

HOUSE BILL No. 6620

November 14, 2006, Introduced by Rep. Kolb and referred to the Committee on Natural Resources, Great Lakes, Land Use, and Environment.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 8328 (MCL 324.8328), as amended by 1996 PA 172.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 8328. (1) Except as otherwise provided in this section,
2 it is the express legislative intent that this part preempt any
3 local ordinance, regulation, or resolution that purports to
4 duplicate, extend, or revise in any manner the provisions of this
5 part. Except as otherwise provided for in this section, a local
6 unit of government shall not enact, maintain, or enforce an
7 ordinance, regulation, or resolution that contradicts or conflicts
8 in any manner with this part.

9 (2) If a local unit of government is under contract with the

1 department to act as its agent or the local unit of government has
2 received prior written authorization from the department, then that
3 local unit of government may pass an ordinance that is identical to
4 this part and rules promulgated under this part, except as
5 prohibited in subsection ~~-(7)-~~ (8). The local unit of government's
6 enforcement response for a violation of the ordinance that involves
7 the use of a pesticide is limited to issuing a cease and desist
8 order as prescribed in section 8327.

9 (3) A local unit of government may enact an ordinance
10 identical to this part and rules promulgated under this part
11 regarding the posting and notification of the application of a
12 pesticide. Subject to subsection ~~-(8)-~~ (9), enforcement of such an
13 ordinance may occur without prior authorization from the department
14 and without a contract with the department for the enforcement of
15 this part and rules promulgated under this part. The local unit of
16 government shall immediately notify the department upon enactment
17 of such an ordinance and shall immediately notify the department of
18 any citations for a violation of that ordinance. A person who
19 violates an ordinance enacted under this subsection is responsible
20 for a municipal civil infraction and may be ordered to pay a civil
21 fine of not more than \$500.00.

22 (4) A local unit of government may enact an ordinance
23 prescribing standards different from those contained in this part
24 and rules promulgated under this part and which regulates the
25 distribution, sale, storage, handling, use, application,
26 transportation, or disposal of pesticides under either or both of
27 the following circumstances:

1 (a) Unreasonable adverse effects on the environment or public
2 health will exist within the local unit of government. The
3 determination that unreasonable adverse effects on the environment
4 or public health will exist shall take into consideration specific
5 populations whose health may be adversely affected within that
6 local unit of government.

7 (b) The local unit of government has determined that the use
8 of a pesticide within that unit of government has resulted or will
9 result in the violation of other existing state laws or federal
10 laws.

11 (5) A LOCAL UNIT OF GOVERNMENT MAY ENACT AN ORDINANCE
12 PROHIBITING OR REGULATING THE USE OF COSMETIC PESTICIDES OR
13 PROVIDING FOR OUTREACH AND EDUCATION REGARDING THE USE OF COSMETIC
14 PESTICIDES. THE REGULATION OF COSMETIC PESTICIDES INCLUDES THE
15 REQUIREMENT OF A PERMIT FOR THE USE OF COSMETIC PESTICIDES. A LOCAL
16 UNIT OF GOVERNMENT THAT ADOPTS SUCH AN ORDINANCE IS NOT REQUIRED TO
17 OBTAIN THE APPROVAL OF THE DEPARTMENT BUT SHALL SUBMIT A COPY OF
18 THE ORDINANCE TO THE DEPARTMENT. THE DEPARTMENT SHALL MAINTAIN A
19 CENTRAL DATABASE OF COSMETIC PESTICIDE ORDINANCES ENACTED UNDER
20 THIS SUBSECTION AND MAKE THAT DATABASE AVAILABLE TO THE GENERAL
21 PUBLIC. AS USED IN THIS SUBSECTION, "COSMETIC PESTICIDE" MEANS A
22 PESTICIDE USED FOR UNNECESSARY, NONESSENTIAL, AND PURELY AESTHETIC
23 PURPOSES.

24 (6) ~~—(5)—~~ An ordinance enacted pursuant to subsections (2),
25 (3), and (4) shall not conflict with existing state laws or federal
26 laws. An ordinance enacted pursuant to subsection (4) shall not be
27 enforced by a local unit of government until approved by the

1 commission of agriculture. If the commission of agriculture denies
2 an ordinance enacted pursuant to subsection (4), the commission of
3 agriculture shall provide a detailed explanation of the basis of
4 the denial within 60 days.

5 (7) ~~—(6)—~~ Upon identification of unreasonable adverse effects
6 on the environment or public health by a local unit of government
7 as evidenced by a resolution submitted to the department, the
8 department shall hold a local public meeting within 60 days after
9 the submission of the resolution to determine the nature and extent
10 of unreasonable adverse effects on the environment or public health
11 due to the use of pesticides. Within 30 days after the local public
12 meeting, the department shall issue a detailed opinion regarding
13 the existence of unreasonable adverse effects on the environment or
14 public health as identified by the resolution of the local unit of
15 government.

16 (8) ~~—(7)—~~ The director may contract with a local unit of
17 government to act as its agent for the purpose of enforcing this
18 part and the rules promulgated pursuant to this part. The
19 department shall have sole authority to assess fees, register and
20 certify pesticide applicators, license commercial applicators and
21 restricted use pesticide dealer firms, register pesticide products,
22 cancel or suspend pesticide registrations, and regulate and enforce
23 all provisions of this part pertaining to the application and use
24 of a pesticide to an agricultural commodity or for the purpose of
25 producing an agricultural commodity.

26 (9) ~~—(8)—~~ For any ordinance enacted pursuant to this section,
27 the local unit of government shall provide that persons enforcing

1 the ordinance comply with the training and enforcement requirements
2 as determined by the director. A local unit of government shall
3 reimburse the department for actual costs incurred in training
4 local government personnel.