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Senate Bill 163 (Substitute S-2 as reported)
Sponsor: Senator Mike Green
Committee: Natural Resources, Environment and Great Lakes

CONTENT

The bill would amend Parts 13 (Permits), 301 (Inland Lakes and Streams), 303 (Wetlands Protection), and 325 (Great Lakes Submerged Lands) of the Natural Resources and Environmental Protection Act (NREPA) to do the following:

- Require the Department of Environmental Quality's (DEQ's) decision on a permit application to be based upon evidence that would meet the statutory standards for a contested case.
- Revise the standards used by the DEQ to deny a permit, and extend them to any review upholding the Department's decision.
- Revise a number of exceptions to the requirement for a permit under Parts 301 and 303.
- Revise exemptions from regulation under Part 303.
- Revise the application fees for several permit categories under Parts 301, 303, and 325.
- Require the DEQ to refund the fee if it denied an application under Part 301 or 303.
- Require the DEQ to develop a general permit under Part 301 for legally established drains, and allow a drain commissioner or drainage board to apply for authorization under the general permit on a countywide basis every year.
- Authorize the DEQ to issue a conditional permit under Part 303 before the expiration of a 20-day period during which a person may request a hearing on the application, if emergency conditions warranted a project.
- Eliminate the October 1, 2015, sunset on provisions regarding a preapplication meeting under Part 303.
- Establish in Part 303 a rebuttable presumption with regard to the availability of feasible and prudent alternatives, and prescribe the conditions that could be considered in determining such alternatives.
- Prescribe factors the DEQ would have to consider in imposing wetland mitigation requirements.
- Authorize the DEQ to establish a stewardship fund to develop wetland mitigation at particular sites or provide an alternative to financial assurance required for mitigation projects.
- Require the DEQ to submit to the Office of Regulatory Reinvention revised administrative rules pertaining to wetland mitigation banking.
- Require the DEQ to establish a program to provide grants and loans to eligible municipalities for the creation of wetland mitigation banks.
- Authorize the DEQ to develop and maintain new general permit and minor project categories consistent with nationwide permits.
- Require the DEQ to develop under Part 303 a general permit for alteration of wetland for blueberry farming under certain conditions.

- Require the DEQ to propose new general permits or minor project categories under Part 303 for conversion of wetland to blueberry farming or other agriculture that included more than minimal drainage or earth moving.
- Require the DEQ to develop a blueberry production assistance program.
- Require the DEQ to provide education and outreach on wetland regulations and agricultural activities, and assist interested parties with the development of wetland mitigation banks.
- Prescribe criteria to be considered in the DEQ's identification of a wetland and determination of its contiguity to a body of water.

The bill also provides that the DEQ's powers, duties, functions, and responsibilities resulting from Federal approval of Michigan's permit program under the Federal Water Pollution Control Act would apply only to "navigable waters" and "waters of the United States", and that determining the need for regulation beyond the scope of Federal law would be the responsibility of the Michigan Legislature.

In addition, the bill would repeal a section of Part 303 pertaining to a waiver of certain Federal requirements regarding the State's permit program for the discharge of dredged or fill material into navigable waters.

MCL 324.1307 et al.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would have a likely positive fiscal impact on the Department of Environmental Quality and no fiscal impact on local units of government. Under the bill, permit fees for Part 301 projects in minor categories would be increased from \$50 to \$100. Additionally, general permit fees issued under Parts 303 and 325 would be reduced from \$100 to \$50, and minor project permit fees would be increased from \$50 to \$100. Based on the number of permits issued under these parts in fiscal year 2011-12, the proposed changes would generate approximately \$90,000 in additional annual revenue for the DEQ.

The bill also could create some new administrative costs to the DEQ as the bill would require the DEQ to develop a blueberry production assistance program. Costs related to the program would come from existing DEQ resources.

Date Completed: 5-21-13

Fiscal Analyst: Josh Sefton

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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.