

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6914

BILL NUMBER: HB 1129

NOTE PREPARED: Feb 16, 2012

BILL AMENDED: Feb 14, 2012

SUBJECT: State Chemist Issues.

FIRST AUTHOR: Rep. Lehe

FIRST SPONSOR: Sen. Mishler

BILL STATUS: 2nd Reading - 2nd House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill provides civil penalty authority to the State Chemist under the agricultural ammonia law and subpoena authority to the State Chemist under the agricultural ammonia law and the commercial fertilizers laws. It provides that the State Chemist may impose a civil penalty only according to a schedule recommended by the Fertilizer Advisory Board.

The bill amends the pesticide laws and the pesticide use and application laws as follows:

- (1) Expands the definition of "produce".
- (2) Makes changes to the qualifications of certain members on the Pesticide Review Board.
- (3) Makes changes to the duties and rule-making authority of the Pesticide Review Board.
- (4) Exempts employees of not-for-profit organizations from the annual pesticide applicator license fee.
- (5) Repeals registration requirements and fees for pesticide consultants.
- (6) Amends provisions of state pesticide law to apply to all pesticide products, including both chemicals and devices. (Current law only applies to chemicals.)
- (7) Makes changes to comply with federal pesticide laws.

The bill amends the commercial feed laws as follows:

- (1) Adds and amends numerous definitions.
- (2) Adds a late fee for distributing feed before applying for a license.
- (3) Allows the State Chemist to revoke, suspend, or place conditions on a commercial feed license that is not in compliance.
- (4) Makes changes to required labeling information.
- (5) Provides conditions that make commercial feed adulterated.

- (6) Adds authority to adopt rules concerning specialty pet foods.
- (7) Adds as Class A infractions:
 - (A) distribution of raw milk that is not labeled "Not for Human Consumption"; and
 - (B) distributing animal feed and stating, promoting, or advertising that it is fit for human consumption.

The bill directs the State Board of Animal Health to conduct a study of the issue of farmers selling unpasteurized milk to consumers.

The bill also makes conforming and technical changes.

Effective Date: (Amended) Upon passage; July 1, 2012.

Explanation of State Expenditures: (Revised) *State Board of Animal Health:* This bill requires the Indiana State Board of Animal Health to conduct a study of farmers selling unpasteurized milk to consumers, and the study must be concluded before November 1, 2012. A report of the study's results is required to be made available by December 1, 2012. This requirement will likely increase the administrative workload for the State Board of Animal Health during the period of time provided for producing the report, but the report should be able to be prepared within the agency's existing staff and resources.

Explanation of State Revenues: *Civil Penalties:* The bill provides that the State Chemist may impose civil penalties under a schedule adopted by the Fertilizer Advisory Board. The amount of revenue that will be collected from penalties will depend on the number and nature of violations and the penalty schedule adopted by the board.

Pesticide Applicator License Fees: It is unknown how many employees of not-for-profit organizations apply for the pesticide applicator license fee, but there are likely not very many. Thus, exempting the employees from the pesticide applicator license fees would likely have a minimal impact. A total of about \$760,000 was collected during FY 2011 for pesticide application license fees. These fees fund the operations of the State Chemist's office.

Pesticide Consultant Registration and Fees: This bill repeals registration requirements and fees for pesticide consultants. According to the State Chemist's office, on average there are about 350 registered consultants annually. They are charged a fee of \$45, which generates about \$15,750 annually. These funds go directly into an account used to fund operational activities such as issuing annual credentials, performing requisite accounting functions, doing compliance outreach, and performing compliance inspections and investigations. The cost of performing those activities exceeds the level of income generated.

Late Fees for Distributing Feed before Applying for a License: According to the State Chemist's office, there were about 45 to 50 companies that had products in the marketplace without being licensed first during 2011. If they were charged a \$50 fee, then about \$2,250 to \$2,500 would have been assessed in late filing fees.

Penalty Increases: This bill increases the penalty for several violations from Class C infractions to Class A infractions, potentially increasing revenue to the state General Fund. However, any change in revenue is likely to be small. Currently, the maximum judgment for a Class C infraction is \$500, while the maximum judgment for a Class A infraction is \$10,000.

The penalties are increased for the following violations:

- (1) The manufacture or distribution of a commercial feed that is adulterated or misbranded.
- (2) The adulteration or misbranding of a commercial feed.
- (3) The distribution of agricultural commodities, such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls, that are adulterated.
- (4) The removal or disposal of a commercial feed in violation of an order under IC 15-19-7-38 or IC 15-19-7-39.
- (5) The failure to obtain a commercial feed license.
- (6) The failure to pay inspection fees or file reports.

New Penalties: The bill provides that the following are Class A infractions:

- (1) The distribution of raw milk for use as a commercial feed for any species if the raw milk is not prominently labeled, in at least a half inch font, "Not for Human Consumption".
- (2) Distribution of any animal feed that is stated, promoted, or advertised by the person to be suitable for human food unless the feed meets all federal, state, and local health laws and labeling requirements for human consumption.

Explanation of Local Expenditures:

Explanation of Local Revenues: *Penalty Increases and New Penalties:* If additional court actions occur and a judgment is entered, local governments would receive revenue from court fees. However, any change in revenue would likely be small.

State Agencies Affected: State Chemist; Fertilizer Advisory Board; State Board of Animal Health.

Local Agencies Affected: Trial courts; local law enforcement agencies.

Information Sources: David Scott, Robert Geiger, and Leo Reed, Office of the Indiana State Chemist, 765-494-1492; Gary Haynes, State Board of Animal Health, 317-544-2412.

Fiscal Analyst: Jessica Harmon, 317-232-9854.