**South Carolina General Assembly**

125th Session, 2023-2024

**H. 3432**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Haddon, Hixon, Forrest, Trantham, Burns, Magnuson, Chumley, Pace and S. Jones

Document Path: LC-0029PH23.docx

Introduced in the House on January 10, 2023

Currently residing in the House

Summary: Agriculture

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/8/2022 House Prefiled

12/8/2022 House Referred to Committee on **Agriculture, Natural Resources and Environmental Affairs**

1/10/2023 House Introduced and read first time ([House Journal‑page 167](h:\hj\20230110.docx))

1/10/2023 House Referred to Committee on **Agriculture, Natural Resources and Environmental Affairs** ([House Journal‑page 167](h:\hj\20230110.docx))

1/24/2023 House Member(s) request name removed as sponsor: Harris

1/31/2023 Scrivener's error corrected

2/8/2023 House Member(s) request name added as sponsor: S. Jones

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**VERSIONS OF THIS BILL**

[12/08/2022](https://www.scstatehouse.gov/sess125_2023-2024/prever/3432_20221208.docx)

[01/31/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/3432_20230131.docx)

A bill

to amend the South Carolina Code of Laws BY ADDING CHAPTER 57 TO TITLE 46 BY ENACTING THE “SOUTH CAROLINA RIGHT TO GROW ACT”, TO DEFINE NECESSARY TERMS, TO DEFINE THE APPLICABILITY OF A PUBLIC OR PRIVATE NUISANCE CLAIM AGAINST A FARM, FARM OPERATION, OR AGRICULTURAL COMPOSTING OPERATION, TO ESTABLISH THE RIGHTS AND OBLIGATIONS OF MUNICIPALITIES IN GOVERNING A FARM, FARM OPERATION, OR AGRICULTURAL COMPOSTING OPERATION, TO ENABLE THE DEPARTMENT OF AGRICULTURE TO ESTABLISH BEST PRACTICES AND HANDLE COMPLAINTS AGAINST A FARM, FARM OPERATION, OR AGRICULTURAL COMPOSTING OPERATION, TO ESTABLISH “THE AGRICULTURAL COMPLAINT RESPONSE FUND”, “THE SOUTH CAROLINA FARM AGRICULTURAL RESOURCE MANAGEMENT AND SUSTAINABILITY PROGRAM”, AND “THE SOUTH CAROLINA WORKING FARMLAND ACCESS AND PROTECTION PROGRAM”.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 46 of the S.C. Code is amended by adding:

CHAPTER 57

South Carolina Right to Grow

Section 46‑57‑10. This act may be cited as the “South Carolina Right to Grow Act”.

Section 46‑57‑20. As used in this chapter:

(1) “Agricultural composting operation” means composting that takes place on a farm. "Agricultural composting operation" does not include an operation that involves nonorganic municipal solid waste or that composts municipal sludge, septage, industrial solid waste or industrial sludge. "Agricultural composting operation" does not include an operation that composts materials with a moderate or high risk of contamination from heavy metals, volatile and semivolatile organic compounds, polychlorinated biphenyls or dioxin.

(2) “Agricultural products” means those plants and animals and their products that are useful to humans and includes, but is not limited to, forages and sod crops, grains and feed crops, dairy and dairy products, poultry and poultry products, bees and bees' products, livestock and livestock products, manure and compost and fruits, berries, vegetables, flowers, seeds, grasses, and other similar products, or any other plant, animal or plant or animal products that supply humans with food, feed, fiber or fur. Agricultural products does not include trees grown and harvested for forest products.

(3) “Agricultural support services” means the aerial or surface application of seed, fertilizer, pesticides or soil amendments and custom harvesting.

(4) “Commissioner” means the South Carolina Commissioner of Agriculture.

(5) “Composting” means the controlled aerobic decomposition of organic materials to produce a soil‑like product beneficial to plant growth and suitable for agronomic use.

(6) “Department” means the South Carolina Department of Agriculture.

(7) “Farm” means the land, plants, animals, buildings, structures, ponds, and machinery used in the commercial production of agricultural products.

(8) “Farm nutrient” means a substance or recognized plant nutrient, element, or compound that is used or sold for its plant nutritive content or its claimed nutritive value for use in growing crops. The term includes, but is not limited to, livestock and poultry manures, compost as fertilizer, commercially manufactured chemical fertilizers, sewage sludge, residuals, or any combination of these.

(9) “Farm operation” means a condition or activity that occurs on a farm in connection with the commercial production of agricultural products and includes, but is not limited to, operations giving rise to noise, odors, dust, insects, and fumes; operation of machinery and irrigation pumps; disposal of manure; agricultural support services; and the employment and use of labor.

Section 46‑57‑30. A farm, farm operation, or agricultural composting operation may not be considered a public or private nuisance in this state if the farm, farm operation, or agricultural composting operation alleged to be a nuisance is in compliance with applicable state and federal laws, rules and regulations and:

(A) the farm, farm operation, or agricultural composting operation conforms to best management practices, as determined by the commissioner in accordance with this title;

(B) for complaints regarding the storage or use of farm nutrients, the farm, farm operation, or agricultural composting operation, has implemented a nutrient management plan and operation of the farm, farm operation, or agricultural composting operation is consistent with the nutrient management plan; or

(C) the farm, farm operation, or agricultural composting operation existed before a change in the land use or occupancy of land within one mile of the boundaries of the farm, farm operation, or agricultural composting operation as long as, before the change in land use or occupancy, the farm, farm operation, or agricultural composting operation would not have been considered a nuisance. This subsection does not apply to a farm, farm operation, or agricultural composting operation that materially changes the conditions or nature of the farm, farm operation, or agricultural composting operation after a change in the land use or occupancy of land within one mile of the boundaries of the farm, farm operation, or agricultural composting operation. Nothing in this subsection affects the applicability of any of the other provisions of this chapter.

Section 46‑57‑40. A farm operation or agricultural composting operation located in an area where agricultural activities are permitted may not be considered a violation of a municipal ordinance if the farm, farm operation, or agricultural composting operation conforms to best management practices as determined by the commissioner.

Section 46‑57‑50. This chapter does not affect the application of state and federal laws. A municipality must provide the commissioner with a copy of any proposed ordinance that affects the farm, farm operations, or agricultural composting operations. The clerk of the municipality or a municipal official designated by the clerk shall submit a copy of the proposed ordinance to the commissioner at least ninety days prior to the meeting of the legislative body or public hearing at which adoption of the ordinance will be considered. The commissioner shall review the proposed ordinance and advise the municipality as to whether the proposed ordinance restricts or prohibits the use of best management practices. This section does not affect municipal authority to enact ordinances.

Section 46‑57‑60. The commissioner shall investigate all complaints involving a farm, farm operation, or agricultural composting operation including, but not limited to, complaints involving the use of waste products, groundwater and surface water pollution, and insect infestations. In cases of insect infestations not arising from agricultural activities, when the State Entomologist believes that the infestation is a public nuisance and is able to identify the source or sources of the infestation, the commissioner shall refer the matter to the South Carolina Attorney General. If the commissioner finds upon investigation that the person responsible for the farm, farm operation, or agricultural composting operation is using best management practices, the commissioner shall notify that person and the complainant of this finding in writing. Notwithstanding Section 46‑57‑30(C), if the commissioner identifies the source or sources of the problem and finds that the problem is caused by the use of other than best management practices, the commissioner shall:

(A) determine the changes needed in the farm, farm operation, or agricultural composting operation to comply with best management practices and prescribe site‑specific best management practices for that farm, farm operation, or agricultural composting operation;

(B) advise the person responsible for the farm, farm operation, or agricultural composting operation of the changes, as determined in subsection (A), that are necessary to conform with best management practices and determine subsequently if those changes are implemented; and

(C) give the findings of the initial investigation and subsequent investigations and any determination of compliance to the complainant and person responsible.

Section 46‑57‑70. The South Carolina Rules of Civil Procedure, Rule 11 applies in any private action filed against the owner or operator of a farm, farm operation, or agricultural composting operation in which it is alleged that the farm, farm operation, or agricultural composting operation constitutes a nuisance if it is determined that the action was not brought in good faith and was frivolous or intended for harassment only.

Section 46‑57‑80. If the person responsible for a farm, farm operation, or agricultural composting operation does not apply best management practices as required by the commissioner, the commissioner shall send a written report to an appropriate agency if a federal or state law has been violated and to the Attorney General. The Attorney General may institute an action to abate a nuisance or to enforce the provisions of this chapter or any other applicable state law, and the court may order the abatement with costs, such injunctive relief as provided in this section or by other applicable law, or that a civil violation has been committed. Failure to apply best management practices in accordance with this chapter constitutes a separate civil violation for which a fine of up to $1,000, together with an additional fine of up to $250 per day for every day that the violation continues, may be adjudged.

Section 46‑57‑90. There is established the nonlapsing Agricultural Complaint Response Fund. The commissioner may accept from any source funds designated to be placed in the fund. The commissioner may authorize expenses from the fund as necessary to investigate complaints involving a farm, farm operation, or agricultural composting operation and to abate conditions potentially resulting from farms, farm operations, or agricultural composting operations.

Section 46‑57‑100. The commissioner shall conduct an educational outreach program for the agricultural community to increase awareness of the provisions of this chapter and the best management practices of the department. The commissioner shall inform the public about the provisions of this chapter, the complaint resolution process adopted by the department and state policy with respect to preservation and protection of agricultural and natural resources.

Section 46‑57‑110. The commissioner shall adopt rules and regulations in accordance with the South Carolina Administrative Procedures Act to interpret and implement this chapter.

Section 46‑57‑120. The commissioner shall establish a process for designating South Carolina Farm Agricultural Resource Management and Sustainability recipients according to this section. This designation provides farmers an opportunity to recognize their commitment to sustainable agricultural practices and long‑term resource management and to increase public awareness of agricultural producer commitment to best management practices.

(A) An applicant for designation as a South Carolina Farm Agricultural Resource Management and Sustainability recipient shall submit a completed application for verification in accordance with subsection (C) to the department. The department shall develop an application and make it available through the offices of the soil and water conservation districts and private organizations and public agencies that support or represent farmers in the State.

(B) A farm is eligible for designation under this section if it engages in the management of cropland or the production of livestock, specialty crops, or value‑added products and meets the criteria established by the commissioner as follows:

(1) the farm consists of land classified as prime farmland, land of statewide or local importance or unique farmland by the Natural Resources Conservation Service within the United States Department of Agriculture. In counties where land of local importance has not been identified, land that is actively farmed may be eligible as provided in rules adopted under subsection (E);

(2) the farm is engaged in the commercial production of agricultural products; or

(3) the farm complies with additional criteria established in rules adopted under subsection (E).

(C) A farm that is farmed under a lease may be designated as long as the landowner and the lessee sign the application.

(D) An applicant for designation as a South Carolina Farm Agricultural Resource Management and Sustainability recipient shall submit a completed application form together with support materials to the department for verification of eligibility.

(E) The commissioner may adopt rules to further define the verification process and establish additional eligibility criteria as needed for designation of South Carolina Farm Agricultural Resource Management and Sustainability recipients. The commissioner may provide signs or certificates or develop other means of recognizing a farm that has attained designation as a South Carolina Farm Agricultural Resource Management and Sustainability recipient.

(F) The commissioner may charge fees as necessary for the administration of this section.

Section 46‑57‑130. (A) The commissioner may establish a pilot program to examine the effectiveness of agricultural districts in keeping farmland in agricultural production and enhancing the profitability of farming. For the purposes of this section, “pilot program” means an agricultural district’s program that allows farmers to propose that the department designate their farmland as an agricultural district where commercial agriculture is encouraged and farmland protected through collaborative efforts at the state and local level.

(B) In order to be eligible to participate in the pilot program, farms must form agricultural districts. An agricultural district must be composed of three or more farms that are located in geographic proximity to each other, produce similar types of agricultural products or share common marketing interests. The commissioner shall review eligibility criteria for participants in agricultural districts in other states and may develop additional criteria for participation with the pilot program including, but not limited to, minimum acreage and farm income thresholds.

(C) The commissioner shall review benefits accruing to participants in agricultural districts in other states. Prior to initiating the pilot program, the commissioner shall develop a description of potential benefits accruing to participants in a pilot program. Potential benefits may include, but are not limited to, scoring bonuses for competitive grants, loans, or business assistance programs. The commissioner shall consult with other agencies administering programs affected by the proposed benefits.

(D) The commissioner shall distribute a description of the purpose and potential benefits of forming an agricultural district. Distribution may be through public agencies and private organizations that have regular contact with farmers in the State. The description must be posted on the department's publicly accessible website. The description notice must include information on how to contact the department to express interest in learning more about or participating in an agricultural district.

(E) Based on the response to the initial solicitation, the commissioner may designate one or more districts. Prior to making a selection, the commissioner shall communicate with local or regional planning commissions and state, local or regional land trusts to ascertain their willingness to participate in efforts to protect farmland in the proposed districts.

(F) If more than one district is designated for the pilot program, the commissioner shall strive to select districts in different parts of the State or different sectors of the state's agricultural economy.

Section 46‑57‑140. (A) The South Carolina Working Farmland Access and Protection Program, referred to in this section as “the program”, is established to provide protection to strategically significant working farmland properties whose continued availability to commercial agricultural businesses is essential to the long‑term future of the economic sector. The department shall administer the program either directly or by contract with a suitable organization.

(B) The department shall establish a review panel to advise the commissioner in the operation of the program including, but not limited to, evaluating applications and recommending to the department applicants for participation in the program.

(C) The selection criteria with which to evaluate applications for protection of working farmland property under the program must include, but are not limited to:

(1) the interest of the owner of the working farmland property to make the farmland available via lease or transfer the protected property to another farmer or other farmers to advance the department's goal of preserving and increasing access to farmland for new and growing farms;

(2) the threat of conversion of the working farmland property such that it would become unavailable for commercial production of agricultural products;

(3) the percentage of soils classified by the United States Department of Agriculture as prime farmland, unique farmland, farmland of statewide importance and farmland of local importance;

(4) the agricultural structures and improvements associated with the working farmland property;

(5) the economic viability of the working farmland property in terms of current and potential future commercial agricultural activities in local, regional and statewide markets; connection of the working farmland property to agricultural services including processors, aggregators and distributors; and number of on‑farm jobs supported by the working farmland property;

(6) the proximity of other working farmland properties in the town or region;

(7) the degree of community support for the proposed protection of the working farmland property;

(8) the multiple natural resources values associated with the working farmland property, including open space land; forested land and wetlands; riparian buffers; wildlife habitat; and freshwater aquifers; and

(9) whether the applicant is from or serving an underserved or underprivileged community as defined by the department by rule.

(D) The commissioner shall enter into grant agreements with state agencies and cooperating entities for the purpose of receiving grants from the South Carolina Working Farmland Access and Protection Fund.

SECTION 2. This act takes effect upon approval by the Governor.

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