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BILL ANALYSIS

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Senate Bill 840 (Substitute S-3 as reported)
Sponsor: Senator Wayne Kuipers
Committee: Agriculture, Forestry and Tourism

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RATIONALE

Fertilizer regulations in Michigan have not been comprehensively revised since 1975. In the intervening years, there have been significant technological changes in the industry and an increased awareness of the potential environmental impacts of nutrients from fertilizers accumulating in the waters of the State. Recently some rivers, lakes, and areas of the Great Lakes have experienced a resurgence of algae blooms, caused by elevated levels of phosphorus in those waters. These concentrated growths of algae can deplete all available oxygen in the water, killing fish and other aquatic life. In some cases, algae blooms can have serious negative health effects for humans and pets. (Please see **BACKGROUND** for more on algae blooms.) Although there are many potential causes of the increased growth of algae, some believe that fertilizers from lawns may be a significant contributor to the problem. Many homeowners are evidently unaware that most of Michigan's soil is rich in phosphorus, and consequently they may be applying phosphorus fertilizer unnecessarily. The excess phosphorus from fertilizer can be washed by rainwater into rivers and streams, providing nutrients for the growth of algae. According to the Huron River Watershed Council, one pound of phosphorus can generate up to 500 pounds of algae.

In an effort to control this problem, about 15 municipalities reportedly have enacted ordinances regulating fertilizer use within their jurisdictions. These efforts can have only a limited effect, however, since all of the waters of the State are connected, and one municipality cannot control what other communities are doing upstream. Although Part 85 of the Natural Resources and Environmental Protection Act regulates the distribution of fertilizer and requires manufacturers and distributors to be licensed, currently there is no statewide regulation of the use of fertilizers. Some believe that Michigan's fertilizer regulations should be revised to address this and other issues.

CONTENT

The bill would amend Part 85 (Fertilizers) of the Natural Resources and Environmental Protection Act to do the following:

-- Revise fertilizer labeling and invoice requirements, and provide exemptions when no primary nutrients were claimed.
-- Remove a prohibition on the sale of fertilizer containing less than a total of 20% of certain primary nutrients.
-- Revise registration requirements for specialty fertilizers and soil conditioners, and provide that a distributor would not have to register a brand of fertilizer that was registered by another person, if the label did not differ in any respect.
-- Require manufacturers and distributors of custom blend soil conditioners or fertilizers to license their firm for an annual fee of $100 or (as currently required) register each grade distributed for a fee of $25.
-- Raise the minimum penalty for nonpayment of inspection fees from $10 to $50.

-- Establish a three-year record-keeping requirement for registrants.
-- Waive payment of fertilizer inspection fees or refunds of inspection fees less than $5.
-- Prohibit a person from distributing an adulterated product.
-- Adopt sampling and analysis methods established by the Association of American Plant Food Control Officials or the Association of Analytical Communities International, and allow the adoption of other methods as appropriate.
-- Authorize the Michigan Department of Agriculture (MDA) to promulgate rules regarding anhydrous ammonia storage and transfer and application equipment.
-- Establish standards for the application of fertilizer on general turf, including limits on the amount of phosphorus that could be applied without a soil test.
-- Establish penalties for violations of Part 85.
-- Provide exemptions from penalties and sanctions for commercial carriers and public officials under certain conditions.
-- Establish a "Fertilizer Control Fund", which would receive all fees, administrative and civil fines, and payments for costs of investigations.
-- Provide for the Fund to be used for administering and enforcing Part 85, as well as the development of training programs.

The bill would take effect on October 1, 2006.

Labeling; Definitions

Currently, "labeling" means all labels and other written, printed, or graphic matter upon or accompanying fertilizer at any time, including advertising or sales literature. The bill also would include electronic material, brochures, posters, and internet, television, and radio announcements used in promoting the sale of the fertilizer.

Under Part 85, packaged fertilizer distributed in the State, including custom mixed fertilizer and soil conditioner, must have an affixed label. The bill would refer to mixed fertilizer, instead of custom mixed fertilizer. (Under Part 85, "mixed fertilizer" means a fertilizer containing any combination or mixture of fertilizer materials designed for use or claimed to have value in promoting plant growth, including mixtures of fertilizer and pesticide. Under the bill, "mixed fertilizer" would mean a fertilizer containing any combination or mixture of fertilizer materials.)

The affixed label must include the net weight of the contents, except for peat or peat moss, which must be designated by volume. Under the bill, soil conditioners, peat, or peat moss could, but would not have to be, designated by volume.

The label also must include the fertilizer grade unless the material is peat, peat moss, or material sold as a soil conditioner. The bill states that the grade would not be required on the label when no primary nutrients were claimed. "Primary nutrients" would mean total nitrogen, available phosphate, or soluble potash, or any combination of those nutrients.

Currently, "package" or "packaged" means any type of product regulated by Part 85 that is distributed in individual containers with a capacity not exceeding 55 gallons for liquids and 200 pounds for solids. The bill would remove the weight and volume restrictions.

"Soil conditioner", under Part 85, means a substance that is used or intended for use solely for the improvement of the physical nature of soil and for which no claims are made for plant nutrients content; the term does not include guaranteed plant nutrients, hormones, bacterial inoculants, or products used in directly influencing or controlling plant growth. The bill would include in the definition materials such as peat moss and peat products, composted products, synthetic soil conditioners, or other products that are worked into the soil or applied on the surface to improve the properties of the soil for enhancing plant growth. "Soil conditioner" would not include guaranteed plant nutrients, agricultural liming materials, pesticides, unmanipulated animal or vegetable manures, hormones, bacterial inoculants, or products used in directly influencing or controlling plant growth. A soil conditioner that was claimed to have nutrient value would be considered a fertilizer under Part 85.

Part 85 defines "fertilizer material" as any substance containing any recognized plant nutrient, which is used as a fertilizer or for compounding mixed fertilizers. Under the bill, "fertilizer material" would mean a fertilizer that is any of the following:

-- Contains not more than one of the following as primary nutrients: total nitrogen, available phosphate, or soluble potash.
-- Has 85% or more of its plant nutrient content present in the form of a single chemical compound.
-- Is derived from a plant or animal residue or by-product or natural material deposit that has been processed in such a way that its content of plant nutrients has not been materially changed except by purification and concentration.

Invoice

Part 85 requires a fertilizer distributed in this State in bulk to be accompanied by an invoice or statement to be furnished to the purchaser at the time of delivery, containing the following information:

-- Name and address of the licensed manufacturer or distributor.
-- Name and address of the purchaser.
-- Date of sale.
-- Brand or product name.
-- Grade.
-- Guaranteed analysis.
-- Net weight.

Under the bill, the grade would not be required when no primary nutrients were claimed. Custom blends would be exempted from these requirements, and instead would have to be accompanied by an invoice or statement containing the following information:

-- Name and address of the licensed manufacturer or distributor.
-- Name and address of purchaser.
-- Date of sale.
-- Either the net weight and guaranteed analysis of the custom blend or the guaranteed analysis and net weight of each material used in the formulation of the custom blend, or both.

"Custom blend" would mean a fertilizer blended according to specifications provided to a blender in a soil test or blended as specifically requested by the consumer prior to blending.

Guaranteed Analysis

Under Part 85, the guaranteed analysis for nitrogen, available phosphoric acid, and soluble potash must be expressed as whole number percentages on the label, and listed in that order. The bill would require the guaranteed analysis to show the minimum percentage of plant nutrients claimed for nitrogen, available phosphate, and soluble potash, in that order.

Part 85 prohibits the sale of a mixed fertilizer if the sum of the guarantees for nitrogen, available phosphoric acid, and soluble potash totals less than 20%, except for specialty fertilizers registered with the MDA. If elemental guarantees are required by rules promulgated under Part 85, the guaranteed analysis must be expressed as percentages of available phosphorus and soluble potassium. The bill would remove those provisions.

The bill would require that the grade for mixed fertilizers be given in whole numbers only. Specialty fertilizers with a guarantee of less than 1% of total nitrogen, available phosphate, and soluble potash, however, could use fractional units. Fertilizer materials, bone meal, manures, and similar materials could be guaranteed in fractional units. Grades for custom blends could either be given in whole numbers or expressed to the nearest one-tenth of a percent in decimal form. For unacidulated mineral phosphate materials, the total phosphate or degree of fineness, or both, also could be guaranteed.

Under Part 85, additional plant nutrients claimed to be present must be guaranteed on the elemental basis, at certain minimum levels. The materials must be approved by the MDA Director, with the advice of the director of the Michigan Agricultural Experiment Station. The bill, instead, provides that other beneficial compounds or substances, determinable by laboratory methods, could be guaranteed if approved by the MDA Director.

Specialty Fertilizers & Soil Conditioners

Under Part 85, a person is prohibited from distributing a specialty fertilizer or soil

conditioner until the manufacturer or distributor registers it with the MDA. The bill would remove the reference to the manufacturer or distributor, instead prohibiting a person from distributing a specialty fertilizer or soil conditioner unless it was registered with the MDA.

The bill also would delete a requirement that an application for registration be submitted in duplicate.

The bill states that a distributor would not be required to register a brand of fertilizer that was registered by another person, if the label did not differ in any respect. (The bill would define "distributor" as any person who distributes fertilizer for sale or use in this State.)

A manufacturer or distributor of custom blend specialty fertilizers for home lawns, golf courses, recreational areas, or other nonfarm areas, would not be required to register each brand, blend, or grade distributed, but would have to license the firm on an application furnished by the Director for an annual fee of $100. A manufacturer or distributor of custom blended soil conditioners would be required either to register each brand or blend distributed, or to license its firm for an annual fee of $100. The fertilizer or soil conditioner distributed under these provisions would have to be labeled as required under Part 85, and the manufacturer or distributor would have to maintain each label for one year, for inspection by the Director.

Inspection Fees

Part 85 provides for an inspection fee of 10 cents per ton to be paid to the MDA for all fertilizers or soil conditioners distributed in the State. Payments due or refunds of less than $1 are waived. The bill would waive payments due of less than $5, and refunds of less than $5 would not be processed unless requested in writing.

Under Part 85, a penalty of 10% of the amount due, with a minimum of $10, must be assessed against the licensee for all amounts not paid when due. The bill, instead, would require the assessment of a penalty of 10% or $50, whichever was greater, for any report not filed with the MDA by the due date. (Part 85 requires that a report, with remittance to cover the inspection fees, be filed with the Department within 30 days of the close of each period of the year, as specified by the Director.)

Records

Part 85 requires each licensee to maintain for three years a record of quantities and grades of fertilizer and soil conditioner sold or distributed by the licensee and to make the records available for inspection and audit on request by the MDA. The bill would extend those requirements to registrants of fertilizer or soil conditioners. Records would have to be made available for inspection or audit during normal business hours.

Under Part 85, each vendor of fertilizer and soil conditioner must maintain for three years shipping data pertaining to fertilizer and soil conditioner. The bill instead would require each distributor to maintain the data.

Prohibited Activities

Part 85 prohibits a person from selling or distributing fertilizer or soil conditioner in violation of the requirements of Part 85 or rules promulgated under it. The bill also would prohibit the use of fertilizer or soil conditioner that violated those requirements.

The bill would prohibit a person from distributing an adulterated product. (Part 85 defines "adulterated product" as a product that contains any deleterious or harmful substance in sufficient amount to render it injurious to beneficial plant life, animal life, human life, or soil or water when applied in accordance with the directions on the label.)

Inspection & Analysis

Under Part 85, the MDA must inspect, sample, and analyze fertilizers and soil conditioners distributed within the State as necessary to determine compliance with the part. The bill would require the sampling and analysis methods to be those established by the Association of American Plant Food Control Officials or the Association of Analytical Communities, International, as those standards existed on the bill's effective date. The standards would be incorporated by reference, and the

MDA could promulgate rules to update them. The Director also could adopt, by rule, other methods considered appropriate in cases not covered by the specified methods or when demonstrably improved methods were available.

Under Part 85, Department representatives and inspectors have free access during regular business hours to all premises where fertilizers or soil conditioners are manufactured, sold, or stored, and to all vehicles and vessels used in transporting a fertilizer or soil conditioner in the State. The bill also would provide for free access during extended business hours.

Fertilizer Storage & Application

Part 85 authorizes the MDA to promulgate rules regarding the bulk storage of fertilizers. The bill would extend that authority to rules for anhydrous ammonia storage and transfer and application equipment.

The bill would establish the following management practices, which would apply only to fertilizer use on general turf:

-- Application would have to be in a manner that prevented fertilizer from remaining on a highway, street, sidewalk, parking lot, concrete, or other surface material that obstructed or prevented the filtration of water into the soil.
-- Application would have to be in a manner that prevented discharge of wash water from fertilization or a fertilizer spreader into waters of the State.
-- Application could not be made on soil that was frozen or saturated to field capacity.
-- Application of phosphorus fertilizer could not be made at a rate in excess of 0.5 pound per 1,000 square feet per year, except when a soil test completed within the past three years and conducted by a laboratory and method approved by the MDA indicated the need for phosphorus fertilizer.
-- Application of fertilizer could not be made within 10 feet of waters of the State unless approved by the MDA.

("Management practices" would mean structural, vegetative, or other practices that reduce or prevent the detachment, transport, and delivery of pollutants to waters of the State or groundwater. "General turf" would mean noncrop land managed using turf grasses, including home lawns, cemeteries, park areas, and commercial, school, university, and government grounds. General turf would not include performance turf, forage production, sod farms, turf establishment, or other agricultural production. "Performance turf" would mean turf managed for use on golf courses and athletic fields. "Turf establishment" would mean an area where turf grasses are being established from seed or sod during the first year of growth. "Field capacity" would mean the amount of water a particular soil is able to contain once gravity has drained surplus water.)

Notwithstanding those provisions, in areas subject to a total maximum daily load (TMDL) of phosphorus, a person could not use or apply fertilizer containing any phosphorus except when a soil test conducted by a laboratory and method approved by the MDA indicated the need for phosphorus fertilizer.

(Under the bill, "TMDL" would mean the maximum pollutant load that can be discharged in waters of the State from all sources, as determined by the State and as required under the Federal Clean Water Act and the U.S. Environmental Protection Agency (EPA) water quality management regulations.)

Local Regulation

As a rule, Part 85 prohibits a local unit of government from enacting, maintaining, or enforcing an ordinance, regulation, or resolution that conflicts in any manner with the part. If a local unit of government is under contract with the MDA to act as its agent or the local unit has received prior written authorization from the Department, the local unit may enact an ordinance that is identical to Part 85 and rules promulgated under it (subject to certain limitations). The local unit's response for a violation of the ordinance involving the manufacture, storage, distribution, or sale of products regulated by the part is limited to issuing a cease and desist order.

A local unit of government may enact an ordinance prescribing standards different from those contained in Part 85 and that regulates the manufacture, storage, distribution, or sale of a product if

unreasonable adverse affects on the environment or public health will exist within the local unit of government, or if the local unit has determined that the manufacture, storage, distribution, or sale of a product regulated by the part has resulted or will result in the violation of other existing State or Federal laws.

The bill would extend these provisions to the use of regulated products, as well as their manufacture, storage, distribution, or sale.

An ordinance enacted by a local unit that differs from the standards contained in Part 85 may not be enforced until approved by the Agriculture Commission. If approval is denied, the Commission must provide a detailed explanation of the basis of the denial within 60 days. Under the bill, the MDA would have to provide that explanation.

Remedies & Penalties

Under the bill, a person who violated Part 85 or a rule promulgated under it would be subject to the specified penalties regardless of whether he or she acted directly or though an employee or agent.

The bill states that if the MDA Director found, after an opportunity for an administrative hearing, that a person had violated or attempted to violate any provision of Part 85 or a rule promulgated under it, he or she could impose an administrative fine of not more than $1,000 for each violation. (If the Director found that a violation had occurred despite the exercise of due care or did not result in significant harm to human health or the environment, he or she could issue a warning instead of imposing a fine.) If a person failed to pay an administrative fine, the Director would have to notify the Attorney General, who would have to bring an action in court to recover the fine.

The bill also would authorize the Director to bring an action to enjoin the violation or threatened violation of Part 85 or a rule in a court of the county where the violation occurred or was about to occur. The Attorney General could file a civil action in which the court could impose a civil fine of up to $5,000 for each violation of Part 85 or a rule promulgated under the part. In addition, the Attorney General could bring an action in circuit court to recover the costs of the investigation from the person who violated or attempted to violate Part 85. Money recovered under these provisions would have to be deposited into the proposed Fertilizer Control Fund.

Under the bill, a person who knowingly violated or attempted to violate Part 85 or a rule promulgated under it would be guilty of a misdemeanor punishable by imprisonment for up to 90 days or a maximum fine of $5,000 for each offense, in addition to any administrative fines imposed. A person who knowingly and with malicious intent violated the part or rule would be guilty of a misdemeanor punishable by up to 90 days' imprisonment or a maximum fine of $25,000 for each offense.

In defense of an action filed under these provisions, in addition to any other lawful defense, a person could present evidence as an affirmative defense that, at the time of the alleged violation, he or she was in compliance with Part 85 and rules promulgated under it.

A person who violated Part 85 would be liable for all damages sustained by a purchaser of a product sold in violation of the Part. In an enforcement action, a court could order restitution to a party injured by the purchase of a product sold in violation of the part, in addition to other remedies or penalties provided by law.

The bill would prohibit a court from allowing the recovery of damages by a person against whom an administrative action was brought if it resulted in an order stopping the sale or use of fertilizer or fertilizer material or requiring its seizure, if the court found that there was probable cause for the action or order.

The bill states that applicable provisions of the Revised Judicature Act would apply to civil actions filed under Part 85.

The bill specifies that the penalties and sanctions provided for violations of Part 85 would not apply to any of the following:

-- A commercial carrier lawfully transporting a commercial fertilizer in the State, if the carrier, upon request, permitted the Director to copy all

records showing the transactions in and movement of the commercial fertilizer.

-- The shipment or movement of any commercial fertilizer considered to be in violation of the Part 85, for the specific purpose of disposal or storage when conducted under the approval of the Director.

-- Public officials of the State and the Federal government while engaged in the performance of their official duties in administering Part 85 or rules promulgated under it.

Grievances

Under the bill, a person aggrieved by an order issued pursuant to Part 85 could request a hearing under the Administrative Procedures Act (which provides for contested case hearings).

Fertilizer Control Fund

The bill would create the Fertilizer Control Fund within the State Treasury. The State Treasurer would have to deposit into the Fund all fees, administrative or civil fines, and payments for the costs of investigations conducted under Part 85. The Treasurer also could receive money or other assets from any source for deposit into the Fund. All interest and earnings from Fund investments would have to be credited to the Fund. Money in the Fund at the close of the fiscal year would remain in the Fund and would not lapse into the General Fund.

The Fund could be used only for the administration and enforcement of Part 85, and for the development of training programs to ensure the proper use and storage of fertilizer.

MCL 324.8501 et al.

BACKGROUND

In recent years, algae blooms have re-emerged as a problem in the Great Lakes and in other Michigan waters. During the 1960s and 1970s, concern over algae blooms and their effects on aquatic life led to extensive efforts to reduce pollution in the Great Lakes. In 1972, the United States and Canada signed the Great Lakes Water Quality Agreement (GLWQA), which established, among other things, limits on phosphate levels in each of the Great Lakes. The cleanup efforts were successful, and by the 1980s the lakes were considered to be much healthier, with the problem of algae blooms largely eliminated.

Algae blooms, or highly concentrated growths of algae, can consume all available oxygen in the water and render parts of lakes or rivers uninhabitable for fish and other aquatic life. Algae blooms are considered a nuisance, littering beaches, clinging to rocks, or forming a thick mat on the surface of the water. The decaying algae produces a disagreeable odor, and can have a slimy feel. Some types of algae blooms can have serious health effects for people and pets if they contain toxic microsystins, which can cause skin rashes, nasal irritation, vomiting, or diarrhea, and have been known to kill pets. In Brazil in 1996, up to 75 people were reported to have died from exposure to microsystins, although no such deaths have occurred in the United States, according to an article in the *Toledo Blade* (7-9-05).

Recent tests have shown that although deep-water phosphate levels in the Great Lakes have not risen above the limits established in the GLWQA, local levels along some parts of the shoreline and in some interior lakes have increased significantly. There are many possible causes of the rise in phosphate levels, including waste water treatment plants, fertilizer runoff from agricultural and urban areas, and the interaction of invasive species such as zebra mussels, which tend to concentrate phosphates in the areas where they are located. Zebra mussels also filter particulates from the water, allowing more sunlight to penetrate. Algae, which need sunlight to grow, then are able to thrive at greater depths or in areas where the water previously was too cloudy. Although scientists are still unsure of the extent to which these and other factors may be contributing to the current algae problem, residential runoff from fertilizers is considered to be a likely contributor.

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

Fertilizers commonly contain three essential plant nutrients: nitrogen, potassium, and phosphorus. Different plant species use these nutrients in differing amounts, and require a proper balance of nutrients for optimum growth. An excessive amount of one nutrient over the others may inhibit growth or actually harm the plants. Homeowners, however, rarely do soil testing before applying fertilizer to their lawns, and many are evidently unaware of the potential harm that excessive phosphorus or other nutrients can cause. Even in communities that are well away from rivers or lakes, overapplication or misapplication of fertilizer can produce runoff that can flow into storm drains, rivers, or streams, contaminating the waters of the State. Fertilizer runoff can elevate the levels of nutrients such as phosphorus in the water, creating conditions for algae to multiply rapidly, causing algae blooms and other problems.

In many cases, the application of phosphorus may be unnecessary. Much of Michigan's soil is rich in phosphorus, and in most cases lawns or other residential areas have no need for added phosphorus for healthy growth, according to the Michigan Environmental Council. A study by the Council in the Kalamazoo area indicated that 99% of soil samples taken from residential yards in that region had sufficient phosphorus. Despite the soil conditions, most of the fertilizers available in the State contain phosphorus, and many residents apply those fertilizers to their lawns. Fertilizer that spills onto sidewalks and driveways poses an additional risk, since it cannot be absorbed by those impervious surfaces, and is easily washed into local waters.

In an attempt to limit the damage caused by residential fertilizer runoff, local governments recently have created ordinances regulating fertilizer use within their jurisdictions. The bill would replace those ordinances with a uniform set of statewide regulations that could be more effective in controlling the manufacture, distribution, and use of fertilizer in the State, reducing harmful effects from misuse or overapplication. The bill also would establish specific penalties for violations of the regulations, and would require that any fees and administrative or civil fines collected for violations be used for administering and enforcing the regulations, or for educating individuals on the proper use of fertilizer. Both the sanctions and the educational provisions would help to reduce the number of violations, as people began to understand the potential environmental damage that can come from applying fertilizer improperly or unnecessarily, and realized that they could face criminal prosecution for doing so.

In the 1970s, limits were placed on the use of phosphates in household detergents and other major sources of phosphorus. The results then were dramatic, and a similar effort now to reduce unnecessary phosphorus use in lawn fertilizers once again could restore the health of Michigan's waters, making them safer for wildlife and recreational users.

The problem is not limited to the Great Lakes. Many small lakes and rivers in Michigan suffer from reduced water quality in part because of fertilizer runoff. Even communities that are not directly on the water's edge can contribute unwittingly to the problem, since storm water drains empty into Michigan's streams, rivers, and lakes without any treatment. Because there is no single source for the pollutants, and because runoff from an upstream site can contaminate all the waters below that point, the most effective way to control the application of phosphate fertilizer would be through statewide limits on the use of phosphate. The bill would prohibit the application of more than half a pound of phosphorus per 1,000 square feet, unless a soil test showed that more was needed. In areas under a TMDL for phosphorus, people would be prohibited from using any phosphorus without a soil test. These provisions would go a long way toward reducing the overapplication of fertilizer, allowing the nutrients to be absorbed fully into the soil and reducing fertilizer runoff.

Response: Hardware and home improvement stores reportedly have been reluctant to carry fertilizer with no phosphorus, because of lack of demand or possibly out of concern that consumers would consider it deficient. Many home improvement stores in the Lansing area, for example, do not carry phosphorus-free fertilizer. Because of the lack of education surrounding fertilizer use, it is easy for consumers to purchase an unsuitable fertilizer. To decrease the amount of

phosphorus in the State's waters effectively, the bill should include a greater emphasis on educating the public and should ensure that low-phosphorus and phosphorus-free fertilizers were widely available.

Supporting Argument
Some components of fertilizers can be used to harm others or manufacture illegal drugs. Ammonium nitrate, for example, is a common and relatively inexpensive source of nitrogen in fertilizers, but it also can be used as an explosive in improvised bombs. Anhydrous ammonia, another common component in fertilizers, recently has been used as an ingredient in the production of methamphetamine. The current fertilizer regulations were written in 1975, before these potential abuses became evident. The bill would overhaul the fertilizer regulation in the State, improving the record-keeping requirements and making it easier to track down individuals who may have purchased fertilizers for illegal uses.

Opposing Argument
As noted above, a number of local governments in Michigan already have taken action to reduce phosphorus use in their communities. The bill would override those ordinances, which may be stronger than the proposed statewide standards, and which may contain beneficial educational components. For instance, reportedly some communities currently require an informational pamphlet on the proper application of fertilizer to be distributed by retailers with every fertilizer purchase. The bill would prevent local governments from imposing such requirements. Statewide fertilizer regulations should supplement, rather than replace, the efforts of local governments.

Response: The bill would continue to permit the adoption of local ordinances that differed from the statute if they were approved by the Agriculture Commission.

Opposing Argument
The sampling fee of 10 cents per ton was enacted in 1975, and has not been increased since. The fee should be raised to 15 cents to reflect the actual cost of conducting sampling activities, and to assist the MDA in performing some of the enforcement responsibilities required under Part 85. According to the MDA, a five-cent increase in the sampling fee would generate additional annual revenue of approximately $70,000, or the approximate cost of one full-time employee.

Opposing Argument
The regulations under the bill would not apply to performance turf, which includes golf courses and athletic fields. This represents a large gap in the proposed legislation. Although some golf courses have taken action to reduce the use of pesticides and fertilizers, some are heavily fertilized, and can produce significant runoff. The bill should include some way to differentiate between performance turf managers who are acting responsibly, and those who may be contributing to the problem. The Audubon Cooperative Sanctuary Program for Golf Courses has developed flexible and environmentally sound turf management standards and has attracted members in all 50 states. (In November 2005, there were 15 golf courses in Michigan certified under the program.) Programs such as this indicate that significant improvements could be made in the management of golf courses and athletic fields. These performance turfs need to be part of any comprehensive overhaul of fertilizer regulation in the State.

Response: Athletic fields and golf courses generally are maintained by highly trained staff, who are familiar with the proper application techniques to minimize runoff, and who regularly perform soil tests to determine precisely what nutrients are needed to optimize the health of the grass. Such facilities have a financial incentive to apply fertilizer only as needed, and to ensure that the fertilizer is absorbed properly into the soil. The focus of the bill should be on residential property, which collectively contributes much more to the problem than does grass for athletic uses.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

The bill would have a minimal fiscal impact on the Department of Agriculture as its provisions mostly would further delineate existing responsibilities. The proposed annual license fee for custom blenders of fertilizer would affect only approximately 10 businesses and generate approximately $1,000 in new revenue, according to the MDA. The proposed civil fine for violations would generate an indeterminate amount of revenue for the Fertilizer Control Fund,

which would be used for the administration and enforcement of Part 85, as well as the development of training programs on the proper use and storage of fertilizer.

The bill's criminal penalty would have an indeterminate fiscal impact on local government. There are no data to indicate how many offenders would be convicted of violating Part 85. Additional penal fine revenue would benefit public libraries.

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