

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 553	FINAL HOUSE FLOOR ACTION:		
SUBJECT/SHORT TITLE	Department of Agriculture and Consumer Services	116	Y's 0	N's
SPONSOR(S):	Commerce Committee; Agriculture & Property Rights Subcommittee; Raburn and others	GOVERNOR'S ACTION:	Approved	
COMPANION BILLS:	CS/CS/SB 740; CS/CS/HB 315; CS/CS/SB 568; CS/SB 1608			

SUMMARY ANALYSIS

CS/CS/HB 553 passed the House on March 7, 2018, as CS/CS/SB 740. The bill modifies several agricultural and consumer service activities under the jurisdiction of the Florida Department of Agriculture and Consumer Services (DACS). The bill:

- Extends for five years the greenbelt classification for agricultural lands damaged by a natural disaster, and exempts screen enclosed horticultural pest protection structures from separate ad valorem assessment
- Codifies the State Agriculture Response Team within DACS and assigns duties
- Allows the Governor to declare an emergency when a breakdown occurs in moving "agricultural products" instead of "perishable food crops", and authorizes electronic verification of permits during such emergency
- Transfers Apalachicola Bay Oyster Harvesting license administration from DACS to the City of Apalachicola
- Removes the requirement that payments of pesticide registration fees be submitted electronically
- Prohibits charitable organizations from commingling contributions with noncharitable funds
- Allows for electronic submission of water vending-machine application forms to DACS
- Expands consumer protections provided under the Do Not Call statute
- Revises DACS antifreeze sampling and testing requirements
- Allows for the lawful seizure of petroleum "skimming devices" by DACS
- Extends brake fluid permitting up to 24-months, eliminates phased-out brake fluid product affidavits, and revises DACS brake fluid testing requirements
- Makes definitional changes to liquefied petroleum (LP) gas licensee categories and expands the license period, replaces the two-tiered LP gas fee structure with a single tiered annual fee structure, revises the LP gas annual vehicle registration requirement, increases the cost threshold for reporting LP gas accidents, and requires dealers to give notice before rendering a consumer's equipment or system inoperable or discontinuing service
- Extends the expiration date for the weights and measures permitting statutes by five years
- Aligns provisions of the state livestock law with the federal Packers and Stockyards Act
- Defines the Commissioner of Agriculture's authority to waive fees during emergencies
- Removes the Nathan Mayo Building bulletin board marketing order posting requirements
- Updates the Florida Seed Law in response to technological and federal regulatory changes
- Authorizes the Florida Forest Service to pay initial commercial driver license exam fees for certain employees
- Creates the "Government Impostor and Deceptive Advertisements Act" to prevent Florida consumers and businesses from being scammed by companies mimicking government services

The bill has an insignificant fiscal impact on state and local government.

The bill was approved by the Governor on March 23, 2018, ch. 2018-84, L.O.F., and will become effective on July 1, 2018.

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

STORAGE NAME: h0553z2.APR

DATE: March 29, 2018

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

The mission of the Department of Agriculture and Consumer Services (DACCS) is to safeguard the public and support Florida's agricultural economy by:

- Ensuring the safety and wholesomeness of food and other consumer products through inspection and testing programs;
- Protecting consumers from unfair and deceptive business practices and providing consumer information;
- Assisting Florida's farmers and agricultural industries with the production and promotion of agricultural products; and
- Conserving and protecting the state's agricultural and natural resources by reducing wildfires, promoting environmentally safe agricultural practices, and managing public lands.¹

The Division of Consumer Services is the state's clearinghouse for consumer complaints, information and protection. The division regulates various businesses, such as charitable organizations and telemarketers. In addition, the division protects consumers and businesses from unfair and unsafe business practices across a wide range of market sectors, including antifreeze, brake fluid, gasoline, liquefied petroleum (LP) gas, pesticides, water vending machines, and weighing and measuring devices.²

The bill modifies several agricultural and consumer service activities under DACCS's jurisdiction.

Assessment of Agricultural Lands (Section 1)

Present Situation

Florida's "greenbelt law," allows properties classified as bona fide agricultural operations to be taxed according to the "use" value of the agricultural operation, rather than the development value.³

Generally, tax assessments for qualifying lands are lower than tax assessments for other uses. For purposes of the income methodology approach to assessment of property used for agricultural purposes, certain structures that are physically attached to the land are considered a part of the average yields per acre and have no separately assessable contributory (taxable) value. These structures include the following:

- Irrigation systems, including pumps and motors;
- Litter containment structures located on producing poultry farms and animal waste nutrient containment structures located on producing dairy farms; and
- Structures or improvements used in horticultural production for frost or freeze protection, which are consistent with the interim measures or best management practices adopted by DACCS.⁴

Effect of Proposed Changes

¹ Office of Program Policy Analysis & Government Accountability (OPPAGA) Government Program Summaries (GPS), *Department of Agriculture and Consumer Services*, <http://www.oppaga.state.fl.us/profiles/4122> (last visited Jan. 19, 2018).

² The Florida Department of Agriculture and Consumer Services, <http://www.freshfromflorida.com/Divisions-Offices/Consumer-Services> (last visited Jan. 19, 2018).

³ s. 196.461, F.S.

⁴ s. 196.461(6)(c), F.S.

The bill provides that screened enclosed structures used in horticultural production for protection from pests and diseases or to comply with state or federal eradication or compliance agreements are considered a part of the average yields per acre and have no separately assessable value.

The bill also allows agricultural lands that incur damage as a result of a natural disaster for which a state of emergency is declared, and which results in the halting of agricultural production, must continue to be classified as agricultural lands for five years following termination of the emergency declaration. However, if such lands are diverted from agricultural use to nonagricultural use during or after the five-year recovery period, such lands must be assessed at fair market value using the factors for deriving just valuation in s. 193.011, F.S. This provision applies retroactively to natural disasters that occurred on or after July 1, 2017.

State Agricultural Response Team (Section 2)

Present Situation

Current law requires the Division of Emergency Management (division) to prepare a statewide comprehensive emergency management plan (CEMP).⁵ The state CEMP is the master operations document in responding to all emergencies, and all catastrophic, major, and minor disasters.

DACS facilitated the development of the State Agricultural Response Team (SART), along with other partners, with a mission dedicated to strengthening a coordinated incident response for the animal and agricultural sectors in the State of Florida. The SART's strategic imperatives are to:

- Support a multi-agency coordination group for state-level response activities for animal and agriculture issues;
- Develop and support an Incident Management Team with equipment and training;
- Develop and support response resources such as the Mobile Animal Response Equipment Units, College of Veterinary Medicine Veterinary Emergency Treatment Service, and Florida Veterinary Corps with funding and or training; and
- Develop and support county and regional outreach, training and information coordination in order to enhance local and regional response capabilities.

Currently, the SART is not expressly provided for in statute.

Effect of Proposed Changes

The bill establishes the SART within DACS. The bill provides that the SART, in coordination with the division, is responsible for the development, training, and support of county agricultural response teams and other nonemergency support functions. During emergency or disaster situations, as described by the Florida Comprehensive Emergency Management Plan, the division is required to coordinate with DACS for the purposes of:

- Oversight of the emergency management functions of preparedness, recovery, mitigation, and response with all agencies and organizations that are involved with the state's response activities to animal, agricultural, and vector issues; and
- Staffing the Emergency Support Function 17 at the State Emergency Operations Center and staffing, as necessary, at county emergency operations centers.

This section of the bill codifies existing practice.

Emergency Transportation/Weight Loads (Section 3)

⁵ s. 252.35, F.S.

Present Situation

Current law authorizes the Governor to declare an emergency when a breakdown occurs in the normal public transportation facilities necessary in moving perishable food crops grown in this state.⁶ The Florida Department of Transportation (FDOT) may establish weight loads during such emergency for hauling perishable foods over the highways from the fields or packinghouses to the nearest available public transportation facility as circumstances demand. FDOT is required to designate special highway routes, *excluding* the interstate highway system, to facilitate the trucking and render any other assistance needed to expedite moving the perishables.

Effect of Proposed Changes

The bill replaces the term “perishable food crops” with “agricultural products.” This allows the Governor to declare an emergency when a breakdown occurs in the normal public transportation facilities necessary in moving agricultural products produced in the state.

The bill authorizes FDOT to issue, and any law enforcement office authorized to enforce the traffic laws must accept, electronic verification of permits during such emergency. Permits issued under this directive are valid for up to 60 days; however, the validity of the permit may not exceed the period of the declared state of emergency or any extension thereof.

The legislative intent is also revised to supersede any existing laws when necessary to protect and save agricultural products, rather than to protect and save any perishable food crops grown in the state.

Apalachicola Bay Oyster Harvesting License (Section 4)

Present Situation

Current law sets forth requirements for the Apalachicola Bay oyster harvesting license (license).⁷ The license first became law in 1989.⁸ The license is administered by DACS and is required for persons who harvest commercial quantities of oysters from Apalachicola Bay.⁹

Proceeds from license fees are deposited in the General Inspection Trust Fund and, less reasonable administrative costs, used or distributed by DACS for the following purposes in Apalachicola Bay:

- Relaying and transplanting live oysters.
- Shell planting to construct or rehabilitate oyster bars.
- Education programs for licensed oyster harvesters on oyster biology, aquaculture, boating and water safety, sanitation, resource conservation, small business management, marketing, and other relevant subjects.
- Research directed toward the enhancement of oyster production in the bay and the water management needs of the bay.¹⁰

⁶ s. 316.565, F.S.

⁷ s. 379.361(5), F.S.

⁸ Ch. 89-175, Laws of Fla.

⁹ According to the Florida Department of Agriculture and Consumer Services, Apalachicola Bay Oyster Harvesting License webpage: Apalachicola Bay refers to all waters within St. George Sound, East Bay, Apalachicola Bay, St. Vincent Sound in Franklin County, and Indian Lagoon in Gulf County, including canals, channels, rivers and creeks. This information is available at: <http://www.freshfromflorida.com/Business-Services/Aquaculture/Apalachicola-Bay-Oyster-Harvesting-License> (last visited Jan. 19, 2018).

¹⁰ s. 379.361(5)(i), F.S.

Effect of Proposed Changes

The bill transfers the license administrative responsibilities from DACS to the City of Apalachicola. Specifically, the bill requires the City of Apalachicola, instead of DACS, to issue the license and collect, deposit, and distribute the license fees. The bill requires the proceeds to be deposited into a trust account, instead of the General Inspection Trust Fund, and, less reasonable administrative costs, used or distributed by the City of Apalachicola for the purposes listed in current law. However, instead of using the funds for the purpose of relaying and transplanting live oysters, the bill requires the City of Apalachicola to use or distribute the funds for an Apalachicola Bay oyster shell recycling program.

According to DACS, transferring the license administrative responsibilities from DACS to the City of Apalachicola will eliminate departmental processing expenses and allow the City of Apalachicola to more directly control the allocation of funds for restoration activities.¹¹

Pesticide Registration Payment Method (Section 5)

Currently, payments of pesticide registration fees, including late fees, must be submitted electronically using the DACS website.¹² The bill removes the electronic submission requirement of payments and allows alternate payment methods.

Solicitation of Contributions (Sections 6 & 7)

Present Situation

Organizations that intend to solicit donations in Florida are required to register with DACS pursuant to the Solicitation of Contributions Act (SCA).¹³ The SCA contains basic registration, financial disclosure, and notification requirements for charitable organizations and sponsors, fundraising consultants, and solicitors. Veterans' organizations that have been granted a federal charter under Title 36, U.S.C., are exempt from the DACS registration requirements.¹⁴

While DACS does not oversee the activities of the organizations that must register, it does monitor an organization's activities to ensure compliance with the requirements of the SCA. In addition, DACS provides information to the public on organizations that are registered to solicit contributions in Florida via the DACS Check-A-Charity database.¹⁵

The SCA contains a list of acts that are prohibited when done in connection with any solicitation or charity sales promotion.¹⁶ Examples of prohibited acts include, but are not limited to:

- Submitting false, misleading, or inaccurate information in a document that is filed with DACS, provided to the public, or offered in response to a request or investigation by DACS, the Department of Legal Affairs, or the state attorney;
- Representing that the contribution is for or on behalf of a charitable organization or sponsor or to use any emblem, device, or printed matter belonging to or associated with a charitable organization or sponsor, without first being authorized in writing to do so by the charitable organization or sponsor; and

¹¹ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 3 (Nov. 21, 2017).

¹² s. 487.041(1)(i), F.S.

¹³ ch. 496, F.S.

¹⁴ s. 496.406(1)(c), F.S.

¹⁵ The Florida Department of Agriculture and Consumer Services, *Check-A-Charity*,

<https://csapp.800helpfla.com/CSPublicApp/CheckACharity/CheckACharity.aspx> (last visited Jan. 19, 2018).

¹⁶ See s. 496.15, F.S.

- Using a name, symbol, emblem, device, service mark, or statement so closely related or similar to that used by another charitable organization or sponsor that the use thereof would mislead the public.

In addition, each charitable organization, sponsor, professional fundraising consultant, and professional solicitor is required to keep for at least 3 years true and accurate records regarding its activities in this state which are covered by the SCA.¹⁷ The records must be made available, without subpoena, to DACS for inspection and must be furnished no later than 10 working days after requested.¹⁸

Current law does not prohibit commingling or contain recordkeeping requirements, regarding charitable and non-charitable funds. According to DACS, investigations of allegations of misuse of charitably-solicited funds are oftentimes made more challenging by the need to decouple charitable and non-charitable monies in the accounting records.¹⁹

Effect of Proposed Changes

The bill prohibits the commingling of contributions with noncharitable funds by charitable organizations and sponsors. The bill requires that each charitable organization, sponsor, professional fundraising consultant, and professional solicitor that collects or takes control or possession of contributions made for a charitable purpose do the following:

- Keep records to permit accurate reporting and auditing as required by law;
- Not commingle contributions with noncharitable funds as specified in s. 496.415(19), F.S.; and
- Be able to account for the funds.

The bill provides that when expenditures of a charitable organization are not properly documented and disclosed by records, there exists a rebuttable presumption of impropriety. The bill stipulates noncharitable funds as including any funds that are not used or intended to be used for the operation of the charity or for charitable purposes.

Water Vending Machines (Section 8)

Present Situation

Water vending-machine applicants must currently submit forms to DACS “in writing”, which prohibits the use of digital applications. DACS issues serialized permit ID decals to approved vending machine-owners; however, the serialized decals are inconsistent with non-serialized decals used in other DACS inspection programs.

Effect of Proposed Changes

The bill removes the requirement that an application for a water vending machine operating permit be made “in writing”, and that the operating permit number be placed on each water vending machine. These changes allow for the electronic submission of water vending-machine application forms and the issuance of non-serialized decals.

Telephone Solicitation (Sections 9 & 10)

Present Situation

¹⁷ s. 496.418, F.S.

¹⁸ *Id.*

¹⁹ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 4 (Nov. 21, 2017).

The federal Telephone Consumer Protection Act provides for restrictions on unsolicited advertisement to a telephone.²⁰ The state mirrors this provision statutorily²¹ and requires DACS to maintain the state's Do Not Call list,²² also known as the “no sales solicitation calls” list.²³

A “telephonic sales call” is defined as a telephone call or text message to a consumer for the purpose of soliciting a sale of any consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.²⁴

According to DACS, advances in ringless communication technology allow telemarketers to directly deliver voicemail messages without causing a customer’s phone to ring.²⁵ The department believes that ringless communication constitutes a telephonic sales call under the state’s Do Not Call statute.²⁶ In the absence of a federal rule regarding this technological innovation, DACS believes adding a state prohibition of ringless voicemails is necessary.²⁷

Effect of Proposed Changes

The bill expands consumer protections provided under the state’s Do Not Call statute, prohibiting a voicemail transmission, in addition to a telephone call and text message, and requiring commercial telephone sellers to retain and make call records available.

The bill includes “voicemail transmission” in the definition of “telephonic sales call.” The bill adds a “business” to the list of entities to whom a telephone solicitor or other person is prohibited from sending a voicemail transmission, call, or text when the entity communicates to the telephone solicitor or other person that he or she does not wish to receive such solicitation.

The bill requires a telephone number that is reflected on a call recipient’s caller ID service as the result of a telephonic sales call to be capable of receiving phone calls, and able to connect the call recipient with the telephone solicitor or the seller on behalf of which the phone call was made. The bill increases penalties for violations of the Do Not Call Program to a maximum of \$10,000 for administrative fines, and minimum of \$10,000 for civil fines.

The bill requires a commercial telephone seller to keep the following information for 2 years after the date the information first becomes part of the seller's business records:

- The name and telephone number of each consumer contacted by a telephone sales call;
- All express requests authorizing the telephone solicitor to contact the consumer; and
- Any script, outline, or presentation the applicant requires or suggests a salesperson use when soliciting, including sales information or literature to be provided by the commercial telephone seller to a salesperson and a consumer in connection with any solicitation.

Within 10 days of an oral or written request by DACS, including a written request transmitted by electronic mail, a commercial telephone seller must make the records it keeps available for inspection

²⁰ 47 U.S.C. § 227.

²¹ s. 501.059, F.S.

²² Information regarding the Do Not Call list can be found at the Florida Department of Agriculture and Consumer Services, *Florida DO NOT CALL Program* webpage, available at: <https://www.fldnc.com/About.aspx> (last visited Jan. 19, 2018).

²³ s. 501.059(3), F.S.

²⁴ s. 501.059(1)(g), F.S.

²⁵ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 5 (Nov. 21, 2017).

²⁶ *Id.* at 5 and 6.

²⁷ *Id.* at 6.

and copying by DACS during DACS's normal business hours. This provision does not limit DACS's ability to inspect and copy material pursuant to any other law.

Florida Antifreeze Act (Sections 11-14)

Present Situation

Section 501.912, F.S., currently has separate definitions for antifreeze, antifreeze coolant, and summer coolant. Current law authorizes DACS to access at reasonable hours all places and property where antifreeze is stored, distributed, or offered or intended to be offered for sale, including the right to inspect and examine all antifreeze and to take reasonable samples of antifreeze for analysis together with specimens of labeling.²⁸ All samples taken must be properly sealed and sent to a laboratory designated by DACS for examination together with all labeling pertaining to such samples.²⁹

Effect of Proposed Changes

The bill makes several changes to the state Antifreeze Act. The bill consolidates the definition of antifreeze to include all antifreeze-coolant, antifreeze and summer coolant, extends antifreeze permitting for up to 24-months, eliminates phased-out product affidavits, and removes the requirement for DACS internal testing (parallels the brake fluid provisions).

The bill changes the registration application timeframe from annual to both annual and biennial, and requires the expiration timeframes to be indicated on the registration certificate. The bill specifies that for each brand of antifreeze, the application fee for a 12-month registration is \$200 and a 24-month registration is \$400.

The bill removes the provisions that addresses a registered brand that is not in production for distribution in this state. The bill requires that a completed registration application be accompanied by specimens or copies of the label for each brand of antifreeze, instead of the current requirement of specimens or facsimiles of the label for each brand of antifreeze.

The bill removes the requirement that a completed application be accompanied by a one to two gallon labeled sample of each brand of antifreeze, and instead requires that all first-time applications be accompanied by a certified report from an independent testing laboratory, dated no more than 6 months prior to the registration application, setting forth the analysis which shows that the antifreeze conforms to minimum standards required for antifreeze by this part or rules of DACS, and is not adulterated.

The bill requires collected samples to be analyzed by DACS. The bill provides that the certificate of analysis by DACS is prima facie evidence of the facts stated therein in any legal proceeding in the state.

The bill revises the requirement that a statement of formula be required for analysis by the laboratory designated by DACS by removing the laboratory designation terminology. According to DACS, this change makes antifreeze formula requirements consistent with the internal departmental-testing, and will allow the department to have reasonable access to an antifreeze manufacturer's formula for the purposes of confirming the independently-conducted testing results submitted with an application.³⁰

²⁸ s. 501.917, F.S.

²⁹ *Id.*

³⁰ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 7 (Nov. 21, 2017).

Skimming Devices (Section 15)

Present Situation

When departmental inspectors locate credit and debit card skimming devices, they contact the Office of Agriculture Law Enforcement (OALE) or, when geographic and staffing issues prevent a response from OALE, local law enforcement is asked to remove these devices. These law enforcement personnel seize these illegal devices and maintain the chain of custody for future legal proceedings. DACS staff often wait on-site for an average of two to three hours per incident because these are non-emergency requests.

Effect of Proposed Changes

The bill amends DACS' responsibilities relating to credit and debit card skimming devices,³¹ conforming the definitions of "scanning device" and "payment card" to the definitions used in the State Credit Card Crime Act,³² and allowing for the lawful seizure of "skimming devices" by DACS regulators.

The bill authorizes DACS to seize without warrant any skimming device, as defined in s. 817.625, F.S., for use as evidence. According to DACS, this will free up tremendous personnel resources for further enforcement.³³

Brake Fluid (Sections 16 & 17)

Present Situation

Applicants currently must submit all brake fluid brands and products to the Bureau of Standards' laboratory for testing prior to initial registration. Despite this requirement, there are no assurances that the samples that DACS tests are the same as the products being offered for sale since the applicant collects and ships samples directly to the laboratory.

Effect of Proposed Changes

The bill makes several changes to the law that provides guidance to DACS' regulation of brake fluid products in the state. The bill allows brake fluid permitting up to 24-months, eliminates phased-out product affidavits, and revises DACS testing requirements (parallels antifreeze provisions).

The bill authorizes a 24-month brake fluid registration period in addition to the 12-month registration period, and sets forth an application fee of \$50 for the 12-month registration, or \$100 for the 24-month registration. The bill requires completed brake fluid registration applications to be accompanied by specimens or copies of the label for each brand of brake fluid, and an application fee of \$50 for a 12-month registration or \$100 for a 24-month registration for each brand of brake fluid.

The bill requires that the certified report from an independent testing laboratory required of all first time-applicants be dated no more than six months before the registration application. The bill removes the requirement that an applicant submit to DACS a sample of at least 24 fluid ounces of brake fluid in a container with a label printed in the same manner that it will be labeled when sold, and removes the requirement that the sample and container be analyzed and inspected by DACS in order that compliance be verified.

³¹ s. 525.07(10), F.S.

³² part II, ch. 817, F.S.

³³ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 8 (Nov. 21, 2017).

The bill removes the requirement that a registrant submit a notarized affidavit on company letterhead to DACS if a registered brand and formula combination is no longer in production for distribution in this state.

The bill requires collected brake fluid samples to be analyzed by DACS, and the certificate of analysis by DACS to be prima facie evidence of the facts stated therein in any legal proceeding in this state.

According to DACS, allowing businesses to submit readily available analysis reports for new products will streamline registration and will allow the laboratory to focus on inspection samples, thereby creating efficiencies for all parties and greater protections for consumers.³⁴ Additionally, businesses may opt to register products for 24-months, which offers both the applicants and DACS increased opportunities for efficiencies.³⁵

Liquefied Petroleum Gas (Sections 18-29)

Present Situation

Currently, DACS regulates the licensing, inspection and training requirements relating to the liquefied petroleum (LP) gas industry.³⁶ The bill makes several changes to the business practices, registration process, and regulatory structure of the chapter of law governing the sale of LP gas. According to DACS, these changes were made in collaboration with the Florida LP Gas Association and other industry leaders to modernize the LP gas statute.³⁷

Definitions (Section 18)

Current law governing LP gas provides definitions for numerous LP gas and the LP gas license categories.³⁸ These licenses include those for selling propane, installation, service or repair work, manufacture of equipment, and other miscellaneous activities.

Effect of Proposed Changes

The bill clarifies LP gas license categories, revises the license year terminology, and expands the license period from one to three years from the issuance of the license. The bill also removes the word “ultimate” from the definition of “ultimate consumer” throughout the LP gas chapter of law. According to DACS, the definitional clarifications sought in this provision modernize subsequent LP gas statutory requirements.³⁹

License, Penalty, Fees (Section 19)

Present Situation

Section 527.01, F.S., provides definitions related to liquefied petroleum gas. Section 527.02, F.S., provides a two-tiered LP gas fee structure with separate fees for an Original Application Fee and a Renewal Fee.

Effect of Proposed Changes

³⁴ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 8 (Nov. 21, 2017).

³⁵ *Id.*

³⁶ ch. 527, F.S.

³⁷ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 9 (Nov. 21, 2017).

³⁸ s. 527.02, F.S.

³⁹ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 9 (Nov. 21, 2017).

The bill redefines the LP gas unlawful activities by incorporating the activities specified in s. 527.01(6)-(11), F.S., replaces the two-tiered LP gas fee structure with a single tiered annual fee structure with new fees, allows a material change in license information prior to renewal with a \$10 fee. In addition, the bill revises the requirement that DACS waive the initial license fee for honorably discharged veterans, their spouses, or the businesses they own by only allowing the waiver to occur for one year.

The bill deletes the provisions related to pipeline-system operator licensure and fees. According to DACS, pipeline-operator requirements are now regulated under federal code⁴⁰ and only monitored by DACS during the startup phase or after an incident.⁴¹ The bill deletes the transferability of LP gas licensure as licenses may be applied for continuously instead of once annually.

Qualifiers; Master Qualifiers; Examinations (Section 20)

Present Situation

Currently, any person applying for a license to engage in the activities of a pipeline system operator, category I liquefied petroleum gas dealer, category II liquefied petroleum gas dispenser, category IV liquefied petroleum gas dispenser and recreational vehicle servicer, category V liquefied petroleum gases dealer for industrial uses only, LP gas installer, specialty installer, requalifier of cylinders, or fabricator, repairer, and tester of vehicles and cargo tanks must prove competency by passing a written DACS examination with a grade of 75 percent or above in each area tested.

Upon successful completion of the competency examination, DACS currently issues a qualifier identification card to the examinee. The qualifier identification card remains in effect as long as the individual provides DACS proof of active employment in the area of examination and all continuing education requirements are met.

Effect of Proposed Changes

The bill requires only persons applying for a license to engage in category I, II, and V activities to prove competency by passing the written DACS examination. The bill reduces the DACS examination grade percentage that the applicants must achieve for passage from 75 percent or above, to 70 percent or above. The bill requires DACS to register an examinee who successfully completes the examination, instead of issuing the examinee a qualifier identification card. The bill revises the automatic expiration provision for qualifiers so that it addresses the registration instead of the identification cards, and makes conforming changes regarding registration as opposed to qualifier status. The bill requires businesses in license categories I, II and V to employ a full time qualifier in each business location.

The bill provides that qualifier registration, instead of cards, expire three years after the date of issuance. The bill removes an outdated qualifier qualification renewal date, and requires persons failing to renew before the expiration date to reapply and take a qualifier competency examination in order to reestablish qualifier status.

The bill removes the requirement that if a category I LP gas qualifier or LP gas installer qualifier becomes a master qualifier at any time during the effective date of the qualifier card, the card shall remain in effect until expiration of the master qualifier certification.

The bill provides that a qualifier for a business must actually function in a supervisory capacity of other company employees performing licensed activities, and removes the requirement for additional

⁴⁰ 49 CFR § 191, § 192 (2017).

⁴¹ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 9 (Nov. 21, 2017).

qualifiers for those business organizations employing more than 10 employees that install, repair, maintain, or service LP gas equipment and systems.

The bill revises the requirement that each category I LP gas dealer and LP gas installer, at the time of application for licensure, identify to DACS one master qualifier who is a full-time employee at the licensed location, to instead require this of a category I and category V licensee.

In order to apply for certification as a master qualifier, the bill requires each applicant to have been a registered qualifier for a minimum of 3 years immediately preceding submission of the application, employed by a licensed category I or category V licensee, or applicant for such license, and pass a master qualifier competency examination. The bill removes the requirement that the master qualifier registration include the name of the licensed company for which the master qualifier is employed. The bill replaces references to the master qualifier certificate with master qualifier registration, and makes conforming changes.

The bill removes the requirement that each category I LP gas dealer or installer licensed as of August 31, 2000, identify to DACS one current category I LP gas dealer qualifier or LP gas installer qualifier who will be the designated master qualifier for the license holder. The bill removes the requirement that a failure by a business organization to obtain a replacement qualifier within 60 days after a vacancy shall be grounds for revocation of licensure or eligibility for licensure. Further removed is the requirement that a failure by a category I or category V licensee to obtain a replacement master qualifier within 90 days of a vacancy shall be grounds for revocation of licensure or eligibility for licensure.

Registration of Transport Vehicles (Section 21)

Present Situation

Owners or lessees of LP gas vehicles must register transport vehicle with DACS annually.

Effect of Proposed Changes

The bill revises the annual registration requirement to instead require each LP gas bulk delivery vehicle owned or leased by an LP gas licensee to be registered as part of the licensing application or when placed into service.

License Renewals (Section 22)

Present Situation

Current law requires all LP gas licenses to be renewed annually within certain timeframes, and subject to the license fees.⁴² All licenses, except Category III LP Gas Cylinder Exchange Unit Operator licenses and Dealer in Appliances and Equipment for Use of LP Gas licenses, must be renewed for the period beginning September 1 and expire on the following August 31 unless sooner suspended, revoked, or otherwise terminated. Category III LP Gas Cylinder Exchange Unit Operator licenses and Dealer in Appliances and Equipment for Use of LP Gas licenses must be renewed for the period beginning April 1 and expire on the following March 31 unless sooner suspended, revoked, or otherwise terminated. Any license allowed to expire becomes inoperative because of failure to renew. The fee for restoration of a license is equal to the original license fee and must be paid before the licensee is allowed to resume operations.

⁴² s. 527.03, F.S.

Effect of Proposed Changes

The bill allows LP gas licenses to be renewed annually, biennially, or triennially, as elected by the licensee, requires all renewals to meet the same requirements and conditions as an annual license for each licensed year, and removes the license category renewal timeframes. According to DACS, these changes optimize the application process and should accelerate application processing, especially during periods of high volume.⁴³

Proof of Insurance (Section 23)

Present Situation

Currently, LP gas companies are required to provide DACS with proof of insurance coverage or a surety bond to conduct business in the state. However, for a license other than a dealer in appliances and equipment for use of liquefied petroleum gas or a category III liquefied petroleum gas cylinder exchange operator, the Governor is authorized to accept a \$1 million bond in lieu of the insurance policy requirements.⁴⁴ For a license issued to a class III liquefied petroleum gas cylinder exchange operator, the Governor is authorized to accept a bond of at least \$300,000 in lieu of the insurance policy requirements.⁴⁵

Effect of the Proposed Change:

This bill replaces the Governor with the Commissioner of Agriculture as the responsible party authorized to accept the \$1 million and the \$300,000 bonds in lieu of the insurance policy requirements. The bill also adds category IV licenses to the exceptions to the insurance requirements. According to DACS, these changes will align this program with similar initiatives and programs such as agricultural dealers, movers and sellers, to make it consistent with historical legislative intent and to optimize interactions with the surety company.⁴⁶

Bulk Storage Locations; Jurisdiction (Section 24)

Present Situation

Current law requires, prior to the installation of any bulk storage container, an LP gas licensee to submit to DACS a site plan of the facility, which shows the proposed location of the container, and to obtain written approval of such location from DACS. A fee of \$200 is assessed for each site plan that DACS reviews. The review must include preconstruction inspection of the proposed site, plan review, and final inspection of the completed facility.⁴⁷

Effect of Proposed Changes

The bill removes the requirements that an LP gas licensee submit to DACS a site plan of the facility, which shows the proposed location of the container, the requirement to obtain written approval of such

⁴³ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 10 (Nov. 21, 2017).

⁴⁴ s. 527.04(1), F.S.

⁴⁵ s. 527.04(2), F.S.

⁴⁶ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 10-11 (Nov. 21, 2017).

⁴⁷ s. 527.0605, F.S.

location from DACS, and the fee of \$200 which is assessed for each site plan that DACS reviews. The bill also removes the requirement for the review to include preconstruction inspection of the proposed site, plan review, and final inspection of the completed facility. According to DACS, master qualifiers have the ability and expertise to review site plans for compliance prior to installation, and a final inspection by DACS is still required prior to commencing operations.⁴⁸

Notification of Accidents; Leak Calls; Jurisdiction (Section 25)

Present Situation

Currently, immediately upon discovery, all LP gas licensees are required to notify DACS of any LP gas-related accident that involves an LP gas licensee or customer account. The accident must fall under one of the following descriptions:

- Caused a death or personal injury requiring professional medical treatment;
- Uncontrolled ignition of LP gas resulted in death, personal injury, or property damage exceeding \$1,000; or
- Caused estimated damage to property exceeding \$1,000.⁴⁹

Effect of Proposed Changes

The bill increases the cost threshold for reporting LP gas accidents involving property damage and/or personal injury from \$1,000 to \$3,000. According to DACS, this reflects inflation adjusted costs.⁵⁰ The dollar value has not been updated since 2003.⁵¹

Notification of Rendering Inoperable or Discontinuance of Service (Section 26)

Present Situation

Generally, LP gas consumers lease their LP gas tanks from a LP gas dealer (owner). Current law prohibits anyone other than the owner from selling, filling, refilling, removing gas from, delivering, permitting to be delivered, or using the tank in any manner, unless the owner gives permission.^{52, 53} In some instances, an LP gas dealer could render inoperable the leased equipment or could discontinue service without notice. Currently, the law does not specify how much notice consumers should be given in these situations.

Effect of Proposed Changes

The bill requires a Category I liquefied petroleum gas dealer to give notice at least five business days before rendering a consumer's liquefied petroleum gas equipment or system inoperable or discontinuing service.

Restriction on Use of Unsafe Container or System (Section 27) & Definitions Relating to Florida Propane Gas Education, Safety, and Research Act (Section 28)

Present Situation

⁴⁸ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 11 (Nov. 21, 2017).

⁴⁹ s. 527.065(1), F.S.

⁵⁰ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 11 (Nov. 21, 2017).

⁵¹ The last time the dollar value was revised was in 2003 (Ch. No. 2003-132, Laws of Florida.) providing that an LP gas-related incident must be reported by an LP gas licensee only when it involves death, personal injury, or property damage exceeding \$1,000.

⁵² s. 527.07, F.S.

⁵³ Rule5J-20.047(1), F.A.C.

Currently, the definition for “dealer” and “wholesaler” relating to the Florida Propane Gas Education, Safety, and Research Act include the term “ultimate consumer.”

Effect of Proposed Changes

The bill removes the term “ultimate” from “ultimate consumer” to make these provisions consistent with the rest of the chapter regarding consumers.

Florida Propane Gas Education, Safety, and Research Council⁵⁴ Established; Membership; Duties and Responsibilities (Section 29)

Present Situation

Section 527.22, F.S., currently requires the Commissioner of Agriculture to “make a call to” qualified industry organizations for nominees to the Florida Propane Gas Education, Safety, and Research Council.

Effect of Proposed Changes

The bill removes the requirement that the Commissioner of Agriculture make a call to qualified industry organizations for nominees to the Florida Propane Gas Education, Safety, and Research Council but retains the submission of nominees by qualified industry organizations. According to DACS, this streamlines the appointment process for the council.⁵⁵

Weights, Measures, and Standards (Section 30)

Present Situation

Currently, the DACS Bureau of Standards is responsible for the inspection of weights and measures devices or instruments in Florida.⁵⁶ The law defines “weights and measures” as all weights and measures of every kind, instruments, and devices for weighing and measuring, and any appliance and accessories associated with any or all such instruments and devices, excluding those weights and measures used for the purpose of inspecting the accuracy of devices used in conjunction with aviation fuel.⁵⁷ The weights and measures program is funded through permit fees.⁵⁸ This framework including provisions related to general permitting, initial and renewal applications, maximum permit fees, suspensions, penalties, revocations, and exemptions, is set to expire on July 1, 2020.

Effect of Proposed Changes

The bill extends the expiration date for the weights and measures program permitting fee framework until July 1, 2025. According to DACS, it will no longer be able to cover the costs to perform this function if the permitting statute is not extended.⁵⁹

Livestock (Sections 31-36)

⁵⁴ s. 527.22, F.S.

⁵⁵ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 12 (Nov. 21, 2017).

⁵⁶ ch. 531, F.S., “Weights and Measures Act of 1971.”

⁵⁷ s. 531.37(1), F.S.

⁵⁸ s. 531.67, F.S.

⁵⁹ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 12 (Nov. 21, 2017).

Present Situation

Current law places the inspection and protection of livestock in the state under the jurisdiction of DACS.⁶⁰ This includes oversight of the sale of, and payment for, livestock at livestock markets.^{61, 62} The Packers and Stockyards Act is a federal law designed to ensure effective competition and integrity in livestock, meat, and poultry items.⁶³ The Act is administered by the Packers and Stockyards Program (“P&SP”), which is a division within the United States Department of Agriculture (USDA).⁶⁴

Effect of Proposed Changes

The bill aligns definitions of the livestock law that govern the sale of livestock at livestock markets with the federal Packers and Stockyards Act. The bill provides definitions for the following terms and makes conforming changes:

- “Stockyards Act” means the Packers And Stockyards Act of 1921, 7 U.S.C. §§181–229 and governing regulations, 9 C.F.R. part 201;
- “Dealer” means any person, not a market agency, engaged in the business of buying or selling in commerce livestock, either on his own account or as the employee or agent of the vendor or purchaser.
- “Livestock” has the same meaning as in s. 585.01(13), F.S.;
- “Packer” means any person engaged in the business of buying livestock in commerce for purposes of slaughter, or of manufacturing or preparing meats or meat food products for sale or shipment in commerce, or of marketing meats, meat food products, or livestock products in an unmanufactured form acting as a wholesaler broker, dealer, or distributor in commerce.
- “Purchaser” means any person, partnership, firm, corporation, or other organization owning, managing, producing, or dealing in livestock, including, but not limited to, “packers” and “dealers”, that buys livestock for breeding, feeding, reselling, slaughter, or other purpose;
- “Registered and approved livestock market” means a livestock market fully registered, bonded, and approved as a “market agency” pursuant to the Stockyards Act and governing regulations by the United States Department of Agriculture Grain Inspection, Packers, and Stockyards Administration; and
- “Seller” means ” means any person, partnership, firm, corporation, or other organization owning, managing, producing, financing, or dealing in livestock, including, but not limited to, “Registered and approved livestock market” as consignee and “dealers”, that sell livestock for breeding, feeding, reselling, slaughter, or other purpose.

The bill repeals the section of law that provides a process by which livestock markets notify DACS that a payment for livestock has been dishonored, which triggers subsequent notification by DACS to all licensed livestock markets.⁶⁵ The bill makes failure to render payment for livestock to any seller or consignee of cattle an unfair or deceptive act in trade or commerce in violation of s. 501.204(1), F.S.,⁶⁶

⁶⁰ s. 534.011, F.S.

⁶¹ s. 534.47(2), F.S., defines “livestock market” as any location in the state where livestock is assembled and sold at public auction or on a commission basis during regularly scheduled or special sales. The term “livestock market” shall not include private farms or ranches or sales made at livestock shows, fairs, exhibitions, or special breed association sales.

⁶² See ss. 534.47-534.54, F.S.

⁶³ The Packers And Stockyards Act of 1921, 7 U.S.C. §§181–229 and governing regulations, 9 C.F.R. §§201.1–201.100.

⁶⁴ The United States Department of Agriculture (USDA), Regulated Entities Under the Packers and Stockyards Act, <https://www.gipsa.usda.gov/psp/regulated.aspx> (last visited Jan. 25, 2018).

⁶⁵ s. 534.50, F.S.

⁶⁶ s. 501.204(1), F.S., provides that unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

and removes the provision that expressly protects the payer's right to refuse payment of unauthorized livestock draft.⁶⁷

The bill repeals the section of law that prohibits a livestock market from filing a complaint under s. 604.21, F.S., which sets forth the process for complaints and investigations regarding dealers in agriculture products.⁶⁸ The bill adds court costs and expenses to the section of law prescribing liability of a purchaser who fails to make payment for purchased livestock as required by the livestock law or the federal Packers and Stockyards Act.⁶⁹

DACS Emergency Powers (Section 37)

Present Situation

Current law governing emergency management gives the Governor extensive authority to act as he or she deems necessary during a declared state of emergency.⁷⁰ The law authorizes the Governor to assume or delegate direct operational control over all or any part of the emergency management functions within this state.⁷¹ In addition, the Governor may issue executive orders, proclamations, and rules, which have the force and effect of law.⁷² In addition, the Governor is authorized to, among other things, use all resources of the state government and of each political subdivision of the state, as reasonably necessary to cope with the emergency.⁷³

Currently, DACS is authorized to declare an emergency when one exists in any matter pertaining to agriculture, and to make, adopt, and promulgate rules and issue orders, which will be effective during the term of the emergency.⁷⁴

During the 2017 hurricane season, Hurricane Irma, among the strongest hurricanes ever to make direct landfall in the United States, caused major losses to all segments of agriculture in the state. Total crop losses are estimated at \$2,014,481,961, while total losses to production agriculture are estimated at \$2,558,598,303.⁷⁵ In response, the Governor declared a state of emergency through an executive order authorizing state agencies to suspend provisions of any statute or regulation, under the respective agency, if strict compliance of the statute or regulation would hinder coping with the emergency.⁷⁶

Effect of Proposed Changes

The bill authorizes the Commissioner of Agriculture during a state of emergency declared pursuant to s. 252.36, F.S., to waive fees by emergency order for duplicate copies or renewal of permits, licenses, certifications, or other similar types of authorizations during a period specified by the commissioner. According to DACS, the proposed revision clarifies the Commissioner of Agriculture's authority during a state of emergency by referencing the emergency management chapter of the Florida Statutes in the chapter related to DACS.⁷⁷

⁶⁷ s. 534.501, F.S.

⁶⁸ s. 534.51, F.S.

⁶⁹ s. 534.54, F.S.

⁷⁰ ch. 252, F.S.

⁷¹ s. 252.36(1)(a), F.S.

⁷² s. 252.36(1)(b), F.S.

⁷³ s. 252.36(5)(b), F.S.

⁷⁴ s. 570.07(21), F.S.

⁷⁵ THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, *Hurricane Irma's Damage to Florida Agriculture*, <http://www.freshfromflorida.com/content/download/77515/2223098/FDACS+Irma+Agriculture+Assessment.pdf> (last visited Jan. 19, 2018).

⁷⁶ Executive Order 17-235, Sep. 4, 2017.

⁷⁷ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 12 (Nov. 21, 2017).

Marketing Order Notice, Nathan Mayo Building (Section 38)

Present Situation

The “Florida Agricultural Commodities Marketing Law” regulates the marketing of agricultural commodities through the establishment of marketing orders and agreements.⁷⁸ A marketing order is an order issued by DACS, prescribing rules governing the distribution, or handling in any manner, of agricultural commodities in the primary channel of trade during any specified period or periods.⁷⁹

Before the issuance of any marketing order, or any suspension, amendment, or termination thereof, a notice must be posted on a public bulletin board maintained by DACS in the Nathan Mayo Building, Tallahassee, Leon County, and a copy of the notice must also be posted on the DACS website the same day.⁸⁰

Before the issuance, suspension, amendment, or termination of any marketing order covered by chapter 573, F.S., or departmental actions effecting marketing orders, a notice must be posted on the Mayo Building public bulletin board in Tallahassee in addition to providing this same information on DACS’ website.

Effect of Proposed Changes

The bill removes the requirement to post notice on a public bulletin board in the Nathan Mayo Building while maintaining the requirement to post notice to the DACS website.

Florida Seed Law (Sections 39-54)

Present Situation

DACS regulates the sale and distribution of all seed sold in Florida pursuant to the Florida Seed Law (FSL).⁸¹ According to DACS, technological and federal regulatory changes have created the need for Florida to update and reorganize the FSL.⁸² Generally, trees and shrubs, and new seed types, are not addressed under the current law.

Effect of Proposed Changes

The bill makes several changes to this regulatory structure pursuant to recommendations from the Agricultural Feed, Seed and Fertilizer Advisory Council, which advises DACS on feed, seed and fertilizer enforcement issues.⁸³ DACS believes these changes will optimize regulation and decrease regulatory compliance costs within Florida’s seed industry.⁸⁴ The changes also align the FSA with the

⁷⁸ See ch. 573, F.S.

⁷⁹ s. 573.103(9), F.S.

⁸⁰ s. 573.111, F.S.

⁸¹ ch. 578, F.S.

⁸² Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 13 (Nov. 21, 2017).

⁸³ DACS Agricultural Feed, Seed and Fertilizer Advisory Council, <http://www.freshfromflorida.com/About/Advisory-Councils-and-Committees/Agricultural-Feed-Seed-and-Fertilizer-Advisory-Council> (last visited Jan. 19, 2018).

⁸⁴ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 13 (Nov. 21, 2017).

provisions of the Recommended Uniform State Seed Law (RUSSL),⁸⁵ Federal Seed Act (FSA),⁸⁶ and Plant Variety Protection Act (PVPA).⁸⁷

Definitions (Section 39)

Present Situation

There have been numerous technological developments in seed production. Many of the definitions in section 578.011, F.S., do not reflect these new technologies.

Effect of Proposed Changes

The bill makes numerous definitional changes to the Florida Seed Law pursuant to recommendations of the DACS Agricultural Feed, Seed and Fertilizer Advisory Council. These changes mirror technological and regulatory changes found in RUSSL, FSA, PVPA, and the requirements of neighboring states.⁸⁸

Preemption (Section 40)

Present Situation

Currently, DACS regulates the sale and distribution of all seed sold in Florida. However, the authority to regulate seed is not expressly preempted to the state.

Effect of Proposed Changes

The bill provides that it is the intent of the Legislature to eliminate duplication of regulation of seed. The bill provides that this chapter is intended as comprehensive and exclusive and occupies the whole field of regulation of seed. The bill preempts the authority to regulate seed or matters relating to seed to the state. The bill prohibits a local government or political subdivision of the state from enacting or enforcing an ordinance that regulates seed, including the power to assess any penalties provided for violation of this chapter.

Registrations (Section 41)

Present Situation

Currently, persons who intend to sell, distribute for sale, offer for sale, expose for sale, handle for sale, or solicit orders for the purchase of any agricultural, vegetable, flower, or forest tree seed or mixture

⁸⁵ In 1946, the Association of American Seed Control Officials created the Recommended Uniform State Seed Law, often referred to as "RUSSL." That document serves as a model law for the states and is reviewed and updated regularly. While RUSSL is technically a guideline, rather than a law, it serves as a general reference point for states when seed law changes occur. <https://soygrowers.com/laws-regs-considerations-buying-seed/> (last visited Jan. 19, 2018).

⁸⁶ 7 U.S.C. § 1551-1611. The Federal Seed Act is a truth-in-labeling law that governs the sale of seed in interstate commerce and seed imported into the United States. The aim of the Act is to provide detailed regulations covering sale of seed on a national basis. Normally, it has no jurisdiction over seed produced and marketed within state boundaries. The federal and state seed laws contain somewhat similar requirements. If seed is labeled to comply with the Federal Seed Act and is shipped in interstate commerce, it will normally comply with the labeling requirements of the state into which it is shipped. Thus, the Act helps maintain the integrity of each state seed law; however, no state may set standards for seed moving into the state from another below the minimum required by the Federal Seed Act. https://link.springer.com/chapter/10.1007/978-1-4615-1619-4_18 (last visited Jan. 19, 2018).

⁸⁷ 7 U.S.C. ch. 57. The Plant Variety Protection Act provides legal intellectual property rights protection to breeders of new varieties of plants, which are sexually reproduced (by seed) or tuber-propagated.

⁸⁸ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 13 (Nov. 21, 2017).

thereof, are required to register with DACS as a seed dealer.⁸⁹ According to DACS, seeds for trees and shrubs are not explicitly covered by the current statute and several of the provisions need updates given current advances in technology.⁹⁰

Effect of Proposed Changes

The bill removes references to s. 578.14, F.S., relating to packet vegetable and flower seed. The bill expands the definition of tree seeds by deleting “forest” and including “shrub seeds” to the types of seeds that require registration.

The bill requires the application for registration to include the name and location of each place of business at which the seed is sold, distributed for sale, offered for sale, exposed for sale, or handled for sale. The bill removes the requirement that registration and payment receipts from DACS be written. This eliminates the need for DACS to issue registration receipts, and thus allows for electronic receipts.

The bill removes the exemption from registration requirements for agricultural experiment stations of the State University System and places it in the section of the FSL directly relating to exemptions.

The bill also provides that when packet seed is sold, offered for sale, or exposed for sale, the company who packs seed for retail sale must register and pay fees as provided.

Label Requirements for Agricultural, Vegetable, Flower, and Tree or Shrub Seed (Section 42)

Present Situation

Current law sets forth seed label requirements for each container of agricultural, vegetable, or flower seed sold, offered for sale, exposed for sale, or distributed for sale within this state for sowing or planting purposes.⁹¹ As with the previous section, trees and shrubs are not explicitly covered under the current law, and sections relating to new seed types are not addressed.⁹²

When seeds are treated with certain substances, the current statute only requires a cautionary statement such as “Do not use for food, feed, or oil purposes,” which is inconsistent with current Environmental Protection Agency (EPA) requirements and provisions of the FSA.⁹³

Effect of Proposed Changes

The bill revises the labeling requirements to align with RUSSEL, deletes specific terms and font requirements, adds provisions relating to coated and vegetable seeds, moves DACS’ authority to prescribe uniform analysis tags, for consistency, includes additional terms to clarify requirements of all seed types, including those of trees and shrubs, allows the term, “blend,” as an option for identifying products containing more than one agricultural seed component, includes lawn and turf seed under the requirements and clarifies that hybrids thereof must be labeled as hybrids.

⁸⁹ s. 578.08(1), F.S.

⁹⁰ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 14 (Nov. 21, 2017).

⁹¹ s. 578.09, F.S.

⁹² Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 14 (Nov. 21, 2017).

⁹³ *Id.*

Forest Tree Seed (Section 43)

Present Situation

Current law governing forest tree seed requires each container sold, offered for sale, exposed for sale, or transported within this state for sowing purposes, to meet certain labeling requirements.⁹⁴

Effect of Proposed Changes

The bill repeals the section of law relating to labeling of forest tree seed. These requirements are replaced with expanded provisions relating to all tree and shrub seeds, and included in the aforementioned revised section of law relating to label requirements.⁹⁵

Exemptions (Section 44)

Present Situation

Currently, the FSL exempts the following from the FSL labeling requirements and prohibitions:

- Seed or grain not intended for sowing or planting purposes.
- Seed in storage in, consigned to or being transported to seed cleaning or processing establishments for cleaning or processing only. Any labeling or other representation which may be made with respect to the unclean seed shall be subject to this law.⁹⁶

The FSL also provides an exemption from the criminal penalties of this law for persons having sold, offered, exposed, or distributed for sale in this state any agricultural, vegetable, or forest tree seed incorrectly labeled or represented.⁹⁷

Effect of Proposed Changes

The bill adds an exemption for seed under development or maintained exclusively for research purposes. The bill revises the exemption for incorrectly labeled seed. The bill provides that if seeds cannot be identified by examination thereof, a person is not subject to the criminal penalties of this chapter for having sold or offered for sale seeds subject to this chapter which were incorrectly labeled or represented as to kind, species, and, if appropriate, subspecies, variety, type, or origin, elevation, and, if required, year of collection unless he or she has failed to obtain an invoice, genuine grower's or tree seed collector's declaration, or other labeling information and to take such other precautions as may be reasonable to ensure the identity of the seeds to be as stated by the grower. The bill provides that a genuine grower's declaration of variety must affirm that the grower holds records of proof of identity concerning parent seed, such as invoice and labels.

According to DACS, the proposed language aligns with RUSSEL and clarifies the release from liability afforded to a person who unknowingly sells mislabeled seed.⁹⁸ Additionally, the amendments clarify the limitations on criminal penalties attached to incorrectly labeled seed to require sellers to "take such other actions as may be reasonable to ensure the identity" beyond solely relying on a grower's or seed collector's declaration.⁹⁹ The modified statutory language is not likely to affect the number of criminal

⁹⁴ s. 578.091, F.S.

⁹⁵ s. 578.09, F.S.

⁹⁶ s. 578.10(2), F.S.

⁹⁷ s. 578.10(3), F.S.

⁹⁸ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 15 (Nov. 21, 2017).

⁹⁹ *Id.*

penalties issued.¹⁰⁰ Further, it exempts seeds under development or maintained for research purposes from the FSL labeling and prohibitions provisions because they are not commercially available to consumers or businesses.¹⁰¹ The language regarding research purposes was expanded such that this exemption no longer solely applies to university entities.¹⁰²

*Duties, Authority, and Rules of DACS; Stop-Sale, Stop-Use, Removal, or Hold Orders
(Sections 45 & 46)*

Present Situation

Multiple references to “forest tree seed” is used throughout the sections of law that sets forth the duties, authority and rulemaking requirements of DACS relating to the FSL,¹⁰³ and the section of law that addresses stop-sale, stop-use, removal, or hold orders for violations of the FSL.¹⁰⁴

Effect of Proposed Changes

The bill replaces the multiple references to “forest tree seed” with “tree or shrub seed.”

Prohibitions (Section 47)

Present Situation

Currently, it is unlawful for any person to sell, distribute for sale, offer for sale, expose for sale, handle for sale, or solicit orders for the purchase of any agricultural, vegetable, flower, or forest tree seed within this state.¹⁰⁵

According to DACS, given the proposed changes to seed label requirements for agricultural, vegetable, or flower seed, the prohibitions need to be modified for consistency.¹⁰⁶ The stop sale provisions and the requirements for certified seed labeling need further clarification.¹⁰⁷ The existing statute specifies seven months as the germination-testing timeframe prior to sale.¹⁰⁸ The statute needs to be updated to include labeling prohibitions related to the PVPA.¹⁰⁹

Effect of Proposed Changes

The bill revises the section of law relating to prohibitions to be consistent with changes throughout the bill that expand the definition of seeds to include shrubs. The bill clarifies the stop-sale provisions and the requirements for certified seed labeling. The bill removes the seven month timeframe within which the test to determine the percentage of germination required by the FSL labeling requirements must be completed as all seed types are listed in the proposed section of the bill relating to labeling requirements, and each category of seed contains a specific germination testing requirement.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ s. 578.11, F.S.

¹⁰⁴ s. 578.12, F.S.

¹⁰⁵ s. 578.13(1), F.S.

¹⁰⁶ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 15 (Nov. 21, 2017).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

Packet Vegetable and Flower Seed (Section 48)

Present Situation

Currently, when vegetable or flower seed are sold, offered for sale, or exposed for sale in packets of less than 8 ounces, the company who packs the seed for retail sale is required to register and pay fees as provided under s. 578.08, F.S.¹¹⁰

Effect of Proposed Changes

The bill repeals the section of the FSL relating to packet vegetable and flower seed. The bill moves the registration requirements to the revised section of the FSL relating to registrations, and the labeling information to the revised section of the FSL relating to registrations, for consistency.

According to DACS, to promote regional continuity and to align with comparable areas of RUSSEL, the proposed language incorporates the 50% minimum germination standard for seed with no established standard and requires a seed count on products where seed is placed in a medium that inhibits seed identification and quantification, such as pre-potted plants.¹¹¹

Penalties and Administrative Fine (Section 49)

Present Situation

Currently, DACS is authorized to enter an order imposing one or more of the following penalties against a person who violates the FSL or the rules adopted under the FSL, or who impedes, obstructs, or hinders DACS in performing its duties under the FSL:

- Imposition of an administrative fine in the Class I category pursuant to s. 570.971, F.S., for each occurrence after the issuance of a warning letter.
- Revocation or suspension of the registration as a seed dealer.

Any person who violates the provisions of the FSL is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. According to DACS, the current language could benefit from being aligned with penalty language found in other chapters.¹¹²

Effect of Proposed Changes

The bill revises the penalty provisions in the FSL relating to circumstances by which DACS may enter an order, and the types of violations the order may be based on. The bill also revises the requirement that DACS issue a warning letter before the imposition of an administrative fine in the Class I category. According to DACS, this will allow it to issue an administrative fine for egregious first-time offenses.¹¹³

Dealers' Records (Section 50)

Present Situation

¹¹⁰ s. 578.14, F.S.

¹¹¹ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 16 (Nov. 21, 2017).

¹¹² *Id.*

¹¹³ *Id.*

Currently, every seed dealer is required to make and keep for a period of 3 years satisfactory records of all agricultural, vegetable, flower, or forest tree seed bought or handled to be sold.¹¹⁴ The records must at all times be made readily available for inspection, examination, or audit by DACS, and must also be maintained by persons who purchase seed for production of plants for resale. According to DACS, clarifying recordkeeping requirements and adopting similar language to that used by neighboring states would streamline the regulatory structure and enhance compliance.¹¹⁵

Effect of Proposed Changes

The bill requires each person who allows his or her name or brand to appear on the label as handling agricultural, vegetable, flower, tree, or shrub seeds subject to the FSL to keep records pursuant to the following timeframes:

- For 2 years, complete records of each lot of agricultural, vegetable, flower, tree, or shrub seed handled.
- For 1 year after final disposition a file sample of each lot of seed.

The bill also requires the records and samples pertaining to the shipment or shipments involved to be accessible for inspection by DACS or its authorized representative during normal business hours. According to DACS, the proposed changes seek to align Florida's records provisions with RUSSEL for better clarity by reducing the seed record holding time from three years to two, by adding a one-year holding requirement for each seed lot after final disposition and by continuing to make such records and samples available for DACS inspection.¹¹⁶

Complaints (Section 51)

Present Situation

Current law provides a complaint process to farmers when seed fails to produce or perform as represented by the label.¹¹⁷ Farmers are required to make a sworn complaint to DACS against the dealer alleging damages sustained, and the Seed Investigation and Conciliation Council (Council) assists in determining the validity of complaints.¹¹⁸

According to DACS, the current provisions only protect "farmers" and involve complaints stemming from the "label attached to the seed" without geographic limitation as to where the seed is planted.¹¹⁹ However, the labeling provisions should be broadened to include all written, printed, or graphic representations, in any form, accompanying and pertaining to the seed in question.¹²⁰ The applicability of the processes specified in this section should be clarified to limit them to complaints stemming from seed planted in Florida.¹²¹

Effect of Proposed Changes

The bill expands the types of complainants by replacing the term "farmer" with "buyer," revises the reference to "forest tree seed" to instead reference "tree or shrub seed," and limits complaints to those

¹¹⁴ s. 578.23, F.S.

¹¹⁵ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 16 (Nov. 21, 2017).

¹¹⁶ *Id.* at 16&17.

¹¹⁷ s. 578.26, F.S.

¹¹⁸ *Id.*

¹¹⁹ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 17 (Nov. 21, 2017).

¹²⁰ *Id.*

¹²¹ *Id.*

that stem from seed planted in this state. The labeling provision is broadened to include any labeling of such seed, instead of only the label attached to the seed.

The bill broadens the council's inspection authority, and prohibits the buyer from commencing legal proceedings against the dealer or asserting such a claim as a counterclaim or defense in any action brought by the dealer until the findings and recommendations of the council are transmitted to the complainant and the dealer. The bill removes the requirement that DACS, upon receipt of the findings and recommendation of the Council, transmit them to the farmer and to the dealer by certified mail, and requires DACS to mail a copy of the council's procedures to each party upon receipt of a complaint by DACS.

According to DACS, with the addition of the term "buyer," the amendments seek to expand the definition of complaints covered to include all buyers (a person who purchases certain seed in packaging of 1,000 or more) and to limit liability to seed planted in the state.¹²² The changes require pursuing all administrative remedies available through the SICC prior to commencing any legal action.¹²³ The bill also restates that DACS is to mail a copy of the SICC's procedures to each party once a complaint has been filed.¹²⁴

Seed Investigation and Conciliation Council (Section 52)

Present Situation

Current law requires the Council to assist farmers and agricultural seed dealers in determining the validity of complaints made by farmers against dealers.¹²⁵ The law establishes the process by which Council members are appointed and how it operates. According to DACS, the terms and appointment process are inconsistent with the operation of other departmental advisory councils. Currently, protections afforded under this section apply only to farmers.¹²⁶

Effect of Proposed Changes

The bill removes the requirement that the Commissioner of Agriculture appoint a seed investigation and conciliation counsel composed of alternate members. To conform to changes made in the complaints section of the bill, the bill expands covered complainants to include all "buyers," expands the types of seed dealers by removing the term "agricultural," and expands the Council's authority to recommend settlements beyond cost damages. In addition, the bill streamlines the terms and succession of the Council councilmembers, updates the name of the Florida Seedsmen and Garden Supply Association, and clarifies the Council's inspection requirements regarding the complainant's farming operation.

Regarding terms and succession of the Council, the bill requires each member to be appointed for a term of 4 years or less and to serve until his or her successor is appointed, removes the staggered term lengths, and removes the requirement that each alternate member serve only in the absence of the member for whom she or he is an alternate.

The bill expands the council's requirement to recommend settlements when appropriate that are not restricted to cost damages, and requires council inspections of the complainant's farm operation to apply to the buyer's property, crops, plants, or trees referenced in or relating to the complaint.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ s. 578.27, F.S.

¹²⁶ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 17 (Nov. 21, 2017).

Seed in Hermetically Sealed Containers (Section 53)

Present Situation

Hermetically sealed containers are currently addressed in s. 578.28, F.S.

Effect of Proposed Changes

The bill renumbers the section of law relating to seed in hermetically sealed containers from s. 578.28, F.S., to s. 578.092, F.S., as part of the overall reorganization of the Seed Law chapter.

Prohibited Noxious Weed Seed (Section 54)

Present Situation

Prohibited noxious weed seed is currently defined in s. 578.011, F.S.

Effect of Proposed Changes

Although there is a definition of prohibited noxious weed seed in current law, there is not expressed authority banning these weeds. The bill creates s. 578.29, F.S., prohibiting noxious weeds from being present in agricultural, vegetable, flower, tree, or shrub seed offered or exposed for sale in this state.

Florida Forest Service Commercial Driver License Examination Fee (Section 55)

Present Situation

The Department of Financial Services' Reference Guide for State Expenditures prohibits the use of public funds to pay license or examination fees under Chapter 69I-40.002(23), F.A.C. The Florida Forest Service (FFS) has 20 different job classes that require a Class A or B Commercial Driver's License (CDL) as a condition of employment.

Effect of Proposed Changes

The bill authorizes, but does not obligate, the FFS to pay the cost of an initial commercial driver license (CDL) examination for employees whose position requires them to operate such equipment.

According to DACS, the proposed policy would allow for one initial Class A or B CDL examination for those whose job classifications require a CDL as a condition of employment. Employees failing the initial test would then be required to pay for subsequent testing themselves. The proposed statutory change would ensure that the FFS has a sufficient number of personnel with CDLs for the suppression, detection, prevention and mitigation of wildfires. Further, this program would assist in the recruitment and the retention of FFS employees.¹²⁷

Government Impostor and Deceptive Advertisements Act (Section 56)

Present Situation

¹²⁷ *Id.* at 18.

DACS receives numerous complaints from consumers and businesses that have been scammed by companies selling free government forms or mimicking government services. The U.S. Post Office currently prohibits this type of mailing of federal government forms or program offers; however, currently, the only remedy is to throw away the offending material, which does not protect unsuspecting consumers.

Effect of Proposed Changes

The bill creates the “Government Impostor and Deceptive Advertisements Act” and provides DACS with the duty and responsibility to investigate potential violations, request and obtain information regarding potential violations, seek compliance, enforce this law, and adopt rules necessary to administer this law.

Violations

The bill provides that the following acts or practices constitute a violation:

- Disseminating an advertisement that:
 - Simulates a summons, complaint, jury notice, or other court, judicial, or administrative process of any kind.
 - Represents, implies, or otherwise engages in an action that may reasonably cause confusion that the person using or employing the advertisement is a part of or associated with a governmental entity, when such is not true.
- Representing, implying, or otherwise reasonably causing confusion that goods, services, an advertisement, or an offer was disseminated by or has been approved, authorized, or endorsed, in whole or in part, by a governmental entity, when such is not true.
- Using or employing language, symbols, logos, representations, statements, titles, names, seals, emblems, insignia, trade or brand names, business or control tracking numbers, website or e-mail addresses, or any other term, symbol, or other content that represents or implies or otherwise reasonably causes confusion that goods, services, an advertisement, or an offer is from a governmental entity, when such is not true.
- Failing to provide the disclosures as required.
- Failing to timely submit to DACS written responses and answers to its inquiries concerning alleged practices inconsistent with, or in violation of, this section. Responses or answers may include, but are not limited to, copies of customer lists, invoices, receipts, or other business records.

Disclosure Requirements

The bill requires mailings, emails, or websites to contain prominent and specific disclaimers stating that the sales material are not related to any government filing and/or that the information or forms can be obtained for free or at a lesser cost from a governmental agency. Businesses are required to give consumers the name and contact information of the governmental agency.

Penalties

The bill authorizes any person who is substantially affected by a violation of this section to bring an action in a court of proper jurisdiction to enforce the provisions of this section. A person prevailing in a civil action for a violation of this section must be awarded costs, including reasonable attorney fees, and may be awarded punitive damages in addition to actual damages proven. This provision is in addition to any other remedies prescribed by law.

The bill authorizes DACS to bring one or more of the following for a violation:

- A civil action in circuit court for the following:
 - Temporary or permanent injunctive relief to enforce this section.
 - For printed advertisements and e-mail, a fine of up to \$1,000 for each separately addressed advertisement or message containing content in violation, except for failing to timely submit written responses to DACS that is received by or addressed to a state resident.
 - For websites, a fine of up to \$5,000 for each day a website with content in violation, except for failing to timely submit written responses to DACS that is published and made available to the general public.
 - For violations of failing to timely submit written responses to DACS, a fine of up to \$5,000 for each violation.
 - Recovery of restitution and damages on behalf of persons substantially affected by a violation of this section.
 - The recovery of court costs and reasonable attorney fees.
- An action for an administrative fine in the Class III category pursuant to s. 570.971, F.S., for each act or omission, which constitutes a violation under this section.

The bill authorizes DACS to terminate any investigation or action upon agreement by the alleged offender to pay a stipulated fine, make restitution, pay damages to customers, or satisfy any other relief authorized by this section. Any person in violation, except for failing to timely submit written responses to DACS, also commits an unfair and deceptive trade practice in violation of part II of chapter 501, F.S., and is subject to the penalties and remedies imposed for such violation.

Conforming Cross References (Section 57)

Present Situation

Currently, the definition for “plumbing contractor” located in the chapter of law relating to contracting cross references the outdated LP gas definition for “specialty installer” that the bill deletes.

Effect of Proposed Changes

The cross reference is changed to “specialty installer” to conform to the changes consistent with the bill.

Liquefied Petroleum Gas – Rules (Section 58)

Present Situation

In 2011, two bills passed the legislature amending s. 527.06(3) F.S., relating to rules. The two bills did not have identical language and, therefore, caused a conflict and the need for a statutory revision “note.” However, the note is outdated and no longer needed.

Effect of Proposed Changes

The bill removes superfluous implementation language from the notes section of the National Fire Protection Association provision.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DACS estimates the following total average loss in revenues as a result of the bill:

	<u>(FY 18-19)</u>	<u>(FY 19-20)</u>	<u>(FY 20-21)</u>
Transfer Oyster Harvesting Licenses to City of Apalachicola	(\$79,900)	(\$79,900)	(\$79,900)
Liquefied Petroleum Gas (Fee Collection Loss Due to License Consolidation)	(\$3,000)	(\$3,000)	(\$3,000)
Total Revenue	(\$82,900)	(\$82,900)	(\$82,900)¹²⁸

2. Expenditures:

DACS estimates the following changes in expenditures as a result of the bill:

	<u>(FY 18-19)</u>	<u>(FY 19-20)</u>	<u>(FY 20-21)</u>
Transfer Oyster Harvesting Licenses to City of Apalachicola	(\$79,000)	(\$79,000)	(\$79,000)
Antifreeze (Increase in Sample Purchasing)	\$6,000	\$6,000	\$6,000
Gasoline and Oil Inspection (Increased shipping costs for skimming devices)	\$4,800	\$4,800	\$4,800
Brake Fluid (Increase in Sample purchasing)	\$4,370	\$4,370	\$4,370
FL Forest Service (Commercial Driver License)	\$36,000	\$36,000	\$36,000
Total Expenditures	(\$28,730)	(\$28,730)	(\$28,730)
Net Fiscal Impact to DACS	(\$54,170)	(\$54,170)	(\$54,170)¹²⁹

DACS can absorb the fiscal impact within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Citrus Enclosed Structures

¹²⁸ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 21 (Nov. 21, 2017).

¹²⁹ *Id.* at 22.

The Revenue Estimating Conference estimates the reduction in the assessment on screened enclosed structures used in horticulture production will reduce local ad valorem taxes by \$1.9 million on a recurring basis beginning in Fiscal Year 2018-2019.¹³⁰

2. Expenditures:

Apalachicola Bay Oyster Harvesting License

Transferring administrative responsibilities of the Apalachicola Bay Oyster Harvesting license from DACS to the City of Apalachicola, and requiring the city to use or distribute proceeds from the license fees for an Apalachicola Bay oyster shell recycling program and other specified activities, will allow the City of Apalachicola to more directly control the allocation of funds for restoration activities.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides additional coverage under the greenbelt law for horticultural pest protection structures, increased consumer protections by strengthening provisions relating to charitable contributions, telephone solicitation, and the Government Imposter and Deceptive Advertisements Act, and streamlines regulations relating to liquefied petroleum gas and brake fluid sampling.

D. FISCAL COMMENTS:

None.

¹³⁰ Revenue Estimating Conference, *Screen Enclosed Structures*, (Feb. 14, 2018), available at: <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/pdf/page454-459.pdf> (last visited Mar. 7, 2018).