

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

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Prepared By: Banking and Insurance Committee

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BILL: SB 1780

SPONSOR: Senator Smith

SUBJECT: Agricultural Products Dealers

DATE: April 5, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhavein</u>	<u>Poole</u>	<u>AG</u>	<b>Favorable</b>
2.	<u>Knudson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<b>Favorable</b>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	<u>GA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

Senate Bill 1780 makes changes to the Florida License and Bond Law to enable the license and bond program to better serve Florida's agricultural industry and to make the program more self-sufficient. The following proposed changes are the result of a review conducted jointly by the House Agriculture Committee staff, the Department of Agriculture and Consumer Services (department), and representatives of Florida's largest agricultural associations. The bill:

- Adds, revises, and clarifies several definitions to better fit today's agriculture and its practices;
- Removes tropical foliage from the list of exemptions and adds timber and timber by-products;
- Changes the existing "cash only" exemption to read, "...United States cash currency or cash equivalents such as money orders, cashier's checks, wire transfers, or debit cards;"
- Requires every dealer in agricultural products to provide the mailing address of the dealer's primary location prior to engaging in business and to notify the department of any changes in the address of the primary location; also, to provide the mailing address of all principals;
- Requires a surety company to give the department a 30-day written notice of cancellation by certified mail before a bond can be cancelled;
- Increases the maximum license fee from \$300 to \$500;
- Increases the maximum license fee for additional locations from \$50 to \$100;
- Clarifies that no bond or certificate of deposit may be in an amount less than \$3,000 and that the bond or certificate of deposit becomes the property of the department;
- Increases the surety bond or certificate of deposit furnished to the department in an amount equal to twice the dollar amount of agricultural products handled for Florida producers, their

agents, or representatives, during the month of maximum transaction during the preceding 12-month period;

- Allows the department to issue a conditional license to an applicant who is unable to provide a single bond or certificate of deposit in the full amount required;
- Clarifies the conditions under which a complaint may be filed against a dealer in agricultural products;
- Increases the minimum amount for filing a complaint from \$250 to \$500 and requires the complainant to pay a \$50 filing fee to the department. If the complainant is successful in proving the claim, the \$50 is reimbursed;
- Allows the inclusion in a complaint of any additional charges necessary to effectuate the sale, places the burden of providing accurate, up-to-date mailing information on the dealer, and allows the department to provide all information to the most recent address of record;
- Increases the maximum fine for violation of any of the law's provisions from \$1,000 to \$2,500;
- Increases the continuing violation fine from \$50 to \$100 per day; and
- Increases the late payment penalty from "not to exceed \$35" to "not to exceed \$100."

This bill substantially amends sections 604.15, 604.16, 604.18, 604.19, 604.20, 604.21, 604.22, 604.23, 604.25, and 604.30 of the Florida Statutes.

## II. Present Situation:

Since its enactment in 1941, the Department of Agriculture and Consumer Services (department) has administered the Florida Agricultural License and Bond Law (law), ss. 604.15-604.34, F.S. The law's purpose is to facilitate the marketing of Florida agricultural products by encouraging a better understanding between product buyers and sellers and by providing a marketplace that is relatively free of unfair trade practices. Due to the perishable nature of many of Florida's agricultural products and the methods of transportation and marketing, such protection is very important to the state's agricultural industry. It helps assure that transactions are recorded properly and that the buyer is financially responsible. In short, the law is in effect to help assure that producers of those products covered by the law receive proper accounting and payment for the products they sell.

Existing law provides that soliciting, handling, or negotiating agricultural products from or for a Florida producer, or a producer's agent, must be licensed and bonded. Sections 604.15-604.34, F.S., require dealers in agricultural products buying directly from a Florida producer or the producer's agent and paying for the product in any form other than cash currency to be licensed with the department. To secure a license, a dealer must:

- File a properly completed application;
- Pay the required license fee;
- Post an adequate surety bond or certificate of deposit.

The surety bond must be payable to the department, and certificates of deposit must be purchased in the dealer's name with the proceeds assigned to the department. The amount must be equal to the dealer's largest month's purchases from Florida producers; however, it cannot exceed \$100,000 or be less than \$3,000. License fees range from \$65 to \$265 depending on the volume of business transacted by the dealer. The bond or certificate of deposit is in place to establish the financial responsibility of the dealer and to assist in final payment for the product.

The law covers all agricultural products except tobacco, sugar cane, citrus and tropical foliage. Citrus is exempt because citrus dealers are covered under the Florida Citrus License and Bond Law found in chapter 601, F.S. Exceptions to the law's requirements are growers or groups of growers selling their own products(s), all persons who buy for cash and pay at the time of purchase with U.S. currency, dealers operating as bonded licensees under the Federal Packers and Stockyards Act, and retail operations purchasing less than \$1,000 in product per month from Florida producers.

Dealers are required by law to account quickly and accurately for the products purchased from or handled for Florida producers. If a producer or the producer's agent has not been properly paid by a dealer, a claim may be filed with the department against the dealer's license. There is no fee for filing a complaint; however, claims must be filed with the department within six months of the date of sale and must involve at least \$250. If the complaint is deemed valid, a letter is sent from the department to the respondent. After presentation of all facts in the case, the department may issue a final order. Once a final order is issued, there is a 30-day appeal period. According to the department, few appeals are filed.

If it is found that the dealer does not comply with the order to pay, the department will order the bonding company to pay over to the department out of the bond posted by the surety. In cases involving certificates of deposit, the financial institution issuing the certificate of deposit is ordered to pay over the proceeds provided for in the Assignment of Certificate of Deposit. In instances where the bond or certificate of deposit is not large enough to pay all claims against the dealer, funds are distributed pro rata among the claimants.

### **III. Effect of Proposed Changes:**

**Section 1.** Amends s. 604.15, F.S., to change the definition of the term "agricultural products" to include sod, tropical foliage, horticulture, hay and any other non-exempt agricultural products produced in the state. Removes tropical foliage from the list of exemptions and adds timber and timber by-products (as defined in s. 591.17, F.S.). Changes the definition of the term "dealer in agricultural products" to include partnerships, corporations, or other business entities. Adds definitions for "negotiating broker," and "producer's agent." Clarifies the definition of "net return basis" by replacing the word "person" with "producer."

**Section 2.** Amends s. 604.16, F.S., to revise exceptions to provisions (ss. 604.15-604.34, but not including 604.22(2), F.S.) regulating dealers in agricultural products. A dealer in agricultural products who pays with cash or a cash equivalent such as a money order, cashier's check, wire transfer, electronic funds transfer or debit card is exempt from the provisions. Previously, the exemption was for "all persons" who pay at purchase with U.S. currency. Additionally, the

exemption for dealers who purchase less than \$1,000 worth of Florida agricultural products during their peak month no longer requires that the dealer operate exclusively on a retail basis.

**Section 3.** Amends s. 604.18, F.S., to require dealers to provide the primary mailing address and physical address for each place of business. Provides criteria for change of address. Requires dealers applying for a renewal license to provide certain information relating to the dollar amount of business done or estimated to be done.

**Section 4.** Amends s. 604.19, F.S., to provide criteria for cancellation of a bond or certificate of deposit by a surety company. The cancellation of a bond or certificate of deposit does not relieve the surety company or financial institution of liability for purchases or sales occurring while the bond or certificate of deposit was in effect. Increases the maximum license fee from \$300 to \$500. Increases the maximum license fee for additional locations from \$50 to \$100. Increases the maximum penalty from \$35 to \$100 if a dealer fails, refuses, or neglects to apply and qualify for renewal of a license on or before the date of expiration.

**Section 5.** Amends s. 604.20, F.S., to provide a calculation for the amount of a bond or certificate of deposit. The section clarifies that no bond or certificate of deposit may be in an amount less than \$3,000 and that the bond or certificate of deposit becomes the property of the department. Increases the surety bond or certificate of deposit furnished to the department in an amount equal to twice the dollar amount of agricultural products handled for Florida producers, their agents, or representatives, during the month of maximum transaction during the preceding 12 month period. Authorizes the department to issue a conditional license to an applicant who is unable to provide a single bond or certificate of deposit in the full amount required.

**Section 6.** Amends s. 604.21, F.S., to clarify the conditions under which a complaint may be filed against a dealer in agricultural products. Increases the minimum transaction amount from \$250 to \$500 in a single license year, in order to file a complaint. Requires a complainant to pay a \$50 filing fee to the department. If the complainant is successful in proving the claim, the \$50 fee is reimbursed. Establishes procedures and requirements for filing a complaint with the department and limits the amount of time to six months that the complainant can be held in abeyance. Provides that any party adversely affected by the final order is entitled to seek review of the final order pursuant to s. 120.68, F.S. Clarifies distribution of bond or certificate of deposit proceeds.

**Section 7.** Amends s. 604.22, F.S., to revise recordkeeping requirements of licensees. Clarifies the application of provisions of s. 604.16 (2), (3), and (4), F.S.

**Section 8.** Amends s. 604.23, F.S., to clarify the conditions under which a complaint may be filed against a dealer in agricultural products.

**Section 9.** Amends s. 604.25, F.S., to clarify provisions and update terminology pertaining to the department's refusal to grant, suspend, or revoke the license of a dealer in agricultural products.

**Section 10.** Amends s. 604.30, F.S., to clarify that a violator of provisions regulating dealers in agricultural products may be a person, partnership, corporation, or other business entity.

Increases the maximum administrative fine for violation of any of the law’s provisions from \$1,000 to \$2,500. Increases the maximum fine for continued violation of an administrative order from \$50 to \$100 per day.

**Section 11.** Provides that this act shall take effect October 1, 2005.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The proposed changes to the Florida License and Bond Law will result in increased fees, penalties and fines. According to the Department of Agriculture and Consumer Services, these changes will also result in an estimated 50 percent increase in bond coverage and protection for the Florida producer.

C. Government Sector Impact:

	<b>Fund</b>	<b>FY 2005-06</b>	<b>FY 2006-07</b>	<b>FY 2007-08</b>
<b>REVENUES:</b>				
Recurring -	GITF*	370,335	370,335	370,335

\*General Inspection Trust Fund

**Revenues provided in this fiscal information were calculated as follows:**

<b>Bond Amount</b>	<b>Current Fees</b>	<b>Number of Fees Collected</b>	<b>Proposed Fees</b>	<b>Estimated Number of Fees Collected</b>	<b>Additional Revenue</b>
\$ 3,000 – 4,999	\$ 65	374	\$100	498	\$ 25,490

5,000 – 9,999	135	338	170	449	30,700
10,000 – 14,999	195	187	230	249	20,805
15,000–100,000	265	1,043	300	1,387	139,705
Additional locations	50	2,255	100	2,255	112,750
Delinquent penalty	35	629	100	629	40,885
<b>Total Additional Revenue:</b>					<b>\$370,335</b>

	<b>Fund</b>	<b>FY 2005-06</b>	<b>FY 2006-07</b>	<b>FY 2007-08</b>
<b>EXPENDITURES:</b>				
<b>Recurring -</b>				
Salaries & Benefits:				
1 Financial Examiner Analyst II	GITF	53,961.43	53,961.43	53,961.43
2 Financial Examiner Analyst I	GITF	88,477.26	88,477.26	88,477.26
1 Administrative Assistant I	GITF	36,066.16	36,066.16	36,066.16
Expenditures:				
3 Professional Expense Packages	GITF	29,229.00	29,229.00	29,229.00
1 Support Staff Expense Package	GITF	8,150.00	8,150.00	8,150.00
Human Resource Services – 4 FTE @\$389 Cat 107040	GITF	1,556.00	1,556.00	1,556.00
AGMIC Add'l computer system maintenance	GITF	12,000.00	12,000.00	12,000.00
<b>Non-Recurring -</b>				
3 Professional OCO Packages	GITF	5,400.00	0	0
1 Support Staff OCO Package	GITF	2,100.00	0	0
<b>Non-Operating Costs -</b>				
Administrative/Indirect	GITF	20,015.00	20,015.00	20,015.00
General Revenue Service Charge	GITF	27,034.46	27,034.46	27,034.46
<b>TOTAL REVENUES:</b>	<b>GITF</b>	<b>\$370,335.00</b>	<b>\$370,335.00</b>	<b>\$370,335.00</b>

<b>TOTAL COSTS:</b>	<b>GITF</b>	<b>\$283,989.31</b>	<b>\$276,489.31</b>	<b>\$276,489.31</b>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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