

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1231 Agricultural Practices
SPONSOR(S): Agriculture & Property Rights Subcommittee; Raburn
TIED BILLS: **IDEN./SIM. BILLS:** SB 1536; HB 765

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Property Rights Subcommittee	15 Y, 0 N, As CS	Thompson	Smith
2) Ways & Means Committee			
3) Commerce Committee			

SUMMARY ANALYSIS

The bill amends laws relating to the Florida Right to Farm Act, sales tax exemptions for certain agricultural items, agricultural restricted motor vehicle license plates, pesticide registration, and trespassing notice on posted lands.

Specifically, the bill:

- Redefines the term “farm product”, in the Right to Farm Act by removing “animal or insect useful to humans” and including livestock, poultry, aquatic plants and animals cultivated using aquaculture, and bees in the definition;
- Exempts certain animal health products used to treat livestock, poultry, or aquaculture; certain fencing materials; and compressed or liquefied oxygen used in aquaculture production, from the state sales and use tax;
- Increases from \$20,000 to \$25,000 the portion of the sales price that tax may not be imposed for certain farm trailers purchased by a farmer;
- Revises eligibility requirements for the agricultural restricted license plate by removing the 150 mile radius of its home address restriction;
- Eliminates the supplemental fee for each registered brand of pesticide that contains an active ingredient for which the Environmental Protection Agency (EPA) has established a food tolerance limit for; and
- Effective October 1, 2017, authorizes the use of specified orange paint markings on trees or posts, to indicate “posted lands” where trespassing would be prohibited.

The Revenue Estimating Conference has not yet estimated the impacts of the bill. See FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT for discussion.

The bill has an effective date of July 1, 2017, except as otherwise expressly provided in this act.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Agricultural Sales Tax Exemptions (Section 1)

Present Situation

Florida levies a six percent sales and use tax on the sale or rental of most tangible personal property, admissions,¹ transient rentals,² commercial real estate rentals,³ and a limited number of services. Chapter 212, F.S., contains statutory provisions authorizing 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. Sales tax is added to the price of taxable goods or services and the tax is collected from the purchaser at the time of sale. There are currently more than 200 different exemptions, exclusions, deductions, and credits from sales and use tax.⁴

Current law exempts specified items for agricultural use and certain nets from the sales and use tax.⁵ These items include the following:

- Nets designed and used exclusively by commercial fisheries;
- Disinfectants, fertilizers, insecticides, pesticides, herbicides, fungicides, and weed killers used for application on crops or groves, including commercial nurseries and home vegetable gardens, used in dairy barns or on poultry farms for the purpose of protecting poultry or livestock, or used directly on poultry or livestock;
- Portable containers or movable receptacles in which portable containers are placed, used for processing farm products;
- Field and garden seeds, including flower seeds;
- Nursery stock, seedlings, cuttings, or other propagative material purchased for growing stock;
- Seeds, seedlings, cuttings, and plants used to produce food for human consumption;
- Cloth, plastic, and other similar materials used for shade, mulch, or protection from frost or insects on a farm;
- Stakes used by a farmer to support plants during agricultural production;
- Generators used on poultry farms; and
- Liquefied petroleum gas or other fuel used to heat a structure in which started pullets or broilers are raised.⁶

These exemptions are not allowed unless the purchaser or lessee signs a certificate stating that the item to be exempted is for the exclusive use designated herein.⁷

The following are also exempt when used by a farmer to contain, produce, or process an agricultural commodity:

- Cellophane wrappers;
- Glue for tin and glass (apiarists);
- Mailing cases for honey;
- Shipping cases;

¹ s. 212.04, F.S.

² s. 212.03, F.S.

³ Florida Department of Revenue, *Who must pay tax? Partial list of taxable business activities*, available at http://dor.myflorida.com/dor/taxes/sales_tax.html (last visited Oct. 2, 2015).

⁴ Florida Revenue Estimating Conference, *Florida Tax Handbook*, (2015), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/index.cfm> (last visited Jan. 19, 2016).

⁵ s. 212.08(5)(a), F.S.

⁶ Id.

⁷ Id.

- Window cartons: and
- Baling wire and twine used for baling hay.⁸

Current law exempts from tax the portion of the sales price below \$20,000 for a trailer that weighs 12,000 pounds or less that is purchased by a farmer. The trailer must be used exclusively in agricultural production or to transport farm products from the farm to the place where the farmer transfers ownership of the product or products.⁹

Effect of Proposed Changes

The bill adds the following to the list of items in agricultural use that are exempt from the state sales and use tax:

- Aquaculture health products;
- Hog wire and nylon mesh netting used on a farm for protection from predatory or destructive animals;
- Barbed wire fencing, including gates and materials used to construct or repair such fencing, used on a beef or dairy cattle farm;
- Compressed or liquefied oxygen used in aquaculture production; and
- Animal health products which are applied to or consumed by livestock or poultry for alleviation of pain or the cure or prevention of sickness, disease, or suffering, including:
 - Antiseptics,
 - Absorbent cotton,
 - Gauze for bandages,
 - Lotions,
 - Vitamins, and
 - Worm remedies.

The bill increases from \$20,000 to \$25,000 the portion of the sales price that tax may not be imposed on for certain farm trailers purchased by a farmer. The trailer must be used exclusively in agricultural production or to transport farm products from the farm to the place where the farmer transfers ownership of the product or products.

Agricultural Restricted License Plate (Section 2)

Present Situation

Current law provides a restricted license plate for an eligible truck tractor or heavy truck, not operated as a for-hire vehicle, which is engaged exclusively in transporting raw, unprocessed, and non-manufactured agricultural or horticultural products, within a 150 mile radius of its home address.¹⁰ The law sets forth the following fees for the plates:

- \$87.75 flat, if the vehicle's declared gross vehicle weight is less than 44,000 pounds.
- \$324 flat, if the vehicle's declared gross vehicle weight is 44,000 pounds or more and such vehicle only transports from the point of production to:
 - The point of primary manufacture;
 - The point of assembling the same; or
 - A shipping point by rail, water or motor transportation company.¹¹

This section also provides for not-for-hire truck tractors and heavy trucks used exclusively in transporting raw, unprocessed and non-manufactured agricultural or horticultural products to be incidentally used to haul farm implements and fertilizers when delivered direct to the growers. For the

⁸ s. 212.08(5)(a), F.S.

⁹ s. 212.08(3)(b), F.S.

¹⁰ s. 320.08(4)(n), F.S.

¹¹ Id.

purpose of this paragraph, "not-for-hire" means that the owner of the motor vehicle must also be the owner of the raw unprocessed, and non-manufactured agricultural or horticultural product, or the user of farm implements and fertilizer being delivered.¹²

Effect of Proposed Changes

The bill revises the eligibility requirement for the agricultural restricted license plate by removing the 150 mile radius of its home address restriction, and instead allows truck tractors or heavy trucks that operate within the state of Florida to be eligible for the restricted license plate. In effect, any such truck tractor or heavy truck operated within the state, and meeting the criteria for a restricted license plate would be eligible.

Pesticide Registration (Section 3)

Present Situation

Effective January 1, 2009, each brand of pesticide¹³ distributed, sold, or offered for sale, except as otherwise provided, within the state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state, must be registered with the Department of Agriculture and Consumer Services (Department) and is subject to a biennial registration fee.¹⁴ The Department assesses each pesticide registration beginning in an odd-numbered year a fee of \$700 per brand of pesticide, and a fee of \$200 for each special local need label and experimental use permit.¹⁵ The registration expires on December 31 of the following year.¹⁶ The Department assesses each pesticide registration beginning in an even-numbered year a fee of \$350 per brand of pesticide, and fee of \$100 for each special local need label and experimental use permit.¹⁷ That registration expires on December 31 of that year.¹⁸

In 2009, the Legislature defrayed the expense of the Chemical Residue Laboratory by creating a supplemental biennial registration fee (supplemental fee) for each registered brand of pesticide that contains an active ingredient for which the United States Environmental Protection Agency (EPA) has established a food tolerance limit in 40 C.F.R. part 180.¹⁹ The law requires the Department to biennially publish by rule a list of the pesticide active ingredients for which a brand of pesticide is subject to the supplemental fee.²⁰ The Department assesses each registration beginning in an odd-numbered year a supplemental registration fee of \$630 per brand of pesticide that is subject to the supplemental fee,²¹ and assesses each registration beginning a supplemental registration fee of \$315 in an even-numbered year per brand of pesticide that is subject to the supplemental fee.²²

The revenue from these two fees, less those costs determined by the Department to be nonrecurring or one-time costs, must be deferred over the two year registration period, deposited in the General

¹² s. 320.08(4)(n), F.S.

¹³ Section 487.021(49), F.S., defines the term "pesticide" as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, or other forms of plant or animal life or viruses, except viruses, bacteria, or fungi on or in living humans or other animals, which the department by rule declares to be a pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant. The term does not include any article that is a "new animal drug" within the meaning of s. 201(w) of the Federal Food, Drug, and Cosmetic Act, has been determined by the Secretary of the US Department of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article; or is an animal feed within the meaning of s. 201(x) of the Federal Food, Drug, and Cosmetic Act.

¹⁴ s. 487.041(1), F.S.

¹⁵ s. 487.041(1)(c), F.S.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

¹⁹ s. 32, ch. 2009-66, Laws of Fla.

²⁰ s. 487.041(1)(d)1., F.S.

²¹ s. 487.041(1)(d)2., F.S.

²² Id.

Inspection Trust Fund, and used by the Department to carry out the provisions of the Florida Pesticide Law.²³ Revenues collected from the supplemental fee may also be used by the Department to test pesticides for food safety.²⁴

The Bureau of Chemical Residue Laboratories within the Division of Food Safety is responsible for the chemical analysis of poisonous or deleterious chemical residues remaining in or on human food produced or marketed in Florida.²⁵ For food safety purposes, the Chemical Residue Laboratory uses the laboratory for the regulatory enforcement of federal pesticide and antibiotic residue tolerances and guidelines adopted by the state for raw agricultural produce.²⁶ The Department operates the Chemical Residue Laboratory in Tallahassee.²⁷ This is the only state laboratory in Florida dedicated to chemical residue analysis in foods.²⁸

Effect of Proposed Changes

The bill eliminates the supplemental fee for each registered brand of pesticide that contains an active ingredient for which the EPA has established a food tolerance limit in 40 C.F.R. part 180 by repealing paragraph 487.041(1)(d), F.S., and removing references to the supplemental fee throughout the section.

Posted Land (Section 4)

Present Situation

Current law governing burglary and trespass²⁹ specifies two options for providing “no trespassing” notice upon “posted land.” Generally, these options allow the owner to post no trespassing signs, or stenciled orange paint marks on trees or posts. Specifically, the law defines “posted land” as land upon which:

- Clearly noticeable signs are placed not more than 500 feet apart along, and at each corner of, the boundaries of the land, upon which signs there appears prominently, in letters of not less than 2 inches in height, the words “no trespassing” and in addition thereto the name of the owner, lessee, or occupant of the land; or
- Conspicuous no trespassing notice is painted on trees or posts on the property, provided that the notice is:
 - Painted in an international orange color and displaying the stenciled words “No Trespassing” in letters no less than 2 inches high and 1 inch wide either vertically or horizontally;
 - Placed so that the bottom of the painted notice is not less than 3 feet from the ground or more than 5 feet from the ground; and
 - Placed at locations that are readily visible to any person approaching the property and no more than 500 feet apart on agricultural land.

Painted notices must be accompanied by signs that comply with s. 810.011(5)(a)1., F.S., and placed conspicuously at all places where entry to the property is normally expected or known to occur.³⁰

²³ s. 487.041(1)(e), F.S.

²⁴ Id.

²⁵ DACS, *Bureau of Chemical Residue Laboratory*, <http://www.freshfromflorida.com/Divisions-Offices/Food-Safety/Bureaus-and-Sections/Bureau-of-Chemical-Residue-Laboratory> (last visited February 21, 2017).

²⁶ Id.

²⁷ Id.

²⁸ DACS, *Agency Analysis of 2016 House Bill 4035*, p. 1 (February 21, 2017).

²⁹ ch. 810, F.S.

³⁰ s. 818.011(5)(a), F.S.

It is not necessary to give notice by posting on any enclosed land or place not exceeding 5 acres in area on which there is a dwelling house in order to obtain the benefits pertaining to trespass on enclosed lands.³¹

Unauthorized entry onto enclosed and posted land is prima facie evidence of the intention of such person to commit an act of trespass.³² In most cases, trespassing is a misdemeanor, but in special cases it can be a felony.³³

Generally, positive management of access to private lands results in benefits to landowners and others. However, it has been found that landowners incur substantial costs to physically post their property.³⁴ Physical signs deteriorate or disappear, and landowners must continually monitor their property and repost their signs if they wish to claim the protection afforded to posted property.³⁵ In addition, posted signs must be highly visible³⁶ and they require the use of nails, which can reduce the value of the landowners' trees and lumber.³⁷

Florida law does not currently allow the use of identifying paint marks alone to legally post private property. However, many states do allow for the use of identifying paint marks as an alternative to physical signs to denote land posting. For example Alabama,³⁸ Arizona,³⁹ Arkansas,⁴⁰ Idaho,⁴¹ Illinois,⁴² Kansas,⁴³ Maine,⁴⁴ Maryland,⁴⁵ Missouri,⁴⁶ Montana,⁴⁷ Nevada,⁴⁸ North Carolina,⁴⁹ Oregon,⁵⁰ Texas,⁵¹ and Utah⁵² all have some provision within their laws allowing for identifying paint marks. Generally, each of these states authorizes the use of paint marks on trees or fence posts to designate a no trespassing area.

Effect of Proposed Changes

The bill authorizes the use of identifying paint marks conspicuously painted on trees or posts provided that the paint marks are:

- Painted in an international orange color as a vertical line not less than 8 inches in length and not less than 1 inch in width;
- Placed so that the bottom of the paint mark is not less than 3 feet from the ground or more than 5 feet from the ground; and
- Placed in a manner and in such a position as to be clearly noticeable from outside the boundary line to any person approaching the property and no more than 100 feet apart on agricultural land.

³¹ s. 818.011(5)(b), F.S.

³² s. 810.12, F.S.

³³ ss. 810.08, F.S., and 810.09, F.S.

³⁴ Arizona State Law Journal [45:0949] *POSTED: Notice and the Right to Exclude*, Richard M. Hynes, pages 959-960.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ s. 13A-7-1 Code of Alabama.

³⁹ s. 17-304, Arizona Revised Statutes

⁴⁰ s. 18-11-406(a)(2) ACA..

⁴¹ s. 18-7011 Idaho Statutes.

⁴² 720 ILCS 5/21-3.

⁴³ s. 32-1013 K.S.A.

⁴⁴ s. 402 Main Revised Statutes.

⁴⁵ s. 6-402 Code of Maryland.

⁴⁶ s. 569.145, Missouri Statutes.

⁴⁷ s. 45-6-201 Montana Code.

⁴⁸ NRS 207.200.

⁴⁹ s. 14-159.7 NC General Statutes.

⁵⁰ 2015 ORS 105.700.

⁵¹ Title 7, s. 30.05, Texas Penal Code.

⁵² 23-20-14 Utah Code.

The bill requires a landowner who uses identifying paint marks on trees or posts to identify a “no trespassing” area to also place signs conspicuously at all places where entry to the property is normally expected or known to occur. The signs must provide in prominent letters of not less than 2 inches in height, the words "No Trespassing" and the name of the owner, lessee, or occupant of the land.

This provision of the bill has an effective date of October 1, 2017.

Florida Right to Farm Act (Section 5)

Present Situation

Pursuant to the Florida Right to Farm Act⁵³ the Legislature finds that agricultural production is a major contributor to the economy of the state and agricultural lands constitute unique and irreplaceable resources of statewide importance.⁵⁴ Additional findings in the act provide that agricultural activities conducted on farm land in urbanizing areas are potentially subject to lawsuits based on the theory of nuisance and that these suits encourage and even force the premature removal of the farm land from agricultural use.⁵⁵ The purpose of this act is to protect reasonable agricultural activities conducted on farm land from nuisance suits.⁵⁶ The act provides protections to farmers from frivolous nuisance claims⁵⁷ and local regulations that are duplicitous.⁵⁸

The term “farm products” is defined under the act to mean any plant, as defined in s. 581.011, F.S.,⁵⁹ or animal useful to humans and includes, but is not limited to, any product derived therefrom. This definition of farm products is referenced as a qualifying use under the term “agricultural purposes” in the Florida Greenbelt agricultural land classification law.⁶⁰

Effect of Proposed Changes

The bill redefines the term “farm product”, in the Right to Farm Act. Specifically, the bill removes “animal or insect useful to humans” and includes livestock as defined in ss. 585.01⁶¹ or 588.13, F.S.,⁶² poultry, aquatic plants and animals cultivated using aquaculture, and bees in the definition. This change narrows the scope of farm products that could qualify a property for protection under the Right to Farm Act, and will also narrow the scope of qualifying land uses that may be considered by a property appraiser for determining greenbelt classification.

B. SECTION DIRECTORY:

⁵³ s. 823.14, F.S.

⁵⁴ s. 823.14(2), F.S.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ s. 823.14(4), F.S.

⁵⁸ s. 823.14(6), F.S.

⁵⁹ Plant means trees, shrubs, vines, forage and cereal plants, and all other plants and plant parts, including cuttings, grafts, scions, buds, fruit, vegetables, roots, bulbs, seeds, wood, lumber, and all products made from them, unless specifically excluded by rule.

⁶⁰ s. 193.461(5), F.S.

⁶¹ s. 585.01(13), F.S., defines “Livestock” as grazing animals, such as cattle, horses, sheep, swine, goats, other hoofed animals, ostriches, emus, and rheas which are raised for private use or commercial purposes.

⁶² s. 588.13, F.S., defines “Livestock” to include all animals of the equine, bovine, or swine class, including goats, sheep, mules, horses, hogs, cattle, ostriches, and other grazing animals.

- Section 1** amends s. 212.08, F.S., related to sales, rental, use, consumption, distribution, and storage tax; specified exemptions.
- Section 2** amends s. 320.08, F.S., related to license taxes.
- Section 3** amends s. 487.041, F.S., related to pesticide registration.
- Section 4** amends s. 810.011, F.S., related to posted land definition.
- Section 5** amends s. 823.14, Florida Right to Farm Act.
- Section 6** provides an effective date of July 1, 2017, unless otherwise provided in this act.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
See Fiscal Comments.
2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
See Fiscal Comments.
2. Expenditures:
See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

Section 1

The bill exempts from sales tax specified agricultural products.

Section 2

The bill removes the distance restriction on agricultural restricted license plates, thereby expanding the distance that these types of vehicles are authorized to travel within. This may cause an increase in the amount of registrations of these plates, thereby creating a positive fiscal impact on state funds. Currently, a portion of each plate fee is deposited into the General Revenue Fund. For the \$87.75 fee, \$22.75 is deposited, and for the \$324 fee, \$84 is deposited.

In addition, expanding the distance that the agricultural restricted license plates are authorized to travel may eliminate the costs associated with shipping agricultural products outside of the 150 mile radius, thereby reducing expenditures of the agricultural industry, and reducing revenue of the shipping industry.

Section 3

The bill removes the supplemental pesticide fee. According to the Department, this will result in an average recurring decrease in funding of \$1.9 million to the General Inspection Trust Fund. However, the loss in revenue for the Department to administer pesticide testing for food safety will be offset by funding from the General Revenue Fund as result of budgetary changes during the 2016 legislative session.⁶³ In addition, this will produce an average recurring savings of \$1,919,337.84 affecting 1,478 pesticide registrants in the private sector.⁶⁴

Section 5

The bill narrows the scope of farm products that qualify a property for protection under the Right to Farm Act. This may also make qualifying for the greenbelt classification more exclusive, thereby increasing the ad valorem tax base of local governments, resulting in a positive fiscal impact to local government revenues, and a correlating negative fiscal impact on affected landowners.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 14, 2017, the Agriculture & Property Rights Subcommittee adopted four amendments to HB 1231. The amendments:

- Removed the section of the bill that redefined the term “agricultural purposes”, for qualifying for a greenbelt classification.
- Redefined the term “farm product”, in the Right to Farm Act by removing “animal or insect useful to humans” and including livestock, poultry, aquatic plants and animals cultivated using aquaculture, and bees in the definition.
- Revised the maximum sales price of certain farm trailers exempt from the sales and use tax, and exempts certain animal health products and agricultural items from sales and use tax.
- Authorized the use of specified orange paint marks on trees or posts, to indicate “posted lands” where trespassing would be prohibited; requiring “No Trespassing” signs to also be affixed at all places where entry to the property is normally expected or known to occur.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.

⁶³ Florida Department of Agriculture and Consumer Services, Agency Analysis of HB 1231, p. 1 (Mar. 10, 2017).

⁶⁴ Id. at 2.