

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: CS/CS/CS/SB 858

SPONSOR: Judiciary Committee, Environmental Preservation Committee, Agriculture Committee
and Senator Smith

SUBJECT: Agriculture

DATE: April 28, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhavein</u>	<u>Poole</u>	<u>AG</u>	<u>Fav/CS</u>
2.	<u>Branning</u>	<u>Kiger</u>	<u>EP</u>	<u>Fav/CS</u>
3.	<u>Akhavein</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/CS</u>
4.	_____	_____	<u>GA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Committee Substitute for Committee Substitute for SB 858 (CS/CS/CS/SB 858) addresses the following issues related to agriculture and the powers and duties of the Department of Agriculture and Consumer Services (department):

- Clarifies the department's jurisdiction over bison raised on farm operations and the Fish and Wildlife Conservation Commission's jurisdiction regarding the exhibition or display of bison;
- Clarifies that property leased or subleased by the department, which is used for citrus inspections, shall have salvage value for ad valorem tax purposes;
- Amends the definition of "material safety data sheet" to allow dissemination of information through electronic means;
- Removes or changes outdated references;
- Establishes an environmental stewardship program which agricultural producers could voluntarily join;
- Amends the membership of the Florida Agriculture Center and Horse Park Authority;
- Standardizes procedures statewide regarding the inspection of consumer products and exempts the department from any on-line procurement program;
- Requires the department to investigate complaints relating to the Florida Agricultural Worker Safety Act;
- Requires special permits for persons wishing to engage in biomass plantings;
- Revises provisions regarding civil liability for prescribed burns; and
- Defines the term "invasive plant."

This CS/CS/CS amends the following sections of the Florida Statutes: 193.451, 372.921, 372.922, 487.2031, 502.014, 502.091, 503.011, 531.39, 531.47, 531.49, 570.07, 570.9135, 570.952, 581.011, 581.083, 585.002, and 590.125.

This CS/CS/CS repeals section 450.211, Florida Statutes.

This CS/CS/CS creates sections 450.175, 487.2042, and 570.076, Florida Statutes.

II. Present Situation:

Ad Valorem Assessments on Leased Property

Citrus juice extractors are equipment used by Department of Agriculture and Consumer Services (department) inspectors to verify that fruit meets statutory standards before being packed or processed. Extractors are also used by some growers or citrus plants in their quality control programs. The department requires some facilities to sublease these regulatory machines so that they (the department) can control the calibration and maintenance of the equipment. Prior to January 1, 2004, no county had assessed ad valorem taxes on any of the extractors used by the department in its regulatory operations. Taxes have now been assessed, beginning January 1, 2004, in Indian River and Polk counties. Machines used for quality control programs are either purchased or leased directly from the manufacturers by the private entities and are already subject to the tax.

Bison

Current statute is somewhat unclear regarding which state agency has jurisdictional authority for bison. The Fish and Wildlife Commission (FWC) rules define bison as a “game mammal,” with ss. 372.921-922, F.S., providing statutory jurisdiction. At the same time, s. 570.36, F.S., states that the Department of Agriculture and Consumer Services has jurisdiction over livestock, with livestock being defined in s. 585.01, F.S., as “grazing animals, such as cattle, horses, sheep, swine, goats, other hooved animals, ostriches, emus, and rheas, which are raised for private use or commercial purposes.” Consequently, some bison owners are subject to conflicting rules and regulations regarding the care and maintenance of their herd.

This legislation resolves this issue by charging the FWC with jurisdictional authority over bison located on hunting preserves or game farms or at places of exhibition which charge a fee. The department has jurisdictional authority over bison that are domesticated and confined for commercial farming purposes.

Farm Labor Safety

During the 2004 Session, the Legislature passed the Farm Labor Safety Act. Since that time, some oversights have been identified. This legislation names Part II of chapter 450, F.S., as the “Alfredo Bahena Act.” Mr. Bahena, a long-time organizer with the Farmworker Association of Florida, was killed in a car accident in May 2004.

This legislation also abolishes the advisory committee to the Legislative Commission on Migrant Labor. This provision was inadvertently left out of the 2004 legislation.

In addition, several complaints have been filed with the department regarding the Florida Agricultural Worker Safety Act. Once the investigations were complete, a majority of the cases were found to be bogus, causing the department to use lose valuable time and manpower for investigating legitimate complaints. This legislation provides criteria for investigating an anonymous complaint or a complaint made by a confidential informant and provides penalties for submitting false complaints.

Environmental Stewardship Certification

Agricultural producers have been the subjects of debate and, in some cases, criticism by the public concerning farm practices that some perceive to be insufficient to protect natural resources. While many public and private programs have been developed to assist farmers with these issues, no statutory program currently exists. This legislation establishes a voluntary environmental stewardship program and authorizes the department to work with the Institute of Food and Agricultural Sciences of the University of Florida to develop a curriculum.

Department of Agriculture and Consumer Services Powers and Duties

The department is charged with enforcing the state laws and rules regarding many of the products consumers purchase every day. department inspectors verify the quality and quantity of many products offered for sale in the various retail establishments across the state. When items are found to be in noncompliance, these inspectors have the authority to issue a warning and/or fine.

Some local governments also have consumer protection offices, which mirror the duties of the department. However, in some municipalities, the fines charged are nearly double the fines levied by the department. This legislation requires local governments providing the same inspection services as the department to use the standards and fines set forth by the department.

Current efforts are underway to standardize the financial systems across state government. One initiative establishes a statewide e-procurement system [MyFloridaMarketPlace (MFMP)], where all agencies shall participate in the on-line program to enable the state to promote open competition and leverage its buying power. This legislation exempts the department from the MFMP e-procurement system provided for in s. 287.057(23)(a), F.S.

Florida Agriculture Center and Horse Park Authority

During the 1994 Legislative Session, in an effort to strengthen equine and other agriculture-related industries, the Legislature created the Florida Agriculture Center and Horse Park. The legislation further created the Florida Agriculture Center and Horse Park Authority (authority), which is comprised of 21 members appointed by the Commissioner of Agriculture and Consumer Services, to oversee the planning, construction and operation, among other things, of the Florida Agriculture Center and Horse Park.

Originally, the law required the membership of the authority to include representatives of various industries throughout the state. This legislation deletes the reference to the various industry representatives and allows the Commissioner of Agriculture to appoint 21 members of his choosing. Additionally, the bill provides for the terms of members who are appointed prior to the effective date of this legislation to expire upon the effective date of this legislation.

Cultivation of Non-Native Plants

There is a growing interest in cultivating large crops of plants to be used as biomass for alternative energy sources for electric power generation. Concerns have been raised that if this enterprise is not profitable, large plantings of potentially invasive plants would be abandoned and the state could potentially be left with the responsibility of disposing of them. This legislation addresses this concern by requiring persons wishing to grow biomass crops to obtain a special permit from the department and to provide proof of financial responsibility.

Civil Liability for Prescribed Burns

Current sections of chapter 590, F.S., regarding forest protection, are in conflict with one another. Section 590.125(3)(c), F.S., provides a haven from liability regarding controlled burns unless gross negligence is proven. At the same time, s. 590.13, F.S., attaches a civil liability for any violation of chapter 590, F.S., whether or not there is criminal prosecution and conviction. This legislation addresses this conflict by providing an exemption from civil liability for burns conducted in accordance with s. 590.125(3)(c), F.S.

III. Effect of Proposed Changes:

Section 1. Amends s. 193.451, F.S., to provide that property leased or subleased by the Department of Agriculture and Consumer Services (department), which is used for citrus inspections, shall have salvage value for ad valorem tax purposes.

Section 2. Amends s. 372.921, F.S., to include bison in the exemption regarding exhibition or sale of wildlife.

Section 3. Amends s. 372.922, F.S., to include bison in the exemption regarding personal possession, control, care and maintenance of wildlife.

Section 4. Creates s. 450.175, F.S., to name Part II of chapter 450, F.S., the “Alfredo Bahena Act.”

Section 5. Repeals s. 450.211, F.S., authorizing the Legislative Commission on Migrant Labor to establish an advisory committee.

Section 6. Amends s. 487.2031, F.S., to amend the definition of the term “material safety data sheet” (MSDS) to include electronic as well as written or printed material. Many manufacturers and distributors provide a website address where the MSDS may be downloaded and printed.

Section 7. Creates s. 487.2042, F.S., to provide for investigation of complaints under the Florida Agricultural Worker Safety Act. Provides criteria for the commencement of an investigation. Provides for the exemption from civil liability, unless the complainant or witness acts in bad faith or with malice. Provides penalties for making a false complaint.

Section 8. Amends s. 502.014, F.S., to delete a duty of the department relating to issuance of a temporary marketing permit for milk and milk products.

Section 9. Amends s. 502.091, F.S., to delete a reference to “certified pasteurized milk” which is no longer produced.

Section 10. Amends s. 503.011, F.S., to update a date referenced in the definition of frozen desserts.

Section 11. Amends s. 531.39, F.S., to delete an outdated reference regarding state standards.

Section 12. Amends s. 531.47, F.S., to revise provisions regarding information required on packaging.

Section 13. Amends s. 531.49, F.S., to revise provisions regarding advertisements of packaged commodities.

Section 14. Amends s. 570.07, F.S., to provide additional power to the Department of Agriculture and Consumer Services to enforce state laws and rules. Ensures uniform health and safety standards will be used in food inspection, regulations and fines throughout the state. Exempts the department from any on-line procurement program.

Section 15. Creates s. 570.076, F.S., to authorize the department to create the Environmental Stewardship Certification Program (program) that must:

- Be integrated, to the extent possible, with other public and private programs;
- Be designed to recognize and promote practices, whether agricultural or homeowner, that demonstrate exemplary resource management that is related to environmental stewardship;
- Include a process to periodically review certifications to ensure compliance with the program requirements; and,
- Require periodic continuing education to maintain certification.

Provides criteria for the department to use in providing an agricultural certification under the program. Authorizes the Soil and Water Conservation Council to develop and recommend additional criteria for the department to use for obtaining agricultural certification. Provides for the department and the Institute of Food and Agricultural Sciences at the University of Florida to work together, as needed, to develop a curriculum that provides instruction concerning environmental issues pertinent to agricultural certification. Authorizes the department to use third-party providers to administer or implement any, or all, of the program. Gives the department rule-making authority to establish the certification program, providing that any rules adopted are developed in consultation with state universities, agricultural organizations, and other interested parties.

Section 16. Amends s. 570.9135, F.S., to correct a reference.

Section 17. Amends s. 570.952, F.S., to amend the membership of the Florida Agriculture Center and Horse Park Authority (FACHPA). Revises terms of membership. Abolishes a report submitted by the department to the Legislature regarding the activities of the FACHPA.

Section 18. Amends s. 581.011, F.S., to define “invasive plant.”

Section 19. Amends s. 581.083, F.S., to prohibit the cultivation of nonnative plants for purposes of fuel production or purposes other than agriculture, in plantings larger than two contiguous acres, except under a special permit issued by the department. Requires the permit applicant to pay a fee and to maintain a bond or certificate of deposit in an amount not less than 150 percent of the estimated cost of removing or destroying the plants. Specifies information that must be on the application for a special permit.

Requires the permit holder to annually cultivate and maintain the nonnative plants. If the permit holder ceases to do so, the plants must be removed and destroyed. Requires the permit holder to notify the department of such removal and destruction within ten days. Authorizes the department to order that the plants be destroyed if there is a danger to public health, safety, welfare, and the environment or if the applicant exceeds the conditions of the special permit. Authorizes the department to issue an immediate final order under specified circumstances. Requires a permit holder to provide reimbursement if it is necessary for the department to remove and destroy plants subject to a special permit. Provides for an administrative hearing process for the permitholder if objections arise.

Provides requirements for maintenance of a bond or certificate of deposit by a permit holder. Provides requirements relating to assignment and cancellation of a bond or certificate of deposit. Authorizes the department to require an annual bond or certificate of deposit and to increase or decrease the amount of security required. Authorizes the department to review cultivation records during normal business hours to determine compliance with the act. Provides for suspension or revocation of a special permit.

Section 20. Amends s. 585.002, F.S., to provide the department with regulatory authority over the possession, control, care, and maintenance of bison.

Section 21. Amends s. 590.125, F.S., to revise provisions regarding civil liability for burning of land in accordance with s. 590.125(3)(c), F.S.

Section 22. Provides a severability clause.

Section 23. Provides that this act shall take effect July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The cost of the special permit issued for bio-mass plantings in section 19 would be approximately \$50 per permit plus \$100 for two onsite inspections to ensure compliance of conditions specified in the permit. There would also be the costs for obtaining a surety bond or a certificate of deposit, which will vary depending on the size of the planting.

C. Government Sector Impact:**Plant Industry Trust Fund Revenues:**

Special Permit @ \$50 per permit – It is unknown how many permits would be issued. However, the Division of Plant Industry anticipates that no more than two or three will be issued per year for bio-mass plantings.

On-Site Inspection Fees @ \$100 for two inspections – The inspections will ensure compliance with the special permit. These fees are contingent on the number of special permits issued for bio-mass plantings. This fee is set by Rule 5B-2, F.A.C., of the department and is \$50 per special inspection visit.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
