

AQUATIC INVASIVE SPECIES PERMIT PROCESS

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Senate Bill 444 (reported from House Committee with amendment)

Sponsor: Sen. Tom Casperson

House Committee: Natural Resources

(Enacted as Public Act 245 of 2014)

Senate Committee: Natural Resources

First Analysis (6-6-14)

BRIEF SUMMARY: Senate Bill 444 would amend Part 33 of the Natural Resources and Environmental Protection Act (NREPA) by revising the permit process for aquatic invasive species abatement and creating a new fund that would receive the proceeds from related fees.

FISCAL IMPACT: It is anticipated that SB 444 would have a neutral fiscal impact on the Department of Environmental Quality (DEQ) since beginning October 1, 2014, fee amounts would be adjusted to equal the approximate amount of revenue needed to fund the ANC program (currently \$900,000 and adjusted annually for inflation).

Currently, permit and Certificate of Coverage fees range from \$75 to \$1,500, depending upon the size of the treatment area. During FY 2011-12, the ANC Program issued 1,374 permits, 1,071 Certificates of Coverage, and processed 117 amendments.

THE APPARENT PROBLEM:

According to committee testimony, the DEQ currently processes more than 2,600 applications annually for aquatic nuisance abatement. The bill sponsor's office noted during testimony that this has led to a backlog of applications, which means waterfront property owners must wait longer to begin treating the water each year, leading to reduced time spent on and in the water.

THE CONTENT OF THE BILL:

Senate Bill 444 would do the following:

- Require the Department of Environmental Quality (DEQ) to proportionally adjust the fees for certificates of coverage (used for lakes that are either artificial or without an outlet) and permits (used for lakes with outlets) in current law to achieve a target in fee revenue, beginning with the 2014-2015 state fiscal year.

(The certificate of coverage fee is \$75 and the permit fees vary based on the size of the area of impact, from \$75 to \$1,500.) The department would set the target so that the annual cumulative total of the target amount would be \$900,000. (This target would be adjusted annually for inflation.) The target would include the amount of General Funds appropriated to the program, and the amount in the

Aquatic Nuisance Fund that exceeds \$100,000 carried forward from the prior state fiscal year.

- Specify that the fees as adjusted, as described above, would have to be proportional to and could not exceed the fees in current law.
- Set the term of a certificate of coverage or permit at not less than three years, unless a shorter term is requested by the applicant.
- Create in the state treasury the "Aquatic Nuisance Control Fund," which would receive the revenues derived from application fees. Monies left in the fund at the end of each fiscal year would carry over to the next fiscal year, not lapsing into the General Fund. Currently, the fees go to the Land and Water Management Permit Fee Fund.
- Set guidelines for what monies in the fund could be used for, and prohibit the MDEQ from charging a fee for amending an application for a certificate of coverage or permit.
- Define "aquatic invasive species" as "an aquatic species that is nonnative to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm or harm to human health." (This definition is currently found in Part 41, which established the Aquatic Invasive Species Advisory Council and is due to be repealed in December 2015.)
- Allow a permittee, without revision to the permit or certificate of coverage but after notifying the MDEQ, to expand the area of impact beyond the area originally authorized so as to include adjacent areas of the same body of water that have become infested after the application for the certificate or permit was submitted.

An additional fee amount would have to be paid if the fee would have been higher if the expanded area of impact had been included in the permit application. In this situation, the permittee may increase the amount of the chemical used, as authorized in the certificate or permit, by an amount proportionate to the expanded area of impact.

- Require a permittee who expands an area of impact to provide the department, within 15 business days of the initial treatment, with the following information:
 - A written explanation of the necessity for the expansion.
 - A map that clearly delineates the changes to the area of impact.
 - A written statement specifying the increase in the amount of chemicals used, or to be used, as a result of the expansion.
 - The treatment dates for the expanded area of impact.
- Limit the permittee, if the area of impact authorized is greater than 100 acres, to expanding the area of impact by no more than 50%, unless, in addition to the four requirements listed above, both of the following apply: (1) the permittee notified the MDEQ in advance of the proposal to expand the area of impact, and (2) within two business days after receiving the notification, the department hasn't notified

the permittee of specific concerns about the proposal and hasn't notified the permittee that the proposal requires a revision of the certificate or permit.

The bill also would amend NREPA to do the following:

- Set April 1 as the deadline by which a permittee would be required to pay any annual fees after being granted the permit. Failure to pay by this deadline would result in the permit being suspended until the annual fee is paid.
- Allow an application for a certificate of coverage or permit to be submitted electronically, and set guidelines for deadlines by which the department would approve or deny an application.
- Set guidelines for when the MDEQ should approve an application and prohibit the department from denying an application for certain reasons.
- Provide for transferring a permit from a permittee authorized to act on behalf of another individual to another authorized individual.
- Require the MDEQ to create and maintain a registry, which is to be posted on its website, of bodies of water that are infested by aquatic invasive species and the particular species infesting each waterbody.
- Delineate the allowable uses for which the department is allowed to spend monies from the Aquatic Nuisance Control Fund.
- Add two activities to those for which a permit is not required. These would include: (1) the removal by the riparian owner, or a person authorized by the owner, of plants that are an aquatic nuisance if the removal is accomplished by hand-pulling without using a powered or mechanized tool and all plant fragments are removed from the water and properly disposed of; and (2) raking by the owner or person authorized by the owner of areas of lake bottomland that are unvegetated and predominantly composed of sand or pebbles prior to raking, which would be done without using a powered or mechanical tool, in order to minimized disturbance to the bottomlands.

HOUSE COMMITTEE ACTION:

The House Natural Resources Committee reported SB 444 with one amendment to the Senate-passed version. That amendment would add one additional activity for which permit is not required, namely the raking of unvegetated lake bottomland, as described earlier.

ARGUMENTS:

For:

Proponents of the bill believe that by allowing permits and certificates of coverage to be issued for three years at a time, it will allow the DEQ to spend less time reviewing applications each year and to devote more time to being out on lakes for enforcement. In addition, supporters note abatement activities utilizing chemicals would be limited to agents already approved by the federal Environmental Protection Agency for use, so there would be no untested chemicals allowed by the permits or certificates.

Against:

Opponents of the bill worry that by increasing the amount of time a certificate or permit is valid, chemicals and other abatement treatments will be used without time for the DEQ to evaluate whether they are needed, leading to excess treatment of lakes. Additionally, opponents wanted a notification component added so other property owners on a lake that were not listed on a permit or certificate application would be made aware of nuisance abatement activities.

POSITIONS:

The following indicated support for the bill on 6-3-14: the Department of Environmental Quality, the Higgins Lake Property Owners Association, Michigan Waterfront Alliance, St. Mary's Cement Company, and Michigan Aquatic Managers Association.

The following indicated opposition to the bill on 6-3-14: Sierra Club and Michigan League of Conservation Voters.

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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.