

Legislative Analysis



FERTILIZERS

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House Bill 6115

Sponsor: Rep. Terry Brown

House Bill 6116

Sponsor: Rep. Mary Valentine

1st Committee: Great Lakes and Environment

2nd Committee: Agriculture (pending referral)

Complete to 5-20-08

A SUMMARY OF HOUSE BILLS 6115 & 6116 AS INTRODUCED 5-13-08

The bills would amend fertilizer regulations contained in Part 85 (Fertilizers) of the Natural Resources and Environmental Protection Act (MCL 324.8501 et seq.). In Part 85 of NREPA, "fertilizer" means a substance containing a plant nutrient or nutrients designed for use, or claimed to have value, in promoting plant growth. "Fertilizer" does *not* include unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and other materials exempt under Part 85's rules.

House Bill 6115 would do the following:

- Prohibit the use of a fertilizer containing more than 0.5 percent available phosphate on lawns, including golf courses, except for (1) lawns with phosphorus-deficient soils, (2) new lawns in their first growing season, or (3) golf courses, when applied under the direction of a person who has successfully participated in an approved ongoing training program.
- Prohibit the release of any fertilizer on impervious surfaces such as streets, sidewalks, and parking lots.
- Prohibit the application of any fertilizer on a lawn with soil that is frozen or saturated with water.
- Clarify when local ordinances regulating the use or display of fertilizers are permitted.
- Specify the penalties for violations of the new restrictions of the use of fertilizers containing higher available phosphate levels on lawns and golf courses and the prohibition on the release or application of any fertilizer on impervious surfaces or lawns with frozen or saturated soils. (Generally speaking, violations of the new restrictions would be classified as civil infractions and would be subject to lower maximum fines than other violations of Part 85—a maximum of \$50, if the person committing the violation owns, rents, is a family member of the owner or renter, or lives on the property where the violation occurs so long as the property either (1) is a single-family residential parcel or (2) comprises any parcel or contiguous parcels no more than four acres.

House Bill 6116 would prohibit displaying for sale a fertilizer containing more than 0.5 percent available phosphate for lawns or gardens and, where fertilizer with higher levels is sold, require a sign that meets rules for content, legibility, and placement.

House Bill 6115

Application of Phosphate-containing Fertilizer to Lawns and Golf Courses

Beginning January 1, 2010, no person could apply a fertilizer containing more than 0.5 percent available phosphate to a lawn. The term "lawn" would mean "land planted in closely mowed, managed grasses"—apparently including golf courses—but *not* "athletic fields, pasture, hayland, hay, turf grown on turf farms, or any other form of agricultural production."

Exceptions. Fertilizer containing more than 0.5 percent available phosphate could only be applied to lawns and golf courses in the following circumstances:

- Phosphorus-deficient soil, as indicated by testing. If a laboratory test or another approved method of testing performed within the last three years indicated that a lawn's soil contained insufficient available phosphorus for healthy lawn growth, a fertilizer with more than 0.5 percent available phosphate could be applied "at the rate necessary to correct the deficiency."
- First growing season of a new lawn. In the first growing season for a new lawn being established with seed or sod, fertilizer containing more than 0.5 percent available phosphate could be applied at a rate specified by the director of the Department of Agriculture unless testing within the last three years indicated a higher rate was needed to correct a deficiency.
- Golf courses. Fertilizer containing more than 0.5 percent available phosphate could be applied to a golf course (1) under the direction of a person licensed, certified, or approved by a qualifying training program, and (2) at a rate indicated by "best management practices." To obtain a license or certification from an organization, a person would have to participate successfully in an ongoing training program, approved by the director, that addresses best management practices for applying phosphate-containing lawn fertilizer and the training program.

Public information. The Department of Agriculture would have to post information about the application of phosphorus-containing fertilizers to lawns and golf courses on its website and publicize the availability of this information by means it considers appropriate.

Impervious Surfaces and Lawns with Frozen or Saturated Soil

Impervious surfaces. A person who releases any fertilizer as defined in Part 85 on an "impervious surface" would have to both (1) promptly contain the fertilizer; and (2) either legally apply the fertilizer to a lawn or another appropriate site or return the fertilizer to an appropriate container. Impervious surfaces would include paved highways, streets, sidewalks, or other surfaces that prevent water from infiltrating the soil.

Lawns with frozen or saturated soil. The bill would prohibit the application of any fertilizer to a lawn with soil that is frozen or saturated with water.

Local Fertilizer Ordinances

When a local fertilizer ordinance is permitted. Generally speaking, Part 85 preempts any local ordinance regulating the manufacture, storage, sale, or use of fertilizer. The bill would clarify existing exceptions to the preemption rule, allowing ordinances when needed to address adverse environmental or public health effects or a conflict with other laws. Under Section 8517(3), as revised by the bill, local fertilizer ordinances would be allowed if the local governmental unit's legislative body determines that, without the local ordinance, one or more of the following would apply (and the Commissioner of Agriculture approves the ordinance):

- Unreasonable adverse environmental or public health effects, taking into account the possible health effects on specific populations within the local jurisdiction.
- Manufacturing, storage, distribution, sale, or agricultural use of the product within the local jurisdiction has or would result in a violation of other state or federal laws.

Commission of Agriculture disapproval of local ordinances. Currently, a local ordinance must be approved by the Commission of Agriculture before it can be enforced. The bill would retain this requirement but slightly revise its wording. The Commission would continue to have to provide a written explanation within 60 days if it disapproves a local fertilizer ordinance.

Effect on existing local ordinances regulating the display or use of phosphate-containing fertilizers for lawn and gardens. The bill would specify that local governmental units could continue to maintain and enforce existing ordinances regulating or prohibiting the display or use of phosphate-containing fertilizers for lawns and gardens that were in effect on the bill's effective date.

Enforcement and Penalties

Warnings and administrative fines of up to \$1,000. Under Section 8520(2), a person who violates Part 85 or its rules may be given a warning (if the violation occurred despite the exercise of due care or did not result in significant harm) or assessed an administrative fine of up to \$1,000 for each violation or attempted violation, after notice and an opportunity for an administrative hearing. Under the bill, a person assessed an administrative fine under this section could not also be assessed a civil fine under Section 8520(7). That section classifies violations of the new restrictions concerning lawns, golf courses, impervious surfaces, and lawns with frozen or saturated soils as a civil infraction with a fine of up to \$1,000 but with reduced maximum fine of only \$50 in many circumstances. See below.

Criminal penalties and additional fines of up to \$5,000. In addition, a person who violates Part 85 or its rules is guilty of a misdemeanor punishable by imprisonment by not more than 90 days or a fine of not more than \$5,000 for each violation or attempted violation. A fine of

up to \$5,000 per violation (up to \$25,000 if the violation was knowing and malicious) may be imposed in addition to any administrative fine imposed. Under the bill, this section would not apply to violations of the new restrictions contained in Section 8512b (application of fertilizer to lawns and golf courses) and Section 8512f (releasing or applying fertilizers to impervious surfaces or lawns containing frozen or saturated soil).

Injunctions. The bill would retain the director's authority to bring an action to enjoin a violation or threatened violation of Part 85 or its rules.

Penalties for violations of Sections 8512b or 8512f, reduced maximum fine for certain violators. A violation or attempted violation of Sections 8512b or 8512f (regulating fertilizer use on lawns, golf courses, impervious surfaces, and lawns with frozen or saturated soils) would be responsible for a state civil infraction and would be subject to a civil fine of up to \$1,000 for each violation or attempted violation. If the violation or attempted violation took place on either a (1) a single-family residential parcel or (2) any other parcel or contiguous parcel totaling four acres or less, the person committing the violation could not be fined more than \$50 so long as he or she lived on, rented, or owned the property where the violation took place (or was a member of the owner or renter's family).

Civil enforcement actions for \$5,000 civil fines and to recover costs of investigations. Currently, the Attorney General may file a civil court action against persons who violate Part 85 or its rules and the court may impose a civil fine of not more than \$5,000 for each violation or attempted violation and the reasonable costs of the investigation. Fines and costs recovered by the Attorney General are forwarded to the state treasurer for deposit into the Fertilizer Control Fund.

Under the bill, the Attorney General would *not* be authorized to bring a civil action against persons who violate or attempt to violate Sections 8512b or 8512f seeking a \$5,000 civil fine but might be able to bring a civil action to recover the costs of the investigation.

Fertilizer Packaging

"Package" and "Packaged." Under the bill, the term "package" would mean "an individual container used to distribute any product regulated by [Part 85]. "Packaged" would describe "any type of product regulated by [Part 85] that is distributed in individual labeled containers."

House Bill 6116

The bill would add a new Section 8512d to Part 85 of NREPA regulating the display of lawn and garden fertilizers containing more than 0.5 percent available phosphate.

- Display ban. Beginning January 1, 2010, no person could *display for sale* a lawn fertilizer or lawn or garden fertilizer containing more than 0.5 percent available phosphate. (Such fertilizers could apparently still be sold, but not displayed).

- Required sign for sellers of fertilizer with higher levels of available phosphate. Sellers of a lawn or lawn and garden fertilizer with a higher level of available phosphate would have to:
 - Post a sign advising customers in easily legible type the requirements of Section 8512b(1) to (3), which are the rules allowing the use of fertilizer with a higher level of available phosphate only for lawns with soils that have tested deficient; new lawns at allowed rates of application, and for golf courses by trained individuals.
 - In the same size or smaller type, the sign could also advise customers that fertilizer with more than 0.5 percent available phosphate is available upon request for uses permitted under the law.
 - The sign would have to be posted in a conspicuous location in the area where other fertilizer, if any, is displayed.

House Bill 6116 is tie-barred to House Bill 6115, meaning that unless that both bills are enacted, House Bill 6116 will not take effect.

FISCAL IMPACT:

There would be an indeterminate, although likely negligible, fiscal impact on state and local government. Any fiscal impact would be the result of increased administration and judicial caseload.

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■ 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.