# Agriculture Committee

## Wednesday, March 15,2006
## 2:30 pm - 5:30 pm
## 214 The Capitol

## MEETING PACKET
# Revised

Allan G. Bense
Speaker

Ralph Poppell
Dwight Stansel
Co-Chairs

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

**Speaker Allan G. Bense** **(AMENDED 3/14/2006 8:40:48AM)**

**Amended(1)**

## Agriculture Committee

| | |
|---|---|
| **Start Date and Time:** | Wednesday, March 15, 2006 02:30 pm |
| **End Date and Time:** | Wednesday, March 15, 2006 05:30 pm |
| **Location:** | 214 Capitol |
| **Duration:** | 3.00 hrs |

**Consideration of the following bill(s):**

HB 637 Consumer Protection by Seiler
HB 685 CS Veterinary Drug Distribution by Coley
HB 687 CS Public Records by Adams
HB 743 Agricultural Usage Sales and Use Tax Exemptions by Bowen
HB 777 Telephone Solicitation by Homan

**Consideration of the following proposed committee bill(s):**

PCB AG 06-03 -- Citrus Canker Disease Managenent

**NOTICE FINALIZED on 03/14/2006 08:40 by SIMS-DAVIS.LINDA**

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 637 Consumer Protection
**SPONSOR(S):** Seiler
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 202

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Agriculture Committee | | Blanchette CB | Reese JRE |
| 2) Civil Justice Committee | | | |
| 3) Judiciary Appropriations Committee | | | |
| 4) State Resources Council | | | |
| 5) | | | |

## SUMMARY ANALYSIS


The bill amends the Florida Deceptive and Unfair Trade Practices Act by changing obsolete dates and allowing a receiver or other neutral party to bring an action on behalf of a defendant against a third party.

This act shall take effect July 1, 2006, and does not appear to have a fiscal impact on state or local government.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:
This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

**Present Situation**
The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) Part II of ch. 501, F.S., provides remedies and penalties for "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce..."[1] The Department of Legal Affairs,[2] office of the state attorney or a consumer[3] may bring an action under ch. 501, F.S.

Under FDUTPA, the Attorney General or other enforcing authority may bring an action on behalf of a consumer[4] and seek the appointment of a receiver[5] or fiduciary to seek redress. A receiver only has the powers given to him or her by statute or by order of appointment.[6] Under most circumstances, it is the receiver's duty to safeguard the property in his or her custody and to protect the rights and interests of all claimants while still maintaining neutrality.[7]

Under current law, it is unclear whether a receiver or other court appointed person has standing to bring a proceeding on behalf of defendants against a third party who may have an involvement in the wrongdoing.

A receivership allows the court to accomplish "complete justice," with the goal of providing protection to the property at issue until the final disposition of the matter.[8] An appointment of a receiver is an equitable question and not a matter of right.[9] Typically, the appointment of a receiver is an ancillary remedy and can only be obtained in connection with some other action to obtain a specific relief.[10]

**Effect of Proposed Changes**
The bill amends ss. 501.203 and 501.204, F.S., to change the date from 2001 to 2006 in order to capture changes in federal law up to July 1, 2006.

The bill amends s. 501.207, F.S., to allow the court to enter orders to bring actions "in the name of and on behalf of the defendant enterprise." The effect is to allow a receiver or other court appointed person to bring an action on behalf of a defendant against a third party who played some role in the alleged wrongdoing.

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[1] Section 501.204, F.S.
[2] Section 501.203(2), F.S.
[3] Section 501.211(1), F.S.
[4] Section 501.207(1), F.S.
[5] A "receiver" is: A person appointed by a court for the purpose of preserving property of a debtor pending an action against him, or applying the property in satisfaction of a creditor's claim, whenever there is danger that, in the absence of such an appointment, the property will be lost, removed or injured; An indifferent person between the parties to a cause, appointed by the court to receive and preserve property or fund in litigation, and receive its rents, issues, and profits, and apply or dispose of them at the direction of the court when it does not seem reasonable that either party should hold them; A fiduciary of the court, appointed as an incident to other proceedings wherein certain ultimate relief is prayed; or, A trustee or ministerial officer representing court, and all parties in litigation, and property or fund entrusted to him. BLACK'S LAW DICTIONARY 1268 (6th ed. 1990).
[6] 44 Fla. Jur. 2d Receivers § 49 (2005).
[7] 44 Fla. Jur 2d Receivers § 49 (2005).
[8] 44 Fla. Jur. 2d Receivers § 2 (2005).
[9] 44 Fla. Jur. 2d Receivers § 3 (2005).
[10] 44 Fla. Jur. 2d Receivers § 3 (2005).

C. SECTION DIRECTORY:

Section 1. Amends s. 501.203, F.S., to change a date to capture changes in federal law up to July 1, 2006.

Section 2. Amends s. 501.204, F.S., to change a date to capture changes in federal law up to July 1, 2006.

Section 3. Amends s. 501.207, F.S., to allow the court to enter orders to bring actions "in the name of and on behalf of the defendant enterprise." The effect is to allow a receiver or other court appointed person to bring an action on behalf of a defendant against a third party who played some role in the alleged wrongdoing.

Section 4. Provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable, because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other: None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A.

1 A bill to be entitled
2 An act relating to consumer protection; amending ss.
3 501.203 and 501.204, F.S.; changing obsolete dates;
4 reenacting and amending s. 501.207, F.S., relating to
5 remedies of the enforcing authority under the Florida
6 Deceptive and Unfair Trade Practices Act; providing that
7 the court may order actions brought under that act on
8 behalf of an enterprise; providing an effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Subsection (3) of section 501.203, Florida
13 Statutes, is amended to read:
14 501.203 Definitions.--As used in this chapter, unless the
15 context otherwise requires, the term:
16 (3) "Violation of this part" means any violation of this
17 act or the rules adopted under this act and may be based upon
18 any of the following as of July 1, 2006 ~~2001~~:
19 (a) Any rules promulgated pursuant to the Federal Trade
20 Commission Act, 15 U.S.C. ss. 41 et seq.;
21 (b) The standards of unfairness and deception set forth
22 and interpreted by the Federal Trade Commission or the federal
23 courts;
24 (c) Any law, statute, rule, regulation, or ordinance which
25 proscribes unfair methods of competition, or unfair, deceptive,
26 or unconscionable acts or practices.
27 Section 2. Subsection (2) of section 501.204, Florida
28 Statutes, is amended to read:

29 501.204 Unlawful acts and practices.--
30 (2) It is the intent of the Legislature that, in
31 construing subsection (1), due consideration and great weight
32 shall be given to the interpretations of the Federal Trade
33 Commission and the federal courts relating to s. 5(a)(1) of the
34 Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of July
35 1, 2006 ~~2001~~.
36 Section 3. Subsection (1) of section 501.207, Florida
37 Statutes, is reenacted, and subsection (3) of that section is
38 amended to read:
39 501.207 Remedies of enforcing authority.--
40 (1) The enforcing authority may bring:
41 (a) An action to obtain a declaratory judgment that an act
42 or practice violates this part.
43 (b) An action to enjoin any person who has violated, is
44 violating, or is otherwise likely to violate, this part.
45 (c) An action on behalf of one or more consumers or
46 governmental entities for the actual damages caused by an act or
47 practice in violation of this part. However, damages are not
48 recoverable under this section against a retailer who has in
49 good faith engaged in the dissemination of claims of a
50 manufacturer or wholesaler without actual knowledge that it
51 violated this part.
52 (3) Upon motion of the enforcing authority or any
53 interested party in any action brought under subsection (1), the
54 court may make appropriate orders, including, but not limited
55 to, appointment of a general or special magistrate or receiver
56 or sequestration or freezing of assets, to reimburse consumers

57 or governmental entities found to have been damaged; to carry
58 out a transaction in accordance with the reasonable expectations
59 of consumers or governmental entities; to strike or limit the
60 application of clauses of contracts to avoid an unconscionable
61 result; to bring actions in the name of and on behalf of the
62 defendant enterprise; to order any defendant to divest herself
63 or himself of any interest in any enterprise, including real
64 estate; to impose reasonable restrictions upon the future
65 activities of any defendant to impede her or him from engaging
66 in or establishing the same type of endeavor; to order the
67 dissolution or reorganization of any enterprise; or to grant
68 ~~legal, equitable, or~~ other appropriate relief. The court may
69 assess the expenses of a general or special magistrate or
70 receiver against a person who has violated, is violating, or is
71 otherwise likely to violate this part. Any injunctive order,
72 whether temporary or permanent, issued by the court shall be
73 effective throughout the state unless otherwise provided in the
74 order.
75 Section 4. This act shall take effect July 1, 2006.

HB 685

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 685 CS Veterinary Drug Distribution
**SPONSOR(S):** Coley and others
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1540

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Health Care Regulation Committee | 9 Y, 0 N, w/CS | Bell | Mitchell |
| 2) Agriculture Committee | | Kaiser | Reese |
| 3) Health Care Appropriations Committee | | | |
| 4) Health & Families Council | | | |
| 5) | | | |

## SUMMARY ANALYSIS


HB 685 w/ CS establishes a new type of prescription drug wholesaler permit, the "limited prescription drug veterinary wholesaler permit" (permit). The permit is required for any person who engages in the distribution, in or into the state to veterinarians, of veterinary prescription drugs and prescription drugs regulated by the Federal Food, Drug, and Cosmetic Act (act).[1] The bill provides several permit requirements, including a $20,000 bond or equivalent surety requirement, and provides parameters for permit holders.

The bill defines any human prescription drug, regulated under the act, as an adulterated drug if it has been returned by a veterinarian to a limited prescription drug veterinary wholesaler.

The bill provides that no more than 30 percent of drug sales by limited prescription drug veterinary wholesalers may be prescription drugs prescribed for human use. It also requires a limited prescription drug veterinary wholesaler to comply with pedigree paper tracking requirements except under certain circumstances. The bill provides a fee for a limited prescription drug veterinary wholesaler's permit of not less than $300 or more than $500 annually.

The bill requires the Department of Health (DOH) to inspect each limited prescription drug wholesaler. It authorizes DOH to order immediate closures of a limited prescription drug veterinary wholesaler if DOH determines that it presents an immediate danger to the public health safety and welfare.

The DOH estimates that, with the creation of the permit, there will be a yearly loss of $3,000. According to DOH, this loss of revenue will have no effect on current operations.

The effective date of the bill is July 1, 2006.


[1] Section 503(b) of the Federal Food, Drug, and Cosmetic Act regulates pharmaceutical drugs intended for human consumption.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government** – HB 685 w/ CS creates a new prescription drug wholesaler permit. The new permit allows veterinary wholesalers to provide legend drugs intended for human use but limits the sales to no more than 30 percent. The bill decreases requirements for veterinary wholesalers that wish to provide legend drugs intended for human use. The creation of the permit will result in a yearly loss of $3,000 in regulatory fees, according to the Department of Health (DOH).

B. EFFECT OF PROPOSED CHANGES:

HB 685 w/ CS establishes a new type of prescription drug wholesaler permit, the "limited prescription drug veterinary wholesaler permit" (permit). The permit is required for any person who engages in the distribution in or into the state of veterinarian prescription drugs and prescription drugs subject to, or described by s. 503(b) of the Federal Food, Drug, and Cosmetic Act[2] to veterinarians. The bill also allows limited veterinary drug wholesalers to sell drugs to:

- Licensed veterinarians practicing on a full-time basis;
- Veterinary medicine instructors;
- Law enforcement personnel with service animals;
- Researchers, not involved in clinical use; or
- For use in chemical analysis or physical testing, for the purposes of instruction in law enforcement, research, or testing.

The bill provides several permit requirements, including a $20,000 bond or equivalent surety requirement, and provides parameters for permit holders. The bill defines any prescription drug subject to, defined by, or described by s. 503(b), which has been returned by a veterinarian to a limited prescription drug veterinary wholesaler as an adulterated drug.

The bill specifies that no more than 30 percent of drug sales[3] by limited prescription drug veterinary wholesalers may be prescription drugs prescribed for human use. It also requires a limited prescription drug veterinary wholesaler to comply with pedigree paper tracking requirements under s. 499.0121, F.S., except that the permit holder is not required to comply with the pedigree paper requirements of s. 499.0121(6)(f), F.S., upon the wholesale distribution of a prescription drug to a veterinarian.

The bill permits intracompany sale or transfer of prescription drugs from an out of state establishment that is duly licensed to engage in the wholesale distribution of prescription drugs in its state of residence, to a licensed limited prescription drug veterinarian wholesaler. Both wholesalers must operate under the same name, and comply with the recordkeeping requirements of s. 499.0121(6), F.S.

The bill provides a fee for a permit of not less than $300 or more than $500 annually. It also requires the Department of Health (DOH) to inspect each limited prescription drug wholesaler. It authorizes DOH to order immediate closures of a limited prescription drug veterinary wholesaler if DOH determines that it presents an immediate danger to the public health safety and welfare.

**Limited Veterinarian Prescription Drug Wholesaler Permit Requirements**
The bill provides the following permit requirements and conditions under the permit:

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[2] Section 503(b) of the Federal Food, Drug, and Cosmetic Act regulates pharmaceutical drugs intended for human consumption.

[3] According to a survey conducted by the American Veterinary Distributors Association (AVDA), human drug sales comprise approximately 30% of the annual sales volume of veterinary wholesalers who sell all types of veterinary products to veterinarians.

- The permit holder must be engaged in the business of wholesaling prescription and veterinary legend drugs on a full-time basis;
- No more than 30 percent of drug sales may be prescription drugs prescribed for human use;
- The permit holder may not be licensed in any state to wholesale prescription drugs subject to s. 503(b) of the Federal Food, Drug, and Cosmetic Act to any person who is authorized to sell, distribute, purchase, trade, or use these drugs on or for humans;
- The permit holder must submit a $20,000 bond or equivalent surety;
- The permit holder must maintain a license or permit to engage in wholesale distribution of prescription drugs at all times in compliance with the laws of the state in which it is a resident;
- The permit holder must comply with s. 499.0121, F.S., except that the permit holder is not required to comply with the pedigree paper requirements of s. 499.0121(6)(f), F.S., for wholesale distribution of a prescription drug to a veterinarian; and
- The permit holder may not return to inventory for subsequent wholesale distribution any drug federally regulated under s. 503(b) which has been returned by a veterinarian.

The effective date of the bill is July 1, 2006.

**Overview**

The Bureau of Statewide Pharmacy Services of DOH is responsible for regulating the wholesale distribution of drugs intended for human consumption[4] and veterinary legend drugs[5] in Florida under the Florida Drug and Cosmetic Act. The Florida Drug and Cosmetic Act is codified in ch. 499, F.S.

Under s. 499.012, F.S., "wholesale distributor" is defined to mean any person engaged in wholesale distribution of prescription drugs. Persons or entities which distribute wholesale veterinary prescription drugs must obtain a permit under the Florida Drug and Cosmetic Act.

Currently, wholesalers that distribute drugs to veterinarians must have a prescription drug wholesaler's permit, an out-of-state wholesaler's permit, a retail pharmacy wholesaler's permit, or a veterinary prescription drug wholesaler permit. However, most often wholesalers that distribute drugs to veterinarians register as a prescription drug wholesaler or a veterinary prescription drug wholesaler.

Veterinary prescription drug wholesalers are limited to only distributing prescription drugs developed and intended for animal use. According to an industry representative, some prescription drugs intended for human use do not have an equivalent prescription drug intended for animal use. Because of this deficiency, veterinarians may prescribe human drugs to animals. According to DOH, human medications sold by veterinarians are not on any list of adulterated, counterfeit, or diverted drugs. The human drugs sold by veterinarians include eye ointment, antibiotics, allergy medications, and topical anesthetics.

**Existing Regulations:**

**Veterinary Prescription Drug Wholesaler Permits**

Section 499.01, F.S., requires a permit for any person or establishment that wishes to operate as a veterinary prescription drug wholesaler. Veterinary prescription drug wholesaler is defined as any person engaged in the wholesale distribution of veterinary prescription drugs in or into Florida.[6]

**Prescription Drug Wholesalers**

All prescription drug wholesalers are required to post a $100,000 bond and to file an extensive permit application that includes the submission of fingerprint cards for all key individuals associated with the wholesaler's operations in order for a criminal history check to be performed. In addition, each prescription drug wholesaler must have a designated representative who has successfully passed an examination on federal and state laws, and department rules, relating to the wholesale distribution of prescription drugs.

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[4] Section 499.003(25), F.S.
[5] Section 499.0122(1)(c), F.S.
[6] Section 499.003(40), F.S.

| | Prescription Drug Wholesaler | Limited Veterinary Prescription Drug Wholesaler (proposed permit) | Veterinary Prescription Drug Wholesaler |
|---|---|---|---|
| **Type of Prescription Drugs Dispensed** | Legend drugs defined or described by s. 503(b) of the Federal Food, Drug, and Cosmetic Act. | May dispense up to 30% of sales from legend drugs. | Veterinarian legend drugs only. |
| **Required Deposit** | $100,000 bond, certificate of deposit, or letter of credit | $20,000 bond, certificate of deposit, or letter of credit | None required. |
| **Authorized yearly fees** | $800 Annually s. 499.041(2)(a), F.S. | $300-$500 Annually (proposed legislation) | $500 s. 499.041(g), F.S. |

**Pedigree Papers**

Pedigree papers are the key standard for control of the wholesale drug industry designed to prevent drug diversion, fraud, and counterfeiting. They require wholesalers to provide purchasers with a written sales history tracing each drug back to its initial manufacturer. These written histories, commonly referred to as pedigree papers, provide an audit trail and contain specific information about each sales transaction, such as the name and address of each previous purchaser of the drug.

Beginning July 1, 2006, prescription drug wholesalers will be required to pass pedigree papers down to the retail level. Wholesalers who pass pedigree papers to veterinarians are included in this provision.

**Florida Drug & Cosmetic Act**

Pursuant to the Florida Drug and Cosmetic Act, part I, chapter 499, Florida Statutes, DOH is responsible for administering and enforcing efforts to prevent fraud, adulteration, misbranding, or false advertising in the preparation, manufacture, repackaging, or distribution of drugs, devices and cosmetics. Wholesalers, manufacturers and distributors of drugs or devices must be permitted by the department or otherwise be exempt.[7]

Under the Florida Drug and Cosmetic Act (act), any person who is at least 18 years of age or older, pays a permit fee, and submits specified information may, with certain exceptions, obtain a permit as a prescription drug wholesaler.[8] The applicant must not have been found guilty of a violation of a law that directly relates to a drug, device, or cosmetic, regardless of adjudication. The applicant must submit information on contact persons for each facility used by the applicant for the storage, handling and distribution of prescription drugs. The permit, once granted, may be renewed biennially.

An out-of-state prescription drug wholesaler distributor located outside of Florida must be permitted by DOH. DOH is authorized to adopt rules that allow out-of-state drug wholesalers to obtain a drug wholesale permit on the basis of reciprocity in Florida to the extent that an out-of-state drug wholesaler possesses a valid permit from another state with requirements that are comparable to those of Florida and can show that the other state from which the wholesaler holds a permit would extend reciprocity under its laws to a Florida-permitted drug wholesaler. According to DOH, there are approximately 450 prescription drug wholesalers located in Florida and 900[9] out-of-state wholesalers, of which less than

[7] Drug marketing is also subject to regulation under the Federal Prescription Drug Marketing Act of 1987, which establishes minimum standards for the prescription drug industry including requirements for an audit trail of sales transactions.

[8] See ss. 499.01 and 499.012, F.S. The permitting requirements for a number of establishments licensed or permitted by the Department of Health to engage in activities regulated under the Florida Drug and Cosmetic Act are the same. Such establishments include: prescription drug manufacturer; over-the-counter drug manufacturer; compressed medical gas manufacturer; device manufacturer; cosmetic manufacturer; prescription drug wholesaler; compressed medical gas wholesaler; out-of state prescription drug wholesaler; retail pharmacy drug wholesaler; veterinary legend drug retail establishment; medical oxygen retail establishment; complimentary drug distributor; or restricted prescription drug distributor.

[9] According to Department of Health records from 2003.

10 percent are one of the three large full-line wholesalers or their distribution centers, or major full-line regional wholesalers. The remaining wholesalers are secondary wholesalers that primarily buy and sell among other prescription drug wholesalers rather than to end-users such as hospitals or other health care entities, which include physicians or pharmacies.

The act requires prescription drug wholesalers to maintain records that provide a complete audit trail of prescription drugs from purchase to sale or other disposition. Such records known as "pedigree papers" must include a written statement of all previous sales of the drug that is sold in a wholesale market.

The act specifies criminal penalties for violations relating to activities regulated by DOH under the act. Such criminal offenses are, with few exceptions, punishable as a second-degree misdemeanor.

C. SECTION DIRECTORY:

**Section 1.** – Amends s. 499.006, F.S., to define a prescription drug returned by a veterinarian to a limited prescription drug veterinary wholesaler as an adulterated drug. Prescription drugs are those regulated by s. 503(b) of the Federal Food, Drug, and Cosmetic Act.

**Section 2.** – Amends s. 499.01, F.S., to require a permit for any person or establishment that intends to operate as a limited prescription drug veterinary wholesaler. The bill provides that the limited drug veterinary wholesaler permit may not be issued to the address of a health care entity or pharmacy licensed under ch. 465, F.S., except as provided in s. 499.01(2)(d), F.S.

**Section 3.** – Amends s. 499.012, F.S., to establish a limited prescription drug veterinary wholesaler permit. The bill provides several permit requirements and conditions under the permit, including a $20,000 bond or equivalent surety requirement, and provides permissible transactions under the permit.

**Section 4.** – Amends s. 499.01221(1)(d) F.S., to delete veterinarians from the group of persons or entities to whom a veterinary legend drug retail establishment may sell veterinary legend drugs. The bill permits a veterinary legend drug retail establishment to only sell veterinary legend drugs to the public.

**Section 5.** – Amends s. 499.041, F.S., to require a fee for a limited prescription drug veterinary wholesaler's permit. The bill provides the fee may not be less than $300 or more than $500 annually.

**Section 6.** – Amends s. 499.065, F.S., to require DOH to inspect each limited prescription drug veterinary wholesaler. The bill permits DOH to order the immediate closure of a limited prescription drug veterinary wholesaler if DOH determines that it presents an immediate danger to the public health, safety, or welfare.

**Section 7.** – Provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

| **Estimated Revenue** | **1st Year** | **2nd Year** (Annualized/Recurring) |
|---|---|---|
| Decrease in permit fee revenue $300 for est. 10 permits | -3,000 | -3,000 |
| **Total Estimated Revenue** | - $3,000 | - $3,000 |

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Under the proposed legislation veterinary wholesalers who wish to offer some legend drugs intended for human use have the option of obtaining a limited veterinary prescription drug wholesaler permit instead of a prescription drug wholesaler permit. Because the limited veterinary prescription drug wholesaler has fewer requirements than the prescription drug wholesaler permit, some cost savings may be realized. Wholesalers who choose to obtain the newly created permit may pass their savings on to their customers.

D. FISCAL COMMENTS:

The Department of Health (DOH) estimates that no more that 10 establishments will apply and qualify to become limited veterinary wholesalers. As a result, the impact, assuming each is currently permitted as a prescription drug wholesaler or out-of-state prescription drug wholesaler, will be a decrease in revenue of $3,000 annually. According to DOH, the $3,000 loss in revenue will have no effect on operations.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The Department of Health has the necessary rulemaking authority to carry out the provisions in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 22, 2006, the Health Care Regulation Committee adopted one amendment to HB 685. The amendment specifies that limited prescription drug veterinary wholesalers can sell prescription drugs to:

- Licensed veterinarians practicing on a full-time basis;
- Veterinary medicine instructors;
- Law enforcement personnel with service animals;
- Researchers, not involved in clinical use; or
- For use in chemical analysis or physical testing, for the purposes of instruction in law enforcement, research, or testing.

The analysis is drafted to the committee substitute.

CHAMBER ACTION

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1 The Health Care Regulation Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to veterinary drug distribution; amending
7 s. 499.006, F.S.; providing that a drug is adulterated if
8 it is a certain prescription drug that has been returned
9 by a veterinarian to a limited prescription drug
10 veterinary wholesaler; amending s. 499.01, F.S.; requiring
11 a limited prescription drug veterinary wholesaler to
12 obtain a permit for operation from the Department of
13 Health; providing that a permit for a limited prescription
14 drug veterinary wholesaler may not be issued to the
15 address of certain health care entities; amending s.
16 499.012, F.S.; revising permit requirements for a
17 veterinary prescription drug wholesaler that distributes
18 prescription drugs; establishing a permit for a limited
19 prescription drug veterinary wholesaler; providing
20 requirements; providing an exception; amending s.
21 499.0122, F.S.; redefining the term "veterinary legend
22 drug retail establishment"; amending s. 499.041, F.S.;
23 requiring the department to assess an annual fee within a

24 certain monetary range for a limited prescription drug
25 veterinary wholesaler permit; amending s. 499.065, F.S.;
26 requiring the department to inspect each limited
27 prescription drug veterinary wholesaler establishment;
28 authorizing the department to determine that a limited
29 prescription drug veterinary wholesaler establishment is
30 an imminent danger to the public; providing an effective
31 date.
32
33 Be It Enacted by the Legislature of the State of Florida:
34
35 Section 1. Section 499.006, Florida Statutes, is amended
36 to read:
37 499.006 Adulterated drug or device.--A drug or device is
38 adulterated:
39 (1) If it consists in whole or in part of any filthy,
40 putrid, or decomposed substance;
41 (2) If it has been produced, prepared, packed, or held
42 under conditions whereby it could have been contaminated with
43 filth or rendered injurious to health;
44 (3) If it is a drug and the methods used in, or the
45 facilities or controls used for, its manufacture, processing,
46 packing, or holding do not conform to, or are not operated or
47 administered in conformity with, current good manufacturing
48 practices to assure that the drug meets the requirements of ss.
49 499.001-499.081 and that the drug has the identity and strength,
50 and meets the standard of quality and purity, which it purports
51 or is represented to possess;

52 (4) If it is a drug and its container is composed, in
53 whole or in part, of any poisonous or deleterious substance
54 which could render the contents injurious to health;
55 (5) If it is a drug and it bears or contains, for the
56 purpose of coloring only, a color additive that is unsafe within
57 the meaning of the federal act; or, if it is a color additive,
58 the intended use of which in or on drugs is for the purpose of
59 coloring only, and it is unsafe within the meaning of the
60 federal act;
61 (6) If it purports to be, or is represented as, a drug the
62 name of which is recognized in the official compendium, and its
63 strength differs from, or its quality or purity falls below, the
64 standard set forth in such compendium. The determination as to
65 strength, quality, or purity must be made in accordance with the
66 tests or methods of assay set forth in such compendium, or, when
67 such tests or methods of assay are absent or inadequate, in
68 accordance with those tests or methods of assay prescribed under
69 authority of the federal act. A drug defined in the official
70 compendium is not adulterated under this subsection merely
71 because it differs from the standard of strength, quality, or
72 purity set forth for that drug in such compendium if its
73 difference in strength, quality, or purity from such standard is
74 plainly stated on its label;
75 (7) If it is not subject to subsection (6) and its
76 strength differs from, or its purity or quality falls below the
77 standard of, that which it purports or is represented to
78 possess;
79 (8) If it is a drug:

80 (a) With which any substance has been mixed or packed so
81 as to reduce the quality or strength of the drug; or
82 (b) For which any substance has been substituted wholly or
83 in part;
84 (9) If it is a drug or device for which the expiration
85 date has passed; ~~or~~
86 (10) If it is a legend drug for which the required
87 pedigree paper is nonexistent, fraudulent, or incomplete under
88 the requirements of ss. 499.001-499.081 or applicable rules, or
89 that has been purchased, held, sold, or distributed at any time
90 by a person not authorized under federal or state law to do so;
91 or~~.~~
92 (11) If it is a prescription drug subject to, defined by,
93 or described by s. 503(b) of the Federal Food, Drug, and
94 Cosmetic Act which has been returned by a veterinarian to a
95 limited prescription drug veterinary wholesaler.
96 Section 2. Subsection (1) and paragraph (d) of subsection
97 (2) of section 499.01, Florida Statutes, are amended to read:
98 499.01 Permits; applications; renewal; general
99 requirements.--
100 (1) Prior to operating, a permit is required for each
101 person and establishment that intends to operate as:
102 (a) A prescription drug manufacturer;
103 (b) A prescription drug repackager;
104 (c) An over-the-counter drug manufacturer;
105 (d) A compressed medical gas manufacturer;
106 (e) A device manufacturer;
107 (f) A cosmetic manufacturer;

108 (g) A prescription drug wholesaler;
109 (h) A veterinary prescription drug wholesaler;
110 (i) A compressed medical gas wholesaler;
111 (j) An out-of-state prescription drug wholesaler;
112 (k) A nonresident prescription drug manufacturer;
113 (l) A freight forwarder;
114 (m) A retail pharmacy drug wholesaler;
115 (n) A veterinary legend drug retail establishment;
116 (o) A medical oxygen retail establishment;
117 (p) A complimentary drug distributor; ~~or~~
118 (q) A restricted prescription drug distributor; or~~.~~
119 (r) A limited prescription drug veterinary wholesaler.
120 (2)
121 (d) A permit for a prescription drug manufacturer,
122 prescription drug repackager, prescription drug wholesaler,
123 limited prescription drug veterinary wholesaler, or retail
124 pharmacy wholesaler may not be issued to the address of a health
125 care entity or to a pharmacy licensed under chapter 465, except
126 as provided in this paragraph. The department may issue a
127 prescription drug manufacturer permit to an applicant at the
128 same address as a licensed nuclear pharmacy, which is a health
129 care entity, for the purpose of manufacturing prescription drugs
130 used in positron emission tomography or other
131 radiopharmaceuticals, as listed in a rule adopted by the
132 department pursuant to this paragraph. The purpose of this
133 exemption is to assure availability of state-of-the-art
134 pharmaceuticals that would pose a significant danger to the
135 public health if manufactured at a separate establishment

136 address from the nuclear pharmacy from which the prescription
137 drugs are dispensed. The department may also issue a retail
138 pharmacy wholesaler permit to the address of a community
139 pharmacy licensed under chapter 465 which does not meet the
140 definition of a closed pharmacy in s. 499.003.
141 Section 3. Paragraph (g) of subsection (2) of section
142 499.012, Florida Statutes, is amended, and paragraph (h) is
143 added to that subsection, to read:
144 499.012 Wholesale distribution; definitions; permits;
145 applications; general requirements.--
146 (2) The following types of wholesaler permits are
147 established:
148 (g) A veterinary prescription drug wholesaler permit.--A
149 veterinary prescription drug wholesaler permit is required for
150 any person that engages in the distribution of veterinary
151 prescription drugs in or into this state. A veterinary
152 prescription drug wholesaler that also distributes prescription
153 drugs subject to, defined by, or described by s. 503(b) of the
154 Federal Food, Drug, and Cosmetic Act which it did not
155 manufacture must obtain a permit as a prescription drug
156 wholesaler, an ~~or~~ out-of-state prescription drug wholesaler, or
157 a limited prescription drug veterinary wholesaler in lieu of the
158 veterinary prescription drug wholesaler permit. A veterinary
159 prescription drug wholesaler must comply with the requirements
160 for wholesale distributors under s. 499.0121, except those set
161 forth in s. 499.0121(6)(d), (e), or (f).
162 (h) Limited prescription drug veterinary wholesaler
163 permit.--Unless engaging in the activities of and permitted as a

164 prescription drug manufacturer, nonresident prescription drug
165 manufacturer, prescription drug wholesaler, or out-of-state
166 prescription drug wholesaler, a limited prescription drug
167 veterinary wholesaler permit is required for any person that
168 engages in the distribution in or into this state of veterinary
169 prescription drugs and prescription drugs subject to, defined
170 by, or described by s. 503(b) of the Federal Food, Drug, and
171 Cosmetic Act to veterinarians under the following conditions:
172 1. The person is engaged in the business of wholesaling
173 prescription and veterinary legend drugs to persons:
174 a. Licensed as veterinarians practicing on a full-time
175 basis;
176 b. Regularly and lawfully engaged in instruction in
177 veterinary medicine;
178 c. Regularly and lawfully engaged in law enforcement;
179 d. For use in research, not involving clinical use; or
180 e. For use in chemical analysis or physical testing, for
181 the purposes of instruction in law enforcement, research, or
182 testing.
183 2. No more than 30 percent of prescription drug sales may
184 be prescription drugs approved for human use which are subject
185 to, defined by, or described by s. 503(b) of the Federal Food,
186 Drug, and Cosmetic Act.
187 3. The person is not permitted, licensed, or otherwise
188 authorized in any state to wholesale prescription drugs subject
189 to, defined by, or described by s. 503(b) of the Federal Food,
190 Drug, and Cosmetic Act to any person who is authorized to sell,

191 distribute, purchase, trade, or use these drugs on or for
192 humans.
193 4. A limited prescription drug veterinary wholesaler that
194 applies to the department for a new permit or the renewal of a
195 permit must submit a bond of $20,000, or other equivalent means
196 of security acceptable to the department, such as an irrevocable
197 letter of credit or a deposit in a trust account or financial
198 institution, payable to the Florida Drug, Device, and Cosmetic
199 Trust Fund. The purpose of the bond is to secure payment of any
200 administrative penalties imposed by the department and any fees
201 and costs incurred by the department regarding that permit which
202 are authorized under state law and which the permittee fails to
203 pay 30 days after the fine or costs become final. The department
204 may make a claim against such bond or security until 1 year
205 after the permittee's license ceases to be valid or until 60
206 days after any administrative or legal proceeding authorized in
207 ss. 499.001-499.081 which involves the permittee is concluded,
208 including any appeal, whichever occurs later.
209 5. A limited prescription drug veterinary wholesaler must
210 maintain at all times a license or permit to engage in the
211 wholesale distribution of prescription drugs in compliance with
212 laws of the state in which it is a resident.
213 6. A limited prescription drug veterinary wholesaler must
214 comply with the requirements for wholesale distributors under s.
215 499.0121, except that a limited prescription drug veterinary
216 wholesaler is not required to provide a pedigree paper as
217 required by s. 499.0121(6)(f) upon the wholesale distribution of
218 a prescription drug to a veterinarian.

219 7. A limited prescription drug veterinary wholesaler may
220 not return to inventory for subsequent wholesale distribution
221 any prescription drug subject to, defined by, or described by s.
222 503(b) of the Federal Food, Drug, and Cosmetic Act which has
223 been returned by a veterinarian.
224 8. An out-of-state prescription drug wholesaler's permit
225 or a limited prescription drug veterinary wholesaler permit is
226 not required for an intracompany sale or transfer of a
227 prescription drug from an out-of-state establishment that is
228 duly licensed to engage in the wholesale distribution of
229 prescription drugs in its state of residence to a licensed
230 limited prescription drug veterinary wholesaler in this state if
231 both wholesalers conduct wholesale distributions of prescription
232 drugs under the same business name. The recordkeeping
233 requirements of s. 499.0121(6) must be followed for this
234 transaction.
235 Section 4. Paragraph (d) of subsection (1) of section
236 499.0122, Florida Statutes, is amended to read:
237 499.0122 Medical oxygen and veterinary legend drug retail
238 establishments; definitions, permits, general requirements.--
239 (1) As used in this section, the term:
240 (d) "Veterinary legend drug retail establishment" means a
241 person permitted to sell veterinary legend drugs to the public
242 ~~or to veterinarians,~~ but does not include a pharmacy licensed
243 under chapter 465.
244 1. The sale to the public must be based on a valid written
245 order from a veterinarian licensed in this state who has a valid
246 client-veterinarian relationship with the purchaser's animal.

247 2. Veterinary legend drugs may not be sold in excess of
248 the amount clearly indicated on the order or beyond the date
249 indicated on the order.
250 3. An order may not be valid for more than 1 year.
251 4. A veterinary legend drug retail establishment may not
252 purchase, sell, trade, or possess human prescription drugs or
253 any controlled substance as defined in chapter 893.
254 5. A veterinary legend drug retail establishment must sell
255 a veterinary legend drug in the original, sealed manufacturer's
256 container with all labeling intact and legible. The department
257 may adopt by rule additional labeling requirements for the sale
258 of a veterinary legend drug.
259 Section 5. Paragraph (h) is added to subsection (2) of
260 section 499.041, Florida Statutes, to read:
261 499.041 Schedule of fees for drug, device, and cosmetic
262 applications and permits, product registrations, and free-sale
263 certificates.--
264 (2) The department shall assess an applicant that is
265 required to have a wholesaling permit an annual fee within the
266 ranges established in this section for the specific type of
267 wholesaling.
268 <u>(h) The fee for a limited prescription drug veterinary</u>
269 <u>wholesaler's permit may not be less than $300 or more than $500</u>
270 <u>annually.</u>
271 Section 6. Subsections (1) and (3) of section 499.065,
272 Florida Statutes, are amended to read:
273 499.065 Imminent danger.--

274 (1) Notwithstanding s. 499.051, the department shall
275 inspect each prescription drug wholesale establishment,
276 prescription drug repackager establishment, veterinary
277 prescription drug wholesale establishment, limited prescription
278 drug veterinary wholesaler establishment, and retail pharmacy
279 drug wholesaler establishment that is required to be permitted
280 under this chapter as often as necessary to ensure compliance
281 with applicable laws and rules. The department shall have the
282 right of entry and access to these facilities at any reasonable
283 time.
284 (3) The department may determine that a prescription drug
285 wholesale establishment, prescription drug repackager
286 establishment, veterinary prescription drug wholesale
287 establishment, limited prescription drug veterinary wholesaler
288 establishment, or retail pharmacy drug wholesaler establishment
289 that is required to be permitted under this chapter is an
290 imminent danger to the public health and shall require its
291 immediate closure if the establishment fails to comply with
292 applicable laws and rules and, because of the failure, presents
293 an imminent threat to the public's health, safety, or welfare.
294 Any establishment so deemed and closed shall remain closed until
295 allowed by the department or by judicial order to reopen.
296
297 For purposes of this section, a refusal to allow entry to the
298 department for inspection at reasonable times, or a failure or
299 refusal to provide the department with required documentation
300 for purposes of inspection, constitutes an imminent danger to
301 the public health.

302 Section 7. This act shall take effect July 1, 2006.

HB 687

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 687 CS Public Records
**SPONSOR(S):** Adams
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1162

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Governmental Operations Committee | 5 Y, 2 N, w/CS | Williamson | Williamson |
| 2) Agriculture Committee | | Kaiser | Reese |
| 3) State Administration Council | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS


In late 2005, an Orlando television station published on its website personal information regarding holders of a concealed weapon license. The television station along with members of the Florida Legislature received numerous complaints concerning the Internet publication of such information.

The bill creates a public records exemption for personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm. It authorizes the release of the information under certain circumstances. The bill provides for future review and repeal of the exemption and provides a statement of public necessity.

The bill does not grant rule-making authority to any administrative agency.

The bill could have a minimal fiscal impact on state government. It does not appear to have a fiscal impact on local governments.

**The bill requires a two-thirds vote of the members present and voting for passage.**

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government** – The bill decreases access to public records.

B. EFFECT OF PROPOSED CHANGES:

**Background**

Current law authorizes the Department of Agriculture and Consumer Services (department) to issue licenses to carry concealed weapons or concealed firearms[1] to qualified persons.[2] The license is valid in Florida for five years from the date of issuance. The license must include a color photograph of the licensee. The licensee must carry the license and valid identification at all times when in possession of the concealed weapon or firearm.[3]

An applicant for such license must submit to the department a completed application, a nonrefundable license fee, a full set of fingerprints, a photocopy of a certificate or an affidavit attesting to the applicant's completion of a firearms course, and a full frontal view color photograph[4] of the applicant.[5] The application must include:

- The name, address, place and date of birth, race, and occupation of the applicant;
- A statement that the applicant is in compliance with licensure requirements;
- A statement that the applicant has been furnished with a copy of chapter 790, F.S., relating to weapons and firearms;
- A warning that the application is executed under oath; and
- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense.[6]

From 2005 to 2006, the department received 30,267 new applications and 34,182 renewal applications. Of those, the department issued 29,235 new licenses and 34,093 renewal licenses.[7]

Information submitted as part of the application process is a public record. In late 2005, an Orlando television station published on its website application information regarding holders of a concealed weapon license. The television station along with members of the Florida Legislature received numerous complaints concerning the Internet publication of such information.

**Effect of Bill**

The bill creates a public records exemption for personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm. It provides for retroactive application of the public records exemption.

The Division of Licensing of the department must release the information:

- With the written consent of the applicant or licensee or his or her legally authorized representative.

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[1] Concealed weapon or concealed firearm means a handgun, electronic weapon or device, tear gas gun, knife, or billie. It does not include a machine gun. Section 790.06(1), F.S.

[2] *Id.*

[3] Violation of s. 790.06(1), F.S., constitutes a noncriminal violation with a penalty of $25. *Id.*

[4] The photograph must be taken within the preceding 30 days. The head, including hair, must measure 7/8 of an inch wide and 1 1/8 inches high. Section 790.06(5)(e), F.S.

[5] Section 790.06(5), F.S.

[6] Section 790.06(4), F.S.

[7] "Concealed Weapon / Firearm Summary Report," viewed February 15, 2006, http://licgweb.doacs.state.fl.us/stats/cw_monthly.html.

- By court order upon a showing of good cause.
- Upon written request by law enforcement in connection with an active criminal investigation.

The bill provides for future review and repeal of the exemption on October 2, 2011. It also provides a statement of public necessity.

C. SECTION DIRECTORY:

Section 1 creates s. 790.0601, F.S., to create a public records exemption for personal identifying information of an applicant for or holder of a concealed weapon or firearm license.

Section 2 provides a public necessity statement.

Section 3 provides a July 1, 2006, effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   This bill could create a fiscal impact on the Department of Agriculture and Consumer Services (department), because staff responsible for complying with public records requests will require training relating to the newly created public records exemption. In addition, the department could incur costs associated with redacting the confidential and exempt information prior to releasing a record.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   This bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

**Vote Requirement**
Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

**Public Necessity Statement**
Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

This bill does not grant rule-making authority to any administrative agency.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Governmental Operations Committee Meeting**
At the February 22, 2006, meeting of the Governmental Operations Committee members raised concerns regarding access to information made confidential and exempt by the bill. Members were concerned that child protective service workers and local government employees (such as code enforcement officers) would not have access to information regarding whether a person had a license to carry a concealed weapon or firearm. As a means of safety, members believed these employees currently conduct a concealed weapons check prior to going to a residence to perform their lawful duties. In addition, members were concerned that law enforcement officers performing routine traffic stops would not have access to such information because it is unclear whether a traffic stop is an active criminal investigation. Members also were concerned that law enforcement officers conducting a routine traffic stop would experience access delays based upon the time of day an officer might submit the written request. For example, an officer submitting a request between the hours of 8:00 a.m. and 5:00 p.m. might not experience a delay because these are considered normal business hours. An officer submitting a written request at 10:00 p.m. might experience a delay due to the office closing and not reopening until the next business day.

**Public Records Law**
Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is further addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[8] provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,

[8] Section 119.15, F.S.

- Protecting trade or business secrets.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 22, 2006, the Governmental Operations Committee adopted a strike-all amendment and reported the bill favorably with committee substitute. The strike-all amendment narrowed the public records exemption by removing the confidentiality for the license number. It removed the exemption for the name, address, and social security number because it was redundant of personal identifying information. In addition, the strike-all amendment provided for retroactive application, conformed the public necessity statement to the public records exemption, and placed the exemption in chapter 790, F.S., which is the weapons and firearms chapter.

CHAMBER ACTION

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1 The Governmental Operations Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5
6 A bill to be entitled
7 An act relating to public records; creating s. 790.0601,
8 F.S.; creating an exemption from public records
9 requirements for certain personal identifying information
10 held by the Division of Licensing of the Department of
11 Agriculture and Consumer Services; providing for
12 retroactive application of the exemption; providing for
13 disclosure of such information under specified conditions;
14 providing for review and repeal; providing a statement of
15 public necessity; providing an effective date.
16
17 Be It Enacted by the Legislature of the State of Florida:
18
19 Section 1. Section 790.0601, Florida Statutes, is created
20 to read:
21 790.0601 Public records exemption for concealed weapons.--
22 (1) Personal identifying information of an individual who
23 has applied for or received a license to carry a concealed

24 weapon or firearm pursuant to s. 790.06 held by the Division of
25 Licensing of the Department of Agriculture and Consumer Services
26 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.
27 I of the State Constitution. This exemption applies to such
28 information held by the division before, on, or after the
29 effective date of this section.
30 (2) Information made confidential and exempt by this
31 section shall be disclosed:
32 (a) With the express written consent of the applicant or
33 licensee or his or her legally authorized representative.
34 (b) By court order upon a showing of good cause.
35 (c) Upon written request by law enforcement in connection
36 with an active criminal investigation.
37 (3) This section is subject to the Open Government Sunset
38 Review Act in accordance with s. 119.15 and shall stand repealed
39 on October 2, 2011, unless reviewed and saved from repeal
40 through reenactment by the Legislature.
41 Section 2. The Legislature finds that it is a public
42 necessity that the personal identifying information of an
43 individual who has applied for or received a license to carry a
44 concealed weapon or firearm held by the Division of Licensing of
45 the Department of Agriculture and Consumer Services be made
46 confidential and exempt from public records requirements, with
47 certain exceptions. The carrying of a concealed weapon in the
48 state by members of the general public requires an individual to
49 obtain a license from the Department of Agriculture and Consumer
50 Services. The applicant for a license to carry a concealed
51 weapon or firearm must state that he or she seeks a concealed

52 weapon or firearms license as a means of lawful self-defense.
53 The knowledge that someone has applied for or received a license
54 to carry a concealed weapon or firearm can very easily lead to
55 the conclusion that the applicant or licensee has in fact armed
56 himself or herself. This knowledge defeats the purpose behind
57 the authorization to carry a concealed weapon or firearm. If the
58 applicant or licensee had intended for the general public to
59 know he or she was carrying a weapon or firearm, he or she would
60 have applied for a regular weapon or firearms permit rather than
61 a license to carry a concealed weapon or firearm. The
62 Legislature has found in prior legislative sessions and has
63 expressed in s. 790.335(1)(a)3., Florida Statutes, that a record
64 of legally owned firearms or law-abiding firearm owners is "an
65 instrument that can be used as a means to profile innocent
66 citizens and to harass and abuse American citizens based solely
67 on their choice to own firearms and exercise their Second
68 Amendment right to keep and bear arms as guaranteed under the
69 United States Constitution." Release of personal identifying
70 information of an individual who has applied for or received a
71 license to carry a concealed weapon or firearm could be used to
72 harass an innocent person based solely on that person's
73 exercised right to carry a concealed weapon or firearm. Further,
74 such information could be used and has been used to identify
75 individuals who have obtained a license to carry a concealed
76 weapon or firearm for the purpose of making the identity of the
77 applicant or licensee publicly available via traditional media
78 and the Internet. Once again, such public disclosure contradicts
79 the purpose of carrying a concealed weapon or firearm.

80 Therefore, the Legislature finds that the personal identifying
81 information of an individual who has applied for or received a
82 license to carry a concealed weapon or firearm pursuant to
83 chapter 790, Florida Statutes, must be held confidential and
84 exempt from public records requirements.
85 Section 3. This act shall take effect July 1, 2006.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 743 Agricultural Usage Sales and Use Tax Exemptions
**SPONSOR(S):** Bowen and others
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1646

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Agriculture Committee | | Kaiser | Reese |
| 2) Finance & Tax Committee | | | |
| 3) Fiscal Council | | | |
| 4) State Resources Council | | | |
| 5) | | | |

## SUMMARY ANALYSIS


This legislation removes the sales tax on electricity used on a farm. The exemption applies only to the electricity used directly and exclusively for the production or processing of agricultural products.

The bill also clarifies that farmers may use tax exempt diesel fuel in equipment other than farm vehicles.

The 2006 Revenue Estimating Conference projects that the exemption from sales tax for diesel fuel and electricity used for certain agricultural purposes would result in a loss of General Revenue of approximately $4.1 million on an annualized basis for FY 2006-2007 and $3.2 million on a cash basis for FY 2007-2008.

The effective date of this bill is July 1, 2006.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

**Ensure lower taxes**: The bill eliminates the sales tax on electricity used on a farm directly and exclusively for the production and processing of agricultural products. It also clarifies that farmers may use tax exempt diesel fuel in equipment other than farm vehicles.

B. EFFECT OF PROPOSED CHANGES:

Currently, s. 212.0501(3), F.S., exempts diesel fuel used for residential purposes from sales tax applicable to the "consumption, use, or storage by a trade or business." This provision also exempts diesel fuel used for agricultural purposes as described in s. 212.08(5), F.S. This exemption does not cover diesel fuel used in farm equipment or on a farm to process or produce farm products. This legislation expands the exemption to cover diesel fuel used in equipment other than farm vehicles.

Section 212.08, F.S., provides for specific exemptions from the sales and use tax imposed by Chapter 212, F.S. Exemptions generally take the form of identifying items specifically exempt, categorizing certain items as exempt when used for particular purposes, and exempting purchases or sales by certain types of organizations, such as the government, churches, and charitable organizations. Section 212.09(5), F.S., sets forth exemptions for sixteen different categories on account of use. This section provides an exemption for gas used exclusively on a farm or for processing farm products, but electricity used for those same purposes is not exempt.

According to the U.S. Department of Agriculture (USDA), between 2003 and 2005, farmers' overall fuel bills rose by 47 percent. The USDA projects farmers' energy bills will climb another $1.7 billion in 2006.[1] The table below reflects the exemption status of electricity for neighboring states in the southern U.S.

| State | Full Exemption | Partial Exemption |
|---|---|---|
| **Louisiana** | X | |
| **South Carolina** | X | |
| **Tennessee** | X* | |
| **Georgia** | X** | |
| **Alabama** | X*** | |
| **Mississippi** | | X**** |

*Effective 2007
**Irrigation systems only
***Heating poultry houses
****1.5 percent

This legislation provides an exemption for electricity used on a farm directly and exclusively for the production and processing of agricultural products.

C. SECTION DIRECTORY:

**Section 1**: Amends s. 212.0501, F.S.; exempting diesel fuel used in farm equipment from sales and use tax.

[1] www.tdo.com, Friday, February 24, 2006, "As energy bills climb, farmers' profits falter", by Pamela Brogan

**Section 2**: Amends s. 212.08, F.S.; exempting electricity used on a farm to process or produce farm products from sales and use tax.

**Section 3**: Provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Agricultural producers will benefit from the exemption of sales and use tax on diesel fuel and electricity.

D. FISCAL COMMENTS:

The 2006 Revenue Estimating Conference projects that the exemption from sales tax for diesel fuel and electricity used for certain agricultural purposes would result in a loss of General Revenue of approximately $4.1 million on an annualized basis for FY 2006-2007 and $3.2 million on a cash basis for FY 2007-2008.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None

1 A bill to be entitled
2 An act relating to agricultural usage sales and use tax
3 exemptions; amending s. 212.0501, F.S.; excluding from
4 application of the sales and use tax diesel fuel used in
5 certain farming vehicles or for certain farming purposes;
6 amending s. 212.08, F.S.; exempting from the sales and use
7 tax electricity used for specified agricultural purposes;
8 providing application; providing a conclusive presumption
9 of taxable use under certain circumstances; providing an
10 effective date.
11
12 Be It Enacted by the Legislature of the State of Florida:
13
14 Section 1. Subsection (3) of section 212.0501, Florida
15 Statutes, is amended to read:
16 212.0501 Tax on diesel fuel for business purposes;
17 purchase, storage, and use.--
18 (3) For purposes of this section, "consumption, use, or
19 storage by a trade or business" does not include those uses of
20 diesel fuel specifically exempt on account of residential
21 purposes, or <u>in any tractor, vehicle, or other equipment used</u>
22 <u>exclusively on a farm or for processing farm products on the</u>
23 <u>farm, no part of which diesel fuel is used in any licensed motor</u>
24 <u>vehicle on the public highways of this state</u> ~~on account of~~
25 ~~agricultural purposes as defined in s. 212.08(5)~~, or the
26 purchase or storage of diesel fuel held for resale.
27 Section 2. Paragraph (e) of subsection (5) of section
28 212.08, Florida Statutes, is amended to read:

29 212.08 Sales, rental, use, consumption, distribution, and
30 storage tax; specified exemptions.--The sale at retail, the
31 rental, the use, the consumption, the distribution, and the
32 storage to be used or consumed in this state of the following
33 are hereby specifically exempt from the tax imposed by this
34 chapter.
35 (5) EXEMPTIONS; ACCOUNT OF USE.--
36 (e)1. Gas used for certain agricultural purposes.--Butane
37 gas, propane gas, natural gas, and all other forms of liquefied
38 petroleum gases are exempt from the tax imposed by this chapter
39 if used in any tractor, vehicle, or other farm equipment which
40 is used exclusively on a farm or for processing farm products on
41 the farm and no part of which gas is used in any vehicle or
42 equipment driven or operated on the public highways of this
43 state. This restriction does not apply to the movement of farm
44 vehicles or farm equipment between farms. The transporting of
45 bees by water and the operating of equipment used in the apiary
46 of a beekeeper is also deemed an exempt use.
47 2. Electricity used for certain agricultural
48 purposes.--Electricity used directly and exclusively on a farm
49 or for processing farm products on the farm is exempt from the
50 tax imposed by this chapter. This exemption applies only if the
51 electricity used for the exempt purposes is separately metered.
52 If the electricity is not separately metered, it is conclusively
53 presumed that some portion of the electricity is used for a
54 nonexempt purpose, and all of the electricity used for such
55 purposes is taxable.
56 Section 3. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **HB 743**

COUNCIL/COMMITTEE ACTION

| | | |
|---|---|---|
| ADOPTED | __ | (Y/N) |
| ADOPTED AS AMENDED | __ | (Y/N) |
| ADOPTED W/O OBJECTION | __ | (Y/N) |
| FAILED TO ADOPT | __ | (Y/N) |
| WITHDRAWN | __ | (Y/N) |
| OTHER | ____ | |

---

1 Committee hearing bill: Agriculture

2 Representative Bowen offered the following:

3

4 **Amendment**

5 Remove lines 48 and 49 and insert:

6 purposes.—Electricity used directly and exclusively for

7 production or processing of agricultural products on the farm is

8 exempt from the

9

000000



743clarifying

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 777 Telephone Solicitation
**SPONSOR(S):** Homan and others
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1318

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Agriculture Committee | | Reese | Reese |
| 2) Utilities & Telecommunications Committee | | | |
| 3) State Resources Council | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS


The bill prohibits a telephone solicitor from making a telephonic sales call to any telephone number assigned to a cellular telephone service or any service where the called party is charged for the call. An exception is provided for calls made with prior written consent of the called party. Additionally, this bill defines "cellular telephone," "electronic serial number," and "mobile identification number."

The bill appears to have no fiscal impact to state or local government and has an effective date of July 1, 2006.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

**Safeguard individual liberty**: The bill prohibits a telephone solicitor from making a telephonic sales call to any telephone number assigned to a cellular telephone service or any service where the called party is charged for the call. An exception is provided for calls made with prior written consent of the called party.

B. EFFECT OF PROPOSED CHANGES:

**Present situation**

State Law

The Florida Telemarketing Act requires non-exempt[1] businesses[2] and their salespersons[3] that engage in the sale of consumer goods or services by telephone in Florida[4] to be licensed by the Department of Agriculture and Consumer Services (DACS). Along with an application, an applicant must post security (surety bond, certificate of deposit, or letter of credit) of no less than $50,000.[5] Each license issued is required to be renewed annually by paying a new fee and submitting a new application to DACS.[6]

DACS maintains Florida's "Do Not Call" list.[7] Residents who do not want to receive sales calls may have their residential, mobile or paging device telephone number included on this list; however, business numbers may not be included on the list.[8] There is an initial fee of $10 for each telephone number and a $5 annual renewal fee.[9] If a residential number is on the list, a telephone solicitor may not make an unsolicited telephone call to that number.[10] The following are not considered to be unsolicited telephone calls:

- In response to an express request of the person called,
- In connection with an existing debt,
- A prior or existing business relationship, or
- From a newspaper publisher.[11]

DACS is permitted to pursue administrative[12] and civil[13] remedies against persons who violate the Florida Telemarketing Act or rules adopted or orders issued pursuant to the Florida Telemarketing Act. In addition, any commercial telephone seller or salesperson who solicits purchasers for a commercial telephone seller who is not licensed with DACS commits a third degree felony.[14] Any subsequent violations are punishable as a second degree felony.[15] Further, an injured individual may bring a civil

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[1] Section 501.604, F.S., contains list of exemptions
[2] Section 501.605, F.S.
[3] Section 501.607, F.S.
[4] Section 501.605(1), F.S., provides that doing business in Florida includes telephone solicitation from a location in Florida or solicitation from other states or nations of purchasers located in Florida.
[5] Section 501.611, F.S.
[6] Section 501.609(1), F.S.
[7] Section 501.059(3)(a), F.S.
[8] *Id.*
[9] *Id.*
[10] Section 501.059(4), F.S.
[11] Section 501.059(c), F.S.
[12] Section 501.612, F.S.
[13] Section 501.618, F.S.
[14] Section 501.623, F.S.
[15] Section 501.623(6), F.S.

action for recovery of actual damages and/or punitive damages, including costs, court costs, and attorney's fees.[16]

Federal Law
The Telephone Consumer Protection Act (TCPA) prohibits autodialed calls to emergency telephone lines, health care facilities, and any service for which the called party is charged for the call such as paging services and cellular telephones.[17] The TCPA also prohibits delivery of artificial or prerecorded messages to residences without the prior express consent of the called party except for emergency purposes.[18] The TCPA also provides a right of action allowing individuals, businesses, and state officials to bring suit.[19]

In addition to the TCPA, the federal government regulates how and when telemarketing occurs. The Telemarketing and Consumer Fraud Abuse Prevention Act empowers the Federal Trade Commission (FCC) to issue the Telemarketing Sales Rule,[20] which provides details on prohibited telemarketing practices.[21]

**Effect of Proposed Changes**

The bill amends s. 501.059, F.S., by providing the following terms and definitions:

- **Electronic serial number** means the unique numerical algorithm that is programmed into the microchip of each cellular telephone by the manufacturer and is vital to the successful operation and billing of the telephone.

- **Mobile identification number** means the cellular telephone number assigned to the cellular telephone by the cellular telephone carrier.

- **Cellular telephone** means a communication device containing a unique electronic serial number that is programmed into its computer chip by its manufacturer and whose operation is dependent on the transmission of that electronic serial number, along with a mobile identification number that is assigned by the cellular telephone carrier, in the form of radio signals through cell sites and mobile switching stations.

The bill also prohibits a telephone solicitor from making a telephonic sales call to any telephone number assigned to a cellular telephone service or any service where the called party is charged for the call. An exception is provided for calls made with prior written consent of the called party.

C. SECTION DIRECTORY:

**Section 1.** Amends section 501.059, F.S., to define the terms "cellular telephone," "electronic serial number," and "mobile identification number"; to prohibit a telephone solicitor from making a telephonic sales call to certain numbers without the subscriber's prior written consent.

**Section 2.** Amends section 501.603, F.S. to conform cross-references.

**Section 3.** Amends section 648.44, F.S., to conform cross-references.

**Section 4.** Provides an effective date of July 1, 2006.

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[16] Section 501.625, F.S.
[17] 47 U.S.C. s. 227(b)(1)(A)(i)-(iii).
[18] 47 U.S.C. s. 227(b)(1)(B).
[19] 47 U.S.C. s. 227(b)(3), (f)(1).
[20] 15 U.S.C. s. 6102.
[21] 16 C.F.R. Part 310.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill prohibits telephone solicitors from making telephonic sales calls to cellular phones. The costs involved with compliance are indeterminate.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

No rule-making authority is granted by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

1 A bill to be entitled
2 An act relating to telephone solicitation; amending s.
3 501.059, F.S.; defining the terms "cellular telephone,"
4 "electronic serial number," and "mobile identification
5 number"; prohibiting a telephone solicitor from making a
6 telephonic sales call to any telephone number assigned to
7 a cellular telephone service without the prior consent of
8 the subscriber to the cellular telephone service; amending
9 ss. 501.603 and 648.44, F.S., conforming cross-references;
10 providing an effective date.
11
12 Be It Enacted by the Legislature of the State of Florida:
13
14 Section 1. Section 501.059, Florida Statutes, is amended
15 to read:
16 501.059 Telephone solicitation.--
17 (1) As used in this section:
18 (a) "Telephonic sales call" means a call made by a
19 telephone solicitor to a consumer, for the purpose of soliciting
20 a sale of any consumer goods or services, or for the purpose of
21 soliciting an extension of credit for consumer goods or
22 services, or for the purpose of obtaining information that will
23 or may be used for the direct solicitation of a sale of consumer
24 goods or services or an extension of credit for such purposes.
25 (b) "Consumer goods or services" means any real property
26 or any tangible or intangible personal property which is
27 normally used for personal, family, or household purposes,
28 including, without limitation, any such property intended to be

29 attached to or installed in any real property without regard to
30 whether it is so attached or installed, as well as cemetery lots
31 and timeshare estates, and any services related to such
32 property.
33 (c) "Unsolicited telephonic sales call" means a telephonic
34 sales call other than a call made:
35 1. In response to an express request of the person called;
36 2. Primarily in connection with an existing debt or
37 contract, payment or performance of which has not been completed
38 at the time of such call;
39 3. To any person with whom the telephone solicitor has a
40 prior or existing business relationship; or
41 4. By a newspaper publisher or his or her agent or
42 employee in connection with his or her business.
43 (d) "Commission" means the Florida Public Service
44 Commission.
45 (e) "Telephone solicitor" means any natural person, firm,
46 organization, partnership, association, or corporation, or a
47 subsidiary or affiliate thereof, doing business in this state,
48 who makes or causes to be made a telephonic sales call,
49 including, but not limited to, calls made by use of automated
50 dialing or recorded message devices.
51 (f) "Consumer" means an actual or prospective purchaser,
52 lessee, or recipient of consumer goods or services.
53 (g) "Merchant" means a person who, directly or indirectly,
54 offers or makes available to consumers any consumer goods or
55 services.
56 (h) "Doing business in this state" refers to businesses

57 who conduct telephonic sales calls from a location in Florida or
58 from other states or nations to consumers located in Florida.
59 (i) "Department" means the Department of Agriculture and
60 Consumer Services.
61 (j) "Electronic serial number" means the unique numerical
62 algorithm that is programmed into the microchip of each cellular
63 telephone by the manufacturer and is vital to the successful
64 operation and billing of the telephone.
65 (k) "Mobile identification number" means the cellular
66 telephone number assigned to the cellular telephone by the
67 cellular telephone carrier.
68 (l) "Cellular telephone" means a communication device
69 containing a unique electronic serial number that is programmed
70 into its computer chip by its manufacturer and whose operation
71 is dependent on the transmission of that electronic serial
72 number, along with a mobile identification number that is
73 assigned by the cellular telephone carrier, in the form of radio
74 signals through cell sites and mobile switching stations.
75 (2) Any telephone solicitor who makes an unsolicited
76 telephonic sales call to a residential, mobile, or telephonic
77 paging device telephone number shall identify himself or herself
78 by his or her true first and last names and the business on
79 whose behalf he or she is soliciting immediately upon making
80 contact by telephone with the person who is the object of the
81 telephone solicitation.
82 (3) A telephone solicitor may not make any telephonic
83 sales call, other than a call made with the prior written
84 express consent of the called party, to any telephone number

85 assigned to a cellular telephone service or any service for
86 which the called party is charged for the call.
87 (4) ~~(3)~~ (a) Any residential, mobile, or telephonic paging
88 device telephone subscriber desiring to be placed on a "no sales
89 solicitation calls" listing indicating that the subscriber does
90 not wish to receive unsolicited telephonic sales calls may
91 notify the department and be placed on that listing upon receipt
92 by the department of a $10 initial listing charge. This listing
93 shall be renewed by the department annually for each consumer
94 upon receipt of a renewal notice and a $5 assessment.
95 (b) The department shall update its "no sales solicitation
96 calls" listing upon receipt of initial consumer subscriptions or
97 renewals and provide this listing for a fee to telephone
98 solicitors upon request.
99 (c) All fees imposed under ~~pursuant to~~ this section shall
100 be deposited in the General Inspection Trust Fund for the
101 administration of this section.
102 (5) ~~(4)~~ A ~~No~~ telephone solicitor may not ~~shall~~ make or
103 cause to be made any unsolicited telephonic sales call to any
104 residential, mobile, or telephonic paging device telephone
105 number if the number for that telephone appears in the then-
106 current quarterly listing published by the department. Any
107 telephone solicitor or person who offers for sale any consumer
108 information which includes residential, mobile, or telephonic
109 paging device telephone numbers, except directory assistance and
110 telephone directories sold by telephone companies and
111 organizations exempt under s. 501(c)(3) or (6) of the Internal
112 Revenue Code, shall screen and exclude those numbers which

113 appear on the division's then-current "no sales solicitation
114 calls" list. This subsection does not apply to any person
115 licensed pursuant to chapter 475 who calls an actual or
116 prospective seller or lessor of real property when such call is
117 made in response to a yard sign or other form of advertisement
118 placed by the seller or lessor.
119 (6) ~~(5)~~ (a) A contract made pursuant to a telephonic sales
120 call is not valid and enforceable against a consumer unless made
121 in compliance with this subsection.
122 (b) A contract made pursuant to a telephonic sales call:
123 1. Shall be reduced to writing and signed by the consumer.
124 2. Shall comply with all other applicable laws and rules.
125 3. Shall match the description of goods or services as
126 principally used in the telephone solicitations.
127 4. Shall contain the name, address, and telephone number
128 of the seller, the total price of the contract, and a detailed
129 description of the goods or services being sold.
130 5. Shall contain, in bold, conspicuous type, immediately
131 preceding the signature, the following statement:
132 "You are not obligated to pay any money unless you sign
133 this contract and return it to the seller."
134 6. May not exclude from its terms any oral or written
135 representations made by the telephone solicitor to the consumer
136 in connection with the transaction.
137 (c) ~~The provisions of~~ This subsection does ~~do~~ not apply to
138 contractual sales regulated under other sections of the Florida
139 Statutes, or to the sale of financial services, security sales,
140 or sales transacted by companies or their wholly owned

141 subsidiaries or agents, which companies are regulated by chapter
142 364, or to the sale of cable television services to the duly
143 franchised cable television operator's existing subscribers
144 within that cable television operator's franchise area, or to
145 any sales where no prior payment is made to the merchant and an
146 invoice accompanies the goods or services allowing the consumer
147 7 days to cancel or return without obligation for any payment.
148 (7) ~~(6)~~ (a) A merchant who engages a telephone solicitor to
149 make or cause to be made a telephonic sales call may ~~shall~~ not
150 make or submit any charge to the consumer's credit card account
151 or make or cause to be made any electronic transfer of funds
152 until after the merchant receives from the consumer a copy of
153 the contract, signed by the purchaser, which complies with this
154 section.
155 (b) A merchant who conducts a credit card account
156 transaction under ~~pursuant to~~ this section shall be subject to
157 the provisions of s. 817.62.
158 (c) ~~The provisions of~~ This subsection does ~~do~~ not apply to
159 a transaction:
160 1. Made in accordance with prior negotiations in the
161 course of a visit by the consumer to a merchant operating a
162 retail business establishment which has a fixed permanent
163 location and where consumer goods are displayed or offered for
164 sale on a continuing basis;
165 2. In which the consumer may obtain a full refund for the
166 return of undamaged and unused goods or a cancellation of
167 services notice to the seller within 7 days after receipt by the
168 consumer, and the seller will process the refund within 30 days

169 after receipt of the returned merchandise by the consumer;
170 3. In which the consumer purchases goods or services
171 pursuant to an examination of a television, radio, or print
172 advertisement or a sample, brochure, or catalog of the merchant
173 that contains:
174 a. The name, address, and telephone number of the
175 merchant;
176 b. A description of the goods or services being sold; and
177 c. Any limitations or restrictions that apply to the
178 offer; or
179 4. In which the merchant is a bona fide charitable
180 organization or a newspaper as defined in chapter 50.
181 (8) ~~(7)~~ (a) A ~~No~~ person may not ~~shall~~ make or knowingly
182 allow a telephonic sales call to be made if the ~~such~~ call
183 involves an automated system for the selection or dialing of
184 telephone numbers or the playing of a recorded message when a
185 connection is completed to a number called.
186 (b) This subsection does not prohibit ~~Nothing herein~~
187 ~~prohibits~~ the use of an automated telephone dialing system with
188 live messages if the calls are made or messages given solely in
189 response to calls initiated by the persons to whom the automatic
190 calls or live messages are directed or if the telephone numbers
191 selected for automatic dialing have been screened to exclude any
192 telephone subscriber who is included on the department's then-
193 current "no sales solicitation calls" listing or any unlisted
194 telephone number, or if the calls made concern goods or services
195 that have been previously ordered or purchased.
196 (9) ~~(8)~~ The department shall investigate any complaints

197 received concerning violations of this section. If, after
198 investigating any complaint, the department finds that there has
199 been a violation of this section, the department or the
200 Department of Legal Affairs may bring an action to impose a
201 civil penalty and to seek other relief, including injunctive
202 relief, as the court deems appropriate against the telephone
203 solicitor. The civil penalty may ~~shall~~ not exceed $10,000 per
204 violation and shall be deposited in the General Inspection Trust
205 Fund if the action or proceeding was brought by the department,
206 or the Legal Affairs Revolving Trust Fund if the action or
207 proceeding was brought by the Department of Legal Affairs. This
208 civil penalty may be recovered in any action brought under this
209 part by the department, or the department may terminate any
210 investigation or action upon agreement by the person to pay a
211 stipulated civil penalty. The department or the court may waive
212 any civil penalty if the person has previously made full
213 restitution or reimbursement or has paid actual damages to the
214 consumers who have been injured by the violation.
215 (10) ~~(9)~~ (a) In any civil litigation resulting from a
216 transaction involving a violation of this section, the
217 prevailing party, after judgment in the trial court and
218 exhaustion of all appeals, if any, shall receive his or her
219 reasonable attorney's fees and costs from the nonprevailing
220 party.
221 (b) The attorney for the prevailing party shall submit a
222 sworn affidavit of his or her time spent on the case and his or
223 her costs incurred for all the motions, hearings, and appeals to
224 the trial judge who presided over the civil case.

225 (c) The trial judge shall award the prevailing party the
226 sum of reasonable costs incurred in the action plus a reasonable
227 legal fee for the hours actually spent on the case as sworn to
228 in an affidavit.
229 (d) Any award of attorney's fees or costs shall become a
230 part of the judgment and subject to execution as the law allows.
231 (e) In any civil litigation initiated by the department or
232 the Department of Legal Affairs, the court may award to the
233 prevailing party reasonable attorney's fees and costs if the
234 court finds that there was a complete absence of a justiciable
235 issue of either law or fact raised by the losing party or if the
236 court finds bad faith on the part of the losing party.
237 (11) ~~(10)~~ The commission shall by rule ensure that
238 telecommunications companies inform their customers of ~~the~~
239 ~~provisions of~~ this section. The notification may be made by:
240 (a) Annual inserts in the billing statements mailed to
241 customers; and
242 (b) Conspicuous publication of the notice in the consumer
243 information pages of the local telephone directories.
244 Section 2. Subsection (1) of section 501.603, Florida
245 Statutes, is amended to read:
246 501.603 Definitions.--As used in this part, unless the
247 context otherwise requires, the term:
248 (1) "Commercial telephone solicitation" means:
249 (a) An unsolicited telephone call to a person initiated by
250 a commercial telephone seller or salesperson, or an automated
251 dialing machine used in accordance with the provisions of s.
252 501.059(8) ~~s. 501.059(7)~~ for the purpose of inducing the person

253 to purchase or invest in consumer goods or services;
254 (b) Other communication with a person where:
255 1. A gift, award, or prize is offered; or
256 2. A telephone call response is invited; and
257 3. The salesperson intends to complete a sale or enter
258 into an agreement to purchase during the course of the telephone
259 call; or
260 (c) Other communication with a person which represents a
261 price, quality, or availability of consumer goods or services
262 and which invites a response by telephone or which is followed
263 by a call to the person by a salesperson.
264
265 For purposes of this section, "other communication" means a
266 written or oral notification or advertisement transmitted
267 through any means. Also, for purposes of this section, "invites
268 a response by telephone" does not mean the mere listing or
269 including of a telephone number in a notification or
270 advertisement.
271 Section 3. Paragraph (c) of subsection (1) of section
272 648.44, Florida Statutes, is amended to read:
273 648.44 Prohibitions; penalty.--
274 (1) A bail bond agent or temporary bail bond agent may
275 not:
276 (c) Initiate in-person or telephone solicitation after
277 9:00 p.m. or before 8:00 a.m., in the case of domestic violence
278 cases, at the residence of the detainee or the detainee's
279 family. Any solicitation not prohibited by this chapter must
280 comply with the telephone solicitation requirements in ss.

281 501.059(2) and (5) ~~(4)~~, 501.613, and 501.616(6).

282 Section 4. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

`Bill No. **HB 777**

COUNCIL/COMMITTEE ACTION

| | | |
|---|---|---|
| ADOPTED | __ | (Y/N) |
| ADOPTED AS AMENDED | __ | (Y/N) |
| ADOPTED W/O OBJECTION | __ | (Y/N) |
| FAILED TO ADOPT | __ | (Y/N) |
| WITHDRAWN | __ | (Y/N) |
| OTHER | ____ | |

---

1 Council/Committee hearing bill: Agriculture
2 Representative Homan offered the following:
3
4 **Amendment (with title amendment)**
5 Remove line 82 and insert:
6
7 (3) A telephone solicitor may not make any unsolicited
8 telephonic
9
10 ========== T I T L E A M E N D M E N T ==========
11 Remove line 6 and insert:
12
13 unsolicited telephonic sales call to any telephone number
14 assigned to

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB AG 06-03 Citrus Canker Disease Management
**SPONSOR(S):** Agriculture Committee
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| Orig. Comm.: Agriculture Committee | | Kaiser | Reese |
| 1) | | | |
| 2) | | | |
| 3) | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS


Citrus canker is a bacterial disease of citrus that causes premature leaf and fruit drop. It is highly contagious and can be spread rapidly by wind-borne rain, non-decontaminated lawnmowers and other landscaping equipment, people carrying the infection on their hands, clothing or equipment, or by moving infected or exposed plants or plant parts. To date, there is no known cure for citrus canker. Scientists continue to agree that the only way to eradicate the disease is to remove infected citrus trees and those located within1,900 feet of infected or exposed trees.

Florida has been battling citrus canker since 1995, when an infestation occurred in an urban backyard very near Miami International Airport. Unfortunately, the United States Department of Agriculture (USDA) and the Florida Department of Agriculture and Consumer Services (DACS) were not able to contain the disease in the urban setting.

The eradication program has been stymied by lengthy legal battles and unprecedented weather conditions over the last few years. In January 2006, the United States Department of Agriculture (USDA) took the position, based on scientific analysis, that the current citrus canker eradication plan in Florida was inadequate to contain the disease. The USDA further stated that they would no longer fund tree removal that is done with eradication as the goal.

The Department of Agriculture and Consumer Services (DACS), working in conjunction with the USDA, plans to develop a response plan with scientific, industry and public input that will limit further tree removal and implement management practices that will accomplish the goals of controlling and suppressing canker infestations.

PCB AG 06-03 dismantles the current eradication plan codified in Florida statute.

The fiscal impact of this legislation on state government is indeterminate at this time. The effective date of this bill is upon becoming law.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government:** The bill dismantles the citrus canker eradication program within the Department of Agriculture and Consumer Services.

**Safeguard individual liberty:** The bill dismantles the citrus canker eradication program within the Department of Agriculture and Consumer Services.

B. EFFECT OF PROPOSED CHANGES:

Citrus canker is a bacterial disease of citrus that causes premature leaf and fruit drop. It is highly contagious and can be spread rapidly by wind-borne rain, non-decontaminated lawnmowers and other landscaping equipment, people carrying the infection on their hands, clothing or equipment, or by moving infected or exposed plants or plant parts. To date, there is no known cure for citrus canker. Scientists continue to agree that the only way to eradicate the disease is to remove infected citrus trees and those located within1,900 feet of infected or exposed trees.

Florida has been battling citrus canker since 1995, when an infestation occurred in an urban backyard very near Miami International Airport. Unfortunately, the United States Department of Agriculture (USDA) and the Florida Department of Agriculture and Consumer Services (DACS) were not able to contain the disease in the urban setting.

The eradication program was nearly halted in November, 2000, by a Broward County Circuit Court order. Additional court orders in May, 2002, from the same judge continued to restrict eradication activity. The judge had declared unconstitutional the statute passed by lawmakers in the 2002 session, requiring the department to remove not only infected trees, but also exposed trees located within 1,900 feet of infected ones.

Based on research conducted by Dr. Timothy Gottwald, a scientist with the United States Department of Agriculture (USDA), "exposed to infection" refers to citrus trees located within 1,900 feet of an infected tree. This term, "exposed to infection," was codified in statute during the 2002 legislative session. At the same time, the Legislature provided for a repeal of the definition effective July 1, 2005 with a mandatory review by the Legislature prior to that date.

Applying his order statewide, the judge also struck down the portion of the law that allows for search warrants for a county-wide area. In response, DACS now obtains individual search warrants to remove infected and exposed trees and to search nearby properties to determine the extent of the outbreak. However, prior to obtaining search warrants, DACS sends Public Information Officers (PIOs) door-to-door seeking homeowner permission for tree removal.

As a result of these legal actions, the program was working under severe constraints and the disease continued to spread in southeast Florida, and was even moved by property owners to several other counties.

Every order issued by the Broward Circuit Judge was subsequently overturned by the Fourth District Court of Appeal in West Palm Beach. The question of the constitutionality of the tree removal statute went before the Florida Supreme Court and the law was upheld in February, 2004.[1]

In addition to the legal delays, the spread of citrus canker bacteria was aided by the unprecedented hurricane seasons Florida experienced in 2004 and 2005. In January 2006, the United States

[1] *Haire v. Florida Department of Agriculture and Consumer Services, 870 So. 2d 774 (Fla. 2004)*

Department of Agriculture (USDA) took the position, based on scientific analysis, that the current citrus canker eradication plan in Florida was inadequate to contain the disease; a new management plan must be devised. The USDA further stated that they would no longer fund tree removal that is done with eradication as the goal.

The DACS, working in conjunction with the USDA, plans to develop a response plan with scientific, industry and public input that will limit further tree removal and implement management practices that will accomplish the goals of controlling and suppressing canker infestations.

The bill dismantles the current eradication plan codified in statute.

C. SECTION DIRECTORY:

**Section 1:** Amending s. 581.184, F.S.; eliminates the authority of the Department of Agriculture and Consumer Services to remove and destroy citrus trees infected with citrus canker; deleting definitions and provisions relating to immediate final orders, notice to property owners, rulemaking authority, and posting of certain conforming orders; and, requiring certain law enforcement officers to maintain order under certain circumstances involving the citrus canker disease management process.

**Section 2:** Amending s. 120.80, F.S.; deleting a cross reference.

**Section 3:** Amending s. 348.0008, F.S.; deleting a cross reference.

**Section 4:** Amending s. 933.40, F.S.; deleting a cross reference.

**Section 5:** Providing an effective date of on upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Indeterminate

2. Expenditures:

   Indeterminate

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Indeterminate

2. Expenditures:

   Indeterminate

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate

D. FISCAL COMMENTS:

At the time of publication of this analysis, the Department of Agriculture and Consumer Services had not completed the fiscal analysis for this legislation.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require counties of municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

1 A bill to be entitled
2 An act relating to citrus canker disease management;
3 amending s. 581.184, F.S; eliminating the authority of the
4 Department of Agriculture and Consumer Services to remove
5 and destroy citrus trees infected with or exposed to
6 citrus canker disease; deleting definitions and provisions
7 relating to immediate final orders, notice to property
8 owners, rulemaking authority, and the posting of certain
9 orders, to conform; requiring certain law enforcement
10 officers to maintain order under certain circumstances
11 involving the citrus canker disease management process;
12 amending ss. 120.80, 348.0008, and 933.40, F.S.; deleting
13 provisions and cross-references to conform to changes made
14 by the act; providing an effective date.
15
16 Be It Enacted by the Legislature of the State of Florida:
17
18 Section 1. Section 581.184, Florida Statutes, is amended to
19 read:
20 581.184 Adoption of rules; citrus canker disease management
21 ~~eradication; voluntary destruction agreements~~.--
22 (1) ~~As used in this section, the term:~~
23 ~~(a) "Infected or infested" means citrus trees harboring the~~
24 ~~citrus canker bacteria and exhibiting visible symptoms of the~~
25 ~~disease.~~
26 ~~(b) "Exposed to infection" means citrus trees located~~
27 ~~within 1,900 feet of an infected tree.~~
28 ~~(2)(a) The department shall remove and destroy all infected~~
29 ~~citrus trees and all citrus trees exposed to infection. The~~

30 ~~department may destroy, by chipping, trees removed pursuant to~~
31 ~~this section. Notice of the removal of such trees, by immediate~~
32 ~~final order, shall be provided to the owner of the property on~~
33 ~~which such trees are located. An immediate final order issued by~~
34 ~~the department pursuant to this section shall notify the property~~
35 ~~owner that the citrus trees that are the subject of the immediate~~
36 ~~final order will be removed and destroyed unless the property~~
37 ~~owner, no later than 10 days after delivery of the immediate~~
38 ~~final order pursuant to subsection (3), requests and obtains a~~
39 ~~stay of the immediate final order from the district court of~~
40 ~~appeal with jurisdiction to review such requests. The property~~
41 ~~owner shall not be required to seek a stay of the immediate final~~
42 ~~order by the department prior to seeking the stay from the~~
43 ~~district court of appeal.~~
44 ~~(b)~~ Regulation of the removal or destruction of citrus
45 trees pursuant to this section is hereby preempted to the state.
46 No county, municipal, or other local ordinance or other
47 regulation that would otherwise impose requirements,
48 restrictions, or conditions upon the department or its
49 contractors with respect to the removal or destruction of citrus
50 trees pursuant to this section shall be enforceable against the
51 department or its contractors.
52 ~~(3) Any immediate final order issued by the department~~
53 ~~pursuant to this section:~~
54 ~~(a) May be delivered in person, by certified mail, or by~~
55 ~~attaching the order to a conspicuous place on the property on~~
56 ~~which a citrus tree to be removed is located.~~
57 ~~(b) Is not required to be adopted by the department as a~~
58 ~~rule.~~

59 ~~(4) Simultaneously with the delivery of an immediate final~~
60 ~~order, the department shall also provide the following~~
61 ~~information to a property owner:~~
62 ~~(a) The physical location of the infected tree which has~~
63 ~~necessitated removal and destruction of the property owner's~~
64 ~~tree.~~
65 ~~(b) The diagnostic report that resulted in the~~
66 ~~determination that the infected tree is infected with the citrus~~
67 ~~canker.~~
68 (2) ~~(5)~~ The department is directed to adopt rules regarding
69 the conditions under which citrus plants~~, other than those that~~
70 ~~are infected or exposed to infection,~~ can be grown, moved, and
71 planted in this state as may be necessary for the ~~eradication,~~
72 control~~,~~ or prevention of the dissemination of citrus canker
73 disease. Such rules shall be in effect for any period during
74 which, in the judgment of the Commissioner of Agriculture, there
75 is the threat of the spread of citrus canker disease in the
76 state. ~~Such rules may provide for the conduct of any activity~~
77 ~~regulated by such rules subject to an agreement by persons~~
78 ~~wishing to engage in such activity to voluntarily destroy, at~~
79 ~~their own expense, citrus plants declared by the department to be~~
80 ~~imminently dangerous by reason of being infected or infested with~~
81 ~~citrus canker or exposed to infection and likely to communicate~~
82 ~~same. The terms of such agreement may also require the~~
83 ~~destruction of healthy plants under specified conditions. Any~~
84 ~~such destruction shall be done after reasonable notice in a~~
85 ~~manner pursuant to and under conditions set forth in the~~
86 ~~agreement. Such agreements may include releases and waivers of~~
87 ~~liability and may require the agreement of other persons.~~

88 (3) ~~(6)~~ The department shall develop by rule, pursuant to
89 ss. 120.536(1) and 120.54, a statewide program of decontamination
90 to prevent and limit the spread of citrus canker disease. Such
91 program shall address the application of decontamination
92 procedures and practices to all citrus plants and plant products,
93 vehicles, equipment, machinery, tools, objects, and persons who
94 could in any way spread or aid in the spreading of citrus canker
95 disease in this state. In order to prevent contamination of soil
96 and water, such rules shall be developed in consultation with the
97 Department of Environmental Protection. The department may
98 develop compliance and other agreements which it determines can
99 aid in the carrying out of the purposes of this section, and
100 enter into such agreements with any person or entity.
101 (4) ~~(7)~~ Owners or ~~and/or~~ operators of nonproduction vehicles
102 and equipment shall follow the department guidelines for citrus
103 canker disease decontamination effective June 15, 2000. ~~The~~
104 ~~department shall publish the guidelines in the Florida~~
105 ~~Administrative Weekly and on the department Internet website. The~~
106 ~~guidelines shall be posted no later than May 15, 2000.~~
107 (5) ~~(8)~~ Notwithstanding any provision of law, the Department
108 of Environmental Protection is not authorized to institute
109 proceedings against any person under the provisions of s.
110 376.307(5) to recover any costs or damages associated with
111 contamination of soil or water, or the evaluation, assessment, or
112 remediation of contamination of soil or water, including
113 sampling, analysis, and restoration of soil or potable water
114 supplies, where the contamination of soil or water is determined
115 to be the result of a program of decontamination to prevent and
116 limit the spread of citrus canker disease pursuant to rules

117 developed under this section. This subsection does not limit
118 regulatory authority under a federally delegated or approved
119 program.
120 (6) ~~(9)~~ Upon request of the department, the sheriff or chief
121 law enforcement officer of each county in the state shall provide
122 assistance in obtaining access to private property for the
123 purpose of enforcing the provisions of this section. The sheriff
124 or chief law enforcement officer shall be responsible for
125 maintaining public order during the citrus canker disease
126 management ~~eradication~~ process and protecting the safety of
127 department employees, representatives, and agents charged with
128 implementing and enforcing the provisions of this section. The
129 department may reimburse the sheriff or chief law enforcement
130 officer for the reasonable costs of implementing the provisions
131 of this subsection.
132 ~~(10) Posting of an order on the property on which citrus~~
133 ~~trees are to be cut pursuant to the citrus canker eradication~~
134 ~~program shall meet the notice requirement of s. 120.569(1).~~
135 Section 2. Paragraph (c) of subsection (2) of section
136 120.80, Florida Statutes, is amended to read:
137 120.80 Exceptions and special requirements; agencies.--
138 (2) DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES.--
139 ~~(c) The provisions of ss. 120.54 and 120.56 shall not apply~~
140 ~~to any statement or action by the department in furtherance of~~
141 ~~its duties pursuant to s. 581.184(2).~~
142 Section 3. Subsection (2) of section 348.0008, Florida
143 Statutes, is amended to read:
144 348.0008 Acquisition of lands and property.--

145 (2) An authority and its authorized agents, contractors,
146 and employees are authorized to enter upon any lands, waters, and
147 premises, upon giving reasonable notice to the landowner, for the
148 purpose of making surveys, soundings, drillings, appraisals,
149 environmental assessments including phase I and phase II
150 environmental surveys, archaeological assessments, and such other
151 examinations as are necessary for the acquisition of private or
152 public property and property rights, including rights of access,
153 air, view, and light, by gift, devise, purchase, or condemnation
154 by eminent domain proceedings or as are necessary for the
155 authority to perform its duties and functions; and any such entry
156 shall not be deemed a trespass or an entry that would constitute
157 a taking in an eminent domain proceeding. An expressway authority
158 shall make reimbursement for any actual damage to such lands,
159 water, and premises as a result of such activities. Any entry
160 authorized by this subsection shall be in compliance with the
161 premises protections and landowner liability provisions contained
162 in s. ~~ss.~~ 472.029 ~~and 581.184~~.
163 Section 4. Paragraph (f) of subsection (1) and paragraph
164 (b) of subsection (3) of section 933.40, Florida Statutes, are
165 amended to read:
166 933.40 Agriculture warrants.--
167 (1) As used in this section:
168 (f) "Plant pest" means any plant pest, noxious weed, or
169 arthropod declared a nuisance by the department pursuant to s.
170 581.031(6)~~, or any plant infected or exposed to infection as~~
171 ~~defined in s. 581.184(1)~~.
172 (3) An agriculture warrant shall be issued only upon
173 probable cause. In determining the existence of probable cause

174 for the issuance of one or more agriculture warrants, one or more
175 of the following findings may be sufficient to support a
176 determination of probable cause:
177 (b) Under all of the circumstances set forth in the
178 affidavit, there is a fair probability the property subject to
179 the agriculture warrant:
180 1. Contains a plant pest;
181 2. Is located in an area which may reasonably be suspected
182 of being infested or infected with a plant pest due to its
183 proximity to a known infestation, or if it is reasonably exposed
184 to infestation;
185 ~~3. Is located in a Section in which the department has~~
186 ~~diagnosed the presence of one or more plants infected with citrus~~
187 ~~canker as defined in s. 581.184(1)(a) or is located in a Section~~
188 ~~adjacent thereto;~~
189 3.~~4.~~ Contains animals affected with any animal pest or
190 which have been exposed to and are liable to spread the animal
191 pest; or
192 4.~~5.~~ Contains any other property that is liable to convey
193 an animal pest.
194 Section 5. This act shall take effect upon becoming a law.

# Agriculture Committee

## ADDENDUM - A

**Wednesday, March 15, 2006**
**2:30 pm - 5:30 pm**
**214 The Capitol**

# MEETING PACKET

Allan G. Bense
Speaker

Ralph Poppell
Dwight Stansel
Co-Chairs

COUNCIL/COMMITTEE ACTION

| | | |
|---|---|---|
| ADOPTED | __ | (Y/N) |
| ADOPTED AS AMENDED | __ | (Y/N) |
| ADOPTED W/O OBJECTION | __ | (Y/N) |
| FAILED TO ADOPT | __ | (Y/N) |
| WITHDRAWN | __ | (Y/N) |
| OTHER | ____ | |

---

1 Council/Committee hearing bill: **Agriculture**
2 Representative **Poppell** offered the following:
3
4 **Strike-all Amendment (with title amendment)**
5 Remove everything after the enacting clause, and insert:
6
7 Section 1. Section 581.184, Florida Statutes, is amended
8 to read:
9 581.184 Adoption of rules; citrus ~~canker~~ disease
10 management ~~eradication; voluntary destruction agreements~~.--
11 (1) The department is directed to implement a comprehensive
12 citrus health plan in order to minimize the impact of exotic
13 citrus pests and diseases to citrus production and to allow for
14 the orderly marketing of citrus fruit in other states and
15 countries.
16
17 ~~As used in this section, the term:~~
18 ~~(a) "Infected or infested" means citrus trees harboring~~
19 ~~the citrus canker bacteria and exhibiting visible symptoms of~~
20 ~~the disease.~~

21 ~~(b) "Exposed to infection" means citrus trees located~~
22 ~~within 1,900 feet of an infected tree.~~
23 ~~(2)(a) The department shall remove and destroy all~~
24 ~~infected citrus trees and all citrus trees exposed to infection.~~
25 ~~The department may destroy, by chipping, trees removed pursuant~~
26 ~~to this section. Notice of the removal of such trees, by~~
27 ~~immediate final order, shall be provided to the owner of the~~
28 ~~property on which such trees are located. An immediate final~~
29 ~~order issued by the department pursuant to this section shall~~
30 ~~notify the property owner that the citrus trees that are the~~
31 ~~subject of the immediate final order will be removed and~~
32 ~~destroyed unless the property owner, no later than 10 days after~~
33 ~~delivery of the immediate final order pursuant to subsection~~
34 ~~(3), requests and obtains a stay of the immediate final order~~
35 ~~from the district court of appeal with jurisdiction to review~~
36 ~~such requests. The property owner shall not be required to seek~~
37 ~~a stay of the immediate final order by the department prior to~~
38 ~~seeking the stay from the district court of appeal.~~
39 (2)~~(b)~~ Regulation of the removal or destruction of citrus
40 trees pursuant to this section is hereby preempted to the state.
41 No county, municipal, or other local ordinance or other
42 regulation that would otherwise impose requirements,
43 restrictions, or conditions upon the department or its
44 contractors with respect to the removal or destruction of citrus
45 trees pursuant to this section shall be enforceable against the
46 department or its contractors.
47 ~~(3) Any immediate final order issued by the department~~
48 ~~pursuant to this section:~~

49 ~~(a) May be delivered in person, by certified mail, or by~~
50 ~~attaching the order to a conspicuous place on the property on~~
51 ~~which a citrus tree to be removed is located.~~
52 ~~(b) Is not required to be adopted by the department as a~~
53 ~~rule.~~
54 ~~(4) Simultaneously with the delivery of an immediate final~~
55 ~~order, the department shall also provide the following~~
56 ~~information to a property owner:~~
57 ~~(a) The physical location of the infected tree which has~~
58 ~~necessitated removal and destruction of the property owner's~~
59 ~~tree.~~
60 ~~(b) The diagnostic report that resulted in the~~
61 ~~determination that the infected tree is infected with the citrus~~
62 ~~canker.~~
63 (3) ~~(5)~~ The department is directed to adopt rules regarding
64 the conditions under which citrus plants~~, other than those that~~
65 ~~are infected or exposed to infection,~~ can be grown, moved, and
66 planted in this state as may be necessary for the ~~eradication,~~
67 control~~,~~ or prevention of the dissemination of citrus ~~canker~~
68 diseases. Such rules shall be in effect for any period during
69 which, in the judgment of the Commissioner of Agriculture, there
70 is the threat of the spread of citrus ~~canker~~ diseases in the
71 state. ~~Such rules may provide for the conduct of any activity~~
72 ~~regulated by such rules subject to an agreement by persons~~
73 ~~wishing to engage in such activity to voluntarily destroy, at~~
74 ~~their own expense, citrus plants declared by the department to~~
75 ~~be imminently dangerous by reason of being infected or infested~~
76 ~~with citrus canker or exposed to infection and likely to~~
77 ~~communicate same. The terms of such agreement may also require~~
78 ~~the destruction of healthy plants under specified conditions.~~

79 ~~Any such destruction shall be done after reasonable notice in a~~
80 ~~manner pursuant to and under conditions set forth in the~~
81 ~~agreement. Such agreements may include releases and waivers of~~
82 ~~liability and may require the agreement of other persons.~~
83 (4) ~~(6)~~ The department shall develop by rule, pursuant to
84 ss. 120.536(1) and 120.54, a statewide program of
85 decontamination to prevent and limit the spread of citrus canker
86 disease. Such program shall address the application of
87 decontamination procedures and practices to all citrus plants
88 and plant products, vehicles, equipment, machinery, tools,
89 objects, and persons who could in any way spread or aid in the
90 spreading of citrus canker in this state. In order to prevent
91 contamination of soil and water, such rules shall be developed
92 in consultation with the Department of Environmental Protection.
93 The department may develop compliance and other agreements which
94 it determines can aid in the carrying out of the purposes of
95 this section, and enter into such agreements with any person or
96 entity.
97 (5) ~~(7)~~ Owners or ~~and/or~~ operators of nonproduction
98 vehicles and equipment shall follow the department guidelines
99 for citrus canker decontamination effective June 15, 2000. ~~The~~
100 ~~department shall publish the guidelines in the Florida~~
101 ~~Administrative Weekly and on the department Internet website.~~
102 ~~The guidelines shall be posted no later than May 15, 2000.~~
103 (6) ~~(8)~~ Notwithstanding any provision of law, the
104 Department of Environmental Protection is not authorized to
105 institute proceedings against any person under the provisions of
106 s. 376.307(5) to recover any costs or damages associated with
107 contamination of soil or water, or the evaluation, assessment,
108 or remediation of contamination of soil or water, including

109 sampling, analysis, and restoration of soil or potable water
110 supplies, where the contamination of soil or water is determined
111 to be the result of a program of decontamination to prevent and
112 limit the spread of citrus canker disease pursuant to rules
113 developed under this section. This subsection does not limit
114 regulatory authority under a federally delegated or approved
115 program.
116 (7) ~~(9)~~ Upon request of the department, the sheriff or
117 chief law enforcement officer of each county in the state shall
118 provide assistance in obtaining access to private property for
119 the purpose of enforcing the provisions of this section. The
120 sheriff or chief law enforcement officer shall be responsible
121 for maintaining public order during the citrus disease
122 management ~~eradication~~ process and protecting the safety of
123 department employees, representatives, and agents charged with
124 implementing and enforcing the provisions of this section. The
125 department may reimburse the sheriff or chief law enforcement
126 officer for the reasonable costs of implementing the provisions
127 of this subsection.
128 ~~(10) Posting of an order on the property on which citrus~~
129 ~~trees are to be cut pursuant to the citrus canker eradication~~
130 ~~program shall meet the notice requirement of s. 120.569(1).~~
131 Section 2. Section 581.188, Florida Statutes, is created
132 to read:
133 581.188 Citrus nursery stock propagation, production and
134 the establishment of regulated areas around citrus nurseries.--
135 (1) As used in this section the term "commercial citrus
136 grove" means a solid set planting of 40 or more citrus trees.
137 (2) It is unlawful for any person to propagate for sale or
138 movement any citrus nursery stock, effective January 1, 2007,

139 which has not been propagated or grown on a site approved by the
140 department at least one mile away from commercial citrus groves
141 and within a protective structure approved by the department.
142 Citrus nurseries registered with the department prior to April
143 1, 2006 shall not be required to comply with the one mile
144 setback from commercial citrus groves while continuously
145 operating at the April 1, 2006 location. However, these
146 nurseries shall be required to propagate citrus within an
147 approved protective structure. It shall be unlawful to
148 distribute any citrus nursery stock that was not produced in a
149 protective structure approved by the department after December
150 31, 2007.
151 (3) The department is directed to adopt rules, pursuant to
152 ss. 120.536 (a) and 120.54, that set forth the conditions under
153 which citrus nursery stock can be propagated, grown, sold or
154 moved and the specifications for the approved site and
155 protective structure.
156 (4) All genera of the R*utaceous* subfamilies *Aurantioideae,*
157 *Rutoideae,* and *Toddalioideae* shall be regulated under the
158 provisions of this chapter unless exempted by the division
159 director if the Citrus Budwood Technical Advisory Committee
160 determines they pose no threat of introducing or spreading a
161 citrus plant pest.

162 (5) The department shall establish regulated areas around
163 the perimeter of commercial citrus nurseries established on
164 sites after April 1, 2006 not to exceed a radius of one mile.
165 The planting of citrus in an established regulated area is
166 prohibited. The planting of citrus within a radius of one mile
167 around commercial citrus nurseries established on sites prior to
168 April 1, 2006 must be approved by the department. Citrus plants

169 within a regulated area that were planted prior to the
170 establishment of the regulated area may remain unless they are
171 determined to be infected or infested with citrus canker or
172 citrus greening. The department shall require the removal of
173 infected or infested citrus, non-approved planted citrus and
174 citrus that has sprouted by natural means in regulated areas.
175 The property owner shall be responsible for the removal of
176 citrus planted without proper approval. Notice of the removal of
177 citrus trees, by immediate final order, shall be provided to the
178 owner of the property on which such trees are located. An
179 immediate final order issued by the department pursuant to this
180 section shall notify the property owner that the citrus trees
181 that are the subject of the immediate final order must be
182 removed and destroyed unless the property owner, no later than
183 10 days after delivery of the immediate final order requests and
184 obtains a stay of the immediate final order from the district
185 court of appeal with jurisdiction to review such requests. The
186 property owner shall not be required to seek a stay of the
187 immediate final order by the department prior to seeking the
188 stay from the district court of appeal.

189 (6) Regulation of the removal or destruction of citrus
190 plants pursuant to this section is hereby preempted to the
191 state. No county, municipal, or other local ordinance or other
192 regulation that would otherwise impose requirements,
193 restrictions, or conditions upon the department or its
194 contractors with respect to the removal or destruction of citrus
195 trees pursuant to this section shall be enforceable against the
196 department or its contractors.

197 (7) The department is directed to relocate foundation
198 source trees maintained by the Division of Plant Industry from
199 various locations including those in Dundee and Winter Haven to
200 protective structures at the Division of Forestry nursery in
201 Chiefland or to other protective sites located a minimum of ten
202 miles from any commercial citrus grove. The department is
203 authorized to expend existing funds from the Contracts and
204 Grants Trust Fund for this purpose.

205 Section 3. Section 581.1845, Florida Statutes, is amended
206 to read:
207 581.1845 Citrus canker eradication; compensation to
208 homeowners whose trees have been removed.--
209 (6) Any claim for compensation under this section or under
210 the Shade Dade or Shade Florida Programs must be filed with the
211 department not later than December 31, 2007. Effective January
212 1, 2008, all claims not filed shall expire.
213 Section 4. There is appropriated to the Department of
214 Agriculture and Consumer Services $10,220,920 from the
215 Agricultural Emergency Eradication Trust Fund and $16,706,310
216 from the Contracts and Grants Trust Fund for the implementation
217 of the programs in this act.
218 Section 5. Paragraph (c) of subsection (2) of section
219 120.80, Florida Statutes, is amended to read:
220 120.80 Exceptions and special requirements; agencies.--
221 (2) DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES.--
222 ~~(c) The provisions of ss. 120.54 and 120.56 shall not~~
223 ~~apply to any statement or action by the department in~~
224 ~~furtherance of its duties pursuant to s. 581.184(2).~~
225 Section 6. Subsection (2) of section 348.0008, Florida
226 Statutes, is amended to read:

227 348.0008 Acquisition of lands and property.--
228 (2) An authority and its authorized agents, contractors,
229 and employees are authorized to enter upon any lands, waters,
230 and premises, upon giving reasonable notice to the landowner,
231 for the purpose of making surveys, soundings, drillings,
232 appraisals, environmental assessments including phase I and
233 phase II environmental surveys, archaeological assessments, and
234 such other examinations as are necessary for the acquisition of
235 private or public property and property rights, including rights
236 of access, air, view, and light, by gift, devise, purchase, or
237 condemnation by eminent domain proceedings or as are necessary
238 for the authority to perform its duties and functions; and any
239 such entry shall not be deemed a trespass or an entry that would
240 constitute a taking in an eminent domain proceeding. An
241 expressway authority shall make reimbursement for any actual
242 damage to such lands, water, and premises as a result of such
243 activities. Any entry authorized by this subsection shall be in
244 compliance with the premises protections and landowner liability
245 provisions contained in s. ~~ss.~~ 472.029 ~~and 581.184~~.
246 Section 7. Paragraph (f) of subsection (1) and paragraph
247 (b) of subsection (3) of section 933.40, Florida Statutes, are
248 amended to read:
249 933.40 Agriculture warrants.--
250 (1) As used in this section:
251 (f) "Plant pest" means any plant pest, noxious weed, or
252 arthropod declared a nuisance by the department pursuant to s.
253 581.031(6)~~, or any plant infected or exposed to infection as~~
254 ~~defined in s. 581.184(1)~~.
255 (3) An agriculture warrant shall be issued only upon
256 probable cause. In determining the existence of probable cause

257 for the issuance of one or more agriculture warrants, one or
258 more of the following findings may be sufficient to support a
259 determination of probable cause:
260 (b) Under all of the circumstances set forth in the
261 affidavit, there is a fair probability the property subject to
262 the agriculture warrant:
263 1. Contains a plant pest;
264 2. Is located in an area which may reasonably be suspected
265 of being infested or infected with a plant pest due to its
266 proximity to a known infestation, or if it is reasonably exposed
267 to infestation;
268 ~~3. Is located in a Section in which the department has~~
269 ~~diagnosed the presence of one or more plants infected with~~
270 ~~citrus canker as defined in s. 581.184(1)(a) or is located in a~~
271 ~~Section adjacent thereto;~~
272 3.~~4.~~ Contains animals affected with any animal pest or
273 which have been exposed to and are liable to spread the animal
274 pest; or
275 4.~~5.~~ Contains any other property that is liable to convey
276 an animal pest.
277 Section 8. This act shall take effect upon becoming a law.
278
279 ========== T I T L E A M E N D M E N T ==========
280 Remove lines 2-14 and insert:
281 An act relating to citrus disease management; amending s.
282 581.184, F.S.; directing the Department of Agriculture and
283 Consumer Services to implement the Citrus Health Response Plan;
284 eliminating the authority of the Department of Agriculture and
285 Consumer Services to remove and destroy citrus trees infected
286 with or exposed to citrus disease; deleting definitions and

287 provisions relating to immediate final orders, notice to
288 property owners, rulemaking authority, and the posting of
289 certain orders, to conform; requiring certain law enforcement
290 officers to maintain order under certain circumstances involving
291 the citrus disease management process; creating s. 581.188,
292 F.S.; providing requirements relating to the propagation and
293 distribution of citrus effective January 1, 2007; providing
294 rule-making authority to the department; providing for exemption
295 of certain citrus from provisions of this section; requiring the
296 department to establish regulated areas around the perimeter of
297 commercial citrus nurseries; providing conditions for regulated
298 areas; preempting regulation of removal or destruction of citrus
299 plants to the state; directing the department to relocate
300 certain trees maintained by the Division of Plant Industry;
301 authorizing expenditure of funds from the Contracts and Grants
302 Trust Fund; amending s. 581.1845, F.S.; revising the terms of
303 citrus canker eradication compensation program; providing an
304 appropriation; amending ss. 120.80, 348.0008, and 933.40, F.S.;
305 deleting provisions and cross-references to conform to changes
306 made by the act; providing an effective date.
307