

DEPARTMENT OF TAXATION

2023 Fiscal Impact Statement

1. **Patron** Mark D. Obenshain

3. **Committee** House Finance

4. **Title** Sales and Use Tax; Agricultural Exemptions.

2. **Bill Number** SB 1240

House of Origin:

 Introduced

 Substitute

 Engrossed

Second House:

 X **In Committee**

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would expand the Retail Sales and Use Tax agricultural exemption to include certain property, regardless of whether affixed to real property, used directly in producing agricultural products for market in an indoor, closed, controlled-environment agricultural facility. All items would be required to be necessary to create, support and maintain the necessary growing environment for plants. Such property would include the following:

- Internal components or materials required for:
 - Towers for growing plants;
 - Conveyances for moving such towers;
 - Insulation, partition, and cladding of interior walls;
 - Lighting systems;
 - Heating, cooling, humidification, dehumidification, and air circulation systems; and,
 - Watering and water treatment systems.
- External components, machinery, and equipment required for:
 - Heating, cooling, humidification, dehumidification, and air circulation systems;
 - Utility upgrades and related distribution infrastructure; and
 - Creating, supporting, and maintaining the necessary growing environment for plants.
- Structural components of:
 - Insulation, partitions, or cladding of exterior walls used in indoor vertical farming to create and maintain the necessary growing environment for plants; and
 - Translucent or transparent windows, walls, and roofs that allow sunlight in greenhouses to create and maintain the necessary growing environment for plants.

The term “indoor, closed, controlled-environment commercial agricultural facility” would include indoor vertical farming or greenhouses. “Agricultural products” would include horticulture, floricultural, viticulture, or other farm crops. The exemption would not apply to property used in the production of cannabis or any derivative thereof. The bill also extends the exemption to contractors engaged to construct the facilities.

Under current law, structural construction materials to be affixed to real property owned or leased by a farmer are specifically excluded from the Retail Sales and Use Tax agricultural exemption.

If this bill is enacted during the 2023 Regular Session of the General Assembly, it would become effective July 1, 2023.

This is Executive Legislation.

- 6. Budget amendment necessary:** No.
- 7. Fiscal Impact Estimates are:** Unknown. (See Line 8.)
- 8. Fiscal implications:**

Administrative Costs

The Department of Taxation considers implementation of this bill to be routine and does not require additional funding.

Revenue Impact

This bill could have an unknown impact to state and local revenues. Eligible purchases by operators of indoor, closed, controlled-environment commercial agricultural facilities, including greenhouses, are not estimated to comprise a significant market share of agricultural purchasing in the Commonwealth.

- 9. Specific agency or political subdivisions affected:**

Department of Taxation

- 10. Technical amendment necessary:** No.

- 11. Other comments:**

Current Law

Generally, items of tangible personal property used in construction of a structure that will be affixed to real property in an immovable way are not eligible for exemption from the Retail Sales and Use Tax. Likewise, the current agricultural exemption extends to tangible personal property used in agricultural production but the exemption specifically excludes structural construction materials to be affixed to real property owned or leased by a farmer.

Proposal

This bill would expand the Retail Sales and Use Tax agricultural exemption to include certain property, regardless of whether affixed to real property, used directly in producing agricultural products for market in an indoor, closed, controlled-environment agricultural

facility. All items must be necessary to create, support and maintain the necessary growing environment for plants.

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Similar Legislation

House Bill 1563 is identical to this bill.

cc : Secretary of Finance

Date: 2/8/2023 ADD
SB1240FS1161