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House Bills 5034 and 5035 (as passed by the House)  
Sponsor: Representative Joel Sheltroun (H.B. 5034)  
Representative Jeff Mayes (H.B. 5035)  
House Committee: Agriculture  
Senate Committee: Agriculture

Date Completed: 11-28-07

### **CONTENT**

**The bills would amend Part 85 (Fertilizers) of the Natural Resources and Environmental Protection Act to include agricultural use in certain provisions that preempt and regulate local ordinances regarding the manufacture, storage, distribution, or sale of products regulated under Part 85.**

House Bill 5034 is tie-barred to House Bill 5035. The bills are described in detail below.

#### **House Bill 5035**

Part 85 preempts any local ordinance, regulation, or resolution that duplicates, extends, or revises the provisions of the part. A local unit of government may not enact, maintain, or enforce an ordinance, regulation, or resolution that contradicts or conflicts with the part, except as otherwise provided.

If a local unit of government is under contract with the Michigan Department of Agriculture (MDA) to act as its agent or it has received prior written authorization from the MDA, it may enact an ordinance that is identical to Part 85 or rules promulgated under the part, with some exceptions.

The local unit of government's response for a violation of that ordinance involving the manufacture, storage, distribution, or sale of products regulated under Part 85 is limited to issuing a cease and desist order.

Under the bill, that provision also would apply to a violation involving the agricultural use of products regulated under Part 85.

Part 85 permits a local unit of government to enact an ordinance that prescribes standards different from those in Part 85 and rules promulgated under the part and that regulates the manufacture, storage, distribution, or sale of a product regulated by Part 85 under either or both of the following conditions:

-- Unreasonable adverse effects on the environment or public health will exist within the local unit of government, taking into consideration specific populations whose health may be adversely affected within the local unit.

-- The local unit of government has determined that the manufacture, storage, distribution, or sale of a product regulated by Part 85 within that local unit has resulted or will result in the violation of other existing State or Federal laws.

The bill would include the agricultural use of a product regulated under Part 85 in those provisions.

Also, under the bill, a local unit of government could adopt an ordinance differing from Part 85 *only* under either or both of the above circumstances.

Under Part 85, within 60 days after a local unit of government submits a resolution identifying unreasonable adverse effects on the environment or public health, the MDA must hold a local public meeting to determine the nature and extent of unreasonable adverse effects on the environment or public health due to the manufacture, storage, distribution, or sale of a product regulated under Part 85.

Under the bill, that requirement also would apply to adverse effects on the environment or public health due to the agricultural use of a product regulated by Part 85.

The bill would replace "enact" with "adopt" in reference to an ordinance, regulation, or resolution in the provisions described above.

### **House Bill 5034**

The bill would define "agricultural use" as that term is defined in Section 36101 of the Act, i.e., the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, captive cervidae, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities. Agricultural use includes use in a Federal acreage set-aside program or a Federal conservation reserve program. The term does not include the management and harvesting of a woodlot.

MCL 324.8501 (H.B. 5034)  
324.8517 (H.B. 5035)

Legislative Analyst: Curtis Walker

### **FISCAL IMPACT**

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Debra Hollon

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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.