

## FINAL BILL ANALYSIS

**BILL #:** CS/CS/HB 7215

**FINAL HOUSE FLOOR ACTION:**  
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**SPONSOR:** Rep. Crisafulli

**GOVERNOR'S ACTION:** Approved

**COMPANION BILLS:** CS/SB 2076

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### SUMMARY ANALYSIS

CS/CS/HB 7215 passed the House on May 2, 2011, and subsequently passed the Senate on May 5, 2011. The bill was approved by the Governor on June 21, 2011, chapter 2011-206, Laws of Florida, and takes effect July 1, 2011. The bill addresses several issues relating to the Department of Agriculture and Consumer Services (department), such as:

- Deleting provisions allowing department advisory committee members to claim per diem and travel expenses.
- Exempting certain Direct Support Organization's within the department from annual audits.
- Increasing current levels of insurance for pest control businesses.
- Providing for the establishment, monitoring, and regulation of centralized pest control customer contact centers in lieu of licensure as pest control businesses.
- Establishing a limited certification category authorizing persons to use nonchemical methods for controlling commensal rodents in lieu of licensure.
- Deleting the Division of Dairy Industry within the department and transfers the duties and responsibilities associated with that division to the Division of Food Safety. Repeals ch. 503, F.S., relating to frozen desserts, and transfers statutory language regarding frozen desserts to ch. 502, F.S.
- Requiring persons who produce, harvest, pack, or repack tomatoes who are not permitted under chapter 500, F.S., to register each location annually by August 1 on a form prescribed by the department.
- Establishing a Certified Pile Burner program in statute.
- Allowing the lead managing agency, instead of the Department of Environmental Protection, to receive the compensation from the grant of easements for the construction of electric transmission and distribution facilities on Board of Trustees-owned lands.
- Granting the department with the exclusive authority to enforce the Florida Building Code as it relates to wildfire and law enforcement facilities under the jurisdiction of the department.
- Authorizing monies received from the sale of surplus state-owned wildland firefighting equipment and vehicles to be used to exchange, maintain or purchase wildland firefighting equipment.
- Authorizing the department to delegate authority to local governments to issue authorizations for open burning.
- Renaming the Office of Water Coordination as the Office of Energy and Water.
- Providing fair associations and the Florida State Fair Authority with immunity from liability for damages resulting from certain exhibits and concessions at public fairs; provides exceptions to immunity for gross negligence and to third parties providing exhibits and concessions.
- Adding the appointment of a (non-voting) youth member who is active in the Future Farmers of America or a 4-H Club to the Florida State Fair Authority.
- Providing criminal charges for the theft of bee colonies of registered beekeepers.
- Renaming the Division of Forestry as the Florida Forest Service.
- Allowing the Commissioner of Agriculture to dissolve a Soil and Water Conservation District if the district fails to comply with audit or financial reporting requirements of Chapter 189, F.S., without prior review and recommendation of the Soil and Water Conservation Council.
- Authorizing the department to enforce rules relating to various aspects of commercial stock feeds and fertilizers.
- Preempting the regulation of the sale of fertilizer to the department. However, local ordinances regulating the sale of fertilizer before July 1, 2011, are exempt from state preemption.

The bill appears to have a significant positive fiscal impact on state government for Fiscal Year 2011-12 of approximately \$220,000. There is an insignificant fiscal impact on local governments. For a more detailed explanation of the fiscal impact, please see Section II, Fiscal Analysis & Economic Impact Statement, of this analysis.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Definition of “Agricultural Purposes” for Property Tax Assessment Purposes**

##### Current situation

Section 193.461, F.S., directs the property appraiser, on an annual basis, to classify all lands within the county as either agricultural or nonagricultural for property tax assessment purposes. Section 193.461(3), F.S., provides that only lands that are used primarily for bona fide agricultural purposes can be classified agricultural. Section 193.461(5), F.S., includes a definition of “agricultural purposes” which includes, but is not limited to, horticulture; floriculture; viticulture; forestry; dairy; livestock; poultry; bee; pisciculture, when the land is used principally for the production of tropical fish; aquaculture; sod farming; and all forms of farm products and farm production.

Section 823.14(3)(c), F.S., defines “farm product” as any plant, as defined in s. 581.011, F.S., or animal useful to humans and includes, but is not limited to, any product derived therefrom.

##### Effect of Proposed Changes

The bill amends the statutory definition of “agricultural purposes”, as used in s. 193.461(5), F.S., to incorporate the statutory definition of farm product into said definition.

#### **Direct/Citizen Support Organizations**

##### Current Situation

A direct/citizen support organization (DSO) is a separate, not-for-profit corporation organized and operated exclusively to assist a specific organization by providing supplemental resources from grants, gifts and bequests of money and/or services. These organizations are authorized by Florida Statute to receive, hold, invest and administer property, and to make expenditures to or for the benefit of the specific organization. State law<sup>1</sup> requires DSOs to obtain an annual financial audit conducted by an independent certified public accountant if the annual expenditures are more than \$100,000. Current law provides an exemption from the auditing requirement for DSOs under the purview of the Department of Environmental Protection (DEP) that are not for profit and have annual expenditures of less than \$300,000.

##### Effect of Proposed Changes

The bill exempts the Department of Agriculture and Consumer Services’ (department) DSOs that are not for profit and have annual expenditures of less than \$300,000 from obtaining annual audits.

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<sup>1</sup> Section 215.981(1), F.S.

## Proceeds from Easements for Electric Transmission and Distribution Facilities

### Current Situation

Section 253.02, F.S., provides that the Board of Trustees of the Internal Improvements Trust Fund (board) cannot sell, transfer, or otherwise dispose of any lands the title to which is vested in the board except by a vote of at least three of the four trustees. However, the authority to grant easements for rights-of-way over, across, and upon uplands, the title to which is vested in the board for the construction and operation of electric transmission and distribution facilities, may be delegated to the Secretary of the DEP where the following criteria are met:

- Easements shall not prevent the use of the state-owned uplands adjacent to the easement area for the purposes for which such lands were acquired, and shall not unreasonably diminish the ecological, conservation or recreational values of the state-owned uplands adjacent to the easement area.
- There is no practical and prudent alternative to locating the linear facility and related appurtenances on state-owned upland.
- Appropriate steps are taken to minimize the impacts to state-owned uplands.
- Except for easements granted as a part of a land exchange initiated by a governmental entity to accomplish a recreational or conservation benefit, or other public purpose, in exchange for such easements, the grantee shall pay an amount equal to the market value of the interest acquired. In addition, for the initial grant of such easements only, the grantee shall provide additional compensation by vesting in the board fee simple title to other available uplands that are 1.5 times the size of the easement acquired by the grantee. The grantor shall approve the property to be acquired on its behalf based on the geographic location in relation to the land proposed to be under easement and a determination that economic, ecological and recreational value is at least equivalent to the value of the lands under proposed easement. Priority for replacement uplands shall be given to parcels identified as in-holdings and additions to public lands and lands on a Florida Forever land acquisition list. *However, if suitable replacement uplands cannot be identified, the grantee must provide additional compensation for the initial grant of such easements only by paying to the department an amount equal to 2 times the current market value of the state-owned land or the highest and best use value at the time of purchase, whichever is greater.* When determining the use of such funds, priority shall be given to parcels identified as in-holdings and additions to public lands and lands on a Florida Forever land acquisition list.

### Effect of Proposed Changes

The bill amends s. 253.02, F.S., to provide that the lead manager of the affected state-owned lands receive the compensation for the initial grant of such easements over BOT-owned lands instead of the department, unless there is no lead manager.

## Advisory Committees

### Current Situation

The Commissioner of Agriculture has statutory authority<sup>2</sup> to appoint advisory committees to assist the department with its duties and responsibilities. There are advisory committees for the:

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<sup>2</sup> Section 570.0705, F.S.

Off-Highway Vehicle Recreation Use, Pest Control Enforcement, Pesticide Review, Motor Vehicle Repair, and the Agricultural Promotion Campaign, to name a few.

The law mandates the composition of the committees, their powers and duties, and the term of their service, among other things. The law also states that advisory committee members may not receive compensation for their services, but are entitled to reimbursement for per diem and travel expenses.<sup>3</sup> According to a 2007 response to a Joint Legislative Sunset Committee request, the department had approximately 50 advisory boards, councils, or committees that incurred travel, staff, and other expenses totaling approximately \$220,000.<sup>4</sup>

#### Effect of Proposed Changes

The bill repeals statutory provisions authorizing members of department advisory committees to receive per diem and travel expenses. The bill specifically removes statutory authorization for the: Off-Highway Vehicle Recreation Advisory Committee, Pest Control Enforcement Advisory Council, Pesticide Review Council, Motor Vehicle Repair Advisory Council, State Agricultural Advisory Council, Animal Industry Technical Council, Arabian Horse Council, Dairy Industry Technical Council, Florida Consumers' Council, Florida Agricultural Promotional Campaign Advisory Council, Marketing Oder Advisory Council, Fertilizer Technical Council, Commercial Feed Technical Council, Honeybee Technical Council, Aquaculture Review Council, and Viticulture Advisory Council.

### **Pest Control Fumigation Notice**

#### Current Situation

Currently, to protect the health, safety and welfare of the public, a pest control licensee must give the Department of Agriculture and Consumer Services (department) an advance notice of at least 24 hours of the location where general fumigation will be taking place. In emergency cases, when a 24-hour notice is not possible, a licensee may provide notice by means of a telephone call and then follow up with a written confirmation providing the required information.

#### Effect of Proposed Changes

The bill allows a licensee, when advance notice is not possible, to contact the department regarding the location where fumigation will be taking place by facsimile or another form of electronic communication, as well as by telephone.

### **Pest Control Insurance Coverage**

#### Current Situation

Current law provides that a pest control licensee cannot operate a pest control business without carrying statutorily required insurance coverage. The minimum requirements for insurance coverage to conduct pest control businesses have not been increased since 1992. According to the department, these minimums need to be increased to reflect current levels of insurance offered by liability insurers and to provide better protection to Florida consumers.

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<sup>3</sup> Section 112.061, F.S., establishes per diem and travel expenses for public officers, employees, and other authorized persons.

<sup>4</sup> FY 2006-07

## Effect of Proposed Changes

The bill increases the required minimum insurance coverage for:

- Bodily injury from \$100,000 to \$250,000 per person; \$300,000 to \$500,000 per occurrence; and
- Property damage from \$50,000 to \$250,000 per occurrence; \$100,000 to \$500,000 in the aggregate; and
- Combined single-limit coverage from \$400,000 to \$500,000 in the aggregate.

For wood-destroying organism inspection licenses, the professional liability insurance limits are increased from \$50,000 to \$500,000 in the aggregate, and \$25,000 to \$250,000 per occurrence, and the alternative of demonstrating equity or net worth is revised to increase the amount from \$100,000 to \$500,000.

## **Pest Control Customer Contact Centers**

### Current Situation

Some pest control companies operate regional customer contact centers that solicit business and receive calls for the appropriate state/area in the region. Under some circumstances, pest control contact centers provide licensees with a more efficient means of providing service to customers.

Florida law currently requires pest control businesses to register and obtain an annual license<sup>5</sup> for each location. In addition to being licensed, a pest control business must have at least one certified operator in charge at each location to provide oversight and training for the identification card holders who perform the actual pesticide application.<sup>6</sup> Currently, a customer contact center may not solicit business or receive calls from customers located in Florida without the requisite pest control license.<sup>7</sup>

### Effect of Proposed Changes

The bill authorizes the department to issue a license to operate a customer contact center for the purpose of soliciting pest control business and coordinating services to consumers for one or more business locations. The bill also provides that a person cannot operate a customer contact center for a pest control business that is not licensed by the department, and establishes a licensing fee,<sup>8</sup> a biennial renewal fee,<sup>9</sup> and a late filing fee.<sup>10</sup> The department is authorized to deny or refuse to renew a license if:

- The pest control business licensees for whom it solicits business are not owned in common by a person or business entity recognized by the state.
- The applicant or licensee, or one or more of the applicant's or licensee's directors, officers, owners, or general partners, are or have been directors, officers, owners, or

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<sup>5</sup> The license fee must be at least \$75 and not more than \$300.

<sup>6</sup> The certification fee for a certified operator is \$150 and the fee for an identification card holder is \$10.

<sup>7</sup> Under s. 501.604(27), F.S., a licensed operator or cardholder under ch. 482, soliciting within the scope of the chapter, is exempt from the separate license requirements for a commercial telephone seller or telephone salesperson in the Florida Telemarketing Act, ch. 501, Part IV, F.S.

<sup>8</sup> The license fee must be at least \$600 and not more than \$1,000.

<sup>9</sup> The renewal fee must be at least \$600 and not more than \$1,000.

<sup>10</sup> The late fee is \$150.

general partners of a pest control business that has gone out of business or sold the business to another party within 5 years immediately preceding the date of application or renewal and failed to reimburse the prorated value of its customers' remaining contract periods or failed to provide for another licensed pest control operator to assume its existing contract responsibility.

- A person who solicits pest control services or provides customer service in a licensed customer contact center performs pest control services such as: the use or application of a device or application to prevent or control any pest in, on, or under a structure, lawn, or ornamental; the identification of or inspection for infestation in, on, or under a structure, lawn, or ornamental; the use of pesticides, poisons, or devices for preventing or controlling insects, vermin, rodents, pest birds, bats, or other pests in, on, or under a structure, lawn, or ornamental; or performing any phase of fumigation.

A license automatically expires if a licensee changes the business address of its customer contact center location. The department is given rule-making authority for implementing provisions related to the recordkeeping and monitoring of pest control customer contact centers. The bill also provides criteria for disciplinary action against a pest control customer contact center or a pest control business licensee of the contact center.

## **Certification for Commercial Wildlife Management Personnel**

### Current Situation

For several years, the Florida Fish and Wildlife Conservation Commission issued permits for persons engaged in the control of nuisance wildlife. Interest in the permitting system dwindled over the years and the permitting was discontinued in 2008. Several persons still engaged in the control of nuisance wildlife have contacted the department asking to have a certification process reinstated to assure that the nuisance animals are being handled humanely and the public is protected.

Under current law, pest control is defined as the use of any method or device or the application of any substance to prevent, destroy, repel, mitigate, curb, control, or eradicate any pest in, on, or under a structure, lawn, or ornamental.<sup>11</sup> Pest is defined as an arthropod, wood-destroying organism, rodent (defined in statute to include rats, mice, squirrels, flying squirrels, or other animals of the order Rodentia, including bats, which may become a pest in, on, or under a structure), or other obnoxious or undesirable living plant or animal organism.<sup>12</sup> Persons practicing pest control are required to be licensed under chapter 482, F.S.

### Effect of Proposed Changes

The bill creates a limited certificate within the department authorizing individual commercial wildlife trappers to use nonchemical methods to control commensal rodents. The bill does not require individuals who trap these animals by nonchemical means to obtain the certificate, but those who choose to be certified are not required to obtain a separate pest control license. The department can only issue the limited certification to an applicant who:

- Submits an application and examination fee of at least \$150, but not more than \$300, as prescribed by rule;
- Passes an examination given by the department; and

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<sup>11</sup> Section 482.021(22)(a), F.S.

<sup>12</sup> Section 482.021(21) & (24), F.S.

- Provides proof, including a certificate of insurance, that the applicant has met the minimum bodily injury and property damage insurance requirements required by statute.<sup>13</sup>

The department is required to provide appropriate reference materials for the examination and make the examination readily available to applicants at least quarterly or as necessary in each county. An application for recertification must be made annually and be accompanied by a recertification fee of at least \$75, but not more than \$150, as prescribed by rule. The application must also be accompanied by proof of completion of 4 classroom hours of acceptable continuing education and the required proof of insurance. After a 30 day grace period, the department must assess a late fee of \$50 in addition to the renewal fee. A certification automatically expires 180 days after the recertification date if the renewal fee has not been paid. After expiration, the department can only issue a new certificate if the applicant successfully passes a reexamination and pays the examination fee and late fee. The certification does not allow the use of pesticides or chemicals to control rodents or other nuisance wildlife in, on, or under structures; operation of a pest control business; or supervision of an uncertified person using nonchemical methods to control rodents.

## **Pest Control Liability Limitations and Relationship with FWCC Regulations**

### Current Situation

Current statute does not specifically address liability of persons who practice accepted pest control methods as it relates to animal cruelty provisions.

Current statute also does not specifically address the relationship between persons licensed or certified by the department under Chapter 482, F.S., and the rules, regulations, or orders of the Fish and Wildlife Conservation Commission.

### Effect of Proposed Changes

The bill specifies that persons licensed or certified by the department under chapter 482, F.S., and who practice accepted pest control methods are immune from liability under the animal cruelty provisions.

The bill also provides that the provisions in chapter 482, F.S., related to pest control, do not exempt a person from any Fish and Wildlife Conservation Commission rule, regulation, or order.

## **Pesticide Registration**

### Current Situation

Currently, each brand of pesticide distributed, sold, or offered for sale in the state must be registered biennially by the department.<sup>14</sup> The registrant must supply the department with the name and address of the registrant, the pesticide brand name, an ingredient statement, and a copy of the labeling. Registrants are required to pay a fee per brand of pesticide and another fee for each special local-need label and experimental use permit. The department may also assess a supplemental fee to offset the costs of testing for food safety for pesticide brands that contain an active ingredient for which the U.S. Environmental Protection Agency (EPA) has established a food tolerance limit.<sup>15</sup> The department is authorized to assess late fees for

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<sup>13</sup> Section 482.071(4), F.S.

<sup>14</sup> The registration requirement also applies to pesticide brands delivered for transportation or transported in intrastate commerce or between points within the state through any point out of the state.

<sup>15</sup> Per 40 C.F.R., part 180

registrations<sup>16</sup> that are not timely renewed. Fees collected through the pesticide registration program are deposited into the General Inspection Trust Fund and used to carry out the provisions of the registration program.

### Effect of Proposed Changes

The bill requires registered pesticide brand products that undergo label revision during the biennium to provide the department with a copy of the revised label, including a cover letter that details the changes. This must be done prior to the “newly labeled” pesticide brand being distributed or offered for sale. If the revised label warrants notification of or amendment review by the EPA, the registrant must submit an additional copy of the label with markings to identify those revisions.

The bill also provides that, by January 1, 2013, all fees related to pesticide registration must be submitted electronically using the department’s e-commerce/eGov web site. The bill states that any fees associated with the pesticide brand registration program are non-refundable.

## **Food Safety**

### Current Situation

The department currently has a Division of Food Safety and a Division of Dairy Industry. 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. 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.

In 2010, the Legislature enacted legislation<sup>17</sup> creating s. 500.70, F.S., authorizing the department to adopt rules establishing food safety standards to safeguard the public health and promote the public welfare by protecting the consuming public from injury caused by the adulteration or the microbiological, chemical, or radiological contamination of tomatoes. The law also required the rules to apply to the producing, harvesting, packing, and repacking of tomatoes for sale for human consumption by a tomato farm, tomato greenhouse, or tomato packinghouse or repacker in this state. The law specifically authorized the rules to establish standards for:

- Registration with the department of persons who produce, harvest, pack or repack tomatoes in the state, such as farms, who do not hold a food permit issued under s. 500.12, F.S.<sup>18</sup>

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<sup>16</sup> These include pesticide brands, special local need labels, and/or experimental use permits.

<sup>17</sup> Chapter 2010-25, L.O.F.

<sup>18</sup> Section 500.12, F.S., requires any person who operates a food establishment or retail food store to obtain a food permit from the department. The exceptions to the permit requirement include:

- Persons operating minor food outlets that sell prepackaged candy, chewing gum, soda, or popcorn provided in shelf space of less than 12 linear feet.
- Persons subject to continuous, onsite federal or state inspection.
- Persons selling only legumes, in the shell, either parched, roasted or boiled.



- Proximity of domestic animals and livestock to the production areas for tomatoes;
- Food safety-related use of water for irrigation during production and washing of tomatoes after harvest;
- Use of fertilizers;
- Cleaning and sanitation of containers, materials, equipment, vehicles, and facilities, including storage and ripening areas;
- Health, hygiene, and sanitation of employees who handle tomatoes;
- Training and continuing education of persons who produce, harvest, pack, or repack tomatoes in the state, and their employees who handle tomatoes; and,
- Labeling and recordkeeping, including standards for identifying and tracing tomatoes for sale for human consumption.

The department has statutory authority to establish standards for registration and to set registration costs for the tomato food safety program, but does not have statutory authority to require registration or payment of said registration costs.

### Effect of Proposed Changes

The bill repeals ch. 503, F.S., relating to frozen desserts, and transfers the statutory language regarding frozen desserts to ch. 502, F.S., relating to milk and milk products. The bill titles ch. 502, F.S., to read “Milk, Milk Products, and Frozen Desserts.” The amended chapter includes requirements for permits, fees, reporting, and recordkeeping. The bill adds administrative penalties to s. 502.231, F.S., for frozen dessert licensees.

The bill abolishes the Division of Dairy Industry within the department and transfers the duties and responsibilities associated with that division to the Division of Food Safety. The Division of Food Safety will assume responsibility 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 Food Safety will also assume responsibility 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.

The bill creates subsection (6) in s. 500.70, F.S., to require that any person who produces, harvests, packs, or repacks tomatoes that are not permitted according to s. 500.12, F.S., to register each location annually by August 1 on a form prescribed by the department. One registration may be submitted for all locations, but the physical address of each location must be provided. The bill authorizes the department to set by rule an annual registration fee not to exceed \$500. Monies collected from the registration fee must be deposited into the General Inspection Trust Fund.

## **Authority to Enforce Laws Relating to Commercial Feed Stock and Fertilizers**

### Current Situation

Currently, s. 570.07, F.S., sets out the powers and duties of the department. These include regulatory and enforcement powers. Section 570.07(16)(c), F.S., provides the department with the authority to enforce state laws and rules relating to registration, labeling, inspection, and analysis of commercial stock feeds and commercial fertilizers.

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- Persons selling sugar cane or sorghum syrup that has been boiled and bottled on a premise located within the state.

### Effect of Proposed Changes

The bill amends s. 570.07(16)(c), F.S., to authorize the department, in addition to its current authority, to enforce state laws and rules relating to the sale, composition, formulation and wholesale and retail distribution of commercial feed stocks.

The bill also amends s. 570.07(16)(o), F.S., to grant the department the power to enforce state laws and rules relating to the regulation of fertilizer, including the sale, composition, packaging, labeling, wholesale and retail distribution, and formulation, including nutrient content level and release rates.

Lastly, the bill creates ss. 570.07(41) and 576.181(5), F.S., to grant the department exclusive authority to regulate the sale, composition, packaging, labeling, retail and wholesale distribution, and formulation, including nutrient content level and release rates of fertilizer. The bill expressly preempts such regulation of fertilizer to the state, unless a county or municipal government adopted its own fertilizer ordinances prior to July 1, 2011, in which case the local government is authorized to enforce such ordinance within its jurisdiction.

## **Office of Energy and Water**

### Current Situation

The Office of Water Coordination (OWC), within the department, was established in 1995 by the Legislature to facilitate communications among federal, state, local agencies, and the agricultural industry on water quantity and water quality issues involving agriculture. The OWC is actively involved in the development of best management practices (BMPs), addressing both water quality and water conservation on a site specific, regional, and watershed basis. The office is also directly involved with statewide programs to implement the Federal Clean Water Act's Total Maximum Daily Load (TMDL) requirements for agriculture. The OWC works cooperatively with agricultural producers and industry groups, the DEP, the university system, the water management districts, and other interested parties to develop and implement BMP programs that are economically and technically feasible.

### Effect of Proposed Changes

The bill renames the Office of Water Coordination to the Office of Energy and Water.

## **Coordination with State Energy Office**

### Current Situation

Florida's "Farm to Fuel" initiative seeks to enhance the market for and promote the production and distribution of, renewable energy from Florida-grown crops, agricultural wastes and residues, and other biomass. In the process, it is designed to give Florida agricultural producers alternative crops to grow to keep their farms and ranches viable. Current statute requires the department to coordinate with and solicit the expertise of the state energy office within the DEP when developing and implementing this initiative.

### Effect of Proposed Changes

Because the state energy office is no longer in the DEP, this requirement is no longer necessary in statute, and is removed by this bill.

## **Soil and Water Conservation Districts**

### Current Situation

Soil and Water Conservation Districts (districts) fall under the purview of the department. The Soil and Water Conservation Council (council) is created within the department to assist it in the oversight of the various districts.

Section 582.30, F.S., establishes the process for terminating the operations of a district and discontinuing the existence of a district. Any time after 5 years of organization of a district, any 10 percent of land owners of land lying within the boundaries of the district may file a petition with the department asking that the operations of the district be terminated and the existence of the district discontinued. The department has the authority to conduct public meetings and hearings as necessary to assist in its decision-making process. Within 60 days of receiving the petition, the department must give notice of holding a referendum. The department must supervise the referendum and issue appropriate regulations regarding how the referendum is conducted. Only owners of lands lying within the boundaries of the district are eligible to vote in the referendum. If two-thirds or more of the qualified voters vote in favor of the discontinuance of the district, the department shall certify to the supervisors of the district the results of the referendum and that the continued operation of the district is not administratively practicable or feasible.

Alternatively, upon review and recommendation by the council regarding the viability of a district, the Commissioner of Agriculture may dissolve or discontinue said district if the Commissioner certifies that the continued operation of the district is not administratively practicable or feasible. Notice of the certification must be published once a week for two weeks in a newspaper of general circulation within the county or counties of the district, stating the name of the district and a general description of the territory included in the district. Any objections to the proposed dissolution or claims against assets of the district must be filed with the department clerk not later than 60 days following the date of last publication.

### Effect of Proposed Changes

The bill amends s. 582.30, F.S., to allow the Commissioner of Agriculture, after review and confirmation by the department's inspector general, to certify dissolution or discontinuance of a district without prior review and recommendation of the Soil and Conservation Council, if the district fails to comply with audit or financial reporting requirements of Chapter 189, F.S.

## **Enforcement of the Florida Building Code**

### Current Situation

The Florida Building Code has been revised several times in recent years and, according to the department, this has created confusion among local governments regarding code interpretation and led to a cumbersome and costly process for the department as they construct facilities for wildfire equipment in different parts of the state.

### Effect of Proposed Changes

The bill grants the department with the exclusive authority to enforce the Florida Building Code as it relates to department wildfire and law enforcement facilities.

## **Surplus Firefighting Equipment and Vehicles**

### Current Situation

Prior to 2006, when the law<sup>19</sup> was changed, the department had the authority to use monies acquired from the disposition of surplus firefighting equipment to reinvest in other firefighting equipment. Since 2006, the department must seek a special appropriation before the funds can be reinvested in other equipment. Also, current law<sup>20</sup> requires that all replaced equipment be reported for disposal within 45 days of being replaced, and that the Department of Management Services must approve the disposal of any motor vehicles or aircraft.<sup>21</sup> Because of the nature of emergency response, the department's equipment needs vary from year to year. Because funding for replacement equipment is inadequate, the department requested the flexibility to retain replaced equipment to meet future emergency needs and for use as backup for the frontline equipment.

### Effect of Proposed Changes

The bill authorizes the department to retain, transfer, warehouse, bid, destroy, scrap, or otherwise dispose of surplus equipment and vehicles that are used for wildland firefighting. All monies received from the disposition of state-owned firefighting equipment and vehicles must be retained by the department. Monies received can be used for the acquisition of exchange and surplus equipment used for wildland firefighting, and for all necessary operating costs related to the equipment. The bill requires the department to maintain records of the accounts into which the money is deposited.

## **Certified Pile Burner Program**

### Current Situation

Under current law, certain requirements must be met for a person to burn wild land or vegetative land-clearing debris. Current law also regulates prescribed burning, which can be performed only when a certified prescribed burn manager is present. The certified burn manager must be on site from ignition of the burn to its completion and have in his/her possession a copy of the prescription. The Division of Forestry (division) currently has a voluntary Certified Pile Burner program in place; however, this program is not specifically authorized in statute. Currently, the division sets pile burning restrictions by rule, but nothing in the statutes allows enforcement of these rules. Therefore, there is no punishment for someone who chooses not to comply.

### Effect of Proposed Changes

The bill codifies the Certified Pile Burner program in statute. It provides definitions for "certified pile burner," "pile burning," "land-clearing operation" and "yard trash," as well as revises the definition of "extinguished." The bill requires the certified pile burner to ensure that:

- Prior to ignition, the piles are properly placed and the content is conducive to efficient burning.
- The piles are properly extinguished no later than 1 hour after sunset. In certain areas, the piles must be properly extinguished at least 1 hour before sunset.

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<sup>19</sup> Chapter 2006-122, s. 40, L.O.F.

<sup>20</sup> Section 287.16, F.S.

<sup>21</sup> Section 273.055, F.S.

- The specific consent of the landowner or his agent must be obtained before requesting authorization to burn.
- An authorization to burn has been obtained from the division prior to ignition.
- There are adequate firebreaks and sufficient personnel and firefighting equipment at the burn site to control the fire.

If a burn is conducted in accordance with the provisions of the program, the property owner and his/her agent are not liable under applicable Florida law<sup>22</sup> for damage or injury caused by the fire or resulting smoke unless gross negligence is proven. Violations of program provisions are a misdemeanor of the second degree, punishable by imprisonment not exceeding 60 days or a \$500 fine. The division is given rule-making authority to implement the certified pile burning program.

The bill authorizes the division to send notices of Wildfire Hazard Reduction Treatment to landowners in wildfire hazard areas.

The bill subjects violations of division rules to administrative fines, not to exceed \$1,000 per violation and creates a new criminal penalty<sup>23</sup> for persons who fail to comply with any rule or order adopted by the division or who knowingly make any false statement or representation in any application, record, plan, or other document required by chapter 597, F.S., or any rules adopted to implement chapter 597, F.S.

## **Delegation of Authority for Local Burning**

### Current Situation

Current law provides for the delegation of authority to the Division of Forestry (division), by the Department of Environmental Protection, to control and prohibit air and water pollution in any way possible. However, the division does not have the statutory authority to delegate to local governments the authority to implement a burn authorization program. Many local governments have expressed an interest and ability to implement such a program with division guidance. Currently, some counties issue permits under their own authority, but because the division has the final authority regarding open burning, the division is required to come behind and re-issue daily authorizations.

### Effect of Proposed Changes

The bill authorizes the division to delegate authority to local governments to issue authorizations for open burning. By delegating the authorization, only one permit will be required as opposed to one from the county and one from the division. The local government's program must be approved by the division, provide ordinances or local laws that comply with state law, provide enforcement of the program's requirements, and provide financial, personnel, and other resources needed to carry out the program. If the division determines that a local government's program does not comply with state law or corresponding rules, the division can require the local government to take corrective action within a reasonable timeframe. If the local government fails to comply within the allotted time, the division may resume administration of the open burning authorization program. Local governments administering an open burning authorization program are responsible for cooperating with and assisting the division in carrying

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<sup>22</sup> Sections 590.13 and 590.125(2), F.S.

<sup>23</sup> Violations of program provisions are a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days or a fine of \$500.

out the division's powers, duties, and functions. Violations of a local government's open burning authorization program are subject to penalties as provided in s. 590.14, F.S.<sup>24</sup>

The division retains final authority regarding the issuance of authorizations for broadcast burning and agricultural and silvicultural pile burning. The bill preempts to the division exclusive authority in these areas unless an emergency order is declared. However, the division may delegate to a local government its authority to require and issue authorizations for the burning of yard trash and debris from land clearing operations.

## **Florida State Fair Authority and Fair Associations**

### Current Situation

A fair association is a not for profit association incorporated for the purpose of conducting and operating public fairs or expositions. Section 616.17, F.S., provides that no public fair or exposition conducted by a fair association can be approved by the Department of Agriculture and Consumer Services (department) for a tax exemption certificate unless the fair or exposition displays a certain number and types of exhibits.

The Florida State Fair Authority is an instrument of the state, under the supervision of the Commissioner of Agriculture. The Florida State Fair Authority, composed of 21 members, is responsible for staging an annual fair to serve the entire state. The Commissioner, or his/her designee, serves as a voting member. There is also a member who serves as a member of the Board of County Commissioners of Hillsborough County representing the county commission district in which the state fairgrounds are located. The Commissioner appoints the remaining members of the authority. Each member serves a 4-year term and may be appointed for more than one term.

### Effect of Proposed Changes

The bill amends s. 616.17, F.S., to provide the Florida State Fair Authority and fair associations with immunity from liability for damages resulting from certain exhibits and concessions at public fairs. The bill also provides exceptions to the immunity granted to an authority or fair association. The bill provides that the immunity will not apply if the damages result from an act or omission that was committed by the authority or fair association in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The bill further provides the immunity does not apply to third parties providing exhibits or concessions.

The bill also provides for the membership of the Florida State Fair Authority to be increased to 22 members, with the appointment of a non-voting youth member who is active in the Florida Future Farmers of America or a 4-H Club. The youth member's term is for one year.

## **Apiary and Farm Theft**

### Current Situation

Florida law currently provides criminal charges<sup>25</sup> for the theft of any commercially farmed animal, such as horses, cows, sheep, swine, or other grazing animals, including aquaculture.

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<sup>24</sup> Ibid

<sup>25</sup> Grand theft of the third degree and a felony of the third degree, punishable by imprisonment not exceeding 5 years, \$5,000 fine or, for habitual offenders, for a term of imprisonment not exceeding 10 years.

Current law also defines “farm theft” as the unlawful taking possession of any items that are grown or produced on land, owned, rented, or leased by another person.

Effect of Proposed Changes

The bill amends current law to include the theft of bee colonies of registered beekeepers. The definition of “farm theft” is amended to include the equipment and associated materials used to grow or produce the farm products as defined in the Florida Right to Farm Act.<sup>26</sup> The definition of “farmer” is also amended to include those persons who produce honey.

**Renaming of the Division of Forestry**

Current Situation

The Division of Forestry (division) within the department 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.

Florida has had an organized forestry service for more than 80 years. Prior to the State Governmental Reorganization Act of 1969<sup>27</sup> (act), 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 changes the name of the Division of Forestry to the Florida Forest Service, as it was first designated in the early 1900s.

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

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

<b>1. Revenues:</b>	<b>FY 11-12</b>	<b>FY 12-13</b>	<b>FY 13-14</b>
<u>Pest Control Registration</u>			
Customer Contact Center License*	\$ 6,000	-	\$ 6,000
Limited Certification Wildlife			

<sup>26</sup> Section 823.14(3)(c), F.S.

<sup>27</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.”

Limited Certification Exam**	15,000	7,500	7,500
Limited Certification Renewal***	<u>-</u>	<u>7,500</u>	<u>7,500</u>
	\$21,000	\$15,000	\$21,000
General Inspection Trust Fund Total	\$21,000	\$17,500	\$24,000
Service Charge to General Revenue 4%	<u>(\$ 840)</u>	<u>(\$ 700)</u>	<u>(\$ 960)</u>
Net Revenue to General Inspection Trust Fund	\$20,160	\$16,800	\$23,040

\*Based on 10 licenses issued per year at \$600 each, renewing biennially.

\*\*Based on 100 exams the first year, 50 the second and third years, at \$150 each.

\*\*\*Based on 100 renewals at \$75 each.

**2. Expenditures:**

Pest Control Registration

Inspections*	\$15,860	\$15,860	\$15,860
License Issuance**	<u>1,097</u>	<u>499</u>	<u>1,595</u>
	\$16,957	\$16,359	\$17,455
Total Expenditures	\$16,957	\$16,509	\$17,630

\*FY 09-10 unit cost per inspection, 20 inspections at \$793.

\*\*FY 09-10 unit cost per license, 110 inspections at \$9.97 the first year, 50 inspections the second year, and 160 inspections the third year.

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

**1. Revenues:**

See Fiscal Comments

**2. Expenditures:**

See Fiscal Comments

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

Persons serving on certain advisory committees for the department will be responsible for covering any travel expenses they incur while performing the duties associated with said service.

Pest control businesses that choose to obtain the pest control customer contact center license and individuals choosing to obtain a limited certification for commercial wildlife management personnel will incur fees associated with these licenses. Also, pest control businesses that do not currently have the proposed minimum insurance requirements will need to meet these requirements, resulting in additional costs.



Companies registering pesticides are required to submit their registration fees by means of the electronic commerce site. Some companies may have to adjust the process by which they register to accommodate this change; however, the reduction in postage and paperwork should reduce the overall cost.

While some tomato farms are in compliance with the bill's provisions, there are a few that will be affected by the requirement to register locations with the department, as well as pay an annual registration fee.

The bill provides civil liability protection to certified pile burners. Persons wishing to obtain an authorization for open burning will no longer be required to obtain two permits. Persons who fail to comply with rules adopted by the department relating to the division may be charged with civil/criminal charges.

The bill provides an authority or fair association with criminal and civil immunity for damages resulting from certain exhibits and concessions at public fairs. This could result in a savings to the state fair authority and fair associations.

#### **D. FISCAL COMMENTS:**

According to a 2007 response to a Joint Legislative Sunset Committee request, the department had approximately 50 advisory boards, councils, or committees that incurred travel, staff, and other expenses totaling approximately \$220,000.<sup>28</sup>

A provision in the bill providing for civil/criminal charges for persons who fail to comply with rules adopted by the department may result in an increase in operation costs for county jails.

When an electric transmission easement is granted on state lands, the bill provides that the lead managing agency of the land where the easement occurs (instead of the DEP) receives the initial grant of compensation. According to the DEP, the compensation for electric transmission easements is not an annual amount. It only occurs when an electric line easement occurs. The easement fee will continue to go into the Internal Improvement Trust Fund. The additional compensation will go to the managing agency. The amount deposited to date for the Division of Forestry is \$744,000. The bill appropriates these nonrecurring funds to the department from the Florida Forever Trust Fund for Fiscal Year 2011-2012 in the Fixed Capital Outlay - Agency Managed – Land Management appropriation category pursuant to s. 259.105(3)(f), F.S.

Other provisions in the bill having an indeterminate fiscal impact include:

- Provisions that require tomato growers to register with the Department of Agriculture and Consumer Services and pay a registration fee of \$500. The estimated number of tomato farms ranges from 75 farms to 120 farms and varies from year to year. Revenue received will be subject to the 4 percent Service Charge to General Revenue.
- Provisions allowing the department to retain monies acquired from the sale of state-owned firefighting equipment and vehicles and to dispose of surplus firefighting equipment and vehicles when, and as, it sees fit.

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<sup>28</sup> FY 2006-07