



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bills 122 and 123 (as introduced 2-9-11)  
Sponsor: Senator Joe Hune  
Committee: Agriculture

Date Completed: 2-14-11

## **CONTENT**

The bills would amend the Natural Resources and Environmental Protection Act (NREPA) to do all of the following:

- Require the Michigan Department of Agriculture and Rural Development (MDA) Director, in consultation with an advisory council, to implement a Michigan Agriculture Environmental Assurance Program (MAEAP).
- Establish requirements for the verification of farms under MAEAP.
- Excuse MAEAP-verified farms from civil fines for water discharges, and specify that discharges would be considered nonpoint source pollution, under certain circumstances.
- Replace the groundwater advisory council with an environmental assurance advisory council, and specify council membership and activities.
- Allow the MDA Director to establish environmental assurance teams, rather than regional groundwater stewardship teams, for the implementation of programs under Part 87 (Groundwater and Freshwater Protection).
- Require the MDA to establish a MAEAP grants program.
- Allow nonpoint source pollution prevention and control grants for projects that promoted MAEAP verification.
- Allow the expenditure of money from the Clean Water Fund for MAEAP promotion and activities.
- Revise requirements related to groundwater stewardship, and refer instead to conservation.
- Allow the MDA Director, in consultation with the environmental assurance advisory council, to develop and establish priorities, procedures, and protocols for the implementation of a surface water quality monitoring program.
- Require the MDA and the Department of Environmental Quality (DEQ) to enter into a memorandum of understanding to formalize a commitment to promote MAEAP and to clarify the application of State and Federal environmental laws to farms.
- Delay the sunset date for fees collected under Part 87.

The bills are tie-barred.

### **Senate Bill 122**

#### **MAEAP-Verified Farms; Discharges**

Under the bill, beginning six months after its effective date, if all of the following conditions were met, the owner or operator of a MAEAP-verified farm would not be subject to civil fines under Section 3115 of NREPA, but could be responsible for actual natural resources damages:

- A discharge to Michigan waters occurred from a portion or operation of the farm.
- The discharge was not intentional.
- The owner or operator acted promptly to correct the condition after discovery.

- The owner or operator reported the discharge to the DEQ within 24 hours of the discovery.

This provision would not apply if either of the following conditions occurred:

- The owner's or operator's actions posed a substantial endangerment to the public health, safety, or welfare.
- The owner or operator previously had committed significant violations that constituted a pattern of continuous or repeated violations of environmental laws, rules, regulations, permit conditions, settlement agreements, or orders of consent or judicial orders and that were due to separate and distinct events.

(Section 3115 establishes civil and criminal penalties for violations of Part 31 (Water Resources Protection) of NREPA.)

If a MAEAP-verified farm were in compliance with all MAEAP standards applicable to the farming operation, the farm would be considered to be implementing conservation and management practices needed to meet total maximum daily load implementation for impaired waters pursuant to Federal law (33 USC 1313).

If a discharge from a MAEAP-verified farm that was in compliance with all MAEAP standards applicable to land application were caused by an "Act of God weather event", the discharge would be considered nonpoint source pollution. If the discharge were determined by the DEQ Director, with scientific evidence provided by water quality data, to have exceeded water quality standards, the farm would have to provide the DEQ with a report, within 30 days of notification, that included details of conservation or management practice changes, if necessary, to address further the risk of discharge recurrence. The report would have to state whether the farm had already implemented those conservation or management practices. Upon receiving the report, the DEQ would have to review it and respond within 30 days. The DEQ response could include report acceptance with no further action required or could recommend environmentally sound and economically feasible conservation or management practices to prevent future discharges. ("Act of God weather event" would mean a

precipitation event that exceeds one-half inch in precipitation and that was forecast by the National Weather Service 24 hours earlier as having less than a 70% probability of exceeding one-half inch of precipitation.)

These provisions would not modify or limit any obligation to obtain a permit under Part 31.

#### Nonpoint Source Pollution Prevention & Control Grants

Under Part 88 (Water Pollution and Environmental Protection Act) of NREPA, the DEQ, in consultation with the MDA must establish a program to provide grants for nonpoint source pollution prevention and control projects and wellhead protection projects. The nonpoint source pollution prevention and control grants must be provided for projects that do either or both of the following:

- Implement the physical improvement portion of watershed plans that are approved by the DEQ.
- Reduce specific nonpoint source pollution as identified by the DEQ.

Under the bill, the grants also could be provided for projects that promoted MAEAP verifications.

In issuing the grants, the bill would require the DEQ, in consultation with the MDA, to select projects that, to the extent practicable, provided maximum benefit to the State in protecting public health and the environment and contributing to economic development.

#### Clean Water Fund Expenditures

Under Part 88, the DEQ must spend money in the Clean Water Fund, upon appropriation, for certain purposes. The bill would include promotion of MAEAP and activities to encourage more MAEAP-verified farms in those purposes. The bill also would require the DEQ to consult with the MDA in spending money in the Fund.

In addition, one of the purposes for which the DEQ must spend money in the Clean Water Fund is to implement the programs described in the DEQ's January 1997 document entitled "A Strategic Environmental Quality Monitoring Program

for Michigan's Surface Waters". The bill would delete a requirement that implementation of those programs be the first priority for expenditures from the Clean Water Fund.

### **Senate Bill 123**

#### **Intent of Part 87 (Groundwater and Freshwater Protection)**

The Act states, "The intent of this part is to reduce risks to the environment and public health by preventing groundwater contamination from pesticides and fertilizers." The bill, instead, would state, "The intent of this part is to reduce risks to the environment and public health and promote economic development by assisting farms in achieving MAEAP standards."

#### **Michigan Agriculture Environmental Assurance Program**

The Act requires the MDA Director, in consultation with the groundwater advisory council, to establish a groundwater stewardship program designed to promote the protection of groundwater through education, technical assistance, and grants. The bill instead would require the MDA Director, in consultation with the environmental assurance advisory council, to implement a Michigan Agriculture Environmental Assurance Program designed to promote natural resources conservation through education, technical assistance, and verification. The MAEAP would be a voluntary program that would be available to farms throughout Michigan.

A farmer who desired to have his or her farm MAEAP-verified would have to do all of the following:

- Complete educational requirements authorized by the MDA.
- Develop and implement one or more conservation plans as approved by the MDA Director.
- Contact the MDA to arrange for an on-site evaluation.

If the MDA conducted an on-site evaluation and determined that a farm was meeting MAEAP standards, the Department would have to issue a MAEAP verification, which would be valid for three years. A farm would be eligible for reverification if it were

determined to be meeting MAEAP standards through an on-site evaluation conducted by the Department or its designee.

Beginning with fiscal year (FY) 2012-13, the MDA would have to provide MAEAP verification signs to each MAEAP-verified farm. A farm that allowed its verification to lapse or whose verification was revoked would have to forfeit its sign and all other benefits that were provided to MAEAP-verified farms under NREPA.

The MDA Director could revoke verification of a MAEAP-verified farm if any of the following applied:

- The Department, in consultation with the DEQ, determined with scientific evidence provided by water quality data that the farm exceeded water quality standards as a result of nonconformance with MAEAP standards.
- The farm failed to conform to MAEAP standards as a result of gross negligence.
- The farm failed to comply with protocols for verification as approved by the Agriculture Commission.
- The farm was responsible for a pattern of continuous repeated violations of environmental laws, rules, regulations, permit conditions, settlement agreements, orders of consent, or judicial orders that were due to separate and distinct events.

#### **Groundwater Stewardship/Conservation**

The Act requires the MDA Director, in conjunction with certain other organizations, to develop groundwater stewardship practices for approval by the Agriculture Commission. Upon that approval, the MDA Director must promote the implementation of these practices. The bill would require the development of conservation practices, rather than groundwater stewardship practices.

Under NREPA, the MDA Director, in conjunction with certain other organizations, also must develop a "voluntary on-site evaluation system for pesticide or nitrogen fertilizer use". The evaluation system must be designed to do all of the following:

- Enable people to determine voluntarily the relative groundwater impact

potential posed by their use of pesticides and nitrogen fertilizers.

- Enable people to determine the degree to which operations are in accord with groundwater stewardship practices and applicable groundwater protection rules.
- Prioritize operational changes at the site level intended to protect groundwater.
- Guide people to appropriate technical and educational materials.

The bill instead would require the development of "protocols for voluntary on-site evaluations". The on-site evaluations would have to be designed to do all of the following:

- Enable farmers to determine voluntarily the relative risk of current practices in relation to sources of contamination.
- Enable farmers to determine the degree to which farm operations were in accord with MAEAP standards and applicable law.
- Prioritize operational changes on farms to protect groundwater and surface water from sources of contamination.
- Guide farmers to appropriate technical educational materials.
- Provide farmers with the opportunity for verification.

The Act requires the MDA Director, in conjunction with the groundwater advisory council, to review and evaluate the effectiveness of the groundwater stewardship practices. The bill instead would require the MDA Director, in conjunction with the environmental assurance advisory council, to review and evaluate the effectiveness of the conservation practices.

#### Advisory Council

The Act requires the MDA Director to establish a groundwater advisory council composed of the MDA Director; the DNR Director; the Director of public health; the Director of the Michigan State University (MSU) Cooperative Extension Service; the Director of the MSU Agricultural Experimentation Station; and representatives of all of the following as appointed by the MDA Director:

- The U.S. Department of Agriculture (USDA) stabilization and conservation service.

- The USDA soil conservation service.
- The U.S. Geological Survey.
- Soil and water conservation districts.
- Agricultural producers.
- Nongovernmental environmental organizations.
- Regulated agricultural industries.
- Right-of-way applicators.
- Other people as determined by the MDA Director.

The bill instead would require the MDA Director to establish an environmental assurance advisory council. The council would have to consist of the MDA Director; the DEQ Director; the Director of the MSU Extension; the Director of the MSU Agricultural Experimentation Station; and representatives of all of the following as appointed by the MDA Director for three-year terms:

- The USDA farm service agency.
- The USDA natural resources conservation service.
- Conservation districts.
- Farmers and other agricultural organizations.
- Nongovernmental conservation and environmental organizations.
- Regulated agricultural industries.
- Other people as determined by the MDA Director.
- A member representing each regional environmental assurance team established under the bill.

The environmental assurance advisory council would have to be co-chaired by the representative of the MSU Extension and a representative of one of the farmers and other agricultural organizations.

Currently, the groundwater advisory council must advise the MDA Director on the following:

- Groundwater stewardship practices.
- On-site evaluation system.
- Groundwater protection rules established under NREPA.
- Water quality and environmental monitoring.
- Stewardship program activities.
- Interagency coordination of groundwater programs.
- Prioritizing the activities of the groundwater stewardship teams based on detections of pesticides in

groundwater, nitrogen concentrations in groundwater, groundwater impact potential estimation, or other factors as determined by the MDA Director.

Under the bill, the environmental assurance advisory council would have to advise the MDA Director on the following:

- MAEAP standards.
- On-site evaluations for verification of specific aspects of a farming operation.
- Water quality and environmental monitoring.
- Protocols for verification and revocation of verification.
- MAEAP activities.
- Interagency coordination of conservation programs.
- The use of money in the Clean Water Fund and other funding sources to promote MAEAP and activities to encourage more MAEAP-verified farms.
- The creation of subcommittees as needed to address emerging and ongoing issues.

The bill also would require the advisory council to do all of the following:

- Annually provide recommendations to the MDA Director on MAEAP standards and protocols for verification and revocation of verification for consideration by the Agriculture Commission.
- Annually submit to the MDA a report that outlined activities, accomplishments, and emerging issues, which the Department would have to share with the agriculture community.
- Submit to the MDA Director, by September 30, 2014, a comprehensive report detailing program achievements under the Michigan Agricultural Environmental Assurance Program.

#### Groundwater Stewardship/Environmental Assurance Teams

Under NREPA, the MDA Director must establish regional groundwater stewardship teams for the implementation of programs developed under Part 87. The bill instead would allow the Director to establish environmental assurance teams for that purpose.

The groundwater stewardship teams are responsible for implementation of programs developed under Part 87, including the provision of technical assistance for people making changes consistent with groundwater stewardship practices or groundwater protection rules, on-site evaluation of practices that may affect groundwater, the development and implementation of stewardship plans, and the development and implementation of activity plans. Under the bill, the environmental assurance teams instead would be responsible for providing access to technical assistance related to any of the following:

- On-site evaluation of practices that could affect natural resources.
- The development and implementation of conservation plans.
- The development and implementation of activity plans for people making conservation practice changes.

In addition, the current groundwater stewardship teams are responsible for the provision of private well sampling, grants in aid for people in the stewardship program, emergency response, and land application of pesticide and fertilizer contaminated materials. Under the bill, the environmental assurance teams instead would be responsible for evaluating, as available, grants to people implementing activity plans and conservation practices required to achieve MAEAP standards.

#### Grants Program

Under NREPA, the MDA may provide grants to people participating in the groundwater stewardship program in accordance with procedures established by the Department. Grants must be available for making changes consistent with groundwater stewardship practices, groundwater protection rules, and the removal of potential sources of contamination and other purposes considered suitable by the MDA Director. Technical assistance programs and grants are limited to availability of funds collected under Part 87. The bill would delete these provisions.

Under the bill, the MDA would have to establish a MAEAP grants program. Grants issued under this program would be limited to availability of funds collected under Part

87. Grants would have to be available for all of the following:

- Technical assistance.
- Promotion of MAEAP.
- Educational programs related to MAEAP.
- Demonstration projects to implement conservation practices.
- Removal of potential sources of contamination.
- Other purposes considered appropriate by the MDA Director.

#### MDA/DEQ Memorandum of Understanding

The MDA and the DEQ would have to enter into a memorandum of understanding to formalize a commitment to promote MAEAP and to clarify the application of State and Federal environmental laws to farms. In addition, the memorandum of understanding would have to provide for all of the following:

- An ongoing interagency technical review panel for MAEAP-verified farms that discharged in violation of State or Federal law to determine enforcement action.
- Preference for funding for nonpoint source pollution funds for farms seeking MAEAP verification.
- Considerations for reverification of a farm with revoked MAEAP-verification status.
- Integration of MAEAP into pollution prevention activities of both agencies.
- Clarification of the consultation process in Part 88 to ensure that the MDA had meaningful input into the establishment of the grants program and the issuance of grants.

#### Surface Water Quality Monitoring

The bill would authorize the MDA Director, in consultation with the environmental assurance advisory council, to develop and establish priorities, procedures, and protocols for the implementation of a surface water quality monitoring program to do both of the following:

- Promote voluntary water quality monitoring by farms.
- Monitor and benchmark the effectiveness of conservation practices and MAEAP standards in cooperation with participating farmers.

Water quality information collected under this provision by the MDA, in cooperation with farmers, would have to be aggregated and made available to the Agriculture Commission. Specific locations or people involved in water quality information collection would be exempt from disclosure under the Freedom of Information Act.

#### Sunset of Fee Requirements

Section 8715 of NREPA requires the payment of certain fees related to groundwater protection, pesticides, and fertilizers. The fees must be transmitted to the State Treasurer, who must credit the money to the Freshwater Protection Fund. Section 8715 is scheduled to be repealed on December 31, 2013. The bill would extend the repeal date to December 31, 2015.

#### Freshwater Protection Fund

The Act created the Freshwater Protection Fund and specifies the purposes for which the MDA may spend money from the Fund. These purposes include emergency response and removal of potential sources of groundwater contamination, as well as groundwater protection and groundwater regulatory program. The bill instead would refer to emergency response and removal of potential sources of water contamination and natural resources protection.

MCL 324.8801 et al. (S.B. 122)

324.8702 et al. (S.B. 123)

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

#### **Senate Bill 122**

The bill would have no fiscal impact on State or local government.

#### **Senate Bill 123**

The bill would have a minimal fiscal impact on the Department of Agriculture and Rural Development as its provisions would largely codify activities already in practice. The bill also would establish a MAEAP grants program, to be paid from funds generated under Section 8715 of the Act. The revenue produced under the section is approximately \$3.8 million annually. These funds are allocated fully in the FY 2010-11 budget for

various environmental programs within the department and none of these funds have yet to be appropriated for what has been titled "MAEAP Grants".

Fiscal Analyst: Bruce Baker  
Josh Sefton

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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.