

## WETLAND MANAGEMENT

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### House Bill 5463

**Sponsor: Rep. Dan Scripps**

**Committee: Great Lakes and Environment**

**Complete to 9-24-09**

### **A PRELIMINARY SUMMARY OF HOUSE BILL 5463 AS INTRODUCED 9-23-09**

The bill would amend the Natural Resources and Environmental Protection Act (NREPA) to do the following, among other things:

- Require notice and public hearings in order to establish minor project categories under Parts 301 (Inland Lakes and Streams), 303 (Wetlands Protection), and 325 (Great Lakes Submerged Lands) for activities and projects that are similar in nature with minimal adverse environmental effects viewed separately or cumulatively; allow the Department of Environmental Quality (DEQ) to process minor project applications without providing notice.
- Require, rather than allow, the DEQ to issue general permits under Parts 301 and 325 on a statewide basis or within a local unit of government for projects that are similar in nature with minimal adverse environmental effects viewed separately or cumulatively.
- Revise notice and hearing requirements for authorizations under general permits issued under Parts 301, 303, and 325. (Generally speaking, notices would be allowed rather than required, public hearings would be prohibited, and site inspections would be atypical.)
- Require the DEQ to issue an authorization under a Part 303 general permit if certain conditions were met; set a 150-day processing period for an authorization under a general permit issued under Section 303012; allow the DEQ to require a proposed project to be processed under Section 30307, even if in a minor project or general permit category, if the project is likely to cause more than minimal adverse effects on aquatic resources, including high-value aquatic habitats.
- Require the DEQ and local units of government to apply Army Corps of Engineers standards to identify wetland boundaries under Part 303.
- Require the Agriculture Commission to identify and make a map publicly available showing at least 2,500 acres suitable for cranberry production (and after 2,000 of these acres were developed, to identify at least 2,500 more); classify certain cranberry production activities as "water dependent" or not; specify that certain presumptions would not apply to applicants who have demonstrated that there was no feasible and prudent alternative to the construction of cranberry beds; and specify that no fee would apply to pre-application meetings relating to cranberry projects, whether held at a DEQ district office or a project site.

- Require the DEQ to implement two new pilot programs, one to increase the efficiency of the wetland permitting process and one to develop wetland mitigation banks; require the DEQ and the program participants to report on the pilot programs.
- Require the DEQ to issue a new guidance document under Part 303 for evaluating feasible and prudent alternatives in which its interpretation of its rules regarding such alternatives could not be more restrictive than federal rules; if DEQ staff has recommended denying a permit on basis of the availability of such alternatives before this new guidance document takes effect, then allow the DEQ and applicant to agree to a 45-day delay.
- Specify certain conditions that could be imposed on any permit or authorization under general permit issued under Part 303.
- Allow certain compensatory wetland mitigation conditions (obtaining credits, restoring a previously-existing wetland, creating a new wetland, or maintaining an exceptional wetland) to be imposed on any Part 303 permit except a general permit; allow the DEQ to accept conservation easements; and allow it to require financial assurance to make sure a compensatory mitigation project was completed as specified.
- Require the DEQ to coordinate general permit and minor project categories under Parts 301, 303, and 325 consistent with nationwide permits, as appropriate.
- Require the DEQ to adopt or maintain general permits or minor project categories equivalent to certain nationwide permits without modifications; require other nationwide permits to be adopted but with modifications allowed; require the DEQ to adopt or maintain other specified general permits or minor project categories.
- Require the DEQ to seek an agreement with the Army Corps of Engineers within 180 days for the Corps to issue state programmatic general permits under Section 404(e) for activities in waters over which the Corps retains jurisdiction under Section 10 of the federal Rivers and Harbors Appropriations Act of 1899.
- Require the DEQ to establish a program to facilitate ecologically responsible voluntary wetland restoration and enhancement projects in coordination with state, federal, tribal, and nongovernmental groups.
- Require the DEQ to pursue an agreement with the federal EPA to expand the categories of discharges subject to a waiver from specified federal clean water requirements.
- Allow the DEQ to provide certifications under Section 401 of the Clean Water Act.
- Create a 17 to 20 member Wetland Advisory Council; require the council to prepare reports on specified topics by October 1, 2010 and October 1, 2012.

## **FISCAL IMPACT:**

A fiscal analysis is in process.

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