

Legislative Analysis



WETLAND MITIGATION NOT REQUIRED WITH CERTAIN ROADWORK

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House Bill 4303 (Substitute H-1)
Sponsor: Rep. Ed McBroom
Committee: Transportation

Complete to 6-22-11

A SUMMARY OF HOUSE BILL 4303 AS REPORTED FROM COMMITTEE

The bill would amend the Natural Resources and Environmental Protection Act to specify that the Department of Environmental Quality could not impose compensatory wetland mitigation as a condition on a permit without the consent of the entity with jurisdiction over the road, if both of the following requirements were met:

- The road was in existence on the effective date of the bill.
- The activity takes place within the road right-of-way.

The bill would define "road" to mean a city or village street, county road, or state trunk line. The bill would define "road work" to mean the maintenance, repair, improvement, or reconstruction of a road. It would not include the construction of a road.

The bill also creates a specific subsection stating, "the department shall not impose compensatory wetland mitigation as a condition of a general permit." Currently, the act says the department may impose a requirement for mitigation on any permit "other than a general permit." (A "general permit" is defined in the act as a permit for activities that the DEQ determines will not negatively impact human health and will have no more than minimal short-term adverse impacts on the natural resources and environment.)

The bill applies to road work that is not exempt under Section 30305 of NREPA. That section says that a permit is not required for activities in a wetland that involve "maintenance or improvement of public streets, highways, or roads, within the right-of-way and in such a manner as to assure that any adverse effect on the wetland will be otherwise minimized. Maintenance or improvement does not include adding extra lanes, increasing the right-of-way, or deviating from the existing location of the street, highway, or road."

[According to the website of the Department of Environmental Quality, "the purpose of compensatory wetland mitigation, commonly referred to as wetland mitigation, is the replacement of unavoidably lost wetland resources with created or restored wetlands, with the goal of replacing as fully as possible the functions and public benefits of the lost wetland." The statute refers to several methods of mitigation, including the restoration of

previously existing wetland, the creation of new wetlands, the preservation of exceptional wetlands, and the acquisition of approved credits from a wetland mitigation bank.]

FISCAL IMPACT:

House Bill 4303 would have no fiscal impact to the State of Michigan. Local units of government could experience savings in specific cases where the bill's provisions would no longer allow the Department of Environmental Quality to require locals to pay for compensatory wetland mitigation activities as under current law. The amount of savings a local unit of government might realize would depend upon the road work project undertaken and the type of mitigation that the Department would have required.

We have been unable to identify instances in which county road commissions have been required by the DEQ to perform wetland mitigation in circumstances which would be exempt from wetland mitigation requirements under the bill. As a result, we do not have a record of actual costs experienced by road commissions in the past and cannot provide a reasonable estimate of future costs.

POSITIONS:

County Road Association of Michigan supports the bill. (5-11-11)

Great Lakes Timber Professionals supports the bill. (5-11-11)

Michigan Association of Timbermen supports the bill. (5-11-11)

Michigan Farm Bureau supports the bill. (5-11-11)

Michigan Infrastructure Transportation Association (MITA) supports the bill. (5-11-11)

Michigan Townships Association supports the bill. (5-11-11)

Department of Environmental Quality opposes the bill. (5-11-11)

Michigan Environmental Council opposes the bill. (5-11-11)

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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.