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Senate Bill 1052 (as enacted)
Sponsor: Senator Tom Casperson
Senate Committee: Natural Resources, Environment and Great Lakes
House Committee: Natural Resources, Tourism, and Outdoor Recreation

PUBLIC ACT 247 of 2012

Date Completed: 1-15-13

CONTENT

The bill amended Parts 13 (Permits), 303 (Wetlands Protection), 325 (Great Lakes Submerged Lands), and 414 (Aquatic Invasive Species Advisory Council) of the Natural Resources and Environmental Protection Act to do the following:

- **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 certain activities conducted between the ordinary high-water mark and the water's edge are not subject to regulation under Part 303 or 325.**
- **Require the Aquatic Invasive Species Advisory Council to review, and make recommendations to the Department of Environmental Quality (DEQ) and the Legislature on, *Phragmites australis* control measures.**

The bill also repealed a section that required the DEQ to designate two areas of Great Lakes shoreline where vegetation mowing and removal were allowed without a permit under Parts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

The bill took effect on July 2, 2012.

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.

Previously, the DEQ could issue a general permit for the mowing or removal of vegetation in the area between the ordinary high-water mark and the water's edge. An application could 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 deleted these provisions.

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

Part 303 prescribes application fees for various project types. Previously, these included a \$50 fee for the removal of vegetation in an area that was not more than 100 feet wide or the width of the property, whichever was 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 deleted 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 eliminated the language pertaining to these uses.

("Beach" meant the area landward of the shoreline of the Great Lakes. The bill deleted this definition.)

Under the bill, except as otherwise provided, the following activities are not subject to regulation under Part 303 by the State:

- Leveling sand, removing vegetation, grooming soil, or removing debris, in an area of unconsolidated material predominately composed of sand, rock, or pebbles, located between the ordinary high-water mark and the water's edge.
- Mowing vegetation between the ordinary high-water mark and the water's edge.

The exemption from regulation does not apply to land included in the survey of the delta of the St. Clair River, otherwise referred to as the St. Clair Flats, located within Clay Township, St. Clair County, as provided in Public Act 175 of 1899.

Part 325: Great Lakes Submerged Lands

Part 325 Permit. Under Section 32512, 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, the same activities are not subject to regulation under Part 325 as the bill exempts from regulation under Part 303, subject to the same exception for the St. Clair Flats.

Also, as in Part 303, the bill deleted provisions in Part 325 for a general permit for the mowing or removal of vegetation in the area between the ordinary high-water mark and the water's edge; a \$50 application fee; beach maintenance and vegetation removal without a permit; and definitions.

Removal in Designated Areas. The bill repealed 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.

Part 414: Aquatic Invasive Species Advisory Council

The bill requires the Advisory Council to review *Phragmites australis* control measures, and provide recommendations on the measures to the DEQ and the standing committees of the Senate and House of Representatives with primary jurisdiction

relating to natural resources and the environment.

MCL 324.1301 et al.

BACKGROUND

Phragmites australis is an aggressive weed that grows around wetlands to form dense, fence-like mats. The reed, which can reach 10 feet in height, can obscure views of the water and render beaches unusable. *Phragmites* is classified as a restricted aquatic invasive plant and its possession and introduction are prohibited under Part 413 (Transgenic and Nonnative Organisms) of the Natural Resources and Environmental Protection Act. Part 413 prescribes civil and criminal penalties, which vary depending on whether the offense involves possession or introduction; and whether the person committed the violation knowingly or with intent to damage natural, agricultural, or silvicultural resources or human health.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill will have an indeterminate impact on the State's finances. The bill eliminated the regulation of removing or mowing vegetation and leveling of sand on beaches under Parts 303 and 325 of the Act. Previously, riparian land owners had to obtain a permit for those activities on beaches and pay a \$50 permit fee. Under the bill, riparian land owners no longer have to obtain this permit, so the DEQ will lose the revenue associated with these fees. Since the DEQ will no longer be processing this type of permit, there will be savings associated with the bill as well. It is not clear whether the amount of fee revenue lost will 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.