



**House
Legislative
Analysis
Section**

House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

**ENCOURAGE CONSERVATION
PRACTICES**

**House Bill 5013 (Substitute H-3)
First Analysis (10-16-01)**

**Sponsor: Rep. Gene DeRossett
Committee: Agriculture and
Management**

THE APPARENT PROBLEM:

The Michigan Agricultural Environmental Assurance Program (MAEAP) and the Conservation Reserve Enhancement Program (CREP) are recently developed programs designed by state, federal, and industry environmental and agricultural groups. The programs are administered by the Department of Agriculture (MDA) and are intended to take a cost-effective and pro-active approach to address pollution and other environmental concerns that arise from agricultural operations.

In 2000, Governor Engler signed a Conservation Reserve Enhancement Program agreement with the federal government designed to reduce soil erosion, improve the water quality and enhance wildlife habitat near rivers and streams related to agriculture use in specific areas. The state Departments of Agriculture, Natural Resources and Environmental Quality, together with United States Department of Agriculture-Farm Service Agency (FSA), USDA-Natural Resources Conservation Service (NRCS), Michigan State University, conservation districts and other resource groups, were involved in developing the CREP agreement. The program is administered by the MDA in cooperation with the FSA and NRCS. The program provides financial incentives to farmers and ranchers who voluntarily enter into contracts to take their land out of agricultural production for 15 years and implement conservation practices to improve the environmental quality of rivers and streams. The land must either be cropland that has been planted in an agricultural commodity in two of the last five years and is capable of being used, or it must be suitable marginal pastureland.

Initially, the program has targeted specific environmental concerns in the Macatawa, River Raisin, and Saginaw watersheds, which encompass 80,000 acres in all or parts of 29 counties throughout the state. Currently, approximately 20,000 acres are being used for the conservation practices in these watersheds. The goal is to expand these conservation

programs throughout the state after these conservation programs are in place in the initial target areas.

The purposes of the program are to reduce the amount of sediment entering Michigan Rivers by over 784,000 metric tons over the next 20 years; reduce the amounts of nitrogen and phosphorus entering rivers and streams by 1.6 million pounds and 0.8 million pounds, respectively; protect the valuable water supply used by over one million people in the three watersheds; protect over 5,000 miles of streams from sedimentation; and improve the wildlife habitat in the target area.

Overall, the cost for the initial program area is \$177 million with a 4:1 federal to state funding ratio. The FSA oversees the federal funds involved in the program. The state's funding match for the program comes from money appropriated to the DNR and DEQ using funds from the general fund, the game and fish protection fund, and two sources from the Clean Michigan Initiative (clean water and nonpoint source). In addition, \$400,000 for the current fiscal year from the turkey permit fees subfund within the DNR budget provided additional state matching funds for CREP. Also, the private conservation group Ducks Unlimited provided \$500,000 toward the state matching funds. These funds are transferred to the MDA, which is responsible for administering the state's share of the CREP funds.

A coalition of agricultural, environmental, and conservation groups created the Michigan Agricultural Environmental Assurance Program in May of 1998 with the purpose of assisting farmers in a proactive approach to reduce agricultural pollution. The MAEAP does not provide specific financial incentives to the farmer like CREP. However, the MDA could assist in some cost sharing measures to offset some of the implementation costs. Under the MAEAP, a farmer assesses the environmental risks

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on his or her farm and creates an action plan to reduce those risks. The goals of the MAEAP are to provide environmental protection through pollution prevention; target environmentally sensitive areas; monitor and record changes in a producer's management practices; develop comprehensive site-specific management plans; and encourage sound agricultural, environmental, and economic practices through education, technical assistance, and incentives. The MDA expects to have 85 percent of the state's livestock farms certified by 2005.

Specifically, the MAEAP has three stages designed to allow the farmer flexibility to efficiently maintain the program to meet specific goals for his or her operation. The first phase of the program is an educational program (5-7 hours) designed to raise a farmer's awareness of practices that reduce legal and environmental risks associated with the operation. Once the first phase is completed, a farmer completes an on-farm assessment and develops a management plan specific to his or her farm. After the management plan is approved and implemented, the next phase is a third party verification. At the request of the farmer, the MDA completes an on-site inspection and verifies that the management plan has been implemented according to schedule. Farmers that complete the necessary requirements of the program receive a certificate that recognizes their accomplishment and commitment to sound environmental stewardship.

Once fully implemented, the MAEAP will involve three systems, each focusing on one specific area of the agricultural operation and addressing the specific environmental impact of each system. The three systems are livestock, farmstead, and cropping. Currently, the livestock system is the only one in place. The other two systems are scheduled to be implemented in the fall of 2002 and the fall of 2004, respectively. Each system would use the same basic three-phase system to implement a management plan: education, assessment, and verification. A farmer would receive a certificate for each phase completed.

According to the MDA, there are about 20 pilot sites throughout the state currently going through the assessment and development process. In addition, there are several hundred that are going through the education phase of the program. The first management plans should be verified in the near future.

Funding for the MAEAP comes from the Clean Michigan Initiative (pollution prevention) to offset the development for the management plans, and from

the DEQ through federal funds from section 319 of the Clean Water Act. In addition, the MDA budget for the fiscal year 2000-01 contained an increase in the base amount for FTE staff under the environmental stewardship division for the MAEAP.

Though the MDA administers these programs, it does not have specific statutory authority to do so. This can become problematic when monitoring and enforcing these programs. In addition, the variety of funding sources for these programs make administering the funds very difficult.

THE CONTENT OF THE BILL:

House Bill 5013 would provide the MDA with the specific statutory authority to establish, administer, and fund these conservation programs. In doing this, the MDA would have the authority to enter into contracts with farmers, make payments to farmers for conservation practices, verify the practices, and establish the Agricultural Pollution Prevention Fund.

Specifically, House Bill 5013 would add part 82 to the Natural Resources and Environmental Protection Act. The bill would allow the Department of Agriculture to establish conservation programs and approve conservation plans that encourage the use of conservation practices. A "conservation plan" would mean a plan approved by the MDA that, including a schedule for implementation, specifies the conservation practices to be undertaken on all or part of a parcel of land. A "conservation practice" would be defined to mean a practice, voluntarily implemented by the landowner, which protects and conserves water quality, soil, natural features, wildlife, or natural resources. In addition, these practices would comply with United States Natural Resource Conservation Service standards and specifications, as approved by the MDA; be provided in rules promulgated by the MDA under the bill; or have been approved by the Commission of Agriculture. The department could promulgate rules to implement the bill.

Conservation Programs. The MDA could establish conservation programs that encourage the voluntary use of the conservation practices. In implementing these programs, the department could enter into a contract with a person to implement the conservation practices on his or her land; enter into a contract or agreement with a person to administer or promote conservation programs, or implement conservation practices; provide financial support, or, upon verification, reimbursement for rental payments and/or the costs of implementing the conservation

practices; promote the use of conservation practices; or recognize and award persons who have implemented conservation practices; monitor and verify compliance with conservation plans; enforce contract or other agreements established under the bill; or terminate contracts or other agreements entered into under this part in accordance with terms established in the contract or other agreement. To carry out these responsibilities, the MDA would coordinate with the DNR, DEQ, and any other applicable partners.

Conservation Practice Verification. The MDA would determine that conservation practices have been established and are being maintained according to the conservation plan. Verification would be granted if the conservation plan complies with MDA requirements; the conservation practices have been established and maintained according to schedule; and the person has agreed to allow the MDA to conduct inspections of the land and facilities; and the department provided the landowner with prior notice of the inspection; and has indeed conducted on-site inspections of the conservation practices.

If the department determined that the conservation practices have not been established or were not being maintained, it could revoke the verification. If the verification were revoked, the person would be responsible for penalties and repayment of any financial support for the costs of implementing the conservation practices according to the terms of the contract.

Conservation Easements. The MDA could purchase or otherwise acquire conservation easements, which could contain provisions for allowable or required use of the land; implementation and maintenance of the conservation practices; inspection of the land; penalties for noncompliance; and other terms agreed to by the department. If the MDA purchases or acquires a conservation easement, it would record the easement with the register of deeds for the county in which the land subject to the easement is located. If that conservation easement were terminated, the MDA would record a notice of that termination with the register of deeds for the county in which the land subject to the conservation easement is located. In addition, the MDA could enter into a contract with a person to monitor and enforce the terms of the conservation easement.

Agriculture Pollution Prevention Fund. The Agriculture Pollution Prevention Fund would be created within the state treasury, and could receive money or other assets from any source. Money in the

fund could be spent, upon appropriation, for the administrative costs of the Department of Agriculture for implementing the bill, which would not be more than 20 percent of the annual appropriation from the fund; the promotion of conservation programs; awards to participants in conservation programs; financial incentives or reimbursement for rental payments for conservation practice implementation costs; payments required under contracts entered into under the bill; and the purchase, monitoring, and enforcement of conservation easements. The bill would define the administrative costs to be the costs incurred while developing and implementing conservation programs; managing payments and financial incentives; monitoring and verifying the implementation of conservation practices and enforcing contracts or agreements concerning conservation practices; or coordinating conservation programs with the USDA and other state agencies with the authority to oversee these conservation programs.

In addition, the MDA would annually report to the House and Senate Appropriations Committees and the standing committees charged with the authority over agriculture issues. This report would include the amount of money received by the fund during the previous fiscal year; the expenditures of money from the fund for the previous fiscal year for each listed allowable appropriation; the balance of the fund on the date of the report; the number of acres in which conservation practices have been implemented; and the number of acres in which conservation easements have been purchased or acquired.

F.O.I.A. exemption. Any information voluntarily provided by a person in connection with the development, implementation, or verification of a conservation plan or conservation practices under the bill would be confidential and exempt from disclosure under the Freedom of Information Act. Furthermore, such information would not be open to public inspection without the person's consent, and any such information that was released to a legislative body could not contain information that identifies a specific person. This exemption would not apply to any documents, communication, data, reports, or other information required to be collected, maintained, or made available or reported to a regulatory agency or any other person by statute, rule, ordinance, permit, order, consent agreement, or as otherwise provided by law.

MCL 324.8201 et al.

BACKGROUND INFORMATION:

The CREP Program. The conservation practices allowable under CREP are filter strips, riparian buffers, wetland restoration, field windbreaks, and the planting of introduced and native grasses. Filter strips are narrow bands of grass or other permanent vegetation next to or parallel lakes and streams that reduce sediments, nutrients, pesticides, and other contaminants. Filter strips also aid in slowing wind erosion and providing wildlife.

Riparian buffers are areas of grasses, shrubs, and/or trees along the banks and rivers of streams. These buffers filter runoff by trapping sediments, nutrients, and pesticides, while also providing a wildlife habitat. Riparian buffers play an important role in restoring and preserving water quality, and in stabilizing the riverbank and wildlife in the area.

Field windbreaks are rows of trees or shrubs that are designed to reduce wind erosion, protect growing plants, and provide wildlife habitat. For the CREP, field windbreaks generally are 2-3 rows of native trees with a row of native shrubs. Grass plantings are designed to reduce the erosion of cropland and provide a wildlife habitat.

Currently, under CREP there are five types of payments that a farmer may receive for participating in the program: base annual payments, incentive payments, maintenance payments, state cost share assistance payments, and state lump sum one-time payments. The first three of these payments are consolidated into an annual CREP payment. In addition to the cropland rental payment, the farmer receives per acre an incentive payment, which is 40 percent of the rental payment. In addition, there is a \$5 maintenance payment per acre. In addition the USDA and the state split the costs for establishing these conservation programs, leaving the farmer with no out of pocket costs. The state pays its own annual rental payment, which is equal to 10 percent of the base annual payment. According to the Farm Service Agency, on average a farmer receives about \$43 per acre under CREP, though the actual amount varies depending on local rental rates.

Currently, approximately half of the states either have a CREP agreement in place or pending. Of the Great Lakes states, Illinois, Michigan, Minnesota, New York, Pennsylvania, and Ohio have a CREP agreement in place. Wisconsin's CREP agreement is pending. Minnesota recently appropriated \$51.4 million to match \$163 million in federal funds for 100,000 acres in the state. As of June 2001, there

were 42,237 acres enrolled in the Minnesota CREP, with another 23,893 acres in the process or awaiting final approval. Pennsylvania's CREP agreement is seeking to protect 100,000 acres in 20 counties throughout the state at a total cost of \$210 million, with state funding at \$60 million. Ohio's CREP agreement seeks to implement the program in all or parts of 27 counties near Lake Erie and its watersheds.

The MAEAP Program. Currently, only the livestock system is being implemented. Under this system, a vital component of the MAEAP is the development of a Comprehensive Nutrient Management Plan (CNMP). The CNMP conforms to the Generally Accepted Agricultural and Management Practices (GAAMPs) and standards developed by the NRCS. The CNMP is designed to protect water quality, obtain beneficial use from animal manure and other by-products of the operation, and reduce the effect the farming operation has on the environment. The CNMP describes the production practices, equipment, and facilities involved in an agricultural operation in a cost-effective manner that protects the environment, yet still maintains the economic viability of the land. Once implemented, the farmstead system and cropping system would develop similar management plans that address the specific environmental needs of each system.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill does not involve any new money and would not have any fiscal impact on the state or a local government. (10-3-01) However, the MDA stated that should CREP be expanded beyond the initial 80,000 acres, additional state or local matching funds would be necessary.

ARGUMENTS:

For:

The bill would solidify two existing programs that take a proactive, non-intrusive, incentive-based approach at improving the effects of agriculture on the environment, while still maintaining the economic viability of the land and the property rights of the owner. The bill would grant the Department of Agriculture specific statutory authority to administer and expand these programs, which have proven to be positive for both the agricultural community and for the environment. In addition, the creation of the fund

would aid the MDA in administering the funds necessary for the programs.

POSITIONS:

The Department of Agriculture supports the bill. (10-11-01)

The Michigan Agri-Business Association supports the bill. (10-11-01)

The Sierra Club supports the bill. (10-11-01)

Pheasants Forever supports the bill. (10-12-01)

The Michigan Farm Bureau supports the bill. (10-11-01)

The Michigan Association of Conservation Districts supports the bill. (10-11-01)

The Michigan Environmental Council supports the bill. (10-11-01)

Analyst: M. Wolf

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.