

PHOSPHATE FERTILIZER RESTRICTIONS

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House Bill 5368

Sponsor: Rep. Terry Brown

House Bill 5369

Sponsor: Rep. Mary Valentine

Committee: Great Lakes and Environment

Complete to 9-18-09

A REVISED SUMMARY OF HOUSE BILLS 5368 & 5369 AS INTRODUCED 9-15-09

The bills would amend Part 85 (Fertilizers) of the Natural Resources and Environmental Protection Act (MCL 324.8501 et seq.) to do the following:

- As of January 1, 2010, prohibit the application of a fertilizer labeled as containing available phosphate to turf unless a test shows a phosphate deficiency or the turf is in its first growing season. (Generally speaking, the term "turf" refers to lawns. The bill's definition of turf specifically excludes all forms of agricultural production, including sod farms.)
- Prohibit the application of a phosphate fertilizer on a golf course unless a test shows a phosphate deficiency or the golf course has an appropriate certification and trained staff.
- Require the Michigan Department of Agriculture (MDA) to post information about the bill's requirements on its website.
- Require fertilizer spilled on an impervious surface (such as a street, sidewalk, or parking lot) to be promptly cleaned up.
- Prohibit applying fertilizer to turf when the soil is frozen or saturated with water.
- Allow local phosphate fertilizer ordinances to be maintained and enforced if in effect when the bill is enacted.
- Designate violations as civil infractions with a maximum fine of \$1,000 (\$50 if the violation is committed on a single-family residential parcel (or other parcel with no more than four acres of turf) by the owner, renter, family member of the owner/renter, or by another person who lives on the property).
- Prohibit retailers from displaying phosphate turf fertilizers as of January 1, 2011. Instead, retailers could post signs that tell customers this type of fertilizer is available upon request and about the restrictions on its use. (HB 5369).

DETAILED SUMMARY:

House Bill 5368

Application to turf. [§8512b(1)] As of January 1, 2010, no person could apply a fertilizer labeled as containing the plant nutrient available phosphate (P_2O_5) to turf unless an exception applies. (The term "**turf**" would mean "land planted in grasses that are closely mowed and otherwise managed or land about to be planted in grasses that will be closely mowed and otherwise managed. Turf does not include pasture, hayland, hay, turf grown on a turf farm, or any other form of agricultural production.")

Exceptions. [§8512b(2)-(3)] A fertilizer containing available phosphate could only be applied to turf in the following situations:

- Recent test results show soil deficiency. If a tissue, soil, or other laboratory test (or another method approved by the MDA director) performed within the last three years indicates that the soil's level of available phosphate is insufficient to establish or grow healthy turf, phosphate could be applied at a rate no higher than necessary to correct the deficiency, after considering the Michigan State University (MSU) Extension's recommended application rate based on the test results.
- New turf. If new turf is being established at a site with seed or sod, and no testing has been performed, phosphate could be applied at a rate not to exceed the standard rate for new turf grass set by the MDA director after consulting the MSU Extension.

Golf courses. [§8512(4)] Fertilizer labeled as containing available phosphate could be applied to a golf course if one or more of the following apply:

- Certification; staff training. The golf course has received a certification from an organization as a result of its staff having successfully completed a training approved by the MDA director. The MDA would have to approve a training program if it's a continuing program, it adequately addresses best management practices for use of phosphate turf fertilizer, and it requires trainees to demonstrate successful implementation of those practices.
- Recent test results show soil deficiency. If a tissue, soil, or other laboratory test (or another method approved by the MDA director) performed within the last three years indicates that the soil's level of available phosphate (P_2O_5) is insufficient to establish or grow healthy turf, available phosphate (P_2O_5) could be applied a rate no higher than necessary to correct the deficiency, after considering the MSU Extension's recommended application rate based on the test results.

Public information. [§8512(5)] The MDA would have to post information about the restrictions on the use of phosphate turf fertilizer on its website and to publicize the availability of this information by appropriate means.

Impervious surfaces. [§8215f(1)] A person who releases fertilizer on an "impervious surface" would have to both (1) promptly contain the fertilizer and (2) either legally apply it to turf or another appropriate site or return the fertilizer to an appropriate container. (The term "**impervious surface**" would mean "a paved highway, street, sidewalk, parking lot, driveway, or other outdoor structure that prevents infiltration of water into the soil.")

Frozen or water-saturated soil. [§8215f(2)] The bill would prohibit the application of any fertilizer to a turf if the soil is frozen or saturated with water.

Local ordinances. [§8517(8)] A local governmental unit could maintain and enforce an ordinance that regulates or prohibits the application of a phosphate fertilizer to turf if the ordinance was in effect on the bill's enactment date.

Administrative fines. [§8520] The bill would retain a provision that allows the MDA director to impose an administrative fine of up to \$1,000 after notice and an opportunity for an administrative hearing for each violation or attempted violation of the act. The bill specifies, however, that a person could not be fined under both this administrative fine provision [§8520(2)] and the state civil infraction provisions [§8502(7)] for the same violation.

Exempt turf, golf course, and retail sale violations from criminal penalties and additional fines. [§8529(5)-(6)] Currently, a person who violates Part 85 or its rules may also be found guilty of a misdemeanor punishable by imprisonment by not more than 90 days or a fine of not more than \$5,000 for each violation or attempted violation. A fine of up to \$5,000 per violation (up to \$25,000 if the violation was knowing and malicious) may be imposed in addition to an administrative fine. Under the bill, a violation of Sections 8512b (restrictions on applying phosphate fertilizer to turf and golf courses), 8512c (retail sale requirements found in House Bill 5369), or 8512f (applying fertilizer to impervious surfaces or frozen or saturated soils) would not be subject to these criminal penalties or additional fines.

Civil infractions; fines. [§8520(7)] A person who violates or attempts to violate Sections 8512b, 8512c, or 8512f would be responsible for a state civil infraction and subject to a civil fine of up to \$1,000 for each violation or attempted violation. If the violation occurs on a single-family residential parcel (or any other parcel totaling four acres or less of turf), the maximum civil fine would be \$50 if the person committing the violation lives on the property, owns it, or rents it (or is a member of the owner or renter's family).

Civil enforcement actions by Attorney General. [§8520(9)] Currently, the Attorney General may file a civil court action against persons who violate Part 85 or its rules and the court may impose a civil fine of not more than \$5,000 for each violation or attempted violation and the reasonable costs of the investigation. Fines and costs recovered by the Attorney General are forwarded to the State Treasurer for deposit into the Fertilizer Control Fund.

Under the bill, the Attorney General would *not* be authorized to bring a civil action seeking a fine against persons who violate or attempt to violate Sections 8512b, 8512c, or 8512f.

House Bill 5369

As of January 1, 2011, no person could display a phosphate turf fertilizer for retail sale. Instead, the retailer could post a sign telling customers that it was available upon request for permitted uses. The sign would have to tell customers, in easily legible type, about the requirements of Section 8512b(1) to (3) (the ban on applying phosphate fertilizer to turf except in certain circumstances). In this section, "**turf fertilizer**" would mean fertilizer labeled for use on turf, lawns, or lawns and gardens. This bill would create a new Section 8512c.

Tie-bar. House Bill 5369 is tie-barred to House Bill 5368, meaning that unless that that bill is also enacted, House Bill 5369 will not go into effect.

FISCAL IMPACT:

A fiscal analysis is in process.

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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.