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## ***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<sup>th</sup> 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; however, the department did not have legal authority for depositing the fines into a rotary account. Therefore the fines could not be enforced.

Section 926.99(A)(1) of the bill increases the penalty for operating without a handler’s license from a minor misdemeanor, carrying a maximum fine of \$100, to a misdemeanor of the 1<sup>st</sup> degree, with a 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, carrying a basic prison term of 6-12 months and maximum fine of \$2,500.

Section 926.99(A)(2) of the bill creates a new violation for commodity handlers who are operating without a license and are insolvent and financially unable to satisfy claimants. The sanction increases according to the amount owed by the violator. These penalties are displayed in the table below.

**Table 1. Penalties for Commodity Handlers Operating Without a License Who Are Insolvent and Unable to Pay Claimants.**

<b>Amount Owed by Violator</b>	<b>Felony Type</b>	<b>Maximum Fine</b>	<b>Prison Term</b>
\$500-5,000	5 <sup>th</sup> degree	\$2,500	6-12 months
\$5,000-\$100,000	4 <sup>th</sup> degree	\$5,000	6-18 months
\$10,00-\$100,000	3 <sup>rd</sup> degree	\$10,000	1-5 years

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 in the past there have been few incidences of operating without a license, the Department would probably realize a minimal gain in revenues from this source. Also, the Department would probably incur increased expenses related to the investigation and prosecution of these unlicensed or insolvent handlers. 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.

**Five Percent Overweight Allowance for Farm Vehicles Transporting Commodities**

Current law allows local governments to set weight limits and establish fines for vehicles which violate these limits. Section 5577.042 of the bill waives these penalties if these vehicles exceed posted weight limits by no more than five percent. The exemption applies only to trucks carrying livestock, timber, bulk milk, corn, soybeans, tobacco, and wheat between points of harvest and first points of delivery. Furthermore, the exemption does not apply to trucks or farm vehicles travelling on interstate highways or roadways and bridges with weight restrictions. The bill also stipulates that vehicle owners are still liable for civil penalties arising from any damage that their vehicles may have caused to the county or township roads. The provision may slightly reduce fine revenue to counties.

**Contracts with marketing associations**

Section 926.36 of the bill would allow the Director of Agriculture to enter into contracts with commodity marketing associations. These associations collect marketing fees from commodity producers, and the Department’s Commodity Marketing program has some responsibility to enforce these assessments. For example, when the Soybean Association was required by the U.S. Department of Agriculture to verify collection compliance, the association requested that the Ohio Department of Agriculture (ODA) verify compliance while performing

annual exams. However, ODA determined that legal authority did not exist for them to carry out this function. This provision in the bill would provide that authority. The Department estimates that a contract with the Soybean Association for this service would cost between \$8,000 - \$12,000 annually. Possible contract amounts with other associations are currently unknown.

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