

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/CS/SB 1164

INTRODUCER: Fiscal Policy Committee, Appropriations Committee on Agriculture, Environment, and General Government, and Senator Collins

SUBJECT: Department of Agriculture and Consumer Services

DATE: April 21, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Burse</u>	<u>Becker</u>	<u>AG</u>	<u>Favorable</u>
2.	<u>Blizzard</u>	<u>Betta</u>	<u>AEG</u>	<u>Fav/CS</u>
3.	<u>Burse</u>	<u>Yeatman</u>	<u>FP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1164 addresses various issues related to agriculture and certain powers and duties of the Department of Agriculture and Consumer Services (department). The bill:

- Creates specific tax exemptions and a Farm Tax Exempt Agricultural Materials (TEAM) card for use by the farmer to claim sales tax exemptions.
- Requires state agencies, universities, and colleges to give preference to food commodities grown or produced in the state in certain purchasing agreements.
- Authorizes the department to charge a prorated permit fee for food permits.
- Amends definitions, including but not limited to “milk,” “dairy farm,” “frozen dessert,” “milk transport tank,” and “pasteurization.”
- Permits the department to collect samples for testing from all facilities engaged in the production, processing, holding, or transfer of milk and milk products.
- Removes the prohibition of a person to test for milkfat content. It also removes the prohibition for a person to repasteurize milk.
- Decreases the timeline for when the department shall provide written notice and renewal forms from 60 to 30 days.
- Grants the department the authority to regulate the development of aquaculture.
- Eliminates certain rules related to the aquaculture certificate of registration.
- Increases the estimated value threshold for the appraisal of specified conservation easement acquisitions.

- Revises the composition of the Aquaculture Review Council.
- Revises the composition of the Viticulture Advisory Council.
- Eliminates certain agricultural advisory councils.
- Provides appropriation to the Department of Revenue to implement farm TEAM card.
- Authorizes a non-law enforcement employee of the department, for all lawful purposes within the department's authority, to use drones.

The bill will have an indeterminate impact on state revenue. See Section V. Fiscal Impact Statement. The bill will also cost the Department of Revenue \$143,104, in nonrecurring funds, for the 2023-2024 fiscal year to implement the Florida farm TEAM card.

II. Present Situation:

Farm Tax Exempt Agricultural Materials

Florida law allows for certain farm or irrigation equipment which are used exclusively on a farm or in a forest in the agricultural production of crops or products produced by those agricultural industries included in s. 570.02(1), F.S. or for fire prevention and suppression work with respect to such crops or products to be exempt from sales tax.¹ In order to be tax exempt the purchaser, renter, or lessee signs a certificate stating that the farm equipment is to be used exclusively as required by law.² The purchaser must submit the exemption certificate to Department of Revenue.³

Georgia Agriculture Tax Exemption (GATE)

The Georgia Agriculture Tax Exemption (GATE) is a program created through legislation, which offers qualified agriculture producers a sales tax exemption on agricultural equipment and production inputs. Qualified farmers and agricultural producers can apply to receive a certificate showing that they are eligible for this exemption⁴. Wallet-sized plastic cards are issued to cardholders and listed additional users. Cards are mailed annually to all active accounts in order to signify the current year of eligibility⁵.

As of the 2019 production year, cards will be issued for a three-year term. This will be implemented through a three year phase-in process. All applications will be processed electronically and will be charged a fee based on the expiration date of their card. A full three-year exemption will cost \$150.⁶

Florida Farm to You Program

¹ Section 212.08(3)(a), F.S.

² Section 212.08(3)(c), F.S.

³ Section 212.08, F.S.

⁴ See <https://forms.agr.georgia.gov/gate/> (Last visited March 7, 2023).

⁵ See <https://forms.agr.georgia.gov/GATE/downloads/2023-Program-Changes.pdf> (Last visited March 7, 2023).

⁶ *Id.*

In 2020, Florida Farm to You was created by the department as a tool to connect buyers directly to farmers and producers of Florida-grown commodities. Buyers ranged from individuals seeking locally grown products to food banks searching for fresh produce in their own communities to serve families in need during the COVID-19 pandemic.⁷

Soon after the launch, the Florida Farm to You site was improved by adding an interactive, searchable map, along with functionality to help agriculture producers find transportation for their crops from field to market. Gradually, the short-term solution to a need during a pandemic has transformed into a permanent, user-friendly resource to help bring buyers and producers together.⁸

Division of Food Safety

The Division of Food Safety is directly responsible for assuring the public of a safe, wholesome and properly represented food supply. They accomplish this through the permitting and inspection of food establishments, inspection and evaluation of food products, and the performance of specialized laboratory testing on a variety of food products sold and/or produced in Florida.⁹

The division proactively monitors food from manufacturing and distribution to retail. They administer and enforce the food and poultry and egg laws, support the enforcement of other food safety laws, and investigate consumer complaints related to food.¹⁰

Dairy Industry Inspections

The department is charged with the regulation of all dairy facilities and related operations in the state. The department provides oversight of all Grade “A” dairy farms, Grade “A” processing plants, single service facilities, tanker washes, bulk milk haulers, manufactured milk processing plants, dairy distribution facilities and wholesale frozen dessert and/or ice cream mix facilities.¹¹

The Grade “A” dairy program is a cooperative program with the U.S. Food and Drug Administration (FDA). The department and the FDA work together to ensure the safety of all dairy products produced in Florida. To ensure the program is being administered in accordance with FDA and the National Conference on Interstate Milk Shipments, FDA Regional Milk Specialists conduct routine inspections and program evaluations to evaluate the effective implementation of the Pasteurized Milk Ordinance, as adopted in Florida Administrative Code.¹²

Dairy Industry Technical Council

The Dairy Industry Technical Council is created within the department and shall be composed of seven members, including:

⁷ See https://floridafarm.wpengine.com/?page_id=8 (Last visited March 7, 2023).

⁸ *Id.*

⁹ See <https://www.fdacs.gov/Divisions-Offices/Food-Safety> (Last visited March 7, 2023).

¹⁰ *Id.*

¹¹ See <https://www.fdacs.gov/Business-Services/Food/Dairy-Industry-Inspections> (Last visited March 7, 2023).

¹² *Id.*

- Two citizens of the state, one of whom shall be associated with the Agricultural Extension Service of the University of Florida and the other with the College of Agricultural and Life Sciences of the University of Florida.
- An employee of the Department of Health.
- Two dairy farmers who are actively engaged in the production of milk in this state and who earn a major portion of their income from the production of milk.
- Two distributors of milk. “Distributor” means a milk dealer who operates a milk gathering station or processing plant where milk is collected and bottled or otherwise processed and prepared for sale.¹³

The meetings, powers and duties, procedures, and recordkeeping of the Dairy Industry Technical Council shall be pursuant to s. 570.232, F.S.¹⁴

State Agricultural Advisory Council

The State Agricultural Advisory Council was created within the department and is composed of 33 members, with an alternate for each member, to be appointed by the Commissioner of Agriculture (commissioner)¹⁵. There is one at-large member and one member, each with an alternate, that each represents 32 agricultural or trade interests.¹⁶ The meetings, powers and duties, procedures, and recordkeeping of the State Agricultural Advisory Council are pursuant to s. 570.232.¹⁷

Florida Young Farmer and Rancher Advisory Council

The Florida Young Farmer and Rancher Advisory Council was created within the department and is composed of 12 members to be appointed by the commissioner.¹⁸ The council may submit to the commissioner, annually, findings and recommendations for mitigating challenges facing aspiring farmers and ranchers in the early stages of their careers. The council may examine issues that include, but are not limited to, access to land, availability of credit and capital, and access to business skills training.¹⁹

Industrial Hemp Advisory Council

The Industrial Hemp Advisory Council was established to provide advice and expertise to the department with respect to plans, policies, and procedures applicable to the administration of the state hemp program²⁰. The council is composed 15 members including two members appointed by the Governor, two members appointed by the President of the Senate, two members appointed by the Speaker of the House of Representatives and others.²¹

¹³ Section 502.301, F.S.

¹⁴ Section 502.301, F.S.

¹⁵ Section 570.23, F.S.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Section 570.843, F.S.

¹⁹ *Id.*

²⁰ Section 581.217(14), F.S.

²¹ *Id.*

Animal Industry Technical Council

The Animal Industry Technical Council is created within the department and is composed of 14 members representing various areas in the animal industry, including beef cattle, swine, dairy, horses, and meat processing and packing establishments.²² The meetings, powers and duties, procedures, and recordkeeping of the Animal Industry Technical Council are pursuant to s. 570.232.²³

Fertilizer

When domestic wastewater is treated a solid byproduct accumulates, which is called biosolids or is more commonly known as “sewage sludge.” This byproduct is high in organic content and contains moderate amounts of nutrients that are needed by plants. These characteristics make biosolids valuable as a soil conditioner and fertilizer.²⁴

Properly treated biosolids may be used as a fertilizer supplement or soil amendment, subject to regulatory requirements that have been established to protect public health and the environment. These requirements include pollutant limits, treatment to destroy harmful microorganisms, and management practices for land application sites. Biosolids may be used by application to land in farming and ranching operations, forest lands, and public areas such as parks, or in land reclamation projects such as restoration of mining properties. The highest quality of biosolids, known in Florida as “Class AA,” are distributed and marketed like other commercial fertilizers.²⁵²⁶

Lawn and garden fertilizers are typically manufactured with three primary nutrients: nitrogen (N), phosphorus (P), and potassium (K), all of which are required for plant growth. However, if applied in excess or at the wrong time, such as before a rainstorm, they may be transported to ground or surface waters. These nutrients can cause problems when they reach waterways by causing increased growth of harmful algae which can smother corals or block sunlight needed for coral growth.²⁷

Aquaculture Review Council

The Aquaculture Review Council (ARC) was created by Florida statute to provide a means of communication between the aquaculture industry and the department. The council consists of

²² Section 585.008, F.S.

²³ *Id.*

²⁴ See <https://floridadep.gov/water/domestic-wastewater/content/domestic-wastewater-biosolids> (Last visited March 7, 2023).

²⁵ See <https://floridadep.gov/water/domestic-wastewater/content/domestic-wastewater-biosolids> (Last visited March 7, 2023).

²⁶ See Chapter 62-640, F.A.C.

²⁷ See https://floridadep.gov/sites/default/files/LBSP_24_Fertilizer.pdf (Last visited March 7, 2023).

eight members, the aquaculture representative on the State Agriculture Advisory Council and seven additional members appointed by the commissioner.²⁸

The ARC meets at least quarterly. It is the responsibility of the ARC to recommend rules and policies governing the aquaculture industry to the commissioner. The ARC annually submits a list of recommendations for short-term research projects designed to address research priorities identified in the state aquaculture plan. It reviews and discusses problems that act as barriers to the growth and development of aquaculture and has been key in the continued growth of the aquaculture industry in Florida.²⁹

Viticulture Advisory Council

The commissioner, in consultation with the Viticulture Advisory Council, develops and coordinates the implementation of the State Viticulture Plan, which identifies problems and constraints of the viticulture industry, proposes possible solutions to those problems, and develops planning mechanisms for the orderly growth of the industry, including but not limited to:

- Criteria for viticultural research, service, and management priorities;
- The potential for viticulture products in terms of market and needs for development;
- Evaluation of wine policy alternatives, including, but not limited to, continued improvement in wine quality, blending considerations, promotion and advertising, labeling and vineyard designations, and development of production and marketing strategies;
- Research and service priorities for further development of the viticulture industry; and
- Business planning, investment potential, financial risks, and economics of production and utilization.³⁰

Aquaculture

The Florida Aquaculture Policy Act established that aquaculture is agriculture, and consolidated state regulatory responsibilities under the department. Florida's aquaculture industry produces the greatest variety of aquatic species of any state in the nation. Moreover, aquaculture is Florida's most diverse agribusiness. The state's subtropical climate, extensive marine and freshwater resources, cargo shipping infrastructure, and extensive coastline have made the state's aquaculture industry uniquely diverse. There are approximately 1,000 certified aquaculture farms in Florida, located in every region of the state, which produce an estimated 1,500 varieties of fish, aquatic plants, mollusks, crustaceans, turtles, amphibians, and alligators for ornamental, food and bait markets as well as for sporting, conservation, and educational purposes.^{31,32}

²⁸ See <https://www.fdacs.gov/About-Us/Advisory-Councils-and-Committees/Aquaculture-Review-Council> (Last visited March 7, 2023).

²⁹ *Id.*

³⁰ Section 599.003, F.S.

³¹ See <https://www.fdacs.gov/content/download/91723/file/FDACS-P-02145-2020FLAquacultureIndustryOverview.pdf> (last visited March 7, 2023).

³² Ch. 597, F.S.

Drones

Section 934.50, F.S., provides the guidelines for law enforcement and non-law enforcement use of drones.³³ Currently an employee of the Fish and Wildlife Conservation Commission or of the Florida Forest Service may use drones for the purposes of managing and eradicating invasive exotic plants or animals on public lands and suppressing and mitigating wildfire threats.³⁴

III. Effect of Proposed Changes:

Section 1 amends s. 212.08, F.S., to create specific tax exemptions and a Farm Tax Exempt Agricultural Materials (TEAM) card for use by a farmer to claim the applicable sales tax exemptions. The department shall adopt these rules by January 1, 2024. The bill also specifies that, for items purchased tax exempt, proof of acceptance by a selling dealer of a Florida farm TEAM card from a purchaser relieves that selling dealer of the responsibility of collecting the sales tax on such items.

Section 2 grants the Department of Revenue the authority to adopt emergency rules to for the purpose of implementing the Florida farm TEAM card.

Section 3 amends s. 213.053, F.S., to grant the Department of Revenue to make information available to the Department of Agriculture and Consumer Services (department) for the purpose of administering or issuing the FARM card.

Section 4 creates s. 287.0823, F.S., to require state agencies, universities, and colleges to give preference to food commodities grown or produced in the state in certain purchasing agreements and provides conditions for such a preference. The bill also permits the department to adopt, by rule, a form that must be submitted to the department and the deadlines for submission.

Section 5 amends s. 500.03, F.S., to revise the definition of “bottled water,” removing the reference to the Code of Federal Regulations. It removes the definitions of “convenience store,” “food outlet,” “food service establishment,” and “retail food store.”

Section 6 amends s. 500.032, F.S., to revise the charge of the department to include the storage of food.

Section 7 amends s. 500.12, F.S., to remove retail food stores from statue as the “retail food stores” definition has been deleted. It establishes expiration periods for new or existing food permits. It also authorizes the department to charge a prorated permit fee for a food permit issued before September 1, 2023.

Section 8 amends s. 500.121, F.S., to remove retail food stores from statue as the “retail food stores” definition has been deleted.

³³ Section 934.50, F.S.

³⁴ *Id.*

Section 9 amends s. 500.147, F.S., to conform to the revision of the definition of “bottled water,” removing the reference to the Code of Federal Regulations and replacing it with department rule.

Section 10 amends s. 500.172, F.S., to add “mislabeled” to list of potential violations in chapter.

Section 11 amends s. 502.0129, F.S., to define “bulk milk hauler/sampler” to mean a person who collects official samples and transports raw milk. It also revises the definitions of “bulk milk pickup tanker,” “dairy farm,” “frozen dessert,” “frozen desserts plant,” “milk plant,” “milk transport tank,” “raw milk,” “reconstituted milk or milk products” or “recombined milk or milk products,” “retail,” “ultra-pasteurization,” and “wholesale.” The following definitions are removed from statute: “frozen desserts manufacturer,” “frozen desserts retail establishment,” and “frozen dietary dairy dessert” “quiescently frozen confection,” “quiescently frozen dairy confection.”

Section 12 amends s. 502.013, F.S., to delete the purpose of the section regulating the shelf life of milk and milk products in the state.

Section 13 amends s. 502.014, F.S., to permit the department to collect samples for testing from all facilities engaged in the production, processing, holding, or transfer of milk and milk products.

Section 14 amends s. 502.042, F.S., to delete provisions related to shelf-life studies.

Section 15 amends s. 502.053, F.S., to revise the requirement of which facilities must apply to the department for a permit to operate. It deletes certain reporting requirements for frozen dessert plant permit holders. It also amends exemptions to milk hauler permit requirements.

Section 16 amends s. 502.181, F.S., to remove the prohibition for a person to test for milkfat content. It also removes the prohibition for a person to repasteurize milk.

Section 17 amends s. 502.231, F.S., to revise requirements for the imposition of an administrative fine.

Section 18 eliminates the Dairy Industry Technical Council.

Section 19 creates s. 570.16, F.S., to require each licensee to notify the department of the licensee’s email address and provides conditions for violations and notices.

Section 20 eliminates State Agricultural Advisory Council.

Section 21 amends s. 570.71, F.S., to create requirement that the department submit a purchase agreement for conservation easements, for approval, if the purchase price exceeds \$5 million.

Section 22 amends s. 570.715, F.S., to increase the estimated value threshold that requires two appraisals to be conducted for a conservation easement acquisition from \$1 million to \$5 million.

Section 23 amends s. 259.105, F.S., to conform provisions of this section to change made in the bill.

Section 24 eliminates Florida Young Farmer and Rancher Advisory Council.

Section 25 amends 570.93, F.S., which is a technical amendment with the additional requirement of s. 403.067(7)(c), F.S.

Section 26 amends s. 576.011, F.S. to define “controlled release fertilizers” and “fertilizer material.” It also revises definitions for “grade” and “slow release fertilizer.”

Section 27 eliminates the Industrial Hemp Advisory Council.

Section 28 eliminates the Animal Industry Technical Council.

Section 29 amends s. 586.045, F.S., to decrease the timeframe of when the department shall provide written notice and renewal forms from 60 to 30 days.

Section 30 amends s. 595.404, F.S., to add the authority to adopt and implement an exemption waiver process by rule, as required by federal regulations, for sponsors under the programs implemented pursuant to this chapter, notwithstanding s. 120.542, F.S., to the powers and duties of the department. It also grants the department authority to revoke the certification of facilities pursuant to s. 597.004, F.S.

Section 31 amends s. 597.003, F.S., to grant the department with the authority to regulate the development of aquaculture and must submit list of proposed projects to be funded upon appropriation by the legislature.

Section 32 amends s. 597.004, F.S., to eliminate certain rules related to the aquaculture certificate of registration. It provides the licensing authorities for shellfish processing facilities, facilities operated by various agencies, and facilities culturing crocodylians of the order of *Crocodylia*. It also provides that aquaculture products may be sold without restriction as long as product origin is identified, with the exception of shellfish and prohibited and restricted nonnative species identified in the Aquaculture Best Management Practices manual.

Section 33 amends s. 597.005, F.S., to revise the composition of the Aquaculture Review Council. It also provides the council must submit list of proposed research projects to be funded upon appropriation by the legislature.

Section 34 amends s. 599.002, F.S., to revise the composition of the Viticulture Advisory Council.

Section 35 amends s. 934.50, F.S., to authorize a non-law enforcement employee of the Florida Department of Agriculture and Consumer Services, for all lawful purposes within the department’s authority, the use of drones.

Section 36 reenacts s. 373.016, F.S., to conform provisions of this section to changes made in the bill.

Section 37 reenacts s. 373.223, F.S., to conform provisions of this section to change made in the bill.

Section 38 reenacts s. 373.701, F.S., to conform provisions of this section to change made in the bill.

Section 39 provides an appropriation of \$143,104, in nonrecurring funds, for the 2023-2024 fiscal year from the Operating Trust Fund to the Department of Revenue for the purpose of modifying the System for Unified Taxation to implement the Florida farm TEAM card, as created by this act.

Section 40 provides that this act shall take effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The tax exemptions from the Farm Tax Exempt Agricultural Materials (TEAM) card may impact the sales tax collected from farming equipment.

B. Private Sector Impact:

Farmers using farm TEAM card may be responsible for paying taxes if it is determined they were not entitled to tax exemption.

C. Government Sector Impact:

Requiring state agencies, universities, and colleges to give preference to Florida grown food commodities will positively impact local farms and communities. The Department of Revenue estimates it would cost the department \$143,104 (non-recurring) to implement the farm TEAM card.³⁵ Revenue from food permits may be effected as the department can now prorate food permits issued before September 1, 2023.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 212.08, 213.053, 500.03, 500.032, 500.12, 500.121, 500.147, 500.172, 502.012, 502.013, 502.014, 502.042, 502.053, 502.181, 502.231, 570.161, 570.93, 576.011, 586.045, 595.404, 597.003, 597.004, 597.005, 599.002, and 934.50.

This bill repeals the following sections of the Florida Statutes: 502.301, 570.23, 570.843, 581.217 and 585.008.

The bill reenacts the following sections of the Florida Statutes: 373.016, 373.223, and 373.701.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

³⁵ Florida Department of Revenue, *SB 1164 Analysis* (on file with the Senate Committee on Agriculture).

CS by Committee on Fiscal Policy on April 20, 2023:

The committee substitute grants the department authority to revoke the certification of facilities pursuant to s. 597.004, F.S.

CS by Appropriations Committee on Agriculture, Environment, and General Government on April 12, 2023:

The committee substitute:

- Specifies that, for items purchased tax exempt, proof of acceptance by a selling dealer of a Florida farm TEAM card from a purchaser relieves that selling dealer of the responsibility of collecting the sales tax on such items.
- Permits the department to adopt, by rule, a form that must be submitted to the department and the deadlines for submission.
- Authorizes the department to charge a prorated permit fee for a food permit issued before September 1, 2023.
- Creates requirement that the department submit a purchase agreement for conservation easements, for approval, if the purchase price exceeds \$5 million.
- Increases the estimated value threshold for the appraisal of specified conservation easement acquisitions.
- Appropriates funds to the Department of Revenue to implement the Florida Farm TEAM card.

B. Amendments:

None.