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Senate Bill 1052 (as introduced 3-28-12)

Sponsor: Senator Tom Casperson

Committee: Natural Resources, Environment and Great Lakes

Date Completed: 4-25-12

### **CONTENT**

**The bill would amend Parts 303 (Wetlands Protection) and 325 (Great Lakes Submerged Lands) of the Natural Resources and Environmental Protection Act to do the following:**

- **Prohibit the Department of Environmental Quality (DEQ) and local units of government from regulating under Part 303 an area commonly referred to as a beach.**
- **Eliminate a requirement that a person obtain a permit under Part 303 or 325 for the mowing or removal of vegetation between the ordinary high-water mark and the water's edge.**
- **Provide that Part 325 permit requirements could not be interpreted to affect a riparian owner's right to maintain land above the water's edge.**

The bill also would repeal a section that required the DEQ Director to designate two areas of Great Lakes shoreline where vegetation mowing and removal was allowed without a permit under Parts 303 and 325 for a limited time.

#### **Part 303: Wetlands Protection**

Part 303 requires a person to obtain a permit from the DEQ to do any of the following:

- Deposit or permit the placement of fill material in a wetland.
- Dredge, remove, or permit the removal of soil or minerals from a wetland.
- Construct, operate, or maintain any use or development in a wetland.
- Drain surface water from a wetland.

A general permit may be issued for the mowing or removal of vegetation in the area between the ordinary high-water mark and the water's edge. An application may be submitted by a local unit of government on behalf of property owners within its jurisdiction or by one or more adjacent property owners for riparian property located within the same county. The bill would delete these provisions.

("Mowing of vegetation" means the cutting of vegetation to a height of not less than two inches, without disturbance of soil or plant roots. "Removal of vegetation" means the manual or mechanized removal of vegetation, other than the manual de minimis removal of vegetation. The bill would delete these definitions.)

Part 303 prescribes application fees for various project types, including a \$50 fee for the removal of vegetation in an area that is not more than 100 feet wide or the width of the property, whichever is less, or the mowing of vegetation under a general permit, in the area between the ordinary high water mark and the water's edge. The bill would delete this fee.

Part 303 authorizes certain uses in a wetland without a permit, subject to other Michigan laws and the owner's regulation. Until November 1, 2007, these uses included beach maintenance activities meeting specific conditions. Also, until June 5, 2006, the uses included removal of vegetation in designated areas as authorized under Section 32516 (described below). The bill would eliminate the language pertaining to these uses.

The bill would prohibit the DEQ and local units of government from regulating under Part 303 an area commonly referred to as a beach. "Beach" means the area landward of the shoreline of the Great Lakes. The bill would delete this definition.

#### Part 325: Great Lakes Submerged Lands

Part 325 Permit. Part 325 contains several references to the "ordinary high-water mark", and sets this mark at a specific elevation above sea level for each Great Lake and Lake St. Clair. The bill would refer instead to the "regulatory water mark".

Part 325 contains a number of references to "unpatented lake bottomlands" and "unpatented lands". The bill would refer instead to "unpatented submerged lands".

Except as otherwise provided, a person who excavates or fills or in any manner alters or modifies any of the land or water subject to Part 325 without DEQ approval is guilty of a misdemeanor punishable by imprisonment for up to one year and/or a maximum fine of \$1,000. A person who commits a minor offense is guilty of a misdemeanor punishable by a maximum fine of \$500 per violation. ("Minor offense" means either the failure to obtain a Part 325 permit or a violation of a Part 325 permit, if the DEQ determines that restoration of the affected property is not required.) The bill would extend the penalties to a person who excavated or filled or in any manner altered or modified land regulated under Section 32512.

Under that section, unless the DEQ has granted a permit or the Legislature has granted authorization, subject to certain exceptions, a person may not 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 or Lake St. Clair, for navigation or other purpose.
- Dredge or place spoil or other material on bottomland.
- Construct a marina.

Under the bill, a person could not do any of these things on submerged lands or any adjacent shorelands below the regulatory water mark without a permit or legislative authorization. The bill also would eliminate the reference to bottomland.

The bill provides that nothing in Section 32512 could be interpreted to affect the right of a riparian owner to mow, groom, remove vegetation, or otherwise maintain land above the water's edge.

Currently, a general permit may be issued for the mowing or removal of vegetation in the area between the ordinary high-water mark and the water's edge. An application for a

permit may be submitted by a local unit of government on behalf of property owners within its jurisdiction or by one or more adjacent property owners for riparian property located within the same county. The bill would delete these provisions.

Part 325 prescribes a \$50 application fee for a permit for the removal of vegetation in an area that is not more than 100 feet wide or the width of the property, whichever is less, or the mowing of vegetation under a general permit, in the area between the ordinary high-water mark and the water's edge. The bill would delete this fee.

Part 325 contains language similar to that in Part 303 allowing beach maintenance activities until November 1, 2007, and vegetation removal in designated areas until June 5, 2006, without a permit or other approval. The bill would delete this language.

Under Part 325, the terms "beach", "beach maintenance activities", "grooming of soil", "leveling of sand", "mowing of vegetation", and "removal of vegetation" have the same definitions as in Part 303. The bill would delete all of these definitions.

Removal in Designated Areas. The bill would repeal Section 32516, which required the DEQ Director to identify two areas of the shoreline of the Great Lakes and Lake St. Clair where the removal of vegetation between the ordinary high-water mark and the water's edge was allowed without a permit under Part 325 or Part 303. This section also allowed the Director to designate additional areas unless he or she determined that additional designations would result in pollution, impairment, or destruction to natural resources. Within the designated areas, the removal of vegetation was allowed if the landowner had received a letter of approval from the DEQ confirming at least three of the following:

- The area was unconsolidated material predominately composed of sand, rock, or pebbles, or was predominantly vegetated by nonnative or invasive species.
- The area met that criterion as of January 1, 1997.
- The removal of vegetation would not violate Part 365 (Endangered Species Protection) or rules promulgated under it.
- The area in which the removal would occur was not an environmental area.

In addition, the area where vegetation removal would occur could not exceed the greater of 50% of the width of the upland riparian property or 100 feet, or a wider area if approved by the DEQ Director. All collected vegetation had to be disposed of properly outside of any wetland.

MCL 324.30301 et al.

Legislative Analyst: Julie Cassidy

## **FISCAL IMPACT**

The bill would have an indeterminate impact on the State's finances. The bill would eliminate the regulation of removing or mowing vegetation on beaches under Parts 303 and 325 of NREPA. Currently, riparian land owners must obtain a permit for the removal of vegetation on beaches and pay a \$50 fee to do so. Under the bill, riparian land owners would no longer have to obtain this permit, so the DEQ would lose the revenue associated with these fees. Since the DEQ would no longer be processing this type of permit, there would be savings associated with the bill as well. It is not clear whether the amount of fee revenue lost would be greater or less than the savings associated with no longer processing the permits, so the fiscal impact of the bill is indeterminate.

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.