

**STORAGE NAME:** h1181.ag  
**DATE:** March 7, 1997

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
AGRICULTURE  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 1181 (PCB AG-97-01)

**RELATING TO:** Fertilizer

**SPONSOR(S):** Committee on Agriculture and Representative Bronson

**STATUTE(S) AFFECTED:** Chapter 576, Florida Statutes

**COMPANION BILL(S):** CS/SB 186 by Senate Committee on Agriculture (s)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

(1) AGRICULTURE YEAS 6 NAYS 0

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**I. SUMMARY:**

This bill saves significant commercial agricultural fertilizer regulatory laws from repeal. Unless reenacted by the Legislature, 21 of the 22 sections in the Florida Statutes relating to commercial fertilizer regulations are scheduled for automatic repeal on October 1, 1997, pursuant to the Laws of Florida. Only the fertilizer laws regarding the regulation of nitrate residues in groundwater are not scheduled for repeal, because they have a later expiration date.

Also, the bill makes changes in the fertilizer laws due for repeal. The bill updates the agricultural fertilizer laws by providing greater consistency with the regulatory standards, investigational allowances, commercial valuation, and labeling requirements used in other states. Such updates effectively streamline regulations within the fertilizer industry, increasing efficiency in the implementation of the law and reducing barriers to interstate distribution of fertilizers.

The Department of Agriculture and Consumer Services will experience no fiscal impact in implementing the bill's provision.

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II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Chapter 576, Florida Statutes, authorizes the Department of Agriculture and Consumer Services (department) to regulate the composition and distribution of commercial fertilizer in Florida. The department implements the fertilizer inspection program. It samples and tests agricultural fertilizer sold in the state. The chapter directs the department to register and license fertilizer distributors.

The chapter provides definitions for terms used in the agricultural fertilizer industry. It requires fertilizer distributors in the state to be registered and licensed with the department. Any fertilizer distributed in Florida must have a label describing the fertilizer's brand and grade, guaranteed analysis, name and street address of the fertilizer distributor, net weight, and sources of primary and secondary nutrients. Specialty fertilizer containers must have a Florida registration number. This requirement poses a problem with manufacturers who distribute interstate. Such manufacturers must print separate labels just for Florida-bound fertilizer.

Pursuant to the chapter, the department is required to test fertilizer sold or offered for sale within Florida. Often, however; the department receives volunteer requests from commercial fertilizer licensees for fertilizer tests as an aid in support of the chapter's purpose. The department is unauthorized to fix and collect fees to cover the costs associated with such volunteer requests. Consequently, the department is forced to refuse these requests.

The department is authorized to set plant nutrient tolerances by rule under s. 576.061(1), F.S. Tolerances are the permitted variance from the guaranteed amounts of plant nutrients listed on the fertilizer label before a penalty is assessed against the manufacturer. The chapter authorizes detailed tolerances for: (1) primary plant nutrients, such as nitrogen, phosphorous, and potassium; (2) nitrogen breakdown products; (3) secondary plant nutrients and micro-nutrients; and (4) liming materials and gypsum. Tolerance amounts are set in rule.

Penalties are assessed against fertilizer licensees whose fertilizer mixtures are found deficient of plant nutrients. Such deficiencies may result in triple penalties payable directly to the consumer and an additional amount to the department. Penalty calculations for tobacco brands of mixed fertilizers are assessed differently. Tobacco brand fertilizers are penalized 100 percent of the commercial value of the mixed fertilizer if it contains chlorine in excess of more than 25 percent of the amount guaranteed. If the fertilizer is not a tobacco brand, the penalties for excess chlorine are one-eighth of those tobacco brands because the harm in excess chlorine is believed to be more significant in tobacco production.

Penalties assessed on deficient fertilizers are calculated using the latest commercial values of plant nutrients established by rule. Current practice is for the department to send out surveys to in-state fertilizer manufacturers and to average the values received for plant nutrient values. Consequently, plant nutrient dollar values used in penalty calculations are state-specific.

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Chapter 576, F.S., creates a 13-member Fertilizer Technical Council. The council is charged with advising the Commissioner of Agriculture on fertilizer issues. Fertilizer manufacturers, consumers, and the department are represented on the council. The council meets regularly and the department values the council's technical and procedural advice on issues relating to uniform fertilizer products regulation. However, there has been difficulty gaining the active participation of the at-large citizen member. Also, because the statute identifies the industry members of the council as those members who also serve on the State Agricultural Advisory Council, some Fertilizer Technical Council members have expressed difficulty in being active on several boards.

The department may deny, suspend, or revoke any license it issues for the violation of the chapter and rules adopted under this chapter. The department may place a manufacturer on probation when deficiency levels do not meet performance levels established by rule within the prescribed tolerances.

The chapter provides for certain prohibited acts including the sale of unprocessed leather, hair, wool waste, or any other organic material as fertilizer or in any mixed fertilizer where water-insoluble nitrogen activity is less than prescribed by the Association of Official Analytical Chemists. However, fertilizer not defined by the Association of American Plant and Food may be used as fertilizer as long as the licensee provides sufficient scientific data. The chapter gives the department specific authority to regulate the distribution of fertilizer by rule, including the establishment of tolerances by rule.

Section 19, ch. 92-143, Laws of Florida, requires that most provisions in chapter 576, F.S., be scheduled for automatic repeal on October 1, 1997, unless the Legislature reenacts all but one section (s. 576.045, F.S., related to nitrate residues in groundwater which expires later).

**B. EFFECT OF PROPOSED CHANGES:**

This bill repeals s. 19, ch. 92-143, Laws of Florida, which repeals chapter 576, F.S., with the exception of s. 576.045, F.S., (relating to nitrate regulations) which expires later. Such a repeal reenacts the following sections: 576.041, 576.045, 576.055, 576.085, 576.087, 576.111, 576.122, 576.132, 576.141, 576.161, 576.171, and 576.191, F.S. The remaining sections in chapter 576, F.S., are amended. Amending these sections effectively reenacts them.

The bill defines new terms in order to update the fertilizer law. The term "tolerances" is deleted and replaced with the phrase "investigational allowances" throughout chapter 576, F.S., without a change in meaning. The new terms and phrases are necessary to conform with definitions in a national model code used in other states to benefit interstate commerce.

The bill eliminates the requirement that a street address be printed on labels required for registration applications. This change conforms with practices of other states. Nor do specialty fertilizers need a Florida registration number printed on their labels. In addition, the department will no longer have to furnish a copy of each registration and registration number series to the applicant. These changes serve to streamline administration and benefit interstate commerce.

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The bill deletes the requirement that labels attached to containers of specialty fertilizer bear a Florida registration number. The reason for this change is so that manufacturers who distribute interstate will not have to print separate labels for Florida-bound fertilizer. Further, specialty fertilizer labels no longer need to show a street address, in conformity with the practice in other states.

The bill authorizes the department to conduct non-regulatory commercial tests of fertilizers and fix and collect fees to cover the additional direct and indirect costs associated with these tests. Such tests are triggered when fertilizer licensees voluntarily request them. This provision assists manufacturers with verifying quality control efforts to reduce deficiencies.

Tables formerly for "tolerances" set forth in rule are "investigational allowances" placed in statute pursuant to the bill. Investigational allowances for primary plant nutrients and secondary and micro plant nutrients are taken from the model code recommended for adoption by states through the American Association for Plant Food Control Officials. These changes conform Florida's standards for investigational allowances with those of other states. The bill also permits investigational allowances that are unique to Florida.

Under the bill, rules regarding deficiency and penalty calculations are now in the statutes with minor modifications. Penalties for excess chlorine in non-tobacco brands of fertilizer are eliminated.

The bill changes the procedure for establishing commercial values of plant nutrients and is no longer established by rule. Such values are used for penalty calculations. Specifically, the bill requires that commercial values be determined by using annualized plant nutrient values contained in one or more generally recognized journals recommended by the Fertilizer Technical Council. This change makes commercial values reflect national prices more closely.

The bill clarifies appointment and expense reimbursement provisions for members and alternate members of the Fertilizer Technical Council. The bill authorizes the Commissioner of Agriculture to appoint all 13 members and provides flexibility to choose industry members to the council without regard to their co-membership on the State Agricultural Advisory Council. These changes will likely encourage active participation by more members of the technical council.

Also, the bill clarifies and strengthens the scientific data criteria for distribution of fertilizers not defined by the Association of American Plant Food Control Officials. The modified criteria require efficacy studies generated with good scientific practices, peer review, publication in an available scientific journal or recognized by the research department of an accredited agricultural college or university. Further, the criteria require that the data must quantify and show that the undefined fertilizer material benefits plant growth when used in according to the manufacturer's recommendations.

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C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No. However, the bill effectively reduces the number of department rules and replaces with clear statutory provisions.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced: **Not Applicable.**

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

(2) what is the cost of such responsibility at the new level/agency?

(3) how is the new agency accountable to the people governed?

2. Lower Taxes: **Not Applicable.**

a. Does the bill increase anyone's taxes?

- b. Does the bill require or authorize an increase in any fees?
- c. Does the bill reduce total taxes, both rates and revenues?
- d. Does the bill reduce total fees, both rates and revenues?
- e. Does the bill authorize any fee or tax increase by any local government?

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Private fertilizer licensees requesting **non-regulatory** testing and analyses on their fertilizer samples from the Department of Agriculture and Consumer Services must pay for the service.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs? The bill increases service resource options to commercial fertilizer licensees who want to maintain high quality control of their fertilizer. Under the bill, these individuals could opt to use the fertilizer testing and analysis conducted by the department. The department regularly receives such requests from the fertilizer industry and is willing and ready to meet this industry need if it is able to recover the costs to perform these non-regulatory requests.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

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5. Family Empowerment: **Not Applicable.**

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

(2) Who makes the decisions?

(3) Are private alternatives permitted?

(4) Are families required to participate in a program?

(5) Are families penalized for not participating in a program?

b. Does the bill directly affect the legal rights and obligations between family members?

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

(2) service providers?

(3) government employees/agencies?

**D. SECTION-BY-SECTION RESEARCH:**

Section 1: Amending s. 576.011, F.S., replacing the term “tolerances” with “investigational allowances” without changing the meaning; and adding definitions for “compost”, “manipulated manure”, “manure”, “pelletized fertilizer”, “soil amendment”, “soil conditioner”, “soil additive”, and “unmanipulated animal and vegetable manure.”

Section 2: Amending s. 576.021, F.S., eliminating the need to include a street address on labels accompanying registration; and removing the requirement that the department furnish a copy of each registration and registration number series to the applicant.

Section 3: Amending s. 576.031, F.S., deleting the requirement that labels attached to specialty fertilizer containers bear a Florida registration number; and providing that fertilizer labels, generally, are not required to show a street address.

Section 4: Amending s. 576.051, F.S., allowing the department to conduct commercial fertilizer tests and assess fees to cover the costs associated with the tests upon request by fertilizer licensees.

Section 5: Amending s. 576.061, F.S., clarifying provisions related to penalties for fertilizer nutrient deficiencies; placing investigational allowances and penalty calculations for fertilizer nutrient deficiencies into statute rather than rule; allowing for investigational allowances unique to Florida; and eliminating penalties for excess chlorine in non-tobacco brands of fertilizer.

Section 6: Amending s. 576.071, F.S., requiring commercial value to be determined by using annualized plant nutrient values contained in one or more generally recognized journals recommended by the Fertilizer Technical Council.

Section 7: Amending s. 576.091, F.S., authorizing the Commissioner of Agriculture to appoint all members and alternate members of the Fertilizer Technical Council; allowing the Commissioner of Agriculture more flexibility to choose industry members to the council without regard to their co-membership on the State Agricultural Advisory Council.

Section 8: Amending s. 576.101, F.S., conforming language to replace “tolerances” with “investigational allowances” and the transfer the allowances from rule to statute.

Section 9: Amending s. 576.151, F.S., clarifying and strengthening the criteria used to evaluate the scientific data supplied by manufacturers for undefined fertilizer materials.

Section 10: Amending s. 576.181, F.S., conforming language to reflect the adoption of “investigational allowances.”

Section 11: Repealing s. 19, ch. 92-143, Laws of Florida, saving 21 sections of chapter 576, F.S., from an October 1, 1997, repeal date.



Section 12: Providing an effective date of October 1, 1997.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The department may experience some revenues generated from voluntary requests for non-regulatory fertilizer testing. However, the charges would only cover the cost of providing the service.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

The bill would require commercial fertilizer licensees to pay for non-regulatory fertilizer testing services performed by the department when they request such testing.

The department represents that "costs to the private sector remain unchanged under this bill." However, this is true only if the fertilizer industry fails to utilize the non-regulatory fertilizer test services administered by the department.

2. Direct Private Sector Benefits:

The fertilizer industry regularly requests non-regulatory fertilizer tests from the department. Such requests are self-imposed by fertilizer licensees who want to maintain high quality control of their fertilizer and aid in the support of the fertilizer laws. So far, the department has refused the industry's request for extra testing services because the department must cover the costs associated with the requested services. Currently, the department has no statutory authority to charge for non-regulatory testing requests. The bill would allow the private sector to receive non-regulatory fertilizing tests from the department.

3. Effects on Competition, Private Enterprise and Employment Markets:

The bill conforms Florida's fertilizer laws to those of other states, making interstate commerce easier. Changes in the law are anticipated to help Florida's fertilizer industry better compete with other states while protecting consumers and environment from substandard fertilizer practices. A logical result of these changes would be improved economic contributions to the state by the fertilizer industry.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision is not applicable to an analysis of PCB AG-97-01 because the bill does not require counties or municipalities to spend funds or take actions requiring expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

PCB AG-97-01 does not reduce the revenue raising authority of any county or municipality.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

PCB AG-97-01 does not reduce any state tax revenues shared with counties and municipalities.

V. COMMENTS:

On February 26, 1997, Representative Byrd introduced an amendment by Representative Smith. The amendment called for the review and repeal of chapter 576 by July 1, 2002. The amendment was later withdrawn.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON AGRICULTURE:

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