

**HOUSE OF REPRESENTATIVES**  
**FINAL BILL ANALYSIS**

**BILL #:** SB 2122

**FINAL HOUSE FLOOR ACTION:**  
118 Y's      0 N's

**SPONSOR:** Budget

**GOVERNOR'S ACTION:** Approved

**COMPANION BILLS:** N/A

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**SUMMARY ANALYSIS**

The bill was passed by the House on May 7, 2011. The bill was approved by the Governor on May 26, 2011, chapter 2011-56, Laws of Florida, and took effect May 26, 2011. The House did not have a companion bill to SB 2122.

The bill makes statutory changes to conform to the funding decisions included in the General Appropriations Act (GAA) for Fiscal Year 2011-2012.

The bill consolidates the Division of Dairy Industry into the Division of Food Safety within the Department of Agriculture and Consumer Services (DACs). Inspections of dairy farms, milk plants, and milk product plants and other specified functions of the Division of Dairy Industry will be conducted by the Division of Food Safety.

The bill transfers authority for the regulation and enforcement of the state Lemon Law and the price gouging program entirely to the Department of Legal Affairs (DLA). Currently, a portion of these activities is conducted by the Division of Consumer Services within the DACs.

The bill renames the Division of Forestry as the Florida Forest Service, as it was first designated in the early 1900s.

The bill reduces the membership of the Citrus Commission from twelve members to nine, reduces the number of citrus districts from four to three, and reassigns counties to those three districts. The bill makes administrative changes in the Department of Citrus. The bill limits the term of the Executive Director to 4 years and requires the Executive Director be confirmed by the Senate. The bill also requires employees to work a 5-day, 40-hour week.

The bill caps the citrus box tax at the rate in effect on May 1, 2011, for fresh and processed grapefruit, fresh oranges, and fresh tangerines and caps the tax for processed oranges at 25 cents.

The consolidation of the Division of Dairy Industry into the Division of Food Safety provides a recurring cost savings of \$239,496 in general revenue funds. The elimination of activities by the Division of Consumer Services relating to the Lemon Law and the price gouging program provides a recurring cost savings to the General Inspection Trust Fund within the DACs of \$445,082.

The bill becomes effective upon becoming law.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Consolidation of the Division of Dairy Industry into the Division of Food Safety**

##### *Current Situation*

The Department of Agriculture and Consumer Services (DACS) currently has a Division of Food Safety and a Division of Dairy Industry.<sup>1</sup> The Division of Food Safety is responsible for assuring that the public has a safe and wholesome food supply through the permitting and inspection of food establishments, inspection of food products, and performance of specialized laboratory analyses on a variety of food products sold or produced in the state.<sup>2</sup> The Division of Dairy Industry is responsible for inspecting dairy farms in the state and enforcing provisions relating to milk and milk products to ensure dairy products are wholesome and produced under sanitary conditions. The Division of Dairy Industry is also responsible for inspecting milk plants, milk product plants, and plants that manufacture and distribute frozen desserts and frozen desserts mix, as well as analyzing and testing samples of milk, milk products, frozen desserts, and frozen desserts mix.<sup>3</sup>

##### *Effect of Proposed Changes*

The bill repeals ss. 570.40 & 570.41, F.S., relating to the director and the power and duties of the Division of Dairy Industry.

The bill also amends s. 570.50, F.S., and consolidates the Division of Dairy Industry within the Division of Food Safety making the Division of Food Safety responsible for the enforcement of the provisions of chapters 502 and 503, F.S.

#### **General Inspection Trust Fund**

##### *Current Situation*

Section 30, ch. 2010-153, L.O.F., specifies for the Fiscal Year 2010-2011 only that funds in the General Inspection Trust Fund may be appropriated for programs operated by the department related to other programs authorized by chapter 570, F.S., in addition to the spending authorized for implementation of the inspection laws.

##### *Effect of Proposed Changes*

The bill removes the time limitations and authorizes funds in the General Inspection Trust Fund to be used for programs other than implementation of inspection laws.

#### **Forestry**

##### *Current Situation*

The Division of Forestry (division) within the DACS is responsible for managing more than one million acres of forest resources. Besides forest management, the division also provides wildfire prevention and suppression among its many other duties.<sup>4</sup>

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<sup>1</sup> s. 20.14(2), F.S.

<sup>2</sup> s. 570.50, F.S.

<sup>3</sup> chs. 502 & 503, F.S.

<sup>4</sup> s. 570.548, F.S.

Florida has had an organized forestry service for more than 80 years. Prior to the State Governmental Reorganization Act of 1969 (act),<sup>5</sup> the state forests fell under the jurisdiction of the Florida Forest Service (service). The service was led by the Florida Board of Forestry (board), which was appointed by, and reported directly to, the governor. The board was responsible for setting forest policy, as well as appointing state foresters, among other responsibilities.

With the passage of the act in 1969, the service became a division within the newly created Department of Agriculture and Consumer Services and the board was converted to the Florida Advisory Council, which reported to the Commissioner of Agriculture.

#### *Effect of Proposed Changes*

The bill renames the Division of Forestry as the Florida Forest Service, as it was first designated in the early 1900s.

### **Lemon Law**

#### *Current Situation*

Commonly known as Florida's "Lemon Law," the Motor Vehicle Warranty Enforcement Act establishes arbitration boards throughout the state to hear and settle complaints between car manufacturers and owners. The act provides remedies for consumers purchasing or leasing motor vehicles in Florida for personal use that have a manufacturing defect or non-conformity, which substantially impairs the vehicle's value, use or safety.<sup>6</sup>

Although arbitration is completed by a New Motor Vehicle Arbitration Board within the Department of Legal Affairs (DLA), the Division of Consumer Services within the DACS screens requests for eligibility prior to arbitration, maintains a toll-free number for consumer information, reviews each manufacturer's certified procedure at least once a year and prepares an annual report, and distributes a free motor vehicle consumer's rights pamphlet.<sup>7</sup>

A consumer fee of \$2 is collected from motor vehicle dealers for administration of the Lemon Law and is deposited into the Motor Vehicle Warranty Trust Fund within the DLA. One-fourth of this fee is transferred from the Motor Vehicle Warranty Trust Fund within the DLA to the General Inspection Trust Fund within the DACS for services performed to carry out the Lemon Law.

#### *Effect of Proposed Changes*

The bill removes from the DACS the responsibilities for consumer education and information, eligibility determination, and review of manufacturers' procedures as pertaining to the Motor Vehicle Warranty Enforcement Act. These tasks are transferred to the DLA, who administers the rest of the Act. The DACS' portion of the consumer fee will no longer be transferred leaving the entire \$2 fee within the DLA for administration of the Lemon Law.

### **Price Gouging**

#### *Current Situation*

Florida prohibits the rental or sale of essential commodities for unconscionable prices during a declared state of emergency. A commodity includes goods, services, materials, merchandise, supplies, equipment, resources, or other articles of commerce which includes food, water, ice,

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<sup>5</sup> In 1968, Florida voters approved a new State Constitution that called for consolidation of a number of executive offices, requiring that 159 offices, boards, and departments be reorganized into "not more than twenty-five departments."

<sup>6</sup> ch. 681, F.S.

<sup>7</sup> ss. 320.90, 681.103, 681.108, 681.109, F.S.

chemicals, petroleum products, and lumber necessary for consumption or use as a direct result of the emergency. A price is unconscionable if there is a gross disparity between the price charged for the commodity and the average price of that commodity during the 30 days prior to a declaration of a state of emergency, with exceptions.

Currently, the DLA, state attorney's offices, and the DACS have concurrent jurisdiction to enforce violations of this law. Many consumers file complaints with both the DLA and the DACS. This action requires both departments to initiate investigations, which results in duplicative activities.<sup>8</sup>

#### *Effect of Proposed Changes*

The bill removes the responsibility to enforce the prohibition against charging unconscionable prices for commodities during declared states of emergency from the DACS.

### **Florida Citrus Commission**

#### **Districts and Members**

##### *Current Situation*

The head of the Department of Citrus is the board known as the Florida Citrus Commission (the commission). The commission is composed of 12 members; seven members primarily engaged in growing citrus fruit and five grower-handler members with two of the five in the fresh fruit business and three of the five in processing citrus fruit. Each of the four citrus districts must be represented by three members of the commission who must live within the district from which they are appointed. Members are appointed by the Governor for terms of 3 years each and subject to Senate confirmation. Regular terms begin on June 1 and end on May 31.<sup>9</sup>

Current law specifies that the commission be redistricted every five years based on total boxes produced from each of the districts.<sup>10</sup> Redistricting was last addressed by the Legislature in the 2005 Session.<sup>11</sup> According to the United States Department of Agriculture (USDA), the total number of boxes of citrus produced for the 2009-2010 season was 159,250,000 down from 203,800,000 boxes produced in the 2007-2008 season, a 21.9 percent decrease.<sup>12</sup>

#### *Effect of Proposed Changes*

The bill reduces the number of members of the Florida Citrus Commission from 12 members to nine members. The bill specifies that the terms of those members appointed on or before May 1, 2011, are terminated and the Governor shall appoint members in accordance with s. 601.04, F.S.

The bill reduces the number of districts from four to three and reassigns counties.

#### **Executive Director and Employees**

##### *Current Situation*

Currently, the department has the authority to employ and discharge an executive director and employees as it deems necessary and to outline their duties and fix their compensation,

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<sup>8</sup> s. 501.160, F.S.

<sup>9</sup> s. 601.04, F.S.

<sup>10</sup> Ibid.

<sup>11</sup> s. 1, ch. 2005-6, L.O.F.

<sup>12</sup> [http://www.nass.usda.gov/Statistics\\_by\\_State/Florida/Publications/Citrus/cit/2010-11/cit0311.pdf](http://www.nass.usda.gov/Statistics_by_State/Florida/Publications/Citrus/cit/2010-11/cit0311.pdf)

including payment of benefits. The executive director is appointed by the Citrus Commission and is not term limited.

*Effect of Proposed Changes*

The bill limits the term of the Executive Director of the Department of Citrus to 4 years. The bill specifies that the initial term will end June 31, 2011, and subsequent appointments of the executive director must be confirmed by the Senate. The bill also requires employees of the Department of Citrus to work a 5-day, 40-hour week.

**Excise Tax**

*Current Situation*

The Florida Citrus Commission is responsible for setting the annual amount of the excise tax, as well as quality standards, for all citrus grown, packed or processed in Florida. An excise tax (citrus box tax) is imposed upon each box of citrus fruit at maximum annual tax rates for each season determined from the tables in s. 601.15, F.S., and based upon the previous season's actual statewide production as reported by the USDA.<sup>13</sup> The maximum rates specified in the tables increase as production decreases. Upon an affirmative vote of a majority of its members and by an order entered by it prior to November 1 of any year, the commission may set the tax rates up to the maximum rates.<sup>14</sup> The rates may be set at any lower rate in any year.

*Effects of Proposed Changes*

The bill caps the citrus box tax at the rate in effect on May 1, 2011, for fresh and processed grapefruit, fresh oranges, and fresh tangerines and citrus hybrids. The bill caps the tax for processed oranges at 25 cents.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

**Lemon Law**

The current consumer fee of \$2 collected from motor vehicle dealers for administration of the Lemon Law will continue to be deposited into the Motor Vehicle Warranty Trust Fund within the DLA. One-fourth of this fee will no longer be transferred from the Motor Vehicle Warranty Trust Fund within the DLA to the General Inspection Trust Fund within the DACS for services performed to carry out the Lemon Law. This will have a negative fiscal impact to the DACS of \$241,181.

**2. Expenditures:**

**Consolidation of the Division of Dairy Industry into the Division of Food Safety**

The consolidation of the Division of Dairy Industry into the Division of Food Safety provides a recurring cost savings of \$239,465 in general revenue funds and three full-time equivalent (FTE) positions.

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<sup>13</sup> s. 601.15(3)(a), F.S.

<sup>14</sup> s. 601.15(3)(e), F.S.

**Lemon Law**

The transfer of duplicative regulatory and enforcement activities related to the Lemon Law from the DACS to the DLA will have a positive fiscal impact to state trust funds within the DACS of \$386,415, including six FTE positions. The activities performed by the six FTE will be absorbed within existing resources at DLA.

**Price Gouging**

The transfer of duplicative regulatory and enforcement activities related to Price Gouging oversight from the DACS to the DLA will have a positive fiscal impact to state trust funds within the DACS of \$58,667, including one FTE position. The activities performed by the one position will be absorbed within existing resources at DLA.

**Division of Forestry**

The DACS states that the fiscal impact of this legislation would be \$6,600 per year over 3 years for signage transition from Division of Forestry to Florida Forest Service. Repeal of the Correctional Medical Authority will result in a reduction of 6.0 FTE and a General Revenue savings of \$717,680.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

None.

**2. Expenditures:**

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Capping the maximum excise tax rate may have a positive fiscal impact on citrus growers.

**D. FISCAL COMMENTS:**

None.