

Legislative Analysis



DEQ PERMIT PROCESSING: TIME EXTENSIONS

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Senate Bill 744 (Substitute S-1)

Sponsor: Sen. Mike Kowall

(Enacted as Public Act 164 of 2012)

House Committee: Regulatory Reform

Senate Committee: Natural Resources, Environment, and Great Lakes

First Analysis (5-1-12)

BRIEF SUMMARY: The bill would require, rather than allow, the Department of Environmental Quality (DEQ) to extend the permit processing period at the request of an applicant, and change the length of the extension for all permits issued under Part 13.

FISCAL IMPACT: Senate Bill 744 would have no fiscal impact on the State of Michigan or local units of government.

THE APPARENT PROBLEM:

Part 13 of the Natural Resources and Environmental Protection Act (NREPA) contains specific time guidelines on the application and review process for permits. After receiving an application for a permit, the department must make a determination as to whether the application is administratively complete within 30 days. Under the act, the department may ask the applicant for clarifications to correct information but is generally prohibited from requesting any new or additional information, other than what is specified in the list provided to the application at the time of application.

The act (at MCL 324.1301) contains specific processing deadlines for final determinations on applications. The processing time varies depending on the type of permit being sought, and ranges from 20 to 150 days. Committee testimony placed the most common processing time at 120 days. Generally speaking, the department must make a determination on a permit application at the end of the processing period based on the information provided by the applicant. However, the applicant may request the department to extend the processing period by up to 20%. If requested, a final decision would then have to be made by the department at the end of the extended processing period, and approval could be granted with conditions or modifications necessary to achieve compliance with the act.

Public Act 120 of 2009 created the Wetland Advisory Council within the DEQ. As part of its review of the Wetlands Program, the Council was required to produce a report by October 1, 2010, containing, among other things, recommendations on how to improve the overall efficiency of the program, specifically addressing (1) the quality of applications submitted and (2) the effect of mandatory decision-making time frames on meeting the purposes of Part 303, and the time-frames that should apply to decision making. As part of its recommendation for statutory changes, the Council recommended a statutory change to Part 13 (MCL 324.1307) to "allow an applicant, with the

concurrence of the DNRE¹, the option of extending the permit processing period longer than the 20% of the processing period currently allowed." The Council recommended language be added to Senate Bill 744 requiring mutual consent of both the applicant and the DEQ before an extension could be given. However, as reported from committee, Senate Bill 744 (S-1) would require the DEQ to grant an extension upon only the applicant's request.

Some permits issued under Part 13 require comment from the U.S. Environmental Protection Agency (EPA). Generally speaking, the EPA has 30 days to provide comment. Due to the overlapping time constraints, it is possible for an applicant to receive comment from the EPA but not have adequate time to make corrections to the application before the DEQ must act on the application. As a result, some applications may be denied. It is also possible that permit applications could require approval or ordinance changes from a local unit of government. The strict time frame the DEQ has to approve permits could result in a permit being denied because the necessary local changes or approvals were not able to be done in time. Consequently, Senate Bill 744 (S-1) would allow applicants to request a processing period extension of up to 120 days, instead of the current 20% extension. It would also require the department, at the request of the applicant, to extend the processing period beyond the additional 120 days, provided the processing period does not extend more than one year after the initial application period ends.

THE CONTENT OF THE BILL:

The bill would amend Part 13 (Permits) of the NREPA to require, rather than allow, the DEQ to extend the permit processing period at the request of an applicant and change the length of the extension for all permits issued under Part 13.

Specifically, the bill would require the DEQ to extend the processing period for a permit by up to 120 days, as specified by the applicant. Additionally, the DEQ could extend the processing period by an additional 120 days at the request of the applicant, but could not extend the processing period to a date later than one year after the application period ends. Currently, the DEQ may extend the processing period by not more than 20% if a request is made by the applicant.

MCL 324.1307

HOUSE COMMITTEE ACTION:

The House Committee on Regulatory Reform reported the Senate-passed version of the bill without amendment.

¹ Executive Order 2009-45, issued on October 8, 2009, combined the Department of Natural Resources (DNR) and the DEQ into one agency known as the Department of Natural Resources and Environment (DNRE). Executive Order 2011-1 subsequently separated the DNRE back into two separate agencies, the DNR and the DEQ.

BACKGROUND INFORMATION:

Senate Bill 744 (S-1) would apply to all permits issued under Part 13 of the NREPA. To view a list of affected permits and their respective processing times, please see:

[http://www.legislature.mi.gov/\(S\(r3o1xo45huxloq451kgnvnz4\)\)/mileg.aspx?page=getObject&objectName=mcl-324-1301](http://www.legislature.mi.gov/(S(r3o1xo45huxloq451kgnvnz4))/mileg.aspx?page=getObject&objectName=mcl-324-1301)

To read the full text of the Wetland Advisory Council report, please see:

http://www.michigan.gov/documents/deq/WAC_Legislative_Report_Final_333492_7.pdf

ARGUMENTS:

For:

The bill would allow applicants to request an extension of the processing period for all permits issued under Part 13. This is a change recommended by the Wetland Advisory Council. The change is aimed at helping applicants whose permit applications benefit from additional time for review. For example, some permits require comment from the EPA, which can take up to 30 days to receive. At that same time, the DEQ is working under a strict timeframe for permit reviews. The EPA could recommend changes be made to the application to ensure compliance with applicable standards. However, because of the strict time frame the DEQ operates under, the applicant may not have enough time to make the necessary changes before the DEQ is statutorily required to issue a determination.

The bill would not extend the time period for reviewing a permit unless requested by the applicant. During committee testimony, there was concern that the DEQ could use this new provision to extend the processing time in order to request additional information. Additionally, the bill does not allow for the department to request any additional information that is not specified at the time the application is made. The DEQ can request additional information during the initial review to determine administrative completeness, but once the application is deemed administratively complete, the department cannot require any additional information to be submitted. As is currently the case, the applicant is not required to provide the requested additional information as a condition for approval for the permit.

Against:

There was no opposition at the committee level.

POSITIONS:

Michigan Department of Environmental Quality supports the bill. (4-24-12)

Michigan Farm Bureau supports the bill. (4-28-12)

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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.