



**PESTICIDE REGULATION**

**House Bill 4344 (Substitute H-2)  
First Analysis (3-16-93)**

**Sponsor: Rep. Tom Alley  
Committee: Agriculture and Forestry**

***THE APPARENT PROBLEM:***

Pesticide regulation is primarily the responsibility of the federal and state governments. The federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) grants the U.S. Environmental Protection Agency the authority to regulate the registration, classification, and labeling of pesticides as well as the conduct of commercial and private pesticide applicators. In Michigan, pesticide regulation is governed by the Pesticide Control Act. Enacted in 1976, the act requires the registration of pesticides, regulates the distribution and labeling of these substances, requires the licensure of pesticide dealers, and provides for the certification of private and commercial applicators. Public Act 449 of 1988 amended the Pesticide Control Act to require the registration of certain commercial applicators and to establish certain qualifications, including training, that these applicators must meet. In addition, Public Act 449 increased the power of the director of the Michigan Department of Agriculture to restrict the use of certain pesticides, requires an apprenticeship for licensed commercial and aerial pesticide applicators, and requires the Department of Agriculture to promulgate rules in such areas as the duty of commercial applicators to inform customers, training for pesticide applicators, and competency standards for pesticide applicator trainers. In addition to these regulations, a number of local governments across the state reportedly have enacted ordinances affecting pesticide use in their localities. Some people believe, however, that pesticide regulation should be uniform across the state and that local governments should be prohibited from enacting local ordinances.

***THE CONTENT OF THE BILL:***

Prohibition of local pesticide ordinances. The bill would amend the Pesticide Control Act to prohibit a local unit of government from enacting, maintaining or enforcing an ordinance or regulation that conflicts "in any manner" with the act. The bill would state that "it is the express legislative intent that this act preempt any local ordinance, regulation

or resolution that purports to duplicate, extend, or revise in any manner the provisions of this act."

Exceptions. However, the bill would allow a local unit to enact an ordinance regulating the distribution, sale, storage, handling, use, application, transportation, or disposal of pesticides if either "unreasonable adverse effects on the environment or public health will exist within the local unit of government," or if the local unit had determined that the use of a pesticide within its jurisdiction violated other existing state or federal laws. (Note: The act defines "unreasonable adverse effects on the environment" to mean any unreasonable risk to human beings or the environment, taking into account the economic, social, and environmental costs and benefits of the use of a pesticide). The bill would specify that an ordinance enacted under this provision could not conflict with existing state or federal laws and could not be enforced by the local unit until it was approved by the Commission of Agriculture. If the commission denied an ordinance under this provision, it would have to provide a detailed explanation of the basis for the denial. However, if the commission approved an ordinance, then those who enforced the ordinance would have to comply with the appropriate and applicable training provisions of the act.

Public Hearing. If unreasonable adverse effects on the environment or public health were identified by a local unit of government, then the Department of Agriculture would be required to hold a local public meeting, at the request of the local unit of government, to determine the nature and extent of these adverse effects on the environment or public health due to the use of pesticides.

Department of Agriculture duties. The bill would require the Department of Agriculture to develop a program on pesticide container recycling and disposal. The program would be limited to licensed pesticide dealers and other persons seeking approval from the department for participation in the

House Bill 4344 (3-16-93)

program. Also, the bill would specifically allow the department to promulgate rules regarding notification or posting designed to inform people entering public and private buildings or areas where pesticides have been applied. Finally, the bill would not prohibit the department from contracting with a local unit of government to enforce the Pesticide Control Act.

MCL 286.568 et al.

### ***FISCAL IMPLICATIONS:***

According to the Department of Agriculture, minimal costs would be incurred by the department for public hearings and for the costs of adopting rules and approving or disapproving local ordinances. (3-10-93)

### ***ARGUMENTS:***

#### ***For:***

According to the Department of Agriculture, a number of local governments (West Bloomfield, Livonia, Forsyth Township, Bear Lake Township, Milford, Holland, East Lansing, Ann Arbor, Ingham County, Troy, and Alma) have enacted or are considering enacting ordinances regulating the use of pesticides within their jurisdictions. In addition, some school districts have enacted policies regulating the use of pesticides on school grounds. The range of regulation varies from assessing fees, to requiring notification before and after pesticide application, to restricting the use of certain pesticides. Some have raised concerns that these local governments lack the technical expertise to determine whether and how pesticides should be regulated. Furthermore, continued regulation at the local level could create a patchwork of laws across the state that would undermine any attempt at uniform regulation of these chemicals. In addition, the consequences of such varied regulation could result in increased costs for pesticide applicators, dealers, and users. Some people in the agricultural industry also fear that uneven regulation could pit farmers with land in jurisdictions that do not regulate pesticides against those who must farm under stiff local regulations. In addition, some farmers, whose land traversed more than one governmental jurisdiction, would have the extra burden of complying with a variety of regulations in order to farm their land.

#### ***Response:***

While House Bill 4344 would prohibit a local government from enacting or enforcing a local ordinance on pesticide use, the bill would allow local governments to enact such ordinances if unreasonable adverse environmental effects existed. Such ordinances would be subject to the approval of the director of the Department of Agriculture before they could be enforced. Because of this relaxation in a proposed strict prohibition against local ordinances, a patchwork of pesticide regulation still could develop. Furthermore, the bill does not specify criteria that the director would consider in determining whether an ordinance should be approved.

#### ***For:***

A 1991 U.S. Supreme Court decision underscores the need for state governments to take action restricting the ability of local governments to regulate pesticide use within their jurisdictions. The case stems from an ordinance enacted in Casey, Wisconsin that requires a permit for the application of any pesticide to public lands and private lands subject to public use, or for the aerial application of any pesticide to private lands. A property owner applied for a permit for aerial spraying of a portion of his land. The town granted him a permit, but precluded aerial spraying and restricted the lands on which ground spraying was allowed. The property owner subsequently sued the town claiming that the ordinance regulating the use of pesticides was preempted by state and federal law. In Wisconsin Public Intervenor v Mortier, the court upheld local rights to regulate pesticides in states that have not explicitly curtailed these regulations (111 S.Ct. 2476). Specifically, the court ruled that FIFRA did not preempt the town's ordinance either explicitly, implicitly, or by virtue of an actual conflict between laws. Thus, local governments can make their own rules concerning pesticide use, unless prohibited from doing so by the states. House Bill 4344 would make it clear that, except under certain conditions, local governments could not enact ordinances on pesticide use that, some fear, could lead to regulating pesticides into virtual non-use.

#### ***For:***

Under the bill, the department would be required to develop a pesticide container recycling and disposal program. Efforts are already under way in the department to establish a recycling program. Last year, the department ran a pilot program for the disposal of farm pesticides in eleven communities

around the state. The department reportedly intends to expand this program to twenty-three communities. Working with Grower Services Corporation and Michigan State University, the department also plans to include in the program the recycling of empty plastic pesticide containers.

***Against:***

The bill would strike at the concepts of local control and home rule by diminishing the authority of local executives and local governing bodies to make decisions that affect the health and safety of residents in their communities. Although local governments could enact ordinances, under certain circumstances, these ordinances still would be subject to the approval of the Commission of Agriculture. If local pesticide ordinances are causing difficulties for those in the pesticide and agricultural industries, then perhaps the legislature should consider establishing uniform standards for local ordinances to regulate agricultural pesticides. Such a compromise would be preferable to the language of House Bill 4344, which is a virtual prohibition of any local pesticide ordinances. Furthermore, the bill represents yet another effort to erode local governments' decision-making authority. Previously, the legislature enacted Public Act 319 of 1990, which prohibits a local government from regulating, taxing, enacting, or enforcing any ordinance pertaining to pistols and firearms and their ammunition, except as provided by federal or state law. Similarly, the ability of a municipality to regulate wetland use or development is being threatened. Unfortunately, such measures deny communities the authority to protect their residents' health, safety, and welfare.

***Against:***

Pesticide use is widespread in farming, but also is as close as the neighbor's yard. Pesticides are used not only in agriculture, but also in lawn care, home gardening, and pest control in schools, homes, and office buildings. Because exposure to these chemicals is possible for many persons, including those who may be particularly sensitive to pesticide exposure such as infants, small children, and senior citizens, it is important that the public be allowed to decide whether and in what manner pesticides may be used. Local governments present the forum where such decisions should be made by a community, since neither FIFRA nor state law provides adequate regulation in this area. Many local governments have taken the lead in protecting the public from pesticide exposure through the

enactment of ordinances requiring the notification of persons when an area has been treated with pesticides. Such notification enables persons to decide about the risks of exposure in their communities.

***Response:***

The Pesticide Control Act provides for the Department of Agriculture to promulgate rules to carry out the act. The bill also would permit the promulgation of rules concerning notification and/or posting to inform persons entering certain public and private buildings or areas where pesticides had been applied. It should be noted that the department has promulgated rules on pesticide use that address many of the concerns that local governments have attempted to handle through local ordinances. Department of Agriculture Pesticide Use Regulation 637 establishes requirements in a number of areas, including applying pesticides, maintaining a registry of persons who due to a medical condition must be notified before a pesticide is applied, mixing and loading pesticides, cleaning equipment, using protective equipment, minimizing drift in pesticide application, posting signs when pesticides have been applied, using service agreements, and providing risk and benefit information on pesticide use.

***Against:***

It is important that persons entering areas where pesticides have been applied be aware of the existence of the pesticides. Accordingly, the bill would allow the Department of Agriculture to promulgate rules regarding notification and posting of signs at treated areas. However, the bill does not specify whether this provision would apply only to commercial pesticide applicators, or to private citizens who used pesticides on their property. For example, some gardeners follow the advice of one popular gardening expert, who recommends spraying lawns and shrubs with household products such as bleach, as a cure for various garden ailments. Under the bill, this practice could conceivably be interpreted to mean that these gardeners would have to notify the Department of Agriculture when they used this method. The bill should be amended to specify that only commercial applicators of pesticides be required to conform to posting and notification requirements.

***Against:***

It is not clear whether local governments would be able to take action against persons who violated the act. Some local government officials contend that

their law enforcement personnel have standing under state law to take action against persons who commit felonies, but that they cannot act on misdemeanors or civil infractions without having either specific language in the act providing for enforcement by local governments or local ordinances providing for such enforcement. Local units should be able to enact ordinances mirroring state law in order to address violations of the act.

**Response:**

Various statutes permit local governments to enforce state law, and local ordinances are not needed in these instances to give local units enforcement authority. For example, this authority is provided under Public Act 59 of 1935, which created the state police and provides for public safety, and under the Public Health Code, which permits local health department officers to issue orders for the correction or removal of an imminent danger to the health or lives of persons living in the area served by a local health department. Further, the bill would permit the director to contract with a local government to act as its agent for the enforcement of the act and rules promulgated under it.

**Against:**

Proponents of the bill seek to restrict the enactment of local pesticide ordinances in order to avoid the development of a patchwork of regulations across the state. It should be noted, however, that a patchwork of regulations already exists due to efforts by the Environmental Protection Agency (EPA) to limit pesticide use in some Michigan counties. Triggered by the federal Endangered Species Act, the EPA reportedly has restricted actions, such as pesticide use, that can threaten an endangered species or its habitat. So far, 11 counties in the state (Alcona, Clare, Crawford, Iosco, Kalkaska, Missaukee, Montmorency, Ogemaw, Oscoda, Presque Isle, and Roscommon) are affected by the EPA's program, which, in this instance, is attempting to protect the nesting grounds of the Kirtland's warbler. Thus, persons in the pesticide and agricultural industries already must contend with a county-by-county variance in pesticide regulation.

**Response:**

While the EPA's actions do cause some dissimilarities in pesticide regulation across the state, this variance is the result of a comprehensive federal program and not the result of individual counties taking action on their own. Under the bill, any variance in state regulation of pesticides, due to

the commission's approval of local ordinances, would be the result of a review by a state agency with the necessary expertise to make the determination. Such expertise is not likely to be found on the local level.

**POSITIONS:**

The Department of Agriculture supports the bill. (3-10-93)

The Michigan Nursery and Landscape Association supports the bill. (3-10-93)

The Michigan Railroads Association supports the bill. (3-10-93)

The Michigan Farm Bureau supports the bill. (3-11-93)

The Lawn Service Association of Michigan supports the bill. (3-11-93)

DowElanco, an agricultural-chemical manufacturing company, supports the bill. (3-11-93)

The Michigan State Chamber of Commerce supports the concept of uniform pesticide regulations but recommends that an amendment be adopted to specify that only commercial applicators of pesticides be required to conform to the posting and notification requirements of the bill. (3-11-93)

Representatives of the following organizations testified before the House Agriculture Committee in support of the bill (3-10-93):

TruGreen - Chemlawn Ltd.  
Grower Service Corp.  
Grass Roots, Inc.  
Michigan Pest Control Association.

Representatives of the following organizations testified before the House Agriculture Committee in opposition to House Bill 4344 (3-10-93):

The Michigan Townships Association.  
The Michigan Municipal League.  
The Michigan Environmental Council (MEC), which represents the Sierra Club, Clean Water Action, Citizens for Alternatives to Chemical Contamination, the East Michigan Environmental Action Council, the West Michigan Environmental Action Council, and other environmental agencies.

(MEC supports stricter legislation on pesticide container disposal, but opposes preemption of local control over environmental ordinances.)

The Chemical Specialties Manufacturers Association opposes the bill, but would support it if it were amended to specify that only commercial applicators of pesticides be required to conform to the posting and notification requirements specified in the bill. (3-10-93)

The Michigan Association of Counties has no position on the bill. (3-12-93)