

Legislative Analysis



FERTILIZERS

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House Bill 6115 (Substitute H-2)

Sponsor: Rep. Terry Brown

1st Committee: Great Lakes and Environment

2nd Committee: Agriculture

Complete to 6-18-08

A SUMMARY OF HOUSE BILL 6115 AS REPORTED FROM COMMITTEE 5-27-08

BRIEF SUMMARY:

The bill would amend Part 85 (Fertilizers) of the Natural Resources and Environmental Protection Act (MCL 324.8501 et seq.) to do the following:

- Require that fertilizer labeled for use on lawns contain directions prohibiting the application of more than 0.25 pounds of available phosphate (P_2O_5) per 1,000 square feet of lawn area.
- Prohibit persons from applying phosphorus-containing fertilizer at a rate higher than this maximum with exceptions as described below.
- Allow exceptions 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 trained individual.
- Prohibit the release of any fertilizer on impervious surfaces or structures, 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.
- Allow local governmental units to maintain and enforce ordinances prohibiting or restricting the use of phosphorus fertilizers that are in effect when the bill takes effect.
- Specify the penalties for violations.

As introduced, the bill restricted the use of fertilizers containing more than 0.5 percent available phosphate on lawns. As reported, the bill does not restrict the content of the fertilizer, but establishes a maximum rate at which phosphorus fertilizers could be applied (0.25 pound of available phosphate per 1,000 square feet of lawn).

DETAILED SUMMARY:

Definition of fertilizer. 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. The bill would not change the definition of fertilizer.

Definition of "lawn." Under the bill, 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."

Application of phosphorus fertilizers to lawns and golf courses. [Section 8512b(1)] Beginning January 1, 2010, both of the following rules would apply:

- (1) A fertilizer labeled for use on lawns would be required to have use directions that prohibit applying more than 0.25 pounds of available phosphate (P₂O₅) per 1,000 square feet of lawn area.
- (2) Unless an exception applies, no person could apply fertilizer to a lawn at a rate exceeding this maximum.

Exceptions. [Section 8512b(1)-(3)] A fertilizer containing phosphorus could only be applied to lawns and golf courses at a rate higher than 0.25 pounds of available phosphate per 1,000 square feet of lawn area in the following circumstances:

- Phosphorus-deficient soil, as indicated by testing within past three years. If a tissue, soil, or other test performed by a laboratory or another approved method within the last three years indicated that a lawn's soil contained insufficient available phosphorus for healthy lawn growth, a fertilizer 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 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 the deficiency.
- Golf courses. Fertilizer 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 limits on 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. [Section 8215(1)] 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 outdoor structures that prevent water from infiltrating the soil.

Lawns with frozen or saturated soil. [Section 8215(2)] The bill would prohibit the application of any fertilizer to a lawn with soil that is frozen or saturated with water.

Maintenance of existing local ordinances regulating the use of phosphorus lawn fertilizers. The bill would allow local governmental units to maintain and enforce existing ordinances that regulate or prohibit the use of lawn fertilizer containing available phosphate (P₂O₅) that are in existence when the bill takes effect.

Prohibit fines under both Part 85 and local ordinance. The bill would not change the provisions of Part 85 allowing persons who violate Part 85 (or who attempt to do so) to receive warnings or administrative fines of up to \$1,000 after notice and an opportunity for an administrative hearing. The bill would specify, however, that a person could not be fined under both the administrative fine provision of Part 85 and a local ordinance for the same violation.

Criminal penalties and additional fines of up to \$5,000. Currently, a person who violates Part 85 or its rules may also be found 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, violations of Sections 8512b (label requirements, maximum application rate, exceptions) or 8512f (application of fertilizers to impervious surfaces or lawns with frozen or saturated soils) would not be subject to criminal penalties or these additional fines.

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. [Section 8520(7)] A person who violates or attempts to violate Section 8512b (label requirements, maximum application rate, exceptions) or Section 8512f (application of fertilizers to impervious surfaces or lawns with frozen or saturated soils) would be responsible for a state civil infraction and subject to a civil fine of up to \$1,000 for each violation or attempted violation. A person could not be fined more than \$50 for a violation or attempted violation taking place on the following types of property, if the person lived on, rented, or owned the property (or was a member of the owner or renter's family):

- A single-family residential parcel.
- Any other parcel or contiguous parcel totaling four acres or less.

Civil enforcement actions for \$5,000 civil fines and to recover costs of investigations. [Section 8520(9)] 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.

A civil action filed under Part 85 is subject to applicable provisions of the Revised Judicature Act of 1961.

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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