




Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 777 (as enacted)
Sponsor: Senator Gerald Van Woerkom
Senate Committee: Agriculture, Forestry and Tourism
House Committee: Agriculture

PUBLIC ACT 132 of 2006

Date Completed: 1-23-08

RATIONALE

In California and in some New England states, some local and county governments have passed ordinances limiting the types of seeds that may be used locally. Most of the ordinances prohibit or limit the use of genetically modified seeds, to address concern about the safety of those products or to protect local organic crops from being cross-pollinated by neighboring crops containing genetically modified material. Organic crops must be certified by the United States Department of Agriculture (USDA), and may not contain any genetically modified material.

In Michigan, many farmers were concerned that local governments could pass similar ordinances, requiring agricultural operations to meet different regulations in each county or township. Some felt that such ordinances could be harmful to the agricultural industry, and could result in confusion or inefficiency among farming operations. Since some farms cross county lines, a farmer could be faced with complying with varying regulations on different sections of his or her land. Consequently, it was suggested that the State should specifically preempt local seed regulation.

CONTENT

The bill amended the Michigan Seed Law to preempt local ordinances prohibiting or regulating the use of seeds, except where necessary to prevent adverse environmental or health effects, or in cases where the activity being regulated is in violation of State or Federal law.

Specifically, the bill prohibits a local unit of government from adopting, maintaining, or enforcing an ordinance that prohibits or regulates the labeling, sale, storage, transportation, distribution, use, or planting of agricultural, vegetable, flower, turf grass, or forest tree seeds.

A local unit of government, however, may enact an ordinance prescribing standards different from those under the Law and rules promulgated under it that prohibit or regulate the use or planting of the specified seeds if unreasonable adverse effects on the environment or public health will exist within the local unit of government, or if the local unit has determined that the activity to be prohibited or regulated has resulted or will result in the violation of other existing State or Federal law.

An ordinance enacted under those provisions must be approved by the Agriculture Commission before it can be enforced by a local unit of government. If the Commission denies the ordinance, the Commission must provide a detailed explanation of the basis of the denial within 30 days.

If a local government submits to the Michigan Department of Agriculture (MDA) a resolution identifying unreasonable adverse effects on the environment or public health, the MDA must, within 60 days, hold a local public meeting to determine the nature and extent of such effects. Within 30 days after the public meeting, the MDA must issue a detailed opinion regarding the existence of unreasonable adverse effects on the

environment or public health as identified by the local unit of government's resolution.

The bill specifies that it does not limit the authority of a local unit of government under Public Act 359 of 1941 (dealing with the containment and eradication of noxious weeds), and that Section 15 of the Seed Law does not apply to a violation of the bill.

(Section 15 contains the following provisions:

- A person who violates the Seed Law is guilty of a misdemeanor punishable by a fine of between \$100 and \$2,000 for each offense, or by imprisonment for up to 90 days.
- The MDA Director may issue and enforce a stop sale order to the owner or custodian of any lot of seed found to be in violation of the Law.
- Any lot of seed not in compliance with the Law is subject to seizure on a complaint of the Director, and if found to be in violation, must be denatured, destroyed, relabeled, or otherwise disposed of.
- The Director may apply for a temporary or permanent injunction restraining a person from violating the Law.)

The bill also repealed Section 16, which repealed Public Act 314 of 1923.

The bill took effect on May 5, 2006.

MCL 286.714

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

If townships and counties began enacting differing seed ordinances, the result could be a patchwork of conflicting regulations across the State, and farmers could have difficulty meeting all the various restrictions imposed in each local unit of government. Some agricultural operators have land in several counties, and it would be extremely difficult to keep track of the different regulations and to maintain records of the crops permitted in each area, let alone comply with diverse ordinances on separate parts of a farm.

Moreover, local governments would not be effective at regulating the use of seeds, because of their limited jurisdiction. If a farmer owned fields on the county line, his or her neighbor could be operating under very different regulations, and a local ordinance would not be effective in protecting his or her crops from cross-pollination. In addition, local officials do not have the time, resources, or expertise to determine which seeds are safe and appropriate for use. Several Federal agencies, including the Food and Drug Administration (FDA), the USDA, and the Environmental Protection Agency, have oversight in determining whether genetically modified (GM) plants are safe for use or consumption. The scientists employed by these agencies are in a better position than local officials to determine the safety of GM crops. For these reasons, seed regulation is better left to the State and Federal government.

Response: Federal agencies do not perform independent studies on the safety of a GM crop before approving it, but rather rely on studies conducted by the company that developed the product. Industry-funded studies cannot be considered to be impartial or reliable, because the companies have a strong interest in seeing the crop approved for production. There have been reports of companies' withholding or distorting the results of clinical trials when the outcomes were negative or damaging to the case for approval. In other situations, the FDA apparently has overlooked or missed obvious errors or omissions in data submitted by companies, often relying on summaries of data rather than the detailed results of the studies. The FDA and other agencies have not provided adequate scrutiny of GM plants before approving them for consumption, creating potential risks to consumers and to farmers in the area surrounding the plants' use. Because of this lack of effective oversight at the Federal level, local governments should have the ability to limit the use of certain seeds if necessary, in order to protect the local farming community from contamination from unwanted genetically modified strains.

Supporting Argument

The bill prevents a local government from banning certain types of seeds, including new varieties developed through genetic engineering. These seeds can have tremendous benefits, environmentally, nutritionally, and economically. Through genetic engineering, disease-resistant crops

that can grow under adverse conditions have been developed. These include varieties that are resistant to pests, such as Bt corn, which is resistant to the corn borer. Such varieties can increase productivity of farmland and reduce the need for pesticides, which can run off into rivers and streams, contaminating the State's surface and groundwater.

It has been estimated that farms will need to double their productivity over the next 30 years to feed the world's growing population adequately. Genetically modified crops will help to meet that need, and have been approved by the FDA and the EPA. Moreover, these crops are in current use in Michigan, and are considered safe. The bill will protect farmers against local government efforts to ban GM crops or any other types of seeds, reserving that authority for the State and Federal government, and helping to ensure a uniform and stable regulatory environment based on scientific evidence.

Response: The bill uses very broad language and does not specifically mention genetically modified crops; instead, it bans the local regulation of all seeds. In addition, no local government in Michigan has attempted to regulate the use or planting of seeds in Michigan. The bill addresses a problem that does not exist.

Opposing Argument

The bill takes away the ability of local governments to regulate the seeds planted within their communities. Local seed regulation may be essential in some cases, where organic crops may be in danger of being contaminated by pollen from genetically modified crops. Food must be certified by the USDA in order to be sold as organic in the United States, and Federal regulations prohibit organic crops from containing any genetically modified material. If GM pollen drifted onto an organic farm from a neighbor's fields, the organic farmer could be driven out of business. The danger is especially acute with corn, which produces pollen that can be blown over long distances, contaminating not just adjacent fields but others in the surrounding areas. Michigan's vitality comes from the variety of local communities and different geographical areas. The bill will inhibit, rather than enhance, rural revitalization, and prevent local governments from acting to protect the diversity in the State.

Under the bill, if a township or county determines a need to regulate the use of certain seeds, the local government must request permission to do so from the Agriculture Commission, and the MDA has the authority to determine whether there are sufficient grounds to allow the local government to act. Local governments should not have to request permission from the State to act to protect their citizens and the local environment.

In addition, the bill will stifle the ability of Michigan residents to participate in government at a local level, where they can have the most impact on their communities. Individual participation in democracy is the strength of the American system of government, which should work to encourage citizen involvement, rather than removing local control and imposing restrictions at a State level. The State is not in the best position to know what is in the best interest of each community, and a blanket provision restricting local ordinances will harm some communities, and favor some agricultural operators over others.

Response: Many of the concerns over contamination of organic crops could be addressed by the establishment of buffer zones between fields, variation in planting times so that crops would be pollinated at different times, and coordination of crop rotations with neighboring farmers. Such measures could protect the opportunity of all farmers to grow the crops that they choose without harming or infringing on their neighbors.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

The bill will cost the State a small amount of money for reviewing a local ordinance that regulates seeds, holding a local public hearing on an ordinance, and issuing an opinion about the existence of adverse environmental effects. The cost will depend on the number of local ordinances that require approval from the Commission on Agriculture.

The bill will have no fiscal impact on local units of government.

Fiscal Analyst: Jessica Runnels

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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.