

Senate Fiscal Agency
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SFA



BILL ANALYSIS

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House Bill 5013 (Substitute H-3 as reported without amendment)
Sponsor: Representative Gene DeRossett
House Committee: Agriculture and Resource Management
Senate Committee: Farming, Agribusiness and Food Systems

Date Completed: 11-27-01

RATIONALE

Agricultural operations can produce pollution in the form of pesticides, engine emissions, and animal waste run-offs. In an effort to deal with pollution proactively, the Conservation Reserve Enhancement Program (CREP) and the Michigan Agricultural Environmental Assurance Program (MAEAP) were recently implemented. These programs are administered by the Michigan Department of Agriculture (MDA) and are intended to take a cost-effective and proactive approach to address pollution and other environmental hazards caused by farm operations.

Both programs operate on voluntary enrollment. The MAEAP provides education to farmers about pollution control, and CREP offers financial incentives to producers who implement specific conservation practices. While the programs are administered by the MDA, the Department lacks the specific statutory authority to do so. Without this statutory authority, the MDA cannot contract directly with farmers who wish to enroll in either program. Some people believe it is necessary to grant the authority to the MDA so that it can establish a separate fund, contract directly with farmers, and carry out other administrative duties presumably necessary to run the two programs.

CONTENT

The bill would add Part 82 (Conservation Practices) to the Natural Resources and Protection Act, which would permit the Michigan Department of Agriculture to establish conservation programs, provide conservation practice verification, and purchase or acquire conservation

easements. The bill also would establish an "Agriculture Pollution Prevention Fund" and require the MDA to report to the Legislature annually.

Conservation Programs

Under the bill, the Department could establish conservation programs designed to encourage the voluntary use of conservation practices in the State. In implementing the programs, the MDA, in coordination with the Departments of Natural Resources and Environmental Quality, could do one or more of the following:

- Enter into contracts with one or more persons for the implementation of conservation practices on their land.
- Enter into contracts or other agreements with one or more people to administer or promote conservation programs, or to implement conservation practices.
- Provide payments, financial incentives, or, upon verification of the implementation of conservation practices, reimbursement for rental payments or for costs of conservation practice implementation, or both.
- Promote the use of conservation practices.
- Recognize and provide awards for people who had implemented conservation practices.
- Monitor and verify compliance with conservation plans.
- Enforce contracts or other agreements entered into under this proposed program.
- Terminate a contract or other agreement entered into under Part 82 in accordance with terms established in the contract or agreement.

In carrying out its responsibilities under the bill, the MDA would have to coordinate with the Departments of Natural Resources and Environmental Quality and other applicable partners.

The MDA could promulgate rules to implement Part 82.

The bill would define "conservation practices" as practices voluntarily implemented by the landowner, that protected and conserved water quality, soil, natural features, wildlife, or other natural resources, and that met one or more of the following criteria: complied with United States Natural Resource Conservation Service standards and specifications as approved by the Department; were provided in rules promulgated by the MDA under the bill; and/or had been approved by the Agriculture Commission.

Conservation Practice Verification

As part of the proposed conservation program, the Department could provide for conservation practice verification. (The bill would define "verification" or "verify" as a determination by the MDA that one or more conservation practices had been established and were being maintained in accordance with a conservation plan.) Conservation practice verification could be granted to a person if all of the following conditions were met:

- The person had submitted a conservation plan in compliance with MDA requirements. (The bill would define "conservation plan" as a plan approved by the Department for all or a portion of a parcel of land that specified the conservation practices to be undertaken, and included a schedule for implementation.)
- The person had established and was maintaining all conservation practices provided for in the conservation plan, according to the plan schedule.
- The person had agreed to allow the MDA, after giving prior notice to the landowner, to conduct inspections of the applicable land and facilities.
- The MDA had conducted an on-site inspection of the conservation practices and had determined that the person had established and was maintaining all conservation practices provided for in the conservation plan, according to the plan schedule.

If the MDA determined at any time that the conservation practices provided in a conservation plan had not been established or were not being maintained, the Department could revoke a person's conservation practice verification. If verification were revoked, the person could be subject to penalties and repayment of all or part of the payments, financial incentives, land rental payments, and reimbursement of costs paid for implementation of the conservation practice according to the terms of the contract.

Department Acquisition of Conservation Easements

Under the bill, the Department could purchase or otherwise acquire conservation easements in accordance with Part 21 of the Act (which specifies that a conservation easement granted to a governmental or other legal entity is enforceable against the owner of the land or body of waters subject to the easement, and requires the easement to be recorded with the register of deeds).

A conservation easement purchased or otherwise acquired under the bill could contain provisions for the allowable or required use of the land subject to the easement, implementation of conservation practices on the land, maintenance of the conservation practices, opportunities for inspection of the land, penalties for noncompliance with the terms of the conservation easement, termination of the easement, and other terms agreed to by the Department. In addition, the MDA could enter into contracts with one or more people to monitor and enforce the terms of conservation easements purchased or acquired under the bill.

If it purchased or acquired a conservation easement under these provisions, the MDA would have to record the easement with the register of deeds for the county in which the land subject to the easement was located. If the easement were subsequently terminated, the MDA would have to record a notice of that termination.

(The bill would define "conservation easement" as it is in Part 21, i.e., "an interest in land that provides limitation on the use of land or a body of water or requires or prohibits certain acts on or with respect to the land or body of water, whether or not the interest is stated in the form of a restriction, easement, covenant, or condition in a deed,

will, or other instrument executed by or on behalf of the owner of the land or body of water or in an order of taking, which interest is appropriate to retaining or maintaining the land or body of water, including improvements on the land or body of water, predominantly in its natural, scenic, or open condition, or in an agricultural, farming, open space, or forest use, or similar use or condition".)

Fund

The bill would create the Agriculture Pollution Prevention Fund in the State Treasury. The State Treasurer could receive money or other assets from any source for deposit into the Fund, including State and Federal revenues, gifts, bequests, and other donations. The Treasurer would have to direct the investment of the Fund and credit to it the interest and earnings from Fund investments.

Any money recovered by the MDA under Part 82, including money paid to the Department due to the termination of a contract, agreement, or conservation easement, would have to be deposited into the Fund.

Money in the Fund would have to be spent, upon appropriation, only for one or more of the following:

- Promotion of conservation programs established by the MDA under the bill.
- Awards to participants in the conservation program.
- Payments, financial incentives, or reimbursement for rental payments for the implementation of conservation practices.
- Payments required under contracts entered into under the bill.
- Purchase of conservation easements.
- Monitoring and enforcement of conservation easements.

In addition, not more than 20% of the annual appropriations from the Fund could be spent for the administrative costs of the MDA in implementing Part 82. Administrative costs would include, but would not be limited to, costs incurred in doing one or more of the following:

- Developing and implementing conservation programs.
- Managing payments and financial incentives.
- Monitoring and verifying the implementation of conservation practices and enforcing contracts or agreements

concerning conservation practices.

- Coordinating conservation practices with the U.S. Department of Agriculture and other State agencies with jurisdiction over conservation programs.

Report to the Legislature

The Department annually would have to prepare and submit a report to the standing committees of the Senate and House of Representatives with jurisdiction over issues related to agriculture and the Senate and House Appropriations Committees. The report would have to include all of the following:

- The amount of money received by the Fund during the previous fiscal year.
- The expenditures from the Fund during the previous fiscal year broken down by the categories listed above.
- The Fund balance on the date of the report.
- The number of acres in which conservation practices had been implemented.
- The number of acres in which conservation easements had been purchased or acquired.

Confidentiality

The bill states that any information voluntarily provided by a person in connection with the development, implementation, or verification of a conservation plan or conservation practices under Part 82 would be confidential and exempt from disclosure under the Freedom of Information Act, and would not be open to public inspection without the person's consent. Any such information that was released to a legislative body could not contain information that identified a specific person.

This exemption would not extend to any documents, communication, data, reports, or other information required to be collected, maintained, or made available or reported to a regulatory agency or any other person by statute, rule, ordinance, permit, order, or consent agreement, or as otherwise provided by law.

Proposed MCL 324.8201-324.8208

BACKGROUND

The Conservation Reserve Enhancement Program is the State arm of the Federal Conservation Reserve Program (CRP) and focuses its efforts on three environmentally

sensitive regions: the Lake Macatawa, River Raisin, and Saginaw Bay watersheds. Conservation practices are centered on water quality, soil erosion, and wildlife habitat.

When enrolling in CREP, farmers and other landowners in the priority watershed areas agree to take eligible parcels of land out of agricultural production and establish conservation practices on those parcels for 15 years. Approved practices include field windbreaks, filter strips, wetland restoration, shallow-water wildlife areas, controlled livestock access and conservation easements. (A "filter strip" is an area of grass, legumes, or other vegetation that filters runoff or waste water by trapping sediment, pesticides, organic matter, or other pollutants. These strips are established on cropland at the lower edge of a field or adjacent to a body of water.)

Under the program, a participant is compensated for 100% of the cost of implementing the conservation practice, and receives an additional payment from the Federal government of 40% of the cost per acre. Once the practice is established, the Federal government pays "rent" on the conservation easement for the next 15 years. The rent amounts to 140% of the Soil Rental Rate (SRR) in the area, which varies from county to county, plus a \$5 per-acre maintenance allowance. In addition, the State pays the participant 10% of the SRR for 15 years in one lump sum. Last, as a signing bonus, the participant receives a one-time payment of \$150 per acre. Under the Program, a participant who invested \$700 initially could receive more than \$16,500 over the next 15 years, for example.

Once a landowner is enrolled in CREP, he or she may permanently enroll land in CREP under the Permanent Conservation Easement Program. Landowners are free to sell, lease, will, or deed the land, as well as hunt and fish on it. Public access on the land is not allowed, however.

The Michigan Agricultural Environmental Assurance Program, which was developed in response to recommendations in the Michigan Agricultural Pollution Prevention Strategy Report, differs from CREP in that it does not provide financial incentives to participants. Instead, it seeks to educate farmers about pollution prevention measures so that they can comply with Federal and State

environmental regulations. Participants learn, in Phase One, about current State and Federal environmental rules and regulations, and the impact of agricultural pollution on the environment. In Phase Two, MAEAP assessors make farm visits to target environmentally sensitive areas and develop comprehensive, site-specific management plans for producers. Phase Three involves a farm visit from the MDA, which verifies that the management plan has been implemented according to the producer's schedule. When these requirements are met, the producer receives MAEAP verification. At present, the Livestock arm of the program is in place. The Farmstead and Cropping arms are to be implemented in the fall of 2002 and 2004, respectively.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Currently, funds necessary to administer CREP and MAEAP must be transferred to the MDA from several budgets agencies within the Department of Natural Resources (DNR): the General Fund, the Game and Fish Protection Fund, the Clean Michigan Initiative, and the turkey permit fees subfund. Donations from Ducks Unlimited, a private conservation group, also must be transferred to the MDA from the DNR. Allowing the MDA to establish its own fund for these programs would enable the Department to contract directly with the producers, thus eliminating unnecessary paperwork, human resources, and headaches. The programs are gaining momentum: in the past year alone, more conservation practices were implemented than in the past five years combined. As farmers struggle to make a profit, as the water quality in this State continues to be stressed, and as agricultural land continues to be lost to residential subdivisions, it is important that the MDA have the tools necessary to administer efficiently these much-needed, agricultural conservation programs.

Legislative Analyst: C. Layman

FISCAL IMPACT

The bill would have no fiscal impact on State or local government. The Agriculture Pollution

Prevention Fund that would be created under the bill would receive money or other assets from any source. It is estimated that the money appropriated for the Conservation Reserve Enhancement Program (CREP) would be consolidated in the Fund. To date, over \$170 million in State, Federal, and private funds have been dedicated for CREP in Michigan.

Fiscal Analyst: C. Thiel

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.