

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Finance and Tax

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BILL: PCS/CS/SB 1608 (705324)

INTRODUCER: Appropriations Subcommittee on Finance and Tax; Transportation Committee and Senator Grimsley

SUBJECT: Agricultural Recovery

DATE: February 21, 2018

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Price</u>	<u>Miller</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>Gross</u>	<u>Diez-Arguelles</u>	<u>AFT</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/CS/SB 1608 addresses a number of provisions related to the agriculture industry. Specifically, the bill:

- Allows certain lands classified as agricultural for tax purposes to continue to be classified as such for 5 years after being damaged by a natural disaster. The assessment applies retroactively to lands damaged by a natural disaster that occurred on or after July 1, 2017.
- Reduces the assessment of certain screened enclosed horticultural structures for ad valorem assessment purposes.
- Exempts certain materials related to agriculture and aquaculture from sales and use tax, and provides for retroactive application and a process for claiming a refund.
- Codifies the State Agricultural Response Team within the Department of Agriculture & Consumer Services (DACCS) and assigns it certain duties.
- Provides for the emergency transportation of agricultural products, as well as revising the authority and duties of the Florida Department of Transportation (FDOT) with respect to electronic permit verification during a declared emergency.

For Fiscal Year 2018-2019, the bill appropriates \$5 million in nonrecurring funds from the General Revenue Fund to the Department of Agriculture and Consumer Services for the Florida Agricultural Promotion Campaign.

The Revenue Estimating Conference estimates that this bill will reduce General Revenue Fund receipts by \$59.5 million in Fiscal Year 2018-2019, and \$27.8 million each year thereafter. Local government revenues will be reduced by \$15.4 million in Fiscal Year 2018-2019, and \$8.9 million each year thereafter.

## II. Present Situation:

The present situation for each section of the bill is discussed below in conjunction with the Effect of Proposed Changes.

## III. Effect of Proposed Changes:

**Section 1** provides that the bill may be cited as the “Farmers and Ranchers Matter Act.”

### Assessment of Agricultural Lands (Section 2)

#### *Present Situation:*

The ad valorem tax or “property tax” is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.<sup>1</sup> The property appraiser annually determines the “just value”<sup>2</sup> of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”<sup>3</sup>

The Florida Constitution limits the Legislature’s authority to provide for property valuations at less than just value, unless expressly authorized.<sup>4</sup> The just valuation standard generally requires the property appraiser to consider the highest and best use of property;<sup>5</sup> however, the Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often result in lower assessments. Agricultural land is one example of property that is assessed based on its current use rather than its fair market value.<sup>6</sup>

Currently, certain structures that are attached physically to the land are considered to be a part of the average yields per acre and have no separately assessable contributory (taxable) value.<sup>7</sup>

These structures include:

- Irrigation systems, including pumps and motors;

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<sup>1</sup> Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

<sup>2</sup> Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction. *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

<sup>3</sup> *See* s. 192.001(2) and (16), F.S.

<sup>4</sup> *See* FLA. CONST. art. VII, s. 4.

<sup>5</sup> Section 193.011(2), F.S.

<sup>6</sup> FLA. CONST. art. VII, s. 4(a).

<sup>7</sup> Section 193.461(6)(c), F.S. This treatment of these structures applies when using the income approach in determining value.

- 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 the DACS.<sup>8</sup>

***Effect of Proposed Changes:***

Section 2 amends s. 193.461(7), F.S., to allow agricultural lands that incur damage as a result of a natural disaster for which a state of emergency is declared,<sup>9</sup> 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.

The bill also amends s. 193.461(6)(c), F.S., to provide 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.

**Exemption from Taxation (Sections 3 and 4)**

***Present Situation:***

Florida levies a six percent sales and use tax on the sale or rental of most tangible personal property, admissions,<sup>10</sup> transient rentals,<sup>11</sup> rental of commercial real estate,<sup>12</sup> and a limited number of services. Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.<sup>13</sup> There are currently more than 250 exemptions, exclusions, deductions and credits from the sales and use tax.<sup>14</sup>

In addition to the state tax, s. 212.055, F.S., authorizes counties to impose nine local discretionary sales surtaxes. A surtax applies to “all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rental, admissions, and other transactions by [ch. 212, F.S.], and on communications services as defined in ch. 202,

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<sup>8</sup> Section 193.461(6)(c), F.S.

<sup>9</sup> Section 252.36(2), F.S., provides for declaration of a state of emergency by executive order or proclamation of the Governor, if he or she finds an emergency or the threat of an emergency has occurred or is about to occur. The law provides that the state of emergency “shall continue until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist and she or he terminates the state of emergency by executive order or proclamation, but no state of emergency may continue for longer than 60 days unless renewed by the Governor.

<sup>10</sup> Section 212.04, F.S.

<sup>11</sup> Section 212.03, F.S.

<sup>12</sup> Section 212.031, F.S.

<sup>13</sup> Florida Dept. of Revenue, *Who must pay tax? Partial list of taxable business activities*, available at [http://dor.myflorida.com/dor/taxes/sales\\_tax.html](http://dor.myflorida.com/dor/taxes/sales_tax.html) (last visited Nov. 15, 2017).

<sup>14</sup> See Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook*, 164-170 (2017).

F.S.”<sup>15</sup> The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold, or where they are delivered. Discretionary sales surtax rates currently levied vary by county in a range from 0.5 percent to 1.5.<sup>16</sup>

Building materials are exempt from the sales and use tax and county discretionary sales surtaxes when they are used for certain purposes (e.g., building materials used in rehabilitation of real property located in an enterprise zone<sup>17</sup> or in a rural area of economic opportunity).<sup>18</sup>

***Effect of Proposed Changes:***

Section 3 amends s. 212.08, F.S., to exempt the following from the sales and use tax:

- Building materials used in the construction of a nonresidential farm building;<sup>19</sup>
- Poles, nets, and other materials used for aquaculture leases; and
- Fencing materials used in the construction of farm fences on lands classified as agricultural land.

The bill provides the exemption through a refund of previously paid taxes and is available only for materials purchased on or after September 1, 2017, which allows purchasers the opportunity to receive a refund of taxes paid prior to the effective date of the bill.

The bill defines “building materials” as tangible personal property that becomes a component part of a nonresidential farm building.

The Department of Revenue (DOR) will accept refund applications within six months of the transaction or the effective date of the bill, whichever occurs later. The bill requires an applicant to submit to the DOR:

- An affidavit executed by the owner of the materials or the real property into which the materials will be or were incorporated, including a statement that the materials were or will be used exclusively as required by this exemption;
- The name and address of the person claiming the refund;
- The address and assessment roll parcel number of the property where the improvement is made;
- A description of the improvement; and
- The sales invoice or other proof of purchase of the materials, showing the amount of sales tax paid, the date of purchase, and the name and address of the dealer from whom the materials were purchased.

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<sup>15</sup> Section 212.054, F.S.

<sup>16</sup> Florida Legislature, Office of Economic and Demographic Research, *Florida Tax Handbook*, 2017 Local Discretionary Sales Surtax Rates in Florida’s Counties, 224-225 (2017), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2017.pdf> (last visited Nov. 15, 2017).

<sup>17</sup> Section 212.08(5)(g), F.S.

<sup>18</sup> Section 212.08(5)(r), F.S.

<sup>19</sup> Section 604.50(2)(d), F.S., defines “nonresidential farm building” as any temporary or permanent building or support structure classified as a nonresidential farm building on a farm [which is exempt from the Florida building code] or that is used primarily for agricultural purposes, is located on land that is an integral part of a farm operation or is classified as agricultural land under s. 193.461, F.S., and is not intended to be used as a residential building. The term includes, but is not limited to, a barn, greenhouse, shade house, farm office, storage building, or poultry house.

Section 4 provides the Department of Revenue with emergency rulemaking authority.

### **State Agricultural Response Team (Section 5)**

#### ***Present Situation:***

Section 252.35, F.S., requires the Division of Emergency Management (DEM) to prepare a statewide comprehensive emergency management plan (CEMP). The state CEMP is the master operations document in responding to all emergencies, and all catastrophic, major, and minor disasters. It also:

- Defines the responsibilities of all levels of government, private, volunteer and non-governmental organizations that make up the State Emergency Response Team (SERT); and
- Ensures that all levels of government are able to mobilize as a unified emergency organization to safeguard the well-being of Florida's residents and visitors.<sup>20</sup>

The SERT is comprised of agency-appointed emergency coordination officers and staff from state agencies, volunteer and non-governmental organizations, and is sorted into 18 emergency support functions (ESFs) that carry out coordination and completion of response and recovery activities in the State Emergency Operations Center. The ESFs are grouped by function, rather than agency, with each ESF headed by a primary state agency and supported by additional agencies. Under the CEMP, the DACS is assigned to ESF 17 for animal and agricultural issues.

The DACS facilitated the development of the State Agricultural Response Team (SART), along with other partners, with the mission to “support an effective and coordinated incident response for the animal and agricultural sectors in the State of Florida.”<sup>21</sup> 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.
- Develop and support county and regional outreach, training and information coordination in order to enhance local and regional response capabilities.<sup>22</sup>

Currently, the SART is not expressly identified or addressed in statute.

#### ***Effect of Proposed Changes:***

Section 5 creates s. 252.3569, F.S., to establish the SART within the DACS. The bill provides that the duties of the SART include, but are not limited, to:

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<sup>20</sup> See the current CEMP at p. 5, available at: <https://floridadisaster.org/globalassets/importedpdfs/2016-state-cemp-complete-final-draft.pdf>. (Last visited February 7, 2018.) Section 252.35(2)(a), F.S., requires submission of the CEMP to the Senate President, House Speaker, and Governor on February 1 of every even-numbered year.

<sup>21</sup> See the *FloridaSART* website available at: <http://flsart.org/about/>. (Last visited February 7, 2018.)

<sup>22</sup> *Id.*

- 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;
- The development, training, and support of county agricultural response teams; 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/Permit Verification (Section 6)**

#### ***Present Situation:***

Section 316.565, F.S., currently 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. The FDOT may establish (increase or eliminate) 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. The 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:***

Section 6 amends s. 316.565, F.S., to replace the term “perishable food crops” with “agricultural products.”<sup>23</sup> This allows the Governor to declare an emergency when a breakdown occurs in the normal public transportation facilities necessary in moving agricultural products raised in the state.

The bill authorizes the FDOT to issue, and any law enforcement office authorized to enforce the traffic laws may 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.

### **Florida Agricultural Promotional Campaign/“Fresh From Florida” (Section 7)**

#### ***Present Situation:***

The Florida Agricultural Promotional Campaign (FAPC) was created by the Florida legislature in 1990 to increase consumer awareness and expand the market for Florida agricultural products. Farmers who join the FAPC gain access to industry information and the ability to participate in

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<sup>23</sup> Section 604.60, F.S., defines “agricultural product” as the natural products from a farm, nursery, grove, orchard, vineyard, garden, or apiary, including livestock, tobacco, and vegetables, and includes aquacultural, horticultural, viticultural, forestry, aquatic, dairy, livestock, poultry, bee, and any farm products.

offers such as reduced entrance rates at trade shows, research that includes up-to-date analysis and sales data, and incentive programs for use of the “Fresh From Florida” logo.<sup>24</sup> Additionally, the promotional campaign markets Florida’s agricultural products to consumers through a mix of media, retail outreach, and events.

***Effect of Proposed Changes:***

Section 7 appropriates, for Fiscal Year 2018-2019, \$5 million in nonrecurring funds from the General Revenue Fund to the Department of Agriculture and Consumer Services for the Florida Agriculture Promotion Campaign to expand initiatives promoting agricultural products of this state.

**Other Provisions (Section 8)**

Section 8 directs the Division of Law Revision and Information to replace the phrase “effective date of this act” wherever it occurs in the act with the date the act becomes a law.

**Section 9** provides that the bill takes effect July 1, 2018.

**IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds or that limit their ability to raise revenue or receive state tax revenues. Subsection (b) of s. 18, Art. VII, Florida Constitution, provides that except upon approval of each house of the legislature by two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandates requirements do not apply to laws having an insignificant impact,<sup>25</sup> which for Fiscal Year 2017-2018, is \$2.05 million or less.<sup>26</sup>

The Revenue Estimating Conference estimates this bill will reduce the authority that counties have to raise revenue from the local options sales tax by \$7.6 million in Fiscal Year 2018-2019. Therefore, the bill may require passage by a two-thirds vote of the membership of each house.

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<sup>24</sup> The Florida Department of Agriculture and Consumer Services, “*Fresh From Florida*” Industry Membership, <https://www.freshfromflorida.com/es/Business-Services/Fresh-From-Florida-Industry-Membership> (last visited February 20, 2018).

<sup>25</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf>. (Last visited February 7, 2018.)

<sup>26</sup> Based on the Demographic Estimating Conference’s population adopted on December 5, 2017. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf>. (Last visited February 7, 2018).

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

The Revenue Estimating Conference estimates that this bill will reduce General Revenue Fund receipts by \$59.5 million in Fiscal Year 2018-2019, and \$27.8 million each year thereafter. Local government revenues will be reduced by \$15.4 million in Fiscal Year 2018-2019, and \$8.9 million each year thereafter.

The table below outlines the revenue impact of the bill.

Issue	GR		Trust		Local		Total	
	<u>1st year</u>	<u>Recur.</u>	<u>1st year</u>	<u>Recur.</u>	<u>1st year</u>	<u>Recur.</u>	<u>1st year</u>	<u>Recur.</u>
5-year agricultural assessment	-	-	-	-	-	-	-	-
Screened enclosed structures	-	-	-	-	-	(1.9)	-	(1.9)
Building materials	(40.8)	(18.4)	(*)	(*)	(10.5)	(4.7)	(51.3)	(23.1)
Fencing materials	(18.5)	(9.2)	(*)	(*)	(4.8)	(2.3)	(24.1)	(11.4)
Aquaculture leases	(0.2)	(0.2)	(*)	(*)	(0.1)	(*)	(0.3)	(0.2)
<b>Total</b>	<b>(59.5)</b>	<b>(27.8)</b>	<b>(*)</b>	<b>(*)</b>	<b>(15.4)</b>	<b>(8.9)</b>	<b>(75.7)</b>	<b>(36.6)</b>

(\*) Impact less than \$50,000.

**B. Private Sector Impact:**

Some owners of agricultural land will experience lower ad valorem tax assessments.

Purchasers of materials may receive a reduction in the cost of construction if they receive a refund of the sales and use tax paid for certain agriculture and aquaculture materials.

**C. Government Sector Impact:**

For Fiscal Year 2018-2019, the bill appropriates \$5 million in nonrecurring funds from the General Revenue Fund to the Department of Agriculture and Consumer Services for the Florida Agriculture Promotion Campaign.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 193.461, 212.08, and 316.565.

This bill creates the following sections of the Florida Statutes: 252.3569 and 604.71.

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

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

**Recommended CS by Appropriations Subcommittee on Finance and Tax on February 21, 2018:**

The committee substitute:

- Provides an agricultural assessment retroactively to lands damaged as a result of a natural disaster that occurred on or after July 1, 2017.
- Removes the exemption for the cost of labor associated with the materials exemption, labor costs are not currently taxable, and makes technical changes.
- Removes the Agritourism Signage provision.
- Extends to the Department of Transportation the option to issue electronic permit verifications during declared emergencies. The permit is valid for up to 60 days or for the duration of the emergency, whichever comes first.
- Appropriates \$5 million in nonrecurring funds from the General Revenue Fund to the Department of Agriculture and Consumer Services for the Florida Agriculture Promotion Campaign.

**CS by Transportation on February 6, 2018:**

The committee substitute:

- Provides an additional set of circumstances under which an existing agricultural classification of lands may be extended or continued.
- Adds certain screened enclosed horticultural structures to a list of structures currently deemed to have no separately assessable value for purposes of the income methodology approach to ad valorem assessment of agricultural property.
- Exempts certain agriculture and aquaculture related materials and labor costs from sales, use, and transaction taxation under Chapter 212, F.S., and provides a process for claiming a refund.
- Codifies the SART within the DACS and assigns it certain emergency management related duties.

- Revises provisions relating to emergency transportation of perishable food, revising applicability of those provisions to crops grown and livestock raised in the state, as well as revising related authority and duties of the FDOT related to truck weight restriction waivers.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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