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Senate Bill 494 (as introduced 5-27-21)
Sponsor: Senator Kevin Daley
Committee: Agriculture (discharged)
Appropriations

Date Completed: 11-2-21

CONTENT

The bill would amend the Natural Resources and Environmental Protection Act to do the following:

- **Modify, add, or eliminate and recodify various terms and definitions in Parts 82 (Conservation Practices), 87 (Groundwater and Freshwater Protection), and 88 (Water Pollution Prevention and Monitoring) of the Act.**
- **Modify various provisions pertaining to conservation programs to refer to "determine" or "determination" instead of "verify" or "verification".**
- **Modify the purposes for which Agriculture Pollution Prevention Fund money may be spent.**
- **Require the Michigan Department of Agriculture and Rural Development (MDARD) to promulgate rules to establish laboratory confirmation mechanisms and risk assessment protocols for the development of associated relevant water quality standards developed under Part 31 (Water Resources Protection).**
- **Specify that not more than 10% of the total annual appropriations from the Agriculture Pollution Prevention Fund could be used to monitor the effectiveness of conservation practices and Michigan Agriculture Environmental Assurance Program (MAEAP) standards in cooperation with participating farmers.**
- **Modify the membership and duties of the Environmental Assurance Advisory Council.**
- **Extend, from December 31, 2021, to December 31, 2026, a sunset on fees paid by various pesticide registrants and fertilizer licensees and deposited into the Freshwater Protection Fund.**
- **Modify the purposes for which Freshwater Protection Fund and Clean Water Fund money may be spent.**

The bill also would repeal Sections 8709, 8713, and 8713a of the Act. (Section 8709 authorizes the Director of MDARD to establish regional environmental assurance teams composed of departmental, educational, and technical assistance personnel, and other individuals as determined necessary by the Director or the team. Section 8713 requires the Director to develop and establish priorities, procedures, and protocols for the implementation of a water quality monitoring system. Section 8713a allows the Director to do the same for the implementation of a surface water quality monitoring program.)

Part 82 Definitions

"Determination" or "determine", unless the context required otherwise, would mean a decision by MDARD that one or more conservation practices have been established and are being maintained in accordance with a conservation plan.

"Verification" or "verify" means a determination by the Department that one or more conservation practices have been established and are being maintained in accordance with a conservation plan. The bill would amend the term to mean the on-site evaluation performed by MDARD in accordance with the protocols adopted by the Commission of Agriculture and Rural Development to determine if MAEAP standards are met. "On-site evaluation" would mean a specific set of criteria used to voluntarily evaluate a farmer's property in determining environmental risks.

The bill would define "MAEAP standards" and "MAEAP-verified farm" as those terms are defined in Section 8703 (which the bill would modify, see Part 87; Definitions)

"Groundwater" would mean waters of the State as that term is defined in Part 31, not including surface waters: groundwaters, lakes, rivers, and streams and all other watercourses and waters, including the Great Lakes, within the jurisdiction of the State. "Surface water" would mean waters of the State as that term is defined in Part 31, not including groundwater.

"Monitoring" would mean sampling and analysis to determine the levels of any of the following:

- Pesticides or their breakdown products.
- Fertilizers or their residues.
- Any other analyte as determined by the Department

"Analyte" or "analytes" would mean the material or materials that an analysis is designed to detect either qualitatively or quantitatively.

"Confirmation mechanism" would mean a scientific process for the verification or detection of analytes in groundwater utilizing at least two separate water samples collected at time intervals of greater than 14 days from the same groundwater sampling point and analyzed by peer-reviewed and authenticated laboratory methodologies.

"Demonstration project" means a project designed to illustrate the implementation and impact of alternate conservation practices.

Conservation Program; "Determination"

Part 82 of the Act authorizes MDARD to establish conservation programs to encourage voluntary use of conservation practices in Michigan. To implement them, MDARD, in coordination with the Departments of Natural Resources and EGLE (the bill would amend references to the Department of Environmental Quality), may contract with one or more entities to implement conservation practices on a person's land and, among other things, may provide payments, financial incentives, or, on determination of the implementation of conservation practices, reimbursement for rental payments or for costs of conservation practice implementation, or both; and monitor and verify compliance with conservation plans.

As part of a conservation program established under Part 82, MDARD may provide for conservation practice verification. Verification may be granted to a person if the person meets the conditions specified in Part 82 and MDARD conducts an on-site inspection of the practices and determines that the person had established and is maintaining all conservation practices provided for in the conservation plan. If MDARD determines that the practices provided in the conservation plan have not been established or are not being maintained, MDARD may revoke a person's conservation practice verification. If a verification is revoked, the person may be subject to penalties and repayment of all or a portion of the payments, financial incentives,

land rental payments, and reimbursement of costs paid for implementation of the conservation practice according to the terms of the contract.

Under the bill, where these provisions refer to "verify" or "verification", the bill would refer to "determine" or "determination", respectively.

Agriculture Pollution Prevention Fund

Part 82 establishes the Agriculture Pollution Prevention Fund. Money in the Fund must be spent, upon appropriation, only for one or more specified purposes, including for payments, financial incentives, or reimbursement for rental payments for the implementation of conservation practices. Under the bill, instead, money for the Fund could be appropriated for payments, financial incentives, cost-share, or reimbursement for rental payments to assist farmers and landowners with conservation, environmental risk reduction, and natural resource protection practices.

Under the bill, in addition to those purposes currently specified, Agriculture Pollution Prevention Fund money would have to be spent, upon appropriation, only for one of more of 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 on the property.
- Promoting MAEAP and activities to encourage more MAEAP-verified farms.
- Demonstration projects to implement conservation practices.
- Research projects on topics including one or more of the following management practices to protect natural resources: a) soil health, b) conservation practices, c) nutrient management plans, d) pesticide use and integrated pest management, e) on-farm protection of water quality or natural resources, f) impediments to verification and improvements to MAEAP standards, g) economic research on costs and benefits or effective ways to incentivize implementation of conservation practices or natural resource protection activities, and h) other topics approved by MDARD.
- Reducing nonpoint source pollution as identified by MDARD.
- Removal of potential sources of contamination.
- Emergency response and removal of potential sources of water contamination; these expenditures could not exceed \$15,000 per emergency response location.
- Providing alternate noncommunity supplies.
- Closure of wells that could affect groundwater, such as abandoned, improperly constructed, or drainage wells.
- Monitoring private well water for pesticides, fertilizers, and other contaminants.
- The removal of soils and waters contaminated by pesticides and fertilizers as well as the land application of pesticides and fertilizers at agronomic rates.
- Water quality monitoring programs; MDARD, in conjunction with the Department of Environment, Great Lakes, and Energy (EGLE), the Department of Health and Human Services, and the Environmental Assurance Advisory Council would have to develop and establish priorities, procedures, and protocols as specified in the bill for this purpose.
- To purchase land, easements, or rights in land for the protection of surface water or groundwater.

The bill would require MDARD to promulgate rules to establish laboratory confirmation mechanisms and risk assessment protocols for the development of associated relevant water quality standards developed under Part 31 or the rules promulgated under Part 31. Water quality information collected by MDARD as specified in the bill would have to be aggregated and made available to the Commission of Agriculture and Rural Development and EGLE.

Specific locations and the names of people involved in the collection of water quality information would not be subject to the Freedom of Information Act.

Not more than 10% of the total annual appropriations from the Fund could be used to monitor and benchmark the effectiveness of conservation practices and MAEAP standards in cooperation with participating farmers.

Generally, Part 82 specifies that not more than 20% of the annual appropriations from the Fund may be used for MDARD's administrative costs to implement Part 82. Administrative costs include costs incurred in engaging in one or more of the activities specified in the Act, including monitoring and verifying the implementation of conservation practices and enforcing contracts or agreements concerning conservation practices. Where the Act refers to "verifying", the bill would refer to "determining".

The Act specifies that any information voluntarily provided by a person in connection with the development, implementation, or verification of a conservation plan or conservation practices under Part 82 is confidential, is not subject to FOIA, and is not open to public inspection without the person's consent. Where the Act refers to "verification", the bill would refer to "determination". In addition, information provided in connection with verification of MAEAP standards under Part 82 also would not be subject to disclosure.

Part 87; Definitions

Part 87 defines "MAEAP standards" as all of the following as adopted by the Commission of Agriculture and Rural Development for the purpose of implementing MAEAP:

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

Part 87 defines "MAEAP-verified farm" as a farm determined by the Department as meeting applicable MAEAP standards through an on-site evaluation. Under the bill, the term would mean a farm that meets applicable MAEAP standards as defined by the Department through an on-site evaluation.

The bill would eliminate the definitions for "confirmation mechanism", "envelope monitoring", "general screening", and "method detection limit", and recodify those terms and definitions in substantially the same form in Part 82.

"Groundwater" means underground water within the zone of saturation. "Monitoring" means sampling and analysis to determine the levels of pesticides or their breakdown products; fertilizers or their residues; or other analytes as determined by the Director. The bill would amend these definitions to be the same as that provided for those term in Part 82.

Conservation & Environmental Risk Reduction Practices

Under Part 87, the Director of MDARD in conjunction with Michigan State University (MSU) Extension and MSU AgBioResearch, and in cooperation with the USDA-NRCS, EGLE, and other

professional and industry organizations, must develop conservation practices for approval by the Commission and, upon approval, must promote their implementation. Under the bill, these entities also would have to develop environmental risk reduction practices for approval and promote their implementation.

Environmental Assurance Advisory Council

Part 87 requires the Director of MDARD to establish an Environmental Assurance Advisory Council composed of himself or herself and the Directors of EGLE, MSU Extension, MSU AgBioResearch, as well as representatives of all specified individual or entities as appointed by the Director of MDARD to serve terms of three years. These include representatives of farmers and other agricultural organizations, regulated agricultural industries, and a member representing each regional environmental assurance team. Under the bill, these representatives would represent farmers, statewide agricultural organizations, and other agricultural organizations, and agricultural industries. The bill would eliminate the reference to a member representing each regional environmental assurance team.

The Council must be co-chaired by the representative from MSU Extension and a representative from one of the farmers and other agricultural organizations. Under the bill, the Council would have to be co-chaired by the representative from MSU Extension and a representative from one of the statewide agricultural organizations.

The Council must advise the Director on topics including, among other things, water quality and environmental monitoring, and the use of money from the Clean Water Fund and other funding sources to promote MAEAP and activities to encourage more MAEAP-verified farms. Under the bill, the Council would have to advise the Director on topics including, among other things, water quality *as identified in Part 82*, and the use of money in the Clean Water Fund, *the Agriculture Pollution Prevention Fund*, and other funding sources to promote MAEAP and activities to encourage more MAEAP-verified farms.

Among its other duties, the Council must do the following:

- Submit an annual report to MDARD that outlines activities, accomplishments, and emerging issues.
- Provide recommendations to the Director on the creation of a tiered recognition program for farms working toward MAEAP verification.
- Provide recommendations to the Director and the Legislature on incentives to increase participation in MAEAP.
- Annually provide recommendations to the Director on funding for research projects that address impediments to verification and improve MAEAP practice standards.

Under the bill, the Council instead would have to do the following:

- Submit an annual report to the Department and the Legislature that outlined activities, accomplishments, and emerging issues.
- Provide recommendations to the Director on the creation of a recognition program for farms working toward MAEAP verification.
- Beginning April 1, 2022, provide biannual recommendations to the Director and the Legislature on incentives and program modifications to increase participation in MAEAP.
- Annually provide recommendations to the Director on funding for research projects authorized under Section 8206 (which creates the Agriculture Pollution Prevention Fund and prescribes the purposes for which Fund money may be spent.)

The bill also would eliminate other references to a "tiered" recognition program.

MAEAP & MAEAP Grants

Part 87 requires the Director, in consultation with the Council to implement MAEAP to promote natural resources conservation through education, technical assistance, and verification. The MAEAP is a voluntary program that is available to all farms throughout Michigan. A farmer is not liable for groundwater contamination on a MAEAP-verified farm for activities on the MAEAP-verified farm unless he or she was grossly negligent, in violation of State or Federal law, or failed to comply with MAEAP standards. Under the bill, this provision also would apply to surface water contamination.

Part 87 also requires MDARD to establish a MAEAP grants program. Grants issued under the MAEAP grants program are limited to availability of funds collected under Part 87. Grants must be available for all of a list of purposes, including removal of potential sources of contamination. The bill would eliminate this purpose.

Fees; Extend Sunset

Section 8715 requires a person who is required to register a pesticide to pay, in addition to the fees required under Part 83 (Pesticide Control), various fees under Part 87. Also, a person required to pay a specialty fertilizer or soil conditioner registration fee must pay an additional \$100 water quality protection fee for each brand and product name of each grade registered. All fertilizer manufacturers or distributors licensed under Part 85 (Fertilizers), except specialty fertilizer and soil conditioner registrants, must pay \$0.0005 per pound of fertilizer sold. These fees and any interest or dividends earned must be transmitted to the State Treasurer for credit to the Freshwater Protection Fund. Section 8715 is repealed December 31, 2021. Under the bill, this sunset would be extended to December 31, 2026.

Freshwater Protection Fund

The Act establishes the Freshwater Protection Fund in the State Treasury. The Department must spend money from the Freshwater Protection Fund, upon appropriation, only for one or more specified purposes, including emergency response and removal of potential sources of water contamination. These expenditures may not exceed \$15,000 per location. The bill would eliminate this purpose for which Freshwater Protection Fund money may be spent.

The Act allows Freshwater Protection Fund money to be spend for administrative costs. For the Freshwater Protection Fund, "administrative costs" means all of the following:

- Groundwater monitoring for pesticides and fertilizers.
- Development and enforcement of natural resources protection rules.
- Coordination of programs under Part 87 with the US Environmental Protection Agency (EPA) and other State programs with environmental protection responsibilities.
- Coordination of programs under Part 87 with the USDA-NRCS and State programs with nonpoint source pollution prevention and conservation practice responsibilities.
- Management of pesticide sales information.

Under the bill, "administrative costs" would mean all of the following:

- Coordination of programs under Part 87 with the EPA and other State programs with environmental protection responsibilities.
- Coordination of programs under Part 87 with the USDA-NRCS and State programs with nonpoint source pollution prevention and conservation practice responsibilities.
- Management of pesticide sales information.

- Training of staff to improve their ability to assist farmers with MAEAP standards and verification.

In addition, Fund money may be spent for direct assistance, indirect assistance, and natural resources protection. "Direct assistance" includes programs that will provide for any of the following:

- Provision of alternate noncommunity water supplies.
- Closure of wells that may affect groundwater, such as abandoned, improperly constructed, or drainage wells.
- The environmentally sound disposal or recycling of specialty and nonspecialty pesticide containers.
- Specialty and nonspecialty pesticide disposal programs.
- Programs devoted to integrated natural resources conservation that encourage the judicious use of pesticides and fertilizers and other agricultural inputs and practices that are protective of water quality through targeted systems approach to management decisions.
- MAEAP grants.
- Programs that enhance investment of private and federal funds in conservation.
- Verification.
- Other programs established pursuant to under this part.

Under the bill, "direct assistance" would include programs that will provide for any of the following:

- The environmentally sound disposal or recycling of specialty and nonspecialty pesticide containers.
- Specialty and nonspecialty pesticide disposal programs.
- Programs devoted to integrated natural resources conservation that encourage the judicious use of pesticides and fertilizers and other agricultural inputs and practices that are protective of water quality through targeted systems approach to management decisions.
- MAEAP grants.
- Programs that enhance investment of private and federal funds in conservation.
- Verification.
- Other programs established pursuant to under this part.
- Technical assistance programs.
- The implementation of on-site evaluation systems, conservation practices, and the MAEAP.

"Indirect assistance" includes programs that will provide for any of the following:

- Public education and demonstration programs on specialty pesticide container recycling and environmentally sound disposal methods.
- Educational programs.
- Technical assistance programs.
- The promotion and implementation of on-site evaluation systems, conservation practices, and the MAEAP.
- Research programs.

Under the bill, the term would include programs that will provide for any of the following:

- Public education and demonstration programs on specialty pesticide container recycling and environmentally sound disposal methods.
- Educational programs.

- The promotion of on-site evaluation systems, conservation practices, and the MAEAP.
- Research programs.

"Natural resource protection" would include programs that will provide for either of the following: a) development of conservation practices and MAEAP standards to protect groundwater and surface water, or b) development of ways to assist the value of managing areas of land that are not utilized for traditional or production agriculture practices for environmental, ecological, and economic benefits.

Clean Water Fund

Part 88 establishes the Clean Water Fund within the State Treasury and requires EGLE, in consultation with MDARD, to spend money in the Clean Water Fund, upon appropriation, for any of the following:

- To implement the programs described in EGLE's document entitled "A Strategic Environmental Quality Monitoring Program for Michigan's Surface Waters", dated January 1997.
- Not more than \$100,00 of the total annual appropriations from the Fund to monitor and benchmark the effectiveness of conservation practices and MAEAP standards in cooperation with participating farmers.
- Promotion of MAEAP and activities to encourage more MAEAP-verified farms.
- Water pollution control activities.
- Wellhead protection activities.
- Storm water treatment projects and activities.

Under the bill, EGLE, in consultation with MDARD, would have to spend money in the Clean Water Fund, upon appropriation, for any of the following:

- To implement the programs described in EGLE's document entitled "Michigan Surface Water Monitoring Strategy Update 2017"; in implementing these programs, EGLE could contract with any person (as is currently the case).
- Water pollution control activities.
- Wellhead protection activities.
- Storm water treatment projects and activities.
- At least 10% of the total annual funds received in the Fund would have to be deposited into the Agricultural Pollution Prevention Fund.

MCL 324.8201 et al.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill would have a minimal fiscal impact on MDARD. The bill would extend a sunset on certain fees through the end of 2026, which would maintain the current level of revenue received by the Department, which has averaged \$6.5 million annually in recent years.

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.