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BILL



ANALYSIS

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House Bill 4212 (Substitute H-2 as passed by the House)
Sponsor: Representative Kevin Daley
House Committee: Agriculture
Senate Committee: Agriculture

Date Completed: 2-23-11

CONTENT

The bill would amend Part 87 (Groundwater and Freshwater Protection) of the Natural Resources and Environmental Protection Act to do the following:

- Require the Michigan Department of Agriculture and Rural Development (MDA) Director, in consultation with an advisory council, to implement a Michigan Agriculture Environmental Assurance Program (MAEAP).
- Establish requirements for the verification of farms under MAEAP.
- Require the MDA 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 MDA 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 MDA Director, in consultation with the advisory council, to develop and establish priorities, procedures, and protocols for the implementation of a surface water quality monitoring program.
- Allow the Freshwater Protection Fund to be used for verification and other MAEAP-related activities.

- Require the MDA 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 bill is tie-barred to Senate Bill 122. (Senate Bill 122 (S-1), as passed by the Senate, would amend the Act to excuse MAEAP-verified farms from civil fines for water discharges, and specify that discharges would be nonpoint source pollution, under certain circumstances; allow nonpoint source pollution prevention and control grants for projects that promoted MAEAP verification; and allow the expenditure of money from the Clean Water Fund for MAEAP-related activities. The bill is tie-barred to House Bill 4212.)

Michigan Agriculture Environmental Assurance Program

The Act requires the MDA 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 would require 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 MAEAP would be a voluntary program that would be available to farms throughout Michigan.

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

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

If the MDA conducted an on-site evaluation and determined that a farm was meeting MAEAP standards, the Department would have to issue a MAEAP verification, which would be valid for three years. A farm would be eligible for reverification if it were 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, the MDA would have to provide MAEAP verification signs to each MAEAP-verified farm. A farm that allowed its verification to lapse or whose verification was revoked would have to forfeit its sign and all other benefits that were provided to MAEAP-verified farms under the Act.

The Director could revoke verification of a MAEAP-verified farm if any of the following applied:

- The Department, in consultation with the DEQ, determined 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 failed to conform to MAEAP standards as a result of gross negligence.
- The farm failed to comply with protocols for verification as approved by the Agriculture Commission.

The Director also could revoke MAEAP verification if he or she determined, upon advice from the interagency technical review panel, that the farm was 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.

Currently, liability for groundwater contamination may 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 would not be liable for groundwater contamination on a MAEAP-verified farm unless he or she were grossly negligent or in violation of State or Federal law, or failed to comply with the MAEAP standards.

The bill would define "MAEAP standards" as all of the following as adopted by the Agriculture 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" would mean a farm determined by the MDA as meeting applicable MAEAP standards through an on-site evaluation.

Groundwater Stewardship/Conservation

The Act requires the MDA Director, in conjunction with certain organizations, to develop groundwater stewardship practices (voluntary practices designed to protect groundwater from contamination by pesticides and fertilizers). Upon approval by the Agriculture Commission, the Director must promote the implementation of these practices. The bill would require the development of conservation practices (as defined in Part 82), rather than groundwater stewardship practices.

Under the Act, the MDA Director, in conjunction with certain organizations, also must develop a voluntary on-site evaluation system for pesticide or nitrogen fertilizer use. The evaluation system must be designed to do all of the following:

- Enable people to determine voluntarily the relative groundwater impact potential posed by their use of pesticides and nitrogen fertilizers.
- Enable people to determine the degree to which operations are 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 would require the development of protocols for voluntary on-site evaluations. The on-site evaluations would have to be designed to do all of the following:

- Enable farmers to determine voluntarily the relative risk of current practices in relation to sources of contamination.
- Enable farmers to determine the degree to which farm operations were 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 requires the MDA Director, in conjunction with the groundwater advisory council, to review and evaluate the effectiveness of the groundwater stewardship practices. The bill instead would require the Director, in conjunction with the environmental assurance advisory council, to review and evaluate the effectiveness of the conservation practices.

Advisory Council

The Act requires the MDA Director to establish a groundwater advisory council composed of the MDA 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 all of the following as appointed by the MDA Director:

- The U.S. Department of Agriculture (USDA) stabilization and conservation service.
- The USDA soil conservation service.
- The U.S. Geological Survey.
- Soil and water conservation districts.
- Agricultural producers.
- Nongovernmental environmental organizations.
- Regulated agricultural industries.
- Right-of-way applicators.
- Other people as determined by the MDA Director.

The bill instead would require the MDA Director to establish an environmental assurance advisory council. The council would have to consist of the MDA 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 MDA Director for three-year terms:

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

The environmental assurance advisory council would have to be co-chaired by the representative of the MSU Extension and a representative of one of the farmers and other agricultural organizations.

Currently, the groundwater advisory council must advise the MDA 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 MDA Director.

Under the bill, the environmental assurance advisory council would have to 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 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 would require the advisory council to do all of the following:

- Annually provide recommendations to the MDA Director on MAEAP standards and protocols for verification and revocation of verification for consideration by the Agriculture Commission.
- Annually submit to the MDA a report that outlined activities, accomplishments, and emerging issues, which the Department would have to share with the agriculture community.
- Submit to the MDA Director, by September 30, 2014, a comprehensive report detailing program achievements under MAEAP.

Groundwater Stewardship/Environmental Assurance Teams

The Act requires the MDA Director to establish regional groundwater stewardship teams for the implementation of programs developed under Part 87. The bill instead would allow the Director to establish environmental assurance teams for that purpose.

The groundwater stewardship teams are responsible for implementation of programs developed under Part 87, including the provision of technical assistance for people making changes consistent with groundwater stewardship practices or groundwater protection rules, on-site evaluation of practices that may affect groundwater, the development and implementation of stewardship plans, and the development and implementation of activity plans. Under the bill, the environmental assurance teams instead would be responsible for providing access to technical assistance related to any of the following:

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

In addition, the current groundwater stewardship teams are responsible for the provision of private well sampling, grants in aid for people in the stewardship program, emergency response, and land application of pesticide and fertilizer contaminated materials. Under the bill, the environmental assurance teams instead would be responsible for evaluating, as available, grants to people implementing activity plans and conservation practices required to achieve MAEAP standards.

Grants Program

The Act allows the MDA to provide grants to people participating in the groundwater stewardship program in accordance with procedures established by the Department. Grants must 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 MDA Director. Technical assistance programs and grants are limited to availability of funds collected under Part 87. The bill would delete these provisions.

Under the bill, the MDA would have to establish a MAEAP grants program. Grants issued under this program would be limited to availability of funds collected under Part 87. Grants would have to 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 MDA Director.

MDA/DEQ Memorandum of Understanding

The bill would require the MDA 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 would have to provide for all of the following:

- An ongoing interagency technical review panel for MAEAP-verified farms that discharged 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 would have to provide for clarification of the consultation process in Part 88 (Water Pollution and Environmental Protection Act) to ensure that the MDA had meaningful input into the establishment of the grants program and the issuance of grants.

Surface Water Quality Monitoring

The bill would authorize the MDA 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 the MDA, in cooperation with farmers, would have to be aggregated and made available to the Agriculture Commission. Specific locations or people involved in water quality information collection would be exempt from disclosure under the Freedom of Information Act.

Sunset of Fee Requirements

Section 8715 of the Natural Resources and Environmental Protection Act 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 is scheduled to be repealed on December 31, 2013. The bill would extend the repeal date to December 31, 2015.

Freshwater Protection Fund

The Act created the Freshwater Protection Fund and specifies the purposes for which the MDA may spend money from the Fund. These purposes include "direct assistance". The definition of "direct assistance" includes, among other things, 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 notify 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, would refer 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 would include in the definition of "direct assistance" verification and programs that enhance investment of private and Federal funds in conservation.

Intent of Part 87

The Act states, "The intent of this part is to reduce risks to the environment and public health by preventing groundwater contamination from pesticides and fertilizers." The bill, instead, would state, "The intent of this part is to reduce risks to the environment and public health and promote economic development by assisting farms in achieving MAEAP standards."

MCL 324.8702 et al.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have a minimal fiscal impact on the Department of Agriculture and Rural Development as its provisions would largely codify activities already in practice. The bill also would establish a MAEAP grants program, 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 2010-11 budget for various environmental programs within the department and none of these funds have yet to be appropriated for what has been titled "MAEAP Grants".

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.