

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 1279 Department of Agriculture and Consumer Services
SPONSOR(S): Infrastructure Strategies Committee and Agriculture, Conservation & Resiliency
Subcommittee, Alvarez and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1164

FINAL HOUSE FLOOR ACTION: 109 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 1279 passed the House on April 26, 2023, and subsequently passed the Senate on that same date.

The Department of Agriculture and Consumer Services (DACS) supports and promotes Florida agriculture, protects the environment, safeguards consumers, and ensures the safety and wholesomeness of foods. The bill contains various provisions related to DACS's programs and Florida's agricultural industry. Specifically, the bill:

- Creates the Florida Farm Tax Exempt Agricultural Materials (TEAM) Card;
- Requires state agencies, universities, state colleges, and their contracted food service providers to give preference to Florida grown and produced food;
- Specifies that DACS is the lead agency for regulating and encouraging the development of aquaculture in the state;
- Authorizes DACS to use drones to manage and eradicate plant or animal diseases;
- Repeals outdated and unnecessary boards and councils;
- Revises and repeals various definitions related to food safety, milk regulations, and fertilizer;
- Authorizes DACS to adopt and implement an exemption, waiver, and variance process for school nutrition program sponsors;
- Requires each person who is licensed or permitted by DACS to provide an email address of record;
- Requires DACS to submit a purchase agreement for a conservation easement acquisition to the Board of Trustees of the Internal Improvement Trust Fund if the purchase price exceeds \$5 million;
- Increases the estimated value threshold that requires two appraisals to be conducted for a conservation easement acquisition from \$1 million to \$5 million; and
- Revises various other provisions to modernize DACS practices and streamline regulations.

The bill may have an indeterminate negative fiscal impact on the state that can be absorbed within existing resources.

The bill was approved by the Governor on May 25, 2023, ch. 2023-154, L.O.F., and will become effective on July 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

The Department of Agriculture and Consumer Services (DACS) supports and promotes Florida agriculture, protects the environment, safeguards consumers, and ensures the safety and wholesomeness of foods. Among other programs and activities, DACS:

- Protects Florida's livestock, honey bees, and crop plants from pests and diseases;
- Manages over a million acres of state forest land for multiple uses, including timber, wildlife habitat, and recreation;
- Acts as the state's clearing house for consumer concerns; and
- Tests for toxins, allergens, chemical contaminants, pesticide residues, food additives, and fraudulent formulations in food samples.¹

DACS's Agricultural Economic Development Program works to strengthen Florida's agriculture to meet the needs of the state's growing population through six divisions: Animal Industry; Aquaculture; Food, Nutrition, and Wellness; Fruit and Vegetables; Marketing and Development; and Plant Industry.²

The bill contains various provisions related to DACS's programs and Florida's agricultural industry.

Florida Farm Tax Exemptions

Background

Florida Sales and Use Tax

Florida's state sales and use tax is a six percent levy on retail sales of most tangible property, admissions, transient lodgings, and motor vehicles.³ Sales tax is added to the price of taxable goods or services and the tax is collected from the purchaser at the time of the sale. In addition to the six percent state sales tax, Florida law authorizes counties to levy a discretionary sales surtax.⁴ The Department of Revenue (DOR) is the state agency that administers the state's taxes and fees, including the sales and use tax.⁵

Chapter 212, F.S., contains statutory provisions that authorize the levy and collection of Florida's sales and use tax as well as the exemptions and credits applicable to certain items or uses under specified circumstances.

Florida Farm Tax Exemptions

Florida farmers and ranchers that are engaged in bona fide agricultural production⁶ are exempt from paying sales and use tax on certain items. When purchasing such items, an eligible farmer must furnish to the seller a signed exemption certificate stating that the item(s) are for a designated use in

¹ Office of Program Policy Analysis & Government Accountability Government Program Summaries (GPS), Department of Agriculture and Consumer Services, <https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=4122> (last visited March 12, 2023).

² *Id.*

³ Chapter 212, F.S.

⁴ Sections 212.054 and 212.044, F.S.

⁵ Florida Department of Revenue, *General Tax Administration Program*, https://floridarevenue.com/taxes/Pages/gta_about_us.aspx (last visited March 8, 2023).

⁶ "Agriculture production" means the production of plants and animals useful to humans, including the preparation, planting, cultivating, or harvesting of these products or any other practices necessary to accomplish production through the harvest phase, including the storage of raw products on a farm. The term includes aquaculture, horticulture, floriculture, forestry, dairy, livestock, poultry, bees, and any and all forms of farm products and farm production. Section 212.02(32), F.S.

agricultural production.⁷ There are currently 25 different agricultural sales tax exemptions, and a separate certificate is required for each one.⁸

Each sales tax exemption certificate expires five years after the date of issuance. In reviewing each sales tax exemption certificate renewal, DOR must ensure that the institution, organization, or individual possessing the certificate is actively engaged in an exempt endeavor.⁹ Each institution, organization, or individual that possesses a sales tax exemption certificate is required to cooperate fully with DOR during its review of the certificate(s). DOR will revoke the certificate of any entity that fails to respond to either of two written requests for information regarding their taxable status. If DOR determines that an entity no longer qualifies for an exemption, then the tax exemption certificate of that entity will be revoked.

Current agricultural sales tax exemptions are:¹⁰

- Animal health and aquaculture health products;
- Aquaculture feed;
- Dyed diesel fuel used for aquaculture;
- Additional aquaculture exemptions for fuel;
- Electricity used for agricultural packing and other purposes;
- Electricity used for agricultural production or processing;
- Fencing and trailers used in agricultural production;
- Fertilizers, insecticides, fungicides, pesticides, and weed killers used for crops, groves, home vegetable gardens, and commercial nurseries;
- Frost protection materials;
- Fuel used for agricultural purposes;
- Generators used exclusively on a poultry farm;
- Insecticides and fungicides, including disinfectants, used in dairy barns or on poultry farms;
- Items used by a farmer to contain, produce, or process an agricultural commodity;
- Liquified petroleum gas or other fuel used to heat a structure in which started pullets or broilers are raised;
- Liquified petroleum gas, diesel, or kerosene used to transport bees by water and in the operation of equipment used in the apiary of a beekeeper;
- Liquified petroleum gas, diesel, or kerosene used for agricultural purposes in any tractor, vehicle, or other farm equipment used exclusively on a farm for farming purposes;
- Nets and repair parts used for nets purchased by commercial fisheries nursery stock, seedlings, cuttings, or other propagative material for growing stock;
- Power farm equipment expansion – accessory parts, accessories, repairs and equipment used through the storage phase of production;
- Portable containers or moveable receptacles used for harvesting or processing farm products;
- Postharvest machinery or equipment;
- Power farm equipment;
- Power farm equipment or irrigation equipment used exclusively in the agricultural production of crops or products;
- Power farm equipment or irrigation equipment used exclusively in fire prevention and suppression work for crops and products;
- Seedlings, cuttings, and plants used to produce food for human consumption; and
- Stakes used to support plants.

⁷ Florida Department of Revenue, *Tax Information Publication*, available at https://floridarevenue.com/taxes/tips/Documents/TIP_22A01-15.pdf.

⁸ See s. 212.08, F.S.

⁹ Section 212.084(1)(a), F.S.

¹⁰ Section 212.08, F.S.

Effect of the Bill

The bill creates the Florida Farm Tax Exempt Agricultural Materials (TEAM) card. A farmer whose property is classified as agricultural¹¹ or who has implemented agricultural best management practices¹² adopted by DACS may apply to DOR for a TEAM card to claim the applicable sales tax exemptions. The farmer may then present the TEAM card to a seller in lieu of the required certificate or affidavit.

For items purchased as tax exempt, proof of acceptance of the TEAM card relieves the selling dealer of the responsibility of collecting the sales tax of the purchased items. DOR must look solely to the purchaser for recovery of the tax if it is determined that the purchaser was not entitled to the claimed exemption.

The bill specifies that the TEAM card is subject to the same DOR review and revocation processes currently applicable to agricultural sales tax exemptions. Each TEAM card is valid for five consecutive years, at which time the review and reissuance procedures apply.

The bill directs DOR to adopt rules necessary to administer the TEAM card and authorizes DACS to take all actions necessary for the administration, issuance, and distribution of the TEAM cards to farmers registered with DOR. The bill requires DOR to accept TEAM card applications beginning January 1, 2024.

The bill authorizes DOR to adopt emergency rules for the purpose of implementing the TEAM card and specifies that the emergency rules will be effective for six months after adoption and may be renewed during the pendency of procedures to adopt permanent rules.

The bill also authorizes DOR to share information with DACS for official purposes related to administering or issuing the TEAM card.

Florida Commodity Preference

Background

The Department of Management Services (DMS) is the business arm of Florida government. DMS's primary mission is to support sister agencies and current and former state employees with workforce and business-related functions.¹³ DMS is divided into two major services areas: Business Operations and Workforce Operations. The business operations area includes the Division of State Purchasing, which develops and oversees the procedures under which agencies purchase commodities and services.¹⁴

Under current law, commodities manufactured, grown, or produced within the state must be given preference whenever there are two or more sealed competitive bids that are otherwise equal with respect to price, quality, and service. A commodity includes any of the various supplies, materials, goods, merchandise, food, equipment, information technology, and other personal property purchased, leased, or otherwise contracted for by the state and its agencies.¹⁵

¹¹ "Agricultural" is a classification of land that is used primarily for bona fide agricultural production purposes; "bona fide agricultural purposes" means good faith commercial agricultural use of the land. Section 193.461(3)(b).

¹² Section 403.067(7)(c)2., F.S.

¹³ Department of Management Services (DMS), *About Us*, https://www.dms.myflorida.com/about_us (last visited March 8, 2023).

¹⁴ *Id.*

¹⁵ "Commodity" also includes interest on deferred-payment commodity contracts approved pursuant to s. 287.063, F.S., entered into by an agency for the purchase of other commodities. However, commodities purchased for resale are excluded from this definition. Printing of publications must be considered a commodity if procured pursuant to s. 283.33, F.S., whether purchased for resale or not. Section 287.012(5), F.S.

Effect of the Bill

By 2025, or upon expiration of any existing food service contract, whichever is earlier, the bill requires all food commodities purchased by an agency, a state university, a Florida College System institution, or any contracted food service provider to be grown or produced in Florida when available, practical, and feasible.

The bill directs state agencies, state universities, Florida College System institutions, and contracted food service providers to give preference to food commodities grown or produced in Florida when purchasing food commodities of any class, variety, or use in their natural state or as processed by a farm operation or processor, including farm products.¹⁶

The bill allows a competitive solicitation for the purchase of food commodities to give preference to a responsive and responsible vendor who agrees to fulfill the contract through the use of food commodities grown or produced in Florida. These vendors may be given preference over other vendors, provided that such preference does not exceed 10 percent of the total score allocated to price or does not result in a price increase greater than 10 percent.

The bill directs DMS to prepare and submit a biennial report to the Governor, the Cabinet, the President of the Senate, and the Speaker of the House of Representatives which describes the amount of food commodities grown or produced in the state which were purchased according to the above requirements. The bill requires DMS to adopt by rule a form to be submitted by each state agency, state university, and Florida College System institution, or contracted food service provider thereof which purchases food commodities. Such state entities must submit the form biennially to DMS. The report must contain, at a minimum:

- The total expenditures on, and the quantity purchased of, food commodities by each agency, state university, and Florida College System institution;
- The total expenditures on, and the quantity purchased of, food commodities grown or produced in Florida by each agency, state university, and Florida College System institution;
- The total expenditures of each agency, state university, or Florida College System institution on food commodities grown or produced outside of Florida; and
- A statement and assessment of the good faith efforts of, and any failures by, each state agency, state university, or Florida College System institution, or any contracted food service provider, to comply with these requirements.

DACS Boards and Councils

Background

There are various boards and councils created within DACS to assist the agency in carrying out its various duties.

The Dairy Technical Council¹⁷ is composed of seven members, including two state citizens associated with the University of Florida, an employee of the Department of Health, two dairy farmers, and two distributors of milk. The council has not met since 2016.

The State Agricultural Advisory Council¹⁸ is composed of 33 members, appointed by the Commissioner of Agriculture (Commissioner), that represent 32 agricultural or trade interests. This council has not met in the last two administrations.

¹⁶ "Farm products" means any plant or animal or insect useful to humans and includes, but is not limited to, any product derived therefrom. Section 823.14(3)(e). "Plants or plant products" means trees, shrubs, vines, forage and cereal plants, and all other plants and plant parts, including cuttings, grafts, scions, buds, fruits, vegetables, roots, bulbs, seeds, wood, lumber, and all products made from them, unless specifically excluded by DACS rules. Section 581.011(27), F.S.

¹⁷ Section 502.301, F.S.

¹⁸ Section 570.23, F.S.

The Florida Young Farmer and Rancher Advisory Council¹⁹ is composed of 12 members appointed by the Commissioner. The council may annually submit to the Commissioner findings and recommendations for mitigating challenges facing aspiring farmers and ranchers in the early stages of their careers. This council has not met since its establishment in 2018.

The Industrial Hemp Council²⁰ was established to provide advice and expertise to DACS with respect to plans, policies, and procedures applicable to the administration of the state hemp program. 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.

The Animal Industry Technical Council²¹ is composed of 14 members representing various areas in the animal industry, including beef cattle, swine, dairy, horses, and meat processing and packing establishments.

Effect of the Bill

The bill repeals boards and councils that are overseen by DACS and have not met since their establishment in statute, have not officially met for decades, or have fulfilled their purpose and are no longer necessary.²² The bill repeals the following boards and councils:

- The Dairy Technical Council;²³
- The State Agricultural Advisory Council;²⁴
- The Florida Young Farmer and Rancher Advisory Council;²⁵
- The Industrial Hemp Council;²⁶ and
- The Animal Industry Technical Council.²⁷

Email Address of Record

Background

Each year, as required by law, DACS sends thousands of notices. Currently, there is no requirement for a person who is licensed or permitted in the state to provide DACS with their email address or to keep their email address up-to-date. This has resulted in email addresses being an unreliable method of contact.²⁸

Effect of the Bill

The bill requires each person who is licensed or permitted by DACS to provide an email address of record. A person who fails to notify DACS of a change in their email address commits a violation that may be subject to penalties. DACS may impose a Class II administrative or civil fine.²⁹

The bill specifies that service by email to a person's email address of record will constitute adequate and sufficient notice when service is required by law except for when an agency intends to grant or

¹⁹ Section 570.843, F.S.

²⁰ Section 585.008(14), F.S.

²¹ Section 585.008, F.S.

²² DACS, *Agency Analysis for House Bill 1279*, March 8, 2023 (on file with the Agriculture, Conservation & Resiliency Subcommittee).

²³ Section 502.301, F.S.

²⁴ Section 570.23, F.S.

²⁵ Section 570.843, F.S.

²⁶ Section 581.217, F.S.

²⁷ Section 585.008(14), F.S.

²⁸ DACS, *Agency Analysis for House Bill 1279*, March 8, 2023 (on file with the Agriculture, Conservation & Resiliency Subcommittee).

²⁹ Section 570.971(3). Under a "Class II" violation, a fine not to exceed \$5,000 may be imposed. Section 570.971(1)(b).

deny a licensing application.³⁰ The bill requires DACS to give notice by mail or telephone if delivery to an email address of record fails.

Drones

Background

The Freedom from Unwarranted Surveillance Act³¹ (act), restricts the use of drones by individuals and government entities to conduct surveillance.

Under Florida law, a drone is a powered, aerial vehicle that:

- Does not carry a human operator;
- Uses aerodynamic forces to provide vehicle lift;
- Can fly autonomously or be piloted remotely;
- Can be expendable or recoverable; and
- Can carry a lethal or nonlethal payload.³²

The act prohibits law enforcement agencies from using a drone to gather evidence or other information with certain exemptions. The act recognizes that a real property owner is presumed to have a reasonable expectation of privacy on his or her privately owned real property if he or she cannot be seen by persons at ground level who are in a place they have a legal right to be.³³ Therefore, law enforcement may not use a drone to gather evidence or other information, with certain exceptions. When law enforcement has reasonable suspicion that swift action is needed for one of the following reasons, drone use is permitted to:

- Prevent imminent danger to life or serious damage to property;
- Forestall the imminent escape of a suspect or the destruction of evidence; or
- Achieve a purpose such as facilitating the search for a missing person.³⁴

Other purposes for which drone use is authorized include:

- Countering terrorist attacks;
- Effecting search warrants authorized by a judge;
- Providing a law enforcement agency with an aerial perspective of a crowd of 50 people or more, under certain circumstances;
- Assisting with traffic management;
- Facilitating the collection of evidence at a crime scene or traffic crash scene;
- Assessment of damage due to a natural disaster that is the subject of a state of emergency declared by the state or a political subdivision, or for vegetation or wildlife management on publicly owned land or water;
- Performance of tasks within the scope and practice of certified fire department personnel;
- Lawful business activities licensed by the state, with certain exceptions;
- Assessing property for ad valorem taxation purposes;
- Capturing images of utilities for specified purposes;
- Aerial mapping;
- Cargo delivery;
- Capturing images necessary for drone navigation;
- Routing, siting, installation, maintenance, or inspection of communications service facilities; and
- By non-law enforcement employees of the Fish and Wildlife Conservation Commission or the Florida Forest Service for managing invasive exotic plants or animals, and suppressing and

³⁰ Section 120.60(3), F.S.

³¹ Section 934.50, F.S.

³² Section 934.50(2)(a), F.S.

³³ Sections 934.50(3)(a) and (4), F.S.

³⁴ Section 934.50(4)(c), F.S.

mitigating wildfires.³⁵

Effect of the Bill

The bill creates a new exception to the prohibition against drone use to allow a non-law enforcement employee of DACS to use a drone for activities for the purposes of managing and eradicating plant or animal diseases.

Conservation Easements

Background

A conservation easement is a voluntary, legally binding agreement between a landowner and a government or nongovernment conservation organization that keeps land in agricultural or open space uses. A conservation easement is customized to meet the landowner's objectives and, in most cases, is perpetual.³⁶ Under a conservation easement, a landowner sells his or her right to develop all or part of their land for non-agricultural or non-open space uses.³⁷

The Rural and Family Lands Protection Program

The Rural and Family Lands Protection Program (RFLPP) is a land preservation program within DACS that was created to protect agricultural lands through the acquisition of permanent agricultural land conservation easements.³⁸ Through the RFLPP, DACS, on behalf of the Board of Trustees of the Internal Improvement Trust Fund (Board),³⁹ is authorized to allocate money to acquire perpetual, less-than-fee interests in land, enter into agricultural protection agreements, and enter into resource conservation agreements.⁴⁰

To qualify for acquisition, the agricultural land must protect the integrity and function of working landscapes, ensure opportunities for viable agricultural activities on working lands threatened by conversion to other uses, and meet at least one of the following public purposes:

- Perpetuating open space on working lands that contain significant natural areas.
- Protecting, restoring, or enhancing water bodies, aquifer recharge areas, wetlands, or watersheds.
- Promoting a more complete pattern of protection, including buffers to natural areas, ecological greenways, functioning ecosystems, and military installations.
- Promoting the restoration, enhancement, or management of species habitat, consistent with the purposes for which the easement is acquired.⁴¹

DACS must follow certain appraisal procedures prior to purchasing a less than fee simple title to property under the RFLPP. Each parcel to be acquired must have at least one appraisal.⁴² Two

³⁵ Section 943.50(4)(a)-(b), and (d)-(p), F.S.

³⁶ University of Florida IFAS extension, *Conservation Easements*, <https://programs.ifas.ufl.edu/florida-land-steward/planning-and-assistance/conservation-easements/#:~:text=A%20conservation%20easement%20is%20a,in%20most%20cases%2C%20is%20perpetual.> (last visited March 20, 2023).

³⁷ *Id.*

³⁸ DACS, *Rural and Family Lands Protection Program*, <https://www.fdacs.gov/Consumer-Resources/Protect-Our-Environment/Rural-and-Family-Lands-Protection-Program> (last visited March 21, 2023).

³⁹ The Board comprises the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture and Consumer Services.

⁴⁰ Section 570.71(1), F.S.

⁴¹ *Id.*

⁴² Section 571.715(1)(b), F.S.

appraisals are required when the estimated value of the parcel exceeds \$1 million.⁴³ If both appraisals of a parcel exceed \$1 million and differ significantly, a third appraisal may be conducted.⁴⁴

Through the RFLPP, the state has acquired conservation easements for over 64,361 acres of working agricultural land.⁴⁵ All perpetual easements acquired under the RFLPP must adhere to BMPs established by DACS.⁴⁶

Effect of the Bill

The bill requires DACS to submit a purchase agreement to the Board for approval if the purchase price of a conservation easement acquisition exceeds \$5 million.

The bill increases the estimated value threshold that requires two appraisals to be conducted for a conservation easement acquisition from \$1 million to \$5 million. If both appraisals exceed \$5 million and differ significantly, then a third appraisal may be obtained.

Agricultural Water Policy

Background

DACS's Office of Agricultural Water Policy (OAWP) works with agricultural producers, industry groups, the Department of Environmental Protection (DEP), the university system, and water management districts to implement best management practices (BMPs) addressing both water quality and water conservation.⁴⁷ Agricultural BMPs are practical, cost-effective actions that agricultural producers can take to conserve water and reduce the amount of pesticides, fertilizers, animal waste and other pollutants entering our water resources.⁴⁸

Current law requires DACS to establish an agricultural water conservation cost-share program for irrigation system retrofit, application of mobile irrigation laboratory evaluations, water conservation, and water quality improvement. The program must coordinate with the United States Department of Agriculture and other federal, state, regional, and local agencies. Each year since 2019, the Implementation Bill for the General Appropriations Act has included a provision that required DACS to coordinate with these other agencies only when appropriate. This provision will expire July 1, 2023.

Effect of the Bill

The bill codifies in statute the requirement that DACS must coordinate with other agencies only when appropriate.

Food Safety

Background

DACS is the agency responsible for the enforcement of the production, manufacture, transportation, and sale of food. DACS's Division of Food Safety is directly responsible for assuring the public of a safe, wholesome, and properly represented food supply.⁴⁹ The division accomplishes this through the permitting and inspection of food establishments, the inspection and evaluation of food products, and the performance of specialized laboratory testing on a variety of food products sold or produced in Florida. The division also proactively monitors food from manufacturing and distribution to retail.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ DACS, *Rural and Family Lands Protection Program*, <https://www.fdacs.gov/Consumer-Resources/Protect-Our-Environment/Rural-and-Family-Lands-Protection-Program> (last visited March 21, 2023).

⁴⁶ Rule 5I-7.014(3), F.A.C.

⁴⁷ DACS, *Office of Agricultural Water Policy*, <https://www.fdacs.gov/Divisions-Offices/Agricultural-Water-Policy> (last visited March 10, 2023).

⁴⁸ *Id.*

⁴⁹ DACS, *Division of Food Safety*, <https://www.fdacs.gov/Divisions-Offices/Food-Safety> (last visited March 10, 2023).

Effect of the Bill

The bill expands DACS's authority to enforce the storage of food, in addition to the production, manufacture, transportation, and sale of food.

The bill revises and removes definitions related to DACS's food safety regulations to create regulatory consistency and eliminate outdated terms. Specifically, the bill redefines "bottled water" to mean water intended for human consumption and sealed in a bottle or other container with no added ingredients, except that it may contain safe and suitable antimicrobial agents. The bill also removes the following outdated terms and their associated definitions:

- "Convenience store"
- "Food outlet"
- "Food service establishment"
- "Retail food store"

Milk and Milk Products

Background

DACS regulates all dairy facilities and related operations in the state, including oversight of all Grade "A"⁵⁰ 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. DACS has the authority to conduct shelf-life testing for milk and milk products in the state.⁵¹ DACS is only authorized to conduct inspections of dairy farms, milk plants, and frozen dessert plants and collect test samples of milk, milk products, and frozen desserts.⁵²

Current law provides the following definitions related to DACS's regulation of milk and milk products:

- "Bulk milk pickup tanker" means a vehicle, including the truck and tank, and necessary attachments, used by a milk hauler to transport bulk raw milk for pasteurization from a dairy farm to a milk plant, receiving station, or transfer station.⁵³
- "Dairy farm" means any place or premises where one or more cows, goats, sheep, water buffalo, or other hooved mammals are kept and from which a part or all of the milk is provided, sold, or offered for sale.⁵⁴
- "Frozen dessert" means a specific standardized frozen dessert described in 21 C.F.R. part 135 and any other food defined by DACS rule that resembles such standardized frozen dessert but does not conform to the specific description in 21 C.F.R. part 135. The term includes, but is not limited to, a quiescently frozen confection, a quiescently frozen dairy confection, a frozen dietary dairy dessert, and a frozen dietary dessert.⁵⁵
- "Frozen dessert plant" means any location or premises at which frozen desserts or mix are manufactured, processed, or frozen for distribution or sale at wholesale.⁵⁶
- "Milk" means the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows, goats, sheep, water buffalo, or other hooved mammals.⁵⁷

⁵⁰ The Grade "A" dairy program is a cooperative program with the U.S. Food and Drug Administration (FDA) that ensures the safety of all dairy products produced in Florida. To ensure the program is being administered in accordance with FDA regulations 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. DACS, *Dairy Industry Inspections*, <https://www.fdacs.gov/Business-Services/Food/Dairy-Industry-Inspections> (last visited March 10, 2023).

⁵¹ Section 502.013(1), F.S.

⁵² Section 502.014(2)(a), F.S.

⁵³ Section 502.012(1), F.S.

⁵⁴ Section 502.012(2), F.S.

⁵⁵ Section 502.012(4), F.S.

⁵⁶ Section 502.012(6), F.S.

⁵⁷ Section 502.012(11), F.S.

- “Milk plant” means any place, premises, or establishment where milk or milk products are collected, handled, processed, stored, pasteurized, aseptically processed, bottled, or prepared for distribution.⁵⁸
- “Milk transport tank” means a vehicle, including the truck and tank, used by a milk hauler to transport bulk shipments of milk from a milk plant, receiving station, or transfer station to another milk plant, receiving station, or transfer station.⁵⁹
- “Raw milk” means unprocessed milk.⁶⁰

Effect of the Bill

The bill revises DACS’s authority related to the regulation of milk and milk products to specify that DACS must permit, conduct inspections of, and collect samples for testing from all facilities engaged in the production, processing, holding, or transfer of milk and milk products.

The bill requires all facilities engaged in the production, processing, holding, or transfer of milk and milk products to apply to DACS for a permit to operate. The bill also removes reporting requirements and penalties for the frozen dessert industry.

The bill removes prohibitions on repasteurizing milk and engaging in milkfat testing without first obtaining a permit or license from DACS.

The bill revises several definitions in current law as follows:

- Specifies that “bulk milk pickup tanker” includes a vehicle, and appurtenances necessary for its use, that is used to transport to bulk raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processing after packaging.
- Specifies that “dairy farm” means any place or premises where one or more lactating animals are kept for milking purposes.
- Defines “frozen dessert” to mean a specific standardized frozen dessert described in 21 C.F.R. part 135, excluding part 136.160.
- Defines “frozen dessert plant” to mean any place that pasteurizes dairy products or receives raw milk for the purpose of manufacturing or processing frozen desserts.
- Expands “milk plant” to include any place where milk or milk products are ultra-pasteurized, aseptically processed and packaged, retort processed after packaging, condensed, dried, or packaged.
- Defines “raw milk” to mean unpasteurized milk, rather than unprocessed milk.
- Expands “milk transport tank” to include a vehicle used by a bulk milk hauler/sampler.

The bill creates the following new definitions:

- “Bulk milk hauler/sampler” means a person who collects official samples and transports raw milk from a farm or raw milk products to or from a milk plant, receiving station, or transfer station and is permitted to sample the milk products by any state regulatory agency charged with implementing the United States Food and Drug Administration’s Grade “A” program.
- “Reconstituted milk or milk products” or “recombined milk or milk products” means milk or milk products that result from reconstituting or recombining milk constituents with potable water.
- “Retail” means the sale of goods to the public for use or consumption rather than for resale.
- “Ultra-pasteurization” means a process in which milk or milk product is thermally processed at or above 138 degrees Celsius or 280 degrees Fahrenheit for at least two seconds, before or after packaging, so as to produce a milk or milk product that has an extended shelf-life under refrigerated conditions.
- “Wholesale” means the selling of goods in quantity to be retailed by others.

⁵⁸ Section 502.012(16), F.S.

⁵⁹ Section 502.012(20), F.S.

⁶⁰ Section 502.012(23), F.S.

The bill removes the following outdated terms and their associated definitions:

- “Frozen desserts manufacturer”
- “Frozen desserts retail establishment”
- “Frozen dietary dairy dessert” or “frozen dietary dessert”
- “Quiescently frozen confection”
- “Quiescently frozen dairy confection”

Food Permits

Background

Owners of a food establishment are required to submit an application of renewal of a food permit on or before January 1st. If DACS does not receive an application for renewal within 30 days of its due date, a late fee not exceeding \$100 must be paid in addition to the food permit fee before a new permit can be issued.⁶¹

Effect of the Bill

The bill amends the application due dates for food permit renewals. Under the bill, a food permit issued to a new food establishment on or after September 1, 2023, is valid for one calendar year after the date of issuance. The renewal date for the permit will be the date it was initially issued. In addition, beginning January 1, 2024, a food permit issued to a food establishment before September 1, 2023, will expire on the month and day the initial permit was issued and must be renewed annually on or before that date. The bill allows DACS to charge a prorated permit fee for a food permit issued before September 1, 2023.

The bill allows an owner who has 100 or more permitted food establishment locations to elect to set the expiration dates of their food permits as December 31st of each calendar year.

Embargoing and Detaining

Background

An agent of DACS may issue and enforce a stop-sale, stop-use, removal, or hold order to detain or embargo when he or she finds or has probable cause to believe that any food, food processing equipment, food processing area, or food storage area is in violation of department rules, and is so found to be dangerous, unwholesome, fraudulent, or insanitary.⁶²

Effect of the Bill

The bill expands an agent’s authority to issue and enforce a stop-sale, stop-use, removal, or hold order to detain or embargo to include any mislabeled food, food processing equipment, food processing area, or food storage area in violation of department rules.

Agricultural Environmental Sciences

Background

DACS’s Division of Agricultural Environmental Sciences administers various state and federal regulatory programs concerning environmental and consumer protection issues. These include state mosquito control program coordination; agricultural pesticide registration, testing, and regulation; pest control regulation; and feed, seed, and fertilizer production inspection and testing.⁶³ The division ensures that pesticides are properly registered and used in accordance with federal and state

⁶¹ Section 500.12(1)(b), F.S.

⁶² Section 500.172(1), F.S.

⁶³ DACS, *Division of Agricultural Environmental Services*, <https://www.fdacs.gov/Divisions-Offices/Agricultural-Environmental-Services> (last visited March 10, 2023).

requirements; mosquito control programs are effectively conducted; and feed, seed, and fertilizer products are safe and effective.⁶⁴

Fertilizer

When domestic wastewater is treated, a solid byproduct accumulates known as biosolids. 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.⁶⁵

Properly treated biosolids may be used as 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 reclamations 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.⁶⁶

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.⁶⁷

Current law provides the following definitions related to DACS’s authority to regulate fertilizer:

- “Grade” means the percentage in fertilizer of total nitrogen expressed as N, available phosphorus expressed as P₂O₅, and soluble potassium expressed as K₂O, stated in whole numbers.⁶⁸
- “Slow or controlled release fertilizer” means a fertilizer containing a plant nutrient in a form which delays its availability for plant uptake and use after application, or which extends its availability to the plant significantly longer than a reference “rapidly available nutrient fertilizer,” such as ammonium nitrate or urea, ammonium phosphate, or potassium chloride.⁶⁹

Association of American Plant Food Control Officials

The Association of American Plant Food Control Officials (AAPFCO) is an affiliate of the National Association of State Departments of Agriculture (NASDA).⁷⁰ AAPFCO’s mission is to gain uniformity and consensus amongst the fertilizer regulatory programs in the United States, Puerto Rico, and Canada.⁷¹

Effect of the Bill

The bill revises definitions related to the regulation of fertilizer based on AAPFCO recommendations. Specifically, the bill creates the following new definitions:

- “Controlled release fertilizers” means a slow release fertilizer engineered to provide nutrients over time at a predictable rate under specified conditions.

⁶⁴ *Id.*

⁶⁵ DEP, *Domestic Wastewater Biosolids*, <https://floridadep.gov/water/domestic-wastewater/content/domestic-wastewater-biosolids> (last visited March 16, 2023).

⁶⁶ *Id.* See also ch. 62-640, F.A.C.

⁶⁷ DEP, *Coral Reefs are Valuable*, available at https://floridadep.gov/sites/default/files/LBSP_24_Fertilizer.pdf (last visited March 16, 2023).

⁶⁸ Section 576.011(15), F.S.

⁶⁹ Section 576.011(36), F.S.

⁷⁰ NASDA is a nonpartisan association working to influence policy that is beneficial for all regions, people, and environments. NASDA, *About NASDA*, <https://www.nasda.org/about-nasda/> (last visited March 13, 2023).

⁷¹ NASDA, *Association of American Plant Food Control Officials (AAPFCO)*, <https://www.nasda.org/about-nasda/affiliates/association-of-american-plant-food-control-officials-aapfco/> (last visited March 13, 2023).

- “Fertilizer material” means a fertilizer that contains important quantities of no more than one of the primary nutrients (nitrogen, phosphate, and potash); has 85 percent or more of its plant nutrient content present in the form of a single chemical compound; or is derived from a plant or an animal residue or byproduct or a natural material deposit that has been processed in such a way that its content of plant nutrients has not been materially changed except by purification and concentration.

The bill also revises current law definitions as follows:

- “Grade” means the percentages in fertilizer of total nitrogen expressed as N, available phosphorus expressed as P₂O₅, and soluble potassium expressed as K₂O, stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis. However, specialty fertilizer may be guaranteed in fractional units of less than one percent of total nitrogen, available phosphate, and soluble potash. Fertilizer materials, bone meal, manures, and similar materials may be guaranteed in fractional units.
- “Slow release fertilizer” means a fertilizer in a form that releases, or converts to a plant-available form, plant nutrients at a slower rate relative to an appropriate reference soluble product.

Plant Industry

Background

The Division of Plant Industry is a regulatory branch of DACS that works to detect, intercept, and control plant and honey bee pests that threaten Florida’s native and commercially grown plants and agricultural resources.⁷²

DACS must notify all beekeepers to renew their registration 60 days prior to the registration’s expiration. According to DACS, the fee renewals are often neglected due to the long period of time between notification and when the payment is due.⁷³

Effect of the Bill

The bill revises the annual renewal notification for apiary registration to specify that DACS must provide written notice and a renewal form at least 30 days before the annual renewal date informing the person of the certificate of registration renewal date and the application fee.

Food, Nutrition, and Wellness

Background

DACS’s Division of Food, Nutrition, and Wellness conducts, supervises, and administers child nutrition and commodity food distribution programs that are carried out using state or federal funds. This division provides outreach, guidance, and training to child nutrition program sponsors, schools, school food service directors, parent and teacher organizations, and students about the benefits of fresh food produced in Florida. Their mission is to ensure that every child in Florida has access to a healthy, nutritious meal each day; increase awareness and consumption of Florida’s agricultural commodities; reduce food insecurity among Florida’s most vulnerable populations; and encourage a healthy lifestyle among Florida residents.⁷⁴

⁷² DACS, *Division of Plant Industry*, <https://www.fdacs.gov/Divisions-Offices/Plant-Industry> (last visited March 10, 2023).

⁷³ DACS, *Agency Analysis for House Bill 1279*, March 8, 2023 (on file with the Agriculture, Conservation & Resiliency Subcommittee).

⁷⁴ DACS, *Division of Food, Nutrition and Wellness*, <https://www.fdacs.gov/Divisions-Offices/Food-Nutrition-and-Wellness> (last visited March 10, 2023).

Effect of the Bill

The bill expands DACS's authority with respect to school food and nutrition programs to allow DACS to adopt and implement an exemption, waiver, and variance process by rule, as required by federal regulations, for sponsors under the programs DACS implements.

Aquaculture

Background

There are an estimated 1,500 species or varieties of fish, plants, mollusks, crustaceans, and reptiles grown in Florida. Current law specifies that DACS is the lead agency in encouraging the development of aquaculture in the state. Through its Division of Aquaculture, DACS is responsible for implementing the Florida Aquaculture Policy Act⁷⁵ by developing and enforcing regulations governing commercial aquaculture; leasing of coastal state submerged lands for aquaculture purposes, providing contacts for financial, educational, and technical assistance to Florida aquafarmers; certifying and inspecting shellfish processing plants; classifying and monitoring shellfish harvesting areas; and supporting the Aquaculture Review Council.⁷⁶

All persons who engage in commercial aquaculture are required to obtain a certificate of registration from DACS.⁷⁷ Aquaculture products include fish, shellfish, amphibians, reptiles, invertebrates, plants, and corals. All aquaculture products must include the certificate number from harvest to point of sale. Aquaculture activities include:

- Fish farming (including culture of species native or non-native to Florida and also including freshwater and saltwater species whether or not they are considered sport or game fish);
- Importing non-native conditional or other non-native fish species (including tropical fish) for aquaculture;
- Culturing freshwater turtles;
- Culturing shellfish on submerged lands leased from the state;
- Culturing liverock on submerged lands leased from the state.⁷⁸

Current law specifies that certified aquaculture producers may sell aquaculture products, except shellfish, snook, and any fish of the genus *Micropterus*, excluding *Micropterus salmoides floridanus*, and prohibited and restricted freshwater and marine species identified by FWC rules.

The current rulemaking process for aquaculture certificates requires that the any rules must be submitted to the President of the Senate and the Speaker of the House of Representatives for review by the Legislature. Adopted rules will remain in effect until rejected or modified by act of the Legislature.⁷⁹

Effect of the Bill

The bill revises DACS's authority with respect to aquaculture by specifying that DACS is the lead agency in regulating and encouraging the development of aquaculture in the state, rather than only encouraging the development of aquaculture. The bill specifies that DACS's delegated aquaculture authority is intended to place responsibility and may not be construed to prevent the respective state agencies from cooperating with each other by exchanging information.

⁷⁵ Chapter 597, F.S.

⁷⁶ DACS, *Division of Aquaculture*, <https://www.fdacs.gov/Divisions-Offices/Aquaculture> (last visited March 10, 2023).

⁷⁷ Florida Fish and Wildlife Commission (FWC), *Aquaculture Certificate*, <https://myfwc.com/license/commercial/aquaculture/> (last visited March 13, 2023).

⁷⁸ *Id.*

⁷⁹ Section 597.004, F.S.

The bill specifies that the regulatory and permitting authority over all aquaculture products is preempted to DACS.⁸⁰ The bill also specifies that DACS is responsible for licensing shellfish processing facilities as well as facilities operated by state agencies, local governments, educational institutions, research institutions, or restoration organizations that maintain aquaculture products for educational, scientific, demonstration, experimental, or restoration activities.

The bill specifies that facilities culturing crocodilians are dually regulated by DACS and FWC. The bill requires any alligator producer that is issued an aquaculture certificate of registration to also maintain an alligator farming license from FWC and specifies that DACS's aquaculture authority does not supersede FWC's authority to regulate alligator farms and alligator farmers.

The bill revises the types of aquaculture that may not be sold by certified aquaculture. Specifically, the bill excludes shellfish and prohibited and restricted nonnative species identified in the Aquaculture Best Management Practices manual.

The bill repeals the current rulemaking review process for aquaculture certificates.

The bill modifies the funding timeline and process for the Aquaculture Review Council's prioritized research projects by specifying that the list of such projects must be submitted to the Commissioner of Agriculture upon the appropriation of funds by the Legislature.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact related to the printing and dissemination of the Farm TEAM card that can be absorbed within existing resources.⁸¹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

⁸⁰ "Aquaculture products" means aquatic organisms and any product derived from aquatic organisms that are owned and propagated, grown, or produced under controlled conditions. Such products do not include organisms harvested from the wild for depuration, wet storage, or relay for purification. Section 597.0015(3), F.S.

⁸¹ DACS, *Agency Analysis for House Bill 1279*, March 8, 2023, p. 9 (on file with the Agriculture, Conservation & Resiliency Subcommittee).

