

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB ANRS 16-01 Department of Agriculture & Consumer Services

SPONSOR(S): Agriculture & Natural Resources Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Agriculture & Natural Resources Subcommittee	13 Y, 0 N	Gregory	Harrington

SUMMARY ANALYSIS

The bill addresses a number of issues relating to the powers and duties of the Department of Agriculture and Consumer Services (DACS), including, but not limited to:

- Changing the procedure to obtain and renew a pest control operator's certificate and eliminating a late charge.
- Changing the deadline to submit a recertification application for the limited certification for urban landscape commercial fertilizer application and eliminating the \$50 per month late charge for late recertification.
- Adding dietary supplements to the list of possibly adulterated foods.
- Adding allergen information labeling requirements to the list of possibly misbranded foods.
- Authorizing DACS to sponsor "events" (not just breakfasts, luncheons, or dinners) to promote agriculture and agricultural business products.
- Authorizing DACS to acquire, secure, enjoy, use, enforce, and dispose of all patents, trademarks, copyrights, and other rights or similar interests.
- Authorizing DACS to use money deposited in the Pest Control Trust Fund to carry out any of the powers of the Division of Agricultural Environmental Services.
- Removing the requirement for DACS to provide staff and meeting space for the Florida Agricultural Center and Horse Park Authority.
- Specifying the intent of the "Fresh From Florida" marketing brand.
- Amending membership requirements for the Florida Agricultural Promotional Campaign Advisory Council.
- Removing the requirement that DACS notify a property owner that a plant infested or infected with plant pests or noxious weeds has been found on their property if the plant is infested with pests or noxious weeds that are determined to be widely established in Florida; thus, not requiring the owner to destroy or remove the plant.
- Modifying the reporting period for fertilizer tonnage sales from monthly to quarterly and changing the reporting requirement from 30 days following the reporting period instead of 15 days.
- Preempting regulatory authority for commercial feed and feedstuff to DACS.
- Changing the powers and duties of the Soil and Water Conservation Districts to reflect the district practices.
- Eliminating Watershed Improvement Districts.
- Eliminating the Florida Forest Service's power to dedicate its land for use by the public as a park.
- Adding definitions for "school breakfast program," "summer nutrition program," and "universal school breakfast program" to specify that they are the programs authorized by federal law.
- Authorizing DACS to implement the Farmer's Market Nutrition Program for Supplemental Nutrition Program for Women, Children and Infants.
- Creating a duty to provide to a "severe need school" the highest rate of reimbursement to which it is entitled under the federal school breakfast program.
- Renaming the "Florida Farm Fresh Schools Program" the "Florida Farm to School Program."
- Eliminating the requirement that each grain dealer report monthly to DACS the value of grain it received from producers for which the producers have not received payment.

The bill appears to have an indeterminate fiscal impact on state and local governments, and the private sector.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Pest Control Operator's Certification Application Fee

Present Situation

Each location of each licensed pest control business must have a certified operator in charge that is registered with the Department of Agriculture and Consumer Services (DACs).¹ This person must be certified for the particular category of pest control engaged in at that location and may be in charge of one or more categories if they are certified in those categories.² A certified operator may not be in charge of the performance of pest control activities at more than one business location for a licensee except during a temporary absence.³ To become a certified operator, an individual must pass an examination and satisfy specified education and experience requirements.⁴

Each person seeking to be a certified operator must pay a \$300 application fee to take the exam.⁵ Once that person passes the exam, he or she must then receive an original certificate before engaging in pest control work.⁶ To obtain the original certificate, the individual must pay a \$150 issuance fee.⁷

Effect of Proposed Changes

The bill amends s. 482.111, F.S., to eliminate the issuance fee and associated application deadlines. Instead, DACs must issue a pest control operator's certificate to an individual who completes an application for examination, pays the examination fee, and passes the examination. DACs indicated that its online capabilities eliminated the need to have an extra step to issue an original certificate and will speed up the certification process.⁸

Limited Certification for Urban Landscape Commercial Fertilizer Application

Present Situation

The Department of Environmental Protection and the Institute of Food and Agricultural Sciences must provide training and testing programs in urban landscape best management practices.⁹ Persons who receive a certificate demonstrating successful completion of such training may apply to DACs to receive limited certification for urban landscape commercial fertilizer application.¹⁰ Individuals who hold such certification are not subject to additional local testing.¹¹

Section 482.1562, F.S., sets forth the application requirements to receive the limited certification. Beginning January 1, 2014, all persons applying commercial fertilizer to an urban landscape must be certified by DACs.¹² Individuals who hold the limited certification must apply for recertification at least 90 days before the expiration of the certification. If the certification application is late, the applicant must pay a \$50 per month late charge in addition to the renewal fee.

Effect of the Proposed Changes

The bill amends s. 482.1562(5), F.S., to change the deadline to submit a recertification application from 90 days before expiration of the current certification to every four years from the date of issuance. The

¹ Section 482.111(6)(a), F.S.

² Id.

³ Id.

⁴ Section 482.132, F.S.

⁵ Section 482.141, F.S.; rule 5E-14.123(4), F.A.C.

⁶ Section 482.111, F.S.

⁷ Id.; rule 5E-14.132(3), F.A.C.

⁸ DACS FISCAL Memo (August 18, 2015).

⁹ Section 403.9338(1), F.S.

¹⁰ Section 403.9338(2), F.S.

¹¹ Id.

¹² Section 482.1562, F.S.

bill eliminates the \$50 per month charge for late recertification. The bill also grants a grace period not to exceed 30 days after expiration for which a person can obtain recertification without having to go through the initial application process.

Florida Food Safety Act

Present Situation

The Florida Food Safety Act (act) is designed to:

- Promote public welfare by protecting the consuming public from injury by product use and the purchasing public from injury by merchandizing deceit, flowing from intrastate commerce in food;
- Provide uniform legislation so far as practical with federal regulations; and
- Promote uniform administration and enforcement of federal and state food safety laws.¹³

Under the act, individuals may not sell food that is adulterated, adulterate food, or receive food in commerce that is adulterated.¹⁴ These prohibitions are similar to federal law.¹⁵ The following are examples when food is deemed adulterated:

- Food that bears or contains any poisonous or deleterious substance which may render it injurious to health;
- Food that bears or contains any added poisonous or added deleterious substance; a food additive; or a color additive, which is unsafe;
- Food that is a raw agricultural commodity and bears or contains a pesticide chemical which is unsafe;
- Food that is or bears or contains any food additive which is unsafe;
- Food that consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance;
- Food that has been produced, prepared, packed, or held under insanitary conditions;
- Food that is the product of a diseased animal or an animal which has died other than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse;
- Food whose container is composed, in whole or in part, of any poisonous or deleterious substance;
- Food where any valuable constituent has been in whole or in part omitted or abstracted therefrom;
- Food where any substance has been substituted wholly or in part therefor;
- Food where damage or inferiority has been concealed in any manner; and
- Food where any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is.¹⁶

Also under the act, individuals may not sell food that is misbranded, misbrand food, or receive food in commerce that is misbranded.¹⁷ These prohibitions are similar to federal law.¹⁸ The following are examples of food that is deemed misbranded:

- The food's label is false or misleading in any particular;
- The food is offered for sale under the name of another food;
- The food is an imitation of another food, unless its label bears, in type of uniform size and prominence, the words "imitation" and, immediately thereafter, the name of the food imitated;
- The food's container is so made, formed, or filled as to be misleading;
- If any word, statement, or other information required by or under authority of the Food Safety Act to appear on the label or labeling is not prominently placed thereon with conspicuousness;

¹³ Section 500.02, F.S.

¹⁴ Section 500.04, F.S.

¹⁵ 21 U.S.C. 331.

¹⁶ Section 500.10, F.S.

¹⁷ Section 500.04, F.S.

¹⁸ 21 U.S.C. 331.

- Unless the food's label bears:
 - The common or usual name of the food, if any; and
 - If it is fabricated from two or more ingredients, the common or usual name of each ingredient and, if the food purports to be a beverage containing vegetable or fruit juice, a statement placed with appropriate prominence on the information panel specifying the total percentage of such vegetable or fruit juice contained in the food;
- Food that bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact;
- Food that is offered for sale and its label or labeling does not comply with federal law pertaining to nutrition information;
- Food that is offered for sale and its label or labeling does not comply with the requirements of federal law pertaining to nutritional content claims and health claims; or
- Bottled water and its label bears a corporate name, brand name, or trademark containing the word "spring," "springs," "well," "artesian well," "natural," or any derivative of those words without stating on the label the source of the water in typeface at least equal to the size of the typeface of the corporate name, brand name, or trademark, if the source of the water is different from the source indicated in the corporate name, brand name, or trademark.¹⁹

DACS may inspect food that may be adulterated or misbranded;²⁰ seize food that is adulterated or misbranded;²¹ suspend permits of those who sell food that is adulterated or misbranded, adulterate or misbrand food, or receive food in commerce that is adulterated or misbranded;²² and impose a fine for adulterated or misbranded food.²³

Effect of Proposed Changes

The bill amends s. 500.03, F.S., to add a definition for the term "vehicle" in order to recognize the various modes of transportation that service food establishments, and to be consistent with the federal rules implementing the Food Safety Modernization Act. Currently, the Florida Food Safety Act does not define the term.

The bill amends s. 500.03, F.S., to add "dietary supplements" as defined in 21 U.S.C. 321(ff)(1) and (2) to the definition of "food." Under 21 U.S.C. 321(ff)(1) and (2), the term "dietary supplement" means:

- A product (other than tobacco) intended to supplement the diet that bears or contains one or more of the following dietary ingredients:
 - A vitamin;
 - A mineral;
 - An herb or other botanical;
 - An amino acid;
 - A dietary substance for use by man to supplement the diet by increasing the total dietary intake; or
 - A concentrate, metabolite, constituent, extract, or combination of any ingredient described above;
- A product that:
 - Is intended for ingestion
 - Is not represented for use as a conventional food or as a sole item of a meal or the diet; and
 - Is labeled as a dietary supplement.

The bill amends s. 500.10, F.S., to include foods transported under certain conditions to be adulterated. The change also adds dietary supplements in the list of foods that could possibly be adulterated and

¹⁹ Section 500.11, F.S.

²⁰ Section 500.147(1), F.S.

²¹ Section 500.173, F.S.

²² Section 500.12(4), F.S.

²³ Section 500.121, F.S.

sets forth criteria to determine if it is adulterated. The criteria to identify a dietary supplement as adulterated are similar to the criteria in the federal Food Safety Act.²⁴

The bill amends s. 500.11, F.S., to include failing to properly label food with allergen information on the list of foods that could possibly be misbranded by referencing federal law. Under federal law, food that contains allergens must be labeled if the food is not a raw agricultural commodity and it is, or it contains an ingredient that bears or contains, a major food allergen. The label must:

- Include the word “contains,” followed by the name of the food source from which the major food allergen is derived, is printed immediately after or is adjacent to the list of ingredients (in a type size no smaller than the type size used in the list of ingredients); or
- Include the common or usual name of the major food allergen in the list of ingredients is followed in parentheses by the name of the food source from which the major food allergen is derived, except that the name of the food source is not required when:
 - The common or usual name of the ingredient uses the name of the food source from which the major food allergen is derived; or
 - The name of the food source from which the major food allergen is derived appears elsewhere in the ingredient list.²⁵

Powers and Organization of the Department of Agriculture and Consumer Services

Present Situation

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

- DACS may stimulate, encourage, and foster the production and consumption of agricultural and agricultural business products by sponsoring trade breakfasts, luncheons, and dinners that will assist in the promotion and marketing of Florida’s agricultural and agricultural business products to the consuming public.²⁶
- DACS’ Division of Administration possesses the power to provide electronic data processing and management information systems support for DACS.²⁷
- DACS must deposit fees and fines collected under the Structural Pest Control Act into the Pest Control Trust Fund.²⁸ DACS may use this money to carry out the provisions of the Structural Pest Control Act, educate the pest control industry, or support research or education in pest control.²⁹
- DACS’ Division of Marketing must enforce the provisions of ss. 604.15 through 604.34, F.S., (regulating dealers in agricultural products) and ss. 534.47 through 534.53, F.S. (regulating livestock markets).³⁰

DACS does not possess the authority to secure or hold a trademark. Any agency created by statute does not have the inherent power to acquire, secure, enjoy, use, enforce, or dispose of patents, trademarks, copyrights, or other rights or similar interests.³¹ Rather, such powers must be granted by the Legislature, either expressly or by necessary implication.³²

Effect of Proposed Changes

²⁴ 21 U.S.C. 342(f).

²⁵ 21 U.S.C. 343(w).

²⁶ Section 570.07(20), F.S.

²⁷ Section 570.30(5), F.S.

²⁸ Section 482.2401, F.S.

²⁹ Id.; s. 570.441, F.S.

³⁰ Section 570.53, F.S.

³¹ *Florida Virtual School v. K12, Inc.*, 148 So.3d 97, 99 (Fla. 2014).

³² Id. The following entities may hold trademarks: Department of Health, s. 20.43(8), F.S., Department of Management Services, s. 282.702(5), F.S., Department of State, s. 286.021, F.S., Department of Transportation, s. 334.049, F.S., Water Management Districts, s. 373.608, F.S., Department of Law Enforcement, s. 943.146, F.S., and State Universities, s. 1004.23, F.S.

The bill grants DACS certain powers and moves other powers to different divisions within DACS.

These changes include:

- Amending paragraph (20)(c) of s. 570.07, F.S., to grant DACS the power to sponsor “events,” in addition to breakfasts, luncheons, and dinners, to stimulate, encourage, and foster the production and consumption of agricultural and agricultural business products;
- Adding subsection (44) to s. 570.07, F.S., to grant DACS the power to acquire, secure, enjoy, use, enforce, and dispose of all patents, trademarks, and copyrights and other rights or similar interests (currently the Department of State may hold the patent, trademark and copyright and the Attorney General’s Office may enforce those rights). According to DACS, as the “Fresh From Florida” trademark becomes more popular, it needs the authority to take immediate action to stop its misuse;³³
- Creating s. 570.68, F.S., to create an Office of Agriculture Technology Services to provide electronic data processing and management information systems support for DACS;
- Amending s. 570.441, F.S., to authorize DACS to use money deposited in the Pest Control Trust Fund to carry out any of the powers of the Division of Agricultural Environmental Services, not just the Structural Pest Control Act (ch. 482, F.S.). The powers of the Division of Agricultural and Environmental Services include state mosquito control program coordination; agricultural pesticide registration, testing, and regulation; pest control regulation; and feed, seed, and fertilizer production inspection and testing. This authorization expires June 30, 2019; and
- Amending s. 570.53, F.S., to remove the power to enforce the provisions of ss. 604.15 through 604.34, F.S., (regulating dealers in agricultural products) and ss. 534.47 through 534.53, F.S., (regulating livestock markets) from the Division of Marketing and Development. The bill grants the power to regulate dealers in agricultural products to the Division of Consumer Services. According to DACS, moving the program to the Division of Consumer Services, which already handles a number of similar programs, will create efficiencies by streamlining department processes.³⁴

Florida Agricultural Center and Horse Park

Present Situation

In 1994, the Florida Legislature created the Florida Agricultural Center and Horse Park (Florida Horse Park) in order to provide Florida with a unique tourist experience for visitors and residents.³⁵ The Florida Horse Park is situated on 500 acres located south of Ocala. Numerous events occur at the Florida Horse Park throughout the year including rodeos, dressage, polo, obstacle challenges, dog shows, and trail rides.³⁶ A twenty-one member group appointed by the Commissioner of Agriculture called the Florida Agricultural Center and Horse Park Authority (Authority) oversees the management of the park.³⁷ DACS is currently required to provide administrative and staff support services for the meetings of the Authority, and to provide suitable space in the offices of the department for the meetings and the storage of records of the Authority.³⁸

Effect of Proposed Changes

The bill amends s. 570.685, F.S., to authorize DACS to provide administrative and staff support services for the meetings of the Authority, and to provide suitable space in the offices at DACS for the meetings and the storage of records of the Authority.

Florida Agricultural Promotion Campaign

Present Situation

³³ DACS Agency Analysis of 2015 PCB ANRS 15-01, p. 6 (January 19, 2015).

³⁴ Id.

³⁵ Section 570.681, F.S.

³⁶ Florida Agricultural Center and Horse Park Authority, *Welcome to the Florida Horse Park*, <http://flhorsepark.com/> (last visited September 15, 2015).

³⁷ Section 570.685, F.S.

³⁸ Section 570.685(4)(b), F.S.

DACS possesses the power to establish and coordinate the Florida Agricultural Promotional Campaign (FAPC), also known as the “Fresh From Florida” campaign.³⁹ This campaign is intended to increase consumer awareness and expand the market for Florida’s agricultural products.⁴⁰ Florida agricultural producers may voluntarily join FAPC. FAPC members may use the “Fresh From Florida” logos, participate in industry trade shows at a reduced cost, receive point-of-purchase materials, have access to trade leads, receive the “Fresh From Florida” magazine and industry newsletter, tie in to supermarket promotions that feature Florida products in newspaper and store circular advertisements, and receive a farm sign customized with the member’s business name.⁴¹

Currently, DACS must designate an employee to serve on the Advertising Interagency Coordinating Council.⁴² This council no longer exists.

In addition, DACS is authorized to adopt rules related to the FAPC, including rules pertaining to negotiating and entering into contracts with advertising agencies.⁴³

Lastly, the Legislature created the 15-member Florida Agricultural Promotional Campaign Advisory Council to provide advice to DACS.⁴⁴ The membership must include:

- Six members representing agricultural producers, shippers, or packers;
- Three members representing agricultural retailers;
- Two members representing agricultural associations;
- One member representing a wholesaler of agricultural products;
- One member representing consumers; and
- One member representing DACS.⁴⁵

Effect of Proposed Changes

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

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

Reporting Requirements for Agricultural Fertilizer

Present Situation

Any person who guarantees a fertilizer and distributes fertilizer (licensee) in Florida must pay an inspection of \$1 per ton of fertilizer sold in the state.⁴⁶ DACS uses this fee to fund the fertilizer inspection program.⁴⁷ Before distributing a fertilizer, each licensee must apply to DACS, report

³⁹ Section 571.24, F.S.

⁴⁰ Section 571.22, F.S.

⁴¹ Florida Department of Agricultural and Consumer Services, *Join “Fresh From Florida,”*

<http://www.freshfromflorida.com/Divisions-Offices/Marketing-and-Development/Agriculture-Industry/Join-Fresh-From-Florida>. (last visited September 15, 2015).

⁴² Section 571.24(8), F.S.

⁴³ Section 571.27, F.S.

⁴⁴ Section 571.28(1), F.S.

⁴⁵ Id.

⁴⁶ Section 576.041(1), F.S.; rule 5E-1.012(1), F.A.C.

⁴⁷ Id.

monthly the tonnage of fertilizer sold, and pay the inspection fee.⁴⁸ The monthly reports and inspection fees must be made before the 15th day of the month succeeding the month covered by the report.⁴⁹ Any licensee who fails to report all fertilizer sold each month is subject to a penalty of 10 percent or \$25,⁵⁰ whichever is greater, and must secure with DACS a surety bond or certificate of deposit.⁵¹ Further, failure to make an accurate statement of tonnage or to pay the inspection fee may constitute cause for revocation of the license and also for cancellation of all registrations on file for the licensee.⁵²

Effect of Proposed Changes

The bill amends paragraph 576.041(2)(b), F.S., to change the fertilizer reporting requirement from monthly to quarterly; authorize use of DACS's website to report tonnage of fertilizer sold; and change the reporting deadline from 15 days to 30 days following the close of the reporting period.

DACS indicated these changes are necessary to take full advantage of its web based reporting tool and align Florida's tonnage reporting requirement with other states.⁵³ Further, DACS indicated these changes will decrease the potential penalties that licensees could incur for late reporting and increase compliance.⁵⁴

Commercial Feed and Feedstuff Preemption

Present Situation

"Commercial feed" is all materials or combinations of materials that are distributed or intended to be distributed for use as feed or for mixing in a feed for animals other than humans, except:

- Unmixed whole seeds, including physically altered entire unmixed seeds, when such seeds are not chemically changed or are not adulterated;
- Unground hay, straw, stover, silage, cobs, husks, and hulls, and individual chemical compounds or substances, when such commodities, compounds, or substances are unmixed with other substances and are not adulterated; and
- Feed mixed by the consumer for the consumer's own use made entirely or in part from products raised on the consumer's farm.⁵⁵

"Feedstuff" is edible materials, other than commercial feed, that are distributed for animal consumption and that contribute energy or nutrients, or both, to an animal diet.⁵⁶

DACS regulates commercial feed and feedstuff for quality, safety, labeling requirements, and standards.⁵⁷ A distributor of commercial feed must obtain a master registration and place on file a copy of the label for each brand of feed to be distributed in Florida.⁵⁸

Effect of Proposed Changes

The bill creates s. 580.0365, F.S., to preempt the regulatory authority for commercial feed and feedstuff to DACS.

Removal and Destruction of Infected and Infested Plants

Present Situation

⁴⁸ Section 576.041(2), F.S.

⁴⁹ Section 576.041(2)(b), F.S.

⁵⁰ Section 576.041(4), F.S.

⁵¹ Rule 5E-1.012(4), F.A.C.

⁵² Section 576.041(5), F.S.

⁵³ DACS, *2016 Proposals—Agricultural Environmental Services (Additional Item) Short title: Modify Chapter 576.041 F.S. modification of required tonnage reporting period*, p. 1 (October 1, 2015).

⁵⁴ Id.

⁵⁵ Section 580.031(2), F.S.

⁵⁶ Section 580.031(10), F.S.

⁵⁷ Section 580.036, F.S.

⁵⁸ Section 580.051, F.S.

The Division of Plant Industry must order the removal and destruction of any plant or plant product infested or infected with plant pests or noxious weeds.⁵⁹ A “plant pest” is any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or their reproductive parts, or viruses, or any organisms similar to or allied with any of the foregoing, including any genetically engineered organisms, or any infectious substances which can directly or indirectly injure or cause disease or damage in any plants or plant parts or any processed, manufactured, or other plant products.⁶⁰ A “noxious weed” is any living stage, including, but not limited to, seeds and productive parts, of a parasitic or other plant of a kind, or subdivision of a kind, which may be a serious agricultural threat in Florida or have a negative impact on the plant species protected under s. 581.185, F.S. (endangered, threatened, or commercially exploited native plants).⁶¹ The Division of Plant Industry may take these actions in order to stop the introduction and dissemination of plants or pests that may threaten Florida’s agriculture industry.

The Director of the Division of Plant Industry must provide notice to the owner or the person having charge of the premises when DACS finds an infested or infected plant or plant product.⁶² Within 10 days of the notice, the owner or person in charge must treat as directed or remove and destroy the infested or infected plant or plant product.⁶³ If the owner or person in charge does not, DACS may treat as directed or remove and destroy the infested or infected plant or plant product.⁶⁴

Effect of Proposed Changes

The bill amends s. 581.181, F.S., to create an exception from the destruction requirement for plant or plant products infested with pest or noxious weeds that are widely established in Florida and not regulated by DACS. According to DACS, there are times when it is unnecessary for the owner to treat or destroy the plant, but DACS lacks the discretion not to give notice to the owner that they must destroy any infested plants or plant products.⁶⁵

Soil and Water Conservation Districts

Present Situation

Faced with the problems of the Dust Bowl in the 1930’s, the federal government passed the Standard State Soil Conservation Districts Law (model law) in 1936.⁶⁶ Drafters of the model law intended to decentralize federal soil erosion control efforts in a form of cooperative federalism that relied on individual districts to achieve national and local objectives.⁶⁷ The model law proposed that state legislatures delegate broad power to the districts through the use of both “project” and “regulatory” power.⁶⁸ Project power granted local districts the power to carry out conservation measures with the assistance of federal funding and technical oversight.⁶⁹ Regulatory powers granted districts the power to adopt local land use regulations.⁷⁰ By 1947, all of the states enacted soil and water conservation district programs.⁷¹ These programs favored the project powers of the soil and water conservation districts, but were reluctant to grant regulatory powers.⁷² Thus, soil and water conservation districts often failed to utilize the full extent of their regulatory powers.⁷³

⁵⁹ Section 581.181(1), F.S.

⁶⁰ Section 581.011(26), F.S.

⁶¹ Section 581.011(19), F.S.

⁶² Section 581.181(1), F.S.

⁶³ Id.

⁶⁴ Section 581.181(2), F.S.

⁶⁵ DACS Agency Analysis of 2015 PCB ANRS 15-01, p. 9 (January 19, 2015).

⁶⁶ Jess Phelps, *A Vision Of The New Deal Unfulfilled? Soil and Water Conservation Districts and Land Use Regulation*, 11 Drake J. Agric. L. 353, 354 & 357 (2006).

⁶⁷ Id. at 355 & 360

⁶⁸ Id. at 355.

⁶⁹ Id. at 355 & 361.

⁷⁰ Id. at 362.

⁷¹ Id. at 364.

⁷² Id.

⁷³ Id. at 368.

Florida adopted much of the model law in 1937.⁷⁴ The Legislature recognized farms, forests, and grazing lands as among Florida's basic assets in need of protection from improper land use techniques that cause erosion.⁷⁵ It found erosion reduced the productivity of land, harmed water resources, injured wildlife, caused flooding, and destroyed infrastructure.⁷⁶ Thus, corrective measures were required to prevent erosion and converse, develop, and utilize soil and water resources.⁷⁷ The Legislature intended for soil and water conservation districts (SWCDs) to control and prevent soil erosion; prevent floodwater and sediment damage; further conservation, development, and utilization of soil and water resources; preserve natural resources; control floods; prevent impairment of dams and reservoirs; assist in maintaining the navigability of rivers and harbors; preserve wildlife; protect the tax base; protect public lands; and protect and promote the health, safety and general welfare of the people of this state.⁷⁸ Currently, there are 58 SWCDs in Florida.⁷⁹

DACS oversees the SWCDs.⁸⁰ DACS may:

- Receive gifts, appropriations, materials, equipment, lands, and facilities and to manage, operate, and disburse them for the use and benefit of the SWCDs;⁸¹
- Audit the SWCDs;⁸²
- Seeks assistance in implementing its powers;⁸³
- Offer assistance to the SWCD supervisors;⁸⁴
- Keep the SWCDs aware of the activities of the other SWCDs and facilitate the interchange of advice and experience;⁸⁵
- Coordinate the programs of the several SWCDs;⁸⁶
- Secure cooperation of other governmental entities in the work of the SWCDs;⁸⁷
- Disseminate information throughout the state about the activities and programs of the SWCDs;⁸⁸ and
- Employ an administrative officer and other staff to oversee the SWCDs.⁸⁹

Within DACS, the Soil and Water Conservation Council (council) consists of seven members who have previously been involved in soil and water conservation and agriculture.⁹⁰ The council may:

- Consider and study the entire field relating to its area of responsibility;
- Consider all matters submitted to it by the commissioner or the division directors;
- Submit proposed legislation and rules to the commissioner;
- Advise and consult with the commissioner and the division directors of the department, at their request or upon its own initiative, regarding the promulgation, administration, and enforcement of all laws and rules relating to its area of responsibility; and
- Suggest policies and practices for the conduct of DACS business which shall be duly considered by the commissioner or division directors.⁹¹

When 10 percent of land owners within a territory propose to form a SWCD, they must file a petition with DACS.⁹² DACS must then publish notice of a hearing to consider the desirability and necessity of

⁷⁴ Chapter 18144, 1937, Laws of Florida.

⁷⁵ Section 582.02, F.S.

⁷⁶ Section 582.03, F.S.

⁷⁷ Section 582.04, F.S.

⁷⁸ Section 582.05, F.S.

⁷⁹ Email from DACS dated September 15, 2015.

⁸⁰ Section 582.055(1), F.S.

⁸¹ Section 582.055(2), F.S.

⁸² Section 582.055(3), F.S.

⁸³ Section 582.055(4), F.S.

⁸⁴ Section 582.08(1), F.S.

⁸⁵ Section 582.08(2), F.S.

⁸⁶ Section 582.08(3), F.S.

⁸⁷ Section 582.08(4), F.S.

⁸⁸ Section 582.08(5), F.S.

⁸⁹ Section 582.09, F.S.

⁹⁰ Section 582.06(1), F.S.

⁹¹ Section 582.06(2), F.S.

a SWCD, the appropriate boundaries of a SWCD, and all other relevant questions.⁹³ If DACS determines that a SWCD is necessary based on the facts presented at the hearing, it must then propose the boundaries of the district,⁹⁴ determine if operating the district is administratively practicable and feasible,⁹⁵ and hold a referendum of all the land owners in the proposed district whether it is appropriate to form a SWCD.⁹⁶ DACS must publish the results of the referendum and may proceed to form the SWCD if a majority of the votes cast are in favor of creating the district.⁹⁷ The Department of State must certify the formation of the SWCD and record the certification and application within its records.⁹⁸ The SWCD is presumed established upon proof of the certificate filed with the Department of State.⁹⁹ After the district is formed, land owners may petition to add or remove territory within a SWCD in the same manner as the petition to form a district.¹⁰⁰

Each SWCD must have five supervisors.¹⁰¹ Elections of district supervisors must be held every two years in a manner consistent with general election laws.¹⁰² Supervisors serve four year terms.¹⁰³ The supervisors and districts possess the power to:

- Conduct surveys, investigations, and research relating to the character of soil erosion and floodwater and sediment damages and publish its results;
- Conduct projects to demonstrate soil conservation methods, erosion prevention and control methods, works for flood prevention or the conservation, development and utilization of soil and water resources, and the disposal of water;
- Carry out flood prevention and control measures;
- Provide financial aid to carry out erosion control and prevention operations and works for flood prevention;
- Provide financial aid for the conservation, development and utilization, of soil and water resources and the disposal of water within the district's boundaries;
- Acquire real or personal property, maintain such property, receive income from such property, or sell such property to further the goals and duties of the SWCD;
- Construct, improve, operate, and maintain structures;
- Develop a comprehensive plan to conserve soil and water resources, control and prevent erosion, prevent floods, conserve and develop water resources, dispose of water, and control artesian wells;
- Takeover, by purchase, lease, or otherwise, and administer any soil-conservation, erosion-control, erosion-prevention project, or any project for flood-prevention or for the conservation, development and utilization of soil and water resources, and the disposal of water, or act as an agent for the federal government to perform such projects; and
- Perform other administrative duties as necessary to perform its powers.¹⁰⁴

SWCDs may adopt land use regulations to conserve soil and soil resources, and to prevent and control soil erosion.¹⁰⁵ The supervisors must publish notice of a referendum to adopt such regulations and make copies of such regulations available.¹⁰⁶ The supervisors may not adopt the proposed regulations unless a majority of the voting land owners approve.¹⁰⁷ All owners and occupiers of land within a

⁹² Section 582.10(1), F.S.

⁹³ Section 582.11, F.S.

⁹⁴ Id.

⁹⁵ Section 582.12, F.S.

⁹⁶ Id.

⁹⁷ Section 582.14, F.S.

⁹⁸ Id.

⁹⁹ Section 582.17, F.S.

¹⁰⁰ Section 582.16, F.S.

¹⁰¹ Section 582.19, F.S.

¹⁰² Section 582.18, F.S.

¹⁰³ Section 582.19(2), F.S. Two supervisors must serve a two year term when the SWCD is initially formed.

¹⁰⁴ Section 582.20, F.S.

¹⁰⁵ Section 582.21(1), F.S.

¹⁰⁶ Id.

¹⁰⁷ Section 582.21(2), F.S.

district must obey adopted land use regulations.¹⁰⁸ A similar referendum must be held to amend, supplement, or repeal such regulations.¹⁰⁹

SWCDs may enforce their land use regulations in circuit court.¹¹⁰ The SWCD supervisors must serve on a board of adjustment to hear and consider petitions for relief from land use regulations.¹¹¹ The board of adjustment may grant a petition for variance if it determines the petitioner is suffering a great personal difficulty or unnecessary hardship.¹¹²

Within each SWCD, owners may petition to form a watershed improvement district for the development and execution of plans and projects for works to control and prevent soil erosion, prevent floods, conserve, develop, and utilize soil and water resources, dispose of water, develop fish and wildlife or recreational, preserve and protect land and water resources, and protect and promote the health, safety, and general welfare of the people of this state.¹¹³ The SWCD supervisors must publish notice of and hold a hearing on the practicability and feasibility of the proposed watershed improvement district.¹¹⁴ If they determine there is a need for a watershed improvement district, the supervisors must define its boundaries.¹¹⁵ Once approved by DACS, the supervisors must hold a referendum of land owners within the proposed watershed improvement district about whether the operation of the proposed district is administratively practicable and feasible.¹¹⁶ The supervisors must then consider the result of the referendum and may form the watershed improvement district if a majority of the land area voted to create the district.¹¹⁷ Once the supervisors decide to form the watershed improvement district, they must certify its formation with DACS and furnish the certification to the clerk of courts.¹¹⁸ Land owners may petition to have the land added, removed, and transferred between watershed improvement districts.¹¹⁹

Thirty days after formation of the watershed improvement district, three individuals must be elected to a board of directors.¹²⁰ Directors must own land within the district and be nominated by 10 of their fellow land owners.¹²¹ Directors serve three year terms.¹²²

Watershed improvement districts may exercise powers under the supervision of the SWCD to:

- Exercise the powers of the SWCD;
- Levy ad valorem taxes for the purposes of the watershed improvement district;
- Acquire land to accomplish the goals of the district;
- Borrow money and issue bonds; and
- Construct, improve, operate, and maintain such structures and works as may be necessary to perform its duties.¹²³

Watershed improvement districts may not raise more taxes than necessary to fund their operations and may not exceed three mills.¹²⁴ The county property appraisers impose and assess this property tax.¹²⁵

There are currently no watershed improvement districts in Florida.

¹⁰⁸ Id.

¹⁰⁹ Section 582.21(3), F.S.

¹¹⁰ Section 582.23, F.S.

¹¹¹ Section 582.24, F.S.

¹¹² Section 582.26, F.S.

¹¹³ Sections 582.331 and 582.34, F.S.

¹¹⁴ Section 582.35, F.S.

¹¹⁵ Id.

¹¹⁶ Section 582.36, F.S.

¹¹⁷ Section 582.37, F.S.

¹¹⁸ Section 582.38, F.S.

¹¹⁹ Section 582.40, F.S.

¹²⁰ Section 582.41(2), F.S.

¹²¹ Section 582.41(1), F.S.

¹²² Section 582.41(2), F.S.

¹²³ Sections 582.43 and 582.46, F.S.

¹²⁴ Section 582.44, F.S.

¹²⁵ Id.

A SWCD may be discontinued or dissolved if:

- Two-thirds of the lands owners vote in a referendum to discontinue the district;¹²⁶
- The Soil and Water Conservation Council determines that continued operation of the district is not administratively practicable or feasible;¹²⁷
- DACS' inspector general determines that the SWCD failed to comply with financial auditing and reporting requirements;¹²⁸ or
- The supervisors of the SWCD adopt a resolution and DACS accepts that that the continued operation of the district is not administratively practicable and feasible.¹²⁹

DACS must publish notice of dissolution in a newspaper of general circulation for two weeks and state that any comments or objections to the proposed certification, or any claims against the assets of the district, must be filed with the department clerk not later than 60 days after the date of last publication.¹³⁰

A watershed improvement district may be discontinued if 25 percent of the land owners file a petition to discontinue the watershed improvement district, a referendum is held, and a majority of the voters vote to discontinue the district.¹³¹

Effect of Proposed Changes

The bill amends several sections of ch. 582, F.S., to eliminate powers and duties not used by SWCDs or powers and duties exercised by other arms of government. Specifically the bill:

- Amends s. 582.01, F.S., to amend the definition of “due notice” to require notification in a newspaper of general circulation seven days in advance of an event, and eliminate the definition of “administrative officer”;
- Amends s. 582.02, F.S., to update the legislative policy to emphasize the purpose of SWCDs is to promote the appropriate and efficient use of soil and water resources, protect water quality, prevent floodwater and sediment damage, preserve wildlife, protect public lands, and to provide assistance, guidance, and education to landowners, land occupiers, the agricultural industry, and the general public in implementing land and water resource protection practices;
- Repeals ss. 582.03, 582.04, and 582.05, F.S., to recognize that many of the goals and responsibilities of SWCDs are no longer necessary because they are performed by the Department of Environmental Protection, the water management districts, and DACS;
- Amends s. 582.055, F.S., to update DACS's powers in relation to SWCDs to reflect its current practices, ensure DACS possesses the power to work with SWCD to receive state/federal assistance, grant DACS the power to create and dissolve SWCDs, grant DACS rulemaking powers to implement the chapter, and combine this section with s. 582.08, F.S., which is being repealed;
- Amends s. 582.06, F.S., to grant the Soil and Water Conservation Council the authority to review requests to create or dissolve SWCD and the ability to review and provide a recommendation, at the request of the governor, whether a SWCD supervisor should be removed because of neglect of duty;
- Repeals s. 582.09, F.S., to eliminate the administrative officer of soil and water conservation. According to DACS, the Officer of Agricultural Water Policy performs the administrative officer's duty;¹³²
- Amends s. 582.16, F.S., to change the procedure to procedure to change boundary of the district to be the same as forming a district;

¹²⁶ Section 582.30(2), F.S.

¹²⁷ Section 582.30(3)(a), F.S.

¹²⁸ Section 582.30(3)(b), F.S.

¹²⁹ Section 582.30(3)(c), F.S.

¹³⁰ Section 582.30(4), F.S.

¹³¹ Section 582.48, F.S.

¹³² DACS, *Supporting Information for Proposed Legislative Edits to: Chapter 582 Soil and Water Conservation*, p. 1 (August 19, 2015).

- Repeals s. 582.17, F.S., because proof of establishment of a SWCD can be demonstrated by showing compliance with the procedures of ss. 582.10 through 582.15, F.S.;
- Amends s. 582.20, F.S., to change or eliminate the powers of the SWCDs and their supervisors because they are not used by SWCDs or are powers exercised by other arms of government. The SWCDs will now emphasis research relating to soil and water resources, conducting and promoting best management practices, providing agricultural assistance in form of materials and equipment, provide training, and coordinate with other governmental entities to meet its goals and duties;
- Repeals s. 582.21, F.S., to eliminate the SWCDs' ability to adopt land use regulations. Municipalities and county largely control land use under their authorities in Chapters 125 and 163, F.S. The Department of Environmental Protection and the water management districts do possess some regulatory authority for erosion control in s. 373.414, F.S.;
- Repeals ss. 582.22, 582.23, 582.24, 582.25, and 582.26, F.S., which set forth what must be in SWCD land use regulations, how SWCD land use regulations are enforced, and the procedure to vary from SWCD land use regulations because SWCDs will no longer have the ability to adopt land use regulations;
- Amends s. 582.29, F.S., to conform to other changes made in the bill; and
- Repeals ss. 582.331, 582.34, 582.35, 582.36, 582.37, 582.38, 582.39, 582.40, 582.41, 582.42, 582.43, 582.44, 582.45, 582.46, 582.47, 582.48, and 582.49, F.S., to eliminate watershed improvement districts. These districts performed many of the same functions as SWCDs, which as discussed above are also performed by other arms of government. Further, SWCDs will no longer be authorized to have sub-entities with the power to levy ad valorem taxes. There are currently no watershed improvement districts in Florida.

Parks on Florida Forest Service Land

Present Situation

The Florida Forest Service may dedicate its land for use by the public as a park.¹³³ These lands must be subject to the rules and regulations adopted by DEP's Division of Recreation and Parks.¹³⁴

Effect of Proposed Changes

The bill repeals s. 589.26, F.S., to eliminate the Florida Forest Service's power to dedicate its land for use by the public as a park. According to DACS, the Florida Forest Service does not have any state parks or manage land for "park purposes."¹³⁵

School Nutrition Program

Present Situation

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

Chapter 595, F.S., authorizes DACS to coordinate with the federal government to use federal and state funding to provide school nutrition programs. The Legislature declared that it is the policy of the state to provide standards for school food and nutrition services and to require each school district to establish and maintain an appropriate school food and nutrition service program consistent with the nutritional needs of students.¹³⁶

Schools must apply through DACS and complete certain requirements¹³⁷ prior to the operation of a school nutrition program. Once approved, DACS will reimburse schools for each lunch and breakfast meal served provided they meet established state and federal regulations.

¹³³ Section 589.26, F.S.

¹³⁴ Id.

¹³⁵ DACS Agency Analysis of 2015 PCB ANRS 15-01, p. 9 (January 19, 2015).

¹³⁶ Section 595.403, F.S.

¹³⁷ Requirements found in s. 595.405, F.S.

Currently, DACS must make a reasonable effort to ensure that any school designated as a “severe need school” receives the highest rate of reimbursement to which it is entitled under the federal school breakfast program for each breakfast meal served.¹³⁸ Further, DACS may advance funds from the school nutrition program’s annual appropriation to sponsors in order to implement the school nutrition program.¹³⁹ There is no restriction on when or for which program the funds may be advanced.

Each school district must implement a school breakfast program that makes breakfast meals available to all students in each elementary school.¹⁴⁰ School districts must offer universal school breakfast programs (a no-cost program) in schools in which 80 percent or more of the students are eligible for free or reduced-price meals.¹⁴¹ There is no exception to these requirements.

Each school must, to the maximum extent practicable, make breakfast meals available to students at an alternative site location.¹⁴²

The Legislature encourages school districts to provide universal free school breakfast meals to all students.¹⁴³ The school may approve or disapprove a universal free school breakfast only after receiving public testimony concerning the proposed policy at two or more regular meetings.¹⁴⁴

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

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

DACS must conduct, supervise, and administer all commodity distribution services related to the school nutrition program that will be carried on using federal or state funds, or funds from any other source, or commodities received and distributed from the United States or any of its agencies.¹⁴⁵ DACS must cooperate fully with the federal government in order to assure it receives the benefit of all federal financial allotments and assistance possible to carry out the school nutrition program.¹⁴⁶

Effect of Proposed Changes

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

- Amends s. 595.402, F.S., to add definitions for “school breakfast program,” “summer nutrition program,” and “universal school breakfast program” to specify that they are the programs authorized by federal law;
- Changes the term “school district” to “district school board”;
- Amends subsection 595.404(2), F.S., to authorize DACS to implement the Farmer’s Market Nutrition Program (FMNP) for Supplemental Nutrition Program for Women, Children and Infants (SNAP-WIC);¹⁴⁷

¹³⁸ Section 595.404(5), F.S.

¹³⁹ Section 595.404(12), F.S.

¹⁴⁰ Section 595.405(2), F.S.

¹⁴¹ Id.

¹⁴² Id.

¹⁴³ Section 595.405(4), F.S.

¹⁴⁴ Id.

¹⁴⁵ Section 595.408(1), F.S.

¹⁴⁶ Section 595.408(2), F.S.

¹⁴⁷ SNAP-WIC provides federal grants to states for supplemental foods, health care referrals, and nutrition education for low-income pregnant, breastfeeding, and non-breastfeeding postpartum women, and to infants and children up to age five who are found to be at nutritional risk. Women, infants (over 4 months old), and children that have been certified to receive WIC program benefits or who are on a waiting list for WIC certification are eligible to participate in the FMNP. State agencies may serve some or all of these categories. A variety of fresh, nutritious, unprepared, locally grown fruits, vegetables and herbs may be purchased with FMNP coupons. State agencies can limit sales to specific foods grown within state borders to encourage FMNP recipients to support the farmers in their own States. United States Department of Agriculture, Farmers’ Market Nutrition Program (FMNP) FMNP Contacts, <http://www.fns.usda.gov/fmnp/fmnp-contacts>. (last visited September 10, 2015).

- Amends subsection 595.404(6), F.S., to create a duty to provide to a “severe need school” the highest rate of reimbursement to which it is entitled under the federal school breakfast program for each breakfast meal served. This is consistent with the federal requirement in 7 CFR 220.9. According to DACS, the department currently provides the highest rate of reimbursement to which each severe need school is entitled;¹⁴⁸
- Amends subsection 595.404(10), F.S., to authorize DACS to adopt rules for the farmer’s market nutrition program;
- Amends subsection 595.404(13), F.S., to specify that funds from the school nutrition program may only be advanced to the sponsors of Summer Food Service Programs. This is consistent with the federal requirement in 7 CFR 225.9. According to DACS, the bill will have no economic or substantive effect on any interest groups or stakeholders, and will remove ambiguities from the statute that could potentially result in misinterpretation and misapplication of the law;¹⁴⁹
- Creates subsection 595.404(14), F.S., to authorize DACS to collect and publish data from multiple sources on food purchased by sponsors through the Florida Farm to School Program and other school food and nutrition service programs;
- Creates subsection 595.404(15), F.S., to authorize DACS to enter into agreements with federal or state agencies to coordinate and cooperate in the implementation of nutrition programs;
- Amends s. 595.406, F.S., to change the name of the “Florida Farm Fresh Schools Program” to “Florida Farm to School Program”;
- Creates subsection 595.406(3), F.S., to authorize DACS to recognize sponsors who purchase at least 10 percent of the food they serve from the Florida Farm to School Program;
- Amends s. 595.407, F.S., to specify that each school district must provide a summer nutrition program within 5 miles of at least one school that serves any combination of grades K through 5, not just elementary schools. This provision attempts to close a loophole where some K-8 or K-12 schools claimed they were not elementary schools, and therefore, did not have to comply. According to DACS, interpretation of this statute has varied greatly.¹⁵⁰ Thus, the proposed change may require district school boards to adjust the location or increase the number of summer nutrition program sites they operate.¹⁵¹ However, these district school boards may seek reimbursement for the program from the state and federal programs;¹⁵²
- Amends paragraph 595.407(2)(a), F.S., to remove the requirement that each school district provide reduced-price school meals during the summer for 35 consecutive days and replace it with the requirement for each school district provide reduced-price school meals during the summer for 35 days between the end of one school year and the beginning of the next. School districts may exclude holidays and weekends;
- Amends s. 595.408, F.S., to change the term “commodity” to “food” to be consistent with federal statutes; and
- Amends s. 595.501, F.S., to remove “school district” from the phrase “any person, sponsor, or school district” because the definition of “sponsor” is inclusive of “school districts.”¹⁵³

Financial Assurance Requirements for Dealers in Agricultural Products and Grain Dealers

Present Situation

Any individual or business entity who wishes to be a dealer in agricultural products¹⁵⁴ must receive a license from DACS and deliver a bond or certificate of deposit to DACS in favor of the Commissioner of Agriculture.¹⁵⁵ This financial assurance requirement is essentially a third-party beneficiary contract to

¹⁴⁸ DACS Agency Analysis of 2015 PCB ANRS 15-01, p. 9 (January 19, 2015).

¹⁴⁹ Id. at 10.

¹⁵⁰ DACS Agency Analysis of 2015 PCB ANRS 15-01, p. 11 (January 19, 2015).

¹⁵¹ Id.

¹⁵² Section 595.405(3), F.S.

¹⁵³ Section 595.402(5), F.S.

¹⁵⁴ A “dealer in agricultural products” is any person or business entity, whether itinerant or domiciled within this state, engaged in Florida in the business of purchasing, receiving, or soliciting agricultural products from the producer or the producer’s agent or representative for resale or processing for sale; acting as an agent for such producer in the sale of agricultural products for the account of the producer on a net return basis; or acting as a negotiating broker between the producer or the producer’s agent or representative and the buyer. Section 604.15(2), F.S.

¹⁵⁵ Sections 604.17, 604.19, and 604.20, F.S.

protect individuals who are harmed when conducting business with dealers in agricultural products who fail to pay for products.¹⁵⁶

Individuals claiming to be damaged by an agricultural products dealer by any breach of the conditions of a bond or certificate of deposit assignment or agreement may file a complaint with DACS.¹⁵⁷ DACS must investigate these complaints and determine if a complaint should be filed against the agricultural products dealer in order to seek damages.¹⁵⁸ To file the complaint, the aggrieved party must file three complaint affidavits or notarizations.¹⁵⁹ If the aggrieved party files the complaint by electronic transmission or facsimile, the original affidavits and original notarizations must be filed with DACS by the close of business of the tenth business day following the electronic transmission or facsimile filing.¹⁶⁰ If the agricultural products dealer fails to respond to the complaint, it waives its point of entry into the proceeding.¹⁶¹

Further, each grain dealer¹⁶² doing business in Florida must maintain a liquid security in an amount equal to the value of grain which the grain dealer has received from grain producers and for which the producers have not received payment.¹⁶³ Each grain dealer must report to DACS monthly the value of grain it received from producers for which the producers have not received payment.¹⁶⁴ This report must include a statement showing the type and amount of security maintained to cover the grain dealer's liability to producers.¹⁶⁵

Effect of Proposed Changes

The bill amends subsection 604.21(1), F.S., eliminating the requirement that a complainant file three complaint affidavits or notarizations. The bill also eliminates the requirement to file an original complaint with DACS if the complaint is submitted electronically.

Further, the bill amends s. 604.33, F.S., to eliminate the requirement that each grain dealer report monthly to DACS the value of grain it received from producers for which the producers have not received payment. DACS possess the authority to request this information if a complaint is filed or if malpractice is suspected.

B. SECTION DIRECTORY:

Section 1. Amends s. 482.111, F.S., relating to a pest control operator's certificate.

Section 2. Amends s. 482.1562, F.S., relating to limited certification for urban landscape commercial fertilizer application.

Section 3. Amends s. 500.03, F.S., defining the term "vehicle."

Section 4. Amends s. 500.10, F.S., relating to foods deemed adulterated.

Section 5. Amends s. 500.11, F.S., relating to foods deemed misbranded.

Section 6. Amends s. 570.07, F.S., relating to the powers and duties of DACS.

¹⁵⁶ In re Hallmark Builders, Inc., 205 B.R. 974, 975 (Bankr. M.D. Fla. 1996).

¹⁵⁷ Section 604.21(1)(a), F.S.

¹⁵⁸ Section 604.21(2), F.S.

¹⁵⁹ Section 604.21(1)(b), F.S.

¹⁶⁰ Section 604.21(1)(d), F.S.

¹⁶¹ Southeast Grove Management, Inc. v. McKiness, 578 So.2d 883, 886 (Fla. 1st DCA 1991).

¹⁶² A "grain dealer" is any person engaged in this state in: (a) buying, receiving, selling, exchanging, negotiating, or processing for resale, or soliciting the sale, resale, exchange, or transfer of, grain purchased from the producer or the producer's agent or representative or received from the producer to be handled on a net return basis; or (b) receiving grain for storage. Section 604.15(6), F.S.

¹⁶³ Section 604.33, F.S.

¹⁶⁴ Id.

¹⁶⁵ Id.

- Section 7.** Amends s. 570.30, F.S., relating to the powers and duties of the Division of Administration.
- Section 8.** Amends s. 570.441, F.S., relating to the Pest Control Trust Fund.
- Section 9.** Amends s. 570.53, F.S., relating to the powers of the DACS Division of Marketing and Development.
- Section 10.** Amends s. 570.544, F.S., relating to the duties of the director of the Division of Consumer Services.
- Section 11.** Creates s. 570.68, F.S., creating the Office of Agriculture Technology Services.
- Section 12.** Amends s. 570.681, F.S., relating to the Florida Agriculture Center and Horse Park.
- Section 13.** Amends s. 570.685, F.S., relating the Florida Agriculture Center and Horse Park Authority.
- Section 14.** Amends s. 571.24, F.S., relating to the FAPC and the Advertising Interagency Coordinating Council.
- Section 15.** Amends s. 571.27, F.S., removing obsolete provisions relating to the authority of DACS to adopt rules related to negotiating and entering into contracts with advertising agencies.
- Section 16.** Amends s. 571.28, F.S., revising membership requirements for the FAPC Advisory Council.
- Section 17.** Amends s. 576.041, F.S., relating to fertilizer inspection fees and records.
- Section 18.** Creates s. 580.0365, F.S., relating to preemption of regulatory authority over commercial feed and feedstuff.
- Section 19.** Amends s. 581.181, F.S., relating to plants or plant products infested with pest or noxious weeds.
- Section 20.** Amends s. 582.01, F.S., revising definitions.
- Section 21.** Amends s. 582.02, F.S., relating to legislative policy and findings and the purpose of SWCDs.
- Section 22.** Repeals s. 582.03, F.S., pertaining to consequences of soil erosion; s. 582.04, F.S., pertaining to appropriate corrective measures for soil conservation; and s. 582.05, F.S., pertaining to legislative policy for conservation.
- Section 23.** Amends s. 582.055, F.S., relating to the powers and duties of the DACS with regard to SWCDs.
- Section 24.** Amends s. 582.06, F.S., relating to the powers and duties of the Soil and Water Conservation Council.
- Section 25.** Repeals s. 582.08, F.S., pertaining to additional powers of DACS in relation to SWCDs and s. 582.09, F.S., pertaining to administrative officer of soil and water conservation.
- Section 26.** Amends s. 582.16, F.S., relating to SWCD boundaries.

- Section 27.** Repeals s. 582.17, F.S., pertaining to the establishment of SWCDs;
- Section 28.** Amends s. 582.20, F.S., relating to powers and duties of the SWCDs and supervisors.
- Section 29.** Repeals s. 582.21, F.S., pertaining to adoption of land use regulations of SWCDs; s. 582.22, F.S., pertaining to SWCD regulations and content; s. 582.23, F.S., pertaining to performance of work under the SWCD regulations; s. 582.24, F.S., pertaining to boards of adjustment for SWCDs; s. 582.25, F.S., pertaining to rules and procedures of the board; and s. 582.26, F.S., pertaining to petitions to board to vary from SWCD regulations.
- Section 30.** Amends s. 582.29, F.S., relating to state agencies cooperating with SWCDs.
- Section 31.** Repeals s. 582.331, F.S., pertaining to establishment of watershed improvement districts within SWCDs; s. 582.34, F.S., pertaining to petition for establishment of watershed improvement districts; s. 582.35, F.S., pertaining to notice and hearing on petition to establish watershed improvement districts, determination of need for a watershed improvement district, and boundaries; s. 582.36, F.S., pertaining to determination of feasibility of proposed watershed improvement district and referendum; s. 582.37, F.S., pertaining to consideration of results of referendum on establishing watershed improvement district and declaration of organization of district; s. 582.38, F.S., pertaining to organization of watershed improvement district, certification to clerks of circuit courts, and limitation on tax rate; s. 582.39, F.S., pertaining to establishment of watershed improvement district situated in more than one SWCD; s. 582.40, F.S., pertaining to changes of district boundaries, additions, detachments, transfers of land from one district to another, and change of district name; s. 582.41, F.S., pertaining to the board of directors of the watershed improvement districts; s. 582.42, F.S., pertaining to officers, agents, and employees; surety bonds; annual audits of watershed improvement districts; s. 582.43, F.S., pertaining to the status and general powers of watershed improvement districts; s. 582.44, F.S., pertaining to watershed improvement districts levying taxes; s. 582.45, F.S., pertaining to the fiscal powers of the watershed improvement district's governing board; s. 582.46, F.S., pertaining to additional powers and authorities of watershed improvement districts; s. 582.47, F.S., pertaining to watershed improvement district to coordinating work with flood control districts; s. 582.48, F.S., pertaining to discontinuing watershed improvement district; and s. 582.49, F.S., pertaining to discontinuing of soil and water conservation district.
- Section 32.** Repeals s. 589.26, F.S., relating to the authority of the Florida Forest Service to dedicate its land for use by the public as a park.
- Section 33.** Amends s. 595.402, F.S., defining terms relating to the school food and nutrition service program.
- Section 34.** Amends s. 595.404, F.S., relating to DACS's powers for the school food and nutrition service programs.
- Section 35.** Amends s. 595.405, F.S., relating to school food and nutrition program requirements.
- Section 36.** Amends s. 595.406, F.S., to change the name of the "Florida Farm Fresh Schools Program" to "Florida Farm to School Program."
- Section 37.** Amends s. 595.407, F.S., relating to children's summer nutrition program.
- Section 38.** Amends s. 595.408, F.S., to change every instance of the word "commodity" to "food" to be consistent with the federal statutes.
- Section 39.** Amends s. 595.501, F.S., relating to penalties under ch. 595, F.S.

Section 40. Amends s. 595.601, F.S., correcting a cross-reference.

Section 41. Amends s. 604.21, F.S., revising affidavit requirements for agricultural products dealers.

Section 42. Amends s. 604.33, F.S., relating to grain dealer report.

Section 43. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Pest Control Operator's Certification Application Fee

The bill appears to have an insignificant negative fiscal impact on state government by eliminating the issuance fee to apply for a pest control operator's original certificate. DACS indicated that it expects the impact to be \$67,250 per year.

Fee for Limited Certification for Urban Landscape Commercial Fertilizer Application

The bill appears to have an insignificant negative fiscal impact on state government revenues by eliminating a late fee for limited certification for urban landscape commercial fertilizer application. DACS indicated that it expects the impact to be minimal.

2. Expenditures:

Office of Agricultural Technology Services

The bill may have a negative fiscal impact associated with the creation of s. 570.68, F.S. This provision creates the Office of Agricultural Technology Services, under the supervision of a senior management class employee. Currently, the Chief Information Officer within the department is classified as a retiree that has been reemployed and not eligible to participate in a state administered retirement plan. The state does contribute a set amount to the state retirement account for employees in these ineligible classes, despite their inability to participate. The current retirement contribution rate for an ineligible employee in a regular class is 4.31 percent, while the contribution rate for an ineligible employee in a senior management class is 17.07 percent. Changing the department's current Chief Information Officer to a senior management class would result in an additional state retirement contribution of \$12,402 from the salary and benefits appropriation category.

If the current Chief Information Officer were to leave and the position was filled at the same annual rate with an employee that was eligible to participate in state retirement, then the retirement contribution for this regular class employee would be 7.26 percent. In this scenario, changing the position to a senior management class would increase the contribution rate to 21.43 percent and result in \$13,722 in additional state retirement contributions.

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

The bill amends s. 595.407, F.S., to specify that each school district must provide a summer nutrition program within 5 miles of at least one school that serves any combination of grades K

through 5, not just an elementary school. This provision attempts to close a loophole where some K-8 or K-12 schools claimed they were not elementary schools, and therefore, did not have to comply. According to DACS, interpretation of this statute has varied greatly. Thus, the proposed change may require district school boards to adjust the location or increase the number of summer nutrition program sites they operate. However, these district school boards may seek reimbursement for the program from the state and federal programs.¹⁶⁶

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

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

The bill amends subsection 604.21(1), F.S., to eliminate the necessity for a complainant to submit three complaint affidavits or notarizations when an individual is damaged by an agricultural products dealer. This may have a positive impact on those individuals by eliminating the extra filings and speeding up the complaint process.

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill eliminates the authority for DACS to adopt rules related to negotiating and entering into contracts with advertising agencies. The bill authorizes DACS and SWCD to adopt rules relating to the districts' powers and duties. The bill eliminates the authority for SWCDs to adopt rules related land use.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.