

Legislative Analysis



ELIMINATE MARINA OPERATING PERMITS

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House Bill 5055

Public Act 139 of 2009

Sponsor: Rep. Doug Bennett

House Committee: Great Lakes and Environment

Senate Committee: Natural Resources and Environmental Affairs

First Analysis (1-24-11)

BRIEF SUMMARY: House Bill 5055 amends 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 was previously 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 require the department to issue such permits if specified conditions are met.
- 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).

MCL 324.30101 et al.

FISCAL IMPACT: By eliminating the \$50 annual fee for the renewal of a marina operating permit, this bill would reduce permit fee revenues by approximately \$20,000 annually, but eliminating permit renewal also would enable the department to avoid annual program expenses exceeding \$175,000. This legislation is necessary to support the Governor's FY 2009-10 budget recommendation for the Department of Environmental Quality (DEQ).

THE APPARENT PROBLEM:

The Department of Environmental Quality, the key agency responsible for protecting Michigan's natural resources as required by Michigan's constitution and laws, has seen its General Fund support cut substantially in recent years. In fact, some critics believe that the budget situation is so dire that the department no longer has sufficient funds to adequately protect Michigan's natural resources.

In light of the budget reductions of recent years, the department has suggested that its existing marina operating permit program under Part 310 (Inland Lakes and Streams) be eliminated to reduce costs. Under the bill, only new, expanded, or reconfigured marinas

will receive agency review. Marina operators will no longer need to obtain a permit for their operation every three years.

THE CONTENT OF THE BILL:

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

- Require permits for marina construction, reconfiguration, and expansion; and Eliminate permits for maintenance and operation.

Unless an exception applies, a permit is needed under Part 301 to erect, maintain, or operate a marina. Under the bill, a permit is needed to "construct, reconfigure, or expand" a marina. This language appears to eliminate the need for a permit to maintain or operate a marina but to require a permit to construct, reconfigure, or expand one. The bill also eliminates the \$50 fee for renewing a marina operating permit found in Section 30104(2).

- Eliminate the permit requirement for certain seasonal mooring structures.

Section 30103 provides a list of exceptions to the permit requirements of Part 301. The bill adds 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 has previously been obtained for a seasonal mooring structure and it is being reinstalled in accordance with that permit, no additional permit is required.

- Require permits for existing marinas.

Some existing marinas do not have permits under Part 301. The bill requires the owner or operator of a marina without a permit as of the bill's effective date [November 4, 2009] to obtain one before an expansion or reconfiguration of the marina or January 1, 2012, whichever comes first. An existing marina authorized by a construction permit does not need a new construction permit except to expand or to reconfigure.

Permits to construct, expand, or reconfigure marinas

Under the bill, the DEQ must issue a permit to construct, expand, or reconfigure a marina if the marina meets the conditions of existing Section 30106 and 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).

New Section 30106a adds the following conditions for a permit to construct, expand, or reconfigure a marina:

- The marina extends from the riparian property of the applicant.
- The marina does not interfere with navigation.
- The marina is 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 must be configured so that all boat mooring under any wind condition occurs solely within the marina's "riparian interest area" to meet the requirement that it is designed to be operated 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, boat mooring ingress and egress for an outside slip, requires a minimum maneuvering distance of 1.5 times the length of the slip.

- An "outside slip" means a "slip that is accessed from a location between the boundary of the marina's riparian interest area and the mooring structure."
- "Slip length" means 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 is 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 is measured from the outside beam of a watercraft moored at the slip to the boundary of the riparian interest area.

Surveys; easements

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

Part 301 definitions.

The bill adds the following definitions to Part 301:

- **"Expand"** means "to occupy a larger area of an inland lake or stream than authorized by a permit issued under [Part 301] for marina mooring structures and watercraft moored at the marina."
- **"Mooring structures"** means "structures used to moor watercraft, including, but not limited to, docks, piers, pilings, mooring anchors, lines and buoys, and boat hoists."
- **"Reconfigure"** means 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"** means "that portion of an inland lake or stream over which a riparian owner has an ownership interest."

ARGUMENTS:

For:

According to the department, elimination of the marina operating permit program will reduce costs for both marina operators and the department. Permits will now only be required when a new marina is built or when an existing marina's "footprint" is expanded or reconfigured. The hope is that this will reduce the department's costs while retaining some level of environmental protection. The department will focus its severely limited resources on the activities (construction, expansion, or reconfiguration) thought to have the most potential to adversely impact natural resources, public trust waters, and riparian rights.

The Governor's FY 2009-2010 budget recommendation for the Department of Environmental Quality assumes the elimination of this program.

The bill moves certain criteria from administrative rules relating to operating permits to Part 301 itself to ensure that the criteria will remain in effect.

The bill requires the owner or operator of an existing marina without a Part 301 permit to come into compliance with the act by January 1, 2012 (or earlier, if the owner or operator wishes to expand or reconfigure the marina before then).

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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.