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Senate Bills 385, 391, and 392 (as introduced 6-10-25)

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Senator Jeremy Moss (S.B. 392)

Committee: Energy and Environment

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CONTENT

Senate Bill 391 would amend Part 201 (Environmental Remediation) of the Natural Resources and Environmental Protection Act (NREPA) to do the following:

- Require hazardous substance facility owners and operators to report a facility to the Department of Environment, Great Lakes, and Energy (EGLE) within 90 days of coming to know the property was a facility or within 90 days of the bill's effective date, whichever was later.
- Require an owner or operator of a facility to submit and implement a due care plan within 180 days after reporting the facility to EGLE.
- Prescribe the requirements of due care plans and establish the process for EGLE to approve, approve with conditions, or deny a due care plan.
- Prescribe a misdemeanor punishable by a fine of at least \$500 but no more than \$5,000 for each violation of failing to implement a due care plan.
- Modify a provision requiring require EGLE to maintain and post an inventory of postclosure plans or agreements on its website to instead require EGLE to post remedial action closure reports.
- Prescribe notification requirements for facility owners and operators upon obtaining information that a release had occurred on or at the facility.
- Require a facility's owner or operator that obtained knowledge of a release to complete certain initial actions, such as determining the extent of the release and taking action to stop the release and to protect further hazard.
- Delete a provision allowing an individual to eliminate the potential for exposure of an unidentified hazardous substance in lieu of identifying it.
- Modify the requirements of a response activity plan and require it to include certain information, such as the location of the property subject to remedial action, the hazardous substances present, and a schedule, among other things.
- Allow EGLE to require a person to submit a new response activity plan if there were new information about the nature and extent of contamination, among other things.
- Delete references to a postclosure plan and instead refer to a no further action report.
- Prescribe the requirements of a no further action report.
- Require a person to submit a remedial action closure report that contained certain information upon completion of remedial actions at a facility that did not meet the requirements of a no further action report.
- Allow EGLE to require changes or updates to a remedial action closure report within 10 years of the report's submission based on conducted reporting and monitoring.

- Establish criteria for EGLE's approval or denial of a remedial action closure report and prescribe EGLE's timeline to do so.
- Allow EGLE to order a facility owner or operator that was not liable for a hazardous substance release to take action to remedy an imminent and substantial danger because of a release.
- Allow the Attorney General to commence a civil action seeking recovery of State response activity costs incurred to fulfill due care requirements.
- Prescribe civil fines for violations of failing to submit certain reports, plans, and documentation and require the fines to be deposited into the Cleanup and Redevelopment Fund subaccount for the previous Environmental Response Fund.

Senate Bill 391 also would repeal Section 20114a and Section 20114g of NREPA, which respectively prescribe how individuals and entities may conduct environmental response activities without prior approval from EGLE and prescribe requirements for the formal submission of documentation to demonstrate compliance with due care obligations.

Senate Bill 392 would amend Part 201 of NREPA to do the following:

- Provide that could only approve a response activity plan, no further action report, or a remedial action closure report if it were technically infeasible to meet generic categorical cleanup criteria.
- Modify provisions governing generic cleanup criteria and site-specific criteria.
- Require EGLE to promulgate *the algorithms used to develop* generic cleanup criteria as administrative rules, instead of requiring EGLE to promulgate the generic cleanup criteria as administrative rules.
- Require EGLE to evaluate and revise generic cleanup criteria in force on the bill's effective date.
- Require a person to request approval from EGLE before imposing or relying on land or resource use restrictions to reduce or restrict exposure to hazardous substances.
- Specify that a current land or resource use restriction would not satisfy a person's obligation to perform response activities and would not relieve a person's obligation to meet EGLE's approval requirement.

Senate Bill 385 would amend the Administrative Procedures Act to specify that the definition of "rule" would not include cleanup criteria and target detection limits developed by EGLE under Part 201 of NREPA.

The bills are tie-barred. Senate Bills 391 and 392 are described in greater detail below.

Senate Bill 391

General Provisions

Part 201 of NREPA establishes the State's primary environmental cleanup program. It covers the release of hazardous substances from a variety of sources, such as commercial and industrial sites, above ground storage tanks,¹ and environmental emergencies. Broadly, NREPA gives EGLE's Remediation and Redevelopment Division (RRD) the rulemaking authority to set remediation standards. Part 201 establishes who may be determined responsible for the cleanup of hazardous substances at a facility and how to determine exposure risks. Generally, "facility" means any area, place, parcel or parcels of property, or portion of a parcel

¹ Chapter 8 of the NREPA covers underground storage tanks.

of property where a hazardous substance in excess of the concentrations that satisfy the cleanup criteria for unrestricted residential use has been released, deposited, disposed of, or otherwise comes to be located. The term generally does not include a site that satisfies Part 201's cleanup criteria.²

Individuals responsible under Part 201 generally include current and past owners and operators responsible for an activity that caused or threatened a release, new owner and operators that did not conduct a baseline environmental assessment within 45 days of purchase, occupancy, or foreclosure, and arrangers or transporters for the disposal or treatment of hazardous materials. Part 201 specifies that liable individuals are responsible for all costs incurred for response activities and damages for the full value on injury or description of natural resource because of a release.

Part 201 establishes the process through which a person held responsible for remediation, such as a facility's owner or operator, may inform EGLE of response activities taken to address the contamination. It also authorizes EGLE to take response activities or approve of response activities that EGLE considers necessary and appropriate to protect public health, safety, welfare, or the environment. Under the bill, the costs of response activities recoverable also would have to include the cost of response activity incurred by the State before cleanup criteria as described under Senate Bill 392.

Facility Owner Operator Obligations, Generally

Currently, Part 201 defines "operator" as a person who is in control of or responsible for the operation of a facility. "Owner" means a person who owns a facility. Neither term includes the following:

- A person who holds indicia of ownership primarily to protect the person's security interest in the facility, unless that person participates in the management of the facility as described under the Act
- A person who is acting as a fiduciary in compliance with Part 201.

Under the bill, "owner" and "operator" also would include a person that had previously acted in that respective position.

Under Part 201, a person who owns or operates a property that the person knows is a facility must take certain actions with respect to hazardous substances at the facility, such as undertaking measures necessary to prevent exacerbation, reduce certain health and safety risks, and ensure the facility can be used safely. The facility owner or operator also must cooperate with cleanup efforts by allowing access to authorized personnel, comply with land and resource use restrictions, and take reasonable precautions to prevent harm from foreseeable third-party actions.

"Exacerbation" means either a 1) occurrence of migration of contamination beyond the boundaries of the property that is the source of the release at levels above cleanup criteria for unrestricted residential use unless a criterion is not relevant because exposure is reliably restricted as otherwise provided in Part 201 or 2) a change in facility conditions that increases response activity costs, either of which is caused by an activity undertaken by the person that

² More specifically, "facility" does not include any property where hazardous substances have already been cleaned up to meet unrestricted residential use standards through approved response or corrective actions, where site-specific criteria have been met, where only compliant beneficial use materials are present, where the property has been lawfully separated from a contaminated area and is clean, or where natural processes have reduced contamination to safe levels pursuant to NREPA.

owns or operates the property, with respect to contamination for which the person is not liable. The bill would modify the term to specify that either occurrence could also be caused by a failure to carry out activities required under a due care plan.

"Source" means any storage, handling, distribution, or processing equipment from which the release originates and first enters the environment. Under the bill the term also would include any contaminated environmental media from which hazardous substances above cleanup criteria continue to leach, migrate, or expand into the environment.

"Release" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous substance into the environment, or the abandonment or discarding of barrels, containers, and other closed receptacles containing a hazardous substance. Among other things, "release" does not include the application of a fertilizer, soil conditioner, agronomically applied manure, or pesticide, or fruit, vegetable, or field crop residuals or processing by-products, aquatic plants, or a combination of these substances if applied according to label directions and according to generally accepted agricultural and management practices at the time of the application.

Under the bill, "release" also would not include the application of biosolids if applied in accordance with Part 31 (Water Resources Protection) and the rules promulgated under Part 31. "Biosolids" would mean solid, semisolid, or liquid residues generated during the treatment of sanitary sewage or domestic sewage in a treatment works. The term would include, scum or solids removed in primary, secondary, or advanced wastewater treatment processes and a derivative of the removed scum or solids.

Under the bill, a person that currently owned or operated a property that had information that indicated that the property was a facility would have to report that facility to EGLE within 90 days of obtaining that information or within 90 days of the bill's effective date, whichever was later. The report would have to be made on a form and in a manner prescribed by EGLE. If a facility were reported to EGLE in accordance with a law or program other than under Part 201, the notification described above would not be required.

A person that violated the reporting requirements above or the due care plan requirements described below would be liable under Part 201 for all costs of response activities lawfully incurred by the State that related to the obligations and implementation of response activities.³ Costs recoverable would include interest that would have to begin accruing on the date payment was demanded in writing or the date expenditure or damage occurred, whichever were later. The rate of interest on the outstanding unpaid balance of the costs recoverable would have to be the same rate specified for calculation of a money judgment in a civil action under the Revised Judicature Act.⁴

Due Care Plan

Further, a person who owned or operated a property that was known to be a facility would

³ "Response activity" means evaluation, interim response activity, remedial action, demolition, providing an alternative water supply, or the taking of other actions necessary to protect the public health, safety, or welfare, or the environment or the natural resources.

⁴ The Revised Judicature Act prescribes the rate of interest allowed and method of calculating interest on a money judgement in a civil action. Interest is calculated at six-month intervals at an interest rate of 1% plus the average rate paid at auctions of five-year treasury notes. As of January 1, 2025 the interest rate is 4.016%: <https://www.michigan.gov/taxes/interest-rates-for-money-judgments>

have to submit and implement a due care plan to EGLE within 180 business days after a report was made to EGLE or within 180 days after the bill's effective date, whichever was later. The due care plan would have to be on a form and manner prescribed by EGLE. This provision would not apply to a State or local unit of government that acquired property by purchase, gift, transfer, or condemnation before June 5, 1995, or a person who was the owner or operator of property on which contamination had migrated unless that person were responsible for an activity causing the release that was the source of the contamination. It also would not apply to a person who held an easement interest in a facility or holds a utility franchise to provide service, for the purpose of conveying or providing goods or services, including, utilities, sewers, roads, railways, and pipeline, or a person that acquires that access through an easement, or a person who owned severed subsurface mineral rights or severed subsurface formations or who leases subsurface mineral rights or formations.

"Due care plan" would mean a written document that details the response activities necessary to comply with the bill's provisions and includes provisions for monitoring, operation, and maintenance to ensure the effectiveness and integrity of response activities that are in place to mitigate unacceptable exposures.

Upon submission of the due care plan, the submitter could request that EGLE review and approve the plan before the plan was implemented. Within 90 days of the receipt of a request to review a plan, EGLE would have to review the plan to ensure that it contained sufficient information and approve, approve with conditions, or deny the plan. If EGLE denied the plan, it would have to provide the reasons why the plan was not approved. Upon request and with good cause shown, EGLE could grant an extension to the timeline if the property were not in use and access to the property was prohibited except as necessary to perform response activities. The bill would allow a person that disagreed with EGLE's decision to submit a petition for review to the response activity panel in accordance with Section 20114e. The bill would allow EGLE to review a due care plan to determine compliance. The Department would have to inform the person that submitted a plan of any deficiencies and provide a timeline to correct any deficiencies.

A due care plan would have to include at least both of the following:

- A list of specific actions, and schedule for completing the specific actions, that a person that owned or operated the property would take to fulfill the person's obligations under Part 201.
- A description of how the person that owned or operated the property would monitor, to the extent necessary, the property for a release or threat of release and a timeline for submitting a report to EGLE regarding the monitoring, of which the report would have to be submitted at least once every five years or at an interval determined by EGLE.

Due Care Plan Compliance

Upon completion of response activities in a due care plan, a person would have to submit to EGLE documentation of due care compliance regarding the facility. The documentation would have to be on a form and in a manner prescribed by EGLE, and would have to contain documentation of compliance with the owner operator obligations and due care plan requirements as well as any additional information required by EGLE. A person could request that EGLE review the documentation of due care compliance.

Within 45 business days after the receipt of a request to review the documentation of due care compliance, EGLE would have to approve, approve with conditions, or deny the documentation of due care compliance. If EGLE did not approve the documentation, it would have to provide the person that submitted the documentation the reasons for the denial. A

person that disagreed with EGLE's decision could submit a petition for review of scientific or technical disputes to the Response Activity Review Panel in accordance with the bill.

Inventory of Residential Closures and Facilities

Currently, EGLE must maintain and update an inventory of residential closures and separate inventory of other known facilities. Each inventory must contain the location, whether at least one response activity plan has been submitted to EGLE and the status of Department approval, and whether land noise or resource restrictions were submitted to EGLE.

Each inventory must also contain whether no further action report was submitted to EGLE and whether it includes a postclosure plan or proposed postclosure agreement and the status of Departmental approval. The bill would delete this requirement, and instead, each inventory also would have to contain whether a remedial action closure report or not further action report was submitted to EGLE.

"Postclosure agreement" means an agreement between EGLE and a person that has submitted a no further action report that prescribes, as appropriate, activities required to be undertaken upon completion of remedial actions as provided under Part 201. The bill would delete this term.

"Postclosure plan" means a plan for land use or resource use restrictions or permanent markers at a facility upon completion of remedial actions as provided for under Part 201. The bill would delete this term.

Part 201 requires EGLE to post the inventories on the EGLE's website. The bill would modify this provision to require EGLE to post the inventory on its website and all the following received by EGLE:

- Response activity plans.
- Remedial action plans.
- Remedial action reports.
- Remedial action closure reports.
- No further action reports.
- Requests for certificates of completion or documentation of due care compliance.
- Initial assessment reports.
- Baseline environmental assessments.
- Due care plans.

Part 201 also requires EGLE to compile and post on its website quarterly data pertaining to the number of approved, denied, and recommendations on activity plans, further action reports, and baseline environmental assessments. The bill specifies that this information would have to be posted in a searchable format.

"Baseline environmental assessment" means a written document that describes the results of an all appropriate inquiry and the sampling and analysis that confirm that the property is or contains a facility. For purposes of a baseline environmental assessment, the all appropriate inquiry may be conducted or updated prior to or within 45 days after the earlier of the date of purchase, occupancy, or foreclosure. Instead under the bill, the term would mean a written document that meets all the following criteria:

- Describes the sampling and analysis, which confirm that the property is or contains a facility.
- Informs the preparation of a due care plan to meet compliance under the bill.

The term also would have to include a written document that describes the results of all appropriate inquiry. The all appropriate inquiry could be conducted or updated before or within 45 days after the earlier of the date of purchase, occupancy, or foreclosure.

Owners Obligations to Respond to a Release

Part 201 requires property owners or operators that have knowledge that a property was a facility to do all the following with respect to a release for which the owner was liable for response activity costs:

- Determine the nature and extent of the release at the facility.
- Notify the EGLE within 24 hours if the release meets certain Federal reportable quantity thresholds, and within 30 days if the contamination has migrated off-site or involves certain permitted activities affecting another property owner.
- Immediately stop or prevent an ongoing release at the source.
- Immediately implement measures to address, remove, or contain hazardous substances if those measures are technically practical, are cost effective, and abate an unacceptable risk to the public health, safety, or welfare or the environment.
- Immediately identify and eliminate any threat of fire or explosion or any direct contact hazards.
- Initiate a remedial action that is necessary and feasible to address unacceptable risks associated with residual NAPL saturation, migrating NAPL, and mobile NAPL using best practices for managing NAPL, including, but not limited to, best practices developed by the American society for testing and materials or the interstate technology and regulatory council.

The bill would delete the provisions described above.

"Technically practical" would mean reasonably achievable using currently available remediation methods considering long-term effectiveness and permanence, reduction of toxicity, mobility or volume through treatment, short-term effectiveness, ability to implement, and cost. "Technically infeasible" would mean not achievable using currently available remediation methods.

Instead, a facility owner or operator would have to do all the following with respect to a release for which the owner or operator was liable for response activity costs related to a hazardous release:

- On request by EGLE, submit supporting documents, including data and conclusions of the initial assessment report.
- Provide an annual report on the progress of response activities conducted under Part 201 until a remedial action closure report was submitted under Section 20114c or a no further action report was submitted under Section 20114d, or at an interval determined by EGLE not to exceed once every five years.

Additionally, unless a response activity plan under Section 20114b, a remedial action closure report under Section 20114c, or no further action report under Section 20114d was submitted to EGLE for the release, not later than 365 days after a release had been discovered or not later than the bill's effective date, whichever was later, the owner or operator that was liable for a facility would have to complete an initial assessment report and submit the report to EGLE on a form and in a manner prescribed by EGLE. The owner or operator could submit a request to EGLE for an extension to the timeline. The initial assessment report would have to include the results of initial actions taken by the liable individual who obtained information of

a release of hazardous substance at or on a property and property information and facility characterization results that included all the following as appropriate:

- The property address.
- The name of the business, if applicable.
- The name, address, and telephone number of a contact individual for the owner or operator that is liable under section 20126.
- The time and date the release was discovered and a description of how the release was discovered.
- The time and date the release was reported to EGLE.
- A map that included Soil and groundwater sample locations, if applicable, the locations of nearby buildings, roadways, paved areas, or other structures, surface waters, wetlands, underground sewers, and utility lines.
- Steps taken to prevent further migration of the hazardous substance into the soil or groundwater.
- Steps taken to evaluate the extent of the release, current conditions, and current levels of hazardous substances remaining at or on the property.
- Data from analytical testing of soil and groundwater samples.
- An estimate of the horizontal and vertical extent of on- site and off-site soil or groundwater contamination that exceeded cleanup criteria for unrestricted residential use.
- The depth to groundwater and groundwater flow rate and direction.
- An identification of potential migration and exposure pathways and receptors.

Also, the facility owner or operator would have to diligently pursue response activities necessary to achieve the cleanup criteria. Except as otherwise provided in Part 201, in pursuing response activities, the owner or operator would have to either submit and implement a response activity plan that included a schedule for performance of activities and for the submission to EGLE of a remedial action plan for EGLE approval within 180 days of submitting an initial assessment report or within 365 days after submitting an initial assessment report submit and implement one of the following as appropriate:

- A response activity plan that included a remedial action plan.
- A remedial action closure report, if remedial actions were complete.
- A no further action report if remedial actions were complete.

Finally, a facility owner or operator would have to take at least one of the following actions upon the written request of EGLE:

- Provide a response activity plan that contained a plan for undertaking interim response activities and undertake interim response activities consistent with that plan.
- Provide a response activity plan that contained a plan for undertaking evaluation activities and undertake evaluation activities consistent with that plan.
- Take any other response activity determined by the department to be technically sound and necessary to protect the public health, safety, welfare, or the environment.

Release of Hazardous Substance on a Property

Under the bill, when a person who was liable for response activity costs related to hazardous substance releases under Part 201 obtained information that a release of a hazardous substance had occurred at or on a property, the person who was liable would have to make the following notifications:

- If the release were of a reportable quantity of a hazardous substance under Federal law report the release to EGLE within 24 hours after the person obtained information of the release.
- If the release were less than the reportable quantity of a hazardous substance described above and was not contained and cleaned up within 24 hours, report the release to EGLE within than 48 hours after the person obtained information of the release.
- If the person obtained information that at least one hazardous substance was migrating and present beyond the boundary of the property at which the release occurred and at a concentration in excess of cleanup criteria for unrestricted residential use or state drinking water standards, report the release to EGLE and any owner of property where the hazardous substance had migrated to and was present within 30 days after the person obtained information of the migration.
- If the release were a result of an activity that was subject to permitting under Part 615 (Supervisor of Wells), the owner or operator was not the owner of the surface property, and the release resulted in hazardous substance concentrations in excess of cleanup criteria for unrestricted residential use, notify EGLE and the surface owner within 30 days after the person obtained information of the release.

A person that held an easement interest in a portion of a property and who had knowledge that there was evidence of a release within that easement would have to report the release to the EGLE within 24 hours after the person obtained information about the release. This provision would apply to reportable quantities of hazardous substances established in accordance with the Federal Comprehensive Environmental Response, Compensation, and Liability Act for which the person that held the easement interest was not liable.

If a release were reported to EGLE in accordance with a law or program other than Part 201, or had been previously reported under Part 201, additional notification under the bill would not be required.

After a person obtained knowledge of a release of hazardous substances on or migrating from the person's property and the release was reported to EGLE, the person who was liable would have to immediately begin and perform all the following initial actions:

- Determine the nature and extent of the release.
- Immediately stop or prevent an ongoing release at the source.
- Identify and mitigate immediate fire, explosion, and acute vapor hazards.
- Take action to prevent further release of hazardous substances.
- Excavate and contain, treat, or dispose of hazardous substances above the water table as necessary to prevent or mitigate further groundwater contamination.
- Take any other action necessary to abate an immediate threat to public health, safety, or welfare, or the environment.
- Determine if the release resulted in hazardous substance concentrations in excess of cleanup criteria for unrestricted residential use.
- Continue to monitor and mitigate additional hazards posed by the hazardous substances.
- Take any required action required under a liable owner or operator's obligations under Part 201.

If access to property were limited due to the property's nature or location, the person who was liable would have to inform EGLE of any conditions that limited the performance of initial actions.

The bill would allow EGLE to investigate a release or facility. An investigation by the EGLE would not relieve the person who is liable from any responsibilities related to the release or facility provided for under Part 201.

If at any time sufficient response activities were undertaken to address the facility, the liable owner or operator could submit a remedial action closure report or a no further action report and omit any remaining interim reports and plans.

The provisions described above would not apply to a permitted release or a release made in compliance with applicable Federal, State, and local air pollution control laws.

Hazardous Substance Identification

Part 201 specifies the ways that the nature and extent of a hazardous substance can be identified when there is no available analytical method or generic cleanup criteria upon release at a property, including by using the analytical determination of another similar substance, using an ecological or modeling demonstration, or developing a new analytical method.

Additionally, Part 201 specifies that the nature and extent of a hazardous substance may be determined by eliminating the potential for exposure in areas where the hazardous substance is expected to be located through removal, containment, exposure barriers, or land use restrictions, in lieu of determining the nature and extent of the hazardous substance release. The bill would delete this provision.

After a liable facility owner or operator submitted supporting documents of an initial assessment report at EGLE's request, the owner or operator would have to submit a remedial action closure report or a no further action report. A person who was not liable could take any of the actions outlined as part of a response activity plan, remedial action completion report, no further action plan, or remedial action plan.

Response Activity Plan

Currently, subject to Part 201's requirement of a liable facility owner or operator to provide a response activity plan upon EGLE's request, a person undertaking the report may submit at least one or more aspects of the plan for EGLE's approval. The bill would delete this provision.

A person that submits a plan and who is not subject to an administrative order or agreement or judicial decree that requires prior Department approval of response activity must submit a response activity plan review request form with the response activity plan. The bill would modify this provision to specify that the submission would have to be on a form and in a manner prescribed by EGLE. Also, a person could request that EGLE review the plan.

A response activity plan would have to address the release of hazardous substances in all environmental media at the facility for which the owner or operator was liable and would have to be consistent with Part 201. A response activity plan would have to include all the following:

- The address and legal description of the property subject to remedial action.
- The proposed cleanup category that was applicable to the remedial action and how the current and foreseeable land use and activity patterns were consistent with the proposed cleanup category.
- Identification of all hazardous substances present as a result of the release.
- The results of all remedial actions that identified the source and defined the nature and extent of contamination at the facility.
- An evaluation of the exposure pathways that were relevant for the facility and a determination of what exposure pathways would have to be addressed by remedial action.
- A description of source removal or control measures that have or would have to take place as part of the remedial action.

- An explanation of any land or resource use restrictions, including how the restrictions would be effective in preventing or mitigating unacceptable exposures.
- An operation and maintenance plan if any element of the remedial action required operation and maintenance.
- A monitoring plan and location of monitoring points if monitoring were required to confirm the effectiveness or integrity of the remedial action.
- Performance objectives and a plan to measure performance to determine if the remedial action was or would be effective in meeting the remedial action goals.
- A schedule for implementing remedial actions.

Additionally, the plan would have to include a feasibility study that described remedial action alternatives. The feasibility study would have to include all the following:

- Remedial action alternatives that permanently or significantly reduced the volume, toxicity, persistence, and mobility of hazardous substances at the facility.
- The effectiveness and feasibility of each remedial action alternative meeting the cleanup criteria.
- The costs associated with each remedial action alternative.
- The time necessary to implement and complete each remedial action alternative.
- If appropriate, the preferred remedial action alternative and how it was the most technically feasible, cost effective, and practical remedy to protect the public health, safety, and welfare and the environment and achieve compliance with Part 201.

Part 201 requires EGLE, within 150 days after receipt of a plan, to approve, approve with conditions, deny, or notify the submitter that the plan does not contain sufficient information to decide. Under the bill this provision would apply to a request to review a response activity plan. Additionally, EGLE could review any submitted plan and approve, approve with conditions, or deny the plan.

If a plan is approved with conditions, EGLE must state with specificity the conditions for approval. The bill specifies that the conditions could include requiring a timeline for completion of certain response activities, requiring intermediary benchmarks, and requiring submission of progress reports at regular intervals.

Additionally, the bill would allow EGLE to require that a person undertaking response activity under Part 201 submit a new response activity plan if there were new information about the nature and extent of contamination or there was evidence that any of the following were creating the potential of unacceptable exposure at the facility:

- Migration of hazardous substances.
- That the person undertaking response activities substantially misrepresented response activities or the type or extent of contamination or failed to comply with conditions set forth in the response activity plan.
- There was new scientific information released regarding the contaminants present at the facility.

Remedial Action Closure Report

"Remedial action closure report" would mean a report submitted under the bill that details the completion of remedial actions and includes provisions for ongoing operation, maintenance, and monitoring, land and resource use restrictions, permanent markers, and financial assurance as necessary.

Currently, if remedial actions at a facility satisfy cleanup criteria for unrestricted residential use, land use, or resource use restrictions or monitoring is not required. Upon completion of remedial actions at a facility for a category of cleanup that does not satisfy cleanup criteria for unrestricted use, the person conducting the remedial action must prepare and implement a postclosure plan for that facility that meets certain conditions. The bill would delete these provisions.

Instead, on completion of remedial actions at a facility that did not meet the requirements for no further action, the person conducting the remedial action would have to submit and implement a remedial action closure report for that facility. A person could submit a remedial action report addressing contamination for which the person was or was not liable.

The report would have to be submitted in a form and manner prescribed by EGLE. The report could include a request that, on approval, the release or conditions addressed by the report be designated as a residential closure.

"Residential closure" means a property at which the contamination has been addressed in a no further action report that satisfies the limited residential cleanup criteria under Part 201 or the site-specific residential cleanup criteria under Part 201, that contains land use or resource use restrictions, and that is approved by EGLE or is considered approved by EGLE. Under the bill, the term also would include a remedial action report.

The remedial action report would have to contain all the following:

- Land use or resource use restrictions.
- Permanent markers to describe restricted areas of the facility and the nature of any restrictions.
- Provisions for monitoring, operation and maintenance, and oversight necessary to ensure the effectiveness and integrity of the remedial action.
- Financial assurance sufficient to pay for monitoring, operation and maintenance, oversight, and other costs determined by EGLE to be necessary to ensure the effectiveness and integrity of the remedial action; however, the cost of activities covered by the financial assurance mechanism would have to be documented on the basis of an annual estimate of maximum costs for the activity as if the activities were to be conducted by a person under contract to the State and costs could not be based on activities being conducted by employees of the person proposing the remedial action.
- A timeline for submitting an annual report to EGLE that contained measures taken to ensure that the land and resource use restrictions were effective in limiting human exposure to contaminants and any known failures of the land or resource use restrictions in preventing access or exposure to the restricted land or resource.
- A description of continuing monitoring sufficient to detect any vertical or horizontal migration or expansion of contamination in soil or groundwater, and reporting on migration or expansion of contaminants.

At any time within 10 years after a remedial action closure report was submitted, EGLE could require changes or updates to the remedial action closure report based on allowed monitoring and reporting conducted.

"Nonresidential" means that category of land use for parcels of property or portions of parcels of property that is not residential. Under the bill, the term would mean that category of land use for parcels of property or portions of parcels of property that is not residential, and the frequency of exposure is reasonably expected or foreseeable to meet the exposure assumptions used by EGLE to develop generic nonresidential cleanup criteria.

Currently a person who implements a post closure report must provide notice of the land use or resource restriction to EGLE and the zoning authority for the local unit of government where facility is located within 30 days after recording that information. This provision would refer to a remedial action closure report instead of a postclosure report.

Additionally, a person that submitted a remedial action closure report would have to include a signed affidavit that attested that the information on which the remedial action closure report was based was complete and true to the best of that person's knowledge. The person also would have to include from the environmental consultant who prepared the remedial action closure report and met certain professional qualifications, a signed affidavit that attested that the remedial actions detailed in the remedial action closure report complied with all applicable requirements and the information on which the remedial action closure report was based was complete and true to the best of the environmental consultant's knowledge and a certificate of insurance that demonstrated that the environmental consultant had obtained, at a minimum, all of the following from a carrier that was authorized to conduct business in the State:

- Statutory worker compensation insurance as required in the State.
- Professional liability errors and omissions insurance that includes bodily injury, property damage, and claims arising out of pollution for environmental work provisions and has a limit of at least \$1.0 million per claim.
- If not covered under the professional liability errors and omissions insurance described above, contractor pollution liability insurance that had a limit of not less than \$1.0 million per claim; however, this provision would not apply to an environmental consultant who did not perform contracting functions.
- Commercial general liability insurance that had a limit of at least \$1.0 million per claim and not less than \$2.0 million aggregate.
- Automobile liability insurance that has a limit of at least \$1.0 million per claim.

A person that submitted a remedial action closure report would have to maintain all documents and data prepared, acquired, or relied on in connection with the remedial action closure report for at least 10 years after the date on which no further monitoring, operation, or maintenance is required to be undertaken as part of the remedial action covered by the remedial action closure report and make the documents and data available to EGLE.

Part 201 specifies that implementation by any person of remedial actions without Departmental approval could not relieve that person of the obligations to undertake response activities or limit the ability of EGLE to take action to require response activities to comply with Part 201. The bill would delete this provision.

On receipt of a remedial action closure report EGLE would have to approve or deny the remedial action closure report or would have to notify the submitter that the remedial action closure report did not contain sufficient information for EGLE to make a decision. The bill would require EGLE to provide its determination within 150 days after the remedial action closure report was received, unless the remedial action closure report required public participation. If the remedial action closure report required public participation, EGLE would have to provide its determination within 180 days after the remedial action closure report was received. If EGLE determined that the remedial action closure report did not include sufficient information, EGLE would have to identify the information that was required to make a decision. If the remedial action closure report were denied, EGLE's denial would have to state with specificity all of the reasons for denial.

If EGLE failed to provide a written response within the timeline described above, the remedial action closure report would be considered approved. Also, EGLE and a person that submitted a remedial action closure report could mutually agree in writing to extend a timeline.

No Further Action Report

On completion of remedial actions that satisfied the requirements of this part, rely only on land or resource use restrictions, and require no monitoring, operation, or maintenance to ensure the protectiveness and integrity of the remedial action, a person that conducted remedial actions under Part 201 would have to submit a no further action report to EGLE.

Currently, Part 201 allows a no further action report to contain certain information on all or a portion of contamination at a facility. The bill would delete those provisions. Instead, remedial actions could address contamination at or within the whole or part of a legally described facility.

Generally, a no further action report must explain why the remedial actions in the report are sufficient to protect public health, safety, welfare, and the environment. The report must be submitted to EGLE and posted on EGLE's website. Among other things, it would have to be submitted with certain information depending on the cleanup criteria either no postclosure documents, just a postclosure plan, or both a postclosure plan and a proposed postclosure agreement. If a postclosure agreement is required, it must include provisions for long-term monitoring and maintenance, financial assurance to cover those activities, notice requirements before transferring property interests, and EGLE's right to access the site for compliance checks. Additionally, the agreement may waive the need for permanent markers on the property. The bill would delete these provisions.

Under the bill, a no further action report would have to document the basis for concluding the remedial actions had been completed. The report would have to be submitted to EGLE in a form and manner prescribed by EGLE.

Part 201 requires a person submitting a no further action report to maintain all documents and data pertaining to the report for at least 10 years after EGLE approves the report, or the date on which no further monitoring, operation, or maintenance is required to be undertaken as part of the remedial action covered by the report. The bill would delete the latter half of this provision and specify that a person submitting a no further action report would have to maintain all documents and data pertaining to the report for at least 10 years after EGLE approved the report.

Also, Part 201 prescribes the process for EGLE to approve, deny, or provide notification on the EGLE's decision regarding a no further action report. It includes the process on whether the no further action report included a postclosure agreement. The bill would delete the references to a postclosure agreement.

Action for Imminent Danger

If EGLE determines there may be imminent and substantial danger to the public health, safety, and welfare, or environment because of release or threatened release, EGLE may require a liable facility owner or operator to take necessary action to abate the danger or threat. The order may require the person to perform response activities at that facility. Under the bill EGLE could also order a facility owner or operator who was not liable for the contamination to abate the danger or threat.

(Individuals who do not comply with an administrative order from EGLE are liable for a maximum civil fine of \$25,000 for each day the violation occurs or the failure to comply continues or exemplary damages equal to at least the amount of costs, but no more than three times the cost, of the response activity incurred by the State due to the noncompliance.)

A person to which an administrative order was issued that complied with the terms of the order but believed that the order was arbitrary, capricious, or unlawful, may petition EGLE for reimbursement within 60 days for reasonable damages plus interest. To obtain reimbursement the petitioner must establish a preponderance of evidence that the petitioner was not a liable facility owner or operator. The bill also would allow a petitioner to establish that the petitioner was not subject to the obligations of a property owner regardless of liability at the time the order was issued.

Attorney General Relief

Generally, the Attorney General may commence a civil action seeking injunctive relief, cost recovery for State response activities, damages for the destruction of natural resources, certain civil fines, and enforcement actions. The bill would allow the Attorney General to commence a civil action seeking recovery of State response activity costs incurred to fulfill due care requirements.

Penalties

A person who does any of the following is guilty of a felony and must be fined at least \$2,500 but no more than \$25,000 for violations involving knowingly releasing or causing a release if that person knew or should have known that the release could cause personal injury or property damage or intentionally making a false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under Part 201, among other things.

Under the bill, a person that failed to implement a due care plan would be guilty of a misdemeanor punishable by a fine of at least \$500 but no more than \$5,000 for each violation.

Additionally, EGLE may pay an award up to \$10,000 to an individual that provides information leading to the arrest and conviction of a person for a violation. The Department must promulgate rules that prescribe criteria for granting awards. The bill specifies that rules would have to comply with the Administrative Procedures Act.

Beginning 180 days after the bill's effective date, a person that failed to submit a report, plan, or documentation required for an owner or operator who knew the owner or operator's facility required a response activity plan within the required timelines would be subject to a civil fine as follows:

- Up to \$100 per day for the first seven days that the required submission was late.
- Up to \$500 per day for days eight through 14 that the required submission was late.
- Up to \$1,000 per day for each day beyond day 14 that the required submission was late.

The prosecutor of the county in which the violation occurred or the Attorney General could bring an action to collect a civil fine. A civil fine collected under this subsection would have to be deposited in the Cleanup and Redevelopment Fund subaccount for the previous Environmental Response Fund.

Subject to a request for an extension authorized under Part 201, for purposes of determining the number of days, the day that the act, event, or default occurred would be not included in

counting the total number of days. The last day would be counted, unless the last day fell on a Saturday, Sunday, legal holiday, or holiday, in which case the last day would be counted as the next day that is not a Saturday, Sunday, legal holiday, or holiday.

A liable owner or operator could by contract transfer the responsibility for paying fines to a consultant.

Additional Definition

"Background Concentration" means the concentration or level of a hazardous substance that exists in the environment at or regionally proximate to a facility that is not attributable to any release at or regionally proximate to the facility. The term allows a person to demonstrate that a hazardous substance is not present at a level that exceeds background concentration by certain methods including by use of EGLE's 2005 Michigan Background Soil Survey. The bill would modify provisions that reference the 2005 Michigan Background Soil Survey and instead require the use of EGLE's "Background Soil Survey 2015 Update".

"Target detection limit" means the detection limit for a hazardous substance in a given environmental medium that is specified in a rule promulgated by EGLE that meets certain requirements. Under the bill, the term would mean the detection limit for a hazardous substance in a given environmental medium that is specified by EGLE on a list published up to once a year on EGLE's website that met certain conditions.

Senate Bill 392

Generic Cleanup Criteria

Under Part 201 of NREPA, EGLE may establish generic cleanup criteria to represent the level of a facility's contamination. When a facility has met its cleanup criteria, it may be considered safe for human health and the environment. The Act establishes four categories of facilities: residential, nonresidential, limited residential, and limited nonresidential. The cleanup criteria differ for each category, as do the remedial actions that may be used to address their contamination.

Currently, Part 201 requires the person proposing the remedial action to select a facility's category, considering the appropriateness of the categorical criteria. The bill would delete this provision. Additionally, the Act prohibits EGLE from approving a remedial action plan or further action report unless the person submitting the plan or report documents that the categorical criteria being proposed is consistent with the current or future zoning of the property. The bill would extend this and related provisions to remedial action closure reports.

Additionally, Part 201 allows EGLE to disregard these categorizations if site-specific numeric or nonnumeric criteria better reflect the toxicity or exposure risk posed by the contamination. The Department may approve a response activity plan or a no-further-action-report that contains these site-specific criteria. The bill would provide that EGLE could only approve a response activity plan, no-further-action-report, or a remedial action closure report if it were technically infeasible to meet the generic categorical criteria previously established.

Part 201 requires EGLE, when developing and publishing cleanup criteria, to review and consider the following sources for determining toxicity values: 1) the United States Environmental Protection Agency's (EPA) integrated risk information system; 2) the United States Department of Health and Human Services Agency for Toxic Substances and Disease Registry's toxicity values; 3) the EPA's health effects assessment summary table, or final values adopted by other states, the World Health Organization, Canada, or the European

Union; and 4) the EPA Office of Pesticide Program's toxicity values for pesticides whose values have been archived. Concerning the last source, the Act prohibits EGLE from deriving or adopting a value for a hazardous substance if the EPA has determined there is insufficient scientific data to include that substance in the integrated risk information system. The bill would remove this provision. Furthermore, it would provide that, if values from these sources were unavailable or unsupported based on more recent scientific studies, a value could be identified using alternate sources or developed by EGLE if there were sufficient supporting toxicity data and information available in peer-reviewed published scientific literature.

Part 201 establishes the order of precedence EGLE must use when selecting chemical or physical data for the development of cleanup criteria. The bill would delete this provision, as well as other provisions that regulate the use of a toxicity value or input that is different than those specified in the Act. Additionally, the bill would remove requirements that certain methods be used to calculate generic health assessment criteria and provisions regulating toxic equivalency quotients.

Currently, Part 201 allows EGLE to calculate generic cleanup criteria for a hazardous substance that does not already have generic cleanup criteria. The Department must subsequently promulgate rules related to these new criteria. The bill would delete these provisions.

New Rules

Currently, Part 201 requires EGLE to promulgate generic cleanup criteria and target detection limits as administrative rules, as well as any revisions to the criteria or limits. The bill would delete this provision, as well as associated provisions that govern EGLE's rulemaking and rule-revising ability for cleanup criteria.

Instead, the bill would require EGLE to promulgate the *algorithms* used to develop generic cleanup criteria as administrative rules. The bill also would require EGLE to evaluate and revise generic cleanup criteria in force on the bill's effective date, using research and risk-assessment strategies. Generic cleanup criteria and target detection limits in force on the bill's effective date would remain in effect until EGLE published new generic cleanup criteria. The Department would have to publish generic cleanup criteria derived from its algorithms and target detection limits on its website. The Department also would have to post on its website the tables listing, by hazardous substance, all toxicity, exposure, and other algorithm factors or variables used in EGLE's calculations and promulgation of rules.

The Department would have to provide notice to the public before revising these criteria, allowing for 60 days of public comment on the proposed revisions. The final version of the revised generic cleanup criteria would have to be made available on EGLE's website, along with an explanation of and basis for these revisions. The bill would require EGLE to periodically evaluate whether new information had become available regarding the generic cleanup criteria and make revisions as appropriate. Within 90 days of each revision, EGLE would have to prepare and submit to the Legislature a report that detailed any revisions made.

Site Specific Criteria

The Act allows EGLE to disregard generic criteria if site-specific numeric or nonnumeric criteria better reflect the toxicity or exposure risk posed by the contamination. Currently, site-specific criteria must consider depth below the ground surface of contamination, which may reduce the potential for exposure and serve as an exposure barrier. The bill would remove this provision, instead requiring site-specific criteria to consider characteristics of the site that would increase or decrease the potential for exposure, including the depth of the contamination below the ground surface, geomorphological and hydrological dynamics,

proximity to residential areas, and proximity to drinking water wells and surface drinking water sources. It also would remove a provision requiring site-specific criteria to consider a land use or resource use restriction.

Generic criteria prescribe the method of remediation. For site-specific criteria, for which there may not be a relevant remediation strategy (also called an exposure pathway), remedial actions may eliminate exposure to the hazardous substance through removal, containment, exposure barriers, or land use or resource use restrictions. The bill would specify that contamination, exposure barriers, or land or resource use restrictions could only be used if removal proved technically impractical.

If a hazardous substance does not have generic cleanup criteria but is found to be substantially similar to a substance that does, the cleanup criteria and remedial actions for the latter may be used for the former as a surrogate. The person responsible for remediation must notify EGLE of the person's determination, provide a written explanation of why the surrogate is suitable, and request approval. If EGLE does not notify the person that it disapproves of the surrogate within 90 days of receipt of notice, the surrogate is considered approved. The bill would extend this deadline to 120 days after receipt of notice.

For a hazardous substance that does not have generic cleanup criteria but for which toxicity information is available, a person may develop site-specific cleanup criteria for the hazardous substance or develop simplified site-specific screening criteria based on toxicity and concentrations found on site, and request EGLE approval. If EGLE does not notify the person that it disapproves of the site-specific criteria or screening criteria within 90 days of receipt of notice, the surrogate is considered approved. The bill also would extend this deadline to 120 days after receipt of notice.

Groundwater and Aquifers

An aquifer is an underground layer of water-bearing material. It may consist of permeable or fractured rock, or of unconsolidated materials such as gravel or sand. The presence of a hazardous substance in aquifer may be dangerous, as water venting, i.e., flowing, may carry hazardous substances into drinking sources or surface waters, threatening human health and the environment. Section 201 prescribes cleanup criteria for venting groundwater and contaminated aquifers.

The Department may use an ecological demonstration, a modeling demonstration, or both to demonstrate that the groundwater's hazardous substance is not likely to migrate to a surface water body or has not or will not impair a surface water body. The bill would require EGLE also to demonstrate that the hazardous substance would not cause vapor intrusion in occupied structures.

Among other things, Part 31 of NREPA prescribes water quality standards, called generic GSI criteria. Part 201 of the Act uses these generic GSI criteria as cleanup criteria for contaminated groundwater. If contaminated groundwater is reasonably expected to vent to surface waters in concentrations that exceed the generic GSI criteria, the associated pathways to remediation may be considered relevant if certain factors are met. The bill would require a person to consider the existing or designated uses of the receiving surface water and whether the receiving surface water was a drinking source as one such factor.

If a person is unable to meet generic GSI criteria through remedial actions, that person may apply to EGLE to obtain a variance of surface water quality standards. The bill would specify that a variance could only be granted if it were technically feasible.

If the cleanup criteria for groundwater in an aquifer were different from the generic GSI criteria, the national secondary drinking water regulations, or, if there were no national secondary drinking water regulations for a contaminant, EGLE's own cleanup criteria, the final cleanup criteria would have to meet the most stringent of the three, unless compliance with this requirement was technically infeasible. In such a case, the cleanup criteria would have to be the most stringent criteria that was technically feasible.

The bill would delete several provisions outlining other response activities involving venting groundwater, such as monitoring efforts. Currently, if venting groundwater has no effect or a minimal effect, response activities beyond evaluation are not required. The bill also would delete this provision.

In some cases, the presence of hazardous substances in venting groundwater may be reduced naturally, such as through the degradation or transformation of the hazardous material. The Act categorizes this as an acceptable form of remediation. Under the bill, such natural attenuation would only be allowed if active remediation was not technically practical; however, hazardous materials may diffuse or degrade. If this diffusion or degradation was impractical to prevent, this form of natural attenuation would be considered acceptable.

Generally, remediation under the Act must meet certain standards. Among others, remediation must attain a degree of cleanup and control of the environmental contamination that complies with all applicable State standards and Federal environmental law. The bill would further require remediation to 1) meet the cleanup criteria for the intended land use and restore any affected aquifer to State drinking water standards, to the extent technically practical, and 2) stop or reverse any vertical or horizontal expansion of the contaminated area or a groundwater contamination plume, to the extent technically practicable.

Land or Resource Use Restrictions

Part 201 allows a person to impose land or resource use restrictions to reduce or restrict exposure to hazardous substances, to eliminate a potential exposure pathway, to assure the effectiveness and integrity of containment or exposure barriers, to provide for access, or to otherwise assure the effectiveness and integrity of response activities undertaken at a property. The bill would modify this provision, requiring a person to request approval from EGLE before imposing or relying on land or resource use restrictions.

The Department could only approve such a request if all the following conditions were met:

- All technically practical steps had been taken or were scheduled to be taken to address a release and limit the horizontal and vertical extent of hazardous substance concentrations above cleanup criteria for unrestricted residential use.
- If necessary, monitoring had been or was scheduled to be conducted that defined the extent of contamination of groundwater resources and could predict the contamination's long-term movement vertically and horizontally.
- If applicable, to the extent technically practical, any groundwater contamination was contained, and the potential impacts of conducting further remedial actions exceeded the benefit of conducting the remedial actions.
- If applicable, notice requirements regarding hazardous substances emanating beyond the boundary of the property were met.

A person could impose or rely on land or resource restrictions without EGLE's approval to 1) prevent exacerbation, 2) as an interim response activity until a remedial action for the facility was complete that no longer relied on land or resource use restrictions, or 3) the person received EGLE's approval.

A land or resource use restriction that was in place before the bill's effective date or was imposed to prevent the exacerbation of a hazardous substance would not satisfy a person's obligation to perform response activities and would not relieve a person's obligation to meet EGLE's approval requirement.

A land or resource use restriction may be imposed through a restrictive covenant. In addition to current requirements, the bill would require such a covenant to include the following:

- A provision that plainly stated that the land use restriction was being placed on the property in accordance with Part 201.
- A provision that required notice to be provided to EGLE on transfer of ownership, or before construction or changes in the land use occurred that could affect environmental contamination or increase exposure at the property.
- A provision that granted a right of access to EGLE and a person responsible for performing response activities at the property; a right of access would have to include the right to enter the property for the purpose of monitoring compliance with the restrictive covenant, the right to take samples, and the right to implement response activities.

Currently, a restrictive covenant may include a provision limiting the restrictive covenant to a specific duration or terminating the restrictive covenant upon the occurrence of a specific event or condition, such as the completion of additional response activities that are approved by EGLE. The bill would remove this provision.

A restrictive covenant also may include a provision obliging the owner of the land to inspect or maintain exposure barriers, permanent markers, fences, or other aspects of the response action or remedy. The bill would extend this to include monitoring wells.

An institutional control may be used to impose land or resource use restrictions instead of or in addition to a restrictive covenant. The bill would require a general description of the institutional control and where to find more information to be recorded on each property covered by the institutional control or filed as an ordinance affecting multiple properties.

Imposing a land or resource use restriction would not relieve a person from undertaking response activities as required under Part 201.

MCL 24.207 (S.B. 385)
324.20101 et al. (S.B. 391)
324.20118 et al. (S.B. 392)

Legislative Analyst: Nathan Leaman

FISCAL IMPACT

Senate Bill 385

There is no anticipated fiscal impact associated with the bill.

Senate Bill 391

The bill could have a negative fiscal impact on EGLE. There would be administrative costs associated with publishing various items outlined in the bill to EGLE's website and reviewing, processing, and investigating the required documents submitted by owners and operators as required under the bill.

Pursuant to the language of the bill, the Attorney General could pursue civil action to recover the State's costs to fulfill due care plan requirements. The bills also would add language

allowing for the implementation of fines ranging from \$500 to \$5,000 for each violation, or failure, to implement a due care plan.

Failures to comply with the new requirements under Sections 20114 or 20114b would result in graduated civil fines between \$100 per day and \$1,000 per day, depending on the length of time for noncompliance. These could be collected on action by county prosecutors or the Attorney General, with the civil fine revenue directed to a subaccount of the Cleanup and Redevelopment Fund created in Section 20108.

State circuit courts could have increased hearing or administrative costs under the bill. These costs would likely be absorbed by circuit courts.

The bill's criminal penalties could have a negative fiscal impact on the State and local government. Violations of the proposed Act would be punishable as misdemeanors and felonies of different severity. More misdemeanor and felony arrests and convictions could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. Misdemeanor convictions could increase county jail and local probation supervision costs, which vary by jurisdiction and are thus indeterminate. Based on 2025 data, the average cost to State government for felony probation supervision is approximately \$4,900 per probationer per year. For any increase in prison intakes the average annual cost of housing a prisoner in a State correctional facility is an estimated \$49,600. Per diem rates range from \$100 to \$431 per day (average per diem is \$135), depending on the security level of the facility. Additionally, any associated fine revenue would increase funding to public libraries.

Senate Bill 392

The bill would likely have a limited negative fiscal impact on EGLE. There would likely be administrative costs in the short term related to developing the algorithms to be used for developing generic cleanup criteria, but this could result in some minor long-term savings. Other administrative costs would include periodically updating and publishing revisions to generic cleanup criteria on EGLE's website, reviewing and approving requests for land or resource use restrictions, and ensuring compliance and monitoring in accordance with the provisions of the bill. There is no anticipated fiscal impact to locals under the bill.

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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.