

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB ANRS 15-01 Florida Department of Agriculture and Consumer Services

**SPONSOR(S):** Agriculture & Natural Resources Subcommittee

**TIED BILLS:** None **IDEN./SIM. BILLS:** None

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

### SUMMARY ANALYSIS

The Proposed Committee Bill (PCB) addresses a number of issues relating to the powers and duties of the Department of Agriculture and Consumer Services (DACS), including:

- Eliminating the requirement that DACS competitively rank each Agricultural Education and Promotion Facilities funding application.
- Changing the deadline to submit a recertification application for the limited certification for urban landscape commercial fertilizer application and eliminating the \$50 per month late charge for late recertification.
- Adding a definition for the word "vehicle" in chapter 500, F.S., in order to be consistent with the federal Food Safety Modernization Act, and adding definitions for the words "retail" and "wholesale" to clarify the types of food permits DACS issues.
- Authorizing DACS to sponsor "events" (not just breakfasts, luncheons, or dinners) to promote agriculture and agricultural business products.
- Authorizing DACS to acquire, secure, enjoy, use, enforce, and dispose of all patents, trademarks, copyrights, and other rights or similar interests.
- Authorizing DACS to use money deposited in the Pest Control Trust Fund to carry out any of the powers of the Division of Agricultural Environmental Services.
- Authorizing DACS to provide staff and meeting space for the Florida Agricultural Center and Horse Park Authority.
- Specifying the intent of the "Fresh From Florida" marketing brand to avoid the misconception that the brand is indicative of inspection for food safety purposes.
- Eliminating the power to adopt rules related to negotiating and entering into contracts with advertising agencies. Purchasing requirements are covered by Department of Management Services' policies and procedures.
- Changing the membership requirements for the Florida Agricultural Promotional Campaign Advisory Council so that a specific number of people from a particular industry are not required.
- Removing the requirement that DACS notify a property owner that a plant infested or infected with plant pests or noxious weeds has been found on their property if the plant is infested with pests or noxious weeds that are determined to be widely established in Florida; thus, not requiring the owner to destroy or remove the plant within 10 days.
- Eliminating the Florida Forest Service's power to dedicate its land for use by the public as a park. Florida Forest Service lands do not include any state parks and the Florida Forest Service does not manage any of its land for park purposes.
- Adding definitions for "school breakfast program," "summer nutrition program," and "universal school breakfast program" to specify that they are the programs authorized by federal law.
- Replacing every instance of the term "school district" with "district school board."
- Creating a duty to provide to a "severe need school" the highest rate of reimbursement to which it is entitled under the federal school breakfast program.
- Renaming the "Florida Farm Fresh Schools Program" to the "Florida Farm to School Program."
- Changing every instance of the word "commodity" to "food" to be consistent with the federal statutes.
- Eliminating the need for dealers in agricultural products to provide a letter, accompanying a certificate of deposit, from the issuing institution acknowledging that the assignment has been properly recorded on the books of the issuing institution and will be honored by the issuing institution.
- Eliminating the requirement that each grain dealer report monthly to DACS the value of grain it received from producers for which the producers have not received payment.

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

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** pcb01a.ANRS

**DATE:** 2/10/2015

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Agricultural Education & Promotion Facilities Funding**

##### **Present Situation**

Subject to the amount provided in the General Appropriations Act, the Legislature grants funding to local governments and fair associations (applicants) to pay for the planning, design, permitting, construction, or renovation of agricultural education and promotion facilities.<sup>1</sup> These funds may also be used to service debt or reimburse local governments for the planning, design, permitting, construction, or renovation of agricultural education and promotion facilities.<sup>2</sup> Applications must be submitted to the Department of Agriculture and Consumer Services (DACS or department) by October 1 of each year to receive funding.<sup>3</sup>

DACS screens these applications to certify that an application includes a qualified agriculture education and promotion facility.<sup>4</sup> An “agriculture education and promotion facility” is defined as an exhibition hall, arena, civic center, exposition center, or other capital project or facility which can be used for exhibitions, demonstrations, trade shows, classrooms, civic events, and other purposes that promote agriculture, horticulture, livestock, equestrian, and other resources of the state and educate the residents about these resources.<sup>5</sup> DACS is required to review each application and certify whether a facility is an agriculture education and promotion facility. To do so, DACS must determine that:

- The applicant is a unit of local government or fair association;
- The applicant projects the proposed facility will serve more than 25,000 visitors annually;
- The municipality or county where the facility is located has certified by resolution that the proposed facility will serve a public purpose; and
- The applicant has demonstrated that it provided, is capable of providing, or has the financial commitment to provide 40 percent of the costs incurred or related to planning, design, permitting, construction, or renovation of the facility.<sup>6</sup>

If DACS certifies that more than three applications are qualified agriculture and education promotion facilities, it must rank the applications in descending order of priority.<sup>7</sup> DACS ranks the applications based on the following criteria:

- The intended use of the funding, with priority being given for new facilities;
- The amount of local match, with priority given to the largest percentage of local match;
- The location of the facility in a brownfield, a rural enterprise zone, an agriculturally depressed area, or county that has lost its agricultural land to environmental restoration projects;
- The net increase, as a result of the facility, of total available exhibition, arena, or civic center space within the jurisdictional limits of the local government in which the facility is to be located, with priority given to the largest percentage increase of total exhibition, arena, or civic center space;
- The historical record of the applicant in promoting agriculture and educating the public about agriculture;
- The highest projection of paid attendance attracted by the facility and the proposed economic impact; and

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<sup>1</sup> Section 288.1175(7), F.S.

<sup>2</sup> Id.

<sup>3</sup> Section 288.1175(8), F.S.

<sup>4</sup> Section 288.1175(1), F.S.

<sup>5</sup> Section 288.1175(3), F.S.

<sup>6</sup> Section 288.1175(4), F.S.

<sup>7</sup> Section 288.1175(5), F.S.

- The location of the facility with respect to an Institute of Food and Agricultural Sciences (IFAS) facility, with priority given to facilities closer in proximity to an IFAS facility.<sup>8</sup>

Once DACS completes its certification, evaluation, and ranking, it submits the project proposals to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives for funding consideration.<sup>9</sup>

### **Effect of Proposed Changes**

The PCB amends s. 288.1175, F.S., to eliminate the requirement that DACS competitively rank each agricultural education and promotion facilities application. Further, the proposal eliminates giving priority funding consideration to:

- New facilities;
- The largest percentage of local match;
- The largest percentage increase in total exhibition, arena, or civic center space; and
- Projects in closer proximity to an IFAS facility.

Instead, DACS will evaluate each application based on the criteria and list applicants in alphabetical order prior to submitting the applications to the Legislature. According to DACS, this change is designed to manage the expectations of the applicants. The ranking system gives applicants the impression that projects will be funded in the order they are ranked, which has typically not been the case. DACS will continue to certify that each application is a qualified agriculture education and promotion facility. This change may require amending rule 5H-25.003, F.A.C.

### **Limited Certification for Urban Landscape Commercial Fertilizer Application**

#### **Present Situation**

Under current law, the Department of Environmental Protection (DEP) and IFAS are required to develop training and testing programs in urban landscape best management practices.<sup>10</sup> Persons who receive a certificate demonstrating successful completion of such training may apply to DACS to receive limited certification for urban landscape commercial fertilizer application.<sup>11</sup> Individuals who hold such certification are not subject to additional local testing.<sup>12</sup>

Section 482.1562, F.S., sets forth the application requirements to receive the limited certification. Beginning January 1, 2014, all persons applying commercial fertilizer to an urban landscape must be certified by DACS.<sup>13</sup> Subsection (5) of s. 482.1562, F.S., provides that individuals who hold the limited certification must apply for recertification at least 90 days before the expiration of their current certification. Further, individuals must pay a \$50 per month late charge in addition to the renewal fee if the limited certification application is late.

#### **Effect of the Proposed Changes**

The PCB amends s. 482.1562(5), F.S., to change the deadline to submit a recertification application from 90 days before expiration of the current certification to every four years from the date of issuance. Further, the PCB eliminates the \$50 per month charge for late recertification. The PCB also grants a grace period not to exceed 30 days after expiration for which a person can obtain recertification without having to go through the initial application process. DACS indicated that this change will help it better

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<sup>8</sup> Section 288.1175(8), F.S.

<sup>9</sup> Rule 5H-25.004, F.A.C.

<sup>10</sup> Section 403.9338(1), F.S.

<sup>11</sup> Section 403.9338(2), F.S.

<sup>12</sup> Id.

<sup>13</sup> Section 482.1592, F.S.

assist certificate holders by making the process consistent with other certifications requirements under chapter 482, F.S.<sup>14</sup>

## **Florida Food Safety Act Definitions**

### **Present Situation**

The Florida Food Safety Act is designed to:

- Promote public welfare by protecting the consuming public from injury by product use and the purchasing public from injury by merchandizing deceit, flowing from intrastate commerce in food;
- Provide uniform legislation so far as practical with federal regulations; and
- Promote uniform administration and enforcement of federal and state food safety laws.<sup>15</sup>

Currently, the Florida Food Safety Act uses the word “vehicle” throughout the chapter and lacks a definition of “retail” and “wholesale.”<sup>16</sup>

### **Effect of Proposed Changes**

The PCB amends s. 500.03, F.S., to add a definition for “vehicle” in order to recognize the various modes of transportation that service food establishments, and to be consistent with the federal rules implementing the Food Safety Modernization Act. Further, the PCB adds definitions of “retail” and “wholesale” to specify the types of food permits issued by the Division of Food Safety.

## **Powers and Organization of the Department of Agriculture and Consumer Services**

### **Present Situation**

The Legislature has granted DACS various powers to regulate and promote Florida agriculture, protect the environment, safeguard consumers, and ensure the safety of food. Many of these powers and the organization of DACS can be found in chapter 570, F.S., such as:

- DACS may stimulate, encourage, and foster the production and consumption of agricultural and agricultural business products by sponsoring trade breakfasts, luncheons, and dinners that will assist in the promotion and marketing of Florida’s agricultural and agricultural business products to the consuming public.<sup>17</sup>
- DACS’s Division of Administration possesses the power to provide electronic data processing and management information systems support for DACS.<sup>18</sup>
- DACS must deposit fees and fines collected under the Structural Pest Control Act into the Pest Control Trust Fund.<sup>19</sup> DACS may use this money to carry out the provisions of the Structural Pest Control Act, educate the pest control industry, or support research or education in pest control.<sup>20</sup>
- DACS’s Division of Food Safety possesses the power to analyze food and feed samples offered for sale in the state for chemical residues as required under the adulteration sections of chapters 500 (Food Products) and 580 (Commercial Feed and Feedstuff), F.S.<sup>21</sup>
- DACS’s Division of Marketing possesses the power to enforce the provisions of ss. 604.15 through 604.34, F.S., (regulating dealers in agricultural products) and ss. 534.47 through 534.53, F.S., (regulating livestock markets).

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<sup>14</sup> Department of Agriculture and Consumer Services, Agency Analysis of 2015 PCB ANRS 15-01, p. 5 (January 19, 2015).

<sup>15</sup> Section 500.02, F.S.

<sup>16</sup> Section 500.03, F.S.

<sup>17</sup> Section 570.07(20), F.S.

<sup>18</sup> Section 570.30(5), F.S.

<sup>19</sup> Section 482.2401, F.S.

<sup>20</sup> Id.; Section 570.441, F.S.

<sup>21</sup> Section 570.50(5), F.S.

- Under current law, DACS has not been granted the authority to secure or hold a trademark. Any agency created by statute does not have the inherent power to acquire, secure, enjoy, use, enforce, or dispose of patents, trademarks, copyrights, or other rights or similar interests.<sup>22</sup> Rather, such powers must be granted by the Legislature, either expressly or by necessary implication.<sup>23</sup>

## Effect of Proposed Changes

The PCB grants DACS certain powers and moves other powers to different divisions within DACS. These changes include:

- Amending paragraph (20)(c) of s. 570.07, F.S., to grant DACS the power to sponsor “events,” in addition to breakfasts, luncheons, and dinners, to stimulate, encourage, and foster the production and consumption of agricultural and agricultural business products;
- Adding subsection (44) to s. 570.07, F.S., to grant DACS the power to acquire, secure, enjoy, use, enforce, and dispose of all patents, trademarks, and copyrights and other rights or similar interests (currently the Department of State may hold the patent, trademark and copyright and the Attorney General’s Office may enforce those rights). According to DACS, as the “Fresh From Florida” trademark becomes more popular, it needs the authority to take immediate action to stop its misuse;<sup>24</sup>
- Creating s. 570.68, F.S., to create an Office of Agriculture Technology Services to provide electronic data processing and management information systems support for DACS. According to DACS, this proposal paves the way for continued implementation of DACS’s IT Strategic plan, allowing for the reclassification of the CIO position to SMS and further organizational changes as IT resources are consolidated;<sup>25</sup>
- Amending s. 570.441, F.S., to authorize DACS to use money deposited in the Pest Control Trust Fund to carry out any of the powers of the Division of Agricultural Environmental Services (set forth in s. 570.44, F.S.), not just the Structural Pest Control Act (chapter 482, F.S.). The powers of the Division of Agricultural and Environmental Services include state mosquito control program coordination; agricultural pesticide registration, testing, and regulation; pest control regulation; and feed, seed, and fertilizer production inspection and testing. This authorization expires June 30, 2018;
- Amending s. 570.50, F.S., to grant the Division of Food Safety the power to analyze milk, milk products, and frozen desserts offered for sale as required under the adulteration sections of chapter 502, F.S.; and
- Amending s. 570.53, F.S., to remove the power to enforce the provisions of ss. 604.15 through 604.34, F.S., (regulating dealers in agricultural products) and ss. 534.47 through 534.53, F.S., (regulating livestock markets) from the Division of Marketing and Development. The bill grants the power to regulate dealers in agricultural products to the Division of Consumer Services. According to DACS, moving the program to the Division of Consumer Services, which already handles a number of similar programs, will create efficiencies by streamlining department processes.<sup>26</sup>

## Florida Agricultural Center and Horse Park

### Present Situation

In 1994, the Florida Legislature created the Florida Agricultural Center and Horse Park (Florida Horse Park) in order to provide Florida with a unique tourist experience for visitors and residents.<sup>27</sup> The

<sup>22</sup> *Florida Virtual School v. K12, Inc.*, 148 So.3d 97, 99 (Fla. 2014).

<sup>23</sup> *Id.* The following agencies possess the power to hold trademarks: Department of Health, s. 20.43(8), F.S., Department of Management Services, s 282.702(5), F.S., Department of State, s. 286.021, F.S., Department of Transportation, s. 334.049, F.S., Water Management Districts, s. 373.608, F.S., Department of Law Enforcement, s. 943.146, F.S., State Universities, s. 1004.23, F.S.

<sup>24</sup> Department of Agriculture and Consumer Services, Agency Analysis of 2015 PCB ANRS 15-01, p. 6 (January 19, 2015).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Section 570.681, F.S.

Florida Horse Park is situated on 500 acres located south of Ocala. Numerous events occur at the Florida Horse Park throughout the year including rodeos, dressage, polo, obstacle challenges, dog shows, and trail rides.<sup>28</sup> A twenty-one member group appointed by the Commissioner of Agriculture called the Florida Agricultural Center and Horse Park Authority (Authority) oversees the management of the park.<sup>29</sup> DACS is currently required to provide administrative and staff support services for the meetings of the Authority, and to provide suitable space in the offices of the department for the meetings and the storage of records of the Authority.<sup>30</sup>

### **Effect of Proposed Changes**

The PCB amends s. 570.685, F.S., to authorize DACS to provide administrative and staff support services for the meetings of the Authority, and to provide suitable space in the offices at DACS for the meetings and the storage of records of the Authority. Currently, DACS is required to provide staff and space. The amendment will leave the decision to provide staff and space to DACS's discretion. According to DACS, the Florida Horse Park provides its own staff to perform these duties and no longer needs support from DACS.

### **Florida Agricultural Promotion Campaign**

#### **Present Situation**

DACS possesses the power to establish and coordinate the Florida Agricultural Promotional Campaign (FAPC), also known as the "Fresh From Florida" campaign.<sup>31</sup> This campaign is intended to increase consumer awareness and expand the market for Florida's agricultural products.<sup>32</sup> Florida agricultural producers may voluntarily join FAPC. FAPC members may use the "Fresh From Florida" logos, participate in industry trade shows at a reduced cost, receive point-of-purchase materials, have access to trade leads, receive the "Fresh From Florida" magazine and industry newsletter, tie in to supermarket promotions that feature Florida products in newspaper and store circular advertisements, and receive a farm sign customized with the member's business name.<sup>33</sup>

Currently, DACS must designate an employee to serve on the Advertising Interagency Coordinating Council.<sup>34</sup> This council no longer exists.

In addition, DACS is authorized to adopt rules related to the Florida Agricultural Promotional Campaign, including rules pertaining to negotiating and entering into contracts with advertising agencies.<sup>35</sup>

Lastly, the Legislature created the 15-member Florida Agricultural Promotional Campaign Advisory Council to provide advice to DACS.<sup>36</sup> The membership must include six members representing agricultural producers, shippers, or packers; three members representing agricultural retailers; two members representing agricultural associations; one member representing a wholesaler of agricultural products; one member representing consumers; and one member representing DACS.<sup>37</sup>

### **Effect of Proposed Changes**

The PCB amends ss. 571.24, 571.27, and 571.28, F.S., regarding the FAPC to:

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<sup>28</sup> Florida Agricultural Center and Horse Park Authority, *Welcome to the Florida Horse Park*, <http://flhorsepark.com/> (last visited December 23, 2014).

<sup>29</sup> Section 570.685, F.S.

<sup>30</sup> Section 570.685(4)(b), F.S.

<sup>31</sup> Section 571.24, F.S.

<sup>32</sup> Section 571.22, F.S.

<sup>33</sup> Florida Department of Agricultural and Consumer Services, *Join "Fresh From Florida,"* <http://www.freshfromflorida.com/Divisions-Offices/Marketing-and-Development/Agriculture-Industry/Join-Fresh-From-Florida>. (last visited December 23, 2014).

<sup>34</sup> Section 571.24(8), F.S.

<sup>35</sup> Section 571.27, F.S.

<sup>36</sup> Section 571.28(1), F.S.

<sup>37</sup> *Id.*

- Specify that the intent of the marketing brand is to serve as a marketing program to promote Florida agriculture commodities, value added products, and agricultural related businesses and is not a food safety or traceability program. The purpose of this provision is to avoid the misconception that the brand indicates that food has been inspected by DACS for safety. This change will likely decrease the possibility that DACS will be held liable for possible food defects because it makes clear that DACS is not warranting the safety of products by use of the brand.
- Eliminate the requirement for DACS to designate an employee to be a member of the Advertising Interagency Coordinating Council, since this council no longer exists;
- Eliminate the power to adopt rules related to negotiating and entering into contracts with advertising agencies. Such rules are already adopted by the Department of Management Services in chapter 60A-1, F.A.C.; and
- Change the membership requirements for the Florida Agricultural Promotional Campaign Advisory Council. The PCB strikes the requirement that there be a specific number of council members from each industry category while maintaining the overall number of members and staggered terms.

## **Removal and Destruction of Infected and Infested Plants**

### **Present Situation**

The Division of Plant Industry may order the removal and destruction of any plant or plant product infested or infected with plant pests or noxious weeds.<sup>38</sup> A “plant pest” is any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or their reproductive parts, or viruses, or any organisms similar to or allied with any of the foregoing, including any genetically engineered organisms, or any infectious substances which can directly or indirectly injure or cause disease or damage in any plants or plant parts or any processed, manufactured, or other plant products.<sup>39</sup> A “noxious weed” is any living stage, including, but not limited to, seeds and productive parts, of a parasitic or other plant of a kind, or subdivision of a kind, which may be a serious agricultural threat in Florida or have a negative impact on the plant species protected under s. 581.185, F.S., (endangered, threatened, or commercially exploited native plants).<sup>40</sup> The Division of Plant Industry may take these actions in order to stop the introduction and dissemination of plants or pests that may threaten Florida’s agriculture industry.

The Director of the Division of Plant Industry must provide notice to the owner or the person having charge of the premises when DACS finds an infested or infected plant or plant product.<sup>41</sup> Within 10 days of the notice, the owner or person in charge must treat as directed or remove and destroy the infested or infected plant or plant product.<sup>42</sup> If the owner or person in charge does not, DACS may treat as directed or remove and destroy the infested or infected plant or plant product.<sup>43</sup>

### **Effect of Proposed Changes**

The PCB amends s. 581.181, F.S., to create an exception from the destruction requirement for plant or plant products infested with pest or noxious weeds that are widely established in Florida and not regulated by DACS. According to DACS, there are times when it is unnecessary for the owner to treat or destroy the plant, but DACS lacks the discretion not to give notice to the owner that they must destroy any infested plants or plant products.<sup>44</sup> This change may require amendment of rule 5B-59.003, F.A.C.

## **Parks on Florida Forest Service Land**

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<sup>38</sup> Section 581.181(1), F.S.

<sup>39</sup> Section 581.011(26), F.S.

<sup>40</sup> Section 581.011(19), F.S.

<sup>41</sup> Section 581.181(1), F.S.

<sup>42</sup> Id.

<sup>43</sup> Section 581.181(2), F.S.

<sup>44</sup> Department of Agriculture and Consumer Services, Agency Analysis of 2015 PCB ANRS 15-01, p. 9 (January 19, 2015).

## **Present Situation**

The Florida Forest Service may dedicate its land for use by the public as a park.<sup>45</sup> These lands must be subject to the rules and regulations adopted by DEP's Division of Recreation and Parks.<sup>46</sup>

## **Effect of Proposed Changes**

The PCB repeals s. 589.26, F.S., to eliminate the Florida Forest Service's power to dedicate its land for use by the public as a park. According to DACS, the Florida Forest Service does not have any state parks or manage land for "park purposes."<sup>47</sup>

## **School Nutrition Program**

### **Present Situation**

The National School Lunch Program (NSLP) is a federally funded program that assists schools and other agencies in providing nutritious meals to children at reasonable prices. In addition to financial assistance, the NSLP provides donated commodity foods to help reduce lunch program costs.

Chapter 595, F.S., authorizes DACS to coordinate with the federal government to use federal and state funding to provide school nutrition programs. The Legislature declared 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.<sup>48</sup>

Schools must apply through DACS and complete certain requirements<sup>49</sup> prior to the operation of a school nutrition program. Once approved, DACS will reimburse schools for each lunch and breakfast meal served provided they meet established state and federal regulations.

Chapter 595, F.S., does not contain definitions for "school breakfast program," "summer nutrition program," or "universal school breakfast program." Currently, DACS must make a reasonable effort to ensure that any school designated as a "severe need school" receives the highest rate of reimbursement to which it is entitled under the federal school breakfast program for each breakfast meal served.<sup>50</sup> Further, DACS may advance funds from the school nutrition program's annual appropriation to sponsors in order to implement the school nutrition program.<sup>51</sup> There is no restriction on when or for which program the funds may be advanced.

Each school district must implement a school breakfast program that makes breakfast meals available to all students in each elementary school.<sup>52</sup> School districts must offer universal school breakfast programs (a no-cost program) in schools in which 80 percent or more of the students are eligible for free or reduced-price meals.<sup>53</sup> There is no exception to these requirements.

Each school must, to the maximum extent practicable, make breakfast meals available to students at an alternative site location.<sup>54</sup>

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<sup>45</sup> Section 589.26, F.S.

<sup>46</sup> Id.

<sup>47</sup> Department of Agriculture and Consumer Services, Agency Analysis of 2015 PCB ANRS 15-01, p. 9 (January 19, 2015).

<sup>48</sup> Section 595.403, F.S.

<sup>49</sup> Requirements found in section 595.405, F.S.

<sup>50</sup> Section 595.404(5), F.S.

<sup>51</sup> Section 595.404(12), F.S.

<sup>52</sup> Section 595.405(2), F.S.

<sup>53</sup> Id.

<sup>54</sup> Id.



The Legislature encourages school districts to provide universal free school breakfast meals to all students.<sup>55</sup> The school may approve or disapprove a universal free school breakfast only after receiving public testimony concerning the proposed policy at two or more regular meetings.<sup>56</sup>

Each school district is required to sponsor a summer nutrition program that operates a site either:

- Within 5 miles of at least one elementary school at which 50 percent or more of the students are eligible for free or reduced-price school meals and for the duration of 35 consecutive days; or
- Within 10 miles of each elementary school at which 50 percent or more of the students are eligible for free or reduced-price school meals.

DACS must conduct, supervise, and administer all commodity distribution services related to the school nutrition program that will be carried on using federal or state funds, or funds from any other source, or commodities received and distributed from the United States or any of its agencies.<sup>57</sup> DACS must cooperate fully with the federal government in order to assure it receives the benefit of all federal financial allotments and assistance possible to carry out the school nutrition program.<sup>58</sup>

### Effect of Proposed Changes

The PCB includes the following revisions to the School Nutrition Program:

- Amends s. 595.402, F.S., to add definitions for “school breakfast program,” “summer nutrition program,” and “universal school breakfast program” to specify that they are the programs authorized by federal law. DACS administers more than one United States Department of Agriculture (USDA) summer nutrition program. The bill amends the definition of “summer nutrition programs” to specify that certain requirements apply to all summer nutrition programs;
- Changes every instance of “school district” to “district school board.” This is a non-substantive technical change;
- Amends subsection (5) of s. 595.404, F.S., to create a duty to provide to a “severe need school” the highest rate of reimbursement to which it is entitled under the federal school breakfast program for each breakfast meal served. This is consistent with the federal requirement in 7 CFR 220.9. According to DACS, the department currently provides the highest rate of reimbursement to which each severe need school is entitled.<sup>59</sup> Therefore, the provision will have no economic or substantive effect;
- Amends subsection (12) of s. 595.404, F.S., to specify that funds from the school nutrition program may only be advanced to the sponsors of Summer Food Service Programs. This is consistent with 7 CFR 225.9. According to DACS, the bill will have no economic or substantive effect on any interest groups or stakeholders, and will remove ambiguities from the statute that could potentially result in misinterpretation and misapplication of the law;<sup>60</sup>
- Adds subsection (13) of s. 595.404, F.S., to authorize DACS to collect and publish data from multiple sources on food purchased by sponsors through the Florida Farm to School Program and other school food and nutrition service programs.
- Rewrites the provisions of s. 595.405, F.S., which specifies that each school district is encouraged to provide universal, free school breakfast meals to all students and the requirement of when a universal school breakfast program must be provided. The reorganizing of the statutes combines several subsections and removes conflicting and duplicative clauses, so that the statutes are easier to read, interpret, and apply;
- Amends s. 595.406, F.S., to change the name of the “Florida Farm Fresh Schools Program” to the “Florida Farm to School Program.” In 2010, the Legislature enacted the Florida Farm Fresh Schools Program to require the Florida Department of Education to coordinate with DACS to increase the presence of Florida-grown products in schools.<sup>61</sup> This program became part of the

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<sup>55</sup> Section 595.405(4), F.S.

<sup>56</sup> Id.

<sup>57</sup> Section 595.408(1), F.S.

<sup>58</sup> Section 595.408(2), F.S.

<sup>59</sup> Department of Agriculture and Consumer Services, Agency Analysis of 2015 PCB ANRS 15-01, p. 9 (January 19, 2015).

<sup>60</sup> Id. at 10.

<sup>61</sup> Ch. 2010-183, Laws of Fla.

Florida Farm to School Program, administered by DACS, when the Legislature transferred the administration of the school nutrition programs to DACS in 2011;<sup>62</sup>

- Adds subsection (3) to s. 595.406, F.S., to authorize DACS to recognize sponsors who purchase at least ten percent of the food they serve from the Florida Farm to School Program;
- Amends s. 595.407, F.S., to specify that each school district must provide a summer nutrition program within 5 miles of at least one school that serves any combination of grades K through 5, not just elementary schools. This provision attempts to close a loophole where some K-8 or K-12 schools claimed they were not elementary schools, and therefore, did not have to comply. According to DACS, interpretation of this statute has varied greatly.<sup>63</sup> Thus, the proposed change may require district school boards to adjust the location or increase the number of summer nutrition program sites they operate;<sup>64</sup>
- Amends paragraph (2)(a) of 595.407, F.S., to remove the requirement that each school district provide reduced-price school meals during the summer for 35 consecutive days and replace it with the requirement for each school district provide reduced-price school meals during the summer for 35 days between the end of one school year and the beginning of the next. School districts may exclude holidays and weekends;
- Amends s. 595.408, F.S., to change every instance of the word “commodity” in the commodity distribution services statute to “food” to be consistent with the federal statutes; and
- Amends s. 595.501, F.S., to remove the phrase “school district” from the provision of chapter 595, F.S., that specifies the penalties for “any person, sponsor, or school district” that violates a provision of the chapter. The phrase is not needed because the definition of “sponsor” is inclusive of “school districts.”<sup>65</sup>

## **Financial Assurance Requirements for Dealers in Agricultural Products and Grain Dealers**

### **Present Situation**

Any individual or business entity who wishes to be a dealer in agricultural products<sup>66</sup> must receive a license from DACS and deliver a bond or certificate of deposit to DACS in favor of the Commissioner of Agriculture.<sup>67</sup> This financial assurance requirement is essentially a third-party beneficiary contract to protect individuals who are harmed when conducting business with dealers in agricultural products who fail to pay for products.<sup>68</sup>

Dealers in agricultural products who provide a certificate of deposit must also provide a letter from the issuing institution acknowledging that the assignment has been properly recorded on the books of the issuing institution and will be honored by the issuing institution.<sup>69</sup>

Each grain dealer<sup>70</sup> doing business in Florida must maintain a liquid security in an amount equal to the value of grain which the grain dealer has received from grain producers and for which the producers

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<sup>62</sup> Ch. 2011-206, Laws of Fla.

<sup>63</sup> Department of Agriculture and Consumer Services, Agency Analysis of 2015 PCB ANRS 15-01, p. 11 (January 19, 2015).

<sup>64</sup> Id.

<sup>65</sup> Section 595.402(5), F.S.

<sup>66</sup> A “dealer in agricultural products” is any person or business entity, whether itinerant or domiciled within this state, engaged in Florida in the business of purchasing, receiving, or soliciting agricultural products from the producer or the producer’s agent or representative for resale or processing for sale; acting as an agent for such producer in the sale of agricultural products for the account of the producer on a net return basis; or acting as a negotiating broker between the producer or the producer’s agent or representative and the buyer. Section 604.15(2), F.S.

<sup>67</sup> Sections 604.17, 604.19, and 604.20, F.S.

<sup>68</sup> *In re Hallmark Builders, Inc.*, 205 B.R. 974, 975 (Bankr. M.D. Fla. 1996).

<sup>69</sup> Section 604.20, F.S.

have not received payment.<sup>71</sup> Each grain dealer must report to DACS monthly the value of grain it received from producers for which the producers have not received payment.<sup>72</sup> This report must include a statement showing the type and amount of security maintained to cover the grain dealer's liability to producers.<sup>73</sup>

## Effect of Proposed Changes

The PCB amends ss. 604.20 and 604.33, F.S., to:

- Eliminate the need to provide a letter, accompanying a certificate of deposit, from the issuing institution acknowledging that the assignment has been properly recorded on the books of the issuing institution and will be honored by the issuing institution. This requirement is unnecessary because issuance of the certificate of deposit is acknowledgment that the agreement has been properly recorded; and
- Eliminate the requirement that each grain dealer report monthly to DACS the value of grain it received from producers for which the producers have not received payment. According to DACS, this change eliminates a burdensome and unnecessary requirement on the few grain dealers in Florida.<sup>74</sup> Only four grain dealers conduct business in the state and only three are required to send in this report. All other grain dealer requirements are left in place to protect business transactions and to give DACS the authority to request this information if a complaint is filed or if malpractice is suspected.

## B. SECTION DIRECTORY:

- Section 1.** Amends s. 288.1175, F.S., relating to agriculture education and promotion facilities.
- Section 2.** Amends s. 482.1562, F.S., relating to limited certification for urban landscape commercial fertilizer application.
- Section 3.** Amends s. 500.03, F.S., to add a definition for the words “vehicle,” “retail,” and “wholesale” in chapter 500, F.S.
- Section 4.** Amends s. 570.07, F.S., relating to the powers of DACS.
- Section 5.** Amends s. 570.30, F.S., relating to the powers of the DACS Division of Administration.
- Section 6.** Amends s. 570.441, F.S., relating to the Pest Control Trust Fund.
- Section 7.** Amends s. 570.50, F.S., relating to the powers of the DACS Division of Food Safety.
- Section 8.** Amends s. 570.53, F.S., relating to the powers of the DACS Division of Marketing and Development.
- Section 9.** Amends s. 570.544, F.S., relating to the powers of the DACS Division of Consumer Services.
- Section 10.** Creates s. 570.68, F.S., to create the DACS Office of Agriculture Technology Services.
- Section 11.** Amends s. 570.681, F.S., relating to the Florida Agriculture Center and Horse Park.
- Section 12.** Amends s. 570.685, F.S., relating the Florida Agriculture Center and Horse Park Authority.
- Section 13.** Amends s. 571.24, F.S., relating to the Florida Agricultural Promotional Campaign and the Advertising Interagency Coordinating Council.

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<sup>70</sup> A “grain dealer” is any person engaged in this state in: (a) buying, receiving, selling, exchanging, negotiating, or processing for resale, or soliciting the sale, resale, exchange, or transfer of, grain purchased from the producer or the producer’s agent or representative or received from the producer to be handled on a net return basis; or (b) receiving grain for storage. s. 604.15(6), F.S.

<sup>71</sup> Section 604.33, F.S.

<sup>72</sup> Id.

<sup>73</sup> Id.

<sup>74</sup> Department of Agriculture and Consumer Services, Agency Analysis of 2015 PCB ANRS 15-01, p. 12 (January 19, 2015).

**Section 14.** Amends s. 571.27, F.S., to eliminate the power to adopt rules related to negotiating and entering into contracts with advertising agencies.

**Section 15.** Amends s. 571.28, F.S., to change the membership requirements for the Florida Agricultural Promotional Campaign Advisory Council.

**Section 16.** Amends s. 581.181, F.S., relating to plants or plant products infested with pest or noxious weeds.

**Section 17.** Repeals s. 589.26, F.S., to eliminate the Florida Forest Service's power to dedicate its land for use by the public as a park.

**Section 18.** Amends s. 595.402, F.S., to add definitions of "school breakfast program," "summer nutrition program," and "universal school breakfast program."

**Section 19.** Amends s. 595.404, F.S., relating to DACS's powers for the school food and nutrition service programs.

**Section 20.** Amends s. 595.405, F.S., relating to school food and nutrition program requirements.

**Section 21.** Amends s. 595.406, F.S., to change the name of the "Florida Farm Fresh Schools Program" to the "Florida Farm to School Program."

**Section 22.** Amends s. 595.407, F.S., relating to children's summer nutrition program.

**Section 23.** Amends s. 595.408, F.S., to change every instance of the word "commodity" to "food" to be consistent with the federal statutes.

**Section 24.** Amends s. 595.501, F.S., relating to penalties under chapter 595, F.S.

**Section 25.** Amends s. 595.601, F.S., to reference s. 595.404, F.S., instead of s. 595.405, F.S.

**Section 26.** Amends s. 604.20, F.S., relating to dealers in agricultural products.

**Section 27.** Amends s. 604.33, F.S., relating to grain dealer report.

**Section 28.** Provides an effective date of July 1, 2015.

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

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

#### **1. Revenues:**

The PCB appears to have an insignificant negative fiscal impact on state government revenues by eliminating a late fee for limited certification for urban landscape commercial fertilizer application. DACS indicated that it expects the impact to be minimal and will be absorbed by the Division of Agricultural and Environmental Services.

#### **2. Expenditures:**

##### **Office of Agricultural Technology Services**

The PCB may have a negative fiscal impact associated with the creation of s. 570.68, F.S. This provision creates the Office of Agricultural Technology Services, under the supervision of a senior management class employee. Currently, the Chief Information Officer within the department is classified as a retiree that has been reemployed and not eligible to participate in a state administered retirement plan. The state does contribute a set amount to the state retirement account for employees in these ineligible classes, despite their inability to participate. The current retirement contribution rate for an ineligible employee in a regular class is 3.80 percent, while the contribution rate for an ineligible employee in a senior management class is 16.30 percent. Changing the department's current Chief Information Officer to a senior management class would result in an additional state retirement contribution of \$11,795 from the Salary and Benefits appropriation category.

If the current Chief Information Officer were to leave and the position was filled at the same annual rate with an employee that was eligible to participate in state retirement, then the retirement contribution for this regular class employee would be 7.37 percent. In this scenario, changing the position to a senior management class would increase the contribution rate to 21.14 percent and result in \$12,994 in additional state retirement contributions.

In either scenario, DACS indicated it would manage these additional costs within existing salary and benefit appropriations.

### **School Nutrition Programs**

The PCB amends subsection (5) of s. 595.404, F.S., to create a duty to provide to a “severe need school” the highest rate of reimbursement to which it is entitled under the federal school breakfast program for each breakfast meal served. According to DACS, the department currently provides the highest rate of reimbursement to which each severe need school is entitled. Therefore, the provision will have no economic or substantive effect.

Section 595.404(12), F.S., currently authorizes DACS to advance funds to program sponsors when requested. Historically, advances have only been given to participants in the Summer Food Service Program. Furthermore, the USDA only requires the department to provide an advancement of funds for participants in the Summer Food Service Program. The proposed statutory change clarifies that DACS will only advance funds when requested by sponsors of the Summer Food Service Program. According to DACS, the provision will have no economic or substantive effect on any interest groups or stakeholders.

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

### **1. Revenues:**

None.

### **2. Expenditures:**

The PCB amends s. 595.407, F.S., to specify that each school district must provide a summer nutrition program within 5 miles of at least one school that serves any combination of grades K through 5, not just an elementary school. This provision attempts to close a loophole where some K-8 or K-12 schools claimed they were not elementary schools, and therefore, did not have to comply. According to DACS, interpretation of this statute has varied greatly. Thus, the proposed change may require district school boards to adjust the location or increase the number of summer nutrition program sites they operate.

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

The PCB amends s. 482.1562, F.S., to eliminate a late fee for limited certification for urban landscape commercial fertilizer application. This may have a positive impact on those who apply commercial fertilizer by eliminating a fee.

The PCB amends ss. 604.20 and 604.33, F.S., to eliminate certain financial assurance and licensing requirements for dealers in agricultural products and grain dealers. This may have a positive impact on those professions by eliminating the filing requirements.

The PCB amends s. 581.181, F.S., to create an exception from the destruction requirement for plant or plant products infested with pest or noxious weeds that are widely established in Florida and not regulated by DACS. This may have a positive impact on those who own plant or plant products infested with pest or noxious weeds by not requiring the owners to destroy them when they are widely established in Florida and not regulated by DACS.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The PCB eliminates the authority for DACS to adopt rules related to negotiating and entering into contracts with advertising agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

N/A