



# Ohio Legislative Service Commission

Tom Wert

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## Fiscal Note & Local Impact Statement

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**Bill:** Sub. S.B. 150 of the 130th G.A.

**Date:** January 28, 2014

**Status:** As Passed by the Senate

**Sponsor:** Sens. Hite and Peterson

**Local Impact Statement Procedure Required:** No

**Contents:** Modifies the laws governing fertilizer application and agricultural pollution abatement, and makes an appropriation

### State and Local Fiscal Highlights

- **Fertilizer applicator certification.** The Department of Agriculture (AGR) would likely incur minimal costs to create a fertilizer applicator certification program and process applications for certification once the program is implemented. Any new costs could be at least partially offset by certification fees allowed under the bill. Under the bill these fees may not be more than the fees established for a private pesticide applicator license. The fees would likely be deposited into the Pesticide, Fertilizer, and Lime Program Fund (Fund 6690).
- **Voluntary nutrient management plans.** Soil and water conservation districts would likely incur some new but minimal costs to develop and approve voluntary nutrient management plans under the bill. Soil and water conservation districts receive state support from solid waste disposal fees deposited into the Soil and Water Districts Assistance Fund (Fund 5BV0).
- **Fertilizer inspection fees.** Modifications affecting fertilizer inspection fees and licenses to manufacture or distribute fertilizer would likely have only a negligible effect on fees collected by AGR and deposited into Fund 6690.
- **Healthy Lake Erie appropriation (GRF).** The bill requires a portion of unused Conservation Reserve Enhancement Program dollars currently held by soil and water conservation districts to be retained by the districts for certain purposes enumerated in the bill, with the remainder to be returned to the GRF for appropriation in line item 725505, Healthy Lake Erie Fund. Specific amounts are to be determined by the Department of Natural Resources.
- **Violations of the Agricultural Additives, Lime, and Fertilizer Law.** The bill alters penalties for violations of the Agricultural Additives, Lime, and Fertilizer Law. This could affect penalty revenues collected by AGR and county common pleas and municipal courts.

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## Detailed Fiscal Analysis

The bill revises provisions and establishes new requirements governing the application of fertilizers and the abatement of agricultural pollution that may have fiscal implications for the Department of Agriculture (AGR), and soil and water conservation districts. Provisions that may have fiscal effects include: (1) a requirement that the Director of Agriculture create a fertilizer applicator certification program, (2) modifications to the enforcement of the Agricultural Additives, Lime, and Fertilizer Law, (3) the creation of voluntary nutrient management plans affecting owners or operators of agricultural land, (4) changes to fertilizer inspections and licensing of fertilizer distribution locations, and (5) redirecting a portion of unused Conservation Reserve Enhancement Program funds from soil and water conservation districts to DNR. The potential fiscal effects of these provisions are discussed in more detail under the headings below.

### **Fertilizer applicator certification**

The bill requires the Director of Agriculture to create a fertilizer applicator certification program and establish fees for the program. Under the bill, a person applying fertilizer in agricultural production is required to achieve certification by September 30th of the third year following the bill's effective date. Individuals applying "start-up" fertilizer through a planter or who apply fertilizer to 50 contiguous acres or less would not require certification. The bill requires individuals who are licensed as a commercial or private applicator of pesticides under continuing law to become certified but exempts them from certification fees. Uncodified language in the bill requires the Director to authorize applicants for commercial and private pesticide applicator licenses to obtain additional training and temporary certification in fertilizer application simultaneously with pesticide application training at no additional cost until rules establishing the certification program are adopted. These provisions would result in the Department of Agriculture (AGR) incurring costs to establish the certification program and to process applications for certification once the program is implemented. Any new costs could be offset by revenue from the certification fees. Under the bill, certification fees may not exceed the fee for a private pesticide applicator license. Specifically, this fee is set in the administrative code and currently stands at \$30. Certification fees would be deposited into the Pesticide, Fertilizer, and Lime Program Fund (Fund 6690).

### **Penalties for violations of the Agricultural Additives, Lime, and Fertilizer Law**

The bill grants the Director of Agriculture discretion in enforcing the Agricultural Additives, Lime, and Fertilizer Law. Under the bill, pursuant to a hearing, if the Director finds that a violation has occurred the Director may require the violator to pay a civil penalty in accordance with the schedule of civil penalties established in rules. Each day of violation would constitute a separate violation under the bill. The bill

also modifies criminal penalties for violations. The bill reduces a first offense from a misdemeanor of the second degree to a misdemeanor of the third degree. Similarly, a second offense is reduced from a misdemeanor of the first degree to a misdemeanor of the second degree. Any additional offenses would be considered first degree misdemeanors under the bill. As a result, penalty revenues collected by AGR and county common pleas and municipal courts could be affected depending on the nature of offenses. Additionally, the bill specifically authorizes the Director to issue a written warning in lieu of initiating any enforcement action if the Director believes a written warning best serves the public interest. In this case, no penalty revenues would be collected.

### **Voluntary nutrient management plans**

The bill creates voluntary nutrient management plans for owners or operators of agricultural land containing results of soil tests conducted on land subject to the plan and that comply with the Field Office Technical Guide established by the United States Department of Agriculture (USDA) Natural Resources Conservation Service. The plans also contain identification of nutrients applied, documentation of the method and seasonal time of utilization and application of nutrients, and field information regarding land subject to the plans. Plans must be in the form of the Ohio Nutrient Management Workbook made available by the Ohio State University (OSU) or other form approved under the bill.

Under the bill, plans may be developed by the owner or operator of agricultural land. An owner or operator may also request the supervisors of applicable soil and water conservation districts to develop the plan. Alternatively, a voluntary nutrient management plan may be developed by the USDA's Natural Resources Conservation Service, a technical service provider certified by the Conservation Service, a person authorized by the Conservation Service to develop the plan, or at the request of an owner or operator, the supervisors of the applicable soil and water conservation district. Once a plan has been developed, the owner or operator may request the supervisors of the applicable soil and water conservation district to approve the plan. Approved plans must be submitted to the applicable district once every five years for review. Upon review, the supervisors may request modification of the plan. If a plan is not approved, the person who developed the plan may request an adjudication hearing or appeal the disapproval to the court of common pleas of Franklin County.

As a consequence of these changes, soil and water conservation districts may incur new costs, stemming mostly from the additional work to develop or approve voluntary nutrient management plans. However, because soil and water conservation districts already develop and approve operation and management plans for the abatement of agricultural pollution, any new costs are likely to be minimal at most. Soil and water conservation districts receive state support from solid waste disposal fees deposited into the Soil and Water Districts Assistance Fund (Fund 5BV0). Another, more incidental fiscal effect, is a potential small gain in revenue for OSU resulting from

additional sales of the Ohio Nutrient Management workbooks. Workbooks are currently available from OSU for \$3. Finally, the Franklin County Court of Common Pleas may also incur minimal new costs to hear appeals of disapproved plans.

### **Fertilizer inspections and fertilizer distribution licensing**

The bill modifies the inspection of fertilizer and licensing of fertilizer distribution locations. Under current law, the registrant of an agricultural additive or the holder of a license to manufacture or distribute fertilizer must pay an inspection fee of 28¢ for each metric ton or 25¢ for each standard ton of fertilizer it distributes in Ohio. The bill eliminates the fee based on metric tons and requires the 25¢ per ton fee to be paid on (1) all fertilizer distributed to a person that does not hold a fertilizer manufacturing or distribution license, (2) all fertilizer that the licensee applies during agricultural production if certified under the bill to do so, and (3) all fertilizer that a registrant distributes in Ohio. Additionally, the bill adds each location outside Ohio from which fertilizer is distributed into Ohio and all locations within Ohio from which fertilizer is distributed to the list of locations for which a \$5 license to manufacture and distribute fertilizer must be obtained. Under current law, only fixed locations and mobile units used to manufacture fertilizer, and out-of-state locations that distribute fertilizer to nonlicensees in Ohio, must be licensed. According to AGR, these provisions are not likely to have more than a negligible fiscal effect. Inspection and licensing fees are deposited into the Pesticide, Fertilizer, and Lime Program Fund (Fund 6690).

### **Redirection of Conservation Reserve Enhancement Program funds**

The bill requires DNR to identify unexpended funds that were previously appropriated to soil and water conservation districts (SWCDs) for the Conservation Reserve Enhancement Program (CREP) and determine the amount of those funds that are necessary for programs, practices, and other activities related to nutrient reduction in Lake Erie, including nutrients associated with open lake disposal of dredge material. These amounts are to be retained by the districts to carry out those activities, while any remaining amounts are to be transferred to the GRF and appropriated in line item 725505, Healthy Lake Erie Fund, for state oversight of activities associated with open lake disposal of dredge material in Lake Erie.

The total amount of unused CREP funds held by SWCDs is currently unknown, which is the reason DNR is given the authority to identify this sum. It is possible there could be some minimal administrative costs for DNR to undertake this task in concert with the SWCDs, though it is likely that this could be accomplished using existing resources.

CREP funds not retained by SWCDs under the bill would be returned to the state and deposited into the GRF for expenditure from line item 725505, Healthy Lake Erie Fund. The bill appropriates any funds so returned to that line item. The current appropriation for line item 725505 is \$650,000 in FY 2014 and \$500,000 in FY 2015. It is not known how much these amounts would increase under the bill. Any increase

would depend on the amount of unused CREP dollars that are retained by the SWCDs and how much is returned to the GRF.

### **Other provisions**

The bill contains several provisions that do not appear to have a significant fiscal effect. Among these include modifications to the composition of Ohio Soil and Water Conservation Commission, prohibiting DNR and soil and water conservation districts from releasing proprietary information that may be part of an operations and management plan, changes to the definition of an animal feeding operation, and changes to the Director of Agriculture's authority to revoke certain applicators licenses. Please see the LSC Bill Analysis for more information concerning these provisions.