



# Ohio Legislative Service Commission

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## Final Analysis

Jeff Grim

### Sub. S.B. 1

131st General Assembly  
(As Passed by the General Assembly)

- Sens.** Gardner and Peterson, Hite, LaRose, Eklund, Manning, Beagle, Bacon, Balderson, Brown, Burke, Coley, Faber, Hottinger, Hughes, Lehner, Obhof, Oelslager, Patton, Sawyer, Schiavoni, Seitz, Tavares, Thomas, Widener, Williams, Yuko
- Reps.** Hill, Burkley, Patterson, Buchy, Cera, Patmon, Sheehy, Ruhl, Anielski, Antonio, Baker, Barnes, Blessing, Brenner, Brown, Celebrezze, Conditt, DeVitis, Dovilla, Driehaus, Fedor, Gerberry, Green, Grossman, Hackett, Hall, Hambley, Hayes, T. Johnson, Koehler, Kraus, Landis, Leland, Lepore-Hagan, Maag, Manning, McClain, M. O'Brien, S. O'Brien, Perales, Phillips, Ramos, Rezabek, Rogers, Ryan, Schaffer, Scherer, Sears, Slaby, Slesnick, K. Smith, R. Smith, Sprague, Stinziano, Strahorn, Sweeney, Young, Rosenberger

**Effective date:** July 3, 2015

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## ACT SUMMARY

### Application of fertilizer and manure

- Prohibits, with certain exceptions, the application of fertilizer consisting of nitrogen or phosphorous and the application of manure in the western Lake Erie basin on frozen ground, on saturated soil, and during certain weather conditions.
- States that the prohibitions do not affect any restrictions established in the Concentrated Animal Feeding Facilities Law or otherwise apply to entities or facilities that are permitted as concentrated animal feeding facilities.
- Exempts a person in the western Lake Erie basin from the prohibitions if the person applies fertilizer or manure under specified circumstances, including injecting it into the ground and incorporating it within 24 hours of surface application.
- Authorizes the Director of Agriculture or the Director's designee (in the case of fertilizer application) or the Chief of Soil and Water Resources in the Department of Natural Resources or the Chief's designee (in the case of manure application) to

investigate complaints against a person that violates a prohibition, including applying for a search warrant.

- Authorizes the Director and Chief to assess a civil penalty against a person that violates a prohibition, but only if the person is afforded an opportunity for an adjudication hearing.
- Requires the amount of the civil penalty to be determined in rules, but prohibits it from exceeding \$10,000 per violation.

### **Temporary exemption – small and medium agricultural operations**

- Authorizes the owner or operator of a small or medium agricultural operation to apply to the Chief for a temporary exemption from the act's manure prohibition, and requires an exemption to be approved or denied within 30 days of the application's submission.
- States that an owner or operator that has been issued an exemption, or whose application is pending, is not subject to civil penalties for violating the manure prohibition during the exemption period.
- Allows the Chief or the Chief's designee, after determining that it is appropriate, to issue an exemption as follows:
  - For a medium agricultural operation, for a period not later than July 3, 2016; or
  - For a small agricultural operation, for a period not later than July 3, 2017.
- Authorizes the Chief or designee to deny or revoke an exemption if the Chief or designee determines that the owner or operator is not in substantial compliance with the Soil and Water Resources Law and rules, other than violating the act's manure prohibition.
- Requires the Chief to establish the form of the application for an exemption in rules, and specifies information the form must include.
- Requires the General Assembly committees that are primarily responsible for agriculture and natural resources matters, not later than July 3, 2018, to jointly assess the results of the implementation of the act's fertilizer and manure prohibitions and issue a report.
- States that it is the intent of the General Assembly that legislation transferring the Agricultural Pollution Abatement Program from the Department of Natural Resources to the Department of Agriculture be enacted not later than July 1, 2015.



## **Certification of manure applicators**

- Prohibits a person, for the purposes of the cultivation, primarily for sale, of plants on more than 50 acres, from applying manure obtained from a concentrated animal feeding facility issued a permit under the Concentrated Animal Feeding Facilities Law unless one of the following applies:
  - The person has a livestock manager certification under that Law; or
  - The person has been certified under the act by the Director of Agriculture to apply the manure.
- Requires the Director to issue, renew, and deny certifications for the application of manure in the same manner as for the certification of fertilizer applicators as required by law enacted in 2014.

## **Application of sewage sludge**

- Prohibits the Director of Environmental Protection, when issuing permits for sludge management under the Water Pollution Control Law, from allowing the placement of sewage sludge on frozen ground in conflict with rules adopted under that Law.

## **Phosphorous monitoring for publicly owned treatment works**

- Requires that a publicly owned treatment works with a design flow of one million gallons per day or more, or designated as a major discharger by the Director, be required to begin monthly monitoring of total and dissolved reactive phosphorous pursuant to a new NPDES permit, an NPDES permit renewal, or a Director-initiated modification not later than December 1, 2016.
- Requires the Director to include in each new NPDES permit, NPDES permit renewal, or Director-initiated modification a requirement that the monitoring be conducted.
- Requires a publicly owned treatment works with a design flow of one million gallons per day or more that is not subject to a phosphorous effluent limit on July 3, 2015, to submit to the Director, not later than December 1, 2017, a study that evaluates the existing facility's capability to reduce phosphorous to one milligram per liter.

## **Dredged material in Lake Erie and tributaries**

- Beginning July 1, 2020, prohibits a person from depositing in Ohio's portion of Lake Erie and its direct tributaries dredged material from harbor or navigation



maintenance activities, unless authorized by the Director of Environmental Protection.

- Authorizes the Director, in consultation with the Director of Natural Resources, to determine that factors exist that result in the inability to comply with the prohibition and, after making that determination, to allow open lake placement of dredged material from specified areas through issuance of a section 401 water quality certification.
- Allows the Director of Environmental Protection to authorize the deposit of dredged material from harbor or navigation maintenance activities for specified facilities and projects, including beach nourishment and habitat restoration.
- Requires the Director, in order to coordinate activities and responsibilities established under the Water Pollution Control Law and the Coastal Management Law, to consult with the Director of Natural Resources when approving the location in which dredged material is proposed to be deposited.
- Requires the Director of Environmental Protection to endeavor to work with the U.S. Army Corps of Engineers on a dredging plan that focuses on long-term planning for the disposition of dredged material consistent with the act's requirements.
- Requires the General Assembly committees that are primarily responsible for environmental protection matters, not later than January 1, 2023, to jointly assess the results of the implementation of the act's prohibition against depositing dredged material and issue a report.

### **Healthy Lake Erie Fund**

- Revises the use of money in the continuing Healthy Lake Erie Fund by:
  - Eliminating most uses of the money, including implementing nonstatutory recommendations of the Agriculture Nutrients and Water Quality Working Group and conducting research and establishing pilot projects reduce algae blooms in Lake Erie, but retaining its use for soil testing; and
  - Instead requiring the money to be used for funding assistance for winter cover crops, edge of field testing, tributary monitoring, and animal waste management and conservation measures in Lake Erie's western basin and reduction of nutrient runoff as determined by the Director of Natural Resources.

## Harmful algae management and response coordinator

- Requires the Director of Environmental Protection to serve as coordinator, or designate a coordinator, of harmful algae management and response, and requires the Director or designee (hereafter Director) to develop plans providing for coordination that may include specified actions and items.
- Requires the Director to consult with certain state and local officials to implement specified actions, including protecting against cyanobacteria in Lake Erie's western basin.
- Requires the Director to develop and implement protocols and actions that may include specified provisions and protocols, including:
  - Analytical protocols for monitoring of cyanobacteria at water intake structures of public water systems and testing for cyanobacteria in Lake Erie; and
  - Provisions on training, testing, and treatment and other support regarding cyanobacteria identification, sampling, treatment techniques, algaecide application, public notification, and source water protection for employees of publicly owned treatment works and public water systems.

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## CONTENT AND OPERATION

### Application of fertilizer and manure

#### Fertilizer

The act establishes provisions governing the application of fertilizer in Lake Erie's western basin and requires the Director of Agriculture to administer and enforce them. Under the act, fertilizer is nitrogen or phosphorous. Lake Erie's western basin is Ohio land in the St. Marys, Auglaize, Blanchard, Sandusky, Cedar-Portage, Lower and Upper Maumee, Tiffin, St. Joseph, Ottawa, and River Raisin watersheds.<sup>1</sup>

Subject to exceptions discussed below, the act prohibits any person in the western basin from surface applying fertilizer under either of the following circumstances:

- (1) On snow-covered or frozen soil; or
- (2) When the top two inches of soil are saturated from precipitation.

Additionally, except as discussed below, the act prohibits any person in the western basin from surface applying fertilizer in a granular form when the local weather forecast for the application area contains greater than a 50% chance of precipitation exceeding one inch in a 12-hour period.<sup>2</sup>

The act states that the prohibitions do not affect any restrictions established in the Concentrated Animal Feeding Facilities Law or otherwise apply to entities or facilities that are permitted as concentrated animal feeding facilities.<sup>3</sup> It also specifies that the prohibitions do not apply if a person in the western basin applies fertilizer under any of the following circumstances:

- (1) The fertilizer is injected into the ground;
- (2) It is incorporated within 24 hours of surface application; or
- (3) It is applied onto a growing crop.<sup>4</sup>

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<sup>1</sup> R.C. 905.326(E) and (F).

<sup>2</sup> R.C. 905.326(A).

<sup>3</sup> R.C. 905.326(D).

<sup>4</sup> R.C. 905.326(B).



## **Manure**

The act also establishes provisions governing the application of manure in Lake Erie's western basin and requires the Chief of the Division of Soil and Water Resources in the Department of Natural Resources to administer and enforce them.

Subject to exceptions discussed below, the act prohibits any person in the western basin from surface applying manure under any of the following circumstances:

- (1) On snow-covered or frozen soil;
- (2) When the top two inches of soil are saturated from precipitation; or
- (3) When the local weather forecast for the application area contains greater than a 50% chance of precipitation exceeding ½ inch in a 24-hour period.<sup>5</sup>

As with fertilizer, the act states that the manure prohibition does not affect any restrictions established in the Concentrated Animal Feeding Facilities Law or otherwise apply to entities or facilities that are permitted as concentrated animal feeding facilities.<sup>6</sup> It also specifies that the prohibition does not apply if a person in the western basin applies manure under the same circumstances discussed above regarding fertilizer, with one addition. The manure prohibition also does not apply if, in the event of an emergency, the Chief or the Chief's designee provides written consent and the manure application is made in accordance with procedures established in the U.S. Department of Agriculture Natural Resources Conservation Service Practice Standard Code 590 prepared for Ohio.<sup>7</sup>

### **Enforcement of fertilizer prohibitions**

Upon receiving a complaint by any person or upon receiving information that would indicate a violation of the fertilizer prohibitions, the Director of Agriculture or the Director's designee may investigate or make inquiries into any alleged violation.

After receiving the complaint or information, the Director or designee may enter at reasonable times on any private or public property to inspect and investigate conditions relating to an alleged violation. If an individual denies access, the Director may apply to a court of competent jurisdiction in the county where the premises is located for a search warrant authorizing access to the premises to determine if a

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<sup>5</sup> R.C. 1511.10(A).

<sup>6</sup> R.C. 1511.10(D).

<sup>7</sup> R.C. 1511.10(B).



violation occurred. The court must issue the search warrant for the purposes requested if there is probable cause to believe that the person violated the prohibition. The finding of probable cause may be based on hearsay, provided there is a reasonable basis for believing that the source of the hearsay is credible.<sup>8</sup>

The Director may assess a civil penalty against a person that violates the fertilizer prohibitions. But the Director first must afford the person an opportunity for an adjudication hearing to challenge the Director's determination that the person violated the fertilizer prohibitions. The person may waive the right to an adjudication hearing.<sup>9</sup>

If the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the Director determines that a violation has occurred or is occurring, the Director may issue an order requiring compliance with the prohibition and assess the civil penalty. The order and the civil penalty may be appealed.<sup>10</sup>

A violator must pay a civil penalty in an amount established in rules adopted by the Director. The civil penalty cannot exceed \$10,000 for each violation. Each day during which fertilizer is applied in violation of the fertilizer prohibitions constitutes a separate violation.<sup>11</sup>

### **Enforcement of manure prohibition**

The act's provisions governing enforcement of the manure prohibition are identical to those governing enforcement of the fertilizer prohibitions with two differences. First, the Chief of Soil and Water Resources or the Chief's designee is to enforce the manure prohibition.<sup>12</sup> Second, the act establishes an exemption for small and medium agricultural operations as discussed below.

#### **Temporary exemption – small and medium agricultural operations**

The owner or operator of a small or medium agricultural operation may apply to the Chief for an exemption from the manure prohibition for a limited period after the act takes effect. A medium agricultural operation is an agricultural operation that stables or confines any of the numbers of animals specified for a medium concentrated animal feeding operation in the Concentrated Animal Feeding Facilities Law. A small

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<sup>8</sup> R.C. 905.326(C).

<sup>9</sup> R.C. 905.327(A).

<sup>10</sup> R.C. 905.327(B).

<sup>11</sup> R.C. 905.327(C) and (D).

<sup>12</sup> R.C. 1511.11(A), (B), (C), and (E)(1).





operation is one that stables or confines fewer than the numbers of animals specified for a medium concentrated animal feeding operation (see "**Supplemental information**," below).<sup>13</sup>

An owner or operator that has been issued an exemption is not subject to civil penalties for a violation of the manure prohibition during the exemption period. An owner or operator that has an initial application for an exemption pending the Chief's review also is not subject to the civil penalties.<sup>14</sup> The authorized exemption periods are:

(1) For a medium agricultural operation, a period ending not later than July 3, 2016; or

(2) For a small agricultural operation, a period ending not later than July 3, 2017.<sup>15</sup>

The Chief or designee must approve or deny an application for an exemption not later than 30 days after it is submitted, and may issue the exemption if the Chief or designee determines it appropriate. The Chief or designee may deny an application or revoke an exemption that has been approved if the Chief or designee determines that the owner or operator is not in substantial compliance with the Soil and Water Resources Law and rules, other than violating the manure prohibition.

The Chief must establish the form of the application for an exemption in rules. The form must include:

(1) A statement from the applicant affirming that the applicant understands the act's manure prohibition and associated enforcement provisions;

(2) A statement from the applicant affirming that the applicant understands that the applicant must be in compliance with procedures established in the U.S. Department of Agriculture Natural Resources Conservation Service Practice Standard Code 590 prepared for Ohio except procedures that conflict with the act's manure prohibition and associated enforcement provisions;

(3) A place for the applicant to explain the reasons for the exemption's necessity;

(4) A place that provides information on programs that may assist an applicant with methods to comply with the manure prohibition; and

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<sup>13</sup> R.C. 1511.11(F).

<sup>14</sup> R.C. 1511.11(D)(3) to (6).

<sup>15</sup> R.C. 1511.11(D)(1).



(5) A place that provides the applicant an opportunity to request technical assistance or information from the Chief or the soil and water conservation district to assist the applicant to comply with the manure prohibition.<sup>16</sup>

### **Legislative review of prohibitions**

The act requires the General Assembly committees that are primarily responsible for agriculture and natural resources matters, not later than July 3, 2018, to jointly assess the results of the implementation of the act's fertilizer and manure prohibitions. The committees must jointly issue a report to the Governor containing their findings and any recommendations based on the assessment. The report may include recommendations to revise or repeal the prohibitions.<sup>17</sup>

### **Intent to transfer Agricultural Pollution Abatement Program**

The act states that it is the intent of the General Assembly that legislation transferring the administration and enforcement of the Agricultural Pollution Abatement Program from the Department of Natural Resources to the Department of Agriculture be enacted not later than July 1, 2015.<sup>18</sup>

### **Certification of manure applicators**

The act prohibits a person, for the purposes of the cultivation primarily for sale, of plants or any parts of plants on more than 50 acres, from applying manure obtained from a concentrated animal feeding facility issued a permit under the Concentrated Animal Feeding Facilities Law, unless one of the following applies:

- (1) The person has a livestock manager certification under that Law; or
- (2) The person has been certified under the act by the Director of Agriculture to apply the manure.

The Director must issue, renew, and deny certifications for the application of manure in the same manner as for the certification of fertilizer applicators as required by law enacted in 2014. Procedures, requirements, and other provisions governing certification of fertilizer applicators apply to the certification of persons under the act.<sup>19</sup>

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<sup>16</sup> R.C. 1511.11(E)(2).

<sup>17</sup> Section 5(A).

<sup>18</sup> Section 6.

<sup>19</sup> R.C. 903.40.



## **Application of sewage sludge**

The act prohibits the Director of Environmental Protection, in issuing permits for sludge management under the Water Pollution Control Law, from allowing the placement of sewage sludge on frozen ground in conflict with rules adopted by the Director under that Law.<sup>20</sup>

## **Phosphorous monitoring for publicly owned treatment works**

The act requires that a publicly owned treatment works with a design flow of one million gallons per day or more, or designated as a major discharger by the Director, be required to begin monthly monitoring of total and dissolved reactive phosphorous pursuant to a new NPDES permit, an NPDES permit renewal, or a Director-initiated modification not later than December 1, 2016. The Director must include in each new NPDES permit, NPDES permit renewal, or Director-initiated modification a requirement that the monitoring be conducted. A Director-initiated modification for that purpose must be considered and processed as a minor modification pursuant to rules adopted by the Director governing NPDES permits.

Additionally, a publicly owned treatment works with a design flow of one million gallons per day or more that is not subject to a phosphorous effluent limit on July 3, 2015, must submit to the Director, not later than December 1, 2017, a study that evaluates the existing facility's technical and financial capability to reduce the final effluent discharge of phosphorous to one milligram per liter, using possible source reduction measures, operational procedures, and unit process configurations.<sup>21</sup>

## **Dredged material in Lake Erie and tributaries**

Beginning July 1, 2020, the act prohibits a person from depositing, in the portion of Lake Erie within Ohio's jurisdictional boundaries or in the direct tributaries of Lake Erie within Ohio, dredged material from harbor or navigation maintenance activities, unless the Director of Environmental Protection has both (1) determined that the dredged material is suitable for one of the locations, purposes, or activities specified below and (2) issued a section 401 water quality certification authorizing the deposit. The Director, in consultation with the Director of Natural Resources, may determine that financial, environmental, regulatory, or other factors exist that result in the inability to comply with the prohibition. After making that determination, the Director of Environmental Protection, through issuance of a section 401 water quality certification,

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<sup>20</sup> R.C. 6111.03(J)(1).

<sup>21</sup> R.C. 6111.03(S)(2).



may allow for open lake placement of dredged material from the Maumee River, Maumee Bay Federal Navigation Channel, and Toledo Harbor.

The Director may authorize the deposit of dredged material from harbor or navigation maintenance activities for any of the following:

- (1) Confined disposal facilities;
- (2) Beneficial use projects;
- (3) Beach nourishment projects if at least 80% of the dredged material is sand;
- (4) Placement in the littoral drift if at least 60% of the dredged material is sand;
- (5) Habitat restoration projects; and

(6) Projects involving amounts of dredged material that do not exceed 10,000 cubic yards, including material associated with dewatering operations related to dredging operations.

Under the act, in order to coordinate the activities and responsibilities established under the Water Pollution Control Law and the Coastal Management Law, the Director must consult with the Director of Natural Resources when approving the location in which dredged material is proposed to be deposited in Ohio's portion of Lake Erie or its direct tributaries. The Director of Environmental Protection may adopt necessary rules.

Finally, the act requires the Director, in order to ensure the regular and orderly maintenance of federal navigation channels and ports, to endeavor to work with the U.S. Army Corps of Engineers on a dredging plan that focuses on long-term planning for the disposition of dredged material consistent with the act's requirements.<sup>22</sup>

### **Legislative review**

The act requires the General Assembly committees that are primarily responsible for environmental matters, not later than January 1, 2023, to jointly assess the results of the implementation of the act's prohibition against depositing dredged material. The committees must jointly issue a report to the Governor containing their findings and any recommendations based on the assessment. The report may include recommendations to revise or repeal the prohibition.<sup>23</sup>

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<sup>22</sup> R.C. 6111.32.

<sup>23</sup> Section 5(B).



## Healthy Lake Erie Fund

The act revises the use of the continuing Healthy Lake Erie Fund by both:

(1) Eliminating a requirement that the Director of Natural Resources consult with the Directors of Agriculture and Environmental Protection in using money in the Fund to implement nonstatutory recommendations of the Agriculture Nutrients and Water Quality Working Group, and instead requiring the Director of Natural Resources to use the money in support of all of the following:

--Conservation measures in Lake Erie's western basin as determined by the Director;

--Funding assistance for winter cover crops, edge of field testing, tributary monitoring, and animal waste management; and

--Any additional efforts to reduce nutrient runoff as determined by the Director.

(2) Eliminating the Director's authority to use the money for monitoring the quality of Lake Erie and its tributaries and conducting research and establishing pilot projects to reduce algae blooms in Lake Erie.

The act retains the use of the Fund for soil testing.<sup>24</sup>

## Harmful algae management and response coordinator

The act requires the Director of Environmental Protection to serve as coordinator, or designate a coordinator, of harmful algae management and response. The Director or the Director's designee (hereafter Director) must develop plans providing for coordination that may include the actions and items discussed below.

The Director must consult with the Directors of Agriculture, Health, and Natural Resources and representatives of local governments, publicly owned treatment works, and public water systems to implement actions that both:

(1) Protect against cyanobacteria in Lake Erie's western basin and in public water supplies; and

(2) Manage wastewater to limit nutrient loading into the western basin.

The Director must develop and implement protocols and actions that may include:

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<sup>24</sup> Sections 3 and 4.



(1) Analytical protocols for monitoring of cyanobacteria at water intake structures of public water systems, testing for cyanobacteria in Lake Erie, and establishing public health advisory levels and public notification protocols if trigger levels of cyanotoxins are detected;

(2) Provisions on training, testing, and treatment and other support regarding cyanobacteria identification, sampling, treatment techniques, algaecide application, public notification, and source water protection for employees of publicly owned treatment works and public water systems; and

(3) Protocols requiring public water systems to notify the Environmental Protection Agency if:

--Cyanotoxins are detected in finished drinking water;

--Cyanobacteria are detected in their source water; or

--Application of an algaecide is anticipated to the source water.<sup>25</sup>

### **Supplemental information**

Under the Concentrated Animal Feeding Facilities Law, a medium concentrated animal feeding operation is an animal feeding facility that stables or confines the number of animals specified in any of the following categories:

(1) 200 to 699 mature dairy cattle whether milked or dry;

(2) 300 to 999 veal calves;

(3) 300 to 999 cattle other than mature dairy cattle or veal calves;

(4) 750 to 2,499 swine that each weigh 55 pounds or more;

(5) 3,000 to 9,999 swine that each weigh less than 55 pounds;

(6) 150 to 499 horses;

(7) 3,000 to 9,999 sheep or lambs;

(8) 16,500 to 54,999 turkeys;

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<sup>25</sup> R.C. 3745.50.



(9) 9,000 to 29,999 laying hens or broilers if the animal feeding facility uses a liquid manure handling system;

(10) 37,500 to 124,999 chickens, other than laying hens, if the animal feeding facility uses a manure handling system that is not a liquid manure handling system;

(11) 25,000 to 81,999 laying hens if the animal feeding facility uses a manure handling system that is not a liquid manure handling system;

(12) 10,000 to 29,999 ducks if the animal feeding facility uses a manure handling system that is not a liquid manure handling system; or

(13) 1,500 to 4,999 ducks if the animal feeding facility uses a liquid manure handling system.<sup>26</sup>

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## HISTORY

ACTION	DATE
Introduced	02-02-15
Reported, S. Agriculture	02-17-15
Passed Senate (32-0)	02-18-15
Reported, H. Agriculture & Rural Development	03-25-15
Passed House (96-0)	03-25-15
Senate concurred in House amendments (33-0)	03-25-15

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<sup>26</sup> R.C. 903.01(Q)(1), not in the act.

