

Legislative Analysis



LOCAL FERTILIZER ORDINANCES

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House Bill 5035 without amendment
Sponsor: Rep. Jeff Mayes

House Bill 5034 without amendment
Sponsor: Rep. Joel Sheltrown
Committee: Agriculture

Revised Summary
Complete to 10-17-07

A SUMMARY OF HOUSE BILLS 5034 & 5035 AS REPORTED FROM COMMITTEE

In general, House Bill 5035 would amend Section 8517 of Part 85 (Fertilizers) of the Natural Resources and Environmental Protection Act (MCL 324.8517) which sets forth the conditions under which local units of government may adopt fertilizer ordinances. Currently, with certain exceptions, local ordinances relating to the manufacture, storage, distribution, or sale of fertilizers are preempted. Under the bill, ordinances relating to the "agricultural use" of fertilizers would also be preempted unless an exception applied. House Bill 5034 would define the meaning of "agricultural use."

The two bills are tie-barred, meaning that unless both are enacted, neither will take effect.

More details about both bills are provided below.

House Bill 5035

General preemption provision. Generally speaking, unless an exception applies, Section 8517(1) prohibits a local unit of government from enacting, maintaining, or enforcing an ordinance, regulation, or resolution that conflicts in any manner with Part 85. The bill would change "enacting" to "adopting" in Section 8517(1) and make similar language changes in other subsections of Section 8517. Changing "enact" or "enacting" to "adopt" or "adopting" in various places throughout the bill would not appear to be a substantive change.

Local ordinances identical to Part 85; cease and desist orders. Under Section 8517(2), a local unit of government may enact an ordinance that is *identical* to Part 85 and its rules (subject to certain limitations) if the local governmental unit (1) is under contract to act as the Department of Agriculture's agent, or (2) has received prior written authorization from the department. If one of these identical local ordinances relating to *the manufacture, storage, distribution, or sale* of regulated products is violated, the local unit of government is limited to issuing a cease and desist order. Under the bill, issuance of a cease and desist order would likewise be the only authorized remedy for violation of a local ordinance involving the *agricultural use* of a regulated product.

Local ordinances with standards that differ from those in Part 85; when allowed. Currently, if either or both of the circumstances specified in Section 8517(3) are present, a local unit of government may enact an ordinance that regulates the manufacture, storage, distribution, or sale of regulated products that prescribes standards different from those contained in Part 85 (and that part's rules). Here, too, the bill would extend these provisions to local ordinances regulating the "agricultural use" of fertilizers in addition to their manufacture, storage, distribution, or sale.

Currently, one or both of the following circumstances must be present for a local unit of government to be eligible to enact an ordinance with standards different than those in Part 85:

- Unreasonable adverse effects on the environment or public health will exist in the local unit of government. This determination must take into consideration specific populations whose health could be adversely affected within that local unit of government.
- The local unit of government has determined that the manufacturing, storage, distribution, or sale of a product regulated by Part 85 within that unit of government has resulted or will result in the violation of other existing state or federal laws.

The bill would retain both of these conditions. The second condition would be expanded to allow a local ordinance different from Part 85 if a local government has determined that the "agricultural use" of a regulated product within its jurisdiction (or its manufacture, storage, distribution, or sale) has resulted or will result in a violation of other state or federal laws.

Approval of local ordinances by the Agriculture Commission. Under Section 8517(4), neither type of ordinance (one identical to or differing from Part 85) is allowed to conflict with existing state or federal laws. In addition, no local ordinance that differs from Part 85 may be enforced until approved by the Agriculture Commission. If approval is denied, the commission has to provide a detailed explanation of the basis of the denial within 60 days. The bill would not appear to make substantive changes to this section.

Public hearings held by Department of Agriculture with respect to adverse effects on the environment or public health. Under the bill, if the legislative body of a local unit of government has determined that the manufacturing, storage, distribution, sale *or agricultural use* of a regulated product has unreasonable adverse effects on the environment or public health, it must submit a resolution to the Department of Agriculture identifying these unreasonable adverse effects. As is currently the case, the department would have to hold a public hearing within 60 days after the resolution is submitted, and issue a detailed opinion regarding the existing of unreasonable adverse effects on the environment or public health.

Enforcement of local ordinances. As is currently the case, a local unit of government with a fertilizer ordinance must require persons enforcing the ordinance to comply with

training and enforcement requirements determined appropriate by the director of the Department of Agriculture.

House Bill 5034

House Bill 5034 would define "**agricultural use**" as it is defined in Section 36101 of Part 361 (Farmland and Open Space Preservation) of NREPA, MCL 324.36101:

"Agricultural use" means the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, captive cervidae, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities. Agricultural use includes use in a federal acreage set-aside program or a federal conservation reserve program. Agricultural use does not include the management and harvesting of a woodlot.

FISCAL IMPACT:

The Michigan Department of Agriculture indicates that the bills would have no fiscal impact.

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