

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 Agriculture

BILL: SB 1514

INTRODUCER: Senator Albritton

SUBJECT: Department of Agriculture and Consumer Services

DATE: February 7, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhavein</u>	<u>Becker</u>	<u>AG</u>	<u>Pre-meeting</u>
2.	<u> </u>	<u> </u>	<u>IT</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

I. Summary:

SB 1514 addresses various issues related to agriculture and certain powers and duties of the Department of Agriculture and Consumer Services (department). Specifically, the bill

Energy

- Revises the contents of an annual department report to the Governor and the Legislature to include the development of renewable energy, alternative fuels, and alternative technologies;
- Requires the department to promote the development of alternative fuel and alternative vehicle technologies; and
- Deletes a requirement that the department prepare a separate energy report of the utilization of the renewable energy technologies investment tax credit.

Agriculture

- Clarifies the definition of food establishment to be consistent with the state’s current regulatory structure;
- Revises the membership of the Florida Food Safety and Food Defense Advisory Council;
- Realigns Chapter 502 with recent updates to the federal Grade A Pasteurized Milk Ordinance;
- Clarifies the preexisting distinction between wholesale and retail frozen dessert sellers and phases out the frozen dessert plant number of gallons of frozen dessert produced reporting requirement;
- Revises the authority of the department to include the inspection of facilities used to distribute milk and milk products and collect samples of those products for testing;
- Eliminates the Milkfat Content Permit reporting requirements;
- Deletes to the Dairy Industry Technical Council;

- Postpones a sunset provision for certain Pest Control Trust Fund expenditures;
- Revises the requirements for the agriculture water conservation program and expands the types of cost-share projects for irrigation system retrofit, mobile irrigation laboratory evaluations, and water conservation that can be considered and funded; and
- Establishes a waiver process by rule for School Nutrition Program Sponsors.

Licensing

- Defines Raw Agricultural Commodity Fumigation and clarifies the applicability of licensure requirements;
- Enables the department to consider whether an entity performs Raw Agricultural Commodity Fumigation when making license classification decisions; and
- Clarifies the food establishment licensee fee submission deadline; and
- Revises the Florida Service's training requirements and certifications for firefighters.

II. Present Situation:

Department of Agriculture and Consumer Services Office of Energy

The Office of Energy is the legislatively designated state energy policy and program development office in Florida. It evaluates energy-related studies, analyses and stakeholder input and submits an Office of Energy Annual Report in order to recommend to the Governor and Legislature energy policies and programs that will move Florida toward a more diverse, stable and reliable energy portfolio. Using available state and federal funds, it develops and manages energy efficiency, renewable energy, and energy education programs throughout the state.¹

Raw Agricultural Commodities Fumigation

Raw food may become infested with common pests such as weevils, grain borers, flour beetles, mites, moth larvae, mice, and rats. Producers, commercial silo managers, handlers, shippers, and commodity brokers commonly rely on fumigants to prevent or minimize the loss of valuable commodity. Raw agricultural commodity fumigation is regulated by the Florida Pesticide Law, however, there is currently no statutory definition for fumigation of agricultural commodities. All persons who apply or supervise the application of restricted use fumigant pesticides to raw agricultural commodities must have a pesticide applicator license issued by the department's Bureau of Licensing and Enforcement/Pesticide Certification Section.²

Florida Food Safety and Food Defense Advisory Council

The Florida Food Safety and Food Defense Advisory Council serves as a forum for investigating and evaluating issues that ensure a safe food supply in Florida. The council shall consist, but need not be limited to, the Commissioner of Agriculture or his or her designee; the State Surgeon General or his or her designee; the Secretary of the Department of Business and Professional Regulation or his or her designee; the person responsible for domestic security within the

¹ See <https://www.fdacs.gov/Divisions-Offices/Energy> (Last visited February 6, 2020).

² See <https://edis.ifas.ufl.edu/pi188> (Last visited February 6, 2020).

Department of Law Enforcement; members representing the food production, processing, distribution or sale industries; food industry group representatives; consumers or members of citizens groups; scientists or other experts from state universities; representatives from local, state and federal agencies; the chairs of the Florida House and the Senate Agriculture Committees or their designees; and the chairs of Florida House or Senate Committees with jurisdictional oversight over home defense issues. The list above describes the minimum membership but does not prevent the Commissioner of Agriculture from appointing additional members.³

Milk, Milk Products, and Frozen Desserts

The Grade A Pasteurized Milk Ordinance is a collection of rules assembled by the United States Food and Drug Administration that prescribes a baseline for products sold across the United States. The ordinance has been adopted by department rule. Recent revisions require the definitions in the Florida Statutes to be updated, along with the types of facilities listed in the powers and duties section to realign them with the Grade A Pasteurized Milk Ordinance. The products and facility types listed in s. 502.014, F.S. are not currently inclusive of all products or entities covered by the Grade A Pasteurized Milk Ordinance and under the department's existing regulatory authority.

Currently, s. 502.053, F.S. requires frozen dessert plants that manufacture and/or wholesale these products to submit monthly, quarterly, semiannual, and annual reports documenting the number of gallons of frozen dessert sold. The intent of the legislation is to only require wholesaling entities to register for this license; retailers must conform to other food safety regulations. The required reports are not consistently utilized to materially impact the regulatory process. Also, the department uses many other mechanisms to ensure that Florida's dairy supply and frozen desserts made with dairy are safe.

Individuals and entities that would like to test for milkfat content are required to be permitted by the department. There is currently no license fee. These milkfat testing results are not used or retained by the department, and milkfat content does not affect food safety. Commercial entities commonly test milkfat to ensure that the products they receive from suppliers conform to contractual standards. The Grade A Pasteurization Ordinance requires Grade A products to be pasteurized at the final point of packaging, whether or not a supplier previously pasteurized them. Because of the current supply chain structure, dairy products are frequently re-pasteurized to comply with the Grade A Pasteurization Ordinance requirements. It is currently unlawful to re-pasteurize in Florida.⁴

Florida Forest Service

The Florida Forest Service employs more than 1,250 people in more than 90 job classes. To become licensed, Florida Forest Service firefighters must complete a fire training course approved by the Florida State Fire College of the Division of State Fire Marshal and a minimum of 250 hours of wildfire training. The Division of the State Fire Marshal's structural training

³ See Department of Agriculture and Consumer Services, Bill Analysis for SB 1514, p. 3 (January 27, 2020) (on file with the Senate Committee on Agriculture).

⁴ *Ibid.*

course must be at least 206 hours. Students must pass a required exam administered by the division and meet the Florida Forest Services' requirements to receive a Forestry Certificate of Compliance. The Florida Forest Service, unlike many other fire suppression and safety agencies, primarily manages wildland or forest fires that may involve a structural element.

School Food and Nutrition Services

Agencies are authorized to waive rules when the person subject to the rule demonstrates that the requirement has been achieved by other means, and when the application of a rule would create substantial hardship or would violate the principles of fairness. Section 12(l) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1760(l), authorizes state administering agencies to request exemptions to specific School Nutrition Program requirements if a program sponsor demonstrates a hardship, and the request does not conflict with the U.S.C. requirements that cannot be waived. The bill would allow the department to establish an exemption, variance or waiver process by rule for School Nutrition Program Sponsors.⁵

III. Effect of Proposed Changes:

Section 1 amends s. 377.703, F.S., to better reflect the functions and policy areas of the department's Office of Energy. It revises the contents of an annual department report to the Governor and the Legislature concerning the state's response to energy supply and demand and its effect on Florida citizens. It must now include the development of renewable energy, alternative fuels, and alternative technologies. The bill requires the department to promote the development of alternative fuel and alternative vehicle technologies. It requires the Division of Emergency Management to consult with the department to include specified provisions in its energy emergency contingency plan. The bill deletes a requirement that the department submit an assessment of how the renewable energy technologies investment tax credit and the renewable energy production credit are utilized.

Section 2 amends s. 487.021, F.S., to add a definition for "raw agricultural commodities fumigation" to the Florida Pesticide Law.

Section 3 amends s. 487.0435, F.S., to authorize the department to consider the use of a fumigant as a pesticide for raw agricultural commodities.

Section 4 amends s. 500.03, F.S., to update definitions used for this chapter. It also deletes definitions for "food outlet," "food service establishment," and "retail food store."

Section 5 amends s. 500.033, F.S., to revise the membership of the Florida Food Safety and Food Defense Advisory Council to include the person responsible for domestic security within the Department of Law Enforcement or his or her designee.

Section 6 amends s. 500.12, F.S., to delete obsolete terms in order to conform provisions to changes made by this act. It revises the date by which a late fee is imposed after nonpayment of a

⁵ *Ibid.*

food permit fee. If a permit fee is not received in full on or before January 1, the department may charge a late fee not exceeding \$100.

Section 7 amends s. 500.121, F.S., to delete all references to the term “retail food store,” which was deleted in Section 4 of the bill.

Section 8 amends s. 500.147, F.S., to update the dates in Florida’s beverage and bottled drinking water provisions to conform to recent federal revisions.

Section 9 amends s. 502.012, F.S., to update the state’s regulatory authority to conform to recent revisions to the federal Grade A Pasteurized Milk Ordinance. It adds definitions for the terms “bulk milk hauler/sampler,” “reconstituted milk or milk products,” “recombined milk or milk products,” “retail,” “ultra-pasteurization,” and “wholesale.” It also redefines the terms “bulk milk pickup tanker,” “dairy farm,” “milk plant,” and “milk transport tank.”

Section 10 amends s. 502.014, F.S., to include products and facility types in the state’s regulatory authority that are covered by the Grade A Pasteurized Milk Ordinance.

Section 11 amends s. 502.053, F.S., to only require wholesaling entities to register for operation permits for manufacturing frozen dessert products. It deletes a department requirement that a frozen dessert plant permit holder must submit monthly, quarterly, semiannual, and annual reports to document the number of gallons of frozen dessert sold. The bill also provides exemptions from bulk milk hauler/sampler permit requirements.

Section 12 amends s. 502.181, F.S., to delete a prohibition against re-pasteurization of milk and a requirement that milkfat testers be licensed by the department.

Section 13 amends s. 502.231, F.S., to delete a penalty imposed on frozen dessert plant permit holders who fail to submit the report that Section 11 of the bill deleted.

Section 14 repeals s. 502.301, F.S., relating to the Dairy Industry Technical Council.

Section 15 amends s. 570.441, F.S., to extend the expiration for the use of funds in the Pest Control Trust Fund from June 30, 2020, until June 30, 2024. This would allow the department to continue to use these funds to carry out the duties of the Division of Agricultural Environmental Services.

Section 16 amends s. 570.93, F.S., to enable cost-share funds to continue to be used for irrigation system retrofits, mobile irrigation lab evaluations, and additional water conservation activities under the department’s agricultural water conservation and agricultural water supply program.

Section 17 amends s. 590.02, F.S., to require the Florida Forest Service to restructure its training course to better meet its wildland firefighters’ specific training needs. The training curriculum would need to contain a minimum of:

- 40 hours of structural firefighter training;
- 40 hours of emergency medical training; and
- 376 hours of wildfire training, rather than the current 250.

Section 18 amends s. 595.404, F.S., to allow the department to establish an exemption, variance, and waiver process, by rule, for School Nutrition Program Sponsors.

Section 19 amends s. 633.408, F.S., to provide wildland firefighter training and certification for firefighters and volunteer firefighters. These changes are needed to conform to changes made to Section 17 of the bill.

Section 20 reenacts s. 373.016, F.S., relating to declaration of policy, conditions for a permit, and a declaration of policy, respectively to incorporate the amendment made to s. 500.033, F.S., in references thereto.

Section 21 reenacts s. 373.223, F.S., relating to declaration of policy, conditions for a permit, and a declaration of policy, respectively to incorporate the amendment made to s. 500.033, F.S., in references thereto.

Section 22 reenacts s. 373.701, F.S., relating to declaration of policy, conditions for a permit, and a declaration of policy, respectively to incorporate the amendment made to s. 500.033, F.S., in references thereto.

Section 23 provides that this act shall take effect July 1, 2020.

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 identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill revises the date by which a late fee is imposed after nonpayment of a food permit fee. If a permit fee is not received in full on or before January 1, the department may

charge a late fee not exceeding \$100. The bill does not make any change to the amount of the fee.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 377.703, 487.021, 487.0435, 500.03, 500.033, 500.12, 500.121, 500.147, 502.012, 502.014, 502.053, 502.181, 502.231, 570.441, 570.93, 590.02, 595.404, and 633.408.

This bill reenacts the following sections of the Florida Statutes: 373.016, 373.223, and 373.701. This bill repeals section 502.301 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.