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BILL



ANALYSIS

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Senate Bill 122 (as enacted)
House Bill 4212 (as enacted)
Sponsor: Senator Joe Hune (S.B. 122)
Representative Kevin Daley (H.B. 4212)
Senate Committee: Agriculture
House Committee: Agriculture

PUBLIC ACT 1 of 2011
PUBLIC ACT 2 of 2011

Date Completed: 8-6-12

CONTENT

Senate Bill 122 amended Part 31 (Water Resources Protection) and Part 88 (Water Pollution and Environmental Protection Act) of the Natural Resources and Environmental Protection Act (NREPA) to do the following:

- Excuse a farm verified under the Michigan Agriculture Environmental Assurance Program (MAEAP) from civil fines for a water discharge, and specify that the discharge will be considered nonpoint source pollution, if the owner or operator meets requirements to correct and report the discharge.
- Allow nonpoint source pollution prevention and control grants for projects that promote MAEAP verification.
- Allow the expenditure of money from the Clean Water Fund for MAEAP promotion and activities.

House Bill 4212 amended Part 87 (Groundwater and Freshwater Protection) of NREPA to do the following:

- Require the Michigan Department of Agriculture and Rural Development (MDARD) Director, in consultation with an advisory council, to implement a Michigan Agriculture Environmental Assurance Program.
- Establish requirements for the verification of farms under MAEAP.

- Require MDARD to establish a MAEAP grants program.
- Replace the groundwater advisory council with an environmental assurance advisory council, and specify council membership and activities.
- Allow the MDARD Director to establish environmental assurance teams, rather than regional groundwater stewardship teams, for the implementation of programs under Part 87.
- Revise requirements related to groundwater stewardship, and refer instead to conservation.
- Allow the Director, in consultation with the advisory council, to establish priorities, procedures, and protocols for a surface water quality monitoring program.
- Allow the Freshwater Protection Fund to be used for verification and other MAEAP-related activities.
- Require MDARD and the Department of Environmental Quality (DEQ) to enter into a memorandum of understanding to formalize a commitment to promote MAEAP and to clarify the application of State and Federal environmental laws to farms.
- Delay the sunset date for fees collected under Part 87.

The bills were tie-barred and took effect on March 9, 2011.

Senate Bill 122

MAEAP-Verified Farms; Discharges

Under the bill, if all of the following conditions are met, the owner or operator of a MAEAP-verified farm is not subject to civil fines under Section 3115 of NREPA, but may be responsible for actual natural resources damages:

- A discharge to Michigan waters occurs from a portion or operation of the 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.

This provision does not apply if the owner's or operator's actions pose or posed a substantial endangerment to the public health, safety, or welfare. The provision also does not apply if the DEQ Director, upon advice from the interagency technical review panel, determines that the owner or operator 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.

(Section 3115 establishes civil and criminal penalties for violations of Part 31 (Water Resources Protection) of NREPA.)

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

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", the discharge will be considered nonpoint source pollution. Also, if the DEQ Director determines, with scientific evidence provided by water quality data, that the discharge caused an exceedance of water quality standards, the farm, within 30 days of

notification, must give the DEQ a report that includes details of conservation or management practice changes, if necessary, to further address the risk of discharge recurrence. The report must state whether the farm has already implemented those conservation or management practices. Upon receiving the report, the DEQ must review it and respond within 30 days. The DEQ response may include report acceptance with no further action required or may recommend environmentally sound and economically feasible conservation or management practices to prevent future discharges. (The bill defines "act of God weather event" as a precipitation event that exceeds one-half inch in precipitation and that was forecast by the National Weather Service 24 hours earlier as having less than a 70% probability of exceeding one-half inch of precipitation.)

These provisions do not modify or limit any obligation to obtain a permit under Part 31.

Nonpoint Source Pollution Prevention & Control Grants

Part 88 requires the DEQ, in consultation with MDARD, to establish a program to provide grants for nonpoint source pollution prevention and control projects and wellhead protection projects. The nonpoint source pollution prevention and control grants must be provided for projects that do at least one of the following:

- Implement the physical improvement portion of watershed plans that are approved by the DEQ.
- Reduce specific nonpoint source pollution as identified by the DEQ.

Under the bill, the grants also may be provided for projects that promote MAEAP verifications.

In issuing the grants, the bill requires the DEQ, in consultation with MDARD, to 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.

Clean Water Fund Expenditures

Under Part 88, the DEQ must spend money in the Clean Water Fund, upon

appropriation, for certain purposes. The bill includes the following in those purposes:

- Promotion of MAEAP and activities to encourage more MAEAP-verified farms.
- Monitoring and benchmarking the effectiveness of conservation practices and MAEAP standards in cooperation with participating farmers.

The bill also requires the DEQ to consult with MDARD in spending money in the Fund.

In addition, one of the purposes for which the DEQ must spend money in the Clean Water Fund is to implement the programs described in the DEQ's January 1997 document entitled "A Strategic Environmental Quality Monitoring Program for Michigan's Surface Waters". The bill deleted a requirement that implementation of those programs be the first priority for expenditures from the Clean Water Fund.

House Bill 4212

Michigan Agriculture Environmental Assurance Program

The Act previously required the MDARD Director, in consultation with the groundwater advisory council, to establish a groundwater stewardship program designed to promote the protection of groundwater through education, technical assistance, and grants. The bill instead required the Director, in consultation with the environmental assurance advisory council, to implement a Michigan Agriculture Environmental Assurance Program designed to promote natural resources conservation through education, technical assistance, and verification. The program must be voluntary and available to farms throughout Michigan.

A farmer who desires to have his or her farm MAEAP-verified must do all of the following:

- Complete educational requirements authorized by MDARD.
- Develop and implement one or more conservation plans as approved by the Director.
- Contact MDARD to arrange for an on-site evaluation.

If MDARD conducts an on-site evaluation and determines that a farm is meeting MAEAP standards, the Department must

issue a MAEAP verification, which will be valid for three years. A farm will be eligible for reverification if it is determined to be meeting MAEAP standards through an on-site evaluation conducted by the Department or its designee.

Beginning in fiscal year (FY) 2012-13, MDARD must provide MAEAP verification signs to each MAEAP-verified farm. If a farm allows its verification to lapse or if its verification is revoked, the farm must forfeit its sign and all other benefits that are provided to MAEAP-verified farms under the Act.

The Director may revoke verification if any of the following apply:

- The Department, in consultation with the DEQ, determines with scientific evidence provided by water quality data that the farm caused an exceedance of 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 Agriculture and Rural Development Commission.

The Director also may revoke MAEAP verification if he or she determines, upon advice from the interagency technical review panel, 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.

Previously, liability for groundwater contamination could not be imposed on a person in the groundwater stewardship program unless he or she was grossly negligent or in violation of State or Federal law, or failed to comply with the provisions of the applicable program or plan. Under the bill, instead, a farmer will not be liable for groundwater contamination on a MAEAP-verified farm unless he or she was grossly negligent or in violation of State or Federal law, or failed to comply with the MAEAP standards.

The bill defines "MAEAP standards" as all of the following as adopted by the Agriculture

and Rural Development Commission for the purpose of implementing MAEAP:

- Conservation practices.
- Site-specific nutrient management plan requirements.
- Emergency protocols.
- Completed environmental risk assessments.
- United States Department of Agriculture Natural Resources Conservation Service practice standards.
- Generally accepted agricultural and management practices developed under the Right to Farm Act.
- Other standards considered appropriate by the Director.

"MAEAP-verified farm" means a farm determined by MDARD as meeting applicable MAEAP standards through an on-site evaluation.

Groundwater Stewardship/Conservation

The Act previously required the MDARD Director, in conjunction with certain organizations, to develop groundwater stewardship practices (voluntary practices designed to protect groundwater from contamination by pesticides and fertilizers). The bill requires the development of conservation practices (as defined in Part 82), rather than groundwater stewardship practices.

Also, the Act previously required the Director, in conjunction with certain organizations, to develop a voluntary on-site evaluation system for pesticide or nitrogen fertilizer use. The evaluation system had to be designed to do the following:

- Enable people to determine the relative groundwater impact potential posed by their use of pesticides and nitrogen fertilizers.
- Enable people to determine the degree to which operations were in accord with groundwater stewardship practices and applicable groundwater protection rules.
- Prioritize operational changes at the site level intended to protect groundwater.
- Guide people to appropriate technical and educational materials.

The bill instead requires the development of protocols for voluntary on-site evaluations, which must be designed to do the following:

- Enable farmers to determine the relative risk of current practices in relation to sources of contamination.
- Enable farmers to determine the degree to which farm operations are in accord with MAEAP standards and applicable law.
- Prioritize operational changes on farms to protect groundwater and surface water from sources of contamination.
- Guide farmers to appropriate technical educational materials.
- Provide farmers with the opportunity for verification.

The Act previously required the Director, in conjunction with the groundwater advisory council, to review and evaluate the effectiveness of the groundwater stewardship practices. The bill instead requires the Director, in conjunction with the environmental assurance advisory council, to review and evaluate the effectiveness of the conservation practices.

Advisory Council

The Act previously required the MDARD Director to establish a groundwater advisory council composed of the MDARD Director; the Department of Natural Resources Director; the director of public health; the director of the Michigan State University (MSU) Cooperative Extension Service; the director of the MSU Agricultural Experimentation Station; and representatives of various agencies and industries.

The bill instead required the Director to establish an environmental assurance advisory council. The council must consist of the MDARD Director; the DEQ Director; the director of the MSU Extension; the director of the MSU Agricultural Experimentation Station; and representatives of all of the following as appointed by the MDARD Director for three-year terms:

- The U.S. Department of Agriculture (USDA) Farm Service Agency.
- The USDA Natural Resources Conservation Service.
- Conservation districts.
- Farmers and other agricultural organizations.
- Nongovernmental conservation and environmental organizations.

- Regulated agricultural industries.
- A member representing each regional environmental assurance team established under the bill.
- Other people as determined by the Director.

The groundwater advisory council was required to advise the MDARD Director on the following:

- Groundwater stewardship practices.
- On-site evaluation system.
- Groundwater protection rules established under the Act.
- Water quality and environmental monitoring.
- Stewardship program activities.
- Interagency coordination of groundwater programs.
- Prioritizing the activities of the groundwater stewardship teams based on detections of pesticides in groundwater, nitrogen concentrations in groundwater, groundwater impact potential estimation, or other factors as determined by the Director.

Under the bill, the environmental assurance advisory council must advise the 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 other funding sources to promote MAEAP and activities to encourage more MAEAP-verified farms.
- Options to increase assistance to small and medium-sized farms in achieving MAEAP standards.
- The creation of subcommittees as needed to address emerging and ongoing issues.

The bill also requires the advisory council to do all of the following:

- Annually provide recommendations to the Director on MAEAP standards and protocols for verification and revocation

of verification for consideration by the Agriculture and Rural Development Commission.

- Annually submit to MDARD a report that outlines activities, accomplishments, and emerging issues, which the Department must share with the agriculture community.
- Submit to the Director, by September 30, 2014, a comprehensive report detailing program achievements under MAEAP.

Environmental Assurance Teams

The Act previously required the MDARD Director to establish regional groundwater stewardship teams for the implementation of programs developed under Part 87. The bill instead allows the Director to establish environmental assurance teams for that purpose.

The environmental assurance teams are responsible for providing access to technical assistance related to any of the following:

- On-site evaluation of practices that may affect natural resources.
- The development and implementation of conservation plans.
- The development and implementation of activity plans for people making conservation practice changes.

The teams also are responsible for evaluating, as available, grants to people implementing activity plans and conservation practices required to achieve MAEAP standards.

Grants Program

The Act previously allowed MDARD to provide grants to people participating in the groundwater stewardship program in accordance with procedures established by the Department. Grants had to be available for making changes consistent with groundwater stewardship practices, groundwater protection rules, and the removal of potential sources of contamination and other purposes considered suitable by the Director. Technical assistance programs and grants were limited to availability of funds collected under Part 87. The bill deleted these provisions.

The bill required MDARD to establish a MAEAP grants program. Grants issued under this program are limited to availability of funds collected under Part 87. Grants must be available for all of the following:

- Technical assistance.
- Promotion of MAEAP.
- Educational programs related to MAEAP.
- Demonstration projects to implement conservation practices.
- Removal of potential sources of contamination.
- Other purposes considered appropriate by the Director.

MDARD/DEQ Memorandum of Understanding

The bill required MDARD and the DEQ to enter into a memorandum of understanding to formalize a commitment to promote MAEAP and to clarify the application of State and Federal environmental laws to farms. In addition, the memorandum of understanding must provide for all of the following:

- 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 reverification of a farm with revoked MAEAP-verification status.
- Integration of MAEAP into pollution prevention activities of both agencies.

The memorandum also must provide for clarification of the consultation process in Part 88 to ensure that MDARD has meaningful input into the establishment of the grants program and the issuance of grants.

Surface Water Quality Monitoring

The bill authorizes the MDARD Director, in consultation with the environmental assurance advisory council, to develop and establish priorities, procedures, and protocols for the implementation of a surface water quality monitoring program to do both of the following:

- Promote voluntary water quality monitoring by farms.

- Monitor and benchmark the effectiveness of conservation practices and MAEAP standards in cooperation with participating farmers.

Water quality information collected under this provision by MDARD, in cooperation with farmers, must be aggregated and made available to the Agriculture and Rural Development Commission. Specific locations or people involved in water quality information collection are exempt from disclosure under the Freedom of Information Act.

Sunset of Fee Requirements

Section 8715 of NREPA requires the payment of groundwater protection fees related to the registration of pesticides and fertilizers. The fees must be transmitted to the State Treasurer, who must credit the money to the Freshwater Protection Fund. Section 8715 was scheduled to be repealed on December 31, 2013. The bill extended the repeal date to December 31, 2015.

Freshwater Protection Fund

The Act created the Freshwater Protection Fund and specifies the purposes for which MDARD may spend money from the Fund. These purposes include "direct assistance". The definition of "direct assistance" previously included the following:

- Incentive and cost share programs for people in the groundwater stewardship program for implementation of groundwater stewardship practices or groundwater protection rules.
- Incentive and cost share programs for people who notified the Director of potential sources of groundwater contamination on their property.
- The promotion and implementation of on-site evaluation systems and groundwater stewardship practices.

The bill, instead, refers to the following:

- Incentive and cost share programs to assist farmers in achieving MAEAP standards.
- Incentive and cost share programs for MAEAP-verified farms with potential sources of contamination.

- The promotion and implementation of on-site evaluation systems, conservation practices, and MAEAP.

The bill also includes in the definition of "direct assistance" verification and programs that enhance investment of private and Federal funds in conservation.

MCL 324.3109d et al. (S.B. 122)
324.8702 et al. (H.B. 4212)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bill 122

The bill has no fiscal impact on State or local government.

House Bill 4212

The bill's fiscal impact on the Department of Agriculture and Rural Development is minimal as its provisions largely codified activities already in practice. The bill also established MAEAP in statute, to be paid for from funds generated under Section 8715 of the Act. The revenue produced under the section is approximately \$3.8 million annually. These funds are allocated fully in the FY 2012-13 budget. An additional \$1.0 million GF/GP in support of MAEAP is also included in the budget.

Fiscal Analyst: Bruce Baker
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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.