

FERTILIZER REGULATION

House Bill 5866 as enrolled
Public Act 276 of 1998
Second Analysis (8-14-98)

Sponsor: Rep. Howard Wetters
House Committee: Agriculture
Senate Committee: Farming,
Agribusiness and Food Systems

THE APPARENT PROBLEM:

Agricultural chemicals, both fertilizers and pesticides, have enabled the U.S. system of agriculture to become one of the most productive in the world even as total farm acreage in the U.S. has decreased. For many years, the environmental and human health costs of this increased agricultural efficiency were not recognized or understood, but in recent years there has been a growing public recognition that the benefits of agricultural chemicals are accompanied by risks as well. One major public concern has been over the contamination of water supplies by the agricultural use of fertilizers and pesticides. The agricultural industry has begun to address consumer concerns in a number of ways, including legislation. For example, in 1993, Public Act 131 established uniform pesticide regulations across the state and prohibited local governments from enacting local ordinances that conflicted with them. In that same year, Public Act 247 created the Groundwater and Freshwater Protection Act to protect groundwater from agricultural pesticides, and Public Act 248 provided additional restrictions on the use of pesticides. However, although it was noted at the time that groundwater contamination by nitrogen fertilizers was a more serious problem than contamination by agricultural pesticides, legislation that would have established strict regulation of agricultural fertilizer contamination on groundwater was not acted upon. Instead, Public Act 247 required only that the Department of Agriculture establish a voluntary, incentive-based program. Accordingly, legislation has been introduced that would complete the process begun under Public Acts 131, 247, and 248 by establishing uniform fertilizer regulations across the state and by prohibiting local governments from enacting local ordinances.

THE CONTENT OF THE BILL:

Prohibition of local fertilizer ordinances. The bill would amend Part 85 of the Natural Resources and Environmental Protection Act (NREPA), which regulates fertilizers, to prohibit a local unit of government from enacting an ordinance or regulation that conflicts "in any manner" with the act. The bill would specify the legislature's intent that the act preempt any "local ordinance, regulation or resolution that duplicated, extended, or revised the provisions of the act."

Requirements for Local Governmental Units. The bill would allow a local unit of government to enact an ordinance with requirements identical to the requirements of the act under the following conditions:

** A local unit could enact an ordinance regarding the posting and notification of a fertilizer application. Enforcement of such an ordinance would not require prior authorization from the Department of Agriculture, nor would a contract with the department be required, provided that those in charge of enforcing the ordinance complied with the training and enforcement requirements established by the department and the local unit reimbursed the department for the cost of training its personnel. The local unit would immediately notify the department of the enactment of such an ordinance and of citations issued for violations. A violation of a local ordinance would be limited to a civil infraction of up to \$500.

** A local unit of government that was under contract with the department to act as its agent, or that had received prior written authorization from the department, could pass an ordinance which -- except as otherwise prohibited -- was identical to the act.

The local unit's enforcement response for a violation of such an ordinance that involved the manufacturing, storage, distribution, or sale of products regulated under Part 85 would be limited to issuing cease and desist orders, as prescribed under the act.

Exceptions. The bill would allow a local unit of government to enact an ordinance prescribing standards regulating the distribution, sale, storage, handling, use, application, transportation or disposal of fertilizers that were different from those contained in the act if, taking into consideration specific populations whose health might be adversely affected, "unreasonable adverse effects on the environment or public health will exist within the local unit of government," and/or the local unit determined that the use of a fertilizer within its jurisdiction violated other existing state or federal laws. The bill would specify that an ordinance enacted under this provision could not conflict with existing state or federal laws and could not be enforced by the local unit until approved by the Commission of Agriculture. If the commission denied an ordinance under this provision, it would have to provide a detailed explanation of the basis for the denial within 60 days.

Public Hearings. If a local unit of government identified unreasonable adverse effects on the environment or public health, as evidenced by a resolution submitted to the Department of Agriculture (DOA), then the DOA would be required to:

****Hold a local public meeting within 60 days after the submission of the resolution to determine the nature and extent of these adverse effects on the environment or public health due to the manufacturing, storage, distribution, or sale of a regulated product.**

****Issue a detailed opinion regarding the adverse effects identified by the resolution within 30 days after the meeting.**

Cease and Desist Orders. Currently, the act specifies that the director of the Department of Agriculture may select samples from commercial fertilizers for analysis and comparison with their labels, and may also seize or stop the sale of a fertilizer or soil conditioner that has been misbranded. The bill would add that the director could also order a person to cease and desist from manufacturing, storing, distributing, selling or registering a product regulated under the act, and that

an order to stop the sale of a fertilizer or soil conditioner could also apply to a product that had been "adulterated," which would be defined under the bill to mean a product that contained any deleterious or harmful substance in sufficient amounts to render it injurious to beneficial plant life, animals, humans, aquatic life, soil or water when applied in accordance with directions for use on the label, or if adequate warning statements or directions for use which might be necessary to protect plant life, animals, humans, aquatic life, soil or water are not shown on the label. The bill would also specify other provisions for cease and desist orders, including the following:

- An order would have to be in writing and would inform the manufacturers, storage operator, distributor, seller, or registrant of the grounds for its issuance. Failure to comply immediately would subject the person to penalties specified under the bill.
- The director could rescind an order immediately after being satisfied by inspection of compliance.
- If it appeared that a product was being distributed in violation of Part 85 of the act, the director could issue and enforce a written order prohibiting the sale, use, or removal of a product regulated by this part of the act to the owner or custodian of any product or product lot and require that the product be held by the owner or custodian at a designated place until it was determined that the law had been complied with, the violation had been legally disposed of, and all costs and expenses incurred had been paid.
- Any product or product lot that did not comply with the provisions of Part 85 of the act would be subject to seizure upon an action filed by the director in a court of competent jurisdiction in the county in which the product was located. If the court found that the product violated the provisions of the act and ordered it condemned, it would have to be disposed of in a manner consistent with the quality of the product and state laws. However, disposition could not be ordered by the court without first providing the claimant an opportunity to petition for its release or for permission to process or relabel it to bring it into compliance.

MCL 324.8501 et al.

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that the requirement that the Department of Agriculture hold local public meetings could result in additional state administrative costs. The amount of the costs would be conditional upon the number of meetings held. (5-26-98)

ARGUMENTS:**For:**

At least one local government -- Washtenaw County -- has expressed an interest in enacting ordinances regulating the use of fertilizers within its jurisdiction, and some have raised concerns that local governments lack the technical expertise to determine whether and how fertilizers should be regulated. Furthermore, continued regulation at the local level could create a patchwork of laws across the state that would undermine any attempt at uniform regulation of these chemicals. In addition, the consequences of such varied regulation could result in increased costs for fertilizer dealers, and users. Some people also fear that uneven regulation could pit farmers with land in jurisdictions that do not regulate fertilizers against those who must farm under stiff local regulations. In addition, some farmers, whose land traversed more than one governmental jurisdiction, would have the extra burden of complying with a variety of regulations in order to farm their land.

Response:

While House Bill 5866 would prohibit a local government from enacting or enforcing a local ordinance on fertilizer use, the bill would allow local governments to enact such ordinances if unreasonable adverse environmental effects existed. Such ordinances would be subject to the approval of the director of the Department of Agriculture before they could be enforced. Because of this relaxation in a proposed strict prohibition against local ordinances, a patchwork of fertilizer regulation still could develop. Furthermore, the bill does not specify criteria that the director would consider in determining whether an ordinance should be approved. The bill would make it clear that, except under certain conditions, local governments could not enact ordinances on fertilizer use that, some fear, could lead to regulating fertilizers into virtual non-use.

For:

Contamination of surface and groundwater by agricultural chemicals (both fertilizers and pesticides) is an increasingly well-recognized problem. Although nitrate contamination also can occur from human and other animal wastes (such as the wastes produced by the food animal industry), in agricultural states nitrate contamination of groundwater has been directly related to agricultural uses of nitrogen-containing inorganic fertilizers. While nitrate itself is harmless to adults, it is readily converted -- both by bacterial action in foods and in the body -- to form nitrite, which, when it combines with compounds called secondary amines, forms powerful cancer-causing chemicals called nitrosamines. Nitrate contamination of water supplies also has been associated with a potentially fatal blood disease in infants, in which nitrates in the baby's bloodstream reduces the baby's oxygen levels (hence the name "blue baby syndrome"). Although rare, poisonings of infants from nitrate-contaminated water do occur.

Against:

The bill would strike at the concepts of local control and home rule by diminishing the authority of local executives and local governing bodies to make decisions that affect the health and safety of residents in their communities. Although local governments could enact ordinances, under certain circumstances, these ordinances still would be subject to the approval of the Department of Agriculture. If local fertilizer ordinances would cause difficulties for those in the fertilizer and agricultural industries, then perhaps the legislature should consider establishing uniform standards for local ordinances to regulate agricultural fertilizers. Such a compromise would be preferable to the language of House Bill 5866, which is a virtual prohibition of any local fertilizer ordinances. Furthermore, the bill represents yet another effort to erode local governments' decision-making authority. Previously, the legislature enacted Public Act 319 of 1990, which prohibits a local government from regulating, taxing, enacting, or enforcing any ordinance pertaining to pistols and firearms and their ammunition, except as provided by federal or state law. Similarly, the ability of a municipality to regulate wetland use or development is being threatened. Unfortunately, such measures deny communities the authority to protect their residents' health, safety, and welfare.

Against:

Fertilizer use is widespread in farming, but also is as close as the neighbor's yard. Fertilizers are used not only in agriculture, but also in lawn care, and in home gardening. Because exposure to these chemicals is possible for many persons, including those who may be particularly sensitive to fertilizer exposure such as infants, small children, and senior citizens, it is important that the public be allowed to decide whether and in what manner fertilizers may be used. Local governments present the forum where such decisions should be made by a community, since state law does not provide adequate regulation in this area.

Against:

It is not clear whether local governments would be able to take action against persons who violated the act. Some local government officials contend that their law enforcement personnel have standing under state law to take action against persons who commit felonies, but that they cannot act on misdemeanors or civil infractions without having either specific language in the act providing for enforcement by local governments or local ordinances providing for such enforcement. Local units should be able to enact ordinances mirroring state law in order to address violations of the act.

Response:

Various statutes permit local governments to enforce state law, and local ordinances are not needed in these instances to give local units enforcement authority. For example, this authority is provided under Public Act 59 of 1935, which created the state police and provides for public safety, and under the Public Health Code, which permits local health department officers to issue orders for the correction or removal of an imminent danger to the health or lives of persons living in the area served by a local health department. Further, the bill would permit the director to contract with a local government to act as its agent for the enforcement of the act and rules promulgated under it.

Analyst: R. Young

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.