



**House
Legislative
Analysis
Section**

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ASSESS LAND USE RESTRICTIONS

House Bills 5969 and 5970

Sponsor: Rep. James McNutt

**Committee: Conservation, Environment
and Great Lakes**

Complete to 11-27-96

A SUMMARY OF HOUSE BILLS 5969 AND 5970 AS INTRODUCED 6-7-96

House Bills 5969 and 5970 would amend the Natural Resources and Environmental Protection Act (NREPA) to require that the Department of Environmental Quality (DEQ) provide on-site evaluations on land use restrictions when requested to do so, and to provide an exemption from the permit requirements of the act for certain activities conducted in wetlands.

House Bill 5969 would add a new section (MCL 324.503b) to Part 5 of the NREPA, which governs the Department of Natural Resources' (DNR) powers and duties, to require that, upon request, the DEQ would have to conduct an assessment of land use restrictions imposed either under the provisions of the act or under federal law affecting the use of a parcel of property. In conducting the assessment, the DEQ would be required to visit the property to evaluate whether any land use restrictions existed. The assessment would include, but not be limited to, an evaluation of whether the parcel was restricted in use due to the presence of any of the following: wetlands; sand dunes; high risk erosion areas; floodplains; endangered species; natural rivers; or shorelands.

An assessment would have to detail both the specific regulatory program that might limit the owner's use of the property and the portion of the parcel that was limited by the regulatory program. In addition, the department could charge a fee, based upon the cost of conducting the assessment.

House Bill 5970 would amend Part 303 of the NREPA (MCL 324.30305), which regulates wetlands protection. Part 303 of the NREPA allows certain activities to be conducted in wetlands, which, if conducted in an inland lake or stream, or on a marina, would require a permit. Under House Bill 5970, a discharge that required a national pollution discharge elimination system permit under Part 31 of the act (which governs water resources protection) would be added to the list of activities that could be conducted without a permit.

Part 303 of the NREPA also specifies that an additional permit is not required for a project solely involving the discharge of fill material subject to the individual permit requirements of Section 404 of Title IV of the federal Water Pollution Control Act, between October 1, 1980, and the date the state program under Title IV is approved. House Bill 5970 would delete this provision, and would specify, instead, that a wetland restored and enrolled under a federal reserve program or voluntarily done under a limited term easement or agreement program, where the wetland wasn't under jurisdiction prior to restoration, did not fall under the jurisdiction of Part 303 of the act.

Permissible Activities. The bill would also exclude from the jurisdiction of the act certain activities in wetlands, including activities in wetlands that were effectively drained prior to October 1, 1980 and that continue to be effectively drained as part of an ongoing farming operation; and wetlands that were incidentally created as a result of one or more of the following activities:

- Excavation for mineral or sand mining, provided that the area was not wetland prior to excavation. However, this exemption would not include emergent wetlands on water bodies of five acres or more in size.

- Development of water treatment ponds or lagoons designed to meet the requirements of state or federal water pollution control regulations.

- Diked areas associated with landfill operations, provided that the area was not wetland prior to diking.

- Failure of public transportation agencies to maintain roadway drainage systems, if the wetland would not persist following maintenance of road ditches and culverts to previously established grades and elevations.

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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.