Legislative Analysis

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COMMERCIAL FEED LAW AMENDMENTS

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House Bill 4451 (reported from committee as H-1)
Sponsor: Rep. Nancy E. Jenkins
Committee: Appropriations
Complete to 4-21-15

SUMMARY:

The bill would amend the Commercial Feed Law (Public Act 120 of 1975) to make the following changes, among other things:

- Rename the act the "Feed Law."
- Clarify who is required to obtain a commercial feed license.
- Increase the license fee from $25 to $100. The fee would remain at $25 for manufacturers and distributors dealing in containers of five pounds or less.
- Modify the labeling requirements for commercial feeds and the information required to be disclosed for customer-formula feed.
- Establish a statutory tonnage inspection fee of $0.30 per ton for commercial feed and $0.15 per ton for ingredients that are manufacturing by-products with a moisture content of 60% or more. The fee is currently set at $0.13 per ton and, according to the department, has not been changed since May 5, 1976. Currently, the fee is established in rule by the director.
- Increase the fee for late payment of tonnage inspection fees to up to $50 or 10% of what is owed, whichever is greater. Currently, the late fee is set at 10% of what is owed.
- Maintain the director's current inspection authority and expand it to include vehicles and other transports.
- Establish standard methods of sampling and analysis.
- Clarify and expand activities that are prohibited under the act.
- Allow the director to issue administrative orders to enforce the act.
- Establish the Feed Control Fund.
- Preempt local ordinances that duplicate, extend, revise, contradict, or conflict with any provisions of the act, with limited exceptions.
- Allow the director to take certain actions to facilitate continued access to markets for feed and feed ingredients.

For a detailed description of the changes by section, see below.

FISCAL IMPACT:

The Michigan Department of Agriculture and Rural Development (MDARD) has regulatory authority over *manufacturers* and *distributors* of *commercial feed,* as well as commercial feed *guarantors* under the authority of the **Commercial Feed Law** (Public Act 120 of 1975). [*Commercial feed* is a defined term in the act and generally refers to

materials or combination of materials, including feed ingredients, distributed or intended for distribution for use as animal feed. *Manufacturers, distributors* and *guarantors* are also defined terms under the act.] The act currently provides for two different types of fees – license fees and tonnage fees.

License fees - Section 4 of the act (MCL 287.524) requires commercial feed *manufacturers*, and commercial feed *distributors/guarantors* to obtain a license from the department and establishes a $25.00 annual license fee – the fee has been unchanged since first established in 1975. There are currently approximately 1,300 licensees.

House Bill 4451 would increase the current license fee from $25.00 to $100.00 for both manufacturers and distributors/guarantors of commercial feed. The bill makes an exception for manufacturers and distributors/guarantors who manufacture or distribute feed in containers of five pounds or less; for them, the fee would remain at $25.00 per year.

The bill would establish a new $50.00 late fee.

Tonnage fees – In addition to the license fees noted above, the **Commercial Feed Law** currently provides for a "tonnage inspection fee." Section 6 of the act, currently directs the department director to determine the tonnage fee "after due notice and public hearing" and to not exceed the cost of enforcement of the act. The amount of the fee, 13 cents per ton, was established in the 1979 State Administrative Code (Rule 285.635.17). The fee does not appear to have been adjusted since originally established.

House Bill 4451 would repeal the administrative rule and establish new per-ton inspection fees in statute. Specifically, the bill would designate the inspection fee as 30 cents per ton. For feed products with a moisture content equal to or greater than 60%, the inspection fee would be 15 cents per ton. The bill would establish a minimum inspection fee of $50.00.

The bill provides for the manufacturer or distributor/guarantor to file, by the last day of July, an annual statement of the number of tons of commercial feed distributed in the state during the preceding July 1 to June 30 period, and submit the applicable inspection tonnage fee.

Current law provides for a late fee of 10% of the amount due but not less than $10.00. Under the bill, the late fee would be $50.00, or 10% of the amount due, whichever is greater, for any report not filed with the department by the due date.

Revenue Impact of House Bill 4451				
Fee Category	Fee Under Current Law/ House Bill 4451	Current Revenue: 3-Year Average	Estimated Revenue Increase under 4451	Estimated Revenue Total
License Fees	$25.00/$100.00	$31,250	$78,750	$110,000
Tonnage Fee (per ton)	13 cents/30 cents, 15 cents for moisture content = or > 60%.	$364,000	$442,650	$806,650
Total		**$395,250**	**$521,400**	**$916,650**

Three-year average revenue shown above was based on recorded revenue for FYs 2011-12, 2012-13, and 2013-14, adjusted to smooth unusually high collection of delinquent fees in FYs 2011-12, and 2012-13. These department figures and revenue estimates appear reasonable.

Distribution of Revenue – Under current law, commercial feed licensure and tonnage inspection fees are deposited into the Agriculture Licensing and Inspection Fee Fund, a state restricted fund established in Section 9 of the Insect Pest and Plant Disease Act, (1931 PA 189). This fund also receives revenues generated by fertilizer, pesticide, and nursery regulatory fees and is primarily used to support regulatory and inspection activities of the department's Pesticide and Plant Pest Management Division.

Under House Bill 4451, revenue generated by commercial feed licensure and tonnage inspection fees would be deposited into a newly created Feed Control Fund, which would be restricted for the administration and enforcement of the act and for training programs and outreach to ensure the proper use and handling of animal feed.

The department indicates that the average annual cost of the commercial feed regulatory and inspection program (FY 2011-12 through FY 2013-14) was approximately **$1,053,000**. Of this, $421,600 was supported with restricted revenue from commercial feed licensure, tonnage inspection fees, and fines. The balance was supported with $224,200 of federal funds (Food and Drug Administration) and $407,100 from the state General Fund. The department indicates that the current fiscal year, FY 2014-15 is the last year these federal funds will be available as the related grant agreement will expire at the end of this fiscal year.

Both annual license renewal fees and annual tonnage inspection fees are due by the last day of July, for the preceding July 1 to June 30 period. As a result, almost all the additional fee revenue provided under House Bill 4451 would accrue in the 2015-2016 fiscal year. The Governor's proposed FY 2015-16 MDARD budget was based on the additional revenue that would be generated from fee increases such as reflected in House Bill 4451. If the proposed fee increases are not enacted, the department could reduce its commercial feed inspection program and/or increase the use of General Fund support.

DETAILED SUMMARY:

Section 1 – Name of the act

The bill would change the name of the act from the "Michigan Commercial Feed Law" to the "Feed Law."

Section 3 – Licenses

Currently, individuals are prohibited from manufacturing or distributing commercial feed unless licensed by the Michigan Department of Agriculture and Rural Development (MDARD).

The bill would require the following people to obtain a commercial feed license:

- A commercial feed manufacturer for each manufacturing facility in the state.
- Persons other than manufacturers that distribute commercial feed or that serve as a guarantor of commercial feed that is distributed within the state. [The bill defines a guarantor as a person that agrees to be responsible for labeling, information, guarantees, and claims.]

The following people would be exempt from needing to obtain a commercial feed license:

- A person that makes only retail sales of commercial feed that contains labeling or another approved indication that the feed is from a licensed facility.
- An on-farm mixer-feeder, provided the person does not distribute feed commercially.
- Integrated operators that do not commercially distribute feed.

License fees

Currently, the license fee a commercial feed license is $25. The bill would increase the license fees to $100 for each manufacturing facility and distributor or guarantor. However, the license fee would remain at $25 for manufacturing facilities that manufacture feed in containers of five pounds or less and distributors and guarantors that distribute in containers of five pounds or less.

Late fee

New applicants for a license that do not obtain a license within 30 days of being notified of the requirement, or any licensee that fails to comply with renewal requirements by June 30, would be subject to a $50 late fee in addition to the license fee.

Issuance timeline

Licenses would have to be issued within 90 days of the applicant submitting a complete application and license fee. MDARD would be required to notify applicants within 60 days in the event an incomplete application is submitted.

Display of license

Once approved by the director, licenses would have to be issued to the applicant. Licenses would have to be displayed prominently at each manufacturing facility and be available at the principal business office of each distributor or guarantor.

License year
Currently, all commercial feed licenses issued under the act expire on December 31 of each year. The bill would change the license year to end on June 30 of each year. Additionally, licenses would not be transferable between individuals, owners, or locations.

Licenses issued before this bill takes effect would not expire until July 1, 2015, but would be subject to the suspension and revocation procedures in the bill.

Noncompliance
The bill would give the director of MDARD the authority to do either of the following:

- Place conditions limiting the manufacture or distribution of particular feeds on the license of anyone found in violation of the act or its rules.
- Refuse to license an applicant or suspend or revoke a license of anyone found not in violation of the act or its rules.

[Section 12 of the act currently allows the director to suspend or revoke a license if an individual is found in violation of the act, and provides the opportunity for a hearing.]

The director could not take any of the above actions pertaining to an individual or license until the individual is given an opportunity to a hearing under the Administrative Procedures Act. After a hearing is conducted, adverse action could be taken against an applicant or licensee if any of the following are found to have happened within the three years preceding a license being issued:

- A previous licensed issued to a person with an ownership or management interest in the new operation was revoked for a violation of Sections 8 or 9 of the act.
- The applicant, a manager, or any other individual employed by the applicant with management responsibilities for a manufacturing operation was convicted of a felony involving fraud, conversion, or embezzlement.
- The applicant's license under the federal law or a commercial feed license in another state was revoked because of a violation.

Out-of-state operations
Every distributor and guarantor that holds a license that operates from a business outside of Michigan must continuously maintain both a registered office and a resident agent in the state. The license holder would have to file the name, address, and telephone number of the resident agent with MDARD and maintain certain required records inside the state or pay all costs incurred by the department in auditing the records at the out-of-state location.

<u>Section 5 – Labeling</u>
Currently, Section 5 of the act requires commercial feed that is distributed in bags to be labeled with certain information. The bill would require the quantity state of the contents of the feed be included on the label in place of the net weight of the contents. Additionally, the bill would make the following changes regarding labeling requirements:

- Exempt commercial feeds from the requirement to list the common or usual name of each ingredient if the director determines the information is not in the interest of

the purchasers. [Currently, the director may eliminate by rule the requirement if the listing of ingredients no longer serves a useful purpose.]

- Require the label to include the name and principal mailing address of the manufacturer or the person responsible for distribution. [Currently, the label must include the name and address of the licensee.]
- In the event a drug product is used, require the label to include (1) the purpose of the drug and (2) the established name of each active drug ingredient and the level of each drug that is used in the final mixture.

Commercial feed, except customer-formula feed, would have to be labeled and the label would have to be presented to the purchaser or agent, or attached to the container, at the time of delivery. Bulk feed that is being held for further manufacturing would have to be labeled in a way that allows for its identity and traceability to be constantly maintained.

Customer-formula feed

Currently, customer-formula feed cannot be distributed unless the purchaser is provided with a document at the time of delivery that specifies the name and address of the mixer and purchaser; date of delivery; product name and brand name, and the amount of each commercial feed used in the mixture; and directions for use for feed containing drugs.

The bill would modify when certain information must be provided to the purchaser. Under the bill, a customer-formula feed label, invoice, delivery slip, or other shipping document would have to include the following information at the time of delivery:

- Name and address of the manufacturer.
- Name and address of the purchaser.
- Date of delivery.
- Product name.
- Quantity statement of the lot(s) delivered.
- If a drug product is used, the purpose of any medication used, the established name of each active ingredient, and the level of each drug used in the final mixture level.

The following additional information would have to be provided electronically to the purchaser upon delivery or within one business day of the delivery:

- Quantity statement for each commercial feed and each other ingredient used in the mixture.
- Adequate directions for use for all commercial feeds containing drugs and for other feeds that the director determines by rule are necessary for safe and effective use.
- Precautionary statements that the director determines by rule are necessary for safe and effective use of the commercial feed.

[Note: The information above is currently required to be provided to the purchaser at the time of delivery. The bill would not modify any of that information, but instead would allow the distributor to provide it to the purchaser up to one day after delivery.]

Section 6 – Tonnage inspection fee

Currently, licensees must pay a tonnage inspection fee on each ton of commercial feed that is manufactured or distributed in the state. Tonnage and fee statements must be filed semi-annually. Tonnage fees are not currently paid on customer-formula feed except on commercial feeds used as ingredients in customer-formula feed.

The fee is currently set by the MDARD director after proper notice and public hearing. Fees cannot exceed the cost of enforcing the act. MDARD is permitted to waive payments less than $1 and hold refunds under $5 unless requested to be returned in writing.

Tonnage inspection fees are required to be included with each semi-annual statement. A late fee of 10% of the amount due, but not less than $10, is assessed against licensees who fail to file a report or pay the fee within 15 days of its due date.

New fee structure

The bill would repeal the current tonnage fee provisions and replace them with a new fee structure. Under the bill, an inspection fee of $0.30 per ton would be levied on commercial feed distributed in Michigan and would have to be paid by the manufacturer, guarantor, or distributor identified on the label.

The following would apply to the new inspection fee:

- The fee would not have to be paid on commercial feed if a payment was made by a previous distributor.
- Customer-formula feed would continue to be exempt if the inspection fee is paid on the commercial feeds that are used as ingredients.
- A minimum inspection fee of $50 would apply for each July 1 to June 30 period.

The inspection fee for feed ingredients that are by-products of manufacturing processes and have a moisture content of 60% or more would be $0.15 per ton.

The bill increases from $1 to $5, the minimum tonnage fee payment that can be waived by the department and maintains the provision that refunds of less than $5 will not be processed unless requested in writing.

The failure to make accurate statements of tonnage and pay the fee would constitute sufficient grounds to suspend a distributor's license.

Late fee

A late fee of 10% of the amount of the inspection fee that is due or $50, whichever is greater, would be applied to all licensees, and the late fee would not prevent the department from taking other actions as provided by the act. [Currently, the late fee is 10% of the amount owed, but not less than $10.]

Records and reporting

Each individual liable for paying an inspection fee would be responsible for filing an annual statement indicating the amount (in tons) of commercial feed distributed during the

preceding July 1 to June 30 period and maintain records for three years accurately indicating the distribution.

Disclosure
Unless disclosure is required for enforcement purposes, the information furnished under Section 6 would be considered private and nonpublic, exempt from disclosure under the Freedom of Information Act, and not able to be disclosed by department employees in any manner that divulges the business operations of a licensee.

Section 7 - Inspections
Currently, the director is required to inspect, sample, and analyze commercial feed to determine whether it is in compliance with the act. Inspectors are authorized to enter factories, warehouses, conveyances, and establishments where commercial feeds are manufactured, processed, bagged, or held, and inspect at reasonable times and within reasonable limits all equipment materials, containers, and labeling.

The bill would maintain the authority of the director to conduct inspections within facilities at reasonable times. Additionally, noncommercial feed could be inspected if there was cause and permission has been given by the licensee.

The bill would expand inspection authority to provide access to any vehicle or transport, and to obtain samples and examine records related to distribution. Inspectors could only enter farm premises with permission of the owner and based on cause.

Refusal of entry
If a facility owner refuses to allow the director to enter or inspect as provided by Section 7, the director could obtain a warrant from any state court directing the owner to submit the premises to inspection.

Maintenance of laboratory
The director would be allowed, rather than required, to maintain a laboratory to analyze and test commercial feeds.

Methods of sampling and analysis
All methods of sampling and analysis would have to be conducted in accordance with methods published by the Association of Analytical Chemists International or using other generally recognized methods. Currently, sampling methods are established through rule by the director.

The bill would also increase from 30 to 60 days, the amount of time a licensee has to request a portion of a sample after receiving an analysis report.

Section 8 – Adulterated feeds
Section 8 establishes standards by which commercial feed can be considered adulterated and therefore in violation of the act. The bill clarifies these standards and makes updates to conform to federal regulations. Additionally, bill removes provisions regarding the director's ability to determine by rule the limits on weed seeds and removes limits on

polybrominated biphenyl (PBB) of .01 parts per million. [For more detail, see pages 20-25 of the bill.]

Section 12 – Cooperative agreements and reports

Currently, Section 12 allows the director to suspend or revoke a license, or refuse to license an applicant, if that person is found in violation of the act. The bill would repeal these provisions in Section 12 and recodify them in Section 4 of the bill with some changes.

Section 12 would be rewritten to allow the director to cooperate with and enter into agreements with government agencies and private associations to implement the act. The director may also publish an annual report of gross tonnage sold or distributed in the state. [This authority is currently contained in Section 13 of the act.]

The bill would give the director new power to publish an annual report of official sample results of feed sold in the state as compared with the analyses guaranteed on each product label.

Section 13 –Manufacturing practices

Currently, Section 13 allows the director to select a sample to be used for the purposes of an official analysis and for comparison with a package label. The sale of commercial feed that is unlicensed, adulterated, misbranded, fails to meet guarantees, or otherwise fails to comply with the act could be seized by the director or have its sale stopped.

Section 13 would be rewritten to require manufacturers and distributors of commercial feed to comply with the following:

- The "AAFCO Model Good Manufacturing Practice Regulations for Feed and Feed Ingredients" as published in the AAFCO official publication, which would be incorporated by reference. These regulations would apply in determining whether a commercial feed (1) is adulterated or (2) has been produced, prepared, packed, or held under unsanitary conditions through which it may have become contaminated and unsafe to animal or public health.
- Federal regulations for veterinary feed directive drugs.
- Regulations prescribing good manufacturing practices for Type A medicated articles and Type B and C medicated feeds.

Section 14 – Prohibited acts

Currently, Section 14 provides that individuals found in violation of the act would be guilty of a misdemeanor and that the act does not require the director to revoke or suspend a license or take other adverse actions against a licensee as a result of a minor violation. The bill would repeal the existing language and rewrite the section to establish the following prohibited acts:

- Manufacturing or distributing adulterated or misbranded commercial feed.
- Adulterating or misbranding commercial feed.
- Distributing adulterated commodities (whole grain, whole seed, hay, straw, stover, sileage, cobs, and husks). However, upon prior approval by the director, these

commodities may be distributed if reworked to acceptable levels for safe use to be fed to animals.

- Removing or disposing of commercial feed that is subject to seizure order without authorization of the director.
- Failing or refusing to obtain a license under the act.
- Failing to (1) make records available, (2) furnish reports, (3) permit examination of records, or (4) pay inspection fees.
- Refusing, or causing another to refuse, to permit entry, inspection, sampling, or examination and copying of production and distribution records and production and control procedures.
- Providing false information or resisting, impeding, or hindering the director in the discharge of his or her duties.
- Using or revealing any information acquired under the act concerning any method, record, formulation, or process that is entitled to protection as a trade secret.
- Violating a rule promulgated under the act.
- Reusing bags, totes, or other containers for commercial feeds, unless the container is in, on, or upon a portable device and can be filled without entering the manufacturing facility. Containers used to directly feed livestock could not be refilled with feed.

Section 15 – Administrative orders

The bill would establish a new Section 15 allowing the director to issue the following administrative orders to enforce the act:

- Cease orders, when the director has probable cause to believe a commercial feed operation is manufacturing or distributing adulterated or misbranded feed. The director can direct the entity to immediately stop manufacturing or distributing the feed entirely or with limitations.
- Seizure orders, when there is probable cause that commercial feed is unlicensed, adulterated, or misbranded, and is in violation of the act. Under a seizure order, distributors must hold the lot of feed at the location and not dispose of it until permission is given by the director. The lot would be released when the rules and the act have been complied with.
- Embargo orders, when there is probable cause that commercial feed is adulterated or misbranded, or poses a threat to animal or human health. Feed under an embargo order cannot be disposed of or removed until receiving permission.

Licensees are responsible for all costs in reprocessing or relabeling commercial feed that is intended to correct a violation, and are responsible for all costs involved in the transportation and disposal of feed that is found not to be in compliance with the act.

Damages could not be recovered by a person against whom an administrative action was brought that resulted in the seizure or embargo of commercial feed if the court finds there was probable cause to issue the order.

The director can order immediate destruction of any feed whose storage is determined to be a risk to animal or human health.

Section 16 – Violations

The director can impose a maximum administrative fine of $1,000 for each violation or attempted violation of the act. However, if it is determined that a violation has occurred despite the exercise of due care or that the violation did not cause significant harm to human or animal health, the director could issue a warning instead of imposing a fine.

Individuals attempting to violate or found to be in violation of the act would be guilty of a misdemeanor, punishable by up to 90 days in jail and/or a maximum fine of $5,000 for each violation. This is in addition to any administrative fine imposed by the director.

Anyone that uses any information acquired under the act containing anything considered protected as a trade secret to his or her advantage, or reveals such information to an unauthorized party, would be guilty of a misdemeanor, punishable by up to 90 days in jail and a minimum fine of $500.

The Attorney General could also file civil actions against individuals found in violation of the act. Anyone found in violation of the act would be liable for all damages sustained by a purchaser of a product that was sold in violation of the act.

Section 17 - Feed Control Fund

The Feed Control Fund would be created within the State Treasury to receive all fees, administrative or civil fines, and payments for the costs of investigations. The Treasurer would direct the investment of the fund and all interest and earnings would be credited back to the fund.

All money in the fund at the close of the Fiscal Year would remain in the fund and would not lapse to the General Fund. MDARD would be the administrator of the fund for auditing purposes and the director would be required to expend money from the fund only for (1) administration and enforcement of the act, and (2) training programs and outreach and educational materials to ensure the proper use and handling of animal feed.

Section 18 – Preemption of local ordinances

The act would preempt any local ordinance, regulation, or resolution that would duplicate, extend, revise, contradict, or conflict with any provisions of the act. Except as otherwise provided, local units of government would be prohibited from adopting, maintaining, or enforcing any ordinance, regulation, or resolution that duplicates, extends, revises, or conflicts with this act.

Local units of government could adopt ordinances that are identical to the act if they are under contract with MDARD to act as its agent or have received prior authorization. A local unit of government's enforcement response for a violation of its ordinance involving the manufacturing, storage, distribution, sale, or use of products that are regulated by the act would be limited to issuing a cease order.

Local units of government could adopt ordinances setting different standards than those contained in the act if (1) the local unit has determined that unreasonable adverse public health or environmental effects would otherwise exist, or (2) if the unit has determined that

the manufacturing, storage, distribution, sale, or use of a product has resulted or will result in a violation of other existing law.

Ordinances adopted under these exceptions could not conflict with existing law and could not be enforced until approved by the Commission of Agriculture and Rural Development.

The director would have to hold public hearings within a specified time frame after receiving a resolution from a local legislative body detailing unreasonable adverse effects. A detailed opinion would have to be issued by the director within 30 days regarding the existence of unreasonable adverse effects.

Section 19 – Continued market access

This section would allow the director to take certain actions to facilitate continued access to markets for feed and feed ingredients, including inspecting and certifying locations where feed is stored, issuing certificates of export, and promulgating rules to inspect and certify locations.

Enacting Section 1

The bill would repeal R 285.635.15 – 285.635.17 of the Michigan Administrative Code. These sections establish good manufacturing practices, recall procedures, and the amount of the tonnage inspection fee.

Enacting Section 2

The bill would take effect 90 days after being signed into law.

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