

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1215 Department of Agriculture and Consumer Services
SPONSOR(S): Agriculture & Natural Resources Subcommittee, Brannan
TIED BILLS: **IDEN./SIM. BILLS:** SB 1446, SB 7062

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	14 Y, 0 N, As CS	Mears	Shugar
2) Agriculture & Natural Resources Appropriations Subcommittee	11 Y, 0 N	White	Pigott
3) State Affairs Committee			

SUMMARY ANALYSIS

The Department of Agriculture and Consumer Services (DACS) is supported by one citizen support organization (CSO) and six direct support organizations (DSO). CSO and DSOs are statutorily authorized or created private entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities. The bill extends the scheduled repeal date for the Babcock Ranch Preserve CSO to 2024, removes the scheduled repeal date for DSOs under DACS, and removes the scheduled repeal date for the Florida Beef Council.

DACS is responsible for the administration and enforcement of food products to prevent fraud, harm, adulteration, misbranding, or false advertising in the preparation, manufacture, or sale of articles of food, which includes regulating retail food businesses. The bill amends the definition of food establishments to consolidate different food retail businesses under one definition to streamline food permits. The bill authorizes DACS to establish the level of inspection needed for individual food establishments, and the bill clarifies the renewal date for permits is annually by January 1. The bill further amends the definition of "raw milk" to include milk products and frozen desserts to be consistent with the definition and requirements of the United States Food and Drug Administration and the United States Department of Agriculture (USDA).

The Florida Forest Service has the authority to develop a training program for forestry firefighters that must contain the basic volunteer structural fire training course approved by the Florida State Fire College and a minimum of 250 hours of wildfire training and a training program for forestry firefighters that is not less than 206 hours. The bill amends the required hours for wildland fire training and certification.

DACS is authorized to treat and regulate the fumigation or treatment of plants and plant products infested or infected by plant pests or exposed to infestation or infection that it is reasonably believed that infestation or infection could exist. The bill further allows DACS to authorize fumigants for raw agricultural commodities at specified locations. The bill extends the scheduled repeal date of the Pest Control Trust Fund to 2024.

The bill amends other programs under DACS that include:

- expanding authority for DACS to use funds from the USDA to retrofit for irrigation laboratory evaluations and water conservation and water quality improvement;
- creating an exemption, variance, and waiver process for school nutrition program sponsors; and
- amending the membership of the Florida Safety and Food Defense Advisory Council to better achieve quorum requirements.

There may be an insignificant negative fiscal impact on DACS that can be absorbed within existing resources to update rules.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Citizen Support and Direct Support Organizations

Present Situation

Citizen support organizations (CSOs) and direct support organizations (DSOs) are statutorily authorized or created private entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities.¹ Further, a law creating, or authorizing the creation of, a CSO or DSO must state that the creation of or authorization for the CSO or DSO is repealed on October 1 of the fifth year after enactment, unless reviewed and saved from repeal by the Legislature. CSOs and DSOs in existence on July 1, 2014, must be reviewed by the Legislature by July 1, 2019. By August 1 of each year, a CSO or DSO created or authorized pursuant to law or executive order and created, approved, or administered by an agency, must submit the following information to the appropriate agency: the name, mailing address, telephone number, and website address of the organization, the statutory authority or executive order pursuant to which the organization was created, a brief description of the mission of, and results obtained by, the organization, a brief description of the plans of the organization for the next three fiscal years, a copy of the organization's code of ethics, and a copy of the organization's most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990).² Each agency receiving information from a CSO or DSO pursuant to s. 20.058(1), F.S., must make the information available to the public through the agency's website, and include a link to the organization's website, if applicable.³

Under the Florida Department of Agriculture and Consumer Services (DACs), there is one CSO, the Babcock Ranch Preserve, and six DSOs: Friends of the Florida State Forests, Forestry Arson Alert Association, Inc., Florida Agricultural Museum, Florida Agriculture in the Classroom, Inc., Florida Agriculture Center and Horse Park Authority, and Living Healthy in Florida, Inc. Additionally, the Florida Beef Council is authorized to operate as a DSO under DACs.

The Friends of Babcock Ranch Preserve, Inc.

The Babcock Ranch Preserve Act passed the Legislature in 2006, authorizing the acquisition of Babcock Ranch. The Babcock Ranch Preserve Act further authorized the creation of the Babcock Ranch Preserve that protected regionally important water resources, diverse natural habitats, scenic landscapes, and historic and cultural resources in southwest Florida.⁴

Section 259.10521, F.S., authorized the creation of a CSO to raise funds, request and receive grants, gifts, and bequests of money, acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal. It was further authorized to make expenditures to or for the direct or indirect benefit of the Babcock Ranch Preserve. On August 1, 2016, the Florida Forest Service (FFS) in DACs began managing the Babcock Ranch Preserve as a working

¹ See Sections 379.223, 20.2551, and 258.015(1), F.S.; specific CSOs and DSOs are granted the authority to operate and conduct programs and activities, raise funds, request and receive grants and gifts, acquire, receive, hold, invest, and administer funds and property, and make expenditures.

² Sections 20.058(1)(a)-(f), F.S.

³ Section 20.058(1), F.S.

⁴ DACs, *Babcock Ranch Preserve*, available at <https://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service/Our-Forests/State-Forests/Babcock-Ranch-Preserve> (last visited Mar. 15, 2019).

ranch, while preserving public recreation opportunities compatible with agricultural operations.⁵ The Friends of the Babcock Ranch Preserve, Inc., will be established when the sale agreement for the Babcock Ranch Preserve is completed, which is anticipated to be in place before the end of 2019.⁶

Friends of the Florida State Forests

Friends of the Florida State Forests is a DSO of the FFS that supports recreation and reforestation projects on Florida's 37 state forests.⁷ The Friends of Florida State Forests work with the community to assist the FFS in expanding opportunities for recreation that include hunting, horseback riding, hiking, off highway vehicle opportunities, environmental education, and forest management within Florida's state forests.⁸

Forestry Arson Alert Association, Inc.

Arson is the number one cause of wildfires in Florida, accounting for more than 25 percent of the total number of wildfires.⁹ The purpose of the Forestry Arson Alert Association is to provide public awareness related to the economic costs, environmental damage, and cultural deprivations that accompany forest fires, along with the importance of promptly reporting forest arson and providing accurate information to law enforcement officials to assist with the apprehension of persons engaged in forest arson. Further, the Forestry Arson Alert Association rewards citizens who assist law enforcement officials in the apprehension and conviction of persons engaged in forest arson.¹⁰

Florida Agricultural Museum

The Florida Agricultural Museum was established in 1983, and in 1992, it was designated the "Museum of Agriculture and Rural History of the State of Florida." The mission of the Florida Agricultural Museum is to preserve Florida's agricultural past, interpret agricultural issues of the past and present, and to educate the public about those issues.¹¹ The Florida Agricultural Museum conserves heritage livestock, including rare Florida Cracker cattle, horses, and sheep,¹² and provides agricultural education to students.¹³

Florida Agriculture in the Classroom, Inc.

Florida Agriculture in the Classroom, Inc. (FAITC), is a non-profit organization that develops and trains teachers and agriculture industry volunteers in agricultural curricula and materials, which then is used to educate students about the importance of agriculture.¹⁴ FAITC provides grant money to teachers and volunteers for projects that teach students about the sources of their food, and the important contributions Florida farmers make to their communities and the state.¹⁵

⁵ DACS, *Babcock Ranch Preserve*, available at <https://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service/Our-Forests/State-Forests/Babcock-Ranch-Preserve> (last visited Mar. 15, 2019).

⁶ Memo from Jim Karels, Director of the FFS, DACS, RE: Babcock Ranch Direct Support Organization (Feb. 13, 2019).

⁷ Friends of Florida State Forests, *About us*, available at <https://floridastateforests.org/about-us> (last visited Mar. 15, 2019).

⁸ DACS, *2018 Direct Support Organizations Report*, available at <https://www.freshfromflorida.com/content/download/82076/2387865/FDACS-DSO-Report-2018.pdf>, p. 3 (last visited Mar. 16, 2019).

⁹ DACS, *2018 Direct Support Organizations Report*, available at <https://www.freshfromflorida.com/content/download/82076/2387865/FDACS-DSO-Report-2018.pdf>, p. 23 (last visited Mar. 16, 2019).

¹⁰ Sections 590.61(1)-(4), F.S.

¹¹ DACS, *2018 Direct Support Organizations Report*, available at <https://www.freshfromflorida.com/content/download/82076/2387865/FDACS-DSO-Report-2018.pdf>, p. 29 (last visited Mar. 16, 2019).

¹² Florida Agricultural Museum, *About Us*, available at <https://www.floridaagmuseum.org/about-us.html> (last visited Mar. 15, 2019).

¹³ *Id.*

¹⁴ Florida Agriculture in the Classroom, *About Us*, available at <https://faitc.org/about-faitc/> (last visited Mar. 15, 2019).

¹⁵ *Id.*

Florida Agricultural Center and Horse Park Authority

The Florida Agriculture Center and Horse Park (the park) in Ocala is a 500-acre, nonprofit, multipurpose, recreational and sporting organization dedicated to developing an international facility.¹⁶ The park strives to advance agriculture and equine education and to provide the state and community with a recreational facility capable of hosting equestrian and non-equestrian events.¹⁷ In fiscal year 2017-2018, 186 events were held at the park.¹⁸

Living Healthy in Florida, Inc.

Living Healthy in Florida, Inc. (Living Healthy), is a collaborative effort among multiple agencies and organizations to communicate consistent information to Florida's children, families and seniors about healthy eating, good nutrition, and active living. Living Healthy has three principles: ensure all Floridians have access to nutritious food and recreational opportunities, share knowledge about the components of a healthy lifestyle, and forge strategic partnerships with those willing to invest in the well-being of Floridians to create a resource network that advances a healthier lifestyle.¹⁹

The Florida Beef Council, Inc.

The federal Beef Promotion and Research Act (act) was passed as part of the 1985 Farm Bill and created the basis for a producer-funded beef promotion and research program, the national Beef Checkoff Program, with the purpose to build demand for beef and beef products, both domestically and internationally.²⁰ The act required cattle producers to pay a fee, or "checkoff" on all sales of cattle to fund advertisements. The act was challenged by cattle producers who disagreed with the content of the advertisements and brought action against the United States Department of Agriculture (USDA) alleging that the government-required fee for advertising violated their First Amendment right to free speech. In response to this challenge, the Florida cattle industry worked with the Legislature to create the Beef Market Development Act in the event the Florida cattle industry decided to hold a referendum to start a state "checkoff" program. The Beef Market Development Act created the Florida Beef Council, Inc., to operate as a DSO under DACS. Since the original federal challenge was not successful, there has not been a need to set up the Florida Beef Council, Inc. However, another challenge is before the United States Court of Appeals for the Ninth Circuit²¹, and the Florida cattle producers have requested that the DSO remain in statute in the event there is a need to move forward with a state program.

Effect of Proposed Changes

The bill amends s. 259.10521, F.S., to extend the scheduled repeal of the Babcock Ranch Preserve CSO to 2024.

The bill amends s. 570.691, F.S., to remove the scheduled repeal of provisions authorizing DSOs established under DACS.

The bill amends s. 570.83(14), F.S., to remove the scheduled repeal of the Florida Beef Council, Inc.

¹⁶ DACS, *2018 Direct Support Organizations Report*, available at <https://www.freshfromflorida.com/content/download/82076/2387865/FDACS-DSO-Report-2018.pdf>, p. 54 (last visited Mar. 16, 2019).

¹⁷ Florida Horse Park, *About Us*, available at <https://flhorsepark.com/> (last visited Mar. 15, 2019).

¹⁸ DACS, *2018 Direct Support Organizations Report*, available at <https://www.freshfromflorida.com/content/download/82076/2387865/FDACS-DSO-Report-2018.pdf>, p. 54 (last visited Mar. 16, 2019).

¹⁹ DACS, *Direct Support Organization*, available at <https://www.freshfromflorida.com/Consumer-Resources/Health-and-Safety/Living-Healthy-in-Florida/Direct-Support-Organization> (last visited Mar. 15, 2019).

²⁰ Beef Checkoff, Beef Act and Order, available at https://www.beefboard.org/library/beefact_order.asp (last visited Mar. 15, 2019).

²¹ *Ranchers-Cattlemen Action Legal Fund v. Vilsack*, CV_16-41-BMM-JTJ, 2016 WL 9804600 (D. MT Dec. 12, 2016).

Pesticide Regulation and Safety

Present Situation

DACS is authorized to treat and regulate the fumigation or treatment of plants and plant products infested or infected by plant pests or exposed to infestation or infection that it is reasonably believed that infestation or infection could exist.²² Fumigation is the use of, within an enclosed space or in or under a structure or tarps, of a fumigant in concentrations that may be hazardous to people.²³ Raw agricultural commodities fumigation is the application of any restricted use fumigant pesticide to post-harvest raw agricultural commodities within any storage facility, during processing or manufacturing procedures, or to a storage facility prior to the facility receiving the commodity for storage or after the commodity has been removed from such a facility;²⁴ however, a specific definition does not exist in statute.²⁵ Structural fumigants undergo a thorough review by the USDA and DACS before they are registered for use. The fumigant label provides instructions for use that are designed to prevent exposure to unsafe levels.²⁶ Only certified applicators can perform structural fumigation.

Effect of Proposed Changes

The bill defines “raw agricultural commodities fumigation” as the use of a fumigant, in a lethal concentration to eliminate pests from fruits, vegetables, nuts, legumes, mushrooms, or other nonanimal matter customarily consumed by humans or animals, under a tarpaulin or in a structure such as a storage facility, barn, silo, or warehouse that is not inhabited by human beings, agricultural livestock, or domestic pets and that is not connected by construction elements such as voids, pipes, conduits, drains, or ducts to a structure that is inhabited by human beings, agricultural livestock, or domestic pets that would allow the transfer of fumigant between the structures. The bill allows raw agricultural commodities fumigation with pesticides²⁷ in buildings where the structure does not share voids, conduits, drains, or ducts that is inhabited by human beings, livestock animals, or domestic pets. The bill creates a license classification for the use of fumigants as pesticides only for raw agricultural commodities fumigation.

Pest Control Trust Fund

Present Situation

The Pest Control Trust Fund is used to carry out the provisions of ch. 482, F.S., including the licensing of pest control businesses, examinations for operators’ certificates, and the education of the pest control industry.²⁸ Revenue sources include license fees, examination fees, certification fees, and commercial fees and fines. Section 570.441(4) allows moneys collected or received that are deposited into the Pest Control Trust Fund to be used to carry out the provisions of s. 570.44, F.S., which gives DACS the authority to:

²² Section 581.161, F.S.

²³ Section 482.021(10), F.S.

²⁴ University of Florida Institute of Food and Agricultural Science, *Agricultural Commodity Fumigation (Raw Agricultural Commodity Fumigation Exam)*, available at <http://ifasbooks.ifas.ufl.edu/p-129-raw-agricultural-commodity-fumigation-raw-agricultural-commodity-fumigation-exam.aspx> (last visited Mar. 17, 2019).

²⁵ DACS, *Florida Structural Fumigation Information*, available at <https://www.freshfromflorida.com/Consumer-Resources/Health-and-Safety/Protect-Your-Home-from-Pests/Florida-Structural-Fumigation-Information> (last visited Mar. 16, 2019).

²⁶ DACS, *Structural Fumigation FAQ*, available at <https://www.freshfromflorida.com/Consumer-Resources/Health-and-Safety/Protect-Your-Home-from-Pests/Florida-Structural-Fumigation-Information/Structural-Fumigation-FAQ> (last visited Mar. 15, 2019).

²⁷ Section 487.021(49), F.S.; “pesticide” means 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.

²⁸ Section 482.241, F.S.

- Inspect and draw samples of commercial feeds for sale, seeds for sale, certified seed grown in Florida, fertilizers for sale, and pesticides;
- Conduct general inspection activities in regard to weights, measures and standards of articles for sale;
- Review and evaluate technical and scientific data associated with the production, manufacture, storage, transportation, sale, or use of any article or product with respect to any statutory authority conferred on the department;
- Analyze samples of fertilizer offered for sale;
- Analyze samples of pesticide formulations offered for sale;
- Analyze samples of commercial feed offered for sale;
- Analyze samples of vegetables, agricultural, flower, and forest tree seed offered for sale; and
- Investigate, evaluate, and develop new or improved technology to enhance the analytical capability and efficiency of all divisional laboratories and perform other related analyses as deemed necessary

Section 570.441(4) is set to expire on June 30, 2019.

Effect of Proposed Changes

The bill amends s. 570.441(4), F.S., to extend the expiration date of the uses of the Pest Control Trust Fund for s. 570.44, F.S., to June 30, 2024.

Food Products, Food Establishments, and Food Permits

Present Situation

DACS is responsible for the administration and enforcement of food products to prevent fraud, harm, adulteration, misbranding, or false advertising in the preparation, manufacture, or sale of articles of food. Specifically, DACS regulates the production, manufacture, transportation, and sale of food.²⁹ A retail food establishment operation is any part of a food establishment involved in the processing, packing, holding, or preparing of food for sale directly to consumers. The term does not include a wholesale food operation. Businesses that typically fall into the food retail category include supermarkets, grocery stores, convenience stores, coffee shops, retail bakeries, retail meat markets, retail seafood or fish markets, juice and smoothie bars, and self-vending water and ice machines.³⁰

Existing definitions related to food retail include:

- “Convenience store” is a business that is engaged primarily in the retail sale of groceries or motor fuels or special fuels and may offer food services to the public.³¹
- “Food establishment” is a factory, food outlet, or other facility manufacturing, processing, packing, holding, or preparing food or selling food at wholesale or retail. This term includes tomato packinghouses and repackers, but does not include any other establishments that pack fruits and vegetables in their raw or natural states, including those fruits or vegetables that are washed, colored, or otherwise treated in their unpeeled, natural form before they are marketed, or provide raw fruits or vegetables to consumers.³²
- “Food outlet” is any grocery store, convenience store, minor food outlet, meat or fish food market, fruit or vegetable market, food warehouse, refrigerated storage facility, freezer locker, salvage food facility, or any other similar place storing or offering food for sale.³³
- “Food service establishment” means any place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided. The

²⁹ Section 500.032, F.S.

³⁰ DACS, *Retail Food Program*, available at <https://www.freshfromflorida.com/Business-Services/Food-Establishment-Inspections/Retail-Food-Program> (last visited Mar. 30, 2019).

³¹ Section 500.03(1)(i), F.S.

³² Section 500.03(1)(p), F.S.

³³ Section 500.03(1)(q), F.S.

term includes any such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. The term includes delicatessens that offer prepared food in individual service portions. The term does not include schools, institutions, fraternal organizations, private homes where food is prepared or served for individual family consumption, retail food stores, the location of food vending machines, cottage food operations, and supply vehicles, nor does the term include a research and development test kitchen limited to the use of employees and which is not open to the general public.³⁴

- “Minor food outlet” means any retail establishment that sells groceries and may offer food service to the public, but neither business activity is a major retail function based on allocated space or gross sales.³⁵
- “Retail food store” is any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption. The term includes delicatessens that offer prepared food in bulk quantities only. The term does not include establishments which handle only prepackaged, nonpotentially hazardous foods; roadside markets that offer only fresh fruits and fresh vegetables for sale; food service establishments; or food and beverage vending machines.³⁶
- “Bottled water” is water that is intended for human consumption and sealed in bottles or other containers with no added ingredients except that it may optionally contain safe and suitable antimicrobial agents.³⁷ The definition for “bottled water” means a beverage as described in 21 C.F.R. §165.110 (2006), that must be in compliance with 21 C.F.R. §129 (2006).³⁸

Section 500.12(4)(b), F.S., requires an application for renewal of a food permit for food establishments to be received annually, on or before January 1. If DACS does not receive the application for renewal within 30 days after the due date, a late fee not to exceed \$100 will be assessed in addition to the permit fees. The late fee must be paid before DACS can issue the food permit.

Effects of Proposed Changes

The bill removes definitions for “convenience store”, “food outlet”, “food service establishment”, and “food retail store” in s. 500.03(1), F.S., and consolidates the different food retail entities under the term “food establishments”. The new definition of “food establishment” includes any establishment or section of an establishment at which food and food products are offered to the consumer and intended for off-premises consumption, and any delicatessen that offers prepared food in bulk quantities. The bill further expands the definition of “food establishment” to include markets that offer only fresh fruits and fresh vegetables for sale. The bill replaces “retail establishments” with “food establishments”, and replaces “groceries” with “food”. The purpose of the definition changes is to streamline the permitting of regulated entities by consolidating the various permit types under one permit for food establishments. All of the entities defined in current law will still be regulated under the definition of “food establishment” and the amount of permit fees will remain the same. There will be no impact to revenues for the consolidation of different retail entities into the definition of “food establishment”.

The bill amends ss. 500.03(1)(d) and 500.147(3)(a), F.S., to update the reference to the most current federal rule regulating bottled water and to update a cross reference.

The bill amends s. 500.12(1), F.S., to require annual food permit fees to be remitted in full to DACS annually by January 1. If DACS does not receive a food permit fee, a late fee not to exceed \$100 will be assessed along with the food permit fee. The change removes ambiguity related to the renewal date.

³⁴ Section 500.03(1)(r), F.S.

³⁵ Section 500.03(1)(v), F.S.

³⁶ Section 500.03(1)(bb), F.S.

³⁷ 21 C.F.R. §165.110(a)(1) (2006).

³⁸ Section 500.03(1)(d), F.S.

The Florida Food Safety and Food Defense Advisory Council

Present Situation

The Florida Food Safety and Food Defense Advisory Council (advisory council) serves as a forum for evaluating issues to ensure a safe food supply in Florida.³⁹ The current advisory council membership includes the Commissioner of Agriculture or his or her designee, the State Surgeon General or his or her designee, the Secretary and Business Professional Regulation or his or her designee, the person responsible for domestic security with the Department of Law Enforcement, members representing the production, distribution, and sale of foods, consumers or members of citizen groups, representatives of food industry groups, scientists or other experts in aspects of food safety from state universities, representatives from local, state, and federal agencies that are charged with responsibilities for domestic security with responsibilities for food safety or food defense, and the chairs of the agriculture committees of the Senate and House of Representatives with jurisdictional oversight of home defense issues or their designees.⁴⁰ The Commissioner of Agriculture may appoint additional members to the Council.⁴¹ The membership positions for the chairs of the agriculture committees of the Senate and House of Representatives and the Florida Department of Law Enforcement representative often remain vacant making it hard for the advisory council to maintain quorum.⁴²

Effects of Proposed Changes

The bill amends the membership of the advisory council to make the chairs of the agriculture committees of the Senate and House of Representatives and the person responsible for domestic security with the Department of Law Enforcement ex officio members.

Exemption, variance or waiver option for school nutrition programs

Present Situation

DACS is required to conduct, supervise, and administer the school nutrition programs using federal or state funds, or funds from any other source.⁴³ Federal law requires the state to provide in law the authority to request a waiver from federal law for the school nutrition programs.⁴⁴

The current state school nutrition “programs”⁴⁵ include:

- The School Breakfast Program⁴⁶
- Florida Farm to School Program⁴⁷
- The Summer Food Service Program⁴⁸
- The National School Lunch Program⁴⁹
- The Special Milk Program⁵⁰
- The Fresh Fruit and Vegetable Program⁵¹

³⁹ DACS, Agency Analysis of 2019 House Bill 1215, p. 3 (Mar. 14, 2019).

⁴⁰ Section 500.033(1), F.S.

⁴¹ DACS, Agency Analysis of 2019 House Bill 1215, p. 3 (Mar. 14, 2019).

⁴² Personal Communication from Emily Buckley, Director of Legislative Affairs, DACS, RE: HB 1215 (Mar. 14, 2019).

⁴³ Section 595.404(1), F.S.

⁴⁴ 42 U.S.C. §1760(l) (2016).

⁴⁵ Section 595.402(3), F.S.

⁴⁶ Section 595.405, F.S.

⁴⁷ Section 595.406, F.S.

⁴⁸ Section 595.407, F.S.

⁴⁹ Section 595.402(3), F.S.

⁵⁰ *Id.*

⁵¹ *Id.*

Effects of Proposed Changes

The bill amends s. 595.404, F.S., to create an exemption, variance, and waiver process in rules promulgated for school nutrition program sponsors as long as these exemptions, variances, and waivers do not conflict with s. 120.542, F.S. and 42 U.S.C. §1760(l) (2016).

Milk and Milk Products

Present Situation

DACS is authorized to conduct onsite inspections of dairy farms, milk plants, and frozen dessert plants, and to collect samples of milk, milk products, and frozen desserts.⁵² Frozen dessert plants are listed to have products “for sale.”⁵³ Frozen dessert permit holders are required to report monthly, quarterly, semiannually, or annually as required by DACS on the amount of frozen dessert or frozen dessert mix that is sold.⁵⁴ The testing of milk fat content or repasteurized milk is prohibited without first obtaining a permit from DACS.⁵⁵

“Bulk milk pickup tanker” means a vehicle, including the truck and tank, and necessary attachments, used by a milk hauler to transport bulk raw milk for pasteurization from a dairy farm to a milk plant, receiving station, or transfer station.⁵⁶ “Dairy farm” means any place or premises where one or more cows, goats, sheep, water buffalo, or other hooved mammals are kept and from which a part or all of the milk is provided, sold, or offered for sale.⁵⁷ “Milk” means the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows, goats, sheep, water buffalo, or other hooved mammals.⁵⁸ “Milk plant” means any place, premises, or establishment where milk or milk products are collected, handled, processed, stored, pasteurized, aseptically processed, bottled, or prepared for distribution.⁵⁹ “Milk transport tank” means a vehicle, including the truck and tank, used by a milk hauler to transport bulk shipments of milk from a milk plant, receiving station, or transfer station to another milk plant, receiving station, or transfer station.⁶⁰ “Raw milk” means unprocessed milk.⁶¹

Effects of Proposed Changes

The bill amends s. 502.012, F.S., to update definitions to be consistent with the Food and Drug Administration Grade “A” Pasteurized Milk Ordinance (PMO), including:

- “Bulk Milk Hauler and Sampler” to mean the person that collects official samples and may transport raw milk from a dairy farm and/or raw milk products to or from a milk plant, receiving station or transfer station and has in their possession a permit from any regulatory agency to sample such raw milk and/or raw milk products.⁶² Also adds “bulk” milk hauler and “sampler” to include exemptions for milk permit requirements and fees in s. 502.053(4).

⁵² Section 502.012(32), F.S.

⁵³ Section 502.053(1)(b), F.S.

⁵⁴ Section 502.053(1)(b), F.S.

⁵⁵ Section 502.181(1), (4), F.S.

⁵⁶ Section 502.012(1), F.S.

⁵⁷ Section 502.012(2), F.S.

⁵⁸ Section 502.012(11), F.S.

⁵⁹ Section 502.012(13), F.S.

⁶⁰ Section 502.012(20), F.S.

⁶¹ Section 502.012(23), F.S.

⁶² Food and Drug Administration, *Grade “A” Pasteurized Milk Ordinance*, available at

<https://www.fda.gov/downloads/food/guidanceregulation/guidancedocumentsregulatoryinformation/milk/ucm612027.pdf>, p. 25 (last visited Mar. 15, 2019).

- “Dairy farm” to include camels and all “milking animals”.⁶³
- “Milk” in s. 502.012(12), F.S., to include “camels”.⁶⁴
- “Milk plant” to include “ultra-pasteurized, aseptic processing and packaged, retort processing after packaging, condensed, dried, packaged” for distribution.⁶⁵
- “Raw milk” to mean unpasteurized, unprocessed milk.
- “Reconstituted milk or milk products” or “recombined milk or milk products” to include milk or milk products resulting from the addition potable water.⁶⁶
- “Retail” to mean the sale of goods to the public rather than resale, which broadens the definition to include frozen dessert inspections.
- “Ultra-pasteurization” to mean a thermal process for milk or milk products that are heated to 280 degrees Fahrenheit or above for at least two seconds before or after it is packaged, which produces a milk or milk product that has an extended shelf-life in unrefrigerated conditions.⁶⁷
- “Wholesale” to mean the selling of goods in quantities to be sold by others, which allows DACS to permit and inspect wholesale frozen desserts.

The bill authorizes DACS to inspect any facility used in production, processing, and distribution of any milk or milk product and collect samples of such products from facilities. The bill further allows DACS to test the samples.

The bill repeals s. 502.053(3)(d), F.S., which requires that dessert plant permitholders to report to DACS on the amount of frozen dessert or frozen dessert mix that is sold. The bill amends s. 502.181(1)-(4), F.S., to allow the testing of milkfat content and repasteurized milk.

Agricultural Water Conservation Program

Present Situation

The Office of Agricultural Water Policy within DACS is responsible for establishing an agricultural water conservation program with a cost-share program coordinated with partners including the USDA Natural Resources Conservation Service, DEP, water management districts, and soil and water conservation districts on agriculture water conservation cost-share programs.⁶⁸ The cost-share program is used for irrigation system retrofit and application of mobile irrigation laboratory evaluations for water conservation and when applicable for water quality improvements.⁶⁹ Additionally, the partners assist agricultural producers in implementing best management practices (BMPs),⁷⁰ which are practical measures that producers can take to reduce the amount of fertilizers, pesticides, animal waste, and other pollutants while maintaining agricultural production. DACS has adopted BMP manuals for most agricultural commodities that cover key aspects of water quality and water conservation with a focus on nutrient management, irrigation management, and water resource protection.⁷¹ Many of the initiatives together and individually provide benefits to water conservation and water quality. Examples of partner BMP cost-share programs include:

- South Florida Water Management District Facilitating Agricultural Resource Management Systems (FARMS) program that promotes surface water and groundwater resource

⁶³ *Id.* at 25.

⁶⁴ *Id.* at 29.

⁶⁵ *Id.* at 30.

⁶⁶ *Id.* at 35.

⁶⁷ *Id.* at 37.

⁶⁸ Section 570.93(1)(a), F.S.

⁶⁹ Section 570.93(1)(b), F.S.

⁷⁰ University of Florida IFAS, *Cost Share Programs*, available at <http://bmp.ifas.ufl.edu/implementation/cost-share.php> (last visited Mar. 21, 2019).

⁷¹ University of Florida IFAS, *What is a BMP?*, available at <http://bmp.ifas.ufl.edu/about/what-is-bmp.php> (last visited Mar. 21, 2019).

sustainability for projects that include tailwater recovery and/or surface water use, while reducing groundwater withdrawals;

- Suwannee River Water Management District Mini-FARMS program that reimburses growers up to 85% of their costs, up to a maximum of \$8,000 per approved water resources project;
- Suwannee River Water Management District Cost-Share Program that provides \$1.5 million annually for four years for agricultural cost-share programs for irrigation retrofits, new water saving technologies, and alternative water supplies;
- St. Johns River Water Management District Cost-Share Program that assists farmers, growers and ranchers in water conservation and reduction of nutrient run-off; and
- USDA Environmental Quality Incentives Program (EQIP), a voluntary conservation program for farmers and ranchers, that promotes agricultural production and environmental quality as compatible national goals and offers financial and technical help assistance for the installation or implementation of structural and management practices on eligible agricultural land.⁷²

Effects of Proposed Changes

The bill clarifies that when appropriate DACS may coordinate with USDA and other federal, state, regional, and local agencies on a cost-share program for irrigation system retrofits and application of mobile irrigation laboratory evaluations and for water conservation and water quality improvements pursuant to s. 403.067(7)(c).

Fire Services and Wildland Firefighting

Present Situation

FFS has the authority to develop a training program for forestry firefighters that must contain the basic volunteer structural fire training course approved by the Florida State Fire College of the Division of State Fire Marshal (division) and a minimum of 250 hours of wildfire training.⁷³ The division⁷⁴ is also required to establish a training program that is not less than 206 hours for forestry firefighters.⁷⁵ When a forestry firefighter completes the current training program and has passed an examination as required by the division, forestry firefighters are granted a Forestry Certificate of Compliance and are entitled to the same rights, privileges, and benefits by law as firefighters.⁷⁶

Effects of Proposed Changes

The bill requires DACS to develop a wildland firefighter training and certification for wildland firefighters that contains at least 40 hours of structural firefighting training, at least 40 hours of emergency medical training, and at least 376 hours of wildfire training. This changes the title of the Forestry Certificate of Compliance to the Wildland Certificate of Compliance in ss. 633.406(1)(d), F.S. and 633.408(8)(a)-(b), F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 259.10521, F.S., extending the scheduled repeal of the Babcock Ranch Preserve CSO to 2024.

Section 2 creates s. 487.021, F.S., providing a definition of raw agricultural commodities fumigation.

⁷² University of Florida IFAS, *Cost Share Programs*, available at <http://bmp.ifas.ufl.edu/implementation/cost-share.php> (last visited Mar. 21, 2019).

⁷³ Section 590.02(1)(e), F.S.

⁷⁴ Section 633.102(3)(5), F.S.

⁷⁵ Section 633.408(8)(a), F.S.

⁷⁶ Sections 633.408(8)(a) and (b), F.S.

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

Section 4 amends s. 500.03, F.S., modifying definitions for food products and food product establishments.

Section 5 amends s. 500.033, F.S., modifying the membership of the Florida Food Safety and Food Defense Advisory Council.

Section 6 amends s. 500.12, F.S., revising the date by which a late fee is imposed for nonpayment of a food permit fee.

Section 7 amends s. 500.121, F.S., conforming provisions to changes made by the act.

Section 8 amends s. 500.147, F.S., conforming provisions to changes made by the act.

Section 9 amends s. 502.012, F.S., providing and revising definitions for milk, milk products, and frozen products.

Section 10 amends s. 502.014, F.S., authorizing DACS to conduct onsite inspections and collect samples in facilities used to produce and process milk, milk products, and frozen products.

Section 11 amends s. 502.053, F.S., requiring operation permits for wholesalers of frozen dessert products.

Section 12 amends s. 502.181, F.S., removing the prohibitions against certain testing for milkfat content and for repasteurizing milk.

Section 13 amends s. 570.441, F.S., extending the expiration of the Pest Control Trust Fund to 2024.

Section 14 amends s. 570.691, F.S., removing the scheduled repeal of DSOs under DACS.

Section 15 amends s. 570.83, F.S., removing the scheduled repeal of the Beef Development Act.

Section 16 amends s. 570.93, F.S., authorizing DACS to provide funding for retrofits for water conservation and water quality improvements.

Section 17 amends s. 590.02, F.S., authorizing the Florida Forest Service to develop a training curriculum for wildland firefighting.

Section 18 amends s. 595.404, F.S., authorizing DACS to adopt an exemption, variance, and waiver process for school nutrition programs.

Section 19 amends s. 633.406, F.S., conforming provisions to changes made in this act.

Section 20 amends s. 633.408, F.S., providing wildland firefighter training and certification.

Section 21 provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

There may be an insignificant negative fiscal impact on DACS that can be absorbed within existing resources to update rules. There is no fiscal impact on DACS related to the regulatory changes because the language doesn't add any additional regulatory functions – DACS is already regulating these programs and can implement the changes in the bill with existing resources. The changes in wildland firefighting training do not increase the hours of training the firefighters are currently receiving – the bill restructures how many hours of training are required for each area of training to reflect the current standards.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures 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:

The bill will require DACS to update rules. The bill does not specifically authorize rulemaking; however, DACS has sufficient rulemaking authority to adopt rules to comply with statutory changes.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2019, the Agriculture & Natural Resources Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed provisions related to the Healthy Food Financing Initiative, the Healthy Food Assistance Program, and the retention of funds for out-

of-state reimbursements for wildland firefighting. Additionally, the amendment updated the date for the federal definition and regulations related to bottled water.

This analysis is drafted to the committee substitute as approved by the Agriculture & Natural Resources Subcommittee.