

Legislative Analysis



WETLANDS PROTECTION: NO CONDITIONS ON PERMIT FOR CERTAIN ROAD WORK

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House Bill 4892

Sponsor: Rep. Tom Casperson

Committee: Transportation

Complete to 6-27-05

A SUMMARY OF HOUSE BILL 4892 AS INTRODUCED

The bill would amend Part 303 of the Natural Resources and Environmental Protection Act (MCL 324.30312), which deals with the protection of wetlands, to specify that the Department of Environmental Quality could not impose conditions designed to mitigate the impact of a discharge of fill materials on a permit for an activity undertaken in conjunction with road work without the consent of the entity with legal jurisdiction over the road. This would apply when both of the following requirements were met: a) the road was in existence on the effective date of the bill, and b) the activity took place within the right-of-way of the road.

The term “road work” would be defined to mean the maintenance, repair, improvement, or reconstruction of a road. Road work would not include the construction of a road.

Under the law, the DEQ can issue general permits on a statewide basis for a category of activities if it determines that the activities will cause only minimal adverse environmental effects when performed separately and cumulatively. The department can impose conditions on a permit for a use or development if the conditions are designed to: a) remove an impairment to the wetland benefits; b) mitigate the impact of a discharge of fill materials; or c) otherwise improve the water quality.

FISCAL IMPACT:

The bill would have an indeterminate fiscal impact on local governmental units. The bill would allow the Department of Environmental Quality to issue a general permit to county road commissioners and to other local units for wetland management activities within a road right of way. This could result in a fiscal savings for the responsible agency. However, the DEQ indicates that if the bill became law, environmental regulation of wetlands and floodplains would still be required under the U.S. National Environmental Policy Act and Section 404 of the Federal Clean Water Act. The department predicts that the U.S. Environmental Protection Agency in that case would assume direct oversight of environmental clearance work currently performed by the department.

BACKGROUND:

Interdepartmental Grants (IDGs) are funds or revenue appropriated from a department budget as a means of reimbursing other state departments for services performed. There

are several IDG grants appropriated from the state transportation budget to agencies which perform services for the Michigan Department of Transportation and state-restricted transportation funds.

The Michigan Department of Environmental Quality (MDEQ) performs environmental clearance work on behalf of the Michigan Department of Transportation (MDOT) as well as county road commissions and cities and villages. The scope of the services and the basis for reimbursement are provided in a Memorandum of Understanding between MDOT and MDEQ. Specifically, the MDEQ provides expedited and coordinated services related to the permitting processes required under the U.S. National Environmental Policy Act and Section 404 of the Federal Clean Water Act. The MDEQ indicates that it is one of only two states that have been approved by the federal Environmental Protection Agency to administer the Section 404 program, which includes wetlands and inland lake and stream protection. The department believes that this authority gives the MDEQ the ability to respond to permit requests in a more timely manner than if the federal government had direct oversight.

Funding for MDEQ transportation-related permit work is appropriated in the state transportation budget through an IDG from the Michigan Transportation Fund (MTF) to the MDEQ. The total amount of the IDG is \$958,200 in the current fiscal year. The amount proposed in the FY 2005-06 Executive budget is \$986,600, a \$28,400 increase to reflect economic increases. The Natural Resources and Environmental Act of 1994 (PA 451 of 1994) authorizes the MDEQ to collect permit application fees for various activities authorized under the act. The MTF IDG funding effectively provides for the reimbursement of the MDEQ for work performed for transportation agencies in lieu of individual permit application fees. Note that the appropriation represents the maximum authorized. Amounts not used at the end of the fiscal year are returned to the MTF.

Auditor General Audit – The Office of Auditor General performs an annual performance audit, *Use of Transportation-Related Funding*. The most recent audit (OAG Report 07-629-05), issued February 2005, was of the 2002-03 fiscal year. The report found that the MDEQ charges to the MTF were appropriate and the cost methodology was reasonable.

In addition, the Auditor General recently completed a performance audit to assess the effectiveness of MDOT in obtaining the necessary environmental permits for highway construction projects. The audit, *Waterways, Wetland, and Soil Erosion and Sedimentation Permits* (OAG Report 59-161-04), issued February 2005, concluded that MDOT was effective in obtaining the necessary permits.

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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.