

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.)

BILL: CS/SB 372

SPONSOR: Appropriations Committee, Senator Clary and Senator Pruitt

SUBJECT: Government Operations

DATE: April 15, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	_____	_____	GO	Withdrawn
2.	_____	_____	AGG	Withdrawn
3.	Fontaine/Hayes	Coburn	AP	Fav/CS
4.	_____	_____	RC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This Committee Substitute establishes a periodic fee review process in conjunction with the constitutionally required four year trust fund review cycle. Each state agency must examine the fees it charges for services and for regulatory oversight to determine whether the public would be better served by state government or the private sector providing the service or regulatory oversight.

The bill provides criteria for examining the adequacy of fees to cover costs and requires the agency to present to the Governor and Legislature, as part of its legislative budget request, a proposed schedule of fee changes for review by the Legislature at its next regular session. Agencies are required to make a recommendation to the Legislature for privatization if it is determined the public would be better served by the private sector.

The bill requires that all costs of providing a service for which a fee is charged or of regulating professionals be borne solely by those receiving the service or regulation. The bill requires the fees imposed to be reasonable, to account for differences in the services or professions being regulated, and to require the responsible agencies to operate efficiently.

This bill authorizes fee increases to address projected trust fund deficits in the Fish and Wildlife Conservation Commission (FWCC). The bill authorizes fee increases to certain fees in the Department of Agriculture and Consumer Services (DACs).

Additionally, the Department of Environmental Protection (DEP) is required to determine the costs associated with each permit identified in Rule 62-4, Florida Administrative Code, and submit a report to the Legislature on these costs by December 1, 2003. DEP is required to make status reports on a monthly basis, beginning June 2003.

This bill creates s. 216.1817, Florida Statutes. This bill substantially amends the following sections of the Florida Statutes: 372.16, 372.57, 372.57, 372.661, 372.87, 372.922, 403.087, 482.091, 487.045, 487.48, 500.12, 534.021, 534.031, 534.041, 534.083, 586.045, 597.004, 849.094, Florida Statutes.

II. Present Situation:

Regulatory Fee Structure

In December 2002, the Senate Interim Project Report titled *Fee Equity – Examining the Fairness of Florida’s Regulatory Fee Structure* was released. The report noted that within the State annual budget of over \$50 billion along with separate fiduciary accounts of almost another \$120 billion, are scores of separate revenue raising and spending streams. The report provided the following background issues:

1. Regulatory fees pose unique sets of issues for the institutions and persons affected by government action through its police power or commerce regulating functions.
2. Fees charged for services and for regulation of businesses and professions are set in statute either as a flat fee, a fee cap, or authorization is given to an agency or board to charge a fee to “cover the cost of such service.”
3. Many fees are capped and require legislation to change the cap.
4. Recently some fees charged have been inadequate to cover the true cost of regulation.
5. One remedy to cover the cost of regulations is to supplement the costs with General Revenue.
6. Another remedy is to have one account borrow from another account with interest sufficient funds to cover its costs.

The Interim Project report included the following key findings:

1. It is critical that the functions each agency discharges match its statutory responsibility.
2. The corresponding costs of providing the regulation of service should be identifiable and relate back to the agency function.
3. Generally, the fees set forth in the statute are to pay for certain costs accrued for the regulation of a profession or provision of a service. Because of policy considerations, the fees may not entirely cover the cost of regulating the profession or providing the service.
4. Fees may more than adequately cover the cost of regulating the profession or providing the service, but the overages are designated to fund additional activities elsewhere in the agency or in the overall budget.
5. Fees may be set to cover the cost of regulating a profession or providing a service based upon average costs, not specific costs.
6. Prescribing that all costs of providing a service or of regulating professions be covered requires that all costs be defined and allocated.
7. The language for cost recovery varies in the statutes between agencies.
8. State agencies perform a broad spectrum of services that can directly benefit a particular entity and at the same time benefit the public as a whole.

The Interim Report made the following recommendations:

1. Fee structures should be reviewed to insure consistency with stated policy. Further, with the concept of cost recovery, the appropriateness of fee caps should be reviewed to make sure these upper limits are sufficient to cover all included costs.
2. Any review should be tied to an existing systematic and periodic review process such as that required for trust funds under s. 215.3208, F.S. The review should consider all costs of providing a service for which a fee is charged and of regulating professionals. This would assure that all costs are borne solely by those receiving the service or regulation. Sharing the cost among broader sources would have to be justified.
3. Under s. 215.3208, F.S., the legislature reviews each state trust fund once every four years. Part of that review should include an examination of the relevance of the funding method along with its revenue sufficiency.

State Trust Fund Administration Structure

In February 2002, the Office of the Auditor General issued a report titled *Statutory Revision Could Improve State Trust Fund Administration Structure*. The report provided recommendations relevant to determining the costs of providing a service for which a fee is charged and of regulating professions. The report included the following recommendations:

1. Establish certain cost accounting capabilities to accumulate both the direct and indirect costs of each activity.
2. Authorize the Governor's Office and the Chief Financial Officer to develop policies and related guidelines for identification and classification of direct and indirect costs.
3. State law does not currently require state agencies to develop and implement cost allocation plans. Therefore, in support of maintenance of cost records, each agency should adopt and periodically thereafter update a plan for allocating to each activity an appropriate share of the agency's indirect costs.

Fish and Wildlife Conservation Commission (FWCC)

Chapter 372, F.S., provides for the regulation of Florida's commercial and recreational hunters, as well as saltwater and freshwater anglers. Section 372.561, F.S., establishes the FWCC's authority to issue permits and licenses for the hunting of wild animal and aquatic life. Section 372.57, F.S., establishes the fees for licenses and permits related to recreational hunting, and salt and freshwater fishing licenses for residents and non-residents, and provides the conditions under which a license for hunting or fishing is not required. Revenues from the sale of licenses and permits authorized in s. 372.57, F.S., are deposited into the State Game Trust Fund for the Marine Resources Conservation Trust Fund, the primary operating funds of the FWCC.

Nonresident Hunting and Fishing Licenses

Section 372.57(5), F.S., contains the fees for nonresident hunting and fishing licenses. The nonresident fee schedule ranges from \$5 for a three day saltwater fishing license to a \$30 fee for annual saltwater and freshwater fishing licenses. The fee for a 10 day non-resident hunting license is \$25. In addition to the annual hunting licenses, s. 372.57, F.S., requires that residents and non-residents who want to hunt wild turkeys purchase a turkey permit for a fee of \$5, the same as the permit cost when it was created in 1985.

Other FWCC Fees for Licenses and Permits

Section 372.16, F.S., provides for a \$5 annual fee (created in 1929) for persons maintaining a private game preserve or farm that is 640 acres or smaller. Private preserves or farms produce and rear birds and animals for private and commercial purposes.

Section 372.661, F.S., provides for a \$25 annual license (created in 1959) to operate private hunting preserves commercially.

Section 372.87, F.S., provides for a \$5 fee (created in 1953) for the keeping, possessing or exhibiting of poisonous or venomous reptiles.

Section 372.921, F.S., establishes the fees for wildlife exhibitor or sales licenses (created in 1967). To exhibit 10 animals or less, the fee is \$5 per year; to exhibit 11 or more animals, the fee is \$25 per year.

Office of Program Policy Analysis and Government Accountability (OPPAGA)

In October 2001, OPPAGA issued a Justification Review of the FWCC, which found that the commission is facing a severe crisis in its financial status. According to the report, the FWCC projects that three of its six trust funds will be in deficit position by Fiscal Year 2004-05. Many of the FWCC's programs are funded through the sale of hunting and fishing licenses. OPPAGA recommends that the FWCC continue its efforts to increase the sale of licenses to decrease projected deficits, and suggests that the Legislature authorize the FWCC to increase existing fees.

FWCC Financial Review Task Force

In response to OPPAGA's findings and recommendations, the FWCC Commissioners asked an independent group (Task Force) to review the agency's finances and make recommendations to the Commission about financial strategies that would allow FWCC to continue providing public services at present levels. The Task Force was composed of private business representatives, representatives from hunting, fishing or commercial groups, and former elected officials.

The Task Force was charged with developing financial strategies to address: 1) a projected \$5.3 million short fall in the FWCC's trust funds; 2) potential General Revenue reductions in the FWCC's budget; and 3) impacts of inflation.

In January 2003, the Task Force issued financial recommendations that were supported by the majority of Task Force members, although some strategies did not receive unanimous support. The report included the following recommendations:

1. Increase non-resident license fees for freshwater and saltwater licenses. (Unanimous vote)
2. Increase non-resident hunting license fees and nonresident turkey permit. (Unanimous vote)
3. Increase commercial license fees for facilities requiring inspections, based on the principle that users of FWCC services should pay a fair share of the costs. (Among these areas are hunting preserves, game farms, venomous reptiles, wildlife sales, wildlife as personal pets and wildlife exhibitors). (Unanimous vote)

Department of Agriculture and Consumer Services (DACS)

Chapter 597, F.S., governs those persons engaging in the production of aquaculture products. Section 597.004(1)(h), F.S., mandates that any individual involved with the production of aquaculture products be registered with the department and assessed a \$50 annual registration fee.

Chapter 482, F.S., authorizes the DACS to administer the Structural Pest Control Act for purposes of controlling and monitoring agricultural pests in the state. Those licensed to administer pesticides for commercial use are required to wear identification. Section 482.091(5), F.S., allows the DACS to assess an annual \$10 fee to issue pesticide operator identification cards. Fees collected are deposited into the Pest Control Trust Fund to provide funding for provisions in Chapter 482, F.S.

Chapter 487, F.S., mandates the DACS with responsibility to regulate every pesticide sold, distributed, or transported in the state. Section 487.045(1), F.S., authorizes the department to establish, by rule, a fee cap of \$100 for licensure of private and commercial pest control chemical applicators. This licensure fee is to be renewed annually. Section 487.048(1), F.S., establishes a dealer's license fee, by rule, for any individual who sells or distributes pesticides. The dealer's fee is currently assessed up to \$250, renewed annually.

Chapter 534, F.S., gives jurisdiction to the DACS for purposes of protecting and inspecting livestock in the state. Section 534.021, F.S., refers to the procedure of marking and branding livestock for purposes of identification. The department is designated as the recorder of brands and marks and assesses a \$10 application fee for each identifier registered. Section 534.031, F.S., allows for livestock owners to certify their brands or marks, although this is not required by law. The DACS collects a \$2 fee per certification of a livestock mark or brand. Registration of a livestock brand or mark provides exclusive ownership to its use and may be renewed every 5 years. Section 534.041, F.S., provides for a \$5 brand registration renewal fee.

Chapter 586, F.S., is referred to as the Florida Honey Certification and Honeybee Law. Pursuant to Section 586.045, F.S., all beekeepers are required to register their bee colonies with the department for purposes of inspection. Section 586.045(1), F.S., mandates the DACS to collect a \$10 bee colony registration late fee.

Chapter 849, F.S., relates to provisions governing the state's gambling and gaming procedures. Section 849.094, F.S., mandates that any commercial game promotion with prizes valued over \$5,000 must be filed with the department. The promoter must submit to the department a list of all prizes and the respective rules and regulations of the game. With each game filed, the promoter is required to submit a \$100 fee to the department to assist with regulating and implementing provisions of this section.

Office of Program Policy and Government Accountability (OPPAGA)

In November of 2001, the Office of Program Policy and Government Accountability (OPPAGA) issued Justification Reviews of the Consumer Protection Program, Environmental Services and Food Safety Programs within the Department of Agriculture. OPPAGA recommended that the legislature and the department reduce the program's general revenue funding needs and contribute toward overhead costs by increasing regulatory fees to levels that fully support program direct and indirect costs. In a separate report in November of 1993, Report No. 12185, OPAGGA recommended the Division of Animal Industry increase its fees for program services to the level charged by other states.

Department of Environmental Protection (DEP)

Chapter 403, F.S., is referred to as the Florida Air and Water Pollution Control Act. The management and reduction of air and water pollution is recognized as a public health necessity. As such, the Legislature has recognized the Department of Environmental Protection (DEP) as the primary administrator and enforcer of the Florida Air and Water Pollution Control Act. Section 403.087, F.S., mandates that establishments recognized as potential sources of either air or water pollution be registered with the DEP.

Section 403.087(6)(a), F.S., allows for the department to adopt a fee schedule, by rule, for 12 broad permit categories. This section provides a fee cap for each of the 12 permit categories, and allows for the DEP to determine permit fees as necessary to cover regulation costs, to the greatest extent possible, for programs.

Auditor General Report

In December 1997, the Auditor General released Report No. 13104, stating that the department failed to develop a methodology consistently realizing the costs associated with each type of permit. Furthermore, it was found that fees assessed were only covering approximately 30% of the related costs for permitting. Permit fees have not been increased since 1993.

Additionally, the Auditor General's Report No. 13104 identified numerous department trust funds that were projected to have diminished cash balances by Fiscal Year 2000-01. Recent financial data provided by the department in the December 2002 Trust Fund Status and Activity Report projects deficits in the 2004-05 Fiscal Year. These deficits include \$3.9 million in the Permit Fee Trust Fund, \$3.1 million in the Ecosystems Management and Restoration Trust Fund, \$2.8 million in the Coastal Protection Trust Fund, and \$3.4 million in the Solid Waste Management Trust Fund.

Trust Fund Review Process

A trust fund is identified in s. 215.3206(4), F.S., "...by a unique 6-digit code in the Florida Accounting Information Resource Subsystem (FLAIR)..." Pursuant to Article III, Section 19(f) of the Florida Constitution, the need for each trust fund must be reviewed at least every four years. The creation of any new trust fund or re-creation of an existing trust fund requires extraordinary vote of the Legislature.

Section 216.023, F.S., directs state agencies to submit a legislative budget request to the Legislature and the Governor. It also requires the Governor and the Legislature to develop legislative budget instructions for agencies to follow. Numerous forms are required to be submitted for this review process, including specific trust fund review information.

The FY 2003-04 Legislative Budget Instructions required state agencies to report detailed trust fund data. This data includes detail of fees and related costs, cash balances, and reconciliation of cash balances. For each fund, the agency must include a request to create, re-recreate, modify or terminate the trust fund. Agencies are required to prepare proposed legislation to enact any proposed new trust funds or to make any modifications to existing trust funds. No specific process or policy is established for the detailed review of the actual fees and revenues collected into each trust fund.

III. Effect of Proposed Changes:

Section 1: Creates new chapter law provision. Establishes a fee review process for state agencies. Agencies are required to examine fees charged for services and regulatory oversight every four years. Provides legislative intent related to costs of providing services for a fee.

Section 2: Amends s. 372.16(1), F.S., to increase the annual license fee assessed for ownership of a private game farm from \$5 to \$50.

Section 3: Amends s. 372.57, F.S., to modify the nonresident fishing and hunting license fee schedule and the wild turkey hunting permit. The annual freshwater license fee is increased from \$30 to \$45. The 10 day hunting fee is increased from \$25 to \$45. The seven day freshwater fishing license fee is increased from \$15 to \$25. This section creates a three day freshwater fishing license with a \$15 fee. This section increases the nonresident turkey hunting fee from \$5 to \$100.

Section 4: Amends s. 372.661, F.S., to increase the fee for ownership of private or commercial hunting preserve from \$25 for each preserve to \$70 for each preserve.

Section 5: Amends s. 372.87, F.S., to increase the ownership, possession, or exhibition of poisonous reptiles fee from \$5 to \$100.

Section 6: Amends s. 372.921, F.S., to increase the fees assessed for wildlife exhibition. The exhibition of 10 or less Class I, Class II, or Class III specimens is increased from \$5 annually to

\$150 annually. The exhibition of more than 10 Class I or Class II specimens is assessed at \$250 annually. The exhibition of more than 10 Class III specimens is assessed at \$50 annually.

Section 7: Amends s. 372.922(2)(b), F.S., to increase the fee for personal possession of Class II wildlife specimens from \$100 to \$140 annually.

Section 8: Amends s. 403.087(6)(a), F.S., to require a processing fee in an amount sufficient to cover the direct and indirect costs associated with the permitting activities.

Section 9: Amends s. 482.091(5), F.S., to increase the annual pesticide applicator employee identification card fee from \$10 to \$20.

Section 10: Amends s. 487.045(1), F.S., to allow the department to establish fees by rule to meet the current fee cap of \$100 for private and public pesticide applicators' licenses and subsequent renewals by June 30, 2006.

Section 11: Amends s. 487.048(1), F.S., to allow the department to establish fees by rule to meet the current fee cap of \$250 for a restricted-use pesticide dealer's license by June 30, 2006.

Section 12: Amends s. 534.021, F.S., to increase the livestock brand recording fee from \$10 to \$25.

Section 13: Amends s. 534.031, F.S., to increase the fee for certified copies of recorded livestock marks and brands from \$2 to \$10.

Section 14: Amends s. 534.041, F.S., to increase the renewal fee of registered livestock marks or brands from \$5 to \$25.

Section 15: Amends s.534.083(1), F.S., to increase the permit fee to haul livestock from \$5 to \$25.

Section 16: Amends s. 586.045(1)(2)(3), F.S., to increase the beekeeper registration renewal late fee from \$10 to \$25 and assesses registration fees based on total number of colonies operated by the registrant ranging from \$7.50 to \$125.

Section 17: Amends s. 597.004(1)(h), F.S., to increase the Aquaculture certificate of registration fee from \$50 to \$100.

Section 18: Amends s. 849.094(3), F.S., to increase the game promotion application filing fee from \$100 to \$150.

Section 19: Creates new chapter law provision. Requires the Department of Environmental Protection to determine the costs associated with each permit identified in Rule 62-4, Florida Administrative Code, and submit a report to substantive committees and Appropriations Committees on these costs by December 1, 2003. Status reports are required on a monthly basis, beginning June 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Fish and Wildlife Conservation Commission:

Fee Description	Present Situation	Proposed Changes	Fee Revenue after Change
Nonresident Fishing License Fees:			
Annual Freshwater	\$30	\$45	\$72,234
7-day Freshwater Fishing	\$15	\$25	\$652,457
3-day Freshwater Fishing	N/A	Create \$15	\$791,415
Nonresident Hunting:			
Ten Day Hunting	\$25	\$45	\$137,314
Nonresident Wild Turkey Hunting Fee	\$5	\$100	\$152,000
Wildlife Possession:			
Private Hunting preserve	\$25	\$70	\$7,200
Game Farm	\$5	\$50	\$27,630
Venomous Reptile	\$5	\$100	\$44,270
Personal Pet	\$100	\$140	\$7,200
Wildlife Exhibition or Sale:			
Annual fee assessed for exhibition of wild animals	10 or less (All Classes): \$5 Over 10 (All Classes): \$25	10 or less (All Classes): \$150 Over 10 (Class I and II): \$250 Over 10	\$166,750 \$55,001

		(Class III): \$50	\$175,150
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Department of Agriculture and Consumer Services:

Fee Description	Present Situation	Proposed Changes	Fee Revenue after Change
Aquaculture Annual Registration Fee	\$50	\$100	\$50,985
Pesticide Applicator Identification Card Fee	\$10	\$20	\$296,640
Restricted Pesticide Dealer's Registration Fee Cap	Up to \$250.	Dept. shall meet fee cap of \$250 by June 30, 2006	\$135,900
Pesticide Applicator Fee Cap	Up to \$100	Dept. shall meet fee cap of \$100 by June 30, 2006	\$155,980
Livestock Brand Recording Registration Fee	\$10	\$25	\$2,280
Certificate Fee of Livestock Brands	\$2	\$10	\$160
Renewal of Livestock Brand Certificate every five years.	\$5	\$25	\$10,980
Apiary Late Registration Renewal Fee	\$10	\$25	\$487
Apiary Inspection Fee	Registration fees assessed, by rule, on current program cost.	Registration fee ranging from \$7.50 to \$125, on number of colonies	\$19,790
Game Promotion Filing Fee	\$100	\$150	\$177,450

B. Private Sector Impact:

This bill contains fee increases that will most likely affect nonresidents who enjoy recreational hunting and fishing in Florida and residents who possess wildlife. Additionally, the business and agriculture sectors may incur cost increases as permit fees are increased.

C. Government Sector Impact:

This bill is expected to increase revenues deposited into the General Inspection Trust Fund, the Pest Control Trust Fund, the Plant Industry Trust Fund, the State Game Trust Fund, and the Marine Resources Conservation Trust Fund.

The Department of Environmental Protection will be required to identify costs associated with each permit identified in Rule 62-4, F.A.C., and submit a status report to the substantive and Appropriations Committees of the Legislature by December 1, 2003. Beginning June 2003, status reports will be required on a monthly basis.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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