

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 5125 PCB NRAC 09-04 Department of Agriculture and Consumer Services

**SPONSOR(S):** Natural Resources Appropriations Committee and Poppell

**TIED BILLS:** **IDEN./SIM. BILLS:**

	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
Orig. Comm.:	Natural Resources Appropriations Committee	9 Y, 0 N	Bellflower	Lachat
1)	Full Appropriations Council on General Government & Health Care	30 Y, 0 N	Bellflower	Leznoff
2)				
3)				
4)				
5)				

**SUMMARY ANALYSIS**

House Bill 5125 revises statutory provisions governing several programs within the Department of Agriculture and Consumer Services (department). The bill:

- Replaces a requirement that the department use all revenues from certain administrative fines to support contract research or education in pest control with an authorization to use such available revenues for those purposes;
- Creates a supplemental registration fee for brands of pesticides tested for food safety;
- Requires permits and payment of fees for commercial weighing and measuring devices;
- Revises specialty fertilizer brand registration fees;
- Revises seed dealer registration fees;
- Limits distribution of funds from state forest receipts to fiscally constrained counties

This bill conforms law to the House of Representatives' proposed General Appropriations Act. This bill generates \$4,182,954 in the General Revenue Fund. The bill also generates \$4,182,954 in the department trust funds that will be fund shifted in the General Revenue Fund. The bill reduces by approximately \$400,000 funds from state forest receipts currently shared with counties for county and school purposes. The private sector will experience increases in several fees as well as new fees for weighing and measuring devices.

This bill conforms law to the House of Representatives' proposed General Appropriations Act.

The bill has an effective date of July 1, 2009, except for the revisions to the statute governing registration of pesticides, which takes effect retroactively to January 1, 2009.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Fine Money Reallocation:**

###### Present Situation:

Fines are collected from persons who have violated provisions of the Florida Structural Pest Control Act Chapter 482, F.S., after completion of the disciplinary action process authorized under Section 482.161, F.S., and conducted in accordance with the provisions of Chapter 120, F.S. All moneys collected or received by the Department of Agriculture and Consumer Services (department or DACS) under the act must be deposited in the Pest Control Trust Fund and, with limited exceptions, used to carry out the provisions of the act and in the education of the pest control industry. All revenues from administrative fines must be used to support contract research or education in pest control.

###### Effect:

This bill removes the requirement that the Department spend administrative fine revenue to support contract research and education in pest control, and makes such expenditures optional. If revenues are available to support contracted research and education, the department is to appoint the committee currently provided for in statute to assist it in establishing education priorities, request for proposals, and selecting contractors from bidders.

##### **Pesticide Brand Registration:**

###### Present Situation:

The department's Division of Food Safety, Bureau of Chemical Residue Laboratories (Chemical Residue), annually receives General Revenue to support its program of monitoring fruits, vegetables, seafood, honey and other foods in the distribution chain for the presence of pesticide residues and other potential chemical contaminants. It is the only state laboratory in Florida dedicated to chemical residue and has traditionally received GR as a public health program.

The Division of Agricultural Environmental Services (AES) has an existing pesticide registration program that does not distinguish independently those brands of pesticides tested for food safety. Under the program, effective January 1, 2009, each brand of pesticide as defined in s. 487.021, F.S., which is distributed, sold or offered for sale, except as otherwise provided, within this state or delivered for transportation or transport within this state must be registered with the department and renewed biennially.

## Effects:

This bill amends s. 487.041, F.S., To defray the expenses of the department for the testing pesticides for food safety, effective January 1, 2009, the bill amends s. 487.041, F.S., to create a supplemental biennial registration fee for each registered brand of pesticide that contains an active ingredient for which the United States Environmental Protection Agency has established a food tolerance limit in 40 C.F.R. part 180. The department is required to biennially publish by rule a list of the pesticide active ingredients for which a brand of pesticide is subject to the supplemental registration fee.

Each registration issued by the department to a registrant for a period beginning in an odd-numbered year shall be assessed a supplemental fee of \$630 per brand of pesticide that is subject to the supplemental fee. Each registration issued by the department to a registrant for a period beginning in an even-numbered year shall be assessed a supplemental fee of \$315 per brand of pesticide that is subject to the supplemental fee. The department is directed to retroactively assess the supplemental registration fee for each brand of pesticide registered on or after January 1, 2009, and that is subject to the supplemental fee.

As with other revenues collected under the registration program, revenues collected from the supplemental biennial registration fee, less those costs determined by the department to be nonrecurring or one-time costs, shall be deferred over the 2-year registration period, deposited in the General Inspection Trust Fund, and used by the department in administering the provisions of chapter 487, F.S. These revenues may also be used by the department for testing pesticides for food safety. The bill provides that the amendments to s. 487.041, F.S., shall apply retroactively to January 1, 2009.

While the department does not collect information on sales values for individual brands, estimates can be made for specific products based on data collected for pesticide usage and costs per pound of active ingredient (figures used to assist farmers for crop budget calculations). Based on usage, cost per pound, and number of brands registered, estimated increases for three commonly used pesticides (simazine, aldicarb and glyphosate) are less than 3 cents per pound.

## Weights and Measures:

### Present Situation:

The Bureau of Weights and Measures within DACS inspects more than 60,000 commercial measuring devices each year. These devices include retail scales, pharmacy balances, industrial and livestock scales, vehicle scales and taximeters. Inspectors also routinely test the accuracy of retail price scanners, as well as the accuracy of labels and net contents of pack food items, packaged goods such as dry goods, household items, building and construction materials, gardening products, and hundreds of other products purchased daily by consumers and business. The Bureau's Metrology Laboratory, located in Tallahassee, maintains the state's primary standards of mass, length and volume. It also provides calibration services to the commercial measurement industry, scientific and law enforcement labs, manufacturers, and the aerospace and technology industries. The Weights and Measures program in Florida and many other states has traditionally been funded from general revenues since the work of the program benefits all citizens and businesses by protecting them from inaccurate and unfair measure. The program provides the service of correcting defective devices, packages and practices and preventing the introduction of substandard devices and products into the Florida marketplace.

The benefits of weights and measures testing and regulation accrue to customers and businesses involved in buying and selling products, commodities, and services by weight or measure. Specific beneficiaries are difficult to identify, particularly when considering functions such as testing packages for accurate net contents compliance, scanners for pricing accuracy, and scales used in legal and safety applications that are not necessarily commercial such as law enforcement, prescription compounding, fire extinguisher filling, etc. However, most of the workload of the program involves the

testing, inspecting, and regulating the use of weighing and measuring devices used in commercial transactions.

There is no federal weights and measures program; the services are provided by the states. Funding for the programs vary among the states, with about half of the states assessing some level of fees similar to those proposed in this bill, although there are no known states where 100% of the funding is provided through fees. As the benefits of weights and measures regulation accrues to all citizens and visitors of a state, some level of general revenue funding is usually provided in each state

### Effects:

This bill creates ss. 531.56, 531.57, 531.58, 531.59, 531.60, 531.61, and 531.62, F.S., to establish permit requirements and fees for weighing and measuring devices used for commercial purposes. The bill provides funding for the Weights and Measures program from the General Inspection Trust Fund by assessing permit fees on the businesses owning nonexempted devices and will offset all funding from General Revenue. The bill provides for annual permits, renewals, replacement permits, transfers, exemptions, forms, certificates, identification tags, and registration application forms. Permits are to be issued on a per device basis, but businesses with multiple devices in one location will be assessed less per device since certain economies of scale are realized by the regulatory program when conducting multiple inspections at one location.

The bill provides for the department to set permit fees in amounts necessary to defray the costs of administering the Weights and Measures program, but requires fees to not exceed specified maximum amounts. The bill authorizes the department to suspend or revoke a permit if a device is used in violation of statutory requirements or those specified in agency rules. The department is prohibited from testing a weighing or measuring device for which a permit fee is established even if the device is not used for commercial purposes unless a permit is obtained for the device and the applicable fee is paid to the department.

The bill authorizes the department to take the following enforcement actions in instances where a weighing or measuring device for which a permit is required is used for commercial purposes without the required permit:

- Prohibit any further commercial use of the unpermitted device until the applicable permit is issued.
- Attach to the device such forms, notices, tags, or seals to prevent the continued unpermitted use of the device.
- Assess a late fee not to exceed \$100 in addition to the permit fees prescribed by rule for issuance of a weighing or measuring device permit.
- In addition to requiring payment of the applicable fees required to obtain a valid permit for use of the device, impose any penalty authorized in s. 531.50(1) against the owner and any person using the device.

### **Specialty Brand Fertilizer:**

#### Present Situation:

Specialty fertilizer is any fertilizer packaged, marketed, and distributed for home and garden use and packaged in containers or bags such that the net weight is 49 pounds or less.<sup>1</sup> Specialty fertilizer brands are those fertilizers typically used in lawn and garden cultivation. There are currently 1,713 fertilizer specialty brands registered. The annual registration fee currently is \$100 each for the first five brands and then \$25 for each additional brand.<sup>2</sup> This fee has not been increased since 1994. In addition to the registration fee, current law applies a supplemental fee of \$100 for each of the first five

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<sup>1</sup> Section 576.011(36), F.S.

<sup>2</sup> Section 576.021(2), F.S.

specialty fertilizer registrations and \$25 for each registration after the first five to fund implementation of fertilizer management practices.<sup>3</sup>

Effects:

This bill applies the \$100 annual registration fee and the \$100 supplemental fee to each specialty fertilizer registered regardless of how many brands are registered. The change will not affect bulk fertilizers used in agriculture.

**Seed Dealer Registration:**

Present Situation:

Current law requires nonexempt persons selling, distributing for sale, offering for sale, exposing for sale, handling for sale, or soliciting orders for the purchase of any agricultural, vegetable, flower, or forest tree seed or mixture thereof to register with the department as a seed dealer. Seed lots are sampled and labels are reviewed to ensure seed is of required purity and germination, and free from contamination and noxious weed seeds. Seed registration fees are based on the gross receipts of seed sales with amount of sale categories established in statute. The application for registration must be accompanied by an annual registration fee for each place of business based on the gross receipts from the sale of such seed for the last preceding license year as follows:

- Receipts less than \$2,500.01, fee ..... \$50;
- Receipts more than \$2,500 and less than \$5,000.01, fee ..... \$100;
- Receipts more than \$5,000 and less than \$10,000.01, fee ..... \$175;
- Receipts more than \$10,000 and less than \$20,000.01, fee ..... \$400;
- Receipts more than \$20,000 and less than \$40,000.01, fee ..... \$500;
- Receipts more than \$40,000 and less than \$70,000.01, fee ..... \$600;
- Receipts more than \$70,000 and less than \$150,000.01, fee ..... \$800;
- Receipts more than \$150,000 and less than \$400,000.01, fee ..... \$1,200;
- Receipts more than \$400,000, fee ..... \$2,300.

There has not been a seed dealer fee increase since 1994.

Effects:

The bill doubles the amount of the fee for each category as follows:

- Receipts less than \$2,500.01, fee ..... \$100;
- Receipts more than \$2,500 and less than \$5,000.01, fee ..... \$200;
- Receipts more than \$5,000 and less than \$10,000.01, fee ..... \$350;
- Receipts more than \$10,000 and less than \$20,000.01, fee ..... \$800;
- Receipts more than \$20,000 and less than \$40,000.01, fee ..... \$1,000;
- Receipts more than \$40,000 and less than \$70,000.01, fee ..... \$1,200;
- Receipts more than \$70,000 and less than \$150,000.01, fee ..... \$1,600;
- Receipts more than \$150,000 and less than \$400,000.01, fee ..... \$2,400;
- Receipts more than \$400,000, fee ..... \$4,600.

**State Forest Receipts:**

Present Situation:

Under current law<sup>4</sup>, the Division of Forestry is required to distribute 15 percent of the gross receipts from a state forest to the county or counties in which it is located. The distribution of funds is

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<sup>3</sup> Section 576.045(2), F.S.

proportionately allocated according to the acreage of the state forests located within each county. The distributed funds are to be used by the county or counties for school purposes.

Additionally, the division is required to distribute 15 percent of the gross receipts from the Withlacoochee State Forest and the Goethe State Forest to the counties in which they are located. The funds are equally divided between the school board and the board of county commissioners of each county.<sup>5</sup>

#### Effects:

This bill revises current law to limit the 15 percent distribution of gross receipts from a state forest as well as the 15 percent distribution of gross receipts from the Withlacoochee State Forest and the Goethe State Forest only to those counties considered “fiscally constrained” and described in s. 218.67(1), F.S.<sup>6</sup>

The division estimates the distribution of forestry receipts to fiscally constrained local counties from the Incidental Trust Fund for the 2009-10 fiscal year to be approximately \$300,000. The division estimates that in Fiscal Year 2009-10, \$400,000 in trust fund revenues will not be distributed to Florida counties, but will be retained in the Incidental Trust Fund due to the provisions in this bill.

#### B. SECTION DIRECTORY:

**Section 1.** Amends subsection (3) of s. 482.2401, F.S.; replacing a requirement that the department use all revenues from certain administrative fines to support contract research or education in pest control with an authorization to use such available revenues for those purposes.

**Section 2.** Amends s. 487.041, F.S.; establishing supplemental registration fee for specified brands of pesticides; requiring the department to adopt rules publishing a list of active ingredients contained in pesticides for which a brand of pesticide is subject to the supplemental registration fee; providing for retroactive assessment of the supplemental fees; providing for use of revenues collected from the fees; providing for retroactive application.

**Section 3.** Creates s. 531.56, F.S.; requiring a permit for use of a weighing and measuring devices for commercial purposes; providing requirements for the issuance of permits; establishing additional requirements applicable to a permitted device after change in ownership; providing an expiration of permits; requiring annual renewal of permits; requiring late fees under certain circumstances.

**Section 4.** Creates s. 531.57, F.S.; exempting certain devices from permitting requirements.

**Section 5.** Creates s. 531.58, F.S.; requiring permit fees; specifying maximum fees.

**Section 6.** Creates s. 531.59, F.S.; authorizing the department to suspend or revoke permits under certain circumstances.

**Section 7.** Creates s. 531.60, F.S.; prohibiting the department from testing a noncommercial device unless a permit it issued for the device.

**Section 8.** Creates s. 531.61, F.S.; providing for application forms, permit certificates, and device identification tags.

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<sup>4</sup> Section 589.08, F.S.

<sup>5</sup> Section 589.081, F.S.

<sup>6</sup>Section 218.67(1), F.S., provides that each county that is entirely within a rural area of critical economic concern as designated by the Governor pursuant to s. 288.0656, F.S., or each county for which the value of a mill will raise no more than \$5 million in revenue, based on the taxable value certified pursuant to s. 1011.62(4)(a)1.a., F.S., from the previous July 1, shall be considered a fiscally constrained county.

**Section 9.** Creates s. 531.62, F.S.; prohibiting the unpermitted use of commercial weighing and measuring devices; providing penalties.

**Section 10.** Amends s. 576.021, F.S.; revising fees for the registration of specialty fertilizers.

**Section 11.** Amends s. 576.045, F.S.; revising supplemental fees for the registration of specialty fertilizers.

**Section 12.** Amends s. 578.08, F.S.; revising fees for the registration of seed dealers.

**Section 13.** Amends s. 589.08, F.S.; limiting the distribution of part of the gross receipts from certain state forests for schools and other purposes to only those counties that are fiscally constrained.

**Section 14.** Amends s. 589.081, F.S.; limiting the distribution of part of the gross receipts from certain state forests for schools and other purposes to only those counties that are fiscally constrained.

**Section 15.** Provides for retroactive application for the amendments to s. 487.041, F.S.

**Section 16.** Provides an effective date of July 1, 2009, except as otherwise expressly provided in the act.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

	(FY 09-10) Amount / FTE	(FY 10-11) Amount / FTE	(FY 11-12) Amount / FTE
1. Revenues:			
Recurring:			
Fine Money (GR)	\$71,745	\$71,745	\$71,745
Pesticide Registration (GITF)	\$1,397,105	\$1,397,105	\$1,397,105
Weights and Measures (GITF)	\$1,922,704	\$1,922,704	\$1,922,704
Fertilizer Registrations (GITF)	\$62,900	\$62,900	\$62,900
Seed Dealer Registrations (GITF)	\$328,500	\$328,500	\$328,500
State Forest Receipts (ITF)	\$400,000	\$400,000	\$400,000
Total	\$4,182,954	\$4,182,954	\$4,182,954

### 2. Expenditures:

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

##### **State Forest Receipts:**

Fiscally constrained counties will continue to receive a distribution of 15% of the gross receipts from state forests estimated at \$300,000, however approximately \$400,000 of state forest revenue collections will not be distributed to "non-fiscally constrained" counties, but will be retained in the Incidental Trust Fund.

#### 2. Expenditures:

##### **Weights and Measures:**

There are a few weighing and measuring devices owned by cities, counties and school boards that are regulated by the program. The total number is unknown, but the fiscal impact would be the cost of the permits and depends on the number and capacity of devices owned by those entities.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

##### **Fine Money Reallocation:**

No impacts on the private sector are anticipated. Fines are collected from violators of Chapter 482, F.S. This bill redirects how the collected money is spent.

##### **Pesticide Registration:**

The impact to the pesticide industry and consumers is expected to be minimal for the following reasons:

- Pesticide sales in Florida are estimated to be \$1.63 billion for 2007.
- The proposed increase of \$1.4 million represents an additional 0.11% additional cost relative to the value of pesticide sales (\$1.4 million/\$1.63 billion).

Based on usage, cost per pound, and number of brands registered, estimated increases for three commonly used pesticides (simazine, aldicarb and glyphosate) are less than 3 cents per pound.

##### **Weights and Measures:**

Owners of commercial weighing and measuring devices in the private sector would be required to purchase permits to use the devices for commercial purposes. The department has developed a proposed fee schedule based on the number of devices and capacities per location is attached, with estimated number of locations currently being regulated by the program. The estimated fees in the schedule are determined based on the amount of time and equipment necessary for testing and inspecting the devices, and are set assuming 100% funding from fees with no funding from General Revenue.

The estimated impact could be substantial on chain stores with multiple devices and locations in the state, particularly chain supermarkets that utilize many scales in each location. For example: under the proposed fee schedule: a store with 1 to 5 commercial scales would be charged \$40; a chain supermarket of 600 stores in Florida, each with 11 to 30 scales per store would be required to purchase permits of \$175 per store and the aggregate fee for all those stores would be \$105,000 annually; and owners of a single scale, used in the weighing of vehicles, would be assessed a fee of \$200 per device

##### **Fertilizer Registration:**

Distributors of specialty brand fertilizers will have to pay increased fees for registration.

#### D. FISCAL COMMENTS:

##### **Pesticide Registration:**

The Chemical Residue Program has an overall operating budget of approximately \$3,100,000, with approximately \$1,700,000 incoming from federal grants, cooperative programs and GR funding of \$1,397,105. General Revenue dollars used by the Bureau of Chemical Residue Laboratories are necessary to operate the program as a whole. Removal of the GR funds without a concurrent fund shift based on GITF revenues will result in the effective closure of the laboratory. Funds received from federal contract partners are insufficient to fully maintain administrative oversight, equipment purchases and maintenance, laboratory staffing, training, etc.

##### **Conforming Provisions**



This bill conforms law to fund shifts in the House of Representatives proposed General Appropriations Act:

- Shifts (\$1,397,105) in Pesticide Registration fees from General Revenue to General Inspection Trust Fund
- Shifts (\$1,922,704) in Weights and Measures permit fees from General Revenue to General Inspection Trust Fund
- Shifts (\$328,500) in Seed Dealer Registration fees from General Revenue to General Inspection Trust Fund
- Shifts (\$62,900) in Fertilizer Registration Fees from General Revenue to General Inspection Trust Fund
- Shifts \$400,000 from State Forest Receipts from General Revenue to Incidental Trust Fund.
- Shifts \$71,745 from Fine Money Reallocation from General Revenue to Pest Control Trust Fund

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

Section 2 of the bill amends s. 487.041, F.S., and requires the Department of Agriculture and Consumer Services to biennially publish by rule a list of the pesticide active ingredients for which a brand of pesticide is subject to the supplemental registration fee. The department also is required to adopt rules governing the procedures for biennially publishing the list of active ingredients for which a brand of pesticide is subject to the supplemental registration fee.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On April 2, 2009, the Natural Resources Appropriations Committee adopted one amendment to PCB NRAC 09-04. The amendment was a technical amendment to correct drafting errors.