

FIRST REGULAR SESSION

# HOUSE BILL NO. 1248

## 101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DEATON.

2250H.011

DANA RADEMAN MILLER, Chief Clerk

### AN ACT

To repeal section 266.336, RSMo, and to enact in lieu thereof one new section relating to the fertilizer control board.

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 266.336, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 266.336, to read as follows:

266.336. 1. There is hereby created a "Fertilizer Control Board". The fertilizer control board shall be composed of thirteen members. Of the thirteen members, five shall be actively employed as fertilizer manufacturers or distributors and five shall be actively engaged in the business of farming. The nonprofit corporation organized under Missouri law to promote the interests of the fertilizer industry shall nominate persons employed as fertilizer manufacturers or distributors, and Missouri not-for-profit organizations that represent farmers shall nominate persons engaged in the business of farming. Such nominations shall be submitted to the ~~[director, and the director]~~ **governor, who** shall ~~[select]~~ **appoint** members from these nominations **with the advice and consent of the senate**. Three at large members shall be ~~[selected]~~ **appointed** by the ~~[director]~~ **governor** with the ~~[approval of a majority of the other ten members of the fertilizer control board]~~ **advice and consent of the senate**.

2. The fertilizer control board shall:

- (1) Meet at least twice each year with meetings conducted according to bylaws;
- (2) Review and approve the income received and expenditures made under sections 266.291 to 266.351;
- (3) In accordance with this section and chapter 536, adopt, amend, promulgate, or repeal after due notice and hearing rules and regulations to enforce, implement, and effectuate the

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 powers and duties of sections 266.291 to 266.351. Any rule or portion of a rule, as that term is  
19 defined in section 536.010, that is created under the authority delegated in this section shall  
20 become effective only if it complies with and is subject to all of the provisions of chapter 536  
21 and, if applicable, section 536.028. This section and chapter 536 are nonseverable, and if any  
22 of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the  
23 effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the  
24 grant of rulemaking authority and any rule proposed or adopted after August 28, 2016, shall be  
25 invalid and void;

26 (4) Revoke or suspend a permit, or refuse to issue a permit, to any distributor who has  
27 knowingly violated any of the provisions of sections 266.291 to 266.351, or has failed or  
28 neglected to pay the fees or penalties provided for in sections 266.291 to 266.351. The board  
29 shall conduct a hearing if requested by the distributor to review all penalties assessed and permit  
30 decisions made by the board. Upon completion of a hearing, the board shall determine if penalty  
31 modifications are warranted giving consideration to the history of previous violations, the  
32 seriousness of the violation, any overage in any other ingredients, demonstrated good faith of the  
33 distributor, and any other factors deemed appropriate. Any penalty modification ~~[must]~~ **shall**  
34 comply with section 266.343;

35 (5) Determine the method and amount of fees to be assessed. In performing its duties  
36 under this subdivision, the fertilizer control board shall represent the best interests of the  
37 Missouri farmers and Missouri agribusinesses;

38 (6) Secure access to a laboratory with necessary equipment, and employees as may be  
39 necessary, to aid in the administration of sections 266.291 to 266.351;

40 (7) Pursue nutrient research, educational, and outreach programs to ensure the adoption  
41 and implementation of practices that optimize nutrient use efficiency, ensure soil fertility, and  
42 address environmental concerns with regard to fertilizer use extending the results of the fertilizer  
43 experiments that may be of practical use to the farmers and agribusinesses of this state;

44 (8) Exercise general supervision of the administration and enforcement of sections  
45 266.291 to 266.351, and all rules and regulations and orders promulgated under such sections;

46 (9) Institute and prosecute through the attorney general of the state suits to collect any  
47 fees due under sections 266.301 to 266.347 ~~[which]~~ **that** are not promptly paid.

48 3. Authorized agents of the fertilizer control board are hereby authorized and empowered  
49 to:

50 (1) Only to the extent necessary to determine general compliance, collect samples,  
51 inspect, and make analysis of fertilizer sold, offered, or exposed for sale within this state; except  
52 that, samples taken of fertilizer sold in bulk shall be taken from the bulk container immediately  
53 after mixing on the premises of the mixing facility or, when not possible, to be sampled from the

54 bulk container wherever found. All samples shall have a preliminary analysis completed within  
55 five business days of the sample being obtained. If requested, a portion of any sample found  
56 subject to penalty or other legal action shall be provided to the distributor liable for the penalty;

57 (2) Only to the extent necessary to determine general compliance, inspect and audit the  
58 books of every distributor who sells, offers for sale, or exposes for sale fertilizer for consumption  
59 or use in this state to determine whether or not the provisions of sections 266.291 to 266.351 are  
60 being fully complied with;

61 (3) Require every distributor to file documentation as prescribed by rules promulgated  
62 under sections 266.291 to 266.351. Such documents shall not be required more often than six-  
63 month intervals, and all such documents shall be returned to the distributor upon request;

64 (4) Enter upon any public or private premises during regular business hours in order to  
65 have access to fertilizer subject to sections 266.291 to 266.351 and the rules and regulations  
66 promulgated under sections 266.291 to 266.351, and to take samples and inspect such fertilizer;

67 (5) Issue and enforce a written or printed "stop-sale, use, or removal" order to the owner  
68 or custodian of any fertilizer that is found to be in violation of any of the provisions of sections  
69 266.291 to 266.351, which such order prohibiting the further sale of such fertilizer until sections  
70 266.291 to 266.351 have been complied with or otherwise disposed of;

71 (6) Publish each year the full and detailed report giving the names and addresses of all  
72 distributors registered under sections 266.291 to 266.351, the analytical results of all samples  
73 collected, and a statement of all fees and penalties received and expenditures made under  
74 sections 266.291 to 266.351;

75 (7) Establish from information secured from manufacturers and other reliable sources,  
76 the market value of fertilizer and fertilizer materials for the purpose of determining the amount  
77 of damages due when the official analysis shows an excessive deficiency from the guaranteed  
78 analysis;

79 (8) Retain, employ, provide for, and compensate such consultants, assistants, and other  
80 employees on a full- or part-time basis and contract for goods and services as may be necessary  
81 to carry out the provisions of sections 266.291 to 266.351, and prescribe the times at which they  
82 shall be appointed and their powers and duties.

83 **4. Vacancies shall be filled by appointment in the same manner as members are**  
84 **appointed in subsection 1 of this section.** The ~~[filling of vacancies, the]~~ selection of officers,  
85 the conduct of its meetings, and all other matters concerning the fertilizer control board shall be  
86 outlined in the bylaws established by the fertilizer control board. All members of the fertilizer  
87 control board shall serve for terms of three years and until their successors are duly appointed  
88 and qualified; except that, of the members first appointed:

89           (1) Two members who are actively employed as fertilizer manufacturers or distributors,  
90 two members actively engaged in the business of farming, and one at large member shall serve  
91 for terms of three years;

92           (2) Two members who are actively employed as fertilizer manufacturers or distributors,  
93 two members actively engaged in the business of farming, and one at large member shall serve  
94 for terms of two years; and

95           (3) The remaining three members shall serve for terms of one year.

96           5. All members shall be residents of this state. No member ~~[may]~~ **shall** serve more than  
97 two consecutive terms on the fertilizer control board, but any member may be reappointed after  
98 ~~[he]~~ **the member** has not been a member of the ~~[advisory council]~~ **board** for a period of at least  
99 three years.

100           6. All members shall be reimbursed for reasonable expenses incurred in the performance  
101 of ~~[their]~~ official duties in accordance with the reimbursement policy set by the fertilizer control  
102 board bylaws. All reimbursements paid under this section shall be paid from fees collected under  
103 sections 266.291 to 266.351.

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