



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 5034 (Substitute S-1 as reported)
House Bill 5035 (as reported without amendment)
Sponsor: Representative Joel Sheltrown (H.B. 5034)
Representative Jeff Mayes (H.B. 5035)
House Committee: Agriculture
Senate Committee: Agriculture

Date Completed: 1-14-08

RATIONALE

Part 85 of the Natural Resources and Environmental Protection Act (NREPA) regulates the manufacture, storage, distribution, and use of fertilizers, including specialty fertilizers, mixed fertilizers, and soil conditioners, whether packaged or in bulk. The part prohibits a local government from enacting an ordinance that duplicates or revises any provisions of the part, except under certain circumstances, and preempts any ordinance that would regulate the manufacture, distribution, or sale of a product regulated under Part 85. Those provisions were added by Public Act 276 of 1998, to establish statewide uniformity and consistency in fertilizer regulations, in response to concerns that local governments could attempt to regulate fertilizers. It now has been suggested that the preemption should be extended to local ordinances regulating the agricultural use of products regulated under Part 85.

CONTENT

The bills would amend Part 85 (Fertilizers) of the Natural Resources and Environmental Protection Act to include agricultural use in certain provisions that preempt and regulate local ordinances regarding the manufacture, storage, distribution, or sale of products regulated under Part 85.

House Bill 5034 (S-1) is tie-barred to House Bill 5035. The bills are described in detail below.

House Bill 5035

Part 85 preempts any local ordinance, regulation, or resolution that duplicates, extends, or revises the provisions of the part. A local unit of government may not enact, maintain, or enforce an ordinance, regulation, or resolution that contradicts or conflicts with the part, except as otherwise provided.

If a local unit of government is under contract with the Michigan Department of Agriculture (MDA) to act as its agent or has received prior written authorization from the MDA, the local unit may enact an ordinance that is identical to Part 85 or rules promulgated under the part, with some exceptions.

The local unit of government's response for a violation of the ordinance involving the manufacture, storage, distribution, or sale of products regulated under Part 85 is limited to issuing a cease and desist order. Under the bill, this provision also would apply to a violation involving the agricultural use of products regulated under Part 85.

Part 85 permits a local unit of government to enact an ordinance that prescribes standards different from those in Part 85 and rules promulgated under the part and that regulates the manufacture, storage, distribution, or sale of a product regulated by Part 85 under either or both of the following conditions:

- Unreasonable adverse effects on the environment or public health will exist within the local unit of government, taking into consideration specific populations whose health may be adversely affected within the local unit.
- The local unit of government has determined that the manufacture, storage, distribution, or sale of a product regulated by Part 85 within that local unit has resulted or will result in the violation of other existing State or Federal laws.

The bill would include the agricultural use of a product regulated under Part 85 in those provisions.

Also, under the bill, a local unit of government could adopt an ordinance differing from Part 85 *only* under either or both of the above circumstances.

Under Part 85, within 60 days after a local unit of government submits a resolution identifying unreasonable adverse effects on the environment or public health, the MDA must hold a local public meeting to determine the nature and extent of unreasonable adverse effects on the environment or public health due to the manufacture, storage, distribution, or sale of a product regulated under Part 85.

Under the bill, that requirement also would apply to adverse effects on the environment or public health due to the agricultural use of a product regulated by Part 85.

The bill would replace "enact" with "adopt" in reference to an ordinance, regulation, or resolution in the provisions described above.

House Bill 5034 (S-1)

The bill would define "agricultural use" as that term is defined in Section 36101 of NREPA, i.e., 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; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; and Christmas trees. The term does not include the management and harvesting of a woodlot.

MCL 324.8501 (H.B. 5034)
324.8517 (H.B. 5035)

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

Fertilizer is a key component of modern agricultural processes, and contributes to increased crop yields and higher quality. The ability to apply the proper amounts of fertilizer is essential to the efficient management of an agricultural operation. Although most farmers use fertilizer in a responsible manner, members of the agricultural community are concerned that a local unit of government could decide to regulate the use of agricultural fertilizers. Such a move could be disruptive to farmers, many of whom operate in more than one township or have multiple fields across county lines. It would be very difficult for a farmer to keep track of and abide by a patchwork of local fertilizer ordinances. Inconsistent regulations also could create an unequal playing field, if agricultural operators in some areas had to comply with regulations and those in neighboring townships or counties were not bound by similar restrictions.

Given the high cost of fertilizers and the low profit margins for most crops, farmers have no incentive to overapply or misapply fertilizer to their fields. With improved technology, fertilizer application has become more precise, limiting harmful runoff or other negative environmental effects. Farmers have begun using technologies such as satellite-based applications and detailed analysis of soil conditions to determine the proper mix of nutrients to apply. Careful application techniques can help ensure that the nutrients are absorbed into the soil, rather than running off into nearby waterways.

Part 85 of NREPA already restricts the ability of a local unit of government to regulate the manufacture, storage, distribution, or sale of fertilizers; the bill would extend the preemption to the use of agricultural fertilizer as well, giving agricultural operators a degree of certainty about the regulatory environment that they will face and ensuring consistency on a statewide basis. The bill would apply to agricultural fertilizers only, and would not affect lawn or residential fertilizers.

Opposing Argument

The bill would diminish the authority of local governments to enact ordinances as they see fit, without any specific benefit or purpose. Since no local government has proposed any ordinance to regulate the use of agricultural fertilizer, the bill seems unnecessary. Furthermore, Part 85 and the bill are similar to Public Act 132 of 2006, which preempts local ordinances regulating the sale, distribution, storage, or use of seeds. These measures could establish a pattern of eroding the concept of local control and autonomy of townships and counties across the State.

Response: The bill would help prevent any future conflicts that might arise over the regulation of the agricultural use of fertilizers. Although no ordinances have been proposed yet, as demographics change and suburban residential communities expand into areas that traditionally have been agricultural land, there could be increased pressure on local governments to implement such ordinances.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

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

Fiscal Analyst: Debra Hollon

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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.