

**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 Appropriations

---

BILL: CS/CS/SB 740

INTRODUCER: Appropriations Committee; Agriculture Committee; and Senator Stargel

SUBJECT: Department of Agriculture and Consumer Services

DATE: February 26, 2018

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhavein</u>	<u>Becker</u>	<u>AG</u>	<b>Fav/CS</b>
2.	<u>Blizzard</u>	<u>Betta</u>	<u>AEN</u>	<b>Recommend: Favorable</b>
3.	<u>Blizzard</u>	<u>Hansen</u>	<u>AP</u>	<b>Fav/CS</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/CS/SB 740 addresses various issues related to agriculture and certain powers and duties of the Department of Agriculture and Consumer Services (department). Specifically, the bill:

- Allows certain lands classified as agricultural for tax purposes to continue to be classified as such for five years after being damaged by a natural disaster. The assessment applies retroactively to lands damaged by a natural disaster that occurred on or after July 1, 2017;
- Provides that screened enclosed structures used in horticulture production for pest exclusion, when consistent with state or federal eradication or compliance agreements, have no separately assessable value for purposes of ad valorem taxation;
- Shifts the issuance of a local oyster harvesting license for Apalachicola Bay from the department to the City of Apalachicola;
- Removes the electronic payment mandate for pesticide registration payments;
- Codifies the State Agricultural Response Team within the department and assigns it certain duties;
- Prohibits comingling charitable and non-charitable funds collected through solicitation or sponsor sales and requires organizations to keep detailed records;
- Prohibits ringless direct-to-voicemail solicitation telephone calls under Florida’s Do Not Call (DNC) statute and adds the opportunity for businesses to add their telephone numbers to the DNC list;
- Revises department sampling and analysis requirements for antifreeze;
- Allows for the lawful seizure of “skimming devices” by department inspectors;

- Revises application requirements and fees for brake fluid brands;
- Transfers responsibility for liquefied petroleum gas (LPG) insurance issues to the Commissioner of Agriculture instead of the Governor of Florida;
- Consolidates and reduces the number of LPG categories and expands the license period from one to three years;
- Eliminates the original and renewal LPG fee structure and replaces it with a new revenue neutral fee structure;
- Updates the dollar threshold for required reporting of LPG accidents from \$1,000 to \$3,000;
- Requires an LPG dealer to give a five day notice before discontinuing service or rendering a consumer's LPG equipment inoperable;
- Aligns provisions of the state livestock law with the federal Packers and Stockyards Act and makes failure to render payment for livestock to a seller an unfair or deceptive act;
- Extends the expiration date for seven weights, measures, and standards sections from July 1, 2020 to July 1, 2025;
- Defines the Commissioner of Agriculture's authority to waive fees during emergencies;
- Updates the Florida Seed Law in response to technological and federal regulatory changes;
- Authorizes the department to cover the cost of the initial Commercial Driver's License (CDL) examination fee for those Florida Forest Service employees whose positions entail operating CDL-requiring equipment; and
- Creates the "Government Impostor and Deceptive Advertisements Act" to prevent Florida consumers and businesses from being scammed by companies selling free government forms or mimicking government services.

The bill modifies several agricultural and consumer service activities resulting in a negative fiscal impact in the General Inspection Trust Fund. However, the trust fund can sustain the revenue reductions associated with the modifications. The department anticipates a reduction in expenditures associated with the transfer of the oyster harvesting license program to the City of Apalachicola that will offset a portion of the revenue reductions in the General Inspection Trust Fund. See Section V.

The Revenue Estimating Conference estimates the reduction in the assessment on screened enclosed structures used in horticulture production will reduce local ad valorem taxes by \$1.9 million on a recurring basis beginning in Fiscal Year 2018-2019.

## **II. Present Situation:**

The mission of the Department of Agriculture and Consumer Services (department) is to safeguard the public and support Florida's agricultural economy by:

- Ensuring the safety and wholesomeness of food and other consumer products through inspection and testing programs;
- Protecting consumers from unfair and deceptive business practices and providing consumer information;
- Assisting Florida's farmers and agricultural industries with the production and promotion of agricultural products; and
- Conserving and protecting the state's agricultural and natural resources by reducing wildfires, promoting environmentally safe agricultural practices, and managing public lands.

The bill modifies several agricultural and consumer service activities under the department's jurisdiction.

### **Assessment of Agricultural Lands (Section 1)**

#### Present Situation

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

The Florida Constitution limits the Legislature's authority to provide for property valuations at less than just value, unless expressly authorized.<sup>1</sup> The just valuation standard generally requires the property appraiser to consider the highest and best use of property;<sup>2</sup> however, the Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often result in lower assessments. Agricultural land is one example of property that is assessed based on its current use rather than its fair market value.<sup>3</sup>

Currently, certain structures that are attached physically to the land are considered to be a part of the average yields per acre and have no separately assessable contributory (taxable) value.<sup>4</sup>

These structures include:

- Irrigation systems, including pumps and motors;
- Litter containment structures located on producing poultry farms and animal waste nutrient containment structures located on producing dairy farms; and
- Structures or improvements used in horticultural production for frost or freeze protection, which are consistent with the interim measures or best management practices adopted by the department.<sup>5</sup>

#### Effect of Proposed Changes

The bill amends s. 193.461(7), F.S., to allow agricultural lands that incur damage as a result of a natural disaster for which a state of emergency is declared, and which results in the halting of agricultural production, must continue to be classified as agricultural lands for five years following termination of the emergency declaration. However, if such lands are diverted from agricultural use to nonagricultural use during or after the five-year recovery period, such lands must be assessed at fair market value using the factors for deriving just valuation in s. 193.011, F.S. This provision applies retroactively to natural disasters that occurred on or after July 1, 2017.

---

<sup>1</sup> See FLA. CONST. art. VII, s. 4

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

<sup>3</sup> FLA. CONST. art. VII, s. 4(a)

<sup>4</sup> Section 193.461(6)(c), F.S.

<sup>5</sup> Section 193.461(6)(c), F.S.

The bill also amends s. 193.461(6)(c), F.S., to provide that screened enclosed structures used in horticultural production for protection from pests and diseases or to comply with state or federal eradication or compliance agreements are considered a part of the average yields per acre and have no separately assessable value.

### **State Agricultural Response Team (Section 2)**

#### Present Situation

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

The department facilitated the development of the State Agricultural Response Team (SART), along with other partners, with a mission dedicated to strengthening a coordinated incident response for the animal and agricultural sectors in the State of Florida. The SART's strategic imperatives are to:

- Support a multi-agency coordination group for state-level response activities for animal and agriculture issues;
- Develop and support an Incident Management Team with equipment and training;
- Develop and support response resources such as the Mobile Animal Response Equipment Units, College of Veterinary Medicine Veterinary Emergency Treatment Service, and Florida Veterinary Corps with funding and or training; and
- Develop and support county and regional outreach, training and information coordination in order to enhance local and regional response capabilities.

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

#### Effect of Proposed Changes

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

- Oversight of the emergency management functions with all agencies and organizations involved with the state's response activities related to animal, agricultural and vector issues;
- The development, training, and support of county agricultural response teams;
- Staffing the Emergency Support Function 17 at the State Emergency Operations Center; and
- Staffing activated local emergency operations centers as necessary.

This section of the bill codifies existing practice.

### **Emergency Transportation/Weight Loads (Section 3)**

#### Present Situation

Section 316.565, F.S., currently authorizes the Governor to declare an emergency when a breakdown occurs in the normal public transportation facilities necessary in moving perishable food crops grown in this state. The Florida Department of Transportation (FDOT) may establish weight loads during such emergency for hauling perishable foods over the highways from the fields or packinghouses to the nearest available public transportation facility as circumstances

demand. The FDOT is required to designate special highway routes, *excluding* the interstate highway system, to facilitate the trucking and render any other assistance needed to expedite moving the perishables.

#### Effect of Proposed Changes

The bill amends s. 316.565, F.S., to replace the term “perishable food crops” with “agricultural products.” This allows the Governor to declare an emergency when a breakdown occurs in the normal public transportation facilities necessary in moving agricultural products produced in the state.

The bill authorizes the FDOT to issue, and any law enforcement office authorized to enforce the traffic laws must accept, electronic verification of permits during such emergency. Permits issued under this directive are valid for up to 60 days; however, the validity of the permit may not exceed the period of the declared state of emergency or any extension thereof.

The legislative intent is also revised to supersede any existing laws when necessary to protect and save agricultural products, rather than to protect and save any perishable food crops grown in the state.

### **Apalachicola Bay Oyster Harvesting Licenses (Section 4)**

#### Present Situation

Current law sets forth requirements for the Apalachicola Bay oyster harvesting license (license).<sup>6</sup> The license is administered by the department and is required for persons who harvest commercial quantities of oysters from Apalachicola Bay.

Proceeds from license fees are deposited in the General Inspection Trust Fund and, less reasonable administrative costs, used or distributed by the department for the following purposes in Apalachicola Bay:

- Relaying and transplanting live oysters.
- Shell planting to construct or rehabilitate oyster bars.
- Education programs for licensed oyster harvesters on oyster biology, aquaculture, boating and water safety, sanitation, resource conservation, small business management, marketing, and other relevant subjects.
- Research directed toward the enhancement of oyster production in the bay and the water management needs of the bay.

#### Effect of Proposed Changes

The bill transfers the license administrative responsibilities from the department to the City of Apalachicola. Specifically, the bill requires the City of Apalachicola to issue the license, and collect, deposit, and distribute the license fees. The bill requires the proceeds to be deposited into a trust account instead of the General Inspection Trust Fund, less reasonable administrative costs, used or distributed by the City of Apalachicola for the purposes listed in current law. However, instead of using the funds for the purpose of relaying and transplanting live oysters, the bill

---

<sup>6</sup> s. 379.361(5), F.S.

requires the City of Apalachicola to use or distribute the funds for an Apalachicola Bay oyster shell-recycling program.

### **Pesticide Registration Fees (Section 5)**

Currently, payments of all pesticide registration fees are submitted electronically by using the department's website.<sup>7</sup> The bill removes the electronic submission requirement of payments allowing for alternate payment methods.

### **Solicitation of Funds (Sections 6 & 7)**

#### Present Situation

Organizations that intend to solicit donations in Florida are required to register with the department pursuant to the Solicitation of Contributions Act (SCA).<sup>8</sup> The SCA contains basic registration, financial disclosure, and notification requirements for charitable organizations and sponsors, fundraising consultants, and solicitors. Veterans' organizations that have been granted a federal charter under Title 36, U.S.C., are exempt from the department's registration requirements.<sup>9</sup>

Current law does not prohibit comingling or contain recordkeeping requirements, regarding charitable and non-charitable funds. According to the department, investigations of alleging misuse of charitably solicited funds are often made more challenging by the need to decouple charitable and non-charitable monies in the accounting records.<sup>10</sup>

#### Effect of Proposed Changes

The bill prohibits the comingling of contributions with noncharitable funds by charitable organizations and sponsors. The bill requires that each charitable organization, sponsor, professional fundraising consultant, and professional solicitor that collects or takes control or possession of contributions made for a charitable purpose keep accurate records and must not comeingle contributions with noncharitable funds as specified in s. 496.415(19), F.S.

### **Water Vending Machines (Section 8)**

#### Present Situation

Water vending machine applicants must submit forms to the department "in writing," thus prohibiting the use of digital applications. Additionally, the department issues serialized permit ID decals to approved vending machine owners.

#### Effect of Proposed Changes

The bill removes the requirements that an application for a water vending machine operating permit be made "in writing", and that the operating permit number be placed on each water

---

<sup>7</sup> s. 487.041(1)(i), F.S.

<sup>8</sup> ch. 496, F.S.

<sup>9</sup> ch. 496.406(1), F.S.

<sup>10</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 Senate Bill 740.

vending machine. These changes allow for the electronic submission of water vending-machine application forms and the issuance of non-serialized decals.

### **Telephone Solicitation (Sections 9 & 10)**

#### Present Situation

The federal Telephone Consumer Protection Act imposes restrictions on unsolicited advertisement to a telephone.<sup>11</sup> The state mirrors this provision statutorily and requires the department to maintain the state's Do Not Call list, also known as the “no sales solicitation calls” list.<sup>12</sup>

A “telephonic sales call” is defined as a telephone call or text message to a consumer for the purpose of soliciting a sale of, an extension of credit for, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.

According to the department, advances in ringless communication technology allow telemarketers to directly deliver voicemail messages without causing a customer’s phone to ring. The department believes that ringless communication constitutes a telephonic sales call under the state’s Do Not Call statute. In the absence of a federal rule regarding this technological innovation, the department believes adding a state prohibition of ringless voicemails is necessary.

#### Effect of Proposed Changes

The bill expands consumer protections provided under the state’s Do Not Call statute, prohibiting ringless direct-to-voicemail solicitation phone calls and requiring commercial telephone sellers to retain and make call records available.

The bill requires a commercial telephone seller to keep the following information for two years after the date the information first becomes part of the seller's business records:

- The name and telephone number of each consumer contacted by a telephone sales call;
- All express requests authorizing the telephone solicitor to contact the consumer; and
- Any script, outline, or presentation the applicant requires or suggests a salesperson use when soliciting, including sales information or literature to be provided by the commercial telephone seller to a salesperson and a consumer in connection with any solicitation.

The bill requires a telephone sales call solicitor to provide on the call recipient’s caller ID, a telephone number that is capable of receiving calls and that can connect the call recipient to the telephone solicitor.

The bill also increases penalties for violations of the Do Not Call statute up to \$10,000 for violations prosecuted administratively, and \$10,000 or more for those prosecuted civilly.

---

<sup>11</sup> 47 U.S.C. § 227.

<sup>12</sup> s. 501.059(3), F.S.

**Florida Antifreeze Act (Sections 11-14)**

Each brand of antifreeze to be distributed in Florida must register with the department before distribution. The bill makes several changes to the state Antifreeze Act. The bill consolidates the definition of antifreeze to include all antifreeze-coolant, antifreeze and summer coolant, extends antifreeze permitting for up to 24-months, eliminates phased-out product affidavits, and removes the requirement for the department's internal testing.

The bill changes the registration application timeframe from annual to both annual and biennial, and requires the expiration timeframes to be indicated on the registration certificate. The bill specifies that for each brand of antifreeze, the application fee for a 12-month registration is \$200 and a 24-month registration is \$400.

The bill removes the provisions that addresses a registered brand that is not in production for distribution in this state. The bill requires a completed registration application be accompanied by specimens or copies of the label for each brand of antifreeze.

The bill removes the requirement that a completed application be accompanied by a one to two gallon labeled sample of each brand of antifreeze, and instead requires that all first-time applications be accompanied by a certified report from an independent testing laboratory. The report shall be dated no more than six months prior to the registration application and include an analysis which shows that the antifreeze conforms to minimum standards required for antifreeze by this part or rules of the department, and is not adulterated.

**Credit and Debit Card Skimming Devices (Section 15)**Present Situation

Skimming is the theft of credit card information used in an otherwise legitimate transaction. A thief can procure a victim's credit card by using a small electronic device to swipe and store card numbers. Last year, the department identified 340 credit and debit card skimming devices for seizure, in connection with gasoline and oil inspections. When department inspectors locate the devices, they contact the Office of Agriculture Law Enforcement (OALE), or when geographic and staffing issues prevent a response from OALE, local law enforcement is asked to remove the devices. Law enforcement personnel must seize the illegal devices and maintain a proper chain of custody for future legal proceedings.

Effect of Proposed Changes

The bill authorizes the department to seize without a warrant, any skimming device as defined in s. 817.625, F.S.

**Emergency Powers (Sections 16, 17 & 39)**Present Situation

Current law governing emergency management gives the Governor extensive authority to act as he or she deems necessary during a declared state of emergency. The law authorizes the Governor to assume or delegate direct operational control over all or any part of the emergency



management functions within this state. In addition, the Governor may issue executive orders, proclamations, and rules, which have the force and effect of law.

The department is authorized to declare an emergency when one exists in any matter pertaining to agriculture, and to make, adopt, and promulgate rules and issue orders, which will be effective during the term of the emergency.

#### Effect of Proposed Changes

The bill authorizes the Commissioner of Agriculture during a state of emergency declared pursuant to s. 252.36, F.S., to issue an emergency order temporarily suspending the enforcement of ss. 526.304 and 526.305, F.S., in recognition of motor fuel as an essential commodity necessary to effectuate emergency plans and aid in recovery.

Additionally, the bill authorizes the Commissioner of Agriculture during a state of emergency declared pursuant to s. 252.36, F.S., to waive fees by emergency order for duplicate copies or renewal of permits, licenses, certifications, or other similar types of authorizations during a period specified by the commissioner.

### **Brake Fluid (Sections 18 & 19)**

#### Present Situation

The department regularly conducts inspections of the petroleum distribution system and analyzes samples of petroleum products to ensure that Florida consumers are getting the amount they pay for and the quality they expect. Gasoline, alternative fuels, kerosene, diesel, fuel oil, antifreeze products, and brake fluid products are routinely tested and must meet strict standards.

Applicants must submit all brake fluid brands and products to the Bureau of Standards' laboratory for testing prior to initial registration. Despite this requirement, there are no assurances that the samples the department tests are the same as the products being offered for sale since the applicant collects and ships samples directly to the laboratory.

#### Effect of Proposed Changes

The bill authorizes a 24-month brake fluid registration period in addition to the 12-month registration period, and sets forth an application fee of \$50 for the 12-month registration, or \$100 for the 24-month registration. The bill requires completed brake fluid registration applications to be accompanied by specimens or copies of the label for each brand of brake fluid, and an application fee of \$50 for a 12-month registration or \$100 for a 24-month registration for each brand of brake fluid.

The bill requires that the certified report from an independent testing laboratory required of all first time-applicants be dated no more than six months before the registration application. The bill removes the requirement that an applicant submit to the department a sample of at least 24 fluid ounces of brake fluid in a container with a label printed in the same manner that it will be labeled when sold. The bill removes the requirement that the sample and container be analyzed and inspected by the department in order that compliance be verified.

## **Liquefied Petroleum Gas (Sections 20-29)**

Currently, the department regulates the licensing, inspection and training requirements relating to the liquefied petroleum gas (LPG) industry.<sup>13</sup> Current law governing LPG provides definitions for numerous LPG and the LPG license categories.<sup>14</sup> These licenses include those for selling propane, installation, service or repair work, manufacture of equipment, and other miscellaneous activities.

### ***Definitions (Section 20)***

Current law governing LPG provides definitions for numerous LPG and the LPG license categories. These licenses include those for selling propane, installation, service or repair work, manufacture of equipment, and other miscellaneous activities.

The bill clarifies LPG license categories, revises the license year terminology, and expands the license period from one to three years from the issuance of the license. The bill also removes the word “ultimate” from the definition of “ultimate consumer” throughout the LPG chapter of law.

### ***License, Penalty, Fees (Section 21)***

The bill redefines the LPG unlawful activities by incorporating the activities specified in s. 527.01(6)-(11), F.S., replaces the two-tiered LPG fee structure with a single tiered annual fee structure with new fees, allows a material change in license information prior to renewal with a \$10 fee. In addition, the bill revises the requirement that the department waive the initial license fee for honorably discharged veterans, their spouses, or the businesses they own by only allowing the waiver to occur for one year.

The bill deletes the provisions related to pipeline-system operator licensure and fees. According to the department, pipeline-operator requirements are now regulated under federal code 43 and only monitored by the department during the startup phase or after an incident. The bill deletes the transferability of LPG licensure as licenses may be applied for continuously instead of once annually.

### ***Qualifiers; Master Qualifiers; Examinations (Section 22)***

The bill requires only persons applying for a license to engage in category I, II, and V activities to prove competency by passing the written the department examination. The bill reduces the examination grade percentage that applicants must achieve for passage from 75 percent or above, to 70 percent or above. The bill requires the department to register an examinee who successfully completes the examination, instead of issuing the examinee a qualifier identification card. The bill revises the automatic expiration provision for qualifiers so that it addresses the registration instead of the identification cards, and makes conforming changes regarding registration as opposed to qualifier status. The bill requires businesses in license categories I, II and V to employ a full time qualifier in each business location.

---

<sup>13</sup> ch. 527, F.S.

<sup>14</sup> s. 527.02, F.S.

The bill provides that qualifier registration, instead of cards, expire three years after the date of issuance. The bill removes an outdated qualifier renewal date, and requires persons failing to renew before the expiration date to reapply and take a qualifier competency examination in order to reestablish qualifier status.

The bill removes the requirement that, if a category I LPG qualifier or LPG installer qualifier becomes a master qualifier at any time during the effective date of the qualifier card, the card remains in effect until expiration of the master qualifier certification.

### ***Registration of Transport Vehicles (Section 23)***

The bill revises the annual registration requirement to instead require each LPG bulk delivery vehicle owned or leased by an LPG licensee to be registered as part of the licensing application or when placed into service.

### ***License Renewals (Section 24)***

#### Present Situation

Current law requires all LPG licenses to be renewed annually within certain timeframes and subject to the license fees.<sup>15</sup> All licenses, except category III LPG cylinder exchange unit operator licenses and dealer in appliances and equipment for use of LPG licenses, must be renewed for the period beginning September 1 and expire on the following August 31 unless suspended, revoked, or otherwise terminated sooner. Category III LPG cylinder exchange unit operator licenses and dealer in appliances and equipment for use of LPG licenses must be renewed for the period beginning April 1 and expire on the following March 31 unless suspended, revoked, or otherwise terminated sooner. Any license allowed to expire becomes inoperative because of failure to renew. The fee for restoration of a license is equal to the original license fee and must be paid before the licensee is allowed to resume operations.

#### Effect of Proposed Changes

The bill allows LPG licenses to be renewed annually, biennially, or triennially, as elected by the licensee; requires all renewals to meet the same requirements and conditions as an annual license for each licensed year; and removes the timeframes for license category renewals. According to the department, these changes optimize the application process and should accelerate application processing, especially during periods of high volume.<sup>16</sup>

### ***Proof of Insurance (Section 25)***

Currently, LPG companies are required to provide the department with proof of insurance coverage or a surety bond to conduct business in the state. However, for a license other than a dealer in appliances and equipment for use of LPG or a category III LPG cylinder exchange operator, the Governor is authorized to accept a \$1 million bond in lieu of the insurance policy requirements.<sup>17</sup>

---

<sup>15</sup> s. 527.03, F.S.

<sup>16</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 Senate Bill 740, p. 10 (Nov. 15, 2017).

<sup>17</sup> s. 527.04(1), F.S.

### Effect of Proposed Changes

This bill replaces the Governor with the Commissioner of Agriculture as the responsible party authorized to accept the \$1 million and the \$300,000 bonds in lieu of the insurance policy requirements. The bill also adds category IV licenses to the exceptions to the insurance requirements.

### ***Bulk Storage Locations; Jurisdiction (Section 26)***

#### Present Situation

Current law requires, prior to the installation of any bulk storage container, an LPG licensee to submit to the department a site plan of the facility, which shows the proposed location of the container, and to obtain written approval of such location from the department. A fee of \$200 is assessed for each site plan that the department reviews. The review must include preconstruction inspection of the proposed site, plan review, and final inspection of the completed facility.

#### Effect of Proposed Changes

The bill removes the requirements that an LPG licensee submit to the department a site plan of the facility, which shows the proposed location of the container, the requirement to obtain written approval of such location from department, and the fee of \$200, which is assessed for each site plan that the department reviews. The bill also removes the requirement for the review to include preconstruction inspection of the proposed site, plan review, and final inspection of the completed facility.

### ***Notification of Accidents; Leak Calls; Responsibilities (Sections 27 & 28)***

#### Present Situation

Currently, immediately upon discovery, all LPG licensees are required to notify the department of any LPG related accident that involves an LPG licensee or customer account. The accident must fall under one of the following descriptions:

- Caused a death or personal injury requiring professional medical treatment;
- Uncontrolled ignition of LPG resulted in death, personal injury, or property damage exceeding \$1,000; or
- Caused estimated damage to property exceeding \$1,000.

#### Effect of Proposed Changes

The bill increases the cost threshold for reporting LPG accidents involving property damage and/or personal injury from \$1,000 to \$3,000. According to the department, this reflects inflation adjusted costs.<sup>18</sup> The dollar value has not been updated since 2003.<sup>19</sup>

---

<sup>18</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 Senate Bill 740, p. 11 (Nov. 21, 2017).

<sup>19</sup> The last time the dollar value was revised was in 2003 (Ch. No. 2003-132, Laws of Florida.) providing that an LP gas-related incident must be reported by an LP gas licensee only when it involves death, personal injury, or property damage exceeding \$1,000.

The bill requires an LPG dealer to give a five day written or electronic notice before discontinuing service or rendering a consumer's LPG equipment or system inoperable. This notice does not apply in the event of a hazardous condition known to the LPG dealer.

***Restriction on Use of Unsafe Container or System (Section 29) & Definitions Relating to Florida Propane Gas Education, Safety, and Research Act (Section 30)***

Currently, the definition for "dealer" and "wholesaler" relating to the Florida Propane Gas Education, Safety, and Research Act include the term "ultimate consumer."

The bill removes the term "ultimate" from "ultimate consumer" to make these provisions consistent with the rest of the chapter regarding consumers.

***Florida Propane Gas Education, Safety, and Research Council<sup>20</sup> Established; Membership; Duties and Responsibilities (Section 31)***

The bill removes the requirement that the Commissioner of Agriculture make a call to qualified industry organizations for nominees to the Florida Propane Gas Education, Safety, and Research Council but retains the submission of nominees by qualified industry organizations.

**Weights, Measures and Standards (Section 32)**

Present Situation

Currently, the department's Bureau of Standards is responsible for the inspection of weights and measures devices or instruments in Florida.<sup>21</sup> The law defines "weights and measures" as all weights and measures of every kind, instruments, and devices for weighing and measuring, and any appliance and accessories associated with any or all such instruments and devices, excluding those weights and measures used for the purpose of inspecting the accuracy of devices used in conjunction with aviation fuel.<sup>22</sup> The weights and measures program is funded through permit fees.<sup>23</sup> This framework including provisions related to general permitting, initial and renewal applications, maximum permit fees, suspensions, penalties, revocations, and exemptions, is set to expire on July 1, 2020.

Effect of Proposed Changes

The bill extends the expiration date for the weights and measures program permitting fee framework until July 1, 2025. According to the department, it will no longer be able to cover the costs to perform this function if the permitting statute is not extended.<sup>24</sup>

---

<sup>20</sup> s. 527.22, F.S.

<sup>21</sup> ch. 531, F.S., "Weights and Measures Act of 1971."

<sup>22</sup> s. 531.37(1), F.S.

<sup>23</sup> s. 531.67, F.S.

<sup>24</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 Senate Bill 740, p. 12 (Nov. 15, 2017).

**Livestock (Sections 33-38)**Present Situation

Currently, the department has jurisdiction of the inspection and protection of livestock in the state under s. 534.011, F.S. This includes oversight of the sale of, and payment for, livestock at livestock markets. The Packers and Stockyards Act is a federal law designed to ensure effective competition and integrity in livestock, meat, and poultry items administered by the Packers and Stockyards Program within the United States Department of Agriculture.

Effect of Proposed Changes

The bill aligns definitions of the law that govern the sale of livestock at livestock markets with the federal Packers and Stockyards Act and makes conforming changes.

The bill repeals the section of law that provides a process by which livestock markets notify the department that a payment for livestock has been dishonored, which triggers subsequent notification by the department to all licensed livestock markets. The bill makes failure to render payment for livestock to any seller or consignee of cattle an unfair or deceptive act in trade or commerce in violation of s. 501.204(1), F.S., and removes the provision that expressly protects the payer's right to refuse payment of unauthorized livestock draft.

The bill repeals the section of law that prohibits a livestock market from filing a complaint under s. 604.21, F.S., which sets forth the process for complaints and investigations regarding dealers in agriculture products. The bill adds court costs and expenses to the section of law prescribing liability of a purchaser who fails to make payment for purchased livestock as required by the livestock law or the federal Packers and Stockyards Act.

**Marketing Order Notice (Section 40)**Present Situation

The "Florida Agricultural Commodities Marketing Law" regulates the marketing of agricultural commodities through the establishment of marketing orders and agreements. A marketing order is an order issued by the department, prescribing rules governing the distribution, or handling in any manner, of agricultural commodities in the primary channel of trade during any specified period or periods. Before the issuance of any marketing order, or any suspension, amendment, or termination thereof, a notice must be posted on a public bulletin board maintained by the department in the Nathan Mayo Building.

Effect of Proposed Changes

The bill removes the requirement to post notice on a public bulletin board in the Nathan Mayo Building while retaining the requirement to post notice to the department's website.

## **Florida Seed Law (Sections 41-56)**

The department regulates the sale and distribution of all seed sold in Florida pursuant to the Florida Seed Law (FSL).<sup>25</sup> According to the department, technological and federal regulatory changes have created the need for Florida to update and reorganize the FSL. Generally, trees and shrubs, and new seed types, are not addressed under the current law. However, the authority to regulate seed is not expressly preempted to the state.

### ***Definitions (Section 41)***

The bill makes numerous definitional changes to the Florida Seed Law pursuant to recommendations of the department's Agricultural Feed, Seed and Fertilizer Advisory Council.

### ***Preemption (Section 42)***

#### Present Situation

Currently, the department regulates the sale and distribution of all seed sold in Florida. However, the authority to regulate seed is not expressly preempted to the state.

#### Effect of Proposed Changes

The bill provides that it is the intent of the Legislature to eliminate duplication of regulation of seed. The bill provides that this chapter is intended as comprehensive and exclusive and occupies the whole field of regulation of seed. The bill preempts to the state the authority to regulate seed or matters relating to seed. The bill prohibits a local government or political subdivision of the state from enacting or enforcing an ordinance that regulates seed, including the power to assess any penalties provided for violation of this chapter.

### ***Registrations (Section 43)***

#### Present Situation

Currently, any person who intends to sell, distribute for sale, offer for sale, expose for sale, handle for sale, or solicit orders for the purchase of any agricultural, vegetable, flower, or forest tree seed or mixture thereof, is required to register with the department as a seed dealer.<sup>26</sup>

#### Effect of Proposed Changes

The bill removes references to s. 578.14, F.S., relating to packet vegetable and flower seed. The bill expands the definition of tree seed by deleting "forest" and including "shrub seed" to the types of seed that require registration.

The bill requires the application for registration to include the name and location of each place of business at which the seed is sold, distributed for sale, offered for sale, exposed for sale, or handled for sale. The bill removes the requirement that registration and payment receipts from the department be in writing. This eliminates the need for the department to issue registration receipts, and thus allows for electronic receipts.

---

<sup>25</sup> ch. 578, F.S

<sup>26</sup> s. 578.08(1), F.S.

The bill removes the exemption from registration requirements for agricultural experiment stations of the State University System and places it in the section of the FSL directly relating to exemptions.

The bill also provides that when packet seed is sold, offered for sale, or exposed for sale, the company who packs seed for retail sale must register and pay fees as provided.

### ***Label Requirements for Agricultural, Vegetable, Flower, and Tree or Shrub Seed (Section 44)***

#### **Present Situation**

Current law sets forth seed label requirements for each container of agricultural, vegetable, or flower seed sold, offered for sale, exposed for sale, or distributed for sale within this state for sowing or planting purposes.<sup>27</sup> As with the previous section, trees and shrubs are not explicitly covered under the current law, and sections relating to new seed types are not addressed.

When seed is treated with certain substances, the current statute only requires a cautionary statement such as “Do not use for food, feed, or oil purposes,” which is inconsistent with current Environmental Protection Agency (EPA) requirements and provisions of the Farm Service Agency.

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

The bill revises the labeling requirements to align with the Recommended Uniform State Seed Law. The bill:

- Deletes specific terms and font requirements;
- Adds provisions relating to coated and vegetable seed;
- Moves the department’s authority to prescribe uniform analysis tags, for consistency;
- Includes additional terms to clarify requirements of all seed types, including those of trees and shrubs;
- Allows the term “blend” as an option for identifying products containing more than one agricultural seed component; and
- Includes lawn and turf seed under the requirements and clarifies that hybrids must be labeled as hybrids.

### ***Forest Tree Seed (Section 45)***

#### **Present Situation**

Current law governing forest tree seed requires each container sold, offered for sale, exposed for sale, or transported within this state for sowing purposes to meet certain labeling requirements.

---

<sup>27</sup> s. 578.09, F.S.



### Effect of Proposed Changes

The bill repeals the section of law relating to labeling of forest tree seed. These requirements are replaced with expanded provisions relating to all tree and shrub seed, and included in the aforementioned revised section of law relating to label requirements.<sup>28</sup>

### ***Exemptions (Section 46)***

#### Present Situation

Currently, the FSL exempts the following from the FSL labeling requirements and prohibitions:

- Seed or grain not intended for sowing or planting purposes.
- Seed in storage in, consigned to or being transported to seed cleaning or processing establishments for cleaning or processing only. Any labeling or other representation which may be made with respect to the unclean seed shall be subject to this law.<sup>29</sup>

The FSL also provides an exemption from the criminal penalties of this law for persons having sold, offered, exposed, or distributed for sale in this state any agricultural, vegetable, or forest tree seed incorrectly labeled or represented.

### Effect of Proposed Changes

The bill adds an exemption for seed under development or maintained exclusively for research purposes. The bill revises the exemption for incorrectly labeled seed. The bill provides that, if seed cannot be identified by examination, a person is not subject to the criminal penalties of this chapter for having sold seed that was incorrectly labeled, unless he or she has failed to obtain labeling information to ensure the identity of the seed to be as stated by the grower. The bill provides that a genuine grower's declaration of variety must affirm that the grower holds records of proof of identity concerning parent seed, such as invoice and labels.

### ***Duties, Authority, and Rules; Stop-Sale, Stop-Use, Removal, or Hold Orders (Sections 47 & 48)***

#### Present Situation

Multiple references to “forest tree seed” is used throughout the sections of law that sets forth the duties, authority and rulemaking requirements of the department relating to the FSL,<sup>30</sup> and the section of law that addresses stop-sale, stop-use, removal, or hold orders for violations of the FSL.

### Effect of Proposed Changes

The bill replaces the multiple references to “forest tree seed” with “tree or shrub seed.”

---

<sup>28</sup> s. 578.091, F.S.

<sup>29</sup> s. 578.10(2), F.S.

<sup>30</sup> s. 578.11, F.S.

***Prohibitions (Section 49)*****Present Situation**

Currently, it is unlawful for any person to sell, distribute for sale, offer for sale, expose for sale, handle for sale, or solicit orders for the purchase of any agricultural, vegetable, flower, or forest tree seed within this state.<sup>31</sup>

**Effect of Proposed Changes**

The bill revises the section of law relating to prohibitions to be consistent with changes throughout the bill that expand the definition of seed to include shrubs. The bill clarifies the stop-sale provisions and the requirements for certified seed labeling. The bill removes the seven month timeframe within which the test to determine the percentage of germination required by the FSL labeling requirements must be completed as all seed types are listed in the proposed section of the bill relating to labeling requirements, and each category of seed contains a specific germination testing requirement.

***Packet Vegetable and Flower Seed (Section 50)*****Present Situation**

Currently, when vegetable or flower seed are sold, offered for sale, or exposed for sale in packets of less than eight ounces, the company who packs the seed for retail sale is required to register and pay fees as provided under s. 578.08, F.S.<sup>32</sup>

**Effect of Proposed Changes**

The bill repeals the section of the FSL relating to packet vegetable and flower seed. The bill moves the registration requirements to the revised section of the FSL relating to registrations, and the labeling information to the revised section of the FSL relating to registrations, for consistency.

***Penalties and Administrative Fine (Section 51)*****Present Situation**

Currently, the department is authorized to enter an order imposing one or more of the following penalties against a person who violates the FSL or the rules adopted under the FSL, or who impedes, obstructs, or hinders the department in performing its duties under the FSL:

- Imposition of an administrative fine in the Class I category pursuant to s. 570.971, F.S., for each occurrence after the issuance of a warning letter.
- Revocation or suspension of the registration as a seed dealer.

Any person who violates the provisions of the FSL is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. According to the department, the current language could benefit from being aligned with penalty language found in other chapters.<sup>33</sup>

---

<sup>31</sup> s. 578.13(1), F.S.

<sup>32</sup> s. 578.14, F.S.

<sup>33</sup> *Id.*

### Effect of Proposed Changes

The bill revises the penalty provisions in the FSL relating to circumstances by which the department may enter an order, and the types of violations the order may be based on. The bill also revises the requirement that the department issue a warning letter before the imposition of an administrative fine in the Class I category.

### ***Dealers' Records (Section 52)***

#### Present Situation

Currently, every seed dealer is required to make and keep for a period of three years satisfactory records of all agricultural, vegetable, flower, or forest tree seed bought or handled to be sold. The records must at all times be made readily available for inspection, examination, or audit by the department, and must also be maintained by persons who purchase seed for production of plants for resale.

#### Effect of Proposed Changes

The bill requires each person who allows his or her name or brand to appear on the label as handling agricultural, vegetable, flower, tree, or shrub seed subject to the FSL to keep records pursuant to the following timeframes:

- For two years, complete records of each lot of agricultural, vegetable, flower, tree, or shrub seed handled.
- For one year after final disposition a file sample of each.

The bill also requires the records and samples pertaining to the shipment or shipments involved to be accessible for inspection by the department or its authorized representative during normal business hours.

### ***Complaints (Section 53)***

#### Present Situation

Current law provides a complaint process to farmers when seed fails to produce or perform as represented by the label.<sup>34</sup> Farmers are required to make a sworn complaint to the department against the dealer alleging damages sustained, and the Seed Investigation and Conciliation Council (council) assists in determining the validity of complaints.

#### Effect of Proposed Changes

The bill expands the types of complainants by replacing the term “farmer” with “buyer,” revises the reference to “forest tree seed” to instead reference “tree or shrub seed,” and limits complaints to those that stem from seed planted in this state. The labeling provision is broadened to include any labeling of such seed, instead of only the label attached to the seed.

The bill broadens the council’s inspection authority, and prohibits the buyer from commencing legal proceedings against the dealer or asserting such a claim as a counterclaim or defense in any

---

<sup>34</sup> s. 578.26, F.S.

action brought by the dealer until the findings and recommendations of the council are transmitted to the complainant and the dealer. The bill removes the requirement that the department, upon receipt of the findings and recommendation of the council, transmit them to the farmer and to the dealer by certified mail, and requires the department to mail a copy of the council's procedures to each party upon receipt of a complaint by the department.

### ***Seed Investigation and Conciliation Council (Section 54)***

#### Present Situation

Current law requires the council to assist farmers and agricultural seed dealers in determining the validity of complaints made by farmers against dealers.<sup>35</sup> The law establishes the process by which council members are appointed and how it operates.

#### Effect of Proposed Changes

To conform to changes made in the complaints section of the bill, the bill expands covered complainants to include all “buyers,” expands the types of seed dealers by removing the term “agricultural,” and expands the council’s authority to recommend settlements beyond cost damages. In addition, the bill streamlines the terms and succession of the council members, updates the name of the Florida Seedsmen and Garden Supply Association, and clarifies the council’s inspection requirements regarding the complainant’s farming operation.

Regarding terms and succession of the council, the bill requires each member to be appointed for a term of four years or less and to serve until his or her successor is appointed. The bill removes the staggered term lengths, and removes the requirement that each alternate member serve only in the absence of the member for whom she or he is an alternate.

The bill expands the council’s requirement to recommend settlements when appropriate that are not restricted to cost damages, and requires council inspections of the complainant’s farm operation to apply to the buyer's property, crops, plants, or trees referenced in or relating to the complaint.

### ***Seed in Hermetically Sealed Containers (Section 55)***

The bill renumbers the section of law relating to seed in hermetically sealed containers from s. 578.28, F.S., to s. 578.092, F.S., as part of the overall reorganization of the Seed Law chapter.

### ***Prohibited Noxious Weed Seed (Section 56)***

Although there is a definition of prohibited noxious weed seed in current law, there is no expressed authority banning these weeds. The bill creates s. 578.29, F.S., to prohibit noxious weed seed from being present in seed offered for sale in Florida.

---

<sup>35</sup> s. 578.27, F.S.

## **Florida Forest Service Commercial Driver License (Section 57)**

### Present Situation

The Florida Forest Service (FFS) has 20 different job classes that require a Class A or B Commercial Driver's License (CDL) as a condition of employment. In any given year, the FFS has approximately 80 new employees (mostly forest rangers) that must obtain their Class A or B CDL. The Department of Financial Services' *Reference Guide for State Expenditures* prohibits the use of public funds to pay license or examination fees under Chapter 691-40.002(23), F.A.C.

### Effect of Proposed Changes

The bill authorizes, but does not obligate, the Florida Forest Service (FFS) to pay the cost of an initial commercial driver license (CDL) examination for employees whose position requires them to operate such equipment.

## **Government Impostor and Deceptive Advertisement Act (Section 58)**

### Present Situation

The department receives numerous complaints from consumers and businesses that have been scammed by companies selling free government forms or mimicking government services. Businesses that sell free government forms or trick businesses into filing unnecessary paperwork have operated in Florida for several years. The U.S. Post Office currently prohibits this type of mailing of federal government forms or program offers. However, the only remedy is to throw away the offending material, which does not protect unsuspecting consumers.

### Effect of Proposed Changes

The bill creates the "Government Impostor and Deceptive Advertisements Act" and provides the department with the duty and responsibility to investigate potential violations, request and obtain information regarding potential violations, seek compliance, enforce this law, and adopt rules necessary to administer this law.

### ***Violations***

The bill provides that the following acts or practices constitute a violation:

- Disseminating an advertisement that:
  - Simulates a summons, complaint, jury notice, or other court, judicial, or administrative process of any kind.
  - Represents, implies, or otherwise engages in an action that may reasonably cause confusion that the person using or employing the advertisement is a part of or associated with a governmental entity, when such is not true.
- Representing, implying, or otherwise reasonably causing confusion that goods, services, an advertisement, or an offer was disseminated by or has been approved, authorized, or endorsed, in whole or in part, by a governmental entity, when such is not true.
- Using or employing language, symbols, website or e-mail addresses, or any other term or other content that implies or otherwise reasonably causes confusion that goods, services, an advertisement, or an offer is from a governmental entity, when such is not true.
- Failing to provide the disclosures as required.

- Failing to timely submit to the department written responses and answers to its inquiries.

### ***Disclosure Requirements***

The bill requires mailings, emails, or websites to contain prominent and specific disclaimers stating that the sales material are not related to any government filing and/or that the information or forms can be obtained for free or at a lesser cost from a governmental agency. Businesses are required to give consumers the name and contact information of the governmental agency.

### ***Penalties***

The bill authorizes any person who is substantially affected by a violation of this section to bring an action in a court of proper jurisdiction to enforce the provisions of this section. A person prevailing in a civil action for a violation of this section must be awarded costs, including reasonable attorney fees, and may be awarded punitive damages in addition to actual damages proven. This provision is in addition to any other remedies prescribed by law.

The bill authorizes the department to bring one or more of the following for a violation:

- A civil action in circuit court for the following:
  - Temporary or permanent injunctive relief to enforce this section.
  - For printed advertisements and e-mail, a fine of up to \$1,000 for each separately addressed advertisement or message containing content in violation, except for failing to timely submit written responses to the department that is received by or addressed to a state resident.
  - For websites, a fine of up to \$5,000 for each day a website has content in violation.
  - For violations of failing to timely submit written responses to the department, a fine of up to \$5,000 for each violation.
  - Recovery of restitution and damages on behalf of persons substantially affected by a violation of this section.
  - The recovery of court costs and reasonable attorney fees.
- An action for an administrative fine in the Class III category pursuant to s. 570.971, F.S., for each act or omission, which constitutes a violation under this section.

The bill authorizes the department to terminate any investigation or action upon agreement by the alleged offender to pay a stipulated fine, make restitution, pay damages to customers, or satisfy any other relief authorized by this section. Any person in violation, except for failing to timely submit written responses to the department, also commits an unfair and deceptive trade practice in violation of part II of chapter 501, F.S., and is subject to the penalties and remedies imposed for such violation.

### **Conforming Cross References (Section 59)**

Currently, the definition for “plumbing contractor” located in the chapter of law relating to contracting cross references the outdated LPG definition for “specialty installer” that the bill deletes. The cross reference is changed to “specialty installer” to conform to the changes consistent with the bill.

### **Liquefied Petroleum Gas – Rules (Section 60)**

The bill removes redundant implementation language from the notes section of the National Fire Protection Association provision.

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

**Section 1** amends s. 193.461, F.S., to provide that screened enclosed structures used in horticulture production for protection from pest and disease have no separately assessable value for purposes of ad valorem taxation. The bill allows agricultural lands that incur damage as a result of a natural disaster continue to be classified as agricultural lands for five years after termination of the emergency declaration. The assessment applies retroactively to lands damaged by a natural disaster that occurred on or after July 1, 2017.

**Section 2** amends s. 252.3569, F.S., to establish the State Agricultural Response Team (SART) within the department. Currently, the SART is not identified in statute.

**Section 3** amends s. 316.565, F.S., to replace the term “perishable food crops” with “agricultural products” and allows the Department of Transportation to issue electronic verification of permits during emergencies declared by the Governor.

**Section 4** amends s. 379.361, F.S., to transfer the responsibilities for Apalachicola Bay oyster harvesting licensure from the Department of Agriculture and Consumer Services (department) to the City of Apalachicola, Florida. The bill also allows annual license fees collected by the city to be used for the Apalachicola Bay oyster shell recycling program.

**Section 5** amends s. 487.041, F.S., to eliminate the requirement that payment of any pesticide registration fee must be submitted electronically using the department’s Internet website.

**Section 6** amends s. 496.415, F.S., to prohibit the comingling of charitable contributions with noncharitable funds in connection with the planning, conduct, or execution of any solicitation or charitable or sponsor sales promotion.

**Section 7** amends s. 496.418, F.S., to define noncharitable funds to include any funds that are not used or intended to be used for the operation of a charity or for charitable purposes. It also requires those soliciting charitable funds to keep accurate and separate sets of records to justify charitable expenses.

**Section 8** amends s. 500.459, F.S., to eliminate the requirement that water vending machine applicants must submit forms to the department “in writing.” This change will permit applications to be submitted electronically.

**Section 9** amends s. 501.059, F.S., to revise the term “telephone sales call” in order to keep pace with advances in ringless communication technology used by telemarketers to solicit sales from consumers. The bill prohibits a telephone solicitor or other person to call or text a business that does not wish to receive an outbound telephone call or text message. The bill also requires a

telephone sales call solicitor to provide a telephone number capable of receiving calls on the call recipient's caller ID.

**Section 10** creates s. 501.6175, F.S., to require telemarketers to maintain specified records for two years after a consumer is contacted. A telemarketer must make records available for inspection and copying within 10 days after a department request.

**Section 11** amends s. 501.912, F.S., to revise the definition of "antifreeze" to include antifreeze-coolant, antifreeze and summer coolant, and summer coolant. This change consolidates separate definitions and removes the unnecessary distinction between coolant types.

**Section 12** amends s. 501.913, F.S., to allow applicants (person whose name appears on the label, the manufacturer, or the packager) to choose between a one-year or a two-year permit when registering antifreeze brands and products. The bill eliminates affidavit requirements when a registered brand is no longer in production or distribution. The bill also eliminates the requirement that the department independently test the fluids upon application. In lieu of departmental testing, all first time applicants will submit a certified report from an independent testing laboratory, dated within the last six months.

**Section 13** amends s. 501.917, F.S., to require the department to perform the analysis of all samples of antifreeze that are collected in the inspection of a business that sells antifreeze. The department's certificate of analysis will be evidence that, if not overcome, will be sufficient evidence to demonstrate that the stated facts are true.

**Section 14** amends s. 501.92, F.S., to conform this section's antifreeze formula requirements to the internal departmental testing requirements specified in s. 501.917, F.S.

**Section 15** amends s. 525.07, F.S., to allow department inspectors to seize without warrant any credit or debit card skimming device.

**Section 16** amends s. 526.304, F.S., to allow the department to temporarily suspend the Motor Fuels Marketing Practices Act during a state of emergency relating to fuel prices.

**Section 17** amends s. 526.305, F.S., authorizes the department to waive licensing fees to renew or replace lost or damaged licenses during a state of emergency.

**Section 18** amends s. 526.51, F.S., to allow a brake fluid business to submit readily available product analysis reports for new products to the department. The bill allows businesses to register products for 24 months, creating greater efficiency for the business as well as the department. The bill also eliminates affidavit requirements when a registered brand and formula combination is no longer in production or distribution.

**Section 19** amends s. 526.53, F.S., to require the department to perform the analysis of all samples of brake fluid that are collected in the inspection of a business that sells brake fluid. The department's certificate of analysis will be evidence that, if not overcome, will be sufficient evidence to demonstrate that the stated facts are true.



**Section 20** amends s. 527.01, F.S., to update definitions concerning liquefied petroleum gas licensee categories so they will more accurately reflect current business practices. The bill also provides an optional expansion of the license period from one to three years.

**Section 21** amends s. 527.02, F.S., to revise the persons subject to liquefied petroleum business licensing provisions. The bill eliminates the original and renewal liquefied petroleum gas license fee structure and replaces it with a new revenue neutral fee structure. The bill allows a licensee to make information changes for a \$10 fee, removing the requirement for the licensee to apply for a new license and again pay the full license fee. The bill also deletes pipeline system operator license provisions because they are now regulated by the federal government under 49 CFR 191 and 192.

**Section 22** amends s. 527.0201, F.S., to clarify the difference between qualifier and master qualifier registration and licenses pertaining to the sale of liquefied petroleum gas. The bill increases the requirements to achieve master qualifier status and removes the employer's name from master qualifier certificates issued by the department. The bill also removes the overly punitive 90-day registration revocation for firms without a master qualifier.

**Section 23** amends s. 527.021, F.S., to revise the circumstances under which liquefied petroleum gas bulk delivery vehicles must be registered with the department. Vehicles will be registered at the time they are placed into service or during the licensing application process by the liquefied petroleum gas dealer.

**Section 24** amends s. 527.03, F.S., to allow for 12, 24, or 36-month liquefied petroleum gas licenses at the discretion of the licensee. The bill optimizes the application process by eliminating defined application periods.

**Section 25** amends s. 527.04, F.S., to make the Commissioner of Agriculture responsible for liquefied petroleum gas insurance issues rather than the Governor of Florida.

**Section 26** amends s. 527.0605, F.S., to remove the requirement that licensees submit a site plan and a review fee for liquefied petroleum bulk storage container site inspections prior to commencing operations and allows for master qualifier compliance reviews. A final inspection by the department is still required prior to commencing operations.

**Section 27** amends s. 527.065, F.S., to update the dollar threshold for required reporting of liquefied petroleum gas accidents from \$1,000 to \$3,000.

**Section 28** amends s. 527.067, F.S., to require a liquefied petroleum gas dealer to give notice at least five business days before rendering a consumer's liquefied petroleum gas equipment or system inoperable or before discontinuing service.

**Section 29** amends s. 527.10, F.S., to conform provisions to changes made by this act.

**Section 30** amends s. 527.21, F.S., to conform provisions to changes made by this act.

**Section 31** amends s. 527.22, F.S., to streamline the Florida Propane Gas Education, Safety, and Research Council nomination procedures.

**Section 32** amends s. 531.67, F.S., to extend the expiration date of seven weights, measures, and standards sections that provide testing, inspections, and regulations for the operation of weighing and measuring devices used in commercial transactions. The date will be extended from July 1, 2020 to July 1, 2025.

**Section 33** amends s. 534.47, F.S., to revise definitions relating to livestock.

**Section 34** amends s. 534.49, F.S., to revise the definition of a buyer relating to livestock drafts.

**Section 35** repeals s. 534.50, F.S., to require each livestock market to report dishonored checks issued in payment for livestock within 24 hours.

**Section 36** amends s. 534.501, F.S., to make failure to render payment for livestock to any seller of cattle an unfair or deceptive act in trade or commerce.

**Section 37** repeals s. 534.51, F.S., to prohibit livestock markets from filing a complaint under s. 604.21 F.S., if the livestock market violated certain provisions relating to transactions.

**Section 38** amends s. 534.54, F.S., to add court costs and expenses to the section of law prescribing liability of a purchaser who fails to make payment for livestock as required by state or federal livestock laws.

**Section 39** amends s. 570.07, F.S., to clarify that the Commissioner of Agriculture has the authority during a state of emergency to waive fees for duplicate copies or renewal of permits, licenses, certifications, or other similar types of authorizations.

**Section 40** amends s. 573.111, F.S., to eliminate the requirement to post a notice on the public bulletin board in the Mayo Building in Tallahassee, FL, before the issuance, suspension, amendment, or termination of any marketing order covered by chapter 573, F.S., or departmental actions affecting marketing orders. This information will continue to be available on the department's website for individuals to review.

**Section 41** amends s. 578.011, F.S., to clarify and update the definitions in chapter 578, F.S., to reflect current technological developments in seed production.

**Section 42** creates s. 578.012, F.S., to explicitly provide for state preemption of the authority to regulate seed or matters relating to seed in order to eliminate regulatory duplication. A local government or political subdivision of the state may not enact or enforce any ordinance that regulates seed, including the power to assess any penalties for violations.

**Section 43** amends s. 578.08, F.S., to expand the definition of tree seed by deleting the limiting adjective "forest" and by including shrub seed into the types of seed that require registration. The bill eliminates the need for the department to issue written registration receipts, clarifies

registration requirements for seed dealers, and requires registration and the payment of fees when packet seed is placed into commerce.

**Section 44** amends s. 578.09, F.S., to revise labeling requirements for agricultural vegetable, flower, tree, and shrub seed. The bill also requires seed labels for agricultural seed, including lawn and turf grass seed and mixtures, to label hybrids as hybrids.

**Section 45** repeals s. 578.091, F.S., pertaining to forest tree seed. The provisions in this section have been moved to s. 578.09, F.S.

**Section 46** amends s. 578.10, F.S., to clarify the release from liability afforded to a person who unknowingly sells seed that is mislabeled. The bill requires sellers to take reasonable actions to ensure the identity of seed in cases involving criminal penalties for incorrect labels. The bill exempts seed under development or maintained for research purposes from the provisions of s. 578.09 and 578.13, F.S., because they are not commercially available to consumers or businesses.

**Section 47** amends s. 578.11, F.S., to make technical changes and to conform provisions to changes made by this act.

**Section 48** amends s. 578.12, F.S., to conform provisions to changes made by this act.

**Section 49** amends s. 578.13, F.S., to expand the definition of seed to include shrubs. The bill specifies that it is unlawful to move, handle, or dispose of seed or tags under a stop-sale notice or order without permission from the department. The bill specifies that it is unlawful to represent seed as certified except under specified conditions or to label seed with a variety name under certain conditions.

**Section 50** repeals s. 578.14, F.S., relating to packet vegetable and flower seed. The section's registration requirements are moved to s. 578.08(5), F.S.

**Section 51** amends s. 578.181, F.S., to clarify when penalties may be imposed. The bill expands what constitutes obstruction of departmental efforts and clarifies that the pre-penalty warning letter requirement is appropriate for minor seed-related violations while fines and other administrative action may be taken for major seed-related violations.

**Section 52** amends s. 578.23, F.S., to reduce the seed record retention periods from three to two years. The bill adds a one-year seed holding requirement after final disposition and continues to require all such records and samples be made available for departmental inspection.

**Section 53** amends s. 578.26, F.S., to change the word "farmer" to the word "buyer." The bill allows buyers, instead of exclusively farmers, to file complaints with the Seed Investigation and Conciliation Council (SICC), which is given broader authority to recommend settlements beyond cost damages. The bill requires that any contested seed be planted in the state and that all administrative remedies be exhausted prior to commencing any legal action. The bill also restates that the department is to mail a copy of the SICC's procedures to each party once a complaint has been filed.

**Section 54** amends s. 578.27, F.S., to remove alternate membership from the SICC and revise the terms of members of the council. The bill revises the purpose of the council to assist buyers, instead of exclusively farmers, and seed dealers. The bill also clarifies language regarding inspections by the SICC of the complainant's farming operations and practices.

**Section 55** renumbers s. 578.28, F.S., pertaining to seed in hermetically sealed containers, as s. 578.092, F.S.

**Section 56** creates s. 578.29, F.S., to prohibit the presence of "prohibited noxious weed seed," as defined in s. 578.011, F.S., in agricultural, vegetable, flower, tree, or shrub seed offered or exposed for sale in Florida.

**Section 57** amends s. 590.02, F.S., to authorize the department to cover the cost of the initial Commercial Driver's License (CDL) examination fee for those Florida Forest Service employees whose positions entail operating CDL-requiring equipment. The bill authorizes the department to make rules to accomplish this provision.

**Section 58** creates s. 817.417, F.S., to create the "Government Impostor and Deceptive Advertisement Act" to prevent Florida consumers and businesses from being scammed by companies selling free government forms or mimicking government services. The bill defines terms and specifies department duties and responsibilities. The act will prohibit mailings, emails, or websites that target Floridians without prominent disclaimers stating that the sales materials are not related to any government filing and/or that the information or forms can be obtained free of charge. Businesses will be required to give consumers the website or phone number of the agency that provides the free information or face potential fines.

**Section 59** amends s. 489.105, F.S., to conform provisions made by this act.

**Section 60** reenacts s. 527.06, F.S., relating to published standards of the National Fire Protection Association.

**Section 61** provides that this act shall take effect July 1, 2018.

#### **IV. Constitutional Issues:**

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

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds or that limit their ability to raise revenue or receive state tax revenues.

Subsection (b) of s. 18, Art. VII, Florida Constitution, provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandates

requirements do not apply to laws having an insignificant impact,<sup>36</sup> which for Fiscal Year 2017-2018, is \$2.1 million or less.<sup>37</sup>

The Revenue Estimating Conference estimates this bill will reduce the authority that counties have to raise revenue from the local ad valorem tax by \$1.9 million. Therefore, this bill has an insignificant fiscal impact on local governments and may not be a mandate requiring a two-thirds vote of the membership.

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

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

The Revenue Estimating Conference estimates the reduction in the assessment on screened enclosed structures used in horticulture production will reduce local ad valorem taxes by \$1.9 million on a recurring basis beginning in Fiscal Year 2018-2019.

**B. Private Sector Impact:**

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

The bill requires the City of Apalachicola to take over administrative responsibilities of the Apalachicola Bay oyster harvesting license fees. This will allow the city to control the allocation of funds for oyster shell restoration activities.

**C. Government Sector Impact:**

The Department of Agriculture and Consumer Services (department) estimates the bill will reduce revenues deposited in the General Inspection Trust Fund by \$82,900 annually beginning in Fiscal Year 2018-2019 as a result of the transfer of the oyster harvesting license program to the City of Apalachicola and the liquid petroleum gas license consolidation. As a result, the amount of the service charge sent from the trust fund to the General Revenue Fund is expected to decrease by \$6,632 annually.

<sup>36</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Nov. 9, 2017).

<sup>37</sup> Based on the Demographic Estimating Conference's population adopted on December 5, 2017. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Dec. 22, 2017).

The department expects \$79,000 of annual expenditures, relating to oyster harvesting licenses, will no longer be necessary. In addition, the department will experience new workload associated with its additional responsibilities for antifreeze regulation, gasoline and oil inspection, and brake fluid regulation. The costs associated with this workload is insignificant (approximately \$9,000 annually).

The department is granted the discretion to pay for the commercial driver licenses for Florida Forest Service employees required to drive certain vehicles. If the department exercised this discretion and paid for such licenses, the cost is anticipated to be \$36,000 annually.

**General Inspection Trust Fund Revenue Reductions**

	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>
Transfer Oyster Harvesting Licensing Program to City of Apalachicola	(79,900)	(79,900)	(79,900)
Liquid Petroleum Gas (license consolidation)	(3,000)	(3,000)	(3,000)
<b>Total Revenue Reduction</b>	<b>(82,900)</b>	<b>(82,900)</b>	<b>(82,900)</b>
8% Surcharge to GR Reduction	(6,632)	(6,632)	(6,632)

**General Inspection Trust Fund Expenditure Adjustments**

	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>
Transfer Oyster Harvesting Licensing Program to City of Apalachicola	(79,900)	(79,900)	(79,900)
Antifreeze (sample purchasing increase)	6,000	6,000	6,000
Gasoline and Oil Inspection (shipping costs increase)	4,800	4,800	4,800
Brake Fluid (sample purchasing increase)	4,370	4,370	4,370
Florida Forest Service (Commercial Driver License)	36,000	36,000	36,000
<b>Total Expenditures</b>	<b>(28,730)</b>	<b>(28,730)</b>	<b>(28,730)</b>
<b>Net Fiscal Impact:</b>	<b>(54,170)</b>	<b>(54,170)</b>	<b>(54,170)</b>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends the following sections of the Florida Statutes: 193.461, 316.565, 379.361, 487.041, 496.415, 496.418, 500.459, 501.059, 501.059, 501.912, 501.913, 501.917, 501.92, 525.07, 526.304, 526.305, 526.51, 526.53, 527.01, 527.02, 527.0201, 527.021, 527.03, 527.04, 527.0605, 527.065, 527.067, 527.10, 527.21, 527.22, 531.67, 534.47, 534.49, 534.501, 534.54, 570.07, 573.111, 578.011, 578.08, 578.09, 578.10, 578.11, 578.12, 578.13, 578.181, 578.23, 578.26, 578.27, 578.28, 578.092, 590.02, and 489.105.

This bill creates the following sections of the Florida Statutes: 252.3569, 501.6175, 578.012, 578.29, and 817.417.

This bill repeals the following sections of the Florida Statutes: 534.50, 534.51, 578.091 and 578.14.

The bill reenacts the following section of the Florida Statutes: 527.06(3).

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Appropriations on February 22, 2018:**

The committee substitute:

- Removes provisions revising the licensure of concealed weapons and firearm instructors and removes language authorizing tax collectors to collect concealed weapon or firearm license fees;
- Provides an agricultural assessment retroactively to lands damaged as a result of a natural disaster that occurred on or after July 1, 2017;
- Requires a telephone sales call solicitor to provide a telephone number capable of receiving calls on the call recipient's caller ID and increases penalties for violations of the Do Not Call Act;
- Allows the department to suspend the Motor Fuel Marketing Practices Act during a state of emergency;
- Aligns provisions of the state livestock law with the federal Packers and Stockyards Act and makes failure to render payment to a seller of livestock an unfair or deceptive act; and
- Requires a liquid petroleum gas dealer to give a five day notice when discontinuing service or rendering equipment inoperable.

**CS by Agriculture on January 11, 2018:**

The committee substitute:

- Provides that screen enclosed structures used in citrus production for pest exclusion, when consistent with department adopted best management practices, have no separately assessable value for purposes of ad valorem taxation;
- Retains the language of current law, which was unintentionally struck, pertaining to labeling requirements of agricultural, vegetable, flower, tree, or shrub seed;
- Requires seed labels for agricultural seed, including lawn and turf grass seed and mixtures, to label hybrids as hybrids; and
- Corrects a cross-reference.

B. Amendments:

None.