

NREPA FEES AND MICHIGAN AGRICULTURE ENVIRONMENTAL ASSURANCE PROGRAM (MAEAP)

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House Bill 4391 (reported from committee as H-2)

Sponsor: Rep. Dan Lauwers

Committee: Appropriations

Complete to 4-21-15

Analysis available at
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SUMMARY:

House Bill 4391 would amend several sections of the Natural Resources and Environmental Protection Act (1994 PA 451)—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.

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 is not lifted, the fee would be \$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.

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.
- Rename "groundwater protection fees" as "water quality protection fees."
- Provide specific requirements for out-of-state fertilizer registrants and licensees.
- Make pesticide water quality protection fees a uniform \$270.00 per pesticide product registered.
- Change fertilizer water quality protection fees from one and one-half 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 director of 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 1, 2015, to December 1, 2021.
- With respect to authorized uses of the Freshwater Protection Fund, direct that not less than 21% of the revenues received from water quality protection fees under Section 8715, be used for the implementation of the conservation technical assistance plan approved under Section 8710.
- Authorize the use of Freshwater Protection Fund revenue for the coordination of groundwater/freshwater protection programs with the United States Department of Agriculture, Natural Resource Conservation Service, and other state programs with nonpoint source pollution prevention and conservation practice responsibilities. The bill would also authorize use of the fund for research programs "to address impediments to MAEAP verifications and to improve MAEAP practice standards."
- 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.

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 be used to monitor and benchmark the effectiveness of conservation practices and MAEAP standards in cooperation with participating farmers.

FISCAL IMPLICATIONS:

House Bill 4391 (H-2) 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 provides for pesticide regulatory fees. House Bill 4391 would lift a sunset date on two types of private applicator fees. If the sunset is 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 at 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** (tonnage 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.

Revenue generated from pesticide and fertilizer regulatory fees described above is credited to the Agriculture Licensing and Inspection Fee Fund, a state-restricted fund established in Section 9 of the Insect Pest and Plant Disease Act, (1931 PA 189). This fund also receives revenues generated from other by regulatory fees and is primarily used to support regulatory and inspection activities of the department's Pesticide and Plant Pest Management Division. These fee increases were assumed in the Governor's proposed FY 2015-16 budget.

Water Quality Protection Program

Section 8715 currently provides for a water quality protection fee of \$100.00 per pesticide specialty product 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 product" is a defined term in Section 8705 of the act. Specialty products 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 products."

House Bill 4391 would establish a flat fee of \$270.00 per year for both specialty products and other pesticide products. The department estimates that this change would increase revenue from fees assessed on specialty products 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 products are registered in Michigan but not sold or marketed. The department believes that the registration for some of these currently registered products would not be renewed under the higher fee structure, but this number cannot be readily estimated.

The bill would also change fertilizer water quality protection fees under Section 8715 from one and one-half 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 lift a sunset date for these and other water quality protection fees established under Section 8715. Under current law, the authority to collect these will sunset on December 31, 2015. The bill would extend the sunset date until 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 budget assumed the lifting or extension of the fee sunset but did not assume addition water quality protection revenue.

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). The part requires the registration or licensing of certain defined types of pesticides and certain persons who sell, distribute or use pesticides.

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 [i.e. Part 83, not just the experimental permit provisions]. 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. [See note below on these different license and registrations.] Specifically, the bill would require each out-of-state registration or licensee 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."

Technical Amendment

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

Note on Types of Registrations/Licenses under Part 83

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*.]

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: Private agricultural applicator certification and Private registered applicator fees would be reduced from \$50.00 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 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.

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 the MDARD. Specifically, Section 8504 requires the licensing of persons who manufacture or distribute fertilizer in this state and provides

Authority to Conduct Audits

House Bill 4391 would add a new section, Section 8506a, 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, 8505, 8506 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 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."

[Note that 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, Section 8506 provides for the registration of certain blended solder conditioners.]

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 add a new subsection to require the Council to report to the director, not later than February 1, 2016, and on

February 1 of each subsequent year, " a proposed conservation technical assistance plan that recommends the targeted use of funds generated by water quality protection fees in a manner that maximizes federal, state, and private resources to provide grants to conservation districts and other qualified persons that deliver conservation and engineering technical assistance."

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.
- Make implementation of conservation technical assistance plans eligible for grants under the MAEAP grants program.
- Require the MDARD director, following consideration of the proposed conservation technical assistance plan submitted by the Environmental Assurance Advisory Council, to present a conservation technical assistance plan to the Commission of Agriculture and Rural Development for review and approval.
- Require the director to review the Council's proposed tiered recognition program and submit a tiered recognition program to the Commission of Agriculture and Rural Development for review and approval. 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 water protection fees in addition to the pesticide and fertilizer regulator 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." [In the balance of this analysis, we will use the new term, "water quality protection fee," for both the fees collected under Section 8715 of current law, and Section 8715 fees proposed under the House Bill 4389.]

Pesticides – Water Protection Fees

Section 8715 (1) currently provides for an annual **water quality protection fee** of \$100.00 for each specialty pesticide product 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 make the annual water quality protection fee a flat \$270.00 per pesticide product registered. Under current law, there is a \$100.00 late fee payment after the water protection fee due date of July 1 of each year. This would not change under House Bill 4391.

Fertilizer – Water Protection Fees

Section 8715 (3) currently provides for an annual **water quality protection fee** is \$100.00 for each specialty fertilizer or soil conditioner brand registered. This would not change under House Bill 4391.

In addition, Section 8715 (4) currently provides for an annual water quality protection fee of one and one-half cents per percent of nitrogen in fertilizer for each ton of fertilizer sold in the state. House Bill 4391 would retain this fee structure through December 31, 2015; however, the bill would change the fee structure beginning January 1, 2016. After that date the water protection fee would be \$.0005 per pound of fertilizer; that is, the fee would no longer be specific to nitrogen fertilizer.

The bill would add a new subsection to authorize MDARD to audit, or contract for audit, of the fees assessed under Section 8715.

Extending Sunset Date

Section 8715(8) currently includes a repealer or sunset date. Under current law, authority to collect the water quality protection fees would expire on December 1, 2015. The bill would extend this current sunset to December 1, 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.