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## PESTICIDE REGULATION

House Bill 4344 as enrolled  
Third Analysis (11-16-93)

Sponsor: Rep. Tom Alley  
Committee: Agriculture and Forestry

### ***THE APPARENT PROBLEM:***

Pesticide regulation is primarily the responsibility of the federal and state governments. The federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) grants the U.S. Environmental Protection Agency the authority to regulate the registration, classification, and labeling of pesticides as well as the conduct of commercial and private pesticide applicators. In Michigan, pesticide regulation is governed by the Pesticide Control Act. Enacted in 1976, the act requires the registration of pesticides, regulates the distribution and labeling of these substances, requires the licensure of pesticide dealers, and provides for the certification of private and commercial applicators. Public Act 449 of 1988 amended the Pesticide Control Act to require the registration of certain commercial applicators and to establish certain qualifications, including training, that these applicators must meet. In addition, Public Act 449 increased the power of the director of the Michigan Department of Agriculture to restrict the use of certain pesticides, requires an apprenticeship for licensed commercial and aerial pesticide applicators, and requires the Department of Agriculture to promulgate rules in such areas as the duty of commercial applicators to inform customers, training for pesticide applicators, and competency standards for pesticide applicator trainers. In addition to these regulations, a number of local governments across the state reportedly have enacted ordinances affecting pesticide use in their localities. Some people believe, however, that pesticide regulation should be uniform across the state and that local governments should be prohibited from enacting local ordinances.

### ***THE CONTENT OF THE BILL:***

Prohibition of local pesticide ordinances. The bill would amend the Pesticide Control Act 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 pesticide 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 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 that was identical to the act. The local unit's enforcement response for a violation of such an ordinance 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 pesticides 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

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local unit of government," and/or the local unit determined that the use of a pesticide 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. In addition, "general use ready-to-use pesticides" (defined under the bill to mean pesticides such as aerosol insecticides or rodent bait boxes, which are not classified as restricted use pesticides, and which are applied directly from containers without mixing) could be used by persons who were not licensed applicators.

**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.**

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

**School Administration Responsibilities.** At the beginning of each school year, school administrators would notify parents and guardians of their right to be informed prior to any pesticide application at their school. The notice to parents and guardians would include a statement that a pesticide would be applied, the approximate location, and the date of the application.

**Department of Agriculture Duties.** The bill would require the Department of Agriculture to develop a program on pesticide container recycling and disposal. The program would be limited to those licensed pesticide dealers and others who sought department approval to participate. The bill would not prohibit the department from contracting with a local unit of government to enforce the Pesticide Control Act. In turn, the local unit of government would be required to reimburse the department for actual costs and to ensure that local government

training personnel complied with the department's training and enforcement requirements.

Finally, the bill would specifically allow the department to promulgate rules regarding the following:

**\*\*Notification of those who entered public and private buildings where pesticides -- other than general use, ready-to-use pesticides -- had been applied.**

**\*\*Prenotification by a building manager (defined under the bill to mean the person responsible for a building's pest management program) for persons regarding the application of a pesticide at day-care centers.**

**\*\*A building manager's responsibility to post signs provided by a commercial applicator.**

**\*\*Designation of posted school bus stops as sensitive areas.**

**\*\*Establishment of a fine schedule for violations of local ordinances regarding the use of pesticides in a manner that was unsafe or inconsistent with labeling.**

**Pesticide Advisory Committee.** Currently, the Pesticide Advisory Committee is composed of the directors of the Departments of Agriculture, Natural Resources (DNR), Public Health, the Michigan Cooperative Extension Service, and a DNR representative with expertise regarding water quality programs. Eight additional members are appointed by the director of the Department of Agriculture, one representing each of eight specific groups of licensed applicators and the agricultural industry. House Bill 4344 would add that one member would represent nongovernmental organizations representing human health interests (but would not increase the panel's membership to nine members). Further the bill would require that one member represent the Michigan Pest Control Association, rather than "licensed indoor commercial applicators." In addition, the bill would require that any member who was absent for four or more consecutive meetings be removed by the director of the Department of Agriculture

MCL 286.553 et al.

## ***FISCAL IMPLICATIONS:***

According to the Department of Agriculture, minimal costs would be incurred by the department for public hearings and for the costs of adopting rules and approving or disapproving local ordinances. (11-15-93)

## ***ARGUMENTS:***

### ***For:***

According to the Department of Agriculture, a number of local governments (West Bloomfield, Livonia, Forsyth Township, Bear Lake Township, Milford, Holland, East Lansing, Ann Arbor, Ingham County, Troy, and Alma) have enacted or are considering enacting ordinances regulating the use of pesticides within their jurisdictions. In addition, some school districts have enacted policies regulating the use of pesticides on school grounds. The range of regulation varies from assessing fees, to requiring notification before and after pesticide application, to restricting the use of certain pesticides. Some have raised concerns that these local governments lack the technical expertise to determine whether and how pesticides 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 pesticide applicators, dealers, and users. Some people in the agricultural industry also fear that uneven regulation could pit farmers with land in jurisdictions that do not regulate pesticides 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 4344 would prohibit a local government from enacting or enforcing a local ordinance on pesticide 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 pesticide regulation still could develop. Furthermore, the bill does not specify criteria that the director would consider in

determining whether an ordinance should be approved.

### ***For:***

A 1991 U.S. Supreme Court decision underscores the need for state governments to take action restricting the ability of local governments to regulate pesticide use within their jurisdictions. The case stems from an ordinance enacted in Casey, Wisconsin that requires a permit for the application of any pesticide to public lands and private lands subject to public use, or for the aerial application of any pesticide to private lands. A property owner applied for a permit for aerial spraying of a portion of his land. The town granted him a permit, but precluded aerial spraying and restricted the lands on which ground spraying was allowed. The property owner subsequently sued the town claiming that the ordinance regulating the use of pesticides was preempted by state and federal law. In Wisconsin Public Intervenor v Mortier, the court upheld local rights to regulate pesticides in states that have not explicitly curtailed these regulations (111 S.Ct. 2476). Specifically, the court ruled that FIFRA did not preempt the town's ordinance either explicitly, implicitly, or by virtue of an actual conflict between laws. Thus, local governments can make their own rules concerning pesticide use, unless prohibited from doing so by the states. House Bill 4344 would make it clear that, except under certain conditions, local governments could not enact ordinances on pesticide use that, some fear, could lead to regulating pesticides into virtual non-use.

### ***For:***

Under the bill, the department would be required to develop a pesticide container recycling and disposal program. Efforts are already under way in the department to establish a recycling program. Last year, the department ran a pilot program for the disposal of farm pesticides in eleven communities around the state. The department reportedly intends to expand this program to twenty-three communities. Working with Grower Services Corporation and Michigan State University, the department also plans to include in the program the recycling of empty plastic pesticide containers.

### ***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 Commission of Agriculture. If local pesticide ordinances are causing difficulties for those in the pesticide and agricultural industries, then perhaps the legislature should consider establishing uniform standards for local ordinances to regulate agricultural pesticides. Such a compromise would be preferable to the language of House Bill 4344, which is a virtual prohibition of any local pesticide 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:***

Pesticide use is widespread in farming, but also is as close as the neighbor's yard. Pesticides are used not only in agriculture, but also in lawn care, home gardening, and pest control in schools, homes, and office buildings. Because exposure to these chemicals is possible for many persons, including those who may be particularly sensitive to pesticide exposure such as infants, small children, and senior citizens, it is important that the public be allowed to decide whether and in what manner pesticides may be used. Local governments present the forum where such decisions should be made by a community, since neither FIFRA nor state law provides adequate regulation in this area. Many local governments have taken the lead in protecting the public from pesticide exposure through the enactment of ordinances requiring the notification of persons when an area has been treated with pesticides. Such notification enables persons to decide about the risks of exposure in their communities.

***Response:***

The Pesticide Control Act provides for the Department of Agriculture to promulgate rules to carry out the act. The bill also would permit the promulgation of rules concerning notification and/or posting to inform persons entering certain public and private buildings or areas where pesticides had been applied. It should be noted that

the department has promulgated rules on pesticide use that address many of the concerns that local governments have attempted to handle through local ordinances. Department of Agriculture Pesticide Use Regulation 637 establishes requirements in a number of areas, including applying pesticides, maintaining a registry of persons who due to a medical condition must be notified before a pesticide is applied, mixing and loading pesticides, cleaning equipment, using protective equipment, minimizing drift in pesticide application, posting signs when pesticides have been applied, using service agreements, and providing risk and benefit information on pesticide use.

***Against:***

It is important that persons entering areas where pesticides have been applied be aware of the existence of the pesticides. Accordingly, the bill would allow the Department of Agriculture to promulgate rules regarding notification and posting of signs at treated areas. However, the bill does not specify whether this provision would apply only to commercial pesticide applicators, or to private citizens who used pesticides on their property. For example, some gardeners follow the advice of one popular gardening expert, who recommends spraying lawns and shrubs with household products such as bleach, as a cure for various garden ailments. Under the bill, this practice could conceivably be interpreted to mean that these gardeners would have to notify the Department of Agriculture when they used this method. The bill should be amended to specify that only commercial applicators of pesticides be required to conform to posting and notification requirements.

***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.

***Against:***

Proponents of the bill seek to restrict the enactment of local pesticide ordinances in order to avoid the development of a patchwork of regulations across the state. It should be noted, however, that a patchwork of regulations already exists due to efforts by the Environmental Protection Agency (EPA) to limit pesticide use in some Michigan counties. Triggered by the federal Endangered Species Act, the EPA reportedly has restricted actions, such as pesticide use, that can threaten an endangered species or its habitat. So far, 11 counties in the state (Alcona, Clare, Crawford, Iosco, Kalkaska, Missaukee, Montmorency, Ogemaw, Oscoda, Presque Isle, and Roscommon) are affected by the EPA's program, which, in this instance, is attempting to protect the nesting grounds of the Kirtland's warbler. Thus, persons in the pesticide and agricultural industries already must contend with a county-by-county variance in pesticide regulation.

***Response:***

While the EPA's actions do cause some dissimilarities in pesticide regulation across the state, this variance is the result of a comprehensive federal program and not the result of individual counties taking action on their own. Under the bill, any variance in state regulation of pesticides, due to the commission's approval of local ordinances, would be the result of a review by a state agency with the necessary expertise to make the determination. Such expertise is not likely to be found on the local level.