

Legislative Analysis



WETLAND PROTECTION

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House Bill 5992

Sponsor: Rep. Rebekah Warren

Committee: Great Lakes and Environment

Complete to 3-24-10

A SUMMARY OF HOUSE BILL 5992 AS INTRODUCED 3-24-10

The bill would amend Part 303 (Wetland Protection) of the Natural Resources and Environmental Protection Act (NREPA) to do several things, including:

- Add additional categories of wetland —"**wet-mesic sand prairie**," "**wooded dune and swale complex**," "**coastal fen**" and "**rich tamarack swamp**" to the category of "rare and imperiled wetland."
- Allow the Department of Natural Resources and Environment (DNRE) to deny or attach conditions to a permit for a project after the U.S. Army Corps of Engineers has granted a permit for the project if there was an **unresolved violation** of Part 303 involving the property.
- Add a **representative of Indian tribes** to the Wetland Advisory Council.
- Make **technical corrections**, including corrections to reflect the merger of the Departments of Natural Resources (DNR) and Environmental Quality (DEQ) into the DNRE.

DETAILED SUMMARY:

Definitions. The bill would make the following changes:

- Make the term "department" refer to the Department of Natural Resources and Environment (DNRE), rather than Department of Environmental Quality (DEQ).
- Revise the definition of term "nationwide permit," as described below.
- Include four more types of wetland —"**wet-mesic sand prairie**," "**wooded dune and swale complex**," "**coastal fen**" and "**rich tamarack swamp**" — within the meaning of the term "**rare and imperiled wetland**." (23 types of wetland are already covered).

The term "nationwide permit" currently means a nationwide permit issued by the U.S. Army Corps of Engineers under a specified federal rule (72 FR 11091 to 11198, March 12, 2007), including all general conditions, regional conditions, and conditions imposed by the State of Michigan under a "water quality certification" (under Section 401 of Title IV of the federal Water Pollution Control Act) or a "coastal zone management consistency determination" (under Section 307 of the Coastal Zone Management Act of 1972). The bill would change "coastal zone management consistency determination" to "coastal zone management consistency determination **or certification**."

Part 303 permit processing deadline. Section 30304(2)(b) of NREPA requires the DNRE, as of January 1, 2011, to make its decision on an application for a permit under Part 303 within

30 days after the U.S. Army Corps of Engineers has made its permit decision for the project (or by the end of the processing period provided for in Section 1301 of NREPA, whichever is later). When an applicant for a permit under Part 303 also needs authorization under one or more other parts of NREPA (Parts 31, 301, 315, 323, 325, **or** 353), the DNRE must make its decision under any of those parts by the same deadline (the later of 30 days or the processing period specified in Section 1301). This bill would change "**or**" to "**and**." This change appears to be technical, rather than substantive.

The bill would also make an apparently technical correction to a subsection reference contained in Section 30311a(4), which grants the DNRE up to 45 more days to process certain applications under some circumstances.

DNRE authority to deny a permit or attach conditions after Army Corps has granted a permit for a project. Generally speaking, under Section 30304b(2)(b) of NREPA, as of January 1, 2011, if the Army Corps has granted a permit for a project, the DNRE must also grant its Part 303 permit without any conditions or limitations beyond those imposed by the Corps. However, if a project falls into any of the following categories, the DNRE may deny a permit, or attach conditions or limitations not imposed by the Corps (and must inform the applicant in writing about the basis for its decision):

- The wetland is a rare and imperiled wetland.
- The wetland is regionally significant for the protection of fisheries, wildlife, or migratory birds.
- The site is described in Section 30309(a), (e), or (g).
- The proposed project involves a use or activity not regulated under Section 404(a) of Title IV of the Federal Water Pollution Control Act, 33 USC 1344.

The bill would also allow the DNRE to deny a permit or attach conditions to a permit ***if there was an unresolved violation of Part 303 involving the property***. The requirement that the DNRE notify the applicant in writing of the basis for its decision would also apply in this situation.

Wetland Advisory Council. Section 30302 of NREPA specifies that the directors of both the Department of Natural Resources and the Department of Environmental Quality are members of the Wetland Advisory Council. Those two departments have been combined into one department, the DNRE. The bill would make the DNRE director (or designee) a member of this council, and also add one individual to represent Indian tribes. The representative of Indian tribes would be appointed by the Governor within 30 days after the bill took effect.

FISCAL IMPACT:

A fiscal analysis is in process.

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■ 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.