



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

BILL ANALYSIS



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

House Bill 4299 (Substitute S-2)
House Bill 4300 (Substitute S-4)
House Bill 4301 (Substitute S-3)
Sponsor: Representative Carl F. Gnodtke
House Committee: Agriculture and Forestry
Senate Committee: Agriculture and Forestry

Date Completed: 5-23-95

SUMMARY OF HOUSE BILLS 4299 (Substitute S-2), 4300 (Substitute S-4), and 4301 (Substitute S-3):

House Bill 4299 (S-2) would amend the Land Sales Act to require the owner of subdivided land that was being offered for sale to include the following statement in a proposed property report (which must be submitted to prospective buyers and contain certain information about the property as specified in the Act):

“This property may be located in the vicinity of a farm or farm operation. Generally accepted agricultural and management practices may be utilized by the farm or farm operation and may generate usual and ordinary noise, dust, odors, and other associated conditions, and these practices are protected by the Michigan Right to Farm Act. The seller is not required to disclose whether a farm or farm operation is actually located in the vicinity of the property or whether generally accepted agricultural and management practices are being utilized.”

House Bill 4300 (S-4) would amend the Michigan Right to Farm Act to do the following:

- Specify that a farm or farm operation that conformed to generally accepted agricultural and management practices would not be a public or private nuisance under certain conditions, including a change in ownership or size.
- Require the Director of the Michigan Department of Agriculture to investigate complaints involving a farm and require

that procedures be developed to investigate and resolve farm-related complaints.

- Require a complainant to be notified in writing if the person responsible for the farm were using generally accepted agricultural and management practices.
- Require the Director to advise a person responsible for a farm that changes would have to be made to resolve a problem, if it were caused by the use of practices not considered to be generally accepted agricultural and management practices.
- Require a complainant who brought more than three “uncertified complaints” within three years against the same farm that had been determined to be using accepted practices, to pay the Department the costs for subsequent complaints against the same farm.

House Bill 4301 (S-3) would amend the Seller Disclosure Act to require a written disclosure statement about property to identify a farm or farm operation in the vicinity of the property.

The bills are tie-barred to each other. House Bills 4299 (S-2) and 4300 (S-4) would take effect September 30, 1995. House Bill 4301 (S-3) would take effect January 1, 1996.

A more detailed description of House Bills 4300 (S-4) and 4301 (S-3) follows.

House Bill 4300 (S-4)

Alleged Nuisance

Currently, under the Michigan Right to Farm Act, a farm or farm operation cannot be found to be a public or private nuisance if the farm or farm operation alleged to be a nuisance conforms to generally accepted agricultural and management practices according to policy determined by the State Agriculture Commission. Generally accepted agricultural and management practices must be reviewed annually by the Commission and revised as considered necessary.

Under the bill, a farm or farm operation that conformed with this provision could not be found to be a public or private nuisance as a result of any of the following: a change in ownership or size; temporary cessation or interruption of farming; enrollment in governmental programs; adoption of new technology; or, a change in the type of farm product being produced.

Complaint Investigation

The Michigan Commission of Agriculture would have to request the Director of the Michigan Department of Agriculture (MDA) or his or her designee to investigate all complaints involving a farm or farm operation, including, but not limited to, complaints involving the use of manure and other nutrients, agricultural waste products, dust, noise, air pollution, surface- or ground-water pollution, food and agricultural processing by-products, care of farm animals, and pest infestations.

The Agriculture Commission and the MDA Director would have to enter into a memorandum of understanding with the Natural Resources Commission and the Director of the Department of Natural Resources. The investigation and resolution of environmental complaints would have to be conducted in accordance with the memorandum of understanding. The Agriculture Commission and the MDA Director would have to develop procedures for investigating and resolving other farm-related complaints.

If the Director, or his or her designee, found upon investigation that the person responsible for the farm or farm operation was using generally accepted agricultural and management practices, the Director would have to give that person and the complainant written notice of the finding. If the Director identified the source or potential sources

of the problem caused by the use of other than generally accepted agricultural and management practices, the Director would have to advise the person responsible for the farm or farm operation that necessary changes would have to be made to resolve or abate the problem and to conform with generally accepted agricultural and management practices. The Director would have to determine if those changes were implemented and would have to give the person and the complainant written notice of this determination.

Recovery of Costs

A complainant who brought more than three "unverified complaints" against the same farm or farm operation, within three years, would have to pay to the department the full costs of investigation of any fourth or subsequent unverified complaint against the same farm or farm operation. ("Unverified complaint" would mean a complaint in which the Director or his or her designee determined that the farm or farm operation was using generally accepted agricultural and management practices.)

In any nuisance action in which a farm or farm operation was alleged to be a nuisance, if the defendant farm or farm operation prevailed, it could recover from the plaintiff the actual amount of costs and expenses determined by the court to have been reasonably incurred by the farm or farm operation in connection with the defense of the action, together with reasonable and actual attorney fees.

Disclosures

Certain real property would be subject to disclosures described in Section 7 of the Seller Disclosure Act (which prescribes a Seller's Disclosure Statement, and would be amended by House Bill 4301). A seller of real property located within one mile of the property boundary of a farm or farm operation could make available to the buyer the following statement: "This notice is to inform prospective residents that the real property they are about to acquire lies within one mile of the property boundary of a farm or farm operation. Generally accepted agricultural and management practices may be utilized by the farm or farm operation and may generate usual and ordinary noise, dust, odors, and other associated conditions, and these practices are protected by the Michigan Right to Farm Act." Certain subdivided land also would be subject to the disclosures described in Section 8 of the Land Sales Act (which would be amended by House Bill 4299).

Applicability

Currently, the Act specifies that it does not affect the application of State and Federal statutes. The bill specifies that for purposes of this provision, "state statutes" would include, but not be limited to, any of the following: the County Rural Zoning Enabling Act, the Township Rural Zoning Act, and Public Act 207 of 1921, which provides for the establishment of zoning districts in portions of counties lying outside the limits of incorporated cities and villages to regulate the use of land and natural resources.

Definitions

Under the Act, "farm" is defined as the land, buildings, and machinery used in the commercial production of farm products. Under the bill, "farm" also would include plants, animals, structures, including ponds used for agricultural or aquacultural activities, equipment, and other appurtenances used in commercial farm production. The bill also would include in the definition of "farm operation" drainage systems, on-farm grain dryers, and the movement of vehicles, machinery, equipment, and farm products and associated inputs necessary for farm operations on the roadway as authorized by the Michigan Vehicle Code. The bill also would add field preparation and ground seeding and spraying as well as the application of organic materials, liming materials, or pesticides, and would delete reference to insecticides, pesticides, and herbicides. The bill would include within the definition of "farm operation" the use of alternative pest management techniques; the fencing, feeding, watering, sheltering, transportation, treatment, use, and care of animals; the management, storage, transport, utilization, and application of farm by-products, including manure or agricultural wastes; and, the conversion from a farm operation activity to other farm operation activities. In addition, the bill would add the following to the definition of "farm product": field crops, aquacultural products, berries, herbs, nursery stock, tree products, and mushrooms.

House Bill 4301 (S-3)

The Seller Disclosure Act specifies that its seller disclosure requirements apply to the transfer of any interest in real estate consisting of at least one and not more than four residential dwelling units, whether by sale, exchange, installment land contract, lease with an option to purchase, any other option to purchase, or ground lease coupled with proposed improvements by the purchaser or tenant, or a transfer of stock or an interest in a

residential cooperative. The transferor of any real property must deliver to the transferor's agent or to the prospective transferee or the transferee's agent a written disclosure statement required by the Act. Currently, a disclosure statement must note any area environmental concerns, such as proximity to a landfill, airport, or shooting ranges. The bill would delete reference to area environmental concerns and specify, instead, farm or farm operations in the vicinity.

MCL 565.808 (H.B. 4299)
286.472 et al. (H.B. 4300)
565.957 (H.B. 4301)

Legislative Analyst: L. Arasim

FISCAL IMPACT

House Bill 4299 (S-2)

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

House Bill 4300 (S-4)

The bill could result in some minimal cost savings to the Department of Agriculture for about one or two cases per year in which the complainant had issued more than three complaints.

House Bill 4301 (S-3)

There would be no fiscal impact on local governmental units. Preparation and duplication costs for the Seller's Disclosure Statement would be absorbed within the total appropriation of the Department of Commerce. No additional staff or budget resources would be needed to implement provisions of this bill.

Fiscal Analyst: A. Rich (H.B. 4299 & 4300)
K. Lindquist (H.B. 4301)

S9596\S4299SB

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.