# *Fiscal Note & Local Impact Statement*

*122 nd General Assembly of Ohio*

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| BILL: | **Am. H.B. 425** | DATE: | **June 18, 1997** |
| STATUS: | **As Reported by House Agriculture and Natural Resources** | SPONSOR: | **Rep. Thompson** |

LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**

CONTENTS: **Revises agricultural commodity handlers laws**

## *State Fiscal Highlights*

| STATE FUND | FY 1997 | FY 1998 | FUTURE YEARS |
|---|---|---|---|
| **Commodity Handlers Regulatory Program Fund** | | | |
| Revenues | - 0 - | Minimal gain | Minimal gains and losses |
| Expenditures | - 0 - | Minimal increase | Minimal increase |

- Minimal gain in revenues from additional fine monies which can now be collected from violation of operating without a license and other offenses or operating without a license, insolvent and financially unable to satisfy a claimant.
- Projected loss of at least $6,000 in revenues over five years due to decrease in number of licensees and exams within 5 years from the effective date of the bill.
- Minimal revenue gain from contracts between the Department of Agriculture and marketing associations.

## *Local Fiscal Highlights*

| LOCAL GOVERNMENT | FY 1997 | FY 1998 | FUTURE YEARS |
|---|---|---|---|
| **Counties** | | | |
| Revenues | - 0 - | Potential minimal loss | Potential minimal loss |
| Expenditures | - 0 - | Potential minimal increase | Potential minimal increase |
| **Municipalities** | | | |
| Revenues | - 0 - | - 0 - | - 0 - |
| Expenditures | - 0 - | Potential minimal increase | Potential minimal increase |

- Potential loss to counties of fine revenue that would now go to the state Commodity Handlers Regulatory Program Fund.
- Potential increase in expenditures to counties and municipalities for adjudication, and to counties for prosecution and possible incarceration, of commodity handlers for operating without a license or operating without a license, insolvent and financially unable to satisfy a claimant.

## *Detailed Fiscal Analysis*

The bill makes the following changes to the agricultural commodity law: changes the definition of agricultural commodity handler; increases the net worth that an applicant for an agricultural commodity handler's license must maintain; increases the penalty for engaging in agricultural commodity handling without a license; and makes other revisions.

**Change in definition and increase in net worth**

According to a spokesperson for the Department of Agriculture, the change in definition of agricultural commodity handlers would mean that the number of licensees would decrease by a small number over the five year implementation period. The increases in the net worth requirements are phased in over five years. These licensees might be small businesses that do not handle large volumes of agricultural commodities (and would qualify for exemption from these regulations), are marginal operations or are operating without adequate capital.

In FY 1996, there were 575 agricultural commodity licensees. License fees are $200 for the main location and $100 for each additional branch location. Currently, 30 licensees do not meet the $50,000 minimum net worth and one does not meet the $450,000 maximum net worth. There would be a loss of at least $6,000 in annual license fee revenues to the Commodity Handlers Regulatory Fund. Since the net worth requirements are phased in over a period of five years, with the maximum requirement not enforced until the 5$^{th}$ year, this loss would probably occur gradually during the five year implementation period. There would be an indeterminate revenue loss in exam fees from the corresponding loss of licensees and changing the period of the agricultural commodity tester certificate from 2 years to 3 years. Exam fees are based on the storage capacity of the facility operated by a licensed commodity handler. These exam fees range from $100 for 10,000 bushels or less of storage capacity up to $1,200 for between 7.5 and 10 million bushels of storage capacity. The Department already administers the exams, therefore there would be no additional expenditures related to the exams. In FY 1996, revenue from license fees totaled $93,341 and revenues from exam fees totaled $127,955.

**Commodity Handlers Regulatory Fund and fines/penalties**

Currently, the Commodity Handlers Regulatory Fund consists of the following monies: revenue generated from the distribution of receipt forms to licensed handlers; application and exam fees; agricultural commodity tester certificate fees; and interest income transferred from the agricultural commodity depositors fund. The bill adds fines, penalties, and costs, except court costs and any monies resulting from contracts between the department and a marketing association to this fund. These monies are used to pay the examination and administrative costs related to this program.

According to a spokesperson for the department, there have been violations in the past of theft and operating without a license. In the past, there have been handlers who have become insolvent, but the department has successfully prosecuted these handlers under the existing theft and fraud statute (Sec. 2913 ORC). In cases where the department finds handlers operating without a license, the handlers are given the opportunity to obtain a license before the department proceeds with prosecution. There have been cases, however, where firms are deliberately operating without a license. About six years ago, the department found six firms deliberately operating without a license. These cases were investigated and the firms were prosecuted, but the department did not have legal authority for handling the fine monies into a rotary account and therefore the fines could not enforced.

The penalty for operating without a handler's license is changed from a minor misdemeanor (maximum fine of $100) to a misdemeanor of the 1st degrees (maximum fine of $1,000 and 6 months jail term) on the first offense. On each subsequent offense, the penalty is a felony of the fifth degree (basic prison term of 6-12 months and maximum fine of $2,500). There is also a new violation in the bill for someone who is operating without a license, insolvent and financially unable to satisfy a claimant. A person who has violated this prohibition is guilty of a felony of the fifth degree (basic prison term of 6-12 months and maximum fine of $2,500) if the financial obligation owed by the offender to the claimant is between $500-$5,000. If the financial obligation is between $5,000-$10,000, the offender is guilty of a felony of the fourth degree (6-18 months prison term and $5,000 maximum fine). According to a spokesperson for the department, the penalty increases in the bill are meant to recoup some of the costs of investigating and prosecuting these individuals. Since there have been relatively few incidences of operating without a license in the past, there is projected to be a minimal gain in revenues and a minimal increase in expenditures for the department. Counties and municipalities could experience a minimal increase in expenditures for potential court hearings, and counties could experience a minimal increase in costs for prosecution and incarceration.

**Contracts with marketing associations**

Language in the bill would allow the Director of Agriculture to enter into a contract with a marketing association. The department does not currently do this. The marketing associations collect marketing fees. The department has some responsibility to enforce marketing assessments through the markets program. When the Soybean Association was required by the U.S. Department of Agriculture to verify collection compliance, the association requested the Ohio Department of Agriculture (ODA) to verify this compliance while performing annual exams. ODA determined that legal authority did not exist for them to carry out this verification. This language in the bill would provide that authority. The department estimates that a contract with the Soybean Association for this service could be between $8,000 - $12,000 annually. Possible contract amounts with other associations are unknown at this point in time.

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