

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1307 w/CS Migrant Labor
SPONSOR(S): Poppell and others
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture	14 Y, 0 N w/CS	Kaiser	Reese
2) State Administration	7 Y, 0 N w/CS	Everhart	Everhart
3) Transportation & Econ. Dev. Apps. (Sub)			
4) Appropriations			
5)			

SUMMARY ANALYSIS

This is the Governor's farm worker initiative. The bill's various components are intended to work towards protecting the health and welfare of farm workers while providing efficient government services.

The bill reactivates and renames the Legislative Commission on Migrant and Seasonal Labor (commission) and revises its advisory committee's membership.

The bill directs the Department of Business and Professional Regulation (DBPR) to establish a best practices program for farm labor contractors. A farm labor contractor desiring designation as a "best practice farm labor contractor" must meet certain requirements established by the DBPR.

The bill further amends current statutes relating to farm labor contractors to:

- Authorize the DBPR to inspect farm labor contractors' books;
- Prohibit a farm labor contractor from employing a person acting as a farm labor contractor who does not have a current certificate of registration;
- Require a farm labor contractor to be available to receive service of process;
- Establish definitions for "minor violations" and "major violations;"
- Increase the fee for a certificate of registration from \$75 to \$125;
- Establish civil penalties for "minor violations" up to a cumulative maximum of \$2,500; and
- Establish civil penalties for "major violations" up to \$2,500. Provide for revocation of registration for multiple violations in a 2-year period.

In addition, the bill creates the Florida Agricultural Worker Safety Act (act) to be administered by the Department of Agriculture and Consumer Services. The act's purpose is to ensure farm workers receive protection from exposure to agricultural pesticides.

This bill would increase state revenues by \$180,000 for FY 2004-2005. There appears to be no fiscal impact on local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1307c.sa.doc
DATE: March 31, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Reduce Government:

1. The bill requires the Department of Business and Professional Regulation to create two new programs for farm labor contractors, one to develop a best practices program and the second to establish an incentive program to encourage participation in the best practices program.
2. The bill requires the Department of Agriculture and Consumer Services to enforce new regulations placed on "agricultural employers" to protect farm workers from exposure to agricultural pesticides.

Lower Taxes: The bill provides for an increase of \$50 in the fee for a certificate of registration for farm labor contractors, as well as both new and increased existing civil penalties.

B. EFFECT OF PROPOSED CHANGES:

HB 1307 with CS is the Governor's farm worker initiative. The bill's various components are intended to work towards protecting the health and welfare of farm workers while providing efficient government services.

The bill reactivates the Legislative Commission on Migrant Labor (commission), changing its name to the Legislative Commission on Migrant and Seasonal Labor. It provides that commission appointments be made by March 1, 2005, and its first meeting be held by July 1, 2005. In addition, the membership of the advisory committee to the commission is revised to include representatives from various state agencies, as well as interested parties from the agricultural industry, farm workers, and farm worker advocates. [See Drafting Issues or Other Comments section.] The bill further states that the commission must provide a report to the Legislature no later than February 1 of each year, beginning in 2006.

The bill classifies violations of farm labor contractor regulation in ch. 450, F.S., as either minor violations or major violations. "Minor violation" means a violation of a specific statute or rule which does not present an imminent threat to the health, safety, or welfare of any employee of a farm labor contractor. The penalty for a first "minor" violation is a warning. The civil penalties for second and subsequent violations start at \$250, rise in increments of \$250, and are capped at \$2,500. A minor violation is also a misdemeanor.

"Major violation" means a violation of a specific statute or rule that presents an imminent threat to the health, safety, or welfare of any employee of a farm labor contractor. The bill requires a farm labor contractor to retake the examination for renewal of a certificate of registration if the contractor has been assessed a civil monetary penalty for a major violation. The penalty for a first "major" violation is a fine of at least \$750. The second violation results in a fine of at least \$1,500. The penalty for a third violation in a two-year period may be no more than \$2,500. The fourth "major" violation in a two-year period may result in revocation of the certificate of registration. A major violation may also be criminally prosecuted as a felony.

The bill states that fees collected for the education and examination program will be deposited into the Professional Regulation Trust Fund. Previously, these fees were deposited into the Crew Chief Registration Trust Fund. In addition, the annual fee for a certificate of registration is increased from \$75 to \$125 and must be paid by cashier's check, certified check or money order.

The bill requires the farm labor contractor, or his or her designated agent, to be available during regular business hours on weekdays to receive service of process and other legal documents. In addition, the Department of Business and Professional Regulation (DBPR) may revoke or refuse to issue or renew any certificate of registration for a farm labor contractor who has:

- A civil fine assessed by the DBPR which remains unpaid.
- Failed to pay unemployment compensation taxes as determined by the Agency for Workforce Innovation.
- Been denied a federal certificate of registration as a farm labor contractor, or the certificate has been suspended or revoked.
- Failed to pay federal employee taxes as determined by the Internal Revenue Service.

DBPR may permanently refuse to issue, renew, or revoke the certificate of registration if an applicant or certificate holder has been convicted within the preceding five years:

- Of any crime under state or federal law relating to gambling or to the sale, distribution or possession of alcoholic beverages in connection with, or incident to, any farm labor contracting activities; or
- Of any felony under state or federal law involving robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, prostitution, peonage, or smuggling or harboring individuals who have entered the country illegally.

In addition, the DBPR is given the authority to inspect books, ledgers and other documents related to farm labor contractor activities.

The bill directs the DBPR to establish a best practices program for "farm labor contractors who have demonstrated a firm commitment to responsible and safe labor practices." However, the bill provides no guidelines regarding the contents of, participation in, or qualifications for the program; it only requires farm labor contractors desiring this designation to meet the requirements established by the DBPR. However, the DBPR is not given rulemaking authority to establish the program.

The bill allows recipients of the designation to use the designation when soliciting business as long as the designation is in effect. The designation may be revoked if the DBPR determines the recipient has failed to comply with any of the requirements. The unauthorized use of the designation is prohibited.

The bill further provides that the DBPR may not be held liable in any civil action for any damages resulting from the granting, denying, suspending, or revoking of a designation as a best practices farm labor contractor. The DBPR is further authorized to establish an incentive program for farm labor contractors receiving best practice designation. No guidelines or rulemaking authority are provided for the incentive program.

In addition to the duties of a farm labor contractor already prescribed in statute, the bill requires a farm labor contractor to maintain an accurate daily field record for each employee actually paid by the farm labor contractor. This record must reflect the hours worked for the farm labor contractor and, if paid by unit, the number of units harvested and amount paid per unit.

The bill prohibits farm labor contractors from retaliating against any person who has filed a complaint or aided in an investigation against the farm labor contractor; nor may a person acting in the capacity of a farm labor contractor who does not hold a current certificate of registration with the DBPR be contracted with or employed. The bill provides penalties for these violations.

The bill further prohibits farm labor contractors from requiring farm workers to purchase goods or services solely from that contractor and from charging a farm worker more than a reasonable cost for any commodity, including housing, food, water or other consumables. The bill defines "reasonable cost" as not being able to make a profit off the product supplied to the farm worker. Penalties are provided for violations of these provisions.

The bill also exempts a single family home or mobile home that houses a single migrant family from the definition of "residential migrant housing." The new language does not specify the degree of the familial relationship, nor does it limit the number of family members who may live in the single home. In addition, the bill includes language grandfathering in housing covered by the former Department of Labor's Employment and Training Administration.

The legislation creates the Florida Agricultural Worker Safety Act (act) to be administered by the Department of Agriculture and Consumer Services (DACS). The act's purpose is to ensure farm workers receive protection from exposure to agricultural pesticides.

The DACS is required to continue to monitor for compliance to the extent that resources are available. In addition, agricultural employers are required to make information regarding agricultural pesticides available to farm workers who come into contact with areas where those pesticides have been applied. The bill provides criteria for making the pesticide information available.

The bill prohibits any person from failing to provide agricultural pesticide information as required by this part of Chapter 487, F.S.; it also prohibits retaliatory action against any worker for exercising his or her rights under the Environmental Protection Agency Worker Protection Standard or this part of Chapter 487, F.S. The bill provides penalties for violations of these provisions.

Finally, the bill directs the DACS to monitor all complaints of retaliation and report its findings to the Legislature on or before October 1, 2008.

C. SECTION DIRECTORY:

Section 1: Amending s. 381.008, F.S.; amending definition of "residential migrant housing."

Section 2: Amending s. 381.0086, F.S.; conforming language to reflect a change in the definition of "residential migrant housing"; and providing an exception for structural variance tied to federal law.

Section 3: Amending s. 381.0087, F.S.; requiring the DBPR to provide notice of suspected violations of any law to the appropriate entity.

Section 4: Amending s. 403.088, F.S.; correcting a cross-reference.

Section 5: Amending s. 420.507, F.S.; authorizing the Florida Housing Finance Corporation to utilize federal and state resources in a manner that maximizes funding opportunities in the state.

Section 6: Amending s. 450.191, F.S.; amending the powers and duties of the Executive Office of the Governor in regard to migrant workers and farm labor registration.

Section 7: Amending s. 450.201, F.S.; requiring appointments to the Legislative Commission on Migrant and Seasonal Labor (commission) to be made by March 1, 2005, and setting the date for the first meeting of the commission to be by July 1, 2005.

Section 8: Amending s. 450.211, F.S.; amending the membership of the advisory committee to the commission.

Sections 9 and 11: Amending ss. 450.221 and 450.261, F.S.; conforming references to the commission.

Section 10: Amending s. 450.231, F.S.; providing for an annual report to the Legislature to be made no later than February 1 of each year beginning in 2006.

Section 12: Amending s. 450.27, F.S.; amending the name of part II of Chapter 450, F.S. to the "Farm Labor Contractor Registration Law."

Section 13: Amending s. 450.271, F.S.; changing a reference from the Department of Labor and Employment Security to the Department of Business and Professional Regulation (DBPR).

Section 14: Amending s. 450.28, F.S.; providing definitions for "minor violation" and "major violation."

Section 15: Amending s. 450.30, F.S.; referencing a penalty for a major violation; and changing a reference to a trust fund.

Section 16: Amending s. 450.31, F.S.; requiring application fees to be paid by cashier's check rather than in cash; referencing a change in a trust fund; requiring a farm labor contractor to designate an agent to receive service of process and other official documents; providing times the designated agent must be available; providing reasons a certificate of registration for a farm labor contract may be revoked, suspended, or not renewed; and allowing the DBPR to inspect books, ledgers, and other documents related to the performance of farm labor activities.

Section 17: Creating s. 450.321, F.S.; creating a best practices program for farm labor contractors; providing that the designation of "best practices farm labor contractor" is not transferable; providing criteria for the use of the designation; providing for revocation of the designation; and creating an inventive program to encourage participation in the best practices program.

Section 18: Amending s. 450.33, F.S.; requiring a farm labor contractor to maintain daily field records for each employee.

Section 19: Amending s. 450.34, F.S.; amending prohibited acts to include retaliation against a person for filing a complaint or aiding in an investigation and contracting with or employing a person in the capacity of a farm labor contractor who does not have a current certificate of registration.

Section 20: Amending s. 450.35, F.S.; providing for the employment of a farm labor contractor with a current certificate of registration and providing for penalties for violation.

Section 21: Amending s. 450.37, F.S.; authorizing the DBPR to work with other state agencies in carrying out the provisions of Chapter 450, F.S.

Section 22: Amending s. 450.38, F.S.; creating a felony for committing a major violation; increasing from \$1,000 to \$2,500 the maximum civil penalty that can be charged for each violation of the farm labor provisions of chapter 450; creating new penalties for minor and major violations; requiring penalties to be paid by check rather than in cash; allowing a complaint to be filed in the county where the farm labor contractor resides or does business; providing degrees of penalties for minor and major violations; and authorizing the DBPR to provide notice of suspected violation of law to an appropriate entity.

Section 23: Creating s. 450.39, F.S.; prohibiting a farm labor contractor from requiring a farm worker to purchase goods or services from the farm labor contractor; prohibiting the farm labor contractor from charging a farm worker more than reasonable cost for any commodity; providing criminal penalties for violations; and creating felony offenses.

Section 24-49: Changing reference from “chapter” to “part.”

Section 50: Creating s. 487.2011, F.S.; providing a popular name; and providing for the Department of Agriculture and Consumer Services (DACS) to handle the administration of the act.

Section 51: Creating s. 487.2021, F.S.; providing legislative intent regarding agricultural pesticides.

Section 52: Creating s. 487.2031, F.S.; providing definitions.

Section 53: Creating s. 487.2041, F.S.; requiring the DACS to continue to operate under federal regulations to the extent resources are available.

Section 54: Creating s. 487.2051, F.S.; requiring an agricultural employer to make agricultural pesticide information available to any worker who enters any agricultural pesticide treated area; providing format for the agricultural pesticide information; and providing criteria for dissemination of information.

Section 55: Creating s. 487.2061, F.S.; making it unlawful for an agricultural employer to fail to provide agricultural pesticide information or to take retaliatory action against a worker for exercising a right under the EPA Worker Protection Standard.

Section 56: Creating s. 487.2071, F.S.; providing penalties for violations; providing for a worker to file a complaint with the DACS regarding retaliatory actions against that worker; providing for the DACS to monitor complaints of retaliation and report findings to the Legislature on a date certain; and providing information to be included in the report.

Section 57: Amending s. 500.03, F.S., correcting a cross-reference.

Section 58: Amending s. 570.44, F.S., correcting a cross-reference.

Section 59: Instructing the Division of Statutory Revision to designate ss. 487.011-487.175, F.S., as part I, the “Florida Pesticide Law,” and ss. 487.2011-487.2071, F.S., as part II, the “Florida Agricultural Worker Safety Act.”

Section 60: Providing an effective date of July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: For FY 2004-2005, an additional \$180,000 in recurring revenues would be deposited into the Professional Regulation Trust Fund resulting from the increase in application fees for the farm labor contractor program, for a total application fee collection of \$450,000 annually.
2. Expenditures: The DBPR anticipates conducting more inspections with the additional funding from increased revenues. The DBPR projects total expenditures to increase slightly (2.2%) over FY 2003-2004 levels to \$1,101,189, requiring approximately \$650,000 from General Revenue to fund the program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None

2. Expenditures:

None

- C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: Farm labor contractors will be subject to higher application fees.
- D. FISCAL COMMENTS: The increased revenue from higher application fees offsets a decrease in federal funding projected for FY 2004-2005. This federal funding is in the form of a non-recurring grant, which is projected to be \$41,784 in FY 2004-2005, reduced from \$127,968 in FY 2003-2004. Without an increase in revenues, the program is projected to experience a \$133,020 deficit in FY 2004-2005. With increased application fees, total revenues for the program for FY 2004-2005 are projected to be \$1,141,579 and total expenditures are projected to be \$1,101,189, resulting in a \$40,390 surplus for FY 2004-2005.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

Comments regarding both the CS by the Agriculture Committee and the CS by the State Administration Committee:

1. The provisions creating the permanent Legislative Commission on Migrant and Seasonal Labor (commission) were enacted in 1970 and have not been amended since. Among the commission's purposes are (1) to oversee migrant labor programs, (2) enter into agreements with other states to create cooperative arrangements for migrant labor programs to have a continuing application from state to state, and (3) to develop a comprehensive plan for improving the conditions for migrant labor. The commission's past activities and results are unclear.

Advising this legislative body is a council made up of executive branch personnel and representatives of migrant laborers and the agriculture industry. No direction is given regarding appointment authority, organization and meeting requirements, or the purpose of the council.

2. The bill provides neither guidelines nor rulemaking authority to the Department of Business and Professional Regulation regarding its requirement to develop a best practices program and an incentives program for farm labor contractors.

3. The bill uses the following terms seemingly interchangeably: "seasonal or migrant farmworker," "farmworker," "migrant workers," "migrant laborers," "farm worker," "agricultural worker," and "worker."

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 11, 2004, the Committee on Agriculture adopted a strike-all amendment and four amendments to the strike-all amendment. This analysis reflects the adoption of the strike-all amendment and amendments thereto.

On March 31, 2004, the Committee on State Administration adopted seven amendments:

Amendment #1: inserts "and seasonal" after "migrant" in the provision relating to the legislative commission.

Amendment #2: restores the current exemption specifying that farmers are not subject to regulations placed on farm labor contracts. The exemption was stricken in an earlier version of the bill

Amendment #3: increases the current \$1,000 maximum civil penalty from \$2,000 (provided for in the Agriculture Committee's CS) to \$2,500 to conform to other civil penalties in the bill for violations of farm labor the provisions in chapter 450, F.S.,

Amendment #4: rewords the new definition of "designated representative" to clarify that this is the person must have written authority in order to ask, on behalf of the farmworker, for pesticide information.

Amendments #5 and #6: correct an incorrect cross-reference to a federal law.

Amendment #7: allows a farmworker to choose, rather than being required to file a complaint in the case of retaliatory actions by an employer when a farmworker has exercised his or her rights under the federal EPA Worker Protection Standard.