



**Senate Fiscal Agency**  
**P. O. Box 30036**  
**Lansing, Michigan 48909-7536**

**BILL ANALYSIS**

**Telephone: (517) 373-5383**  
**Fax: (517) 373-1986**

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

Date Completed: 5-20-13

**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.**

#### Part 13: Permits

Part 13 establishes processing periods for the different permits issued under NREPA.

The DEQ must approve or deny an application for a permit by the prescribed deadline. If requested by the applicant, the Department must extend the processing period by up to 120 days, and may extend the period by up to one year.

Under the bill, the approval or denial of a permit application would have to be in writing, and would have to be based on evidence that would meet the standards in Section 75 of the Administrative Procedures Act.

(Under that section, in a contested case, the rules of evidence as applied in a nonjury civil case in circuit court must be followed as far as practicable, but an agency may admit and give probative effect to evidence of a type commonly relied on by reasonably prudent people in the conduct of their affairs. Effect must be given to the rules of privilege recognized by law. Objections to offers of evidence may be made and must be noted in the record. Subject to these requirements, an agency may provide in a contested case or by rule for submission of all or part of the evidence in written form, for the purpose of expediting hearings and when the interests of the parties will not be substantially prejudiced.)

Part 13 requires the DEQ, to the extent practical, to specify all of the reasons for a permit denial, including the provisions of NREPA or rules promulgated under it, and, to the extent applicable, the scientific information providing the basis for the denial. Under the bill, instead, a permit denial and any review upholding the DEQ's decision would have to determine, to the extent practical, all of the following:

- That the decision was based on specific provisions of NREPA or rules promulgated under it.
- That the decision was based on sufficient facts or data, which were recorded in the file.
- To the extent applicable, that the decision was the product of reliable scientific principles and methods and had applied them reliably to the facts.

## Part 301: Inland Lakes & Streams

Scope of Regulation. The bill specifies that, for the purposes of Part 301, the powers, duties, functions, and responsibilities exercised by the DEQ because of Federal approval of Michigan's permit program under Section 404(g) and (h) of the Federal Water Pollution Control Act (FWPCA) would apply only to "navigable waters" and "waters of the United States" as defined under Section 502(7) of that Act, and as further refined by federally promulgated rules and court decisions that have the full effect and force of Federal law. The bill provides that determining whether additional regulation is necessary to protect Michigan waters beyond the scope of Federal law would be the Legislature's responsibility based on its determination of what is in the best interest of Michigan citizens.

(The FWPCA allows the Secretary of the Army to issue permits for the discharge of dredged or fill material into navigable waters at specified disposal sites. Under Section 404(g), the governor of any state desiring to administer its own permit program within its jurisdiction may submit a proposal to the Administrator of the Environmental Protection Agency. Under Section 404(h), upon approval of a proposal, the Secretary of the Army must suspend the issuance, administration, and enforcement of permits for activities covered by the state's program.

Section 502(7) of the FWPCA defines "navigable waters" as the waters of the United States, including the territorial seas. "Territorial seas" means the belt of the seas measured from the ordinary low water line along the portion of the coast that is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.)

Exemption from Permit Requirement. Part 301 requires a person to obtain a permit from the DEQ in order to do any of the following:

- Dredge or fill bottomland.

- Construct, enlarge, extend, remove, or place a structure on bottomland.
- Construct, reconfigure, or expand a marina.
- Create, enlarge, or diminish an inland lake or stream.
- Structurally interfere with the natural flow of an inland lake or stream.
- Construct, dredge, commence, extend, or enlarge an artificial waterway where the purpose is ultimate connection with an existing inland lake or stream, or within 500 feet of the ordinary high-water mark of an existing inland lake or stream.
- Connect any natural or artificially constructed waterway with an existing inland lake or stream for navigation or any other purpose.

Part 301 contains several exceptions to the permit requirement, including construction or maintenance of a private agricultural drain, regardless of outlet. The bill, instead, would make an exception for maintenance of an agricultural drain, regardless of outlet, if both of the following requirements were met:

- The maintenance included only activities that maintained the as-constructed location, depth, and bottom width of the drain as constructed or modified at any time before of July 1, 2014.
- The maintenance was performed by the landowner or pursuant to the Drain Code.

Under the bill, as used in Part 301, "agricultural drain" would mean a human-made conveyance of water that meets all of the following requirements:

- Does not have continuous flow.
- Flows primarily as a result of precipitation-induced surface runoff or groundwater drained through subsurface drainage systems.
- Primarily serves agricultural production.
- Was constructed before January 1, 1973, or was constructed in compliance with Part 301 or former Public Act 203 of 1979.

Part 301 also exempts from the permit requirement a waste collection or treatment facility that is ordered to be constructed or that is approved for construction by the DEQ. The bill would refer to such a facility that was ordered to be constructed or approved for construction under State or Federal water pollution control law, if constructed in upland.

Part 301 also exempts maintenance and improvement of a drain that was legally established or constructed before January 1, 1973, pursuant to the Drain Code. The bill would eliminate the reference to drain improvement in this exception, and would extend the exception to maintenance of a drain constructed or modified under a Part 301 permit.

With regard to these provisions, "maintenance of a drain" would mean the physical preservation of the location, depth, and bottom width of a drain and appurtenant structures to restore the function and approximate capacity of the drain as constructed or modified at any time before July 1, 2014. The term would include activities specified in the bill if performed with best management practices.

Permit Application Fees. An application for a permit under Part 301 must be accompanied by a fee based on an administrative cost according to a prescribed schedule, based on the type of project. For activities included in a minor project category, the bill would increase the fee from \$50 to \$100. (Part 301 authorizes the DEQ to establish minor project categories of activities and projects that are similar in nature, have minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment.) The bill would retain the \$50 fee for activities included in a general permit category.

If the DEQ denied an application for a permit under Part 301, it would have to refund the application fee promptly.

General Permit for Drains. By December 31, 2013, the bill would require the DEQ to develop and maintain a general permit for activities in drains legally established pursuant to the Drain Code. The general permit would have to cover installation and replacement of culverts, clear span bridges, and end sections; culvert extensions; drain realignments; installation of bank stabilization structures and grade stabilization structures; spoil placement; and other common drain activities that use best management practices.

A drain commissioner or drainage board could apply for an authorization under the general permit on a countywide basis.

The DEQ would have to grant or deny an authorization under the general permit by March 1 if the commissioner or board applied by the preceding January 20. An authorization under the general permit would be valid until March 30 of the year after the year in which it was granted.

By December 31 of each year, the commissioner or board would have to submit to the DEQ a report that included the names of the drains on which activities were performed under the permit during that calendar year, the locations and nature of the activities, and plans and other documentation demonstrating that the activities met the general permit requirements.

A drain commissioner or drainage board would not be eligible for a new authorization under the general permit if significant violations under a previous authorization had not been corrected.

### Part 303: Wetlands Protection

Exemption from Permit Requirement. Part 303 requires a person to obtain a permit from the DEQ to do any of the following in a wetland:

- Deposit or permit the placing of fill material.
- Dredge, remove, or permit the removal of soil or minerals.

- Construct, operate, or maintain any use or development.
- Drain surface water.

Specific uses are allowed without a permit, however, subject to other Michigan laws and the owner's regulation. These uses include grazing of animals. The bill specifies that this would include fencing and post placement if the fence were designed to control livestock, did not exceed 4.5 feet in height, and used an amount of material that did not exceed that of a woven wire fence using 10 horizontal wires with six-inch vertical spacing and posts.

The uses allowed without a permit also include farming, horticulture, silviculture, lumbering, and ranching activities, including plowing, irrigation, irrigation ditching, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, and upland soil and water conservation practices.

The bill provides that, beginning October 1, 2013, to be allowed in a wetland without a permit, these activities would have to be part of an established ongoing farming, horticultural, silvicultural, or ranching operation. Farming activities on areas lying fallow as part of a conventional rotational cycle would be considered part of an established ongoing operation, unless modifications to the hydrological regime or ongoing mechanized land clearing were necessary to resume operation.

Activities that brought an area into farming, horticultural, silvicultural, or ranching use, or that converted an area from a forested or silvicultural use to a farming, ranching, or horticultural use, would not be considered part of an established ongoing operation.

The bill specifies that minor drainage would not include drainage associated with the immediate or gradual conversion of a wetland to a nonwetland, or conversion from one wetland use to another. Minor drainage also would exclude the construction of a canal, ditch,

dike, or other waterway or structure that drained or otherwise significantly modified a stream, lake, or wetland.

The Part 303 permit requirement also does not apply to maintenance, operation, or improvement that includes straightening, widening, or deepening of the following that is necessary for the production or harvesting of agricultural products:

- An existing private agricultural drain.
- The portion of a drain legally established pursuant to the Drain Code that has been constructed or improved for drainage purposes.
- A drain constructed pursuant to other provisions of Part 303 or former Public Act 203 of 1979.

The bill, instead, would exempt from the permit requirement maintenance of an agricultural drain, regardless of outlet, if the following requirements were met:

- The maintenance included only activities that maintained the location, depth, and bottom width of the drain as constructed or modified at any time before July 1, 2014.
- The maintenance was performed by the landowner or pursuant to the Drain Code.
- The maintenance did not include any modification that resulted in additional wetland drainage or conversion of a wetland to a use to which it was not previously subject.

As used in Part 303, "agricultural drain" would have the same definition as in Part 301.

The bill also would exempt maintenance of a drain that was legally established pursuant to the Drain Code, if it were constructed before January 1, 1973, or under a Part 303 permit. With regard to this provision, "maintenance of a drain" would mean the physical preservation of the location, depth, and bottom width of a drain and appurtenant structures to restore the function and approximate capacity of the drain as constructed or modified at any time before July 1, 2014,

including the placement of spoils removed from a drain in locations where spoils had been placed along it previously. Maintenance would not include any modification that resulted in additional wetland drainage or conversion of wetland to a use to which it was not previously subject.

In addition, Part 303 contains an exception to the permit requirement for drainage necessary for the production and harvesting of agricultural products if the wetland is owned by a person who is engaged in commercial farming. Except as otherwise provided, wetland improved under this provision after October 1, 1980, may not be used for nonfarming purposes without a permit. The bill would delete this exception to the permit requirement.

Part 303 also exempts maintenance or improvement of public streets, highways, or roads done within the right-of-way and in a manner that minimizes adverse effect on the wetland. The bill, instead, would exempt maintenance of public streets, highways, or roads if it did not include any modification that changed the original location or footprint, and were done in a manner that minimized any adverse effect on the wetland.

Currently, a permit is not required for maintenance, repair, or operation of gas or oil pipelines, or construction of gas or oil pipelines with a maximum diameter of six inches, if the pipelines are constructed, maintained, or repaired in a manner that minimizes any adverse effect on the wetland. The bill would refer to maintenance or repair of utility lines and associated support structures, rather than maintenance, repair, operation, or construction of gas or oil pipelines. Additionally, the maintenance or repair could not include any modification to the character, scope, or size of the originally constructed design; and could not convert a wetland area to a use to which it was not previously subject.

Currently, maintenance, repair, or operation of electric transmission and distribution power lines and construction

of distribution power lines are allowed in a wetland without a permit, if the distribution lines are constructed, maintained, or repaired in a manner that minimizes any adverse effect on the wetland. The bill would eliminate this exception. Instead, the bill would exempt the installation of utility lines with a maximum diameter of six inches using directional drilling or boring, or knifing-in, and the placement of poles with minimal (less than one cubic yard) structure support, if the lines and poles were installed in a manner that minimized any adverse effect. Specific additional requirements would apply to directional drilling or boring.

For the purposes of these provisions, "utility line" would mean any pipe or pipeline used for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purposes; and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone or telegraph messages, or radio or television communication.

The bill also would eliminate an exception to the permit requirement for the construction of iron and copper mining tailings basins and water storage areas.

The bill would exempt from the permit requirement the placement of biological residuals from activities, including the cutting of woody vegetation or the in-place grinding of tree stumps, performed within a wetland, if all of the residuals originated within that wetland.

Exemption from Part 303 Regulation. A wetland created incidentally as a result of certain activities is not subject to regulation under Part 303. The activities include excavation for mineral or sand mining, if the area was not a wetland before excavation. The bill would refer to excavation as part of commercial sand, gravel, or mineral mining in this provision. Currently, this exemption does not include a wetland on or adjacent to a water body of at least one acre. The bill would delete this provision. Also, the bill provides that the exemption would apply until the property on which the wetland was

located was no longer used for excavation as part of commercial mining, and was being used for a purpose unrelated to the excavation.

Construction and operation of a water treatment pond or lagoon in compliance with State or Federal water pollution control regulations also are exempt from regulation under Part 303. The bill would refer to laws rather than regulations, and would extend the exemption to compliant storm water facilities.

The bill also would exempt the following from Part 303 regulation:

- The construction of drains in upland for the sole purpose of removing excess soil moisture from upland areas that are primarily in agricultural use.
- The construction of roadside ditches in upland for the sole purpose of removing excess soil moisture from upland.
- An agricultural soil and water conservation practice designed, constructed, and maintained for the purpose of enhancing water quality.

The bill specifies that an area that became contiguous to a water body created as a result of commercial excavation for sand, gravel, or mineral mining would not be subject to Part 303 regulation solely because it was contiguous to the water body. This exemption would apply until the property was no longer used for excavation and was being used for an unrelated purpose.

The bill would establish an exemption from regulation for the placement of biological residuals similar to the exemption from the Part 303 permit requirement.

Permit Fee. An application for a Part 303 permit must be accompanied by a fee. For a project in a category of activities for which a general permit is issued, the fee is \$100. The bill would reduce the fee to \$50. The bill would establish a fee of \$100 for activities included in a minor project category.

The bill would require the DEQ promptly to refund the fee if it denied an application for a permit.

Conditional Permit. The DEQ may hold a public hearing on a Part 303 permit application, but may approve or disapprove the application without a hearing unless a person requests one within 20 days after notice of the application is mailed, or unless the Department determines that the impact of the application warrants a hearing.

The bill would authorize the DEQ to issue a conditional permit before the 20-day period expired if emergency conditions warranted a project to protect property or the public health, safety, or welfare.

Preapplication Meeting. Under Part 303, a landowner or other authorized person may request a meeting with the DEQ to review a proposed project or proposed permit application in its entirety. Any written agreement provided by the DEQ as a result of a preapplication meeting regarding the need to obtain a permit is binding on the Department for two years. A request for a preapplication meeting must be accompanied by a fee ranging from \$150 to \$1,000, depending on where the meeting is held and the size of the project area. If the project location is a single-family residential lot of less than one acre, however, there is no fee for a meeting at the DEQ's district office and the fee for a meeting at the project site is \$100.

Until October 1, 2012, there was no fee for a preapplication meeting for cranberry production activities, regardless of the meeting's location. The bill would reinstate this fee exemption, and extend it to blueberry production.

Currently, all of the provisions regarding preapplication meetings are set to expire on October 1, 2015. The bill would eliminate the sunset.

Feasible & Prudent Alternatives. Unless the DEQ determines that the issuance of a permit is in the public interest, that the permit is necessary to realize the benefits

derived from the activity, and that the activity is otherwise lawful, a permit may not be approved for any of the following activities in a wetland:

- Depositing or permitting the placing of fill material.
- Dredging, removing, or permitting the removal of soil or minerals.
- Constructing, operating, or maintaining any use or development.
- Draining surface water.

Part 303 prescribes factors that the DEQ must consider in determining whether the activity is in the public interest, including the availability of feasible and prudent alternative locations and methods to accomplish the expected benefits from the activity.

If it is otherwise a feasible and prudent alternative, a property not presently owned by the applicant that could reasonably be obtained, used, expanded, or managed in order to fulfill the basic purpose of the proposed activity may be considered. The bill would establish a rebuttable presumption that alternatives located on property not presently owned by the applicant were not feasible and prudent, if all of the following conditions were met:

- The activity involved depositing or permitting the placing of fill material; or dredging, removing, or permitting the removal of soil or minerals.
- The activity would affect a maximum of two acres of wetland.
- The activity was undertaken for the construction or expansion of a single-family home and attendant features, the construction or expansion of a barn or other farm building, or the expansion of a small business facility.
- The activity was not covered by a general permit.

Consideration of feasible and prudent alternatives regarding the size of a proposed structure would have to be based on the structure's footprint and not its square footage. The choice and extent of the proposed activity within a proposed structure could not be considered.

Compensatory Wetland Mitigation. Part 303 allows the DEQ to impose as a condition on any permit, other than a general permit, a requirement for compensatory wetland mitigation through one or more prescribed methods. If mitigation is required, a permit applicant must submit a mitigation plan to the Department for approval, and provide for permanent protection of the mitigation site. The Department may require financial assurance to assure that mitigation is accomplished as specified.

Under the bill, if mitigation were required, in setting the mitigation ratio the DEQ would have to consider the mitigation method, the likelihood of success, differences between the functions lost at the affected site and the functions expected to be produced by the mitigation project, temporary losses of aquatic resource functions, the difficulty of restoring or establishing the desired aquatic resource type and functions, and the distance between the affected resource and the mitigation site.

For agricultural activities, a permit applicant could provide for protection and restoration of the affected site under a conservation easement with the DEQ as part of the mitigation requirements. An applicant could make a payment into the proposed stewardship fund (described below), if established, as part of the requirements, as an alternative to providing required financial assurances.

The bill would authorize the DEQ to establish a stewardship fund within the State Treasury. The State Treasurer could receive money or other assets from any source for deposit into the fund. The Treasurer would have to direct the investment of the fund, and credit to it any interest and earnings. Money in the fund at the close of the fiscal year would remain in the fund and would not lapse to the General Fund. The DEQ would be the fund administrator for auditing purposes. The Department could spend fund money, upon appropriation, only to develop mitigation for affected sites or as an



alternative to the required financial assurance.

Within one year after the bill's effective date, the DEQ would have to submit to the Office of Regulatory Reinvention (ORR) for informal review revised administrative rules on mitigation that would do all of the following:

- Reduce the preference for on-site mitigation.
- Allow flexibility in mitigation ratios for uses of wetlands.
- Allow a reduction of mitigation ratios when approved credits from a wetland mitigation bank were used.
- Allow consideration of additional ecologically beneficial features.
- Allow any excess mitigation for any project to be credited to another project at a later date.

The DEQ also would have to submit to the ORR, within one year after the bill took effect, revised rules that encouraged the development of wetland mitigation banks. The proposed rules would have to do the following:

- Allow earlier release of credits if the benefits of a mitigation bank had been properly established and the credits were revocable or covered by a financial assurance.
- Allow wetland preservation to be used in areas where wetland restoration opportunities did not exist, if an unacceptable disruption of the aquatic resources would not result.
- Enlarge mitigation bank service areas.

A service area would have to be located within the same watershed or ecoregion as the permitted project or activity, ensure no net loss of the wetland resources, and protect the predominant wetland functions of the service area. The DEQ would have to consider enlarging the size of ecoregions for mitigation bank service areas.

The bill would require the Department to establish a wetland mitigation bank funding program under Part 52 (Strategic Water Quality Initiatives) that provided

grants and loans to eligible municipalities for the purposes of establishing mitigation banks.

(Under 2012 amendments to Part 52, the purposes for which money in the Strategic Water Quality Initiatives Fund may be used include grants and loans for wetland mitigation banks, and the DEQ must establish a funding program that provides up to \$10.0 million in grants and loans to eligible municipalities. Up to half of that amount may be used for grants, which municipalities may use to complete loan application requirements related to wetland mitigation banking. Grants may cover up to 90% of a municipality's costs. Municipalities may use loans under the program to establish wetland mitigation banks.)

Permit Coordination. The DEQ is required to coordinate general permit and minor project categories under Parts 303, 301, and 325 consistent with nationwide permits, as appropriate. The bill also would allow the Department to develop and maintain new general permit and minor project categories. In addition, the Department could alter the scope of the activities covered under general permit and minor project categories corresponding to nationwide permits if any adverse environmental effects would be minimal.

Blueberry Farming Permits & Project Categories. By October 1, 2013, the DEQ would have to develop and maintain a general permit for alteration of wetland for blueberry farming that included minimal drainage and earth moving if all of the following requirements were met:

- The wetland would be restored when farming activities in the wetland ceased.
- The farmed wetland was placed under conservation easement protection until the wetland was restored when farming activities ceased.
- Activities that converted the wetland to a nonwetland were prohibited.

Also, roads, ditches, reservoirs, pump houses, and secondary support facilities

for shipping, storage, packaging, parking, and similar purposes would have to be prohibited unless authorized under Section 30305 (which exempts certain activities and uses from the permit requirement or regulation).

By December 31, 2013, the DEQ would have to propose new general permits or minor project categories for conversion of wetland to blueberry farming or other agriculture that included more than minimal drainage or earth moving.

Assistance Programs. The bill would require the DEQ to develop a blueberry production assistance program to provide wetland delineation and preapplication services and assistance with avoidance and minimization. The Department would have to coordinate this program with the Michigan Department of Agriculture and Rural Development. The DEQ also would have to provide education and outreach on wetland regulations and agricultural activities, and assist interested parties with the development of wetland mitigation banks for the purpose of providing required compensatory mitigation for agricultural impacts.

Assessment of Wetland. Part 303 allows a person who owns or leases a parcel of property to request the DEQ to assess whether that parcel is a wetland and give the property owner a written assessment report. Under the bill, as part of an assessment, a person could request that the Department make a determination whether a wetland was not "contiguous". The bill provides that a wetland would not be contiguous to the Great Lakes or Lake St. Clair, an inland lake or pond, or a river or stream, if the DEQ determined that there was no direct physical contact and no surface water or interflowing groundwater connection to such a body of water. The Department would have to make its determination in writing within 30 days after an on-site evaluation. The Department could not consider an agricultural drain in determining whether a wetland was contiguous to any of the specified bodies of water. The bill provides that a drainage structure, such a culvert, ditch, or channel, in and of

itself, would not be a wetland. A temporary obstruction of drainage, in and of itself, would not be a wetland until the presence of water was of sufficient frequency and duration to be identified as wetland pursuant to Section 30301(2). (That section requires the DEQ and local units of government, in identifying wetland boundaries, to apply the technical wetland delineation standards set forth in the United States Army Corps of Engineers January 1987 wetland delineation manual and appropriate regional supplements.)

Part 303 allows the DEQ to charge a fee for an assessment based on the cost of conducting it. The bill would prohibit imposition of a fee for an assessment under the blueberry production assistance program.

The DEQ would have to give an applicant a copy of any delineation forms completed by the Department associated with a permit application, upon request and at no charge.

Scope of Regulation. The bill would add to Part 303 language similar to the language it would add to Part 301 regarding the DEQ's powers, duties, functions, and responsibilities exercised under Federal approval of Michigan's permit program, and additional regulation to protect Michigan waters beyond the scope of Federal law.

Federal Waiver. The bill would repeal Section 30325 of NREPA, which requires the DEQ to pursue an agreement with the Environmental Protection Agency (EPA) to expand the categories of discharges subject to a waiver of transmission and notice requirements under the Federal Water Pollution Control Act.

(A state that administers its own program under the FWPCA must transmit to the EPA Administrator a copy of each permit application it receives, as well as notice of every action related to consideration of the application. The Administrator may object to issuance of the permit based on

specific grounds, and the state may not issue it unless it modifies the permit in accordance with the Administrator's comments. Alternatively, the state may request a public hearing. If the state does not submit a revised permit or request a hearing within a prescribed time period, the Secretary of the Army may issue the permit in accordance with Federal guidelines and requirements.

The EPA Administrator is authorized to waive the transmission and notice requirements at the time he or she approves a state's permit program for any category of discharge within the submitting state.)

#### Part 325: Great Lakes Submerged Lands

Part 325 requires a person to obtain a permit from the DEQ in order to do any of the following:

- Construct, dredge, commence, or do any work with respect to an artificial canal, channel, ditch, lagoon, pond, lake, or similar waterway where the purpose is ultimate connection of the waterway with any of the Great Lakes, or Lake St. Clair.
- Connect any natural or artificially constructed waterway, canal, channel, ditch, lagoon, pond, lake, or similar waterway with any of the Great Lakes for navigation or any other purpose.
- Dredge or place spoil or other material on bottomland.
- Construct a marina.

For a project in a category of activities for which a general permit is issued, the application fee is \$100. The bill would reduce the fee to \$50.

The fee for activities included in a minor project category is \$50. The bill would increase this amount to \$100.

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.

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.