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House Bill 5368 (Substitute H-2 as passed by the House)

Sponsor: Representative Terry Brown

House Committee: Great Lakes and Environment

Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 11-9-10

CONTENT

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

- -- Prohibit the use of fertilizer containing available phosphate, beginning October 1, 2011, subject to specific exceptions.
- -- Establish regulations for the application of any fertilizer near water, as well as the cleaning of a fertilizer spreader.
- -- Require a person who released fertilizer on an impervious surface to take certain actions, and prohibit the application of fertilizer on frozen or saturated soil.
- -- Require the Michigan Department of Agriculture (MDA), in consultation with interested parties, to approve and make available to the public information regarding the use of fertilizer and the management of phosphorus.
- -- Provide that a person who violated the phosphate fertilizer ban would be responsible for a State civil infraction, and establish a civil fine.

Phosphate Fertilizer

<u>Available Phosphate Ban.</u> Under the bill, beginning October 1, 2011, except as otherwise provided, a person could not apply to turf a fertilizer labeled as containing the plant nutrient available phosphate. ("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. The term would not include pasture, hayland, hay, turf grown on a turf farm, or any other form of agricultural production.)

A person could apply fertilizer to turf at an application rate for available phosphate not exceeding that necessary to correct a deficiency, if a tissue, soil, or other test performed within the preceding three years, by a laboratory experienced in conducting phosphorus tests that adhere to recognized national standards, indicated that the level of available phosphate in the soil was deficient to support healthy turf grass growth or establishment.

A person also could apply fertilizer at an application rate for available phosphate not exceeding the standard rate for new turf grass establishment if the following conditions were met: new turf was being established using seed or sod, it was the first growing season for the turf grass at the site, and a phosphorus test had not been performed. The MDA Director would have to specify the standard rate after consultation with the Michigan State University Extension.

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<u>Golf Course</u>. A person could apply fertilizer labeled as containing available phosphorus to a golf course if the golf course were certified by an organization because the course's staff had successfully completed a training program approved by the MDA Director.

If a laboratory tissue, soil, or other test performed within the preceding three years indicated that the level of available phosphate in the soil was deficient to support healthy golf course turf grass growth or establishment, the course could apply fertilizer at an application rate for available phosphate not exceeding that necessary to correct the deficiency.

A golf course also could apply fertilizer at an application rate for available phosphate not exceeding the rate necessary for new grass establishment under the following conditions: new turf was being established using seed or sod, it was the first growing season for the turf grass at the site, and a phosphorus test had not been performed.

Fertilizer Restrictions

A person could not apply fertilizer to turf less than 15 feet from any surface water, unless at least one of the following applied:

- -- A continuous natural vegetative buffer at least 10 feet wide separated the turf from the surface water.
- -- A spreader guard, deflector shield, or drop spreader was used when the fertilizer was applied and the fertilizer was not applied within three feet of the surface water.

A person could not clean a fertilizer spreader that was used to apply fertilizer to turf in a manner that allowed wash water from the spreader to discharge directly into the waters of the State, including a drain under the Drain Code.

A person who released fertilizer on an impervious surface promptly would have to contain it, and either legally apply it to turf or another appropriate site or return it to an appropriate container. ("Impervious surface" would mean a paved highway, street, sidewalk, parking lot, driveway, or other outdoor structure that prevents infiltration of water into the soil.)

A person could not apply a fertilizer to turf if the soil were frozen or saturated with water.

<u>Information</u>

The bill would require the MDA to post on its website information concerning the application of fertilizer, and publicize that information by whatever means it determined to be appropriate.

In addition, in consultation with fertilizer industry representatives, fertilizer retailers, statewide environmental organizations, lake groups, and other interested parties, the MDA could approve consumer information on use restrictions and recommend best practices for lawn fertilizer containing available phosphate, and on best management practices for other residential uses of phosphorus. The information would have to be in a format and include content suitable for use by the general public or posting and distribution at retail points of sale of turf fertilizer.

Local Regulation

Part 85 specifies that, except as otherwise provided, it preempts any local ordinance, regulation, or resolution that would duplicate, extend, or revise its provisions in any manner. Except as otherwise provided, a local unit of government may not adopt,

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maintain, or enforce an ordinance, regulation, or resolution that contradicts or conflicts in any manner with Part 85.

Under the bill, these provisions would not prohibit the maintenance or enforcement of an ordinance in effect on the bill's effective date that regulated or prohibited the application to turf of fertilizer containing available phosphate.

Violations & Penalties

A person who violates Part 85 or rules promulgated under it is subject to prescribed penalties and remedies, whether he or she acted directly or through an employee or agent.

The bill would establish penalties for violating or attempting to violate the phosphate fertilizer ban or the ban on releasing the fertilizer on an impervious surface or soil that was frozen or saturated with water. A violator would be responsible for a State civil infraction and could be ordered to pay a civil fine of up to \$1,000 for each violation or attempted violation. The maximum fine would be \$50, however, if both of the following applied:

- -- The violation or attempted violation occurred on a single-family residential parcel or any other parcel or contiguous parcels with a maximum total of four acres of turf.
- -- The violation was committed by the property owner or lessee, a member of his or her family, or a person who resided on the property.

Currently, the MDA Director may impose an administrative fine of up to \$1,000 for each violation or attempted violation. The bill provides that a person could not be fined under both this provision and the proposed provision for the same violation.

Part 85 authorizes the Attorney General to file a civil action in which a court may impose on a violator a civil fine of up to \$5,000 for each violation. The bill would exclude the proposed violations from this provision.

MCL 324.8501 et al. Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would establish a \$1,000 State civil infraction fine for using fertilizers containing phosphates except in certain outlined circumstances. The fine would be \$50 for violations at single-family residences if the violator owned or leased the property, or were a member of the owner's family. It is unclear how much revenue would be collected from these fines, as it would directly depend on how many people were caught violating the law.

State civil infraction fine revenue benefits public libraries.

Fiscal Analyst: Josh Sefton

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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.