HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB ANRS 13-01 Department of Agriculture and Consumer Services
SPONSOR(S): Agriculture & Natural Resources Subcommittee
TIED BILLS: PCB ANRS 13-02 **IDEN./SIM. BILLS:** SB 1628

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Agriculture & Natural Resources Subcommittee	12 Y, 0 N, As CS	Kaiser	Blalock

SUMMARY ANALYSIS

The bill addresses various issues relating to the powers and duties of the Department of Agriculture and Consumer Services (department). The bill:

- Expands the current law prohibiting local governments from banning agricultural or silvicultural open burning in Florida to apply when an emergency order is declared; authorizes the Florida Forest Service (FFS) to delegate the open burning of land clearing debris to a local government or special district through authority delegated to the FFS by the Department of Environmental Protection; specifies that the responsible person named in the burn authorization must remain at the burn site until the fire is extinguished for pile burns and there are no spreading flames for prescribed burns at the conclusion of the authorization period; provides that fire spreading outside the authorized burn area on the day of the certified prescribed burn ignition does not constitute conclusive proof of inadequate firebreaks, insufficient personnel, or a lack of firefighting equipment; provides that during the authorization period if the certified prescribed burn is contained within the authorized burn area then a strong rebuttable presumption exists that adequate firebreaks, sufficient personnel, and sufficient firefighting equipment were present; authorizes the FFS to enter any lands for the purpose of detecting wildfires, in addition to preventing and suppressing wildfires as allowed under current law; specifies that recreational fires may not be left unattended until no visible flames, smoke, or emissions exist; provides that the FFS is not liable for burns for which it issues authorizations or burns it conducts on state-owned land.
- Expands Operation Outdoor Freedom (OOF) to other state land (not just state forests) and also private land.
- Changes the public hearing requirement for developing land management plans to provide that at least one public hearing must be held in one affected county instead of each affected county.
- Grants the department rulemaking authority to distribute 70% of state matching funds for local mosquito control programs to such mosquito control programs that have a budget of less than $1 million when the amount of matching funds appropriated by the Legislature is insufficient to grant each local program state funds on a dollar-for-dollar matching basis.
- Deletes the redundant requirement that the department submit a report every three years on restricted pesticide use in Florida because the United States Department of Agriculture (USDA) provides this information
- Eliminates the Pesticide Review Council. The council is unnecessary and does not review pesticide registration issues.
- Eliminates the permitting requirement for livestock haulers.
- Repeals an obsolete statute pertaining to Arabian horse racing, breeders, and stallion awards, and also eliminates the Arabian Horse Council.
- Codifies the organization and duties of the Division of Food, Nutrition and Wellness in the department's authorizing statute (Ch. 570), and establishes a separate chapter (595) in the statutes for the division. The division is responsible for carrying out the school lunch program that was transferred from the state Department of Education to the department.
- Repeals the Gertrude Maxwell Save a Pet Direct Service Organization and provides for dispensation of the funds remaining in the DSO's account. This DSO is no longer operational.
- Authorizes the department to establish a direct support organization. Same authority given to other state agencies.
- Moves the nutrient standards and thresholds for ensuring that fertilizer sold in the state contains the amount of nutrients guaranteed to be in the product from statute to rule.
- Closes the animal disease diagnostic laboratory in Suwannee County because this facility is no longer necessary.
- Allows apiary inspectors to be certified beekeepers as long as the inspector does not inspect his/her own apiary.
- Repeals statutory language prohibiting the sale of articles made from unfinished cross-sectional slabs cut from buttresses of cypress without a permit.

The bill appears to have an insignificant fiscal impact on state and local governments (See Fiscal Comments).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Forest Service

Land Management Plans

Present Situation

Section 253.034(5), F.S., provides that managers of conservation lands must submit a land management plan (plan) to the Division of State Lands (division) every 10 years. The plans must be updated whenever new facilities are proposed or substantive land use or management changes are made that were not addressed in the approved plan, or within one year of the addition of significant new lands. Managers of non-conservation lands must also submit a plan to the division every 10 years.

The division reviews the plans to ensure compliance with s. 253.034(5), F.S., and the rules established by the Board of Trustees of Internal Improvement Trust Fund (BOT) pursuant to s. 253.034(5), F.S. Land use plans, whether for single-use or multiple-use properties, must include an analysis of the property to determine whether any significant natural or cultural resources are located on the property. Such resources include archaeological and historic sites, state and federally listed plant and animal species, imperiled natural communities, and unique natural features. If such resources are located on a property, the land manager, in consultation with the division and other appropriate agencies, must develop a management strategy to protect these resources. Land use plans must also provide for the control of invasive non-native plants and the conservation of soil and water resources. Descriptions of how the land manager plans to control and prevent soil erosion and soil or water contamination must be included in the plans. Land use plans must include reference to appropriate statutory authority for all uses and must conform to the appropriate policies and guidelines of the state land management plan.

Plans for managed areas larger than 1,000 acres must contain an analysis of the multiple-use potential of the property and include the potential of the property to generate revenues to enhance the management of the property. The plan must also include an analysis of the potential use of a private land manager to facilitate the restoration or management of the land.

In cases where a newly acquired property has a valid conservation plan that has been developed by a soil and water conservation district, that plan should be used until a formal land use plan is completed.

Currently, when developing land management plans, at least one public hearing is held in each affected county.

Effect of Proposed Change

The bill amends s. 253.034(5), F.S., to provide that, when developing land management plans, at least one public hearing must be held in one affected county, rather than each affected county. The Department of Agriculture and Consumer Services (department) feels that holding one meeting in one centrally-located county is a better use of department time and resources.

Operation Outdoor Freedom

Present Situation

During the 2011 legislative session, the Florida Forest Service (FFS) was directed to designate areas of state forests as “Wounded Warrior Special Hunt Areas” to honor wounded veterans and service members, and provide outdoor recreational opportunities for eligible veterans and servicemembers.

Section 589.19(4), F.S., provides that admittance to these areas is limited to persons who are an active duty member of any branch of the U.S. Armed Forces and have a combat-related injury or veterans who served during a period of wartime service or peacetime service and have a service-connected disability or were discharged from military service due to a disability acquired or aggravated while serving on active duty. Persons, who are not eligible veterans or servicemembers but are accompanying an eligible veteran or servicemember who requires the person's assistance to use the designated areas, may be allowed entry by the FFS.

Funding required for specialized accommodations are provided through the Friends of Florida State Forests program.

After the enactment of ch. 2011-116, L.O.F., it came to the attention of the department that another organization had adopted and was using the term "Wounded Warrior." During the 2012 legislative session, s. 589.19(4)(a), F.S., was amended to rename the "Wounded Warrior Special Hunt Area" the "Operation Outdoor Freedom Special Hunt Area."

Section 375.251, F.S., provides that an owner or lessee who provides the public with an area for outdoor recreational purposes owes no duty of care to keep that area safe for entry or use by others, or to give warning to persons entering or going on that area of any hazardous conditions, structures, or activities on the area. An owner or lessee who provides the public with an area for outdoor recreational purposes:

- Is not presumed to extend any assurance that the area is safe for any purpose;
- Does not incur any duty of care toward a person who goes on the area; or
- Is not liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on the area.

An owner or lessee who makes available to any person an area primarily for the purposes of hunting, fishing, or wildlife viewing is entitled to the limitation of liability so long as the owner or lessee provides written notice of this provision to the person before or at the time of entry upon the area or posts notice conspicuously in the area. While an area offered for outdoor recreational purposes may be subject to multiple uses, the limitation of liability extended to an owner or lessee applies only if no fee is charged for entry to or use of the area for outdoor recreational purposes and no other revenue is derived from patronage of the area for outdoor recreational purposes.

An owner or lessee who enters into a written agreement concerning the area with the state for outdoor recreational purposes, where such agreement recognizes that the state is responsible for personal injury, loss, or damage resulting in whole or in part from the state's use of the area under the terms of the agreement subject to the limitations and conditions specified in s. 768.28, F.S., owes no duty of care to keep the area safe for entry or use by others, or to give warning to persons entering or going on the area of any hazardous conditions, structures, or activities thereon. An owner who enters into a written agreement concerning the area with the state for outdoor recreational purposes:

- Is not presumed to extend any assurance that the area is safe for any purpose;
- Does not incur any duty of care toward a person who goes on the area; or
- Is not liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on the area.

This applies to all persons going on the area that is subject to the agreement, including invitees, licensees, and trespassers. The intent of the law is that an agreement entered into pursuant to this subsection of law should not result in compensation to the owner of the area above reimbursement of reasonable costs or expenses associated with the agreement. An agreement that provides for such does not subject the owner or the state to liability even if the compensation exceeds those costs or expenses. This provision only applies to agreements executed after July 1, 2012.

A person is not relieved of liability that would otherwise exist for deliberate, willful, or malicious injury to persons or property. The limitation of liability provision does not create or increase the liability of any person.

Effect of Proposed Changes

The bill amends s. 589.19(4), F.S., replacing the Operation Outdoor Freedom Special Hunt Area Program with the Operation Outdoor Freedom Program and directing the FFS to develop the program to offer hunting or other activities for injured active duty members or injured veterans of any branch of the U.S. Armed Forces in designated forest areas and other designated public and private lands, not just in state forests. The bill offers legislative findings that it is in the public interest for the FFS to develop partnerships with the Florida Fish and Wildlife Conservation Commission (FWC) and other public and private organizations in order to provide the needed resources and funding to make this program successful.

Participation in the program is limited to Florida residents who:

- Are honorably discharged military veterans certified by the U.S. Department of Veterans Affairs or its predecessor or by any branch of the U.S. Armed Forces to be at least 30 percent permanently service-connected disabled;
- Have been awarded the Military Order of the Purple Heart; or
- Are active duty servicemembers with a service-connected injury as determined by his/her branch of the U.S. Armed Forces.

The FFS may require proof of eligibility for participation in the program. Notwithstanding the eligibility requirements discussed above, the program may conduct guided or unguided invitation-only activities as part of the Operation Outdoor Freedom Program for injured or disabled veterans and injured or disabled active duty servicemembers of any branch of the U.S. Armed Forces in designated state forest areas and on designated public and private lands. Persons granted admission to designated program areas who are not eligible veterans or servicemembers must be there for the sole purpose of accompanying an eligible veteran or servicemember who requires said person's assistance to use the designated areas.

The FFS is authorized to cooperate with state and federal agencies, local governments, private landowners, and others in connection with Operation Outdoor Freedom. Monetary donations to the program must be deposited into the Friends of Florida State Forests Program and used for program activities.

The bill also provides that a private landowner who allows their land to be designated and used as an Operation Outdoor Freedom Program hunting site has the same limited liability protection afforded other landowners pursuant to s. 375.251, F.S, as discussed above. Private landowners who consent to the designation and use of their land as part of the program without compensation are considered a volunteer and are covered by state liability protection. The liability protections do not relieve any person from liability that would otherwise exist for deliberate, willful, or malicious injury to persons or property, nor do they create or increase the liability of any person.

The bill designates the second Saturday of each November as Operation Outdoor Freedom Day.

<u>Annual Meeting of the Florida Forestry Council</u>

Present Situation

Section 589.02, F.S., designates Tallahassee as the official headquarters of the Florida Forestry Council (council), although the council may hold meetings at other locations in the state as determined by resolutions or selected by a majority of the members of the council. Currently, the annual meeting is held on the first Monday in October of each year. Special meetings may be called at any time by the chair or upon the written request of a majority of the members. Each year at the annual meeting, the

council elects a chair, vice chair, and secretary from its membership. A majority of members of the council constitutes a quorum for such purpose.

Effect of Proposed Changes

The bill amends s. 589.02, F.S., to eliminate the requirement for the council to hold its annual meeting the first Monday in October, as well as a provision allowing special meetings to be called at any time by the chair or upon the written request of a majority of the members. The bill also removes the provision requiring the election to be held at the annual meeting.

According to the department, in the recent past, the council has held its annual meeting in conjunction with the Florida Forestry Association annual meeting during the week of Labor Day.

Duty of Florida Forest Service District or Center Managers

Present Situation

Section 589.30, F.S., provides that district foresters are responsible for directing all work in accordance with the law and regulations of the Florida Forest Service; gathering and disseminating information in the management of commercial timber, including establishment, protection and utilization; and assisting in the development and use of forest lands for outdoor recreation, watershed protection, and wildlife habitat. The district forester is also responsible for providing encouragement and technical assistance to individuals and urban and county officials in the planning, establishment, and management of trees and plant associations to enhance the beauty of the urban and suburban environment and meet outdoor recreational needs.

The department reports that, in the mid-1980's, district foresters titles were changed to district managers. Also, when Blackwater River State Forest was merged with the Milton district and Withlacoochee State Forest merged with the Brookville district, both facilities became centers. The persons heading those units were titled as center managers.

Effect of Proposed Changes

The bill amends s. 589.30, F.S., to change the title of the district forester to district manager. The bill also creates a position known as a center manager. These changes bring the statutes in line with the terminology currently used in the field.

Open Burning

Present Situation

Section 570.07(28), F.S., requires the department, for the purposes of pollution control and the prevention of wildfires, to regulate open burning connected with land clearing, agricultural, or forestry operations.

Section 590.02(1), F.S., provides the department with the power, authority, and duty to prevent, detect, and extinguish wildfires whenever they occur on public or private land in the state and to do all things necessary in the exercise of such powers, authority, and duties.

Section 590.02(2), F.S., authorizes the FFS's employees, and the firefighting crews under their control and direction, to enter any lands for the purpose of preventing and suppressing wildfires and investigating smoke complaints or open burning not in compliance with authorization and to enforce the provisions of chapter 590, F.S.

Section 590.02(3), F.S., authorizes the employees of the FFS and of federal, state, and local agencies to, in the performance of their duties, set counterfires, remove fences and other obstacles, dig trenches, cut firelines, use water from public and private sources, and carry on all other customary

activities in the fighting of wildfires without incurring liability to any person or entity. This provision applies to all other persons and entities that are under contract or agreement with the FFS to assist in firefighting operations as well as those entities called upon by the FFS to assist in firefighting.

Section 590.02(10), F.S., provides that the FFS has exclusive authority to require and issue authorizations for broadcast burning and agricultural and silvicultural pile burning. An agency, commission, department, county, municipality, or other political subdivision of the state may not adopt or enforce laws, regulations, rules, or policies pertaining to agricultural and silvicultural pile burning unless an emergency order is declared in accordance with s. 252.38(3), F.S., The FFS may delegate to a county or municipality its authority, as delegated by the Department of Environmental Protection, to require and issue authorizations for the burning of yard trash and debris from land clearing operations.

Section 590.11, F.S., provides that it is unlawful for any individual or group of individuals to build a warming fire, bonfire, or campfire and leave it unattended or unextinguished.

Section 590.125, F.S., provides statutory authority for open burning authorized by the FFS. Currently, the statutes provide definitions for "certified pile burner," "certified prescribed burn manager," "extinguished," "land-clearing operation," "pile burning," "prescribed burning," "prescription," and "yard trash."

"Extinguished" means that for:

- Wildland burning or certified prescribed burning, no spreading flames exist.
- Vegetative land-clearing debris burning or pile burning, no visible flames exist.
- Vegetative land-clearing debris burning or pile burning in an area designated as smoke sensitive by the FFS, no visible flames, smoke, or emissions exist.

"Pile burning" means the burning of silvicultural, agricultural, or land-clearing and tree-cutting debris originating onsite, which is stacked together in a round or linear fashion, including but not limited to, a windrow.

"Prescribed burning" means the controlled application of fire by broadcast burning in accordance with a written prescription for vegetative fuels under specified environmental conditions, while following appropriate precautionary measures that ensure that the fire is confined to a predetermined area to accomplish the planned fire or land management objectives.

"Prescription" means a written plan establishing the criteria necessary for starting, controlling, and extinguishing a prescribed burn.

Section 590.125(2), F.S., provides that persons may be authorized to burn wild land or vegetative land-clearing debris if:

- There is specific consent of the landowner or his/her designee;
- Authorization has been obtained from the FFS or its designated agent before starting the burn;
- There are adequate firebreaks at the burn site and sufficient personnel and firefighting equipment for the control of the fire;
- The fire remains within the boundary of the authorized area;
- An authorized person is present at the burn site until the fire is extinguished;
- The FFS does not cancel the authorization; and
- The FFS determines that air quality and fire danger are favorable for safe burning.

Persons who burn wild land or vegetative land-clearing debris in a manner that violates any of the requirements listed above is guilty of a misdemeanor of the second degree, punishable by a definite term of imprisonment not exceeding 60 days or a fine not exceeding $500.

Section 590.125(3), F.S., provides that prescribed burning is a land management tool that benefits the safety of the public, the environment, and the economy of the state. Certified prescribed burning

pertains only to broadcast burning for purposes of silviculture, wildland broadcast burning for purposes of silviculture, wildland fire hazard reduction, wildlife management, ecological maintenance and restoration, and range and pasture management. It must be conducted in accordance with s. 590.125(3), F.S., and:

- May be accomplished only when a certified prescribed burn manager is present on site with a copy of the prescription from ignition of the burn to its completion.
- Requires that a written prescription be prepared before receiving authorization to burn from the FFS.
- Requires that the specific consent of the landowner or his/her designee be obtained before requesting an authorization.
- Requires that an authorization to burn be obtained from the FFS before igniting the burn.
- Requires that there be adequate firebreaks at the burn site and sufficient personnel and firefighting equipment for the control of the fire.
- Is considered to be in the public interest and does not constitute a public or private nuisance when conducted under applicable state air pollution statutes and rules.
- Is considered to be a property right of the property owner if vegetative fuels are burned as required in s. 590.125(3), F.S.

Neither a property owner nor his/her agent is liable pursuant to s. 590.13, F.S., for damage or injury caused by the fire or resulting smoke or considered to be in violation for burns conducted in accordance with the above conditions unless gross negligence is proven. Any certified burner violating these provisions is guilty of a misdemeanor of the second degree, punishable by a definite term of imprisonment not exceeding 60 days or a fine not exceeding $500.

The FFS is authorized to adopt rules for the use of prescribed burning and for certifying and decertifying prescribed burn managers based on their past experience, training, and record of compliance with these provisions.

Section 590.125(4), F.S., provides that certified pile burning pertains to the disposal of piled, naturally occurring debris from an agricultural, silvicultural, or temporary land-clearing operation. A land-clearing operation is temporary if it operates for 6 months or less. Certified pile burning must be conducted in accordance with the following:

- A certified pile burner must ensure, before ignition, that the piles are properly placed and that the content of the piles is conducive to efficient burning.
- A certified pile burner must ensure that the piles are properly extinguished no later than 1 hour after sunset.
- If the burn is conducted in an area designated by the FFS as smoke sensitive, a certified pile burner must ensure that the piles are properly extinguished at least 1 hour before sunset.
- A written pile burning plan must be prepared before receiving authorization from the FFS to burn.
- The specific consent of the landowner or his/her agent must be obtained before requesting authorization to burn.
- An authorization to burn must be obtained from the FFS or its designated agent before igniting the burn.
- There must be adequate firebreaks and sufficient personnel and firefighting equipment at the burn site to control the fire.

Section 590.25, F.S., provides that anyone who interferes with, obstructs, or commits any act aimed to obstruct the extinguishment of wildfires by the employees of the FFS or any other person engaged in the extinguishment of a wildfire, or who damages or destroys any equipment being used for such purpose, is guilty of a felony of the third degree, punishable by a term of imprisonment not exceeding 5 years or a fine not exceeding $5,000.

Effect of Proposed Changes

The bill amends s. 570.07(28), F.S., to remove the term “land clearing” and replace it with “pile burning.” This provides consistency between the Florida Administrative Code and the Florida Statutes.

The bill amends s. 590.02(1), F.S., to provide that the FFS has the power and duty to authorize broadcast burning, prescribed burning, pile burning, and land clearing debris burning to carry out the duties of chapter 590, F.S., and the rules under chapter 590, F.S. The bill deletes the term “extinguish” as it relates to the wildfire control duties of the FFS. This term is redundant in statute.

The bill amends s. 590.02(2), F.S., to provide that FFS employees can enter upon any lands for the purpose of detecting wildfires. Current law already authorizes such activity for the purpose of preventing and suppressing wildfires.

The bill amends s. 590.02(3), F.S., to provide that the manner in which the FFS monitors a smoldering wildfire, or a smoldering prescribed fire or fights any wildfire is a planning level activity for which sovereign immunity applies and is not waived.

The bill amends s. 590.02(10), F.S., to provide that the FFS has exclusive authority to require and issue authorizations for broadcast burning and agricultural and silvicultural pile burning even if an emergency order is declared by a local government. The bill authorizes the FFS to delegate to a special district its authority to manage and enforce regulations pertaining to the burning of yard trash. The FFS may also delegate to a special district the authority to manage the open burning of land clearing debris. The department states these changes provide clarification pertaining to their authority regarding open burning in the state.

The bill amends section 590.11, F.S., to provide that it is unlawful for any individual or group of individuals to leave a campfire or bonfire unattended while visible flame, smoke, or emissions exist.

The bill amends the definitions in s. 590.125, F.S., to include new definitions for “Certified pile burning,” “Certified prescribed burning,” “Contained,” “Gross negligence,” “Pile burn plan,” and “Smoldering.” “Certified pile burning” means a pile burn conducted in accordance with a written pile burning plan by a certified pile burner. “Certified prescribed burning” means prescribed burning in accordance with a written prescription conducted by a certified prescribed burn manager. “Contained” means that fire and smoldering exist entirely within established firelines or firebreaks. “Gross negligence” means conduct so reckless or wanting in care that it constitutes a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct. “Pile burn plan” means a written plan establishing the method of conducting a certified pile burn. “Smoldering” means the continued consumption of fuels, which may emit flames and smoke, after a fire is contained.

The bill also replaces the term “Extinguished” with “Completed” and amends the definition to mean that for:

- Broadcast burning, no continued lateral movement of fire across the authorized area into entirely unburned fuels.
- Certified pile, no visible flames exist for pile burning or certified pile burning.
- Certified pile, no visible flames, smoke, or emissions exist for pile burning or certified pile burning in an area designated as smoke sensitive by the FFS.

The definition of “pile burning” is amended to provide that pile burning authorized by the FFS is a temporary procedure, operating on the same site for 6 months or less.

The bill amends s. 590.125(2), F.S., requiring that the person named responsible in the burn authorization or a designee is present at the burn site until the fire is completed. The bill also amends terminology to incorporate new and amended phrases as appropriate. The insertion of the new and amended phrases does not change the substantive nature of the bill.

The bill amends s. 590.125(3), F.S., to replace “range and pasture management” with “agriculture” as it pertains to certified prescribed burning. The bill also provides that certified prescribed burning can only occur when a certified prescribed burn manager (manager) directly supervises the certified prescribed burn until the burn is completed, after which the manager is not required to be present. The bill also provides that a new prescription or authorization is not required for smoldering that occurs within the authorized burn area when no new ignitions are conducted by the manager, and that monitoring of the smoldering activity of a certified prescribed burn does not require a prescription or an additional authorization even if flames begin to spread within the authorized burn area due to ongoing smoldering.

The bill requires that there be adequate firebreaks at the burn site and sufficient personnel and firefighting equipment to contain the fire within the authorized burn area. Fire that spreads outside the authorized burn area on the day of the certified prescribed burn ignition does not constitute conclusive proof of inadequate firebreaks, insufficient personnel, or a lack of firefighting equipment. During the authorization period, if the certified prescribed burn is contained within the authorized burn area then a strong rebuttable presumption exists that adequate firebreaks, sufficient personnel, and sufficient firefighting equipment were present. Continued smoldering of a certified prescribed burn resulting in a subsequent wildfire does not by itself constitute evidence of gross negligence. A property owner, his/her agent, contractor or legally authorized designee is not liable for damage or injury caused by the fire, including a re-ignition of a smoldering, previously contained burn unless gross negligence is proven. The FFS is not liable for burns for which it issues authorizations.

The bill amends s. 590.125(4), F.S., to specify that certified pile burning pertains to the disposal of tree cutting debris originating on site. The bill deletes a reference to land clearing being temporary as well as a reference to land clearing operation being temporary if it operates for 6 months or less. The bill requires the written pile burning plan to be on site and available for inspection by a FFS representative. The bill also replaces the term “extinguished” with the term “completed” to conform to the changes in terminology.

The bill amends s. 590.25, F.S., providing that anyone who interferes with, obstructs, or commits any act aimed to obstruct the prevention, detection, or suppression of wildfires by the employees of the FFS or any other person engaged in the prevention, detection, or suppression of a wildfire, or who damages or destroys any equipment being used for such purpose, is guilty of a felony of the third degree, punishable by a term of imprisonment not exceeding 5 years or a fine not exceeding $5,000.

Florida Forest Service Training Center

Present Situation

Section 590.02(7), F.S., authorizes the FFS to organize, staff, equip, and operate the Florida Center for Wildfire and Forest Resource Management Training (center). The center serves as a site where fire and resource managers may obtain current knowledge, techniques, skills, and theory as they relate to their respective disciplines. The center is authorized to establish cooperative efforts involving federal, state, and local entities; hire appropriate personnel; and engage others by contract or agreement with or without compensation to assist in carrying out the training and operations of the center. The center provides wildfire suppression training opportunities for rural fire departments, volunteer fire departments, and other local fire response units. The center focuses on a curriculum related to, but not limited to, fuel reduction, an incident management system, prescribed burning certification, multiple-use land management, water quality, forest health, environmental education, and wildfire suppression training for structural firefighters. The center is authorized to assess appropriate fees for food, lodging, travel, course materials, and supplies in order to meet its operational costs and may grant free meals, room, and scholarships to persons and other entities in exchange for instructional assistance.

An advisory committee consisting of the following individuals or their designees must review program curriculum, course content, and scheduling:

- Director of the FFS,
- Assistant director of the FFS,

- Director of the School of Forest Resources and Conservation of the University of Florida,
- Director of the Division of Recreation and Parks at the Department of Environmental Protection,
- Director of the Division of State Fire Marshall,
- Director of the Florida chapter of The Nature Conservancy,
- Executive vice president of the Florida Forestry Association,
- President of the Florida Farm Bureau Federation,
- Executive director of the Fish and Wildlife Conservation Commission,
- Executive director of a water management district as appointed by the Commissioner of Agriculture,
- Supervisor of the National Forests in Florida,
- President of the Florida Fire Chief's Association, and
- Executive director of the Tall Timbers Research Station.

Effect of Proposed Changes

The bill amends s. 590.02(7), F.S., to change the name of the Florida Center for Wildfire and Forest Resource Management Training to the Florida Forest Service Training Center. The bill also eliminates the advisory committee associated with the center.

Sale of Cypress Products

Present Situation

Section 590.50, F.S., provides that no person is allowed to sell or offer for sale articles made from unfinished cross-sectional slabs cut from buttresses of trees of the species Taxodium distichum, commonly known as cypress, without first obtaining a permit from the department. This does not apply to the owner of the property on which the cypress trees are grown.

Effect of Proposed Changes

The bill repeals s. 590.50, F.S.

Agricultural Environmental Services

State Aid to Local Programs for Mosquito Control

Present Situation

Section 388.261, F.S., provides that counties and districts (local programs) that budget local funds for the control of mosquitoes are eligible to receive state funds on a dollar-for-dollar matching basis. If the funds appropriated by the Legislature are insufficient to grant each local program state funds on a dollar-for-dollar matching basis for the amount budgeted in local funds, the department prorates available funds based on the amount of matchable local funds budgeted by a local program. This results in programs with large local budgets receiving the same funds as programs with small local budgets.

Effect of Proposed Change

The bill amends s. 388.261, F.S., to authorize the department to adopt rules specifying how state funds are distributed to local mosquito control programs when the funds appropriated by the legislature are insufficient to grant each county or district funds on a dollar-for-dollar matching basis. The bill requires the rules to provide for up to eighty percent of the funds appropriated by the state to be distributed to local mosquito control programs with budgets of less than $1 million, if the local programs meet the eligibility requirements, to support mosquito control and to support research, education, and outreach. The department states that this change ensures that small local programs that rely heavily on state matching dollars will receive a larger share of the monies available.

Mosquito Control District Budgets

Present Situation

During the 2012 legislative session, the date on which the certified budget of a mosquito control district is due to the department was changed from September 15 to September 30 of each year. However, a reference to this date was inadvertently overlooked in s. 388.271, F.S.

Effect of Proposed Change

The bill amends s. 388.271, F.S., to change the date on which the certified budget of a mosquito control district is due to the department from September 15 to September 30 of each year to conform to s. 388.201, F.S. This change reduces the burden on local governments by providing additional time for budget preparation.

Pesticide Review Council

Present Situation

Section 487.0615, F.S., created the Pesticide Review Council (council) in 1983 to advise the Commissioner of Agriculture regarding the sale, use, and registration of pesticides and to advise government agencies regarding pesticides as they relate to activities under their jurisdiction.

The council consists of 11 members of the scientific community: a representative from the department, a representative from the Department of Environmental Protection (DEP), a representative from the Department of Health (DOH), a representative from the Fish and Wildlife Conservation Commission (FWC), the dean of research of the Institute of Food and Agricultural Sciences of the University of Florida (IFAS), and six members appointed by the Governor. The representatives from the department, DEP, DOH, and FWC are appointed by their respective agencies. The Governor's appointees must represent the pesticide industry, an environmental group, hydrology interests, toxicology interests, one of the five water management districts, and a grower association. The grower representative must be chosen from a list of three persons nominated by statewide grower associations. Members are appointed for a term of 4 years and serve until a successor is appointed. Vacancies are filled for the remainder of the unexpired term. Members of the council receive no compensation for their services.

The council has the authority to:

- Recommend appropriate studies on a registered pesticide when preliminary data indicates the product may pose an unreasonably adverse effect on the environment or human health. The council's recommendations may include using available services of state agencies to conduct scientific studies or may advise that the agencies seek funding to conduct the studies. The council has the authority to conduct scientific studies if specific funding is provided to the department or other governmental agency by the Legislature.
- With a majority vote, make recommendations to the Commissioner of Agriculture relating to the sale or use of a pesticide that the council has reviewed. When the review is performed in conjunction with the registration of a pesticide, the council must adhere to the time framework of the registration process pursuant to Chapter 120, F.S., and as implemented by department rules.
- Provide advice or information to appropriate government agencies regarding pesticides as they relate to activities under their jurisdiction. However, any confidential data received from the U.S. Environmental Protection Agency or the registrant must be kept confidential and exempt from provisions relating to inspecting, copying and photographing public records. It is illegal for any member of the council to use the data for his/her own benefit or to reveal the data to the general public.
- Review biological and alternative controls to replace or reduce the use of pesticides.

- Consider, at the request of any member of the council, the development of advice or recommendations for a pesticide when preliminary data indicates the product may pose an unreasonably adverse effect on the environment or human health.
- Assist the department in the review of registered pesticides selected for special review due to potential environmental or human health effects. The special review process must include, at a minimum, selecting pesticides for special review, providing periodic updates to the council on preliminary findings as a special review progresses, and formulating final recommendations on any pesticide which was the subject of a special review.

The council is required to submit a report by November 1 of each year to the Commissioner of Agriculture, the Speaker of the House, and the President of the Senate, documenting the council's activities, recommendations regarding any pesticide reviewed by the council, and recommendations related to any other duty of the council and its purpose.

The council is defined as a "substantially interested person" and has standing under Chapter 120, F.S., in any proceeding conducted by the department relating to the registration of a pesticide. The standing of the council in no way prevents individual members of the council from exercising standing in these matters.

Effect of Proposed Changes

The bill repeals s. 487.0615, F.S., relating to the Pesticide Review Council. According to the department, the council has outlived its usefulness. The department states that many of the functions of the council are being dealt with at the professional staff level through monthly meetings of the Pesticide Registration Evaluation Committee. The bill also deletes a reference to the council in s. 487.041(5), F.S.

Triennial Pesticide Reports

Present Situation

Section 487.160, F.S., provides that licensed private applicators of pesticides , licensed public applicators, and licensed commercial applicators must maintain records, as mandated by the department, regarding the application of restricted pesticides, including, but not limited to, the type and quantity of pesticide, method of application, crop treated, and dates and location of application. Other licensed private applicators must maintain records as well in regard to the date, type, and quantity of restricted-use pesticides used.

Licensees are required to keep the records for a period of two years from the date of application of the pesticide and must furnish a copy of the records at the department's written request. Every third year, the department conducts a survey and compiles a report on restricted-use pesticides in the state. The report must include, at a minimum, types and quantities of pesticides, methods of application, crops treated, and dates and locations of application, records of persons working under direct supervision, and reports of misuse, damage, or injury.

The department reports that the National Agricultural Statistics Survey of the USDA provides pesticide usage surveys that include not only restricted-use pesticides but general-use pesticides as well. The USDA survey reports are freely available to the public. In an effort to cut expenses, the department relies on this information in lieu of conducting their own resource-intensive surveys.

Effect of Proposed Changes

The bill amends s. 487.160, F.S., to remove the duplicative state triennial reporting requirement.

Referee Sample Analysis

Present Situation

Section 576.051, F.S., directs the department to sample, test, inspect and make analyses of fertilizer sold or offered for sale in the state. When analyzing fertilizer, section 576.051(3), F.S., authorizes the department to obtain an official sample of the fertilizer from the licensee. The department must obtain enough fertilizer to set some aside as a check sample, properly sealed, labeled, dated and identified by number, until the official analysis is completed. Once the official analysis has been completed, a true copy of the fertilizer analysis report must be mailed to the licensee and to the dealer or agent, if any, and purchaser, if known. The analysis must show all determinations of plant nutrient and pesticides. If the analysis conforms to the provisions of s. 576.061, F.S., the check sample may be destroyed.

If the official analysis does not conform to said provisions, the check sample is retained for a period of 90 days from the date of the fertilizer analysis report of the official sample. During that time, the licensee of the fertilizer from whom the official sample was taken, after receiving the official analysis report, may make a written demand for analysis of the check sample by a referee chemist, who must be mutually acceptable to the licensee and the department. The department then sends a portion of the check sample to the referee chemist for analysis. This is done at the expense of the licensee. Upon completion of the analysis, the referee chemist must forward the fertilizer analysis report to the department and licensee. The fertilizer analysis report must contain an identifying mark or number and be verified by an affidavit of the person making the analysis. If the fertilizer analysis report checks within three-tenths of 1 actual percent with the department's analysis on each element for which the analysis was made, the mean average of the two analyses is accepted as final and binding on all concerned.

But, if the referee's fertilizer analysis report shows a variation greater than three-tenths of 1 actual percent from the department's analysis in any one or more elements for which an analysis was made, either the department or the licensee may request that a portion of the check sample sufficient for analysis be submitted to a second referee chemist, mutually acceptable to both the department and the licensee. This is at the expense of the party requesting the analysis by the second referee chemist. The second referee chemist, upon completing the analysis, must make a fertilizer analysis report in the same manner as the first referee chemist did. The mean average of the two analyses nearest in conformity to each other will be accepted as final and binding on all concerned. If no demand is made for an analysis by a second referee chemist, the department's fertilizer analysis report is final and considered binding on all concerned.

Effect of Proposed Changes

The bill amends ss. 576.051 and 576,061, F.S., providing that the three-tenths of 1 actual percent measure currently used for determining whether a fertilizer is deficient in plant food be replaced with criteria established by rule of the department. The bill also provides that a commercial fertilizer is deemed deficient if the analysis of any nutrient is below the guarantee by an amount exceeding the investigational allowances. The bill directs the department to establish by rule these investigational allowances used to determine whether fertilizer is deficient in plant food. The rule must take effect on July 1, 2014. After July 1, 2014, the investigational allowances currently in statute are superseded by the rule and will be repealed.

The bill also amends s. 576.181, F.S., to incorporate the above changes. These changes do not alter the substantive nature of the current law.

The department states that while the three-tenths of 1 actual percent measure is reasonable for higher guarantees (e.g., ten percent of the weight of the fertilizer), it does not make sense for the low level guarantees (e.g., five percent of the weight of the fertilizer) such as for micronutrients. In some cases, the three-tenths of 1 actual percent amount is greater than the micronutrient guarantee percentage. The department further states that, by setting the allowance by rule, the allowances can be varied as analytical techniques and fertilizer manufacturing processes evolve.

Animal Industry

Livestock Hauler's Permit

Present Situation

Section 534.083, F.S., requires persons transporting or hauling livestock on any street or highway in the state to obtain a permit from the department. The information provided by the applicant on the application for permit must be certified under oath. The cost of the permit is $5 and the permit expires on December 31 of each year. Upon obtaining a permit, the department will issue a metal tag/plate bearing the serial number of the permit to the applicant. Each vehicle used by the hauler will be issued a tag/plate. State law requires the tag/plate to be attached in a conspicuous place in an upright position on the rear of each vehicle used for transporting or hauling livestock. If the livestock is transported in a trailer type vehicle propelled by a motor truck or tractor, the tag/plate must be placed on the rear of the trailer. It is not necessary to have a tag/plate attached to the truck or tractor propelling the trailer.

Persons engaged in the business of hauling or transporting livestock, upon receiving livestock for transport, must issue a waybill or bill of lading (bill) for any livestock hauled or transported. The bill must accompany the livestock shipment and a copy must be provided to the person delivering the livestock to the hauler. The bill must show the place of origin and destination of the shipment, the name of the owner of the livestock, date and time of loading, name of the person or company hauling the livestock, and the number and general description of the animals. The bill must also be signed by the person delivering the livestock to the hauler certifying that the information contained on the bill is correct.

Effect of Proposed Changes

The bill amends s. 534.083, F.S., to eliminate the permitting requirement for livestock haulers. Livestock haulers will still be required to comply with the waybill or bill lading provisions.

The department states that the information obtained through the permitting process is not used for regulatory or animal identification purposes.

Arabian Horse Racing

Present Situation

Section 570.382, F.S., provides legislative findings regarding the economic benefits of establishing and maintaining Arabian horse racing in the state. The department is authorized to:

- Establish a voluntary registry for Florida-bred Arabian horses.
- Make Arabian horse breeders' and stallion awards available to qualified individuals from funds derived from monies specifically set aside for promoting Arabian horse racing in the state.
- Establish a stallion award program. (To be eligible, the stallion must reside permanently in the state; if the stallion is dead, it must have resided in the state for the year immediately prior to its death; removal of the stallion from the state for breeding purposes bars the owner of the stallion from receiving a stallion award for offspring sired in the state in the breeding season commencing January 1 of the year of the stallion's removal; and, if a removed stallion is returned to the state, all offspring sired in the state subsequent to the stallion's return ensure eligibility for the stallion award.)
- Maintain records that document the date the stallion arrived in the state for the first time; whether the stallion remained in the state permanently; the location of the stallion; whether the stallion still resides in the state; and awards earned, received, and distributed.

Florida law also establishes the Arabian Horse Council (council), composed of seven members. Six of the members are appointed by the department, a majority of whom must be Florida breeders of racing Arabian horses. The seventh member is a representative of the department designated by the Commissioner of Agriculture and serves as the secretary of the council. Members serve for a term of

four years. A chair is elected every two years from the membership. Members of the council receive no compensation for their services.

The council is authorized to recommend rules, receive and report to the department any complaints or violations involving s. 570.382, F.S., and assist the department in the collection of information deemed necessary for administration of Arabian horse racing in the state.

Persons who register unqualified horses or misrepresent information in any way are ineligible to participate in breeders' and stallion awards. Any horses misrepresented are no longer deemed to be Florida-bred.

Owners who participate in the program for Florida-bred Arabian foals under 1 year of age must pay a registration fee of $25 per horse to the department. Owners of Florida-bred Arabian yearlings from 1 to 2 years of age must pay a registration fee of $50 per horse to the department to participate in the program. Owners who participate in the program for Florida-bred Arabian horses that are 2 years of age or older must pay a registration fee of $250 per horse to the department. The department charges a fee, not exceeding $100 annually, to stallion owners to cover the cost of administration of the stallion award program. These funds go toward defraying the necessary expenses incurred by the department in the administration of the program and are deposited into the General Inspection Trust Fund in a special account known as the Florida Arabian Horse Racing Promotion Account. The amount paid to the department for administration of the program may not exceed the amount of the deposited registration fees.

Effect of Proposed Changes

The bill repeals section 570.382, F.S., relating to Arabian horse racing, breeders' and stallion awards, the Horse Council, horse registration fees, and the Florida Arabian Horse Racing Promotion Account. The bill also amends ss. 550.2625 and 550.2633, F.S., to eliminate references to the Florida Arabian Horse Racing Promotion Account. The department reports:

- The last race in Florida with an Arabian horse occurred in the 1980's;
- The council has been inactive since the 1990's; and
- Funds have not been deposited into the Florida Arabian Horse Racing Promotion account since 2005.

<u>Gertrude Maxwell Save a Pet Direct Support Organization</u>

Present Situation

Section 570.97, F.S., establishes the Gertrude Maxwell Save a Pet Direct Support Organization (DSO), which was created in 2008 to provide grants to animal shelters for spaying and neutering animals. The DSO also provides grants during times of emergencies and to develop and disseminate pet care education materials. The DSO does not participate in, endorse, or financially support political activities at the national, state, or local level.

The DSO has a board of directors that includes one representative from each of the following associations:

- Florida Veterinary Medical Association;
- Cat Fanciers' Association;
- Florida Association of Kennel Clubs;
- Florida Animal Control Association;
- National Rifle Association;
- A consumer member not affiliated with any of the aforementioned associations;
- A humane organization designated by the Commissioner of Agriculture; and,
- The Commissioner of Agriculture or his/her designee.

The board of directors may appoint up to three non-voting honorary members. Nominees for honorary membership must be individuals, companies, or organizations that have exemplified themselves or made significant contributions to the health, safety, or well-being of animals. Honorary board members may serve for a maximum of two consecutive annual terms.

Effect of Proposed Changes

The bill repeals s. 570.97, F.S., relating to the Gertrude Maxwell Save a Pet Direct Support Organization (DSO). The department reports that since officers were elected in 2008, there has been no other activity, nor has the DSO set up a bank account to provide for the transfer of monies remaining from the initial donation by Ms. Maxwell.

The bill also provides that the amount of $59,239, which represents the remaining funds of the DSO, be transferred from the department's General Inspection Trust Fund to Florida Animal Friend, Inc., in keeping with the donor's wishes.

Animal Disease Diagnostic Laboratory

Present Situation

Section 585.61, F.S., establishes the Bronson Animal Disease Diagnostic Laboratory in Osceola County as well as an animal disease diagnostic laboratory in Suwanee County. The laboratories fall under the supervision of the department and provide prompt reliable diagnoses of animal diseases, including any diseases that affect poultry eggs, for persons who maintain animals in the state. The laboratories are also responsible for making recommendations for the control and eradication of such diseases.

Persons using the services of the laboratories must comply with the terms set forth in Florida law, and corresponding rules. The department must require any user of the laboratory's services to pay a fee not to exceed $300. Monies collected from the fees are deposited into the Animal Industry Diagnostic Laboratory Account within the General Inspection Trust Fund and used to improve the diagnostic laboratory services.

The laboratory in Suwannee County contracts with the United States Department of Agriculture (USDA) to test for brucellosis surveillance samples. Since brucellosis is on the downturn (Florida has been declared brucellosis-free since 2001), the USDA has decided to reduce brucellosis surveillance nation-wide and utilize a single federal laboratory for this testing. According to the department, federal funding for state laboratories will be discontinued effective March 31, 2013.

Effect of Proposed Changes

The bill amends s. 585.61, F.S., to eliminate the animal disease diagnostic laboratory in Suwannee County. In response to the loss of federal dollars, the department intends to consolidate testing and diagnostic services to the laboratory in Osceola County.

Division of Food, Nutrition, and Wellness

Present Situation

During the legislative session of 2011, the school food and nutrition programs were transferred from the Department of Education (DOE) to the Department of Agriculture and Consumer Services (department) as the Division of Food, Nutrition, and Wellness (division). The transfer included all powers, duties, functions, records, personnel, property, pending issues and existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds for the administration of the school food and nutrition programs.

Statutory language regarding the administration of the school food and nutrition program from chapter 1006, F.S., which falls under the jurisdiction of DOE, was transferred to chapter 570, F.S., which falls under the jurisdiction of the department.

Currently, the division is not created and given duties in the department's authorizing statute (ch. 570, F.S.), nor is its division director.

Section 570, 072, F.S., provides that the department can conduct, supervise, and administer all commodity distribution services that will be carried on using federal or state funds or funds from any other source. This includes commodities received and distributed from the United States or any of its agencies. The department determines the benefits each applicant or recipient is entitled to receive under chapter 570, F.S. An applicant or recipient must be a resident of Florida and a citizen of the United States or an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law. The department must cooperate fully with the U. S. government and its agencies and instrumentalities in order to receive the benefit of all federal financial allotments and assistance possible to carry out the purposes of chapter 570, F.S.

The department can accept any duties with respect to commodity distribution services that are delegated to it by an agency of the federal government or any state, county, or municipal government. The department may also act as an agent of, or contract with, the federal government, state government, or any county or municipal government in the administration of commodity distribution services to secure the benefits of any public assistance that is available from the federal government or any of its agencies. The department can also act as an agent of, or contract with, the federal government, state government, or any county or municipal government in the distribution of funds received from any of the aforementioned for commodity distribution services within the state. The department is authorized to accept from any person or organization all offers of personal services, commodities, or other aid or assistance. The duties of the department are laid out in chapter 570, F.S., and do not limit, abrogate, or abridge the powers and duties of any other state agency.

Section 1001.42, F.S., provides that, regarding the school lunch program, district school boards must assume such responsibilities, powers, and duties assigned by law or as required by rules of the State Board of Education, or that, in the opinion of the school board, are necessary to provide school lunch services, consistent with needs of students; effective and efficient operation of the program; and the proper articulation of the school lunch program with other phases of education in the district.

Section 1003.453, F.S., provides that each school district must submit to DOE a copy of its school wellness policy as required by the Child Nutrition and WIC Reauthorization Act of 2004 and a copy of its physical education policy required under s. 1003.455, F.S. Each school district must also annually review its school wellness policy and physical education policy and provide a procedure for public input and revisions. In addition, each school district must send an updated copy of its wellness policy and physical education policy to DOE and to the department when a change or revision is made.

Effect of Proposed Changes

The bill creates s. 570.64, F.S., to establish the Division of Food, Nutrition, and Wellness (division) in the departments' authorizing statute and tasks the division with administering and enforcing its powers and duties in regard to the school food and nutrition programs. The bill also establishes a director of the division, who is appointed and serves at the pleasure of the Commissioner of Agriculture. The director is required to:

- Supervise, direct, and coordinate the activities of the division;
- Exercise such powers and duties as authorized by the Commissioner of Agriculture; and
- Enforce the provisions of chapter 595, F.S., the rules adopted pursuant to chapter 595, F.S., and any other powers and duties as authorized by the department.

The bill transfers the statutory language regarding the administration of the school food and nutrition programs from chapter 570, F.S., to chapter 595, F.S. This transfer is in line with the other divisions

within the department that have a separate chapter detailing the powers, duties, and functions of their respective divisions.

The bill creates s. 595.401, F.S., to provide that chapter 595, F.S., is titled the "Florida School Food and Nutrition Act."

The bill creates s. 595.402, F.S., creating definitions for terms used in chapter 595, F.S. "Commissioner" means the Commissioner of Agriculture. "Department" means the Department of Agriculture and Consumer Services. "Program" means any one or more of the food and nutrition programs that the department has responsibility over, including, but not limited to, the National School Lunch program, Special Milk program, School Breakfast program, Summer Food Service program, Fresh Fruit and Vegetable program, and any other program that relates to school nutrition. "School District" means any one or more of the 67 county school districts, including their respective district school board. "Sponsor" means any entity that is conducting a program under a current agreement with the department.

The bill creates s. 595.403, F.S., which provides that the legislature, in recognition of the demonstrated relationship between good nutrition and the capacity of students to develop and learn, declares that it is the policy of the state to provide standards for school food and nutrition services and to require each school district to establish and maintain an appropriate school food and nutrition service program consistent with the nutritional needs of students. To implement that policy, the state shall provide funds to meet the state National School Lunch Act matching requirements. The funds provided shall be distributed in such a manner as to comply with the requirements of the National School Lunch Act.

In addition to the powers and duties currently in law, the bill amends s. 595.404, F.S., to include the following new powers and duties for the department:

- To implement and adopt by rule, as required, federal regulations to maximize federal assistance for the program.
- To develop and propose legislation necessary to implement the program, encourage the development of innovative school nutrition programs, and expand participation in the program.
- To employ such persons as are necessary to perform the duties of chapter 595, F.S.
- To adopt and implement an appeal process by rule, as required by federal regulations, for applicants and participants under the program.
- To assist, train, and review each sponsor in its implementation of the program.
- To advance funds from the program's annual appropriation to sponsors, when requested, in order to implement the provisions of chapter 595, F.S., and in accordance with federal regulations.

In addition to the program requirements currently in law, the bill amends s. 595.405, F.S., to provide that each sponsor must complete all corrective action plans required by the department or a federal agency to be in compliance with the program.

The bill transfers s. 570.072, F.S., related to commodity distribution services to s. 595.408, F.S.

The bill creates s. 595.501, F.S., that provides that any person, sponsor, or school district that violates any provision of chapter 595, F.S., or any rule promulgated under chapter 595, F.S., or is not in compliance with the program may be subject to a suspension or revocation of their agreement, loss of reimbursement, or a financial penalty in accordance with federal or state law or both. This does not restrict the applicability of any other law.

The bill amends s. 1001.42, F.S., to reference the department as opposed to the State Board of Education. The bill amends s. 1003.453, F.S., to provide that each school district must electronically submit its local school wellness policy to the department. The bill also requires each school district to review its local school wellness policy annually. Lastly, the bill requires each school district to provide an updated copy of such policies to the applicable agency when a change or revision is made.

Miscellaneous

Direct Support Organization

Present Situation

Section 570.903, F.S., requires the Legislature to authorize the establishment of a direct support organization (DSO) within the department. In so doing, the department must adhere to certain provisions that govern the creation, use, powers, and duties of the DSO, such as:

- The department must enter into a memorandum or letter of agreement with the DSO, specifying the approval of the department, the powers and duties of the DSO, and the rules with which the DSO must comply.
- The department may permit, without charge, appropriate use of department property, facilities, and personnel by a DSO. The use must be in directly keeping with the approved purposes of the DSO and may not be made at times or places that would unreasonably interfere with opportunities for the general public to use department facilities for established purposes.
- The department must prescribe, by contract or by rule, conditions with which a DSO must comply in order to use department or museum property, facilities, or personnel. Such rules must provide for budget and audit review and oversight by the department.
- The department cannot permit the use of property, facilities, or personnel of the museum, department, or designated program by a DSO that does not provide equal employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin.

The DSO is empowered to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and make expenditures to or for the direct or indirect benefit of the museum or designated program.

The DSO is authorized to enter into contracts or agreements with or without competitive bidding for the restoration of objects, historical buildings, and other historical materials; for the purchase of objects, historical buildings, and other historical materials which are to be added to the collections of the museum; or to benefit the designated program. However, before the DSO can enter into a contract or agreement without competitive bidding, the DSO must file a certification of conditions and circumstances with the internal auditor of the department justifying each contract or agreement.

The DSO is authorized to enter into contracts to insure property of the museum or designated programs and may insure objects or collections on loan from others in satisfying security terms of the lender. The DSO must provide for an annual audit in accordance with s. 215.981, F.S.

Neither a designated program or museum, nor a trustee or an employee of a nonprofit corporation may receive a commission, fee, or financial benefit in connection with the sale or exchange of historical objects or properties to the DSO, the museum, or the designated program. Likewise, neither a designated program or museum, nor a nonprofit corporation trustee or employee is allowed to be a business associate of any individual, firm, or organization involved in the sale or exchange of property to the DSO, the museum, or the designated program.

All monies received by the DSO must be deposited into an account of the DSO and used by the organization in a manner consistent with the goals of the museum or designated program. The identity of a donor or prospective donor who desires to remain anonymous and all information identifying such donor or prospective donor are confidential and exempt from the provisions of s. 119.071(1), F.S., and s. 24(a), Art. 1 of the State Constitution. The Commissioner of Agriculture, or the commissioner's designee, may serve on the board of trustees and executive committee of any DSO established to benefit the museum or any designated program. The department must establish, by rule, archival procedures relating to museum artifacts and records. The rules must provide procedures which protect the museum's artifacts and records equivalent to those procedures which have been established by the Department of State under chapters 257 and 267, F.S.

Effect of Proposed Changes

The bill amends s. 570.903, F.S., to authorize the department to establish DSOs to provide assistance, funding and promotional support for the museums and other designated programs within the department. The department must prescribe by agreement, rather than contract or by rules as previously required, conditions that a DSO must comply with in order to use property, facilities, or personnel of the department.

The bill no longer requires DSOs to comply with competitive bidding laws when entering into contracts or agreements for the restoration of objects, historical buildings, and other historical materials; for the purchase of objects, historical buildings, and other historical materials which are to be added to the collections of the museum; or to benefit the designated program. Previously, DSOs were able to utilize competitive bidding.

The bill clarifies that a department employee, DSO or museum employee, volunteer or director, or a designated program may not receive a commission, fee, or financial benefit in connection with the sale or exchange of real or personal property, or historical objects to the DSO, the museum, or the designated program. This restriction also applies to the above-named persons acting as a business associate of any individual, firm, or organization involved in the sale or exchange of real or person property to the DSO, the museum, or the designated program.

The department is authorized to terminate the agreement with the DSO at any time it determines that the DSO is no longer meeting the objectives for which it was established. Upon termination, the assets of the DSO must be distributed pursuant to its Articles of Incorporation or by-laws or, if not provided for, to the department. The bill also cleans up statutory language referencing DSOs that are no longer in existence.

Apiary

Present Situation

Section 586.10, F.S., provides the powers and duties of the department with regard to honeybees and honey certification. The department is authorized to inspect all apiaries in the state at intervals it deems best. The department must keep an accurate and current list of the inspected apiaries which includes the:

- Name of the apiary.
- Name of the owner of the apiary.
- Mailing address of the apiary owner.
- Location of the apiary.
- Number of hives in the apiary.
- Pest problems associated with the apiary.
- Brands used by beekeepers where applicable.

Current law requires beekeepers having honeybee colonies within the state to apply to the department for certificates of inspection and registration. Certificates must be renewed annually on the anniversary date of the registration. Applications for renewal postmarked after the anniversary date are subject to a $10 late filing fee. Registration applications must be accompanied by a fee as set by department rule. Neither the registration fee nor the renewal fee may exceed $100. Any governmental agency having honeybee colonies for experimental or educational purposes may be exempted by the department from payment of a registration fee.

The department must provide written notice and renewal forms 60 days prior to the annual renewal date to each person who has obtained certificates of registration informing the persons of the registration renewal date and the renewal fee. The department may, for good cause, such as natural disasters, hardship cases, or unusual circumstances, which are supported by written documentation,

extend the renewal date without penalty for up to 90 days. Certificates of registration are renewed as long as the registrant has complied with the provisions of Chapter 586, F.S., including the payment of the applicable fees, and the rules of the department.

Effect of Proposed Changes

The bill amends s. 586.10, F.S., to allow an apiary inspector to be a certified beekeeper as long as the inspector does not inspect his/her own apiary. The department states that the inspectors must have a good working knowledge of beekeeping ranging from the hobbyist to the commercial hives. This is a unique skill set mainly found in individuals who have some level of involvement within the apiary industry.

B. SECTION DIRECTORY:

Section 1: Amending s. 253.034, F.S.; requiring public hearings relating to the development of land management plans to be held in any one, rather than each, county affected by such plans.

Section 2: Amending s. 388.261, F.S.; revising provisions for the distribution and use of state funds for local mosquito control programs.

Section 3: Amending s. 388.271, F.S.; revising the date by which mosquito control districts must submit their certified budgets for approval by the department.

Section 4: Amending s. 487.160, F.S.; deleting provisions requiring the department to conduct a survey and compile a report on restricted-use pesticides.

Section 5: Amending s. 534.083, F.S.; deleting permitting requirements for livestock haulers.

Section 6: Amending s. 570.07, F.S.; clarifying the authority of the department to regulate certain open burning.

Section 7: Creating s. 570.64, F.S.; establishing the duties of the Division of Food, Nutrition, and Wellness within the department; and, providing for a director of the division.

Section 8: Amending s. 570.902, F.S.; clarifying the applicability of definitions relating to certain designated programs and direct-support organizations.

Section 9: Amending s. 570.903, F.S.; related to direct-support organizations.

Section 10: Amending s. 576.051, F.S.; authorizing the department to establish certain criteria for fertilizer sampling and analysis.

Section 11: Amending s. 576.061, F.S.; requiring the department to adopt rules establishing certain investigational allowances for fertilizer deficiencies; and, providing a date by which such allowances are effective and other allowances are repealed.

Section 12: Amending s. 576.181, F.S.; revising the department's authority to adopt rules establishing certain criteria for fertilizer analysis.

Section 13: Amending s. 585.61, F.S.; deleting provisions for the establishment of an animal disease diagnostic laboratory in Suwannee County.

Section 14: Amending s. 586.10, F.S.; authorizing apiary inspectors to be certified beekeepers under certain conditions.

Section 15: Amending s. 589.02, F.S.; deleting annual and special meeting requirements for the Florida Forestry Council.

Section 16: Amending s. 589.19, F.S.; establishing the Operation Outdoor Freedom Program within the Florida Forest Service to replace provisions for the designation of specified hunt areas in state forests for wounded veterans and servicemembers.

Section 17: Amending s. 589.30, F.S.; revising references to certain Florida Forest Service personnel titles.

Section 18: Amending s. 590.02, F.S.; authorizing the Florida Forest Service to allow certain types of burning; specifying that sovereign immunity applies to certain planning level activities; deleting provisions relating to the composition and duties of the Florida Forest Training Center advisory council; prohibiting government entities from banning certain types of burning; authorizing the service to delegate authority to special districts to manage certain types of burning; and revising such authority delegated to counties and municipalities.

Section 19: Amending s. 590.11, F.S.; revising the prohibition on leaving certain recreational fires unattended, to which penalties apply.

Section 20: Amending s. 590.125, F.S.; revising and providing definitions relating to open burning authorized by the Florida Forest Service; revising requirements for noncertified and certified burning; and limiting the liability of the service and certain persons related to certain burns.

Section 21: Amending s. 590.25, F.S.; revising provisions relating to criminal penalties for obstructing the prevention, detection, or suppression of wildfires.

Section 22: Creating chapter 595, F.S., to establish the Florida School Food and Nutrition Act.

Section 23: Creating s. 595.401, F.S.; providing a short title.

Section 24: Creating s. 595.402, F.S.; providing definitions.

Section 25: Creating s. 595.403, F.S.; declaring state policy relating to school food and nutrition services.

Sections 26-28: Transferring, renumbering, and amending ss. 570.98 and 570.981, F.S., relating to school food and nutrition services and the Florida Farm Fresh Schools Program; revising the department's duties and responsibilities for administering such services and program; and revising requirements for school districts and sponsors.

Section 29: Transferring, renumbering, and amending s. 570.982, F.S., relating to the children′s summer nutrition program; and clarifying provisions.

Section 30: Transferring, renumbering, and amending s. 570.072, F.S.; authorizing the department to conduct, supervise, and administer commodity distribution services relating to school food and nutrition services.

Section 31: Creating s. 595.501, F.S.; providing certain penalties.

Section 32: Transferring, renumbering, and amending s. 570.983, relating to the Food and Nutrition Services Trust Fund; and, conforming a cross-reference.

Section 33: Transferring and renumbering s. 570.984, F.S.; relating to the Healthy Schools for Healthy Lives Council.

Section 34: Amending s. 1001.42, F.S.; requiring district school boards to perform duties relating to school lunch programs as required by the department's rules.

Section 35: Amending s. 1003.453, F.S., deleting an obsolete provision; requiring school districts to submit certain policies to the department and the Department of Education.

Section 36: Repealing ss. 487.0615, 570.382, 570.97, and 590.50, F.S., relating to the Pesticide Review Council, Arabian horse racing and the Arabian Horse Council, the Gertrude Maxwell Save a Pet Direct-Support Organization, and permits for the sale of cypress products, respectively.

Section 37: Amending s. 487.041, F.S.; conforming provisions.

Section 38: Amending s. 550.2625, F.S., conforming provisions.

Section 39: Amending s. 550.2633, F.S.; conforming provisions.

Section 40: Providing for the disbursement of specified funds.

Section 41: Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments section

2. Expenditures:

   See Fiscal Comments section

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See Fiscal Comments section

2. Expenditures:

   See Fiscal Comments section

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

By repealing s. 570.97, F.S., a positive cash flow is provided to the Florida Animal Friends, Inc.

By amending s. 534.083, F.S., persons engaged in the hauling of livestock will realize a savings in both time and money through the elimination of the livestock haulers permit.

By amending s. 590.02, F.S., persons seeking an authorization for land-clearing may be charged a fee by the local government.

By repealing s. 590.51, F.S., persons selling cypress products will no longer be required to obtain a permit from the department.

D. FISCAL COMMENTS:

State Government Impact

To effectuate the repeal of s. 570.97, F.S., $59,239 in non-recurring funds is appropriated to the department's General Inspection Trust Fund for the 2013-14 fiscal year in the expenses appropriation category within the Division of Animal Industry to transfer the balance of funds donated by Gertrude Maxwell to the Florida Animal Friends, Inc.

By repealing section 487.0615, F.S., the department estimates a decrease in expenditures of approximately $20,000 per year associated with the administration of the Pesticide Review Council.

By amending section 534.083, F.S., the department estimates a decrease in revenues of approximately $5,000 per year associated with the livestock haulers permit.

By amending section 585.61, F.S., the department estimates a decrease in expenditures of approximately $400,000 per year associated with the closing of the animal disease diagnostic laboratory in Suwanee County.

Local Government Impact

By amending s. 388.261, F.S., local mosquito control programs with less than $1 million in local budgets will receive more funding. Local programs with over $1 million in local budgeted funds would receive less funding.

By amending s. 590.02, F.S., local governments that do not have infrastructure and personnel in place may incur some costs prior to having open burning authorization delegated to the local government. The department states that some local governments charge a fee for open burning authorizations; delegating the authority to the local government may result in a source of revenue.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None

B. RULE-MAKING AUTHORITY:

Section 388.261, F.S., authorizes the Department of Agriculture and Consumer Services (department) to adopt rules to provide for up to seventy percent of the funds appropriated by the state to be distributed to local mosquito control programs with budgets of less than $1 million, if the local programs meet the eligibility requirements.

Section 576.061, F.S., authorizes the department to establish, by rule, investigational allowances to be utilized in determining whether a fertilizer is deficient in plant food.

Section 595.403, F.S., authorizes the department to implement and adopt by rule, as required, federal regulations to maximize federal assistance for the school food nutrition programs as well as an appeal process for applicants and participants under the program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 12, 2013, the Agriculture and Consumer Services Subcommittee adopted one amendment to PCB ANRS 13-01. The amendment transfers s. 570.072, F.S., pertaining to commodity distribution to s. 595.408, F.S. Previously in the PCB, the language was created in s. 595.408, F.S., but s. 570.072, F.S., was not removed from statute. This is a purely technical, housekeeping amendment.