

Legislative Analysis



MAEAP-VERIFIED FARMS

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House Bill 4212 as enacted
Public Act 2 of 2011
Sponsor: Rep. Kevin Daley
House Committee: Agriculture
Senate Committee: Agriculture

Senate Bill 122 as enacted
Public Act 1 of 2011
Sponsor: Sen. Joe Hune
Senate Committee: Agriculture
House Committee: Agriculture

Complete to 7-13-11

A SUMMARY OF HOUSE BILL 4212 & SENATE BILL 122 AS ENACTED

The bills would amend the Natural Resources and Environmental Protection Act (NREPA) to recognize the ***Michigan Agriculture Environmental Assurance Program*** in statute and promote its expansion. This voluntary program for farmers is designed to promote natural resources conservation through education, technical assistance, and verification.

BRIEF SUMMARY:

House Bill 4212 would amend various sections and add one new section within Part 87 of NREPA, "Groundwater and Freshwater Protection." The purpose of Part 87, as described in Section 8706, is "to reduce risks to the environment and public health by preventing groundwater contamination from pesticides and fertilizer." The Michigan Department of Agriculture and Rural Development has responsibility and authority over program activities established in Part 87.

Senate Bill 122) would amend various sections within Part 88 of NREPA, "Water Pollution and Environmental Protection," a section dealing primarily with non-point source pollution. The bill would also add one new section to Part 31 of NREPA, "Water Resources Protection," a section dealing with discharges of injurious substances into the waters of the state, including human sewage, medical waste, and ship ballast. The Michigan Department of Environmental Quality has responsibility and authority over program activities established under Part 88 and Part 31. The bill says that it does not modify or limit any obligation to obtain a permit under Part 31.

Among other things, Senate Bill 122 would exempt MAEAP-verified farms, under certain defined circumstances, from civil fines under Section 3115 for "a discharge to the waters of the state." The bill does not indicate what types of discharge would be exempt -- it does not define "discharge" and does not reference the discharges described in

Section 3109 of the act. Although exempt from civil fines, under the bill a MAEAP-verified farm would still be responsible for "actual natural resource damages [caused by a discharge]."

Senate Bill 122 would also direct that "if a discharge from a MAEAP-verified farm that is in compliance with all MAEAP standards applicable to land application is caused by an act of God weather event [as defined in the bill], the discharge shall be considered nonpoint source pollution." The bill does not define "land application;" we assume the reference is to land application of animal manure.

BACKGROUND INFORMATION:

The Michigan Agricultural Environmental Assurance Program (MAEAP) was created in May 1998 by a coalition of agricultural, environmental, and conservation groups, with the purpose of assisting farmers in taking a voluntary, proactive approach to reducing agricultural pollution.

Although not established in statute, MAEAP has been recognized and supported in the Department of Agriculture budget since FY 2000-01. There is a separate line item for the program in the current year (FY 2010-11) budget, with a General Fund appropriation of \$262,000. The department indicates that it uses restricted funds from other appropriation line items to supplement the General Fund appropriation; actual current year program costs are anticipated to be about \$550,000.

According to the MAEAP website (at www.maeap.org/maeap):

The Michigan Agriculture Environmental Assurance Program (MAEAP) is an innovative, proactive program that helps farms of all sizes and all commodities voluntarily prevent or minimize agricultural pollution risks. This comprehensive, voluntary, proactive program is designed to reduce farmers' legal and environmental risks through a three-phase process: 1) education; 2) farm-specific risk assessment; and 3) on-farm verification that ensures the farmer has implemented environmentally sound practice. . . After becoming MAEAP verified, a farm can display a MAEAP sign signifying that MAEAP partners recognize the farm is environmentally assured.

DETAILED SUMMARY:

House Bill 4212 would amend Part 87 of NREPA (Groundwater and Freshwater Protection). Senate Bill 122 would amend Parts 31 (Water Resources Protection) and 88 (Water Pollution and Environmental Protection). The two bills are tie-barred. Taken together, the bills would do the following.

- The director of the Department of Agriculture and Rural Development would be required to implement a Michigan Agricultural Environmental Assurance Program, in consultation with the Environmental Assurance Advisory Council. The program would be designed to promote natural resources conservation through education, technical assistance, and verification. The MAEAP program would be a voluntary program available to farms throughout the state.

- A farmer who desires a farm to be MAEAP-verified would be required to complete educational requirements authorized by the Department of Agriculture; develop and implement one or more department-approved conservation plans; and pass an on-site evaluation by the department. MAEAP verifications would be valid for three years and would be renewable.
- The Department of Agriculture and the Department of Environmental Quality would have to enter into a memorandum of understanding to formalize a commitment to promote the MAEAP and to clarify the application of state and federal environmental laws to farms.
- The director of the Agriculture Department, in consultation with the Environmental Assurance Advisory Council, could develop and establish priorities, procedures, and protocols for the implementation of a surface water quality monitoring program to promote voluntary water quality monitoring by farms and to monitor and benchmark the effectiveness of conservation practices and MAEAP standards in cooperation with participating farmers.
- The owner or operator of a MAEAP-verified farm would not be subject to civil fines under Section 3115 of NREPA under certain conditions. The owner or operator must act promptly to correct the condition after discovery, and report the discharge to the DEQ within 24 hours of discovery. Section 3115 provides for civil and criminal penalties for violations of state water resource protection and pollution laws. .
- A farmer would not be liable for contamination on an MAEAP-verified farm for activities on the farm unless the farmer was grossly negligent or in violation of state or federal law, or failed to comply with MAEAP standards. (However, this would not modify or limit any obligation, responsibility, or liability imposed by another provision of state law.) This provision is consistent with current statutory language that applies to persons in the groundwater stewardship program.
- An Environmental Assurance Council would replace the existing Groundwater Advisory Council and its membership would be altered.
- Regional environmental assurance teams would be created to replace existing regional groundwater stewardship teams.
- Nonpoint source pollution prevention and control grants issued by the Department of Environmental Quality under Part 88 of NREPA could be used to promote MAEAP verification, in addition to current uses (reducing nonpoint source pollution and implementing watershed plans). In issuing grants, the DEQ, in consultation with the MDA, must select projects that, to the extent practicable, provide maximum benefit to the state in protecting public health and the environment and contributing to economic development.
- Money in the Clean Water Fund could be spent for the promotion of MAEAP and activities to encourage more MAEAP-verified farms and to monitor and benchmark the effectiveness of conservation practices and MAEP standards in

cooperation with participating farmers. The bill would strike current language saying that the first priority for spending money in the Fund is for the implementation of the programs described in the department's document entitled "A Strategic Environmental Quality Monitoring Program for Michigan's Surface Waters." Also the DEQ would have to consult with the Department of Agriculture and Rural Development in spending money from the Fund.

- The Department of Agriculture would be required to establish a MAEAP grants program. Grants would be available for technical assistance, promotion of the MAEAP, educational programs, demonstration projects to implement conservation practices, and removal of potential sources of contamination, among other things.
- The language describing the intent of Part 87 of NREPA would be rewritten. Currently, the act says that the intent is "to reduce risks to the environment and public health by preventing groundwater contamination from pesticides and fertilizer." House Bill 4212 would say instead that the intent is "to reduce risks to the environment and public health and promote economic development by assisting farms in achieving MAEAP standards."
- Generally speaking, provisions that currently apply to the Michigan Groundwater Stewardship Program would be replaced with provisions applying to the Michigan Agricultural Environmental Assurance Program. For example, references in law to "groundwater stewardship practices" would be replaced by references to "MAEAP standards," references to "pesticides and fertilizer" would be replaced by references to "sources of contamination," references to "pesticide and fertilizer management practices" would be replaced by "conservation practices."
- The authority to collect groundwater protection fees under Section 8715 of NREPA would be extended to December 31, 2015. They are currently due to expire December 31, 2013. These fees go to the Groundwater Protection Fund.

ADDITIONAL DETAIL ON THE BILLS:

House Bill 4212

MAEAP Verification of Farms

Under the bill, a farmer who desires to have a farm MAEAP-verified must do all of the following:

- Complete educational requirements authorized by the Department of Agriculture and Rural Development.
- Develop and implement one or more conservation plans as approved by the director.
- Contact the department to arrange for an on-site evaluation.

If an on-site evaluation determines a farm is meeting MAEAP standards, the department would issue a MAEAP verification valid for three years. A farm is eligible for re-verification if an on-site evaluation determines it is meeting MAEAP standards.

Beginning in the 2012-2013 fiscal year, the department would provide verification signs to each verified farm. A farm that allows its verification to lapse or whose verification is revoked must forfeit its verification sign and all other benefits provided to MAEAP-verified farms.

Revocation of MAEAP Verification

The director of the Department of Agriculture could revoke verification for any of the following reasons:

- The department, in consultation with the DEQ, determines with scientific evidence provided by water quality data that the farm exceeded water quality standards as a result of nonconformance with MAEAP standards.
- The farm fails to conform to MAEAP standards as a result of gross negligence.
- The farm fails to comply with protocols for verification as approved by the Commission of Agriculture and Rural Development.
- The director, upon advice from the Interagency Technical Review Panel, determines that the farm is responsible for a pattern of repeated violations of environmental laws, rules, regulations, permit conditions, settlement agreements, orders of consent, or judicial orders that were due to separate and distinct events.

Memorandum of Understanding

The MDA and DEQ would have to enter into a memorandum of understanding to formalize a commitment to promote the MAEAP and to clarify the application of state and federal environmental laws to farms. In addition, the MOU would have to provide:

- An ongoing interagency technical review panel for MAEAP-verified farms that discharge in violation of state or federal law to determine enforcement action.
- Preference for funding for nonpoint source pollution funds for farms seeking MAEAP verification.
- Considerations for re-verification of a farm with revoked verification status.
- Integration of the MAEAP into pollution prevention activities of both agencies.
- Clarification of the consultation process in Part 88 to ensure that the MDA has meaningful input into the establishment of the grants program and the issuance of grants.

Water Quality Monitoring

The MDA, in consultation with the Environmental Assurance Advisory Council, could develop and establish priorities, procedures, and protocols for the implementation of a surface water quality monitoring program to do both of the following: (1) promote voluntary water quality monitoring by farms, and (2) monitor and benchmark the effectiveness of conservation practices and MAEAP standards in cooperation with participating farmers.

Water quality information collected by the department in cooperation with farmers would be aggregated and made available to the state Commission on Agriculture and Rural Development. Specific locations or persons involved in water quality information collection would be exempt from disclosure under the Freedom of Information Act.

Environmental Assurance Advisory Council

This council replaces in statute the Groundwater Advisory Council. It would advise the MDA director on the following: MAEAP standards, on-site evaluations for verification of specific aspects of a farming operation, water quality and environmental monitoring, protocols for verification and revocation of verification, MAEAP activities, interagency coordination of conservation programs, the use of money in the Clean Water Fund and from other funding sources to promote MAEAP and activities to encourage more MAEAP-verified farms, options to increase assistance for small- and medium-sized farms in achieving MAEAP standards, and the creation of subcommittees as needed to address emerging and ongoing issues.

The council would also be required to annually provide recommendations to the director on MAEAP standards and protocols for verification and revocation of verification for consideration by the Commission on Agriculture and Rural Development; annually submit a report to the department outlining activities, accomplishments, and emerging issues, with the department to share the report with the agriculture community; and, not later than September 30, 2014, submit to the director a comprehensive report detailing program achievements.

Council Membership

The Advisory Council would have the following members: the directors of the MDA and DEQ, the directors of the Michigan State University Extension and Agricultural Experimentation Station, a member representing regional environmental assurance teams, and representatives from the U.S. Department of Agriculture's Farm Service Agency and of its Natural Resources Conservation Service, conservation districts, farmers and other agricultural organizations, nongovernmental conservation and environmental organizations, and regulated agricultural industries. The MDA director could add other persons. (Current members of the Groundwater Advisory Council who would not be on the new council include the director of the state Department of Community Health and representatives of the U.S. Geological Survey and right-of-way applicators. The council would be co-chaired by the representative from MSU Extension and a representative from one of the farmers and other agricultural organizations.

Regional Environmental Assurance Teams

These teams replace the groundwater stewardship teams and would be responsible, among other things, for providing access to technical assistance related to: (1) on-site evaluation of practices that may impact natural resources; (2) the development and implementation of conservation plans; and (3) the development and implementation of activity plans for persons making conservation practice changes. The teams would also be responsible for evaluating, as available, grants to persons implementing activity plans and conservation practices required to achieve MAEAP standards.

Definition of MAEAP standards

The term "MAEAP standards" means all of the following, as adopted by the Commission of Agriculture and Rural Development for the purpose of implementing the program: conservation practices; site-specific nutrient management plan requirements; emergency protocols; completed environmental risk assessments; U.S. Department of Agriculture Natural Resources Conservation Service practice standards; generally accepted agricultural and management practices developed under the state's Right to Farm Act; and other standards considered appropriate by the director of MDA.

[A "site-specific nutrient management plan refers to a plan designed to assist farmers in achieving MAEAP standards that includes both (1) conservation practices and nutrient management activities that (when implemented as part of a conservation system) will help to ensure that both production and natural resource protection goals are met, and (2) proposed actions to address soil erosion, manure, and organic by-products and their potential impact on water quality.]

Senate Bill 122

Beginning six months after the bill's effective date, notwithstanding any other provision of NREPA, the following applies to MAEAP-verified farms:

-- The owner or operator of the farm would not be subject to civil fines under Section 3115 of NREPA if all of the following conditions were met (although the farmer may be responsible for actual natural resources damages):

- A discharge to the waters of the state occurred from a portion or operation of a farm that is MAEAP-verified and in compliance with MAEAP standards.
- The owner or operator acted promptly to correct the condition after discovery.
- The owner or operator reported the discharge to the DEQ within 24 hours of the discovery.

However, this would not apply if either: (1) The actions of the owner or operator pose or posed a substantial endangerment to the public health, safety, and welfare; or (2) the DEQ director, upon advice from the Interagency Technical Review Panel, determines that the owner or operator had previously committed significant violations that constitute a pattern of repeated violations of environmental laws, rules, regulations, permit

conditions, settlement agreements, or orders of consent or judicial orders and that were due to separate and distinct events.

-- If a MAEAP-verified farm is in compliance with all MAEAP standards applicable to the farming operation, the farm would be considered to be implementing conservation and management practices needed to meet total maximum daily load implementation for impaired waters under federal law on water quality standards and implementation plans (33 USC 1313).

-- If a discharge from a MAEAP-verified farm that is in compliance with all MAEAP standards on land application was caused by an act-of-God weather event, both of the following apply:

- The discharge would be considered nonpoint source pollution. (Under Section 8801 of NREPA, "nonpoint source pollution" means water pollution from diffuse sources, including runoff from precipitation or snowmelt contaminated through contact with pollutants in the soil or on other surfaces and either infiltrating into the groundwater or being discharged to surface waters, or runoff or wind causing erosion of soil into surface waters.)
- If the discharge is determined by the director with scientific evidence provided by water quality data to have exceeded water quality standards, the farm (within 30 days of notification) must provide to the department a report that includes details of conservation or management practice changes (if needed) to further address the risk of discharge recurrence. The report must state whether those conservation or management practices have already been implemented by the farm. Upon receiving the report, the department must review it and respond within 30 days. The response could include report acceptance with no further action required or could recommend environmentally sound and economically feasible conservation or management practices to prevent future discharges.

(An "act of God weather event" is defined in the bill as a precipitation event that meets both of the following conditions: (1) it exceeds one-half inch in precipitation; and (2) it was forecast by the National Weather Service 24 hours earlier as having less than a 70 percent probability of exceeding one-half inch of precipitation.)

The bill says that it does not modify or limit any obligation to obtain a permit under Part 31.

FISCAL IMPACT:

Department of Agriculture and Rural Development

Although not established in statute, MAEAP has been recognized and supported in the Department of Agriculture budget since FY 2000-01. At that time, the appropriation for the program was \$570,000 -- all General Fund. The supporting budget detail indicated that there were seven FTE positions associated with the program.

There is a separate line item for the program in the current year (FY 2010-11) budget, with a General Fund appropriation of \$262,000. The department indicates that it uses

restricted funds from other appropriation line items to supplement the General Fund appropriations; actual current year program costs are anticipated to be approximately \$550,000. The department indicates that there are currently four full-time, and one half-time, employees assigned to the program.

An expansion of MAEAP would require additional resources within the Department of Agriculture and Rural Development. We do not yet have an estimate from the department of what additional support would be needed.

Department of Environmental Quality

House Bill 4212 would have no significant fiscal impact to the Department of Environmental Quality.

Senate Bill 122 may increase expenditures from the Clean Water Fund (CWF) within Department of Environmental Quality (DEQ) programs. The bill expands the list of expenditures that can be made from the CWF to include the promotion of MAEAP and activities to encourage more MAEAP-verified farms.

The CWF received \$90.0 million funding from the Clean Michigan Initiative Bond program which was a \$675.0 million general obligation bond approved by Michigan voters in 1998 to fund environmental, health, and natural resources protection programs.

The purpose of the CWF is to implement the surface water quality monitoring plan of the DEQ. According to statute (MCL 324.8807), money in the Fund may be appropriated for water pollution control, wellhead protection, and storm water treatment projects. The current statute states that the first priority for expenditures from the Fund shall be for water pollution control activities. Senate Bill 122 eliminates this stipulation concerning expenditure priority.

Of the original \$90.0 million Clean Michigan Initiative Bond appropriation to the CWF, \$45.0 million is allocated for water pollution control projects, such as the conservation reserve enhancement program (CREP), abandoned wells, and failing on-site septic systems. Of this \$45.0 million funding, only \$100,000 is projected to not be expended by the end of FY 2011-12.

The remaining \$45.0 million of the original appropriation is allocated to surface water quality monitoring projects. According to the Department, the projected balance of this funding will be approximately \$6.4 million at the end of FY 2011-12. Approximately \$3.9 million is used annually in the DEQ budget for water quality monitoring activities.

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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.