

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 509 w/CS Agricultural Fertilizers
SPONSOR(S): Bowen
TIED BILLS: **IDEN./SIM. BILLS:** SB 1644

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture	13 Y, 0 N	Reese	Reese
2) Natural Resources	16 Y, 0 N w/CS	McKinnon	Lotspeich
3) Agriculture & Environment Apps. (Sub)		Sneed	Dixon
4) Appropriations			
5)			

SUMMARY ANALYSIS

Section 576.045, F.S., provides legislative findings and intent regarding the issue of nitrate contamination of ground water. A funding source is established for research and development of BMPs for fertilizer use, evaluating and verifying the effectiveness of the BMPs and restoring contaminated drinking water wells. Existing law increased the annual license fees for fertilizer dealers by \$100 and the registration fee for specialty fertilizers by \$100 for each fertilizer up to five and then by \$25 for each specialty fertilizer registration above five. The law also added an additional fee of 50 cents a ton for nitrogen-containing fertilizer sold in this state. Fee receipts are deposited in the Florida Department of Agriculture and Consumer Services' (FDACS) General Inspection Trust Fund.

In addition, an exemption from cost recovery of nitrate contamination cleanup is provided for property owners or leaseholders if they meet certain requirements as specified in the law.

Because several subsections of the existing law are scheduled to expire on December 31, 2003, unless reenacted, staff of the House Agriculture Committee conducted an interim review of s. 576.045, F.S. Failure to reenact these subsections would result in the expiration of the following fees: (a) \$100 license fee for each fertilizer dealer; (b) \$100 for each of the first five specialty brand fertilizer registrations and \$25 for each registration thereafter; and (c) \$.50 per ton for all fertilizer sold in the state that contains nitrogen. These fees, which generate revenues totaling \$1,151,000 are collected by the FDACS and deposited into the General Inspection Trust Fund to cover the cost of research and remediation relating to nitrate levels.

The bill adds phosphorus contamination to water quality issues previously addressed in section 576.045, F.S. The bill also expands the law to include contaminated surface waters, along with the ground water and drinking water provisions included in current law.

With the addition of phosphorus to the fee coverage, the program is essentially revenue neutral (based upon the last several years fertilizer sales records, approximately an additional \$6,000 out of \$1 million collected) because a relatively small amount of fertilizer containing only phosphorus is sold.

This bill was generated from information obtained during the review and in conjunction with proposals from FDACS, the Florida Department of Environmental Protection (FDEP), and the Florida agricultural industry.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0509d.ap.doc
DATE: April 10, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

The bill expands the existing fifty cent per ton assessment on fertilizers containing nitrogen to also include fertilizers containing phosphorus.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Between 1985 and 1992, the Florida Department of Agriculture and Consumer Services (FDACS) and the Florida Department of Environmental Protection (FDEP) jointly conducted surveys of drinking water wells in predominantly agricultural regions of Florida. Survey results from limited sampling in 38 Florida counties showed elevated levels of nitrate in drinking water wells in 36 of the 38 counties tested. Of those 36 counties, 13 had at least one site with nitrate levels above the federal drinking water standard of 10 parts per million (ppm) set by the United States Environmental Protection Agency (USEPA).

Based on these findings, FDACS initiated development of a comprehensive program to protect Florida’s water resources while maintaining the state’s large agricultural industry. The FDACS, in partnership with FDEP, the Florida Farm Bureau, the Florida Fruit and Vegetable Association, the Florida Fertilizer and Agrichemical Association, and other groups, developed a voluntary, incentive-based program to develop individual practices or combinations of practices to specify how nitrogen-based fertilizers are to be used. Two categories of practices were created:

- Interim Measures (IMs) – Based on currently available knowledge, IMs were intended to provide a reasonable expectation of reducing nitrate levels entering ground water.
- Best Management Practices (BMPs) – BMPs are determined by research or field testing at representative sites to be the most effective and practicable methods of fertilization that meets crop needs and nitrate groundwater quality standards.

To fund the development of research-based BMPs and IMs, the 1994 Legislature authorized FDACS to impose supplemental fees on users of all fertilizer materials containing nitrogen. The authorization was granted through adoption of section 576.045, F.S.

The FDEP is required to establish procedures for well construction, testing, permitting, and clearance requirements in areas vulnerable to nitrate contamination and in areas where FDEP has provided a restoration subsidy, extended existing water lines, or developed new water supply systems to remediate contaminated water supplies.

Proposed changes

Because several subsections of the existing law are scheduled to expire on December 31, 2003, unless reenacted, staff of the House Agriculture Committee conducted an interim review of s. 576.045, F.S. This bill was generated from information obtained during the review and in conjunction with proposals

from FDACS, FDEP, and the Florida agricultural industry.

The bill expands program coverage from nitrogen and ground water to also include phosphorus and surface waters in which phosphorus residues are found.

The bill also conforms BMP development and implementation processes to be consistent with the Total Maximum Daily Load process in s. 403.067, F.S., meaning that all benefits of the program will be available for interim measures as well as BMPs. Funds collected must be used consistent with the provisions of s. 403.067, F.S., for:

- research, development, demonstration, and implementation of suitable BMPs or other measures used to achieve water quality standards;
- reimbursing the Water Quality Assurance Trust Fund for specific costs incurred by FDEP; and
- sampling, analysis, and restoration of potable water supplies.

The bill provides that FDEP will use best professional judgment for the initial determination of BMP effectiveness; therefore, benefits of implementing BMPs can be realized before all verification is completed.

The bill continues the \$0.50 per ton fee for bulk fertilizer (sold in Florida) containing nitrogen and also extends the fee to fertilizer containing phosphorus.

In addition, the bill specifies that implementation of BMPs or other measures adopted by rule pursuant to s. 576.045, F.S., provide release from provisions of s. 376.307(5), F.S., regarding recovery from a person or persons responsible for a discharge, the amounts taken from the Water Quality Assurance Trust Fund and used for restoration.

Rulemaking language is clarified to state that FDACS, in consultation with FDEP, Florida Department of Health, the water management districts, and affected parties, shall adopt rules for interim measures, BMPs, conservation plans, nutrient management plans, or other necessary water quality improvement measures.

Florida's agricultural community, represented by those groups involved in creation of s. 576.045, F.S., supports passage of this bill. FDACS and FDEP, the two agencies charged with implementation of the law, are also in support of the bill.

C. SECTION DIRECTORY:

Section 1: amends s. 576.045, F.S., by adding phosphorus contamination to the water quality issues addressed by this law; adding "surface waters" to the types of waters where residues are found; applying the provisions relating to nitrate fertilizers to phosphorus-containing fertilizers; providing for use of collected funds; providing new expiration dates for specific subsections of the law.

Section 2: provides that the act shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Please see "Fiscal Comments".

2. Expenditures:

Please see "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill reenacts subsections 1, 2, 3, 4 and 6 that are scheduled to expire on December 31, 2003 and extends the expiration of subsections 5 and 7 until December 31, 2017. Failure to reenact these subsections would result in the expiration of the following fees on December 31, 2003: (a) \$100 license fee for each fertilizer dealer; (b) \$100 for each of the first five specialty brand fertilizer registrations and \$25 for each registration thereafter; and (c) \$.50 per ton for all fertilizer sold in the state that contains nitrogen. These fees, which generate revenues totaling \$1,151,000 are collected by the FDACS and deposited into the General Inspection Trust Fund to cover program costs funded in the proposed 2003-04 House Appropriations Bill (HB 1789) including research, analysis, restoration and monitoring of water supplies by FDACS and FDEP.

The addition of phosphorus to the fee coverage, is essentially revenue neutral (based upon the last several years fertilizer sales records, approximately an additional \$6,000 out of \$1 million collected) because a relatively small amount of fertilizer containing only phosphorus is sold.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not affect municipal or county government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Existing rule-making authority is clarified; no new authority is granted.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The bill was favorably reported by the Natural Resources Committee with a committee substitute on March 19, 2003, that made the following changes:

- Removes all cross references to s.403.067, F.S., and modifies the existing statutory language to be consistent with the requirements of s. 403.067, F.S.; and
- Applies consistent terminology throughout the statute. i.e. (nitrogen and phosphorous, interim measures, best management practices, and other measures)