This revised analysis replaces the analysis dated 5-8-02.

House
Legislative
Analysis
Section

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REGULATION OF AQUATIC NUISANCE CONTROL

House Bill 5958 (Substitute H-1)
Revised First Analysis (5-9-02)

Sponsor: Rep. Larry DeVuyst
Committee: Conservation and Outdoor Recreation

THE APPARENT PROBLEM:

Aquatic plants, such as cattails, water lilies, water milfoil, and duckweed, are a vital part of any lake or pond. As noted in "Management of Aquatic Plants," published by the Department of Natural Resources (DNR), they convert sunlight and chemical elements into living plant tissue. They are used by fish, insects, and microscopic animals for food. They also replenish the aquatic environment with oxygen, which is essential to aquatic animals. In addition, rooted plants create a varied aquatic environment in which fish food organisms reside, and provide cover for spawning fish, nesting waterfowl, shoreline mammals, and their young. However, although they are important to the aquatic environment, plants frequently conflict with recreational and economic interests. For example, they can impair the enjoyment of the use of inland water when they become the hosts for parasites that cause "swimmer's itch."

Michigan has a wealth of freshwater resources that provide tremendous aesthetic and recreational value for the people of the state. However, as more and more people use the lakes, the potential for use impairment increases. Lake quality is influenced by many factors, such as the amount of recreational use a lake receives, shoreline development, and water quality. Problems most commonly cited by lake residents, such as excessive plant growth, algae, and mucky bottom sediments, are caused by water quality factors that lead to increased lake fertility or productivity. Productivity refers to the amount of plant and animal life that can be produced within a lake. Excessive productivity can significantly shorten the life of a lake. It has been suggested that part of the cause of a degradation in water quality is the result of the increase in development around inland lakes, with the consequent runoff of sediment from paved areas, lawn fertilization, and an increase in the use of automatic dishwashers in lakeside cottages and homes, with the consequent loading of septic tanks of phosphorus from dishwashing detergents.

While the gradual increase of lake productivity over time is a natural process, called eutrophication, or lake aging, this can be slowed down by reducing the input of plant nutrients such as phosphorus and sediments to the lake. Another step in slowing the degradation process is to apply chemicals in powder, crystal, or solution form. The application, or control work, must be made in accordance with provisions specified under the Public Health Code, and the application may be conducted by the state or a political subdivision, an organized lake association, the owner of abutting property, or by an aquatic pest control applicator licensed under the Natural Resources and Environmental Protection Act (NREPA), after a permit from the Department of Environmental Quality (DEQ) has been obtained. The necessary control work must be conducted at those times, under those conditions, and with those safeguards that are required by the DEQ. The DEQ may provide permits for the suppression of swimmer's itch and aquatic plants, if the applicants provide the chemicals and other equipment and services that are called for in the rules promulgated by the department.

The permit fees received from applicators cover the administrative costs of reviewing and processing applications, and support the Land and Water Management Permit Fee Fund. This permit system has been under attack in recent years because it cannot keep up with demand. The Department of Natural Resources (DNR), the DEQ, and the Department of Agriculture -- which, together with the DEQ, has oversight over applications -- has met for several months with lake associations, lakeside property owners, and the distributors of aquatic products to work out a new permit system for aquatic chemical applications – one which would give licensed applicators more flexibility and control over

where and when they may treat bodies of water. Together, they have agreed on legislation to accomplish this.

THE CONTENT OF THE BILL:

House Bill 5958 would add a new Part 33 to the NREPA (MCL 324.3301) to regulate the control of aquatic nuisance species. (The original Part 33, "Contamination of Waters," was repealed by Public Act 27 of 1996, since it was duplicated in Part 469 of the act, concerning fisheries). The new Part 33 would be entitled "Aquatic Nuisance Control." The bill would add new provisions concerning permits and permit fees for aquatic chemical applications, and add specific requirements for the application of pesticides to control "aquatic nuisances." The bill would also repeal sections of the Public Health Code that have been replaced by provisions of the bill. The bill would take effect January 1, 2003.

Definitions. The following are some of the definitions specified in the bill, listed in alphabetical order:

- "Class A control work" would mean control work that met either or both of the following requirements: a) it took place on a waterbody with a surface area of less than ten acres, had no outlet, and had bottomlands under a single ownership; or b) the treatment area had a surface area of less than one-half acre, lay along the shoreline, and had associated bottomlands under a single ownership.

- Class B control work would be defined under the bill to mean control work that was not class A control work, and that met one or more of the following requirements: b) it took place on a waterbody with a surface area of less than ten acres, and had no outlet with continuous flow (this would not apply if the control work included offshore control of an invasive, nonindigenous species): b) the treatment area lay along the shoreline and represented less than ten percent of the total shoreline length; c) the treatment area was a marina constructed in an area above the ordinary high water mark of, and directly connected to, an inland lake, a Great Lake, Lake St. Clair, or the St. Marys, St. Clair, or Detroit rivers; or d) the treatment area was a canal, directly connected to an inland lake, constructed in an area above the ordinary high water mark of that lake, and did not connect two or more waterbodies.

- Class C control work would be defined under the bill as control work that was not class A or class B control work.

- "Lake management plan" would mean a plan to manage a lake that included goals for preparing all of the following plans or gathering all of the following information, as applicable: all the information required for a Declaration of Intent for class C control work; a map or maps to scale showing all wetlands, public land, access sites, and water control structures in or bordering the waterbody; the size of the littoral zone (defined as the portion of a waterbody from the water's edge to the limit of the depth of light penetration where rooted aquatic vegetation typically grows); shoreline length; a description of the aquatic vegetation communities based on the department's field and data analysis methods; existing information on, and a plan to develop and maintain, fish communities and wildlife communities; an action plan and timeline, including vegetation goals and goal maps and vegetation management activities, for each of five years after the lake management plan had been submitted; shoreline length; critical habitat areas; description of water quality; available information on water quality problems and causes; water quality goals and options to achieve those goals; land uses surrounding the waterbody; and monitoring and evaluation.

- "Pesticide" would mean a substance or mixture of substances intended to prevent, destroy, repel, or mitigate aquatic nuisances.

- "Standard information" would be defined under the bill to include the applicator's name, address, and telephone number, his or her license and certification number, the name, size, and location of the waterbody, including a map that clearly delineated the location and the treatment area, active ingredient, trade name and application rate for each pesticide to be used. "Standard information" would also include, subject to the bill's provisions, the date of the control work, if known, except for algaecide application, information as to whether drinking water for adjacent riparian property to the treatment area was from a municipal system or private wells, and the name and daytime and evening telephone numbers of the applicator, and, if different, the person on whose behalf the control work was to be performed.

- "Treatment area" would be defined to mean a canal that was directly connected to an inland lake, that was constructed in an area above the ordinary high water mark of that lake, and that did not connect two or more waterbodies.

- "Vegetation management plan" would mean a plan to manage vegetation in a waterbody that included all of the information required for a Declaration of Intent

for class C control work, as described under the bill; a map or maps to scale showing all wetlands, public land, access sites, and water control structures in or bordering the waterbody; a description of the aquatic vegetation community, based on the DEQ's field and data analysis methods; and vegetation goals and goal maps and vegetation management activities for each of three years after the plan was submitted.

Pesticides. House Bill 5958 would specify that the application of pesticides to state waters to control "aquatic nuisances" (defined as any organism, including, but not limited to, aquatic vegetation that lives or propagates, or both, within the aquatic environment, and that impairs the use or enjoyment of the state waters, including the intermediate aquatic hosts for Schistosomes that cause swimmer's itch) would be lawful and not in contravention of the private or public rights to the use and enjoyment of abutting property by the property owners or occupants if the application was made in compliance with the requirements of Part 33, and of the provisions and rules promulgated under Part 83 of the act (pesticide control). Further, the bill would specify that control work (the application of a pesticide to a waterbody) could be undertaken on behalf of the state, a political subdivision of the state (including, but not limited to, a drainage board), by a lake board or lake association, or by a person with riparian rights to the affected waterbody.

The bill would specify that a person who sold pesticides at retail would have to provide a Declaration of Intent form for class A and class B control work with the pesticides. The forms would be provided by the department upon request and at no charge. The DEQ would have to post each Declaration of Intent form required under the provisions of the bill in downloadable form on the DEQ's Internet web site. The bill would also specify that the department, in conjunction with the Department of Agriculture, would have to undertake an education campaign to inform members of the public and the pesticide application industry about the requirements of these provisions and seek the voluntary cooperation of lake boards and lake associations, local units of government, businesses that sell pesticides, licensed and certified applicators, and environmental and conservation organizations in the education campaign.

Further, the bill would specify that a person could not knowingly give false information to the DEQ or the Department of Agriculture in a matter pertaining to the provisions of the bill, or knowingly resist, impede, or hinder the department's representative in the discharge of his or her duties under these provisions. A violation of the bill's provisions would be subject to the applicable sanctions imposed under Part 83 of the act (pesticide control), as provided under the bill.

Vegetation/Lake Management Plan. A vegetation management plan or lake management plan could be submitted to the DEQ by a political subdivision of the state, or a lake board or lake association or other group having demonstrated support from lake riparian owners. Either plan would have to be signed and accompanied by the fee specified under the bill. The plan would take effect beginning 60 days after it was submitted, unless, before that time, the DEQ by certified mail notified the person who submitted the plan that it was incomplete or not acceptable to the DEQ, and the DEQ identified the specific reasons for its determination. The person could submit a revised plan, which would be subject to the same requirements as an original plan, within 60 days after the DEQ mailed the notification. No fee would be required for the revised plan. In addition, if the department notified a person that a revised plan was incomplete or not acceptable to the department, the fee that accompanied the original plan would be returned, and the plan could not receive further consideration from the department. However, a new plan could be submitted, accompanied by the required fee.

A signed plan update would have to be submitted to the department before March 1 of each year in which a Vegetation Management Plan or Lake Management Plan was in effect, except for the first calendar year. The update for a Lake Management Plan would also have to specify progress made in achieving goals for preparing plans or gathering information, as set forth in the plan. In addition, an update for either type of plan could not propose major modifications. An update to either plan would also be subject to rejection, modification, or revision.

Memorandum of Understanding . The Commission of Agriculture and the director of the Department of Agriculture would be required to enter into a Memorandum of Understanding with the director of the DEQ. The investigation and resolution of violations of the provisions of the bill would have to be conducted in accordance with the memorandum. The Memorandum of Understanding would have to provide for both of the following:

- That the DEQ and the Department of agriculture would provide notice to each other of suspected violations of the provisions of the bill.

• Any other matters relevant to the investigation and resolution of violations of the bill's provisions that the parties to the memorandum considered advisable.

Aquatic Pesticide Enforcement Review Board. The bill would establish the Aquatic Pesticide Enforcement Review Board, which would make recommendations to the director of the Department of Agriculture for enforcement actions for violations of the bill's provisions. The board would be created within the DEQ and would consist of the following members:

• Two employees of the DEQ appointed by the director of the department.

• Two employees of the Department of Agriculture appointed by the director of that department.

• One member representing licensed pesticide applicators appointed by the governor.

Members would serve at the pleasure of the director of the DEQ or the director of the Department of Agriculture, respectively, for two-year terms, but could be removed by the governor for incompetency, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause. The board would meet at least quarterly, or more frequently at the call of the chairperson or if requested by two or more members. The board would conduct business in compliance with the provisions of the Open Meetings Act and the Freedom of Information Act (FOIA). Members of the board who were employees of the DEQ or the Department of Agriculture would serve without compensation. However, members could be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.

Declarations of Intent. Under the bill, Class A control work on a treatment area could be performed by a licensed pesticide applicator or by the owner of the bottomlands associated with the treatment area. A signed Declaration of Intent (on a form provided by the Department of Environmental Quality) would have to be submitted to the department not less than 5 days before the work was performed. The Declaration of Intent would have to include all of the following information: "standard information," as defined under the bill; the target species, if known, and an explanation of the need for the control work.

Class B control work would have to be performed by a licensed applicator, unless it was performed on a waterbody described in the bill as having a surface area of less than ten acres, and no outlet with continuous flow, in which case it could be performed by the owner or owners of the bottomlands associated with the treatment area. A signed Declaration of Intent would have to be submitted to the DEQ not less than ten days before the work was performed. In addition, unless the Class B control work was to be performed according to a vegetation management or lake management plan, it would have to be accompanied by a fee, as provided under the bill, and would have to include the following: standard information; the target species; an explanation of the need for the control work; a map of the treatment area, size of the treatment area, and, for control work along the shoreline, the shoreline dimensions in the treatment area; and -- for control work described in the bill as a treatment area along the shoreline representing less than ten percent of the total shoreline length -- the total shoreline length.

If the class B control work was to be performed according to a vegetation management or lake management plan, the Declaration of Intent would have to include the applicator's name, address, and telephone number; his or her certification and, if applicable, license number; if applicable; the name and location of the waterbody; the active ingredient, trade name and application rate for each pesticide to be used; subject to the bill's provisions, the date of control work, except for algaecide application; and the applicator's name and daytime and evening telephone numbers, and the person on whose behalf the control work would be performed if that person was not the applicator.

Class C control work would also have to be performed by a licensed or certified applicator. The requirements for class C control work would generally be the same as those specified for class B control work, except that the Declaration of Intent would have to be submitted at least 14 days before the work was performed, and the map of the treatment area would have to show the depth contours of the treatment area, and inlets, outlets, and wetlands within or adjacent to the treatment area. In addition, the bill would require an explanation of how each target species interfered with designated uses; the size of the littoral zone; and information identifying certain species that use the waterbody.

Amendments to Declarations of Intent. If, after a person submitted a declaration of intent, the application rate or class of the pesticide to be used for control work changed, or if the date on which the control work was to be performed changed or was not known when the application was submitted, the

person would have to amend the declaration to update that information and submit the amendment in writing or by electronic mail. Otherwise, a new Declaration of Intent would have to be submitted if any information in the original changed after submission. Beginning five, ten, or 14 days, respectively, after a Declaration of Intent for class A, class B, or class C control work had been submitted, or 24 hours after the department received an amendment, whichever period expired later, a person could proceed with the control work as described unless the director of the department issued an order prohibiting the work. The director could issue such an order for either of the following causes:

• The use of a pesticide, although otherwise in accordance with the labeling, was likely, by itself or in combination with other aquatic management activities, to result in either or both of the following: a public health hazard; or specific and identifiable pollution, impairment of a designated use, or unacceptable negative impacts to the natural resources or the public trust therein of a type or magnitude not considered by the U.S. Environmental Protection Agency (EPA), or the Department of Agriculture in the decision to register the pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the provisions of Part 83 of the NREPA (pesticide control), respectively.

• The Declaration of Intent was incomplete or contained false information.

• The Declaration of Intent was not accompanied by the required fee, if any.

Under the bill, an order prohibiting the control work would have to include findings of fact, including a concise and explicit statement of the underlying facts supporting the findings.

Control Work. Under the bill, control work would have to comply with the following requirements:

• Control work for aquatic vegetation, alone or in combination with other aquatic vegetation management activities, would be authorized only for the control of aquatic vegetation that interfered with a "designated use" of a waterbody (a public use as established by administrative rule).

• Control work, alone, or in combination with other aquatic vegetation management activities, could not result in the nonattainment of any designated use.

• Control work, alone or in combination with other management activities, could not result in less than 20 percent cover with native submergent aquatic vegetation in the littoral zone of the lake, including a minimum of five species of native submergent macrophytes consisting of at least one species from each of three architectural groups -- as determined by the department -- except for management activities in either of the following: ponds included on the DEQ's reduced review list, if control work was conducted when there is no outflow; or marinas constructed in an area above the ordinary high water mark of an inland lake, Great Lake, Lake St. Clair, or a connecting channel.

• A maximum area of 40 feet by 40 feet of submergent vegetation could be removed from each developed riparian property using pesticides alone or in combination with other aquatic vegetation management activities for waterbodies that, before any control work or other aquatic vegetation management activities, had less than one or more of the following: 20 percent cover with native submergent aquatic vegetation in the littoral zone; five species of native submergent vegetation; or one species from each architectural group;

• Floating leaf and emergent vegetation could not be damaged, except under one or more of the following conditions:

-- A maximum of a 40-foot by 40-foot area could be cleared by control work alone or in combination with other aquatic vegetation management activities along each developed riparian property, regardless of the shoreline length of the riparian property.

-- A 15-foot wide channel could be cleared by control work, alone or in combination with other aquatic vegetation management activities, to allow access to open water. However, if an area was cleared in accordance with the above requirements for clearing a 40-foot by 40-foot area, the channel would have to be added to the lakeward side of the 40-foot by 40-foot area so that the total width of plant removal did not exceed 40 feet.

-- The target area was in a pond included on the department's reduced review list and control work was conducted when there was no outflow.

-- The target area was in a marina constructed in an area above the ordinary high water mark of an inland lake, Great Lake, Lake St. Clair, or a connecting channel.

• Control work, alone or in combination with other aquatic vegetation management activities, could not damage aquatic vegetation in the offshore area, except for selective chemical control of invasive nonindigenous aquatic vegetation.

• Control work would be authorized only in areas where the riparian property was developed except that selective control of invasive nonindigenous aquatic vegetation and control of nuisance vegetation in an area not to exceed 40 feet by 40 feet adjacent to privately owned undeveloped riparian property would be authorized.

• Control work could not result in damage to aquatic vegetation or in water use restrictions in areas not described as a target area in the declaration of intent.

• Copper sulfate could not be used in any portion of a trout stream or lake, or within 1,000 feet of trout stream or lake as designated under the provisions of Part 487 of the act, which regulates sport fishing.

• Control work having the potential to affect endangered or threatened species or their habitats would not be authorized, except when the Department of Natural Resources (DNR) had authorized the control work in writing. The authorization would have to be made immediately available to the department upon request.

• Control work could not damage critical fish spawning habitat.

Restrictions on Control Work. The bill would also specify that, before performing control work with Granular 2,4-D, or Endothall products, the person performing the control work would be required to obtain the location and depth of all private drinking water wells within 250 feet of the treatment area. Records of the locations and depths of the wells would have to be retained for one year from the date of each control work with granular 2,4-D or Endothall products. In addition, the records would have to be made available to the department immediately upon request. Also, under the bill, a person could not perform control work using the liquid formulation of Fluridone {1-Methyl-3-Phenyl-5-[3-(Trifluromethyl) Phenyl] –4(1H)–Pyridinone} in a manner inconsistent with either the pesticide's labeling, or the recommendations as to application frequency, times, and rates in *"Interim Strategy: Spring Fluridone Use in Michigan in 2002"* (November, 2001), by the Land and Water Management Division of the DEQ.

Fees. The bill would require that the following nonrefundable fees accompany each Declaration of Intent or plan submitted to the department:

Declaration of Intent, Class A Control Work	No fee
Declaration of Intent, Class B Control Work	$ 75.00 (Unless the work is being performed under a Vegetation or Lake Management Plan.)
Declaration of Intent, Class C Control Work	$150.00 (Unless the work is being performed under a Vegetation or Lake Management Plan
Vegetation Management Plan or Lake Management Plan	$300.00

The bill would also specify that the department would have to forward fees to the state treasurer for deposit in the Land and Water Management Permit Fee Fund established under Part 301 of the act (324.30113).

Public Notice. Not less than three days before performing control work, an applicator would have to provide notice of the pesticide to be used, the treatment area, and restrictions on the use of treated water by one of the following methods:

• Publication of a notice in a newspaper of general circulation in the area where the waterbody was located.

• Broadcasting an announcement on a radio station that served the area where the waterbody was located.

• First-class mail, addressed to residents with riparian rights to the waterbody.

Posting of Signs in Treatment Area. The bill would require that, before performing control work, an applicator would have to post the treatment area with signs, as follows:

• For a treatment area of less than two acres in size, signs would have to be posted along the shoreline of the area of impact not more than 100 feet apart. To allow for drift of chemical from the treatment area, riparian lands adjacent to the treatment area would also have to be posted, if permitted by the riparian owners.

• For a treatment area of two or more acres in size, signs would have to be posted in the same manner as above. In addition, all access sites, boat launching areas, and private and public parks located on the waterbody would have to be posted conspicuously, such as at the entrances, boat ramps, and bulletin boards, if permitted by their managers or owners. If these sites, launching areas, or parks were not to be treated, or were not adjacent to the treatment area, the signs would have to clearly indicate the location of the treatment area and outline the restrictions or the use of the water in the treatment area.

The bill would also specify that a printed sign would have to be approved by the department, and include the name, address, and telephone number of the applicator; and the name of the pesticides and the restrictions on the use of treated water, according to the labeling. In addition, the bill would specify that an applicator would not be liable if posted signs were removed without that person's consent; that the applicator would have to allow department representatives to collect a sample of the pesticide used, before or during the control work, as determined by the DEQ; that the sample could not be a larger quantity than was required for analysis; and that the DEQ could conduct spot checks to monitor compliance with these provisions.

Contested Case Hearing. The bill would specify that a person could request a contested case hearing held under the provisions of the Administrative Procedures Act when aggrieved by an order issued under the bill's provisions for class B control work, or under the provisions of the act concerning a stop order issued when it is believed that a pesticide or device is being used in violation of the provisions of parts 33 and 83, or a rule promulgated under Part 33 of the act.

Other. House Bill 5958 would amend provisions under Part 83 of the act, concerning pesticide control, to specify that violations of the provisions of Part 33, concerning aquatic nuisance control, as well as violations concerning pesticide control provisions, would be subject to fines, warnings, and orders to stop prohibited conduct issued by the director of the Department of Agriculture as well as civil actions.

Land and Water Management Permit Fee Fund. Currently, the act specifies that the DEQ must expend money from the Land and Water Management Permit Fee Fund to implement certain parts of the NREPA. House Bill 5958 would extend the list to include Part 33, aquatic nuisance control, and Part 323, concerning shorelands protection and management.

Repealers. The bill would repeal sections 12561, 12562, and 12563 of the Public Health Code (MCL 333.12561, 333.12562, and 333.12563), which have been replaced by provisions of the bill.

Effective Date. The effective date of the bill would be January 12, 2003.

BACKGROUND INFORMATION:

Michigan has over 36,000 miles of streams, and more than 11,000 lakes and ponds. These precious water resources are protected from degradation due to pollution, physical alterations and nuisance aquatic species under state law. The water quality, aquatic habitat, and compliance with state laws are monitored, for the most part, by the Department of Environmental Quality (DEQ). Other state agencies and volunteer organizations also take part in the process. For example, assessment and protection of the environmental quality of inland lakes is the focus of the Cooperative Lakes Management Program (CLMP). Lake water quality monitoring is conducted by staff and by volunteers through the CLMP, and administered by staff in partnership with the Michigan Lakes and Streams Association. The CLMP provides sampling methods, training, workshops, technical support, quality control, and laboratory assistance for volunteers to monitor lakes for indicators of lake productivity. Information on these programs is available on the DEQ's web site, *www.michigan.gov/deq/.*

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The bill would reduce the administrative work now required of the Department of Environmental Quality (DEQ) in issuing permits for aquatic chemical applications. The system has been criticized in the past few years because department employees cannot keep abreast with the demand for permits. For example, the DEQ at present has a backlog of approximately 800 permits, and the summer season has not yet begun! This means that some applicators, homeowners, and lake associations cannot treat their waterfront property until the vegetation begins to grow out of control. Eventually, this situation will result in more chemicals being put into the water to treat the overgrowth of vegetation. This increases the cost to everyone involved. The bill, instead, proposes

a new system that would involve only public notice and notice to the DEQ of proposed aquatic herbicide treatments.

Under the bill, the DEQ would not have to respond to every notice, and a licensed applicator would be able to perform the treatments in a reasonable time. Proponents point out that, under the bill, licensed aquatic applicators would be treated in the same manner as other pesticide applicators, such as agricultural pesticide applicators, are treated (under Part 83 of the Natural Resources and Environmental Protection Act, concerning pesticide control). If they used poor judgement in applying chemicals, their licenses could be revoked. In addition, the DEQ and the Department of Agriculture would retain the authority to issue an order to stop an aquatic treatment if it is determined that it would result in a public health risk or a risk to the state's natural resources.

Response:

Proponents of the bill maintain that, as a result of the proposed system specified under the bill, DEQ staff would be able to spend more time in the field enforcing permitting and control work requirements, rather than reviewing permits behind a desk. However, as written, there are no enforcement provisions in the bill.

Against:

The bill seeks to impose a simple solution on a complex problem. For example, the proposed system for aquatic chemical applications is based on the erroneous assumption that aquatic weeds are the *cause* of the problem referred to as aquatic nuisance. Actually, an overabundance of aquatic weeds in a lake is the *effect* of pollution from sewer runoff and from lawn fertilizers. A weed-free lake does not mean that the lake has clean water, since most native plants are important to the aquatic ecosystem. The provisions of the bill, however, could result in a broad spectrum of aquatic herbicides being applied that could result in unintended damage to aquatic ecosystems. Such applications would destroy not only the nuisance plants in a lake, but also native plants that serve as food for ducks and other populations. The application of a broad spectrum of herbicides would also affect plant life downstream. These problems are certain to increase as development around inland lakes increases. Rather than establish a system that might encourage the unilateral elimination of *all* aquatic weeds, some people maintain that policymakers should, instead, look at the methods of controlling the sources of pollution that cause aquatic nuisance problems. They point, as an example, to communities that have already imposed restrictions specifying that buildings on lakefront property cannot be sold unless they are equipped with up-to-date septic tank systems.

In addition, representatives of environmental groups point out that the verdict is not yet in on all pesticides. It is just now becoming clear that some pesticides, such as those used to treat lumber, that were tested and approved years ago, have toxic elements. As a result, playgrounds built using certain lumber materials must now be reassessed. In order to avoid similar problems involving pesticides in lakes, it has been suggested that the bill be amended to require the bonding of pesticide applicators conducting control work in lakes. Others suggest that, instead of changing the current system for aquatic chemical applications, some of the funds from the bond proposal that may be decided in November should be used to address the enormous problems of outdated septic and sewage systems that contribute to this problem. Money from the bond could be distributed to local units of government to finance sewer projects in lakeside areas.

Against:

The bill is overly permissive. For example, it would specify that, for class A aquatic work, a Declaration of Intent would have to be submitted to the department five days before the work was to be performed. For class B control work, a ten-day notice would be required; and class C control would require fourteen days notice. Beginning five, ten, or fourteen days, respectively, after a Declaration of Intent for class A, class B, or class C control work has been submitted, a person could proceed with the work, unless the director of the department issues an order prohibiting it. Isn't it overly optimistic to assume that the department will review each Declaration of Intent as soon as it is received? However, if this isn't done, each applicant will have the right to proceed with an aquatic application, regardless of the merits of the proposed control work.

POSITIONS:

Representatives of the following testified in support of the bills (5-2-02):

- The Michigan Association of Lake Associations
- The Michigan Aquatic Managers Association (MAMA)
- The Michigan Agribusiness Association

- The Michigan Waterfront Alliance

The Department of Environmental Quality supports the concept of the bill but has not yet taken an official position. (5-9-02)

The Michigan United Conservation Clubs (MUCC) opposes the bill. (5-7-02)

Trout, Unlimited opposes the bill. The association would support an amendment requiring the bonding of applicators. (5-7-02)

The Michigan Environmental Council (MEC) opposes the bill. (5-7-02)

Analyst: R. Young

■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.