

Legislative Analysis



MARINA AND SEASONAL MOORING PERMITS

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House Bill 5055 (Substitute H-1)

Sponsor: Rep. Doug Bennett

Committee: Great Lakes and Environment

Complete to 9-14-09

A SUMMARY OF HOUSE BILL 5055 AS REPORTED FROM COMMITTEE

House Bill 5055 would amend Part 301 (Inland Lakes and Streams) of the Natural Resources and Environmental Protection Act to do the following:

- Eliminate the requirement for a permit to install certain seasonal mooring structures if a permit had previously been issued for the structure and it is being reinstalled in accordance with the permit.
- Eliminate the requirement for a permit to maintain or operate a marina and the associated \$50 fee.
- Require permits to construct, expand, or reconfigure a marina and provide conditions for the issuance of such permits.
- Provide design requirements for new, expanded, or reconfigured marinas.
- Require the owner or operator of an existing marina without a Part 301 permit to obtain one by January 1, 2012 (or earlier, if expanding or reconfiguring the marina).

Unlike the introduced bill, the H-1 Substitute is silent as to local regulatory authority over marinas.

FISCAL IMPACT:

This bill would reduce permit fee revenues by approximately \$20,000 annually, but would enable the department to avoid annual program expenses exceeding \$175,000. This program is totally supported by consolidated permit fee revenue. Total program costs for FY 2009-2010 are anticipated to be more than \$175,000.

This legislation is necessary to support the Governor's FY 2009-10 budget recommendation for the Department of Environmental Quality (DEQ).

DETAILED SUMMARY:

Part 301 definitions. [§30101] The bill would add the following definitions to Part 301:

- "**Expand**" would mean "to occupy a larger area of an inland lake or stream occupied than authorized by a permit issued under [Part 301] for marina mooring structures and watercraft moored at the marina."

- **"Mooring structures"** would mean "structures used to moor watercraft, including, but not limited to, docks, piers, pilings, mooring anchors, lines and buoys, and boat hoists."
- **"Reconfigure"** would mean to do either of the following without expanding the marina: (1) to change the location of the dock or docks and other mooring structures at the marina to occupy an area of the inland lake or stream that was not previously authorized by a permit issued under Part 301, or (2) to decrease the distance available for ingress and egress to an outside slip as described in Section 30106a.
- **"Riparian interest area"** would mean "that portion of an inland lake or stream over which a riparian owner has an ownership interest."

Require permits for marina construction, reconfiguration, and expansion; eliminate permits for maintenance and operation. [§30102, §30104] Unless an exception applies, Part 301 prohibits persons without a permit from erecting, maintaining, or operating a marina. Under the bill, a person without a permit could not "construct, reconfigure, or expand" a marina, eliminating the need for a permit to maintain or operate a marina but adding a permit requirement for a reconfiguration or expansion. The bill would likewise eliminate the \$50 fee for renewing a marina operating permit found in Section 30104(2).

Eliminate permit requirement for certain seasonal mooring structures. [§30103] Section 30103 provides a list of exceptions to the permit requirements of Part 301. The bill would add the "annual installation of a seasonal dock or docks, pilings, mooring buoys, or other mooring structures previously authorized by and in accordance with a permit issued under [Part 301]" to the list of projects or structures for which a permit is not required. In other words, if a permit had previously been obtained for a seasonal mooring structure and it is being reinstalled in accordance with that permit, no additional permit would be required.

Permits to construct, expand, or reconfigure marinas. [§30106a] Under the bill, the DEQ would be required to issue a permit to construct, expand, or reconfigure a marina if the marina met the conditions of existing Section 30106 as well as those set forth in a new Section 30106a.

[Under existing Section 30106, the following provisions apply to permits issued under Part 301:

- The DEQ must find that the structure or project will not adversely affect the public trust or riparian rights, considering the possible effects on the inland lake or stream (and on the waters from which or into which it flows), and the uses of all such waters for recreation, fish and wildlife, aesthetics, local government, agriculture, commerce, or industry.
- The proposed project or structure must not unlawfully impair or destroy any of the waters or other natural resources of the state.
- Part 301 does not modify the rights and responsibilities of riparian owners as to their riparian water.
- The permit must specify that the project will not cause unlawful pollution as defined in Part 31 (Water Resources Protection).]

The bill would add the following conditions for the issuance of a permit to construct, expand, or reconfigure a marina:

- The marina must extend from the riparian property of the applicant.
- The marina must not interfere with navigation.
- The marina must be located and designed to be operated consistently with the "correlative rights" of other riparian owners, including the rights of adjacent riparians.

Design requirements. The marina would have to be configured so that **all boat mooring under any wind condition would occur solely within the marina's "riparian interest area"** to meet the requirement that its design is consistent with the correlative rights of other riparians. ("Riparian interest area" is defined, for this section only, as both (1) the applicant's riparian interest area, and (2) any adjacent area for which the applicant has secured written authorization from the owner whose rights might be affected.)

In addition, for an outside slip, boat mooring ingress and egress would require a minimum maneuvering distance of 1.5 times the length of the slip.

- An "outside slip" would mean a "slip that is accessed from a location between the boundary of the marina's riparian interest area and the mooring structure."
- "Slip length" would mean the longer of (1) the total length of all mooring structures, including the docks and pilings, or (2) the total length of the vessel moored in the slip, including, but not limited to, outboard engines, boat hoists, bowsprits, and swim platforms.
- The minimum distance would be measured from the end of the slip to the boundary of the marina's riparian interest area, except for broadside moorage.
- For broadside moorage, the minimum distance would be measured from the outside beam of a watercraft moored at the slip to the boundary of the riparian interest area.

Surveys; easements. The DEQ could require the applicant to either (1) submit a riparian interest area estimate survey, sealed by a licensed surveyor, or (2) obtain and record an easement from any affected adjacent riparian owner authorizing an incursion.

Require permits for existing marinas. Some existing marinas do not have permits under Part 301. The bill would require the owner or operator of a marina without a permit as of the bill's effective date to obtain one before an expansion or reconfiguration of the marina or January 1, 2012, whichever came first. An existing marinas authorized by a construction permit does not need to obtain a new construction permit except to expand or reconfigure.

Local regulatory authority over marinas. As introduced, the bill contained a provision that said that Section 30106a neither limits nor grants authority to local units of government to regulate the location or operation of a marina, and that the issuance of a marina permit does not eliminate the need to obtain other applicable authorizations. This provision has been removed in the substitute version.

POSITIONS:

The Department of Environmental Quality supports the bill as amended. (9-10-09)

The Michigan Boating Industries Association submitted written testimony in support of the bill as amended. (9-10-09)

The Tip of the Mitt Watershed Council submitted written testimony in support of the bill as amended. (9-10-09)

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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.