

NREPA FEES AND MICHIGAN AGRICULTURE ENVIRONMENTAL ASSURANCE PROGRAM (MAEAP)

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House Bill 4391 as enacted
Public Act 118 of 2015
Sponsor: Rep. Dan Lauwers
House Committee: Appropriations
Senate Committee: Appropriations
Complete to 8-21-15

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4391 amends several sections of the Natural Resources and Environmental Protection Act (Public Act 451 of 1994) – specifically sections within the following parts dealing with nonpoint source pollution control: Part 83, Pesticide Control; Part 85, Fertilizers; Part 87, Groundwater and Freshwater Protection; and Part 88, Water Pollution and Environmental Protection. References in the body of this analysis to House Bill 4391 or to "the bill" are to the S-6 substitute enacted as Public Act 118 of 2015 and effective October 1, 2015.

BRIEF DESCRIPTION:

Among other things the bill would:

Amend Part 83 (Pesticide Control) to:

- Give to the director of the Michigan Department of Agriculture and Rural Development authority to conduct audits to determine compliance with Part 83.
- Provide specific requirements for out-of-state pesticide registrants and licensees.
- Lift a September 30, 2015, sunset date to maintain two pesticide applicator fees at the current level of \$50.00 for a three-year certification. If the sunset date were not lifted, the fees would have reverted to \$10.00 for a three-year certification.
- Increase pesticide registration [regulatory] fees from \$40.00 to \$100.00.
- Establish a new \$100.00 late fee for pesticide registrations received after June 30.

Amend Part 85 (Fertilizer) to:

- Give to the director of the Michigan Department of Agriculture and Rural Development authority to conduct audits to determine compliance with Part 85.
- Provide specific requirements for out-of-state fertilizer registrants and licensees.

- Increase fertilizer inspection [regulatory] fees from 10 cents per ton to 35 cents per ton.
- Specifically designate monies collected under Part 85 for deposit to the Fertilizer Control Fund created in Section 8514 and provide for additional uses of fund revenue.
- Establish new Fertilizer Advisory Committee in new Section 8512h to advise the department director of the Michigan Department of Agriculture and Rural Development on fertilizer research funded from the Fertilizer Control Fund.

Amend Part 87 (Groundwater and Freshwater Protection) to:

- Make a number of changes under Section 8710 with respect to the administration of the Michigan Agriculture Environmental Assurance Program (MAEAP).
- Rename "groundwater protection fees" as "water quality protection fees."
- Make pesticide water quality protection fees a uniform \$270.00 per pesticide product registered.
- Change fertilizer water quality protection fees from 1½ cents per percentage of nitrogen per ton of fertilizer, to \$.0005 per pound – effectively \$1.00 per ton –for all fertilizer sold or distributed in the state.
- Give to the Michigan Department of Agriculture and Rural Development authority to conduct audits of the water quality protection fees assessed under Section 8715.
- Extend the sunset date for both pesticide and fertilizer water quality protection fees assessed under Section 8715 from December 31, 2015, to December 31, 2021.
- Change the ceiling on the authorized balance in the Freshwater Protection Fund from \$3.5 million to \$5.0 million. If the balance exceeded \$5.0 million, the department would be prohibited from collecting water quality protection fees for the following year. House Bill 4391 would authorize reinstatement of the fees only if the amount of money in the fund fell to less than \$2.0 million; this threshold is \$1.0 million under current law.

Amend Part 88 (Water Pollution and Environmental Protection) to:

- With respect to authorized uses of the Clean Water Fund, direct that not more than \$100,000 of the annual appropriation be used to monitor and benchmark the effectiveness of conservation practices and MAEAP standards in cooperation with participating farmers.

FISCAL IMPLICATIONS:

House Bill 4391 would affect fees and fee revenue related to three MDARD program areas: the pesticide regulatory program, the fertilizer regulator program, and water quality protection programs.

Pesticide Control

Section 8317 of the Natural Resources and Environmental Protection Act (NREPA) currently provides for pesticide regulatory fees. House Bill 4391 would lift a sunset date on two types of private applicator fees. If the sunset were not lifted, these fees, currently \$50.00 for a three-year certification, would fall to \$10.00 for a three-year registration, starting October 1, 2015. Currently, these fees generate approximately \$100,000 per year.

The bill would also increase pesticide registration [regulatory] fees from \$40.00 to \$100.00. These fees currently generate approximately \$620,000. According to department estimates, the increased fees proposed in the bill would generate a total of \$1,490,000 – an increase of \$870,000.

The department indicates that FY 2013-14 expenditures for the pesticide regulatory program totaled \$3,571,000, of which, approximately 52% was provided by General Fund revenue, 12% from federal grant revenue, and 36% from restricted pesticide regulatory fee revenue.

Fertilizer Regulatory Program

House Bill 4391 would amend Section 8506 to increase the current fertilizer inspection fee from 10 cents per ton to 35 cents per ton. These fees currently generate approximately \$140,000 in annual revenue. The department estimates the proposed fee increases would provide a total of \$490,000 – an increase of \$350,000.

The department indicates that FY 2013-14 expenditures for the fertilizer regulatory program totaled \$293,000, all of which came from restricted revenue sources.

Section 8317 currently directs pesticide regulatory fee revenue to the Agriculture Licensing and Inspection Fee Fund, a state-restricted fund established in Section 9 of the Insect Pest and Plant Disease Act, (Public Act 189 of 1931). Section 8514 currently directs fertilizer regulatory fee revenue to the Fertilizer Control Fund, a state-restricted fund established in Section 8514. However, the Fertilizer Control Fund revenue is rolled into the Agriculture Licensing and Inspection Fee Fund for budgetary and financial reporting purposes.

As described above, pesticide and fertilizer regulatory fees are used to support department regulatory and inspection programs, primarily in MDARD's Pesticide and Plant Pest Management Division. The additional fee revenue provided under House Bill 4391 was assumed in the Governor's proposed FY 2015-16 MDARD budget and is included in the enacted MDARD budget, Article I of 2015 PA 84.

Water Quality Protection Program

Section 8715 currently provides for certain *groundwater protection fees*. House Bill 4391 would redesignate the fees in the section as *water quality protection fees*.

Section 8715 currently provides for a groundwater protection fee of \$100.00 per *specialty pesticide* and a fee equal to .75% of sales for all other pesticide products. These fees generate \$1,025,000, and \$2,702,500, respectively, per year.

The term "specialty pesticide" is a defined term in Section 8705 of the act. Specialty pesticides are generally those pesticides sold to the public for household or garden use, including household disinfectants, sanitizers, germicide, biocide, or other pesticide labeled solely for use directly on humans or pets. The definition excludes pesticides labeled for use on rights-of-way, or other outdoor wide-area treatments. Pesticides used in commercial agriculture are generally not "specialty pesticides."

House Bill 4391 would establish a flat water quality protection fee of \$270.00 per year for both specialty pesticides and all other pesticide products. The department estimates that this change would increase revenue from fees assessed on specialty pesticides by \$1,472,500, and decrease fee revenue from other pesticide products by \$1,285,000 – a net increase of \$187,500. The department indicates these are rough estimates. Currently some specialty pesticides are registered in Michigan but not sold or marketed. The department believes that the registration for some of these currently registered specialty pesticides would not be renewed under the higher fee structure, but this number cannot be readily estimated.

Effective January 1, 2016, the bill would also change fertilizer groundwater/water quality protection fees under Section 8715 from 1½ cents per percentage of nitrogen per ton of fertilizer, to \$.0005 per pound for all fertilizer sold or distributed in the state. [The language of current law is somewhat confusing: Under current law the fee rate increases by one and one-half cents for each percentage of nitrogen in the fertilizer mix, e. g. the fee rate for a mix of 20% nitrogen would be 30 cents per ton. \$.0005 per pound is effectively \$1.00 per ton.] The current fee generates approximately \$390,000 per year. The department estimates that the new fee structure would provide a total of \$1.1 million – an increase of \$710,000.

In addition to the water quality protection fee changes described above, House Bill 4391 would extend a sunset date for these and other water quality protection fees established under Section 8715. Under current law, the authority to collect these fees would expire on December 31, 2015. The bill would extend the sunset date to December 31, 2021.

The water quality fees established under Section 8715 are credited to the Freshwater Protection Fund established under Section 8716. This is a state-restricted fund used to support MDARD environmental stewardship programs, including the MAEAP program.

The two water quality fee increases described above, \$187,500 related to pesticide products, and \$710,000 related to fertilizer, would provide approximately \$900,000 in

additional Freshwater Protection Fund revenue. The Governor's proposed FY 2015-16 MDARD budget assumed the lifting or extension of the fee sunset but did not assume additional water quality protection revenue. The enacted FY 2015-16 MDARD budget, Article I of 2015 PA 84, does recognize additional revenue from the water quality fee increases in department environmental stewardship/MAEAP programs.

DETAILED ANALYSIS:

Part 83 – Pesticide Control

Part 83 of the Natural Resources and Environmental Protection Act (NREPA) provides for the regulation of pesticides and gives authority for the state pesticide regulatory program to the Michigan Department of Agriculture and Rural Development (MDARD). Part 83 requires the registration or licensing of certain defined types of pesticides and certain persons who sell, distribute or use pesticides.

Section 8307a provides for the registration of every *pesticide* "distributed, sold, exposed, or offered for sale in this state." Section 8310 provides for the licensing of persons, engaged in the "distribution, selling, or offering for sale" *restricted use pesticides*. Section 8310a provides for the licensing of persons, other than those already licensed under Section 8310, engaged in the "distribution, selling, or offering for sale" *agricultural pesticides*. Section 8312 provides for the licensing of *certified applicators*. Section 8313 provides for the licensing of *commercial applicators*. The italicized terms used above and in the rest of this analysis are defined terms in Part 83, Sections 8302 through 8306.

Authority to Conduct Audits

House Bill 4391 would amend Section 8308, which currently provides authority to the MDARD director to issue an experimental permit under certain conditions. The bill would add a new subsection to give the department director authority to "conduct audits to determine compliance with *this part*." [Emphasis added.] That is, the bill would give to the department director authority to conduct audits to determine compliance with all of Part 83 and not just Section 8308's provisions governing experimental permits. The bill would allow the department director to contract for the performance of the audit.

Out-of-State Registrants/Licensees

House Bill 4391 would amend Sections 8307a, 8310, 8310a, and 8313 to amend requirements for registrants or licensees that operate from a business location outside of the state. Specifically, the bill would require each out-of-state registration or licensee to either "continuously maintain in this state a registered office and a resident agent...", or "maintain and make available to the department records required by this part [i.e. Part 83] and Part 87 and pay all costs incurred by the department in auditing the records if they are held in an out-of-state location."

Technical Amendment

House Bill 4391's amendment to Section 8312 appears to be merely technical in nature.

Registration/Licensing Fees

Section 8317 (MCL 324.8317) establishes application fees for the various registrations and licenses established in Part 83.

Applicator fees – Under current law, there are four different applicator fees: Commercial applicator certification, \$75.00; Private agricultural applicator certification, \$50.00; Commercial registered applicator, \$50.00; and Private registered applicator, \$50.00. Of the four different fees, two of them have sunset dates of a sort: the fees for private agricultural applicator certification and private registered applicator fees which were raised from \$10.00 to \$50.00 effective October 1, 2003 by Public Act 82 of 2003, would revert to \$10.00 after September 30, 2015. House Bill 4391 would strike the sunset dates so that these two fees would remain at \$50.00 after September 30, 2015. Note that all four of these certifications are valid for not less than three years.

Pesticide registration fees

House Bill 4391 would increase the registration application fee for each pesticide sold or distributed in the state from \$40.00 to \$100.00. The bill would also create a new \$100.00 late fee for each pesticide registration fee received after June 30.

The bill would not change the annual registration/license fees for *restricted use pesticide* dealers, or agricultural pesticide dealers, which are currently \$100.00.

Disposition of Pesticide Regulatory Fee Revenue

Subsection 9 of Section 8317 currently directs MDARD to deposit "license and administrative fees and administrative, civil, and noncriminal fines received, as well as any payment for costs or reimbursement to the department for investigation" under Part 83 in the Agriculture Licensing and Inspection Fee Fund, a state-restricted fund established in Section 9 of the Insect Pest and Plant Disease Act, (Public Act 189 of 1931). This fund also receives revenues generated from other by regulatory fees and is primarily used to support various department regulatory and inspection activities. The bill would amend this subsection to make the current earmarking of fee revenue more explicit. Specifically, the bill would direct the department to deposit "***application***, license, ***registration***, and administrative fees..." as well as administrative, civil and noncriminal fines and repayment or reimbursements of department investigative costs to the Agriculture Licensing and Inspection Fee Fund.

Part 85 – Fertilizer

Part 85 of the Natural Resources and Environmental Protection Act (NREPA) provides for the regulation of fertilizer and gives authority for the state fertilizer regulatory program to MDARD. Specifically, Section 8504 provides for the licensing of persons who manufacture or distribute fertilizer in this state. Section 8505 provides for the registration of specialty fertilizer or soil conditioners.

Authority to Conduct Audits

House Bill 4391 would add a new section, Section 8506a, to give to the MDARD director authority to "conduct audits to determine compliance with this part [i.e. Part 85]." The bill would allow the department director to contract for the performance of the audit

Out-of-State Registrants/Licensees

House Bill 4391 would amend Sections 8504 and 8505 to establish requirements for registrants or licensees that operate from a business location outside of state. Specifically, the bill would require each out-of-state registration or licensee to either "continuously maintain in this state a registered office and a resident agent...", or "maintain and make available to the department records required by this part and Part 87 and pay all costs incurred by the department in auditing the records if they are held in an out-of-state location."

Application/Registration Fees, Inspection Fees

Section 8504 currently provides for a \$100.00 license application fee. Section 8505 currently provides for a \$25.00 registration fee. House Bill 4391 would not change these fees.

In addition to these application and registration fees, Section 8506 currently provides for an additional inspection fee of 10 cents per ton for all fertilizers and soil conditioners sold or distributed in the state, other than registered specialty fertilizers and soil conditioners sold or distributed only in packages of 10 pounds or less. House Bill 4391 would increase this inspection fee from 10 cents per ton to 35 cents per ton.

Disposition of Fertilizer Regulatory Fee Revenue

Public Act 503 of 2006 amended Section 8514 to establish the Fertilizer Control Fund as a state-restricted fund in the state treasury. The fund was to receive all fees, administrative and civil fines, and payments for investigations collected by MDARD under Part 85. Section 8514 directed the department to expend money from the fund only for administration of Part 85 of NREPA and for the development of training programs to ensure the proper use and storage of fertilizer.

House Bill 4391 would amend Section 8506 to more explicitly direct money collected by the department under the section, i.e. the 35-cents-per-ton inspection fee, to the Fertilizer Control Fund. The bill would also amend Section 8514 to provide for an additional use of fund revenue, specifically, for research necessary to ensure the adoption and implementation of practices that optimize nutrient use efficiency, ensure soil fertility, and address environmental concerns with regard to fertilizer uses. The bill requires that until December 31, 2019, not less than 40% of the inspection fees collected under Section 8506(1) be used for these specific research purposes. The bill also requires MDARD to notify the House and Senate Appropriations Committees, and the House and Senate Fiscal Agencies at least 10 days before issuing grants from the fund to local government agencies, institutions of higher education, or nonprofit organizations.

House Bill 4391 would add a new section, Section 8512h, to establish a new Fertilizer Advisory Committee to advise the MDARD director on fertilizer research funded from the Fertilizer Control Fund.

Note that while Section 8514 currently directs fertilizer regulatory fee revenue to the Fertilizer Control Fund, Fertilizer Control Fund revenue is rolled into the Agriculture Licensing and Inspection Fee Fund for budgetary and financial reporting purposes.

Part 87 – Groundwater-Freshwater Protection

Definitions

House Bill 4391 would amend a definition section, Section 8704, to strike a definition of "nitrogen fertilizer." This definition would no longer be needed in the act as amended by the bill.

Michigan Agriculture Environmental Assurance Program (MAEAP)

House Bill 4391 would amend Section 8708, a section that establishes an Agriculture Environmental Assurance Advisory Council to advise the director on various topics, and specifically on MAEAP established in Section 8710.

The bill would also require the Council to:

- "Provide recommendations to the director on the creation of a tiered recognition program for farms working toward MAEAP verification."
- "Provide recommendations to the director and the Legislature on incentives to increase participation in MAEAP."
- "Annually provide recommendations to the director on funding for research projects that address impediments to verification and improve MAEAP practice standards."

House Bill 4391 would also amend Section 8710 to make a number of changes to MAEAP, specifically, the bill would:

- Make MAEAP verifications valid for five years. Verifications are currently valid for three years.
- Require the director to review and implement a tiered recognition program. The bill provides specific guidance for the proposed tiered recognition program.
- Require the department to publish a detailed report, beginning December 1, 2016, and each subsequent December 1, on the MAEAP.
- Require the department to make available a consent form to farmers implementing conservation practices. The consent form would give the department permission

for the department to associate the farmer's name, farm location, and mailing address with the conservation practices implemented on the farm. The consent form would also provide for a statement by the farmer that conservation practices being implemented are for the purpose of working toward MAEAP verification. The bill would exempt consent form information from the Freedom of Information Act.

Water Protection Fees

Part 87 of NREPA, and specifically Section 8715 (MCL 324.8715) provides for pesticide and fertilizer fees in addition to the pesticide and fertilizer regulatory fees under Part 83 (MCL 324.8317), and Part 85 (MCL 234.8506), respectively. Current law identifies these fees as "groundwater protection fees." House Bill 4389 would rename these fees as "water quality protection fees."

Pesticides – Water Quality Protection Fees

Section 8715 (1) currently provides for an annual groundwater protection fee of \$100.00 for each specialty pesticide registered, and for all other registered pesticide products, .75% of the wholesale value of previous year product sales, but not less than \$150.00 minimum.

House Bill 4391 would establish a flat water quality protection fee of \$270.00 per year for both specialty pesticides and all other pesticide products. Under Section 8715 (2), there is currently a \$100.00 late fee payment after the fee due date of June 30 of each year. This would not change under House Bill 4391.

Fertilizer – Water Quality Protection Fees

Section 8715 (3) currently provides for an annual groundwater protection fee of \$100.00 for each specialty fertilizer or soil conditioner brand registered. House Bill 4391 would not change this subsection other than to redesignate the fee as a water quality protection fee.

House Bill 4391 would amend Section 8715(4) to change the current groundwater protection fee of 1½ cents per percentage of nitrogen per ton of fertilizer, to a water quality protection fee of \$.0005 per pound for all fertilizer sold or distributed in the state. [The language of current law is somewhat confusing: Under current law the fee rate increases by one and one-half cents for each percentage of nitrogen in the fertilizer mix, e. g. the fee rate for a mix of 20% nitrogen would be 30 cents per ton. \$.0005 per pound is effectively \$1.00 per ton.]

House Bill 4391 would make the change to Section 8715(4) beginning January 1, 2016.

The current fee generates approximately \$390,000 per year. The department estimates that the new fee structure would provide a total of \$1.1 million – an increase of \$710,000.

The bill would add a new subsection to Section 8715 to authorize MDARD to audit, or contract for audit, the records that are the basis for fees levied under Section 8715.

Extending Sunset Date

Section 8715(8) currently includes a repealer or sunset date. Under current law, authority to collect the groundwater protection fees would expire on December 31, 2015. The bill would extend the authority to collect water quality protection fees to December 31, 2021.

Part 88: Water Pollution and Environmental Protection

The Clean Water Fund is a state-restricted fund established in Section 8807 by Public Act 287 of 1998, as part of the Clean Michigan Initiative bond program.

Among other things, Section 8807 currently authorizes use of the fund to monitor and benchmark the effectiveness of conservation practices and MAEAP standards in cooperation with participating farmers.

House Bill 4391 would amend Section 8807 to direct that not more than \$100,000 from total annual fund appropriations be used to monitor and benchmark the effectiveness of conservation practices and MAEAP standards in cooperation with participating farmers.

Fiscal Analyst: William E. Hamilton

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.