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Senate Bill 436 (as introduced 4-2-09) Sponsor: Senator Jud Gilbert, II

Committee: Economic Development and Regulatory Reform

Date Completed: 6-3-09

## **CONTENT**

The bill would add Section 1313 to Part 13 (Permits) of the Natural Resources and Environmental Protection Act to do the following:

- -- Allow a person to file a permit application or a proposed remedial action plan with a licensed professional engineer for review.
- -- Require the licensed professional engineer to report his or her findings and recommendations to the Department of Environmental Quality (DEQ).
- -- Require the DEQ to process the application or proposed plan within 21 days after receiving the engineer's report or after a hearing or consultation; and provide that any processing fee would be 50% of the amount otherwise charged.
- -- Require the DEQ to maintain a list of licensed professional engineers eligible to review permit applications or proposed remedial action plans.
- -- Require the DEQ to promulgate rules implementing Section 1313.
- -- Require the DEQ Director to submit to the Legislature an annual report regarding application and plan reviews by licensed professional engineers.

The bill also would amend Part 13 to require a department, agency, or official to pay 50%, rather than 15%, of certain amounts if the department, agency, or official failed to approve or deny a permit application by the processing deadline.

For purposes of Section 1313, "permit" would mean a permit required by any of the following sections of the Act or rules promulgated under those sections:

- -- Section 3104: floodplain alteration permit.
- -- Section 3112 or 3113: permit to discharge into waters of the State.
- -- Section 5505: air pollution permit to install or operate.
- -- Section 30104: inland lakes and streams project permit
- -- Section 31509: dam construction, repair, or removal permit.
- -- Section 32503: bottomland dredging or spoils permit.
- -- Section 32723: water withdrawal permit.

#### Licensed Professional Engineer Review

The bill would allow a person to file an application for a permit or file a proposed remedial action plan with a licensed professional engineer approved by the DEQ as competent to process that type of permit or plan. The licensed professional engineer could not be an

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employee of the permit applicant or the person proposing the remedial action plan. Any fee charged to the applicant by the licensed professional engineer for reviewing a permit application would be in addition to the DEQ's permit application fee.

The licensed professional engineer would have to review the permit application or proposed remedial action plan based on the relevant standards in the Act and rules. If the engineer determined that the application or proposed plan met the relevant standards, he or she would have to give a written report of his or her findings and recommendations to the DEQ and the applicant or person proposing the plan.

Notwithstanding any other section of the Act, the DEQ would have to process the permit application or proposed remedial action plan within 21 days after receiving it, the professional engineer's findings and recommendations, and any fee, which would have to be 50% of the fee otherwise established by the Act or rules. If, however, the DEQ conducted a hearing or consultation on the permit application or proposed plan pursuant to the Act or rules, the Department would have to process the application or proposed plan within 21 days after the hearing or consultation. The DEQ could not obtain an extension of the deadline or request from the applicant or person proposing the plan any additional information pertaining to the application or proposed plan. If the DEQ failed to process an application or proposed plan by the deadline, the application or plan would have to be considered approved.

If the DEQ denied a permit application or rejected a proposed remedial action plan contrary to the recommendations of a licensed professional engineer, within 15 days after the denial or rejection the Department would have to give the applicant or person proposing the plan a written explanation of the reasons for denial, including citations to specific statutory provisions or rules providing the basis for the denial or rejection. The explanation would have to be signed by the Director.

The DEQ would have to maintain a list or lists of licensed professional engineers eligible to conduct reviews of permit applications or proposed remedial action plans under Section 1313. The Department would have to post each list on its website and update each list at least every 30 days.

Within 270 days after the bill's effective date, the DEQ would have to promulgate rules to implement Section 1313.

By December 1, 2010, and every subsequent year, the Director would have to submit a report to the standing committees and Appropriations subcommittees of the Senate and House of Representatives with primary responsibility for environmental issues. The report would have to include all of the following information for each type of permit application or proposed remedial action plan that the DEQ received with findings and recommendations of a licensed professional engineer under Section 1313 for the preceding fiscal year:

- -- The number received.
- -- The number approved, the number approved by the deadline, the number approved because of failure to meet the deadline, and the average time for the DEQ to approve or disapprove the applications or proposed plans.
- -- The number denied.

# Failure to Meet Deadline

Part 13 requires a department to approve or deny an application for a permit by the processing deadline. (In this part, "department" means the department, agency, or official

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authorized by the Act to approve or deny an application for a particular permit.) The processing deadline ranges from 30 to 150 days, depending on the type of permit.

Except for several types of permits, if a department fails to satisfy this requirement, it must pay the applicant an amount equal to 15% of the greater of the following, as applicable:

- -- The amount of the application fee for that permit.
- -- If the department charges an assessment or other late fee on an annual or other periodic basis to a person holding the permit for which the application was submitted, the amount of the first periodic charge of the assessment or other fee for that permit.

Under the bill, a department would have to pay 50%, rather than 15%, of the applicable amount.

(The permits to which this does not apply are solid waste disposal area construction permits; solid waste disposal permits; and permits to place fill material in a wetland, remove soil or minerals from a wetland, construct, operate, or maintain any use or development in a wetland, or drain surface water from a wetland.)

MCL 324.1307 et al.

## Legislative Analyst: Suzanne Lowe

# **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on the Department of Environmental Quality. One provision of the bill would require the Department to refund 50%, rather than the currently required 15%, of application fees or late fees when an application was not processed by the prescribed deadline. In a recent report to the Legislature, required by Section 1311 of the Natural Resources and Environmental Protection Act, the Department reported that of 6,645 permit decisions made in a recent time period, 6,463, or 97%, were made within the required processing period. The bill also would allow a person to file with the Department an application that contained a review of that application performed by a licensed professional engineer, and to pay a processing fee of 50% of the amount otherwise charged. It is not known whether this proposal would reduce the time frame in which the Department could complete its own analysis of the permit. In addition, the Department would be required to maintain a list of licensed professional engineers eligible to review permit applications or proposed remedial action plans, as proposed by the bill, and to file an annual report with the Legislature.

Fiscal Analyst: Bruce Baker

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.