

Legislative Analysis



REVISIONS TO NREPA

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House Bills 4042-4044

Sponsor: Rep. Greg MacMaster

Committee: Regulatory Reform

Complete to 3-8-11

A SUMMARY OF HOUSE BILLS 4042-4043 AS INTRODUCED 1-13-11

Each bill would amend the Natural Resources and Environmental Protection Act (NREPA).

House Bill 4042 would require multiple state departments and local governmental units to include a scientific rationale when a permit application is denied under NREPA.

House Bill 4043 would require the department or local governmental unit which issued a permit under NREPA to meet with a permittee prior to initiating a civil enforcement action.

House Bill 4043 would require the Department of Natural Resources to conduct a cost/benefit analysis and a fiscal analysis of the impact of a proposed rule promulgated under NREPA.

A detailed description of each bill follows.

House Bill 4042 would amend Article 1, Part 13, entitled "Permits," of NREPA (324.1307) to specify that a denial of an application for a permit would have to include, in addition to currently required information, a scientific rationale upon which the decision had been based. As used in the bill, "scientific rationale" would mean scientifically proven and tested evidence with verified results. Currently, a permit denial must include an explanation of the reasons for denial and a specific reference to provisions of the act or departmental rules providing the basis for denial.

Section 1301 defines "permit" as a permit or operating license required by certain sections of the act or rules, and they are listed in the provision. "Department" is defined as the department, agency, or officer authorized by the act to approve or deny an application for a particular permit.

Thus, the bill would impose the requirement to include a scientific rationale with a permit denial on multiple departments, including the Department of Natural Resources, the Department of Environmental Quality, the Department of Agriculture, and the Department of Transportation. In addition, the definition of "permit" also includes one license, a local soil erosion and sedimentation control permit, that is issued by a county

enforcing agency or municipal enforcing agency. It would appear that the bill would impose the same requirement on the local unit.

House Bill 4043 would add a new section (MCL 324.1511) to Article 1, Part 16 of NREPA, entitled "Enforcement." Notwithstanding any other provision of the act, the bill would require the department that issued a permit to contact a permittee prior to initiating a civil enforcement action under the act and extend an offer for departmental staff to meet with the person to discuss the potential enforcement action and potential resolution of the issue. If the permittee wishes to meet with the department, and the meeting is held within a reasonable time period, the department could not proceed with any enforcement action until after the meeting was held. Since permits are issued by various state departments and in one instance, by a local governmental unit, this requirement would appear to apply to all permitting entities.

House Bill 4044 would add a new section to Article I, Part 5 of NREPA, entitled "Department of Natural Resources" (MCL 324.514). Notwithstanding any other provision of the act, and beginning on the bill's effective date, the DNR could not promulgate any rules under the act unless it first conducted a cost/benefit analysis and a fiscal analysis of the impact of the proposed rules on persons impacted by the proposed rules. The DNR would have to provide a copy of the each cost/benefit analysis and fiscal analysis prepared under the bill to the members of the Legislature.

FISCAL IMPACT:

A fiscal analysis is in process.

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