

INSTALLATION OF TEMPORARY EROSION CONTROL STRUCTURES WITHOUT A PERMIT

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House Bill 4385 as introduced
Sponsor: Rep. Joey Andrews
Committee: Natural Resources and Tourism
Complete to 6-3-25

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4385 would amend the Natural Resources and Environmental Protection Act (NREPA) to allow property owners to install certain erosion control measures under specified conditions. The bill would also require that, when reviewing an application for a permit under Part 323 (Shorelands Protection and Management), the Department of Environment, Great Lakes, and Energy (EGLE) must give deference to a landowner's rights over public access rights.

Currently, section 32312a of NREPA allows above-grade walls to be constructed with moveable brick. The bill would also allow the following materials to be used in this fashion:

- Stone.
- Biodegradable materials.
- Soft, permeable synthetic textile material that consists of polypropylene or polyester and contains not more than 4% carbon black. This type of textile material could not contain BPA (bisphenol A, a plastic additive that some studies have found may contribute to health problems).

The bill would also provide that a permit issued under Part 323 or Part 325 (Great Lakes Submerged Lands) is not required to construct a soft erosion control structure if all of the following are met:

- The structure is installed on the shoreland of Lake Superior, Lake Michigan, Lake Huron, Lake Erie, or Lake St. Clair.
- The structure is constructed using sandbags, sand-filled geotubes, or geotextile tubes made from biodegradable materials or soft, permeable synthetic textile material that consists of polypropylene or polyester, contains not more than 4% carbon black, and does not contain BPA.
- The structure is installed in a manner that complies with manufacturer installation recommendations.
- To the extent reasonably possible to ensure shoreland and dune preservation and protection, the structure does not extend into the water of Lake Superior, Michigan, Huron, Erie, or St. Clair, and does not impair walkability.
- Before installation of the structure begins, the property owner files a notice with EGLE, in writing, that contains all the following information:
 - The property owner's name, address, phone number, and email address.
 - A physical description of where the soft erosion control structure will be installed.
 - The materials that will be used to construct the soft erosion control structure.

- Any other information EGLE considers necessary.

A soft erosion control structure that is exempt from permitting as described above could remain in place as long as both of the following apply:

- The structure does not impede or prevent walkability along the shoreline when the water is below the ordinary high-water mark.
- The majority of the structure is covered by sand or otherwise not visible, and any part of the structure that is visible does not show signs of degradation.

The bill would allow a property owner who has a soft erosion control structure installed on their property to file an application for a permit to install a hard wall revetment to replace the soft erosion control structure. If the owner files an application for a permit to install a hard wall revetment, the soft erosion control structure could remain in place until EGLE issues a permit under Part 323. If the property owner has an operational septic system within 100 feet of the wave cut, they could install a hard wall revetment to replace the soft erosion control structure without applying for a Part 323 permit. Removing a soft erosion control structure would not require a Part 323 permit.

Finally, the bill would provide that a violation of the newly added section 32510a would be considered a minor violation, just as a failure to obtain a Part 323 permit, or a violation of a Part 323 permit condition, is classified at present. A violation of section 32510a would be treated similarly to how a violation of Part 323 is presently handled. (Section 32510a provides that a permit issued under Part 325 is not required to construct a soft erosion control structure if the requirements described above are met.)

MCL 324.32312, 324.32312a, and 324.32510 and proposed MCL 324.32510a

FISCAL IMPACT:

House Bill 4385 is likely to reduce revenue for EGLE by expanding exemptions to extant Great Lakes shoreline permit requirements. The number of construction projects that will fit the exemptions detailed in the bill is unclear at present, so the extent of a revenue reduction is unclear. These permits are one of the department's Land and Water Permits, which collectively generate approximately \$2.1 million in annual revenue and primarily support water resource programs in the Water Resources Division. This appropriation administers permit processes for construction; enforces compliance for lakes, streams, wetlands, Great Lakes, flood plains, and sand dunes areas; oversees Great Lakes Shorelands Program; and provides guidance and administrative support for land and water regulatory programs among other functions. It is supported by 168.0 FTE positions and \$28.1 million Gross (\$18.6 million GF/GP) in FY 2024-25. The bill is unlikely to affect departmental costs, local government revenues, or local government costs.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.