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INCREASE WETLAND PERMIT FEES

House Bill 5114 as passed by the House Second Analysis (3-25-98)

Sponsor: Rep. Kwame Kilpatrick
**Committee: Conservation, Environment
and Recreation**

THE APPARENT PROBLEM:

Michigan's forests, lakes, wetlands, and wildlife are the focal point of much of the tourist interest in this state. The state's environmental protection programs help to protect its natural resources and to ensure that the flora and fauna of this state continue to attract and impress tourists and citizens alike. In this respect, wetlands are particularly valuable natural resources. They are useful and productive habitats for fish and waterfowl, they recharge groundwater, help purify water sources, help in flood control, and provide many recreational opportunities. The state regulates the development of wetlands to help ensure their survival and to minimize adverse impacts on the environment and public health. The federal Clean Water Act provides protective guidelines for wetlands and Michigan is one of only two states that has a delegated wetlands program under the Clean Water Act, where the state issues its own wetlands permits while meeting the federal guidelines under the act. When a party desires to undertake a project that will have a potentially adverse impact upon a wetland area, the party is required to apply for and receive a permit for that use or development before being allowed to undertake the project. However, the state is currently only charging \$25 for wetland permit applications regardless of the impact or size of the proposed project. It has been suggested that this fee is too low given the time and effort involved in reviewing some of the permit applications and, as a result, legislation has been introduced to increase these fees and to set up a graduated fee system to charge higher fees for more demanding permit applications.

THE CONTENT OF THE BILL:

Under Part 303 of the Natural Resources and Environmental Protection Act (NREPA), which regulates wetland protection, a permit for conducting certain activities in a wetland costs \$25 regardless of the size of the wetland. House Bill 5114 would amend Part 303 to, instead, establish a fee scale, under which

the cost of each permit would be based on the particular activity proposed for a wetland.

General Permit Fee. Under the bill, an application for a project in a category of activities for which a general permit (one that applies to activities that are similar in nature and will have only a minimal adverse environmental effect on the environment) is issued would have to be accompanied by a \$100 fee.

Other Fees. A fee of \$2,000 would be charged for a major project, including the filling or draining of one acre or more of coastal or inland wetland; 10,000 cubic yards or more of wetland fill; or a new golf course, subdivision, or condominium affecting wetland. A fee of \$500 would be required for all other projects.

The single highest permit fee specified would be charged for a project that required review and approval under Section 117 of Land Division Act, concerning land and water management permit fees, and the provisions of Part 303 and the following sections of the NREPA:

- Section 3104, which concerns floodplain permits.
- Part 301, which regulates inland lakes and streams.
- Part 323, which regulates shorelands protection and management.
- Part 325, which regulates Great Lakes Submerged Lands.

Violations of Permit Requirements. If work had been done in violation of a permit requirement under Part 303 of the act, and restoration had not been ordered by the Department of Environmental Quality (DEQ), the department could accept a permit application if the application was accompanied by a fee equal to twice the amount normally required.

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Disposition of Fees and Civil Fines. Currently, the act specifies that fees and civil fines collected under the provisions of Part 303 must be deposited in the general fund. However, fees collected for assessments by the DEQ as to whether a parcel, or part thereof, is a wetland are deposited in the Land and Water Management Permit Fee Fund. The bill would require that all civil fines be deposited in the general fund and that all fees be deposited in the Land and Water Management Permit Fee Fund. In addition, the DEQ would be required to spend money from the Land and Water Management Permit Fee Fund to support guidance for property owners and applicants, permit processing, compliance inspections, and enforcement activities.

The department would also be required to prepare an annual report not more than 90 days after the end of each state fiscal year after 1997. The report would describe how the money from the land and water management permit fee fund had been expended during that fiscal year. The report would be submitted to the appropriations committees and the standing committees in the House of Representatives and the Senate that primarily address issues pertaining to the protection of natural resources and the environment. The act also currently specifies that funds collected by a local unit of government under a local ordinance be deposited in the local unit's general fund; this does not include criminal fines. The bill would exempt, in addition to criminal fines, civil fines and costs, the disposition of which is governed by the provisions of the Revised Judicature Act.

Other. The bill would specify that a permit application would have to include appropriate drawings describing the proposed use or development. The bill would also clarify a current provision of the act that specifies that a local unit of government should forward a copy of each wetland permit that it has accepted under a local ordinance. The bill would add that the local unit of government must also forward any permit fees that have been submitted. In addition, if after a permit application was made the department determined that permit was not required, the department would be required to promptly refund the permit application fee.

MCL 324.30306

FISCAL IMPLICATIONS:

Fiscal information on the House-passed version of the bill is not available.

ARGUMENTS:

For:

Many of the state's environmental protection programs are already funded through user fees. The fees charged to those who use or are involved in these programs are set at rates that are sufficient to meet the costs of these programs. Unfortunately, this is not true of the fees for wetland permits. The current flat fee for these applications of \$25 is simply too low to actually cover the costs involved in properly reviewing a permit application. The time and effort involved in examining a permit application and determining whether to approve or deny the permit usually far exceeds the \$25 fee. By increasing the fees, the bill will help the DEQ to collect the money necessary for this particular environmental protection program to pay for itself, as many of the other programs do already. According to the DEQ, the fees set by the bill are projected to generate between \$325,000 and \$450,000 in additional revenue for the DEQ. It is hoped the additional funds will allow the DEQ to focus more attention on compliance and enforcement activities, develop guidance, and provide other services to permit applicants, as well as to maintain prompt permit processing turnaround. Further, by applying the same type of graduated permit fee schedule used for all other permits under the Land and Water Management Division's consolidated permitting program, the process will also be made more fair. Investigation of bigger projects is more costly and therefore should cost more than investigation of smaller projects.

Furthermore, if the DEQ were to lose its delegated wetlands program, these permits would be handled under the federal system, which has no administrative appeals process, nor does it have a ninety-day turnaround period as the current state program has.

Against:

The bill is not strong enough, given the DEQ's record on compliance and enforcement issues, and particularly in light of a recent audit that found the DEQ lacking in those areas. Many feel that the bill

should more strongly require the DEQ to spend more of the money that would be brought in under the changes in the permit fees on compliance and enforcement.

Response:

The bill's requirement that the DEQ make a yearly report describing how the money was spent will allow for the needed oversight to make certain that the department uses to money for the purposes suggested.

POSITIONS:

The Department of Environmental Quality supports the bill. (1-13-98)

The Michigan United Conservation Clubs supports the bill. (1-12-98)

The Michigan Association of Realtors supports the bill. (1-12-98)

The Michigan Environmental Council supports the bill. (1-12-98)

The Michigan Chamber of Commerce supports the bill. (1-12-98)

Analyst: W. Flory

■ 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.