

**SUBSTITUTE FOR  
HOUSE BILL NO. 5368**

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
by amending sections 8501, 8517, and 8520 (MCL 324.8501, 324.8517,  
and 324.8520), section 8501 as amended by 2008 PA 13, section 8517  
as amended by 2008 PA 14, and section 8520 as added by 2006 PA 503,  
and by adding sections 8512b, 8512f, and 8512g.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 8501. As used in this part:

2       (a) "Adulterated product" means a product that contains any  
3 deleterious or harmful substance in sufficient amount to render it  
4 injurious to beneficial plant life, animals, humans, aquatic life,

1 soil or water when applied in accordance with directions for use on  
2 the label, or if adequate warning statements or directions for use  
3 that may be necessary to protect plant life, animals, humans,  
4 aquatic life, soil or water are not shown on the label.

5 (b) "Agricultural use" means that term as defined in section  
6 36101.

7 (c) "Aquifer" means a geologic formation, group of formations,  
8 or part of a formation capable of yielding a significant amount of  
9 groundwater to wells or springs.

10 (d) "Aquifer sensitivity" means a hydrogeologic function  
11 representing the inherent abilities of materials surrounding the  
12 aquifer to attenuate the movement of nitrogen fertilizers into that  
13 aquifer.

14 (e) "Aquifer sensitivity region" means an area in which  
15 aquifer sensitivity estimations are sufficiently uniform to warrant  
16 their classification as a unit.

17 (f) "Brand or product name" means a term, design, or trademark  
18 used in connection with 1 or more grades of fertilizer.

19 (g) "Bulk fertilizer" means fertilizer distributed in a  
20 nonpackaged form.

21 (h) "Custom blend" means a fertilizer blended according to  
22 specifications provided to a blender in a soil test nutrient  
23 recommendation or blended as specifically requested by the consumer  
24 prior to blending.

25 (i) "Department" means the department of agriculture.

26 (j) "Director" means the director of the department or his or  
27 her designee.

(k) "Distribute" means to import, consign, sell, barter, offer for sale, solicit orders for sale, or otherwise supply fertilizer for sale or use in this state.

(l) "Distributor" means any person who distributes fertilizer for sale or use in this state.

(m) "Fertilizer" means a substance containing 1 or more recognized plant nutrients, which substance is used for its plant nutrient content and which is designed for use, or claimed to have value, in promoting plant growth. Fertilizer does not include unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and other materials exempted by rules promulgated under this part.

(n) "Fertilizer material" means a fertilizer ~~that is any~~ **TO WHICH 1 OR MORE** of the following **APPLY**:

(i) Contains not more than 1 of the following as primary nutrients:

(A) Total nitrogen (N).

(B) Available phosphate ( $P_2O_5$ ).

(C) Soluble potash ( $K_2O$ ).

(ii) Has 85% or more of its plant nutrient content present in the form of a single chemical compound.

(iii) 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.

(o) "Fund" means the fertilizer control fund created under section 8514.

(p) "Grade" means the percentage guarantee of total nitrogen (N), available phosphate ( $P_2O_5$ ), and soluble potash ( $K_2O$ ), of a fertilizer. ~~and GRADE~~ shall be stated in the same order given in this subdivision. Indication of grade does not apply to peat or peat moss or soil conditioners.

(q) "Groundwater" means underground water within the zone of saturation.

(r) "Groundwater stewardship practices" means any of a set of voluntary practices adopted by the commission of agriculture pursuant to part 87, designed to protect groundwater from contamination by fertilizers.

(s) "Guaranteed analysis" means the minimum percentage of each plant nutrient guaranteed or claimed to be present.

**(T) "IMPERVIOUS SURFACE" MEANS A PAVED HIGHWAY, STREET, SIDEWALK, PARKING LOT, DRIVEWAY, OR OTHER OUTDOOR STRUCTURE THAT PREVENTS INFILTRATION OF WATER INTO THE SOIL.**

(U) ~~(t)~~ "Label" means any written, printed, or graphic matter on or attached to packaged fertilizer or used to identify fertilizer distributed in bulk or held in bulk storage.

(V) ~~(u)~~ "Labeling" means all labels and other written, printed, electronic, or graphic matter upon or accompanying any fertilizer at any time, and includes advertising, sales literature, brochures, posters, and internet, television, and radio announcements used in promoting the sale of that fertilizer.

(W) ~~(v)~~ "Licensee" means the person who receives a license to manufacture or distribute fertilizers under this part.

(X) ~~(w)~~ "Lot" means an identifiable quantity of fertilizer

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1 that can be sampled officially according to methods adopted under  
2 section 8510, that ~~amount~~ **IS** contained in a single vehicle, or that  
3 ~~amount~~ **IS** delivered under a single invoice.

4 (Y) ~~(\*)~~—"Manufacture" means to process, granulate, compound,  
5 produce, mix, blend, or alter the composition of fertilizer or  
6 fertilizer materials.

7 (Z) "TURF" MEANS LAND PLANTED IN GRASSES THAT ARE CLOSELY  
8 MOWED AND OTHERWISE MANAGED OR LAND ABOUT TO BE PLANTED IN GRASSES  
9 THAT WILL BE CLOSELY MOWED AND OTHERWISE MANAGED. TURF DOES NOT  
10 INCLUDE PASTURE, HAYLAND, HAY, TURF GROWN ON A TURF FARM, OR ANY  
11 OTHER FORM OF AGRICULTURAL PRODUCTION.

12 SEC. 8512B. (1) BEGINNING [OCTOBER 1, 2011], EXCEPT AS PROVIDED IN  
13 SUBSECTION (2), (3), OR (4), A PERSON SHALL NOT APPLY TO TURF A  
14 FERTILIZER LABELED AS CONTAINING THE PLANT NUTRIENT AVAILABLE  
15 PHOSPHATE ( $P_2O_5$ ).

16 (2) IF A TISSUE, SOIL, OR OTHER TEST PERFORMED WITHIN THE  
17 PRECEDING 3 YEARS BY A LABORATORY [EXPERIENCED IN CONDUCTING TESTS FOR  
18 PHOSPHORUS THAT ADHERE TO RECOGNIZED NATIONAL STANDARDS

19 ]  
20 INDICATES THAT THE LEVEL OF AVAILABLE PHOSPHATE ( $P_2O_5$ ) IN THE SOIL  
21 IS DEFICIENT TO SUPPORT HEALTHY TURF GRASS GROWTH OR ESTABLISHMENT,  
22 A PERSON MAY APPLY FERTILIZER TO THE TURF AT AN APPLICATION RATE  
23 FOR AVAILABLE PHOSPHATE NOT EXCEEDING THAT NECESSARY TO CORRECT THE  
24 DEFICIENCY.

25 (3) IF NEW TURF IS BEING ESTABLISHED USING SEED OR SOD, IT IS  
26 THE FIRST GROWING SEASON FOR THE TURF GRASS AT THE SITE, AND A TEST  
27 DESCRIBED IN SUBSECTION (2) HAS NOT BEEN PERFORMED, A PERSON MAY

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1 APPLY FERTILIZER TO THE TURF AT AN APPLICATION RATE FOR AVAILABLE  
2 PHOSPHATE ( $P_2O_5$ ) NOT EXCEEDING THE STANDARD RATE FOR NEW TURF GRASS  
3 ESTABLISHMENT, WHICH SHALL BE SPECIFIED BY THE DIRECTOR AFTER  
4 CONSULTATION WITH THE MICHIGAN STATE UNIVERSITY EXTENSION.

5 (4) IN ADDITION, A PERSON MAY APPLY FERTILIZER LABELED AS  
6 CONTAINING THE PLANT NUTRIENT AVAILABLE PHOSPHATE ( $P_2O_5$ ) TO A GOLF  
7 COURSE IF 1 OR MORE OF THE FOLLOWING APPLY:

8 (A) THE GOLF COURSE HAS BEEN CERTIFIED BY AN ORGANIZATION AS A  
9 RESULT OF THE GOLF COURSE'S STAFF HAVING SUCCESSFULLY COMPLETED A  
10 TRAINING PROGRAM APPROVED BY THE DIRECTOR. THE DIRECTOR SHALL  
11 APPROVE A TRAINING PROGRAM IF IT IS A CONTINUING PROGRAM,  
12 ADEQUATELY ADDRESSES BEST MANAGEMENT PRACTICES FOR USE OF TURF  
13 FERTILIZER CONTAINING AVAILABLE PHOSPHATE, AND REQUIRES TRAINEES TO  
14 DEMONSTRATE SUCCESSFUL IMPLEMENTATION OF THOSE BEST MANAGEMENT  
15 PRACTICES.

16 (B) IF A TISSUE, SOIL, OR OTHER TEST PERFORMED WITHIN THE  
17 PRECEDING 3 YEARS BY A LABORATORY [EXPERIENCED IN CONDUCTING TESTS FOR  
18 PHOSPHORUS THAT ADHERE TO RECOGNIZED NATIONAL STANDARDS

19 ]  
20 INDICATES THAT THE LEVEL OF AVAILABLE PHOSPHATE IN THE SOIL IS  
21 DEFICIENT TO SUPPORT HEALTHY GOLF COURSE TURF GRASS GROWTH OR  
22 ESTABLISHMENT, THE GOLF COURSE MAY APPLY FERTILIZER AT AN  
23 APPLICATION RATE FOR AVAILABLE PHOSPHATE NOT EXCEEDING THAT  
24 NECESSARY TO CORRECT THE DEFICIENCY.

25 (C) IF NEW TURF IS BEING ESTABLISHED USING SEED OR SOD, IT IS  
26 THE FIRST GROWING SEASON FOR THE TURF GRASS AT THE SITE, AND A TEST  
27 DESCRIBED IN SUBDIVISION (B) HAS NOT BEEN PERFORMED, A GOLF COURSE

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1 MAY APPLY FERTILIZER TO THE TURF AT AN APPLICATION RATE FOR  
2 AVAILABLE PHOSPHATE ( $P_2O_5$ ) NOT EXCEEDING THE RATE NECESSARY FOR NEW  
3 GOLF COURSE TURF GRASS ESTABLISHMENT.

4 (5) A PERSON SHALL NOT APPLY FERTILIZER TO TURF LESS THAN 15  
5 FEET FROM ANY SURFACE WATER, UNLESS 1 OR MORE OF THE FOLLOWING  
6 APPLY:

7 (A) A CONTINUOUS NATURAL VEGETATIVE BUFFER AT LEAST 10 FEET  
8 WIDE SEPARATES THE TURF FROM THE SURFACE WATER.

9 (B) A SPREADER GUARD, DEFLECTOR SHIELD, OR DROP SPREADER IS  
10 USED WHEN APPLYING THE FERTILIZER, AND THE FERTILIZER IS NOT  
11 APPLIED LESS THAN 3 FEET FROM THE SURFACE WATER.

12 (6) A PERSON SHALL NOT CLEAN A FERTILIZER SPREADER [THAT IS USED TO  
13 APPLY FERTILIZER TO TURF IN A MANNER] THAT ALLOWS WASH WATER FROM THE  
14 SPREADER TO DISCHARGE DIRECTLY INTO WATERS OF THIS STATE, INCLUDING, BUT NOT  
15 LIMITED TO, A DRAIN UNDER THE DRAIN CODE OF 1956, 1956 PA 40, MCL  
16 280.1 TO 280.630.

17 (7) THE DEPARTMENT SHALL POST INFORMATION CONCERNING THE  
18 REQUIREMENTS OF SUBSECTIONS (1) TO (4) ON ITS WEBSITE AND PUBLICIZE  
19 THE AVAILABILITY OF THAT INFORMATION BY WHATEVER MEANS THE  
20 DEPARTMENT DETERMINES TO BE APPROPRIATE.

21 SEC. 8512F. (1) A PERSON WHO RELEASES FERTILIZER ON AN  
22 IMPERVIOUS SURFACE SHALL DO BOTH OF THE FOLLOWING:

23 (A) PROMPTLY CONTAIN THE FERTILIZER.

24 (B) EITHER LEGALLY APPLY THE FERTILIZER TO TURF OR ANOTHER  
25 APPROPRIATE SITE OR RETURN THE FERTILIZER TO AN APPROPRIATE  
26 CONTAINER.

27 (2) A PERSON SHALL NOT APPLY A FERTILIZER TO TURF IF THE SOIL

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1 IS FROZEN OR SATURATED WITH WATER.

2 SEC. 8512G. THE DEPARTMENT, IN CONSULTATION WITH THE  
3 FERTILIZER INDUSTRY REPRESENTATIVES, [FERTILIZER RETAILERS,] STATEWIDE  
4 ENVIRONMENTAL ORGANIZATIONS, LAKE GROUPS, AND OTHER INTERESTED PARTIES, MAY  
5 APPROVE CONSUMER INFORMATION ON USE RESTRICTIONS AND RECOMMENDED  
6 BEST PRACTICES FOR LAWN FERTILIZER CONTAINING AVAILABLE PHOSPHATE  
7 ( $P_2O_5$ ), AND ON BEST MANAGEMENT PRACTICES FOR OTHER RESIDENTIAL USES  
8 OF PHOSPHORUS. THE INFORMATION SHALL BE IN A FORMAT AND INCLUDE  
9 CONTENT SUITABLE FOR USE BY THE GENERAL PUBLIC OR POSTING AND  
10 DISTRIBUTION AT RETAIL POINTS OF SALE OF TURF FERTILIZER.

11 Sec. 8517. (1) Except as otherwise provided in this section,  
12 this part preempts any local ordinance, regulation, or resolution  
13 that would duplicate, extend, or revise in any manner the  
14 provisions of this part. Except as otherwise provided for in this  
15 section, a local unit of government shall not adopt, maintain, or  
16 enforce an ordinance, regulation, or resolution that contradicts or  
17 conflicts in any manner with this part.

18 (2) If a local unit of government is under contract with the  
19 department to act as its agent or the local unit of government has  
20 received prior written authorization from the department, that  
21 local unit of government may adopt an ordinance that is identical  
22 to this part and rules promulgated under this part, except as  
23 prohibited in subsection (6). The local unit of government's  
24 enforcement response for a violation of the ordinance that involves  
25 the manufacturing, storage, distribution, sale, or agricultural use  
26 of products regulated by this part is limited to issuing a cease  
27 and desist order in the manner prescribed in section 8511.



1           (3) A local unit of government may adopt an ordinance  
2     prescribing standards different from those contained in this part  
3     and rules promulgated under this part and that regulates the  
4     manufacturing, storage, distribution, sale, or agricultural use of  
5     a product regulated by this part only under either or both of the  
6     following circumstances:

7           (a) Unreasonable adverse effects on the environment or public  
8     health will **OTHERWISE** exist within the local unit of government,  
9     taking into consideration specific populations whose health may be  
10    adversely affected within that local unit of government.

11          (b) The local unit of government has determined that the  
12    manufacturing, storage, distribution, sale, or agricultural use of  
13    a product regulated by this part within that unit of government has  
14    resulted or will result in the violation of other existing state or  
15    federal laws.

16          (4) An ordinance adopted under subsection (2) or (3) shall not  
17    conflict with existing state laws or federal laws. An ordinance  
18    adopted under subsection (3) shall not be enforced by a local unit  
19    of government until approved by the commission of agriculture. The  
20    commission of agriculture shall provide a detailed explanation of  
21    the basis of a denial within 60 days.

22          (5) Within 60 days after the legislative body of a local unit  
23    of government submits to the department a resolution identifying  
24    unreasonable adverse effects on the environment or public health as  
25    provided for in subsection (3)(a), the department shall hold a  
26    local public meeting to determine the nature and extent of  
27    unreasonable adverse effects on the environment or public health

1 due to the manufacturing, storage, distribution, sale, or  
2 agricultural use of a product regulated by this part. Within 30  
3 days after the local public meeting, the department shall issue a  
4 detailed opinion regarding the existence of unreasonable adverse  
5 effects on the environment or public health as identified by the  
6 resolution of the local unit of government.

7 (6) The director may contract with a local unit of government  
8 to act as its agent for the purpose of enforcing this part and the  
9 rules promulgated under this part. The department has sole  
10 authority to assess fees, register fertilizer or soil conditioner  
11 products, cancel or suspend registrations, and ~~regulate~~ **ADMINISTER**  
12 and enforce provisions of section 8512.

13 (7) A local unit of government that adopts an ordinance under  
14 subsection (2) or (3) shall require persons enforcing the ordinance  
15 to comply with training and enforcement requirements determined  
16 appropriate by the director.

17 **(8) SUBSECTION (1) DOES NOT PROHIBIT THE MAINTENANCE OR**  
18 **ENFORCEMENT OF AN ORDINANCE THAT REGULATES OR PROHIBITS THE**  
19 **APPLICATION TO TURF OF FERTILIZER CONTAINING THE PLANT NUTRIENT**  
20 **AVAILABLE PHOSPHATE (P<sub>2</sub>O<sub>5</sub>), BUT ONLY IF THE ORDINANCE WAS IN EFFECT**  
21 **ON THE ENACTMENT DATE OF THE AMENDATORY ACT THAT ADDED THIS**  
22 **SUBSECTION.**

23 Sec. 8520. (1) A person who violates this part or rules  
24 promulgated under this part is subject to the penalties and  
25 remedies provided in this part regardless of whether he or she  
26 acted directly or through an employee or agent.

27 (2) The director, upon finding after notice and an opportunity

1 for an administrative hearing that a person has violated or  
2 attempted to violate any provision of this part or a rule  
3 promulgated under this part, may impose an administrative fine of  
4 not more than \$1,000.00 for each violation or attempted violation.

5 **A PERSON SHALL NOT BE FINED UNDER BOTH THIS SUBSECTION AND**  
6 **SUBSECTION (7) FOR THE SAME VIOLATION.**

7 (3) If the director finds that a violation or attempted  
8 violation has occurred despite the exercise of due care or did not  
9 result in significant harm to human health or the environment, the  
10 director may issue a warning instead of imposing an administrative  
11 fine.

12 (4) The director shall advise the attorney general of the  
13 failure of any person to pay an administrative fine imposed under  
14 this section. The attorney general shall bring an action in a court  
15 of competent jurisdiction to recover the fine.

16 (5) A person who violates this part or a rule promulgated  
17 under this part, or attempts to violate this part or a rule  
18 promulgated under this part, is guilty of a misdemeanor punishable  
19 by imprisonment for not more than 90 days or a fine of not more  
20 than \$5,000.00 for each violation or attempted violation, in  
21 addition to any administrative fines imposed. **THIS SUBSECTION DOES**  
22 **NOT APPLY TO A VIOLATION OF SECTION 8512B OR 8512F.**

23 (6) A person who knowingly and with malicious intent violates  
24 this part or a rule promulgated under this part is guilty of a  
25 misdemeanor punishable by imprisonment for not more than 90 days or  
26 a fine of not more than \$25,000.00 for each offense. **THIS**  
27 **SUBSECTION DOES NOT APPLY TO A VIOLATION OF SECTION 8512B OR 8512F.**

1           (7) A PERSON WHO VIOLATES OR ATTEMPTS TO VIOLATE SECTION 8512B  
2 OR 8512F IS RESPONSIBLE FOR A STATE CIVIL INFRACTION AND MAY BE  
3 ORDERED TO PAY A CIVIL FINE OF NOT MORE THAN THE FOLLOWING FOR EACH  
4 VIOLATION OR ATTEMPTED VIOLATION:

5           (A) EXCEPT AS PROVIDED IN SUBDIVISION (B), NOT MORE THAN  
6 \$1,000.00.

7           (B) NOT MORE THAN \$50.00 IF ALL OF THE FOLLOWING APPLY:

8           (i) THE VIOLATION OR ATTEMPTED VIOLATION OCCURS ON A SINGLE-  
9 FAMILY RESIDENTIAL PARCEL OR ANY OTHER PARCEL OR CONTIGUOUS PARCELS  
10 WITH A TOTAL OF NOT MORE THAN 4 ACRES OF TURF.

11           (ii) THE VIOLATION IS COMMITTED BY THE PROPERTY OWNER OR  
12 LESSEE, A MEMBER OF HIS OR HER FAMILY, OR A PERSON WHO RESIDES ON  
13 THE PROPERTY.

14           (8) ~~(7)~~—The director may bring an action to enjoin the  
15 violation or threatened violation of this part or a rule  
16 promulgated under this part in a court of competent jurisdiction of  
17 the county in which the violation occurs or is about to occur.

18           (9) ~~(8)~~—The attorney general may file a civil action in which  
19 the court may impose on any person who violates **OR ATTEMPTS TO**  
20 **VIOLATE** this part or a rule promulgated under this part, ~~or~~  
21 ~~attempts to violate this part or a rule promulgated under this part~~  
22 **OTHER THAN SECTION 8512B OR 8512F**, a civil fine of not more than  
23 \$5,000.00 for each violation or attempted violation. In addition,  
24 the attorney general may bring an action in circuit court to  
25 recover the reasonable costs of the investigation from any person  
26 who violated this part or attempted to violate this part. Money  
27 recovered under this subsection shall be forwarded to the state

1 treasurer for deposit into the fund.

2 (10) ~~(9)~~—In defense of an action filed under this section for  
3 a violation of this part, in addition to any other lawful defense,  
4 a person may present evidence as an affirmative defense that, at  
5 the time of the alleged violation or attempted violation, he or she  
6 was in compliance with this part and rules promulgated under this  
7 part.

8 (11) ~~(10)~~—A person who violates this part is liable for all  
9 damages sustained by a purchaser of a product sold in violation of  
10 this part. In an enforcement action, a court, in addition to other  
11 sanctions provided by law, may order restitution to a party injured  
12 by the purchase of a product sold in violation of this part.

13 (12) ~~(11) Applicable~~ **A CIVIL ACTION FILED PURSUANT TO THIS**  
14 **PART IS SUBJECT TO APPLICABLE** provisions of the revised judicature  
15 act of 1961, 1961 PA 236, MCL 600.101 to ~~600.9948~~, ~~apply to civil~~  
16 ~~actions filed pursuant to this part~~ **600.9947.**