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SFA

BILL ANALYSIS

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House Bill 5013 (Substitute H-3 as passed by the House)
Sponsor: Representative Gene DeRossett
House Committee: Agriculture and Resource Management
Senate Committee: Farming, Agribusiness and Food Systems

Date Completed: 11-7-01

CONTENT

The bill would add Part 82 (Conservation Practices) to the Natural Resources and Protection Act, which would permit the Michigan Department of Agriculture (MDA) to establish conservation programs, provide conservation practice verification, and purchase or acquire conservation easements. The bill also would establish an "Agriculture Pollution Prevention Fund" and require the MDA to report to the Legislature annually.

Conservation Programs

Under the bill, the Department could establish conservation programs designed to encourage the voluntary use of conservation practices in the State. In implementing the programs, the MDA, in coordination with the Departments of Natural Resources and Environmental Quality, could do one or more of the following:

- Enter into contracts with one or more persons for the implementation of conservation practices on their land.
- Enter into contracts or other agreements with one or more people to administer or promote conservation programs, or to implement conservation practices.
- Provide payments, financial incentives, or, upon verification of the implementation of conservation practices, reimbursement for rental payments or for costs of conservation practice implementation, or both.
- Promote the use of conservation practices.
- Recognize and provide awards for people who had implemented conservation practices.
- Monitor and verify compliance with conservation plans.
- Enforce contracts or other agreements entered into under this proposed program.
- Terminate a contract or other agreement entered into under Part 82 in accordance with terms established in the contract or other agreement.

In carrying out its responsibilities under the bill, the MDA would have to coordinate with the Departments of Natural Resources and Environmental Quality and other applicable partners.

The Department could promulgate rules to implement Part 82.

The bill would define "conservation practices" as practices voluntarily implemented by the landowner, that protected and conserved water quality, soil, natural features, wildlife, or other natural resources, and that met one or more of the following criteria: complied with United States Natural Resource conservation service standards and specifications as approved by the

Department; were provided in rules promulgated by the MDA under the bill; and/or had been approved by the Agriculture Commission.

Conservation Practice Verification

As part of the proposed conservation program, the Department could provide for conservation practice verification. (The bill would define "verification" or "verify" to mean a determination by the MDA that one or more conservation practices had been established and were being maintained in accordance with a conservation plan.) Conservation practice verification could be granted to a person if all of the following conditions were met:

- The person had submitted a conservation plan in compliance with MDA requirements. (The bill would define "conservation plan" as a plan approved by the Department for all or a portion of a parcel of land that specified the conservation practices to be undertaken, and included a schedule for implementation.)
- The person had established and was maintaining all conservation practices provided for in the conservation plan, according to the plan schedule.
- The person had agreed to allow the MDA, after giving prior notice to the landowner, to conduct inspections of the applicable land and facilities.
- The MDA had conducted an on-site inspection of the conservation practices and had determined that the person had established and was maintaining all conservation practices provided for in the conservation plan, according to the plan schedule.

If the MDA determined at any time that the conservation practices provided in a conservation plan had not been established or were not being maintained, the Department could revoke a person's conservation practice verification. If verification were revoked, the person could be subject to penalties and repayment of all or part of the payments, financial incentives, land rental payments, and reimbursement of costs paid for implementation of the conservation practice according to the terms of the contract.

Department Acquisition of Conservation Easements

Under the bill, the Department could purchase or otherwise acquire conservation easements in accordance with Part 21 of the Act (which specifies that a conservation easement granted to a governmental or other legal entity is enforceable against the owner of the land or body of waters subject to the easement, and requires the easement to be recorded with the register of deeds).

A conservation easement purchased or otherwise acquired under the bill could contain provisions for the allowable or required use of the land subject to the easement, implementation of conservation practices on the land, maintenance of the conservation practices, opportunities for inspection of the land, penalties for noncompliance with the terms of the conservation easement, termination of the easement, and other terms agreed to by the Department. In addition, the MDA could enter into contracts with one or more people to monitor and enforce the terms of conservation easements purchased or acquired under the bill.

If it purchased or acquired a conservation easement under these provisions, the MDA would have to record the easement with the register of deeds for the county in which the land subject to the easement was located. If the easement were subsequently terminated, the MDA would have to record a notice of that termination.

(The bill would define "conservation easement" as it is in Part 21, i.e., "an interest in land that provides limitation on the use of land or a body of water or requires or prohibits certain acts

on or with respect to the land or body of water, whether or not the interest is stated in the form of a restriction, easement, covenant, or condition in a deed, will, or other instrument executed by or on behalf of the owner of the land or body of water or in an order of taking, which interest is appropriate to retaining or maintaining the land or body of water, including improvements on the land or body of water, predominantly in its natural, scenic, or open condition, or in an agricultural, farming, open space, or forest use, or similar use or condition".)

Fund

The bill would create the Agriculture Pollution Prevention Fund in the State Treasury. The State Treasurer could receive money or other assets from any source for deposit into the Fund, including State and Federal revenues, gifts, bequests, and other donations. The Treasurer would have to direct the investment of the Fund and credit to it the interest and earnings from Fund investments.

Any money recovered by the MDA under Part 82, including money paid to the Department due to the termination of a contract, agreement, or conservation easement, would have to be deposited into the Fund.

Money in the Fund would have to be spent, upon appropriation, only for one or more of the following:

- Promotion of conservation programs established by the MDA under the bill.
- Awards to participants in the conservation program.
- Payments, financial incentives, or reimbursement for rental payments for the implementation of conservation practices.
- Payments required under contracts entered into under the bill.
- Purchase of conservation easements.
- Monitoring and enforcement of conservation easements.

In addition, not more than 20% of the annual appropriations from the Fund could be spent for the administrative costs of the MDA in implementing Part 82. Administrative costs would include, but would not be limited to, costs incurred in doing one or more of the following:

- 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.
- Coordinating conservation practices with the U.S. Department of Agriculture and other State agencies with jurisdiction over conservation programs.

Report to the Legislature

The Department annually would have to prepare and submit a report to the standing committees of the Senate and House of Representatives with jurisdiction over issues related to agriculture and the Senate and House Appropriations Committees. The report would have to include all of the following:

- The amount of money received by the Fund during the previous fiscal year.
- The expenditures from the Fund during the previous fiscal year broken down by the categories listed above.
- The Fund balance on the date of the report.
- The number of acres in which conservation practices had been implemented.

-- The number of acres in which conservation easements had been purchased or acquired.

Confidentiality

The bill states that any information voluntarily provided by a person in connection with the development, implementation, or verification of a conservation plan or conservation practices under Part 82 would be confidential and exempt from disclosure under the Freedom of Information Act, and would not be open to public inspection without the person's consent. Any such information that was released to a legislative body could not contain information that identified a specific person.

This exemption would not extend 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, or consent agreement, or as otherwise provided by law.

Proposed MCL 324.8201-324.8208

Legislative Analyst: C. Layman

FISCAL IMPACT

The bill would have no fiscal impact on State or local government. The Agriculture Pollution Prevention Fund that would be created under the bill would receive money or other assets from any source. It is estimated that the money appropriated for the Conservation Reserve Enhancement Program (CREP) would be consolidated in the Fund. To date, over \$170 million in State, Federal, and private funds have been dedicated for CREP in Michigan.

Fiscal Analyst: C. Thiel

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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.