



**House  
Legislative  
Analysis  
Section**

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**BEACH MAINTENANCE ON GREAT  
LAKES RIPARIAN LANDS**

**House Bill 4257 as introduced  
First Analysis (3-26-03)**

**Sponsor: Rep. Brian Palmer  
Committee: Great Lakes and Tourism**

***THE APPARENT PROBLEM:***

Great Lakes' water levels, which fluctuate over time, are currently very low. Homeowners and resort owners in some areas along the Great Lakes shoreline have seen the waters recede to reveal both additional beachfront and marshy coastal wetlands (or weedy swamps, depending on one's point of view). This appears to have particularly been a problem in Saginaw Bay, but is true elsewhere as well. For many this has been an unwelcome occurrence: docks and marinas no longer reach far enough and sandy beaches give way to exposed vegetation and shallow pools of standing water. Property owners used to enjoying sandy beaches find the newly exposed shoreline unsightly and some complain of the odor that accompanies the vegetation. And, of course, access to the water is now through tall grass and plants rather than over sandy beach. Residents claim the vegetation can be a breeding ground for mosquito-borne diseases and bacterial infections. Resort owners note that their customers come to enjoy the sand and water not swampy, marshy waterfronts. They say that keeping beaches in a condition that visitors expect and desire is vital to the tourist industry, which is a major component of the state's economy. Homeowners and resort owners want to engage in "beach maintenance" activities that can help to restore the beach to its general appearance when water levels were higher, including mowing vegetation and grooming the beach. The vegetation is, from their point of view, not a natural phenomenon but the result of pollution and new invasive non-native plant species. They say property owners have traditionally groomed their beaches and removed debris, jetsam, and nuisance vegetation.

The Department of Environmental Quality (DEQ) and environmentalists have a different view of the newly exposed vegetation. A 2000 briefing report about activities in Saginaw Bay from a DEQ biologist put it this way: "Normal to low water levels experienced in late 1998 and 1999 have exposed large areas of bottomlands and promoted the natural resurgence of Saginaw Bay coastal marsh habitat.

This marsh habitat provides valuable breeding, rearing, feeding, and resting habitat for a diverse group of wildlife species, especially waterfowl. Marshes with standing water also provide valuable fish spawning and rearing habitat. Destruction of this habitat disrupts the natural life cycle of the native plants and animals of Saginaw Bay". The DEQ says that it has regulatory responsibilities for the newly exposed lakebed under both Part 303 (wetlands) and Part 325 (submerged lands) of the Natural Resources and Environmental Protection Act (NREPA). The U.S. Army Corps of Engineers also has responsibilities under federal law. Property owners are required to seek permits in order to engage in activities that will physically alter wetlands and bottomlands. The DEQ says that it "routinely issues permits for [beach maintenance] activities when the Department has carefully determined that the activity is in the public interest". Property owners dispute this, claiming the permit process is too strict (and costly), and further arguing that they should not fall under current state wetlands and bottomlands laws when maintaining their beachfronts.

This state of affairs has led to conflict between property owners and state environmental regulators. In some ways, this is a clash between those who value sandy beaches, including their aesthetic and economic benefits, and those who value the aesthetic and ecological value of coastal wetlands, and a clash between those who see this as essentially as an issue of private property rights and those who emphasize a public trust theory of protecting natural resources. Legislation has been introduced that will allow property owners on the Great Lakes coastline to engage in certain specified beach maintenance activities without obtaining a permit from the state.

***THE CONTENT OF THE BILL:***

The bill would amend the Natural Resources and Environmental Protection Act (NREPA) to allow

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“beach maintenance activities” without a permit on certain Great Lakes riparian lands.

Beach maintenance activities would be defined in the bill as including, but not limited to, manual or mechanized mowing, leveling of sand, and removal of vegetation and grooming of the top four inches of soil of the area of Great Lakes riparian lands lying between the ordinary high water mark and the water’s edge. The “ordinary high water mark” is defined already in Section 32502 of the act as 601.5 feet above sea level for Lake Superior; 579.8 feet for Lake Michigan and Lake Huron; 574.7 feet for Lake St. Clair; and 571.6 feet for Lake Erie. The term “Great Lakes riparian lands” would refer to property bordering on the Great Lakes.

The bill would amend Part 303 dealing with wetlands protection to specify that “beach maintenance activities” would be allowed in a wetland without a permit (subject to other state laws and the regulations of the property owner). It would also amend Part 325 dealing with Great Lakes submerged lands to specify that a permit or other approval would not be required for beach maintenance activities.

Currently, Section 32511 of NREPA allows a riparian owner to apply to the Department of Environmental Quality for a certificate suitable for recording the location of his or her “lakeward boundary” or indicating that the land involved has accreted to his or her property as a result of natural accretions or placement of a lawful, permanent structure. The application must be accompanied by a fee of \$200 and proof of upland ownership. House Bill 4257 would eliminate the term “lakeward boundary” and insert “the ordinary high water mark” instead.

MCL 324.30301 et al.

### **BACKGROUND INFORMATION:**

Useful background information on this topic can be obtained from the Office of Science and Technology within the Legislative Service Bureau. Two background articles in particular are useful: one entitled Great Lakes Coastal Wetlands (2002) and another entitled Great Lakes’ Water Levels (2000).

### **FISCAL IMPLICATIONS:**

The House Fiscal Agency reports that the bill would have no fiscal impact on the state or on local

governmental units. (HFA floor analysis dated 3-20-03)

### **ARGUMENTS:**

#### **For:**

In a 2002 presentation to the legislature from Save Our Shoreline, a group of property owners that originated in Saginaw Bay and now includes property owners from elsewhere on the Lake Huron shoreline and from the Grand Traverse area, the organization made the following concluding argument:

*People living and recreating around the Saginaw Bay, after at least a century of enjoying their clean, sugar sand beaches, have become accustomed to this as the natural state of their environment. Some residents obtained the benefit of a clean, sand beach without much effort, while others have had to maneuver sand in relatively small amounts to maintain their beaches. Ignoring or unaware of the historical state and usage of the Saginaw Bay over the last century, the DEQ has sought to change the way of life of thousands of citizens without any direction of change in policy from [the] legislature, and without adequate basis in law. While the DEQ is charged with implementing environmental protection statutes, it is up to the legislature to determine Michigan’s overall public policy. Coastal wetlands may be beneficial when weighed in a vacuum, but that benefit must yield to public health and safety, the economic value of tourism, our local economies and tax base, the sanctity of private property, and the will of shoreline owners and their local communities.*

Supporters of the bill make the following arguments.

- Tourism is the state’s second largest industry and the state’s beaches are a major factor in its success. The livelihood of many Michigan residents depends on the attractiveness of the state’s beaches. If the beaches are not attractive and useable, tourists will go elsewhere. Preventing resort owners and park managers from maintaining beaches threatens businesses and jobs. It also threatens the revenues of local units of government both from business activity and from the drop in property values for residences and commercial properties alike.
- Stagnant water and tall weeds and grasses can be a breeding ground for mosquitos and can spread bacterial infections when polluted by fertilizer runoff, sewage, and decayed organic materials. The newly exposed vegetation can threaten the public health (and raises the spectre of the West Nile virus).

- The exposed vegetation, rather than being a valuable habitat, is a temporary, non-natural phenomenon caused by pollutants and invasive species. It will disappear when water levels rise. The aim of affected property owners is not to get rid of legitimate wetlands but to prevent their beaches from being turned into wetlands due to abnormal conditions.

- Current DEQ policies are unpopular and are creating conflict and have the potential to make criminals out of hardworking, law abiding property owners. The department has acted in an unfair, uncooperative, and intimidating manner with property owners.

- Moreover, the DEQ policies have no basis in law. Great Lakes landowners have ownership and control of beaches to the water's edge, so state bottomlands regulations should not apply. Further, ordinary beach maintenance activities do not constitute the dredging and filling of wetlands and so should not be subject to state wetlands regulations.

#### ***Against:***

Representatives of the Department of Environmental Quality say:

*The wetlands that fringe the Great Lakes depend on normal fluctuations in Great Lakes water levels for their continued existence. By eliminating wetland vegetation that is exposed during low water years, the activities exempted under these bills would destroy coastal wetlands that provide critical fisheries and wildlife habitat, including fish feeding and spawning areas and waterfowl feeding areas, without any public review to minimize adverse impacts to that habitat as required by Parts 303 and 325 [of the Natural Resources and Environmental Protection Act]. Up to two thirds of the Great Lakes coastal marshes were exposed during the low water years of 1999 and 2000. Under [this bill], these wetlands could have been eliminated without a State permit. Once the bottomlands are physically altered by activities exempted in [the bill], rare coastal marshes may not recover for years, if ever.*

Opponents of the bill make the following arguments.

- The bill is not needed because coastal property owners can obtain authorization to conduct reasonable beach maintenance activities by acquiring permits from the DEQ. The permit process assures an independent review and allows for public comment on proposed alterations to bottomlands. Methods are available to expedite beach projects that

have minimal environmental impact. It should be noted that some of the "beach maintenance activities" permitted under this bill could over the long run damage beaches because vegetation protects beaches from erosion.

- Coastal wetlands also contribute to the state's economy and to tourism because they support fishing and hunting by providing critical fisheries and waterfowl habitats. The state also benefits from tourists who come to Michigan for nature observation and wildlife photography.

- The bill would allow mechanized mowing, mechanized leveling of sand, removal of vegetation, and mechanized plowing and disking in the top four inches of soil on all of the state's public trust bottomlands between the ordinary high water mark and the water's edge. It is simply not accurate to characterize this as merely "beach maintenance".

- The lands affected by the bill do not belong to coastal property owners. The Michigan Environmental Council has said that "the Great Lakes bottomlands are just as much a publicly owned resource as our state parks and forests. Enacting this legislation . . . is like turning over management of those parks and forests to private interests without any oversight". Further, an exposed lakebed is not a beach.

- While the bills would exempt certain beach maintenance activities from state permit requirements, the activities would still fall under the jurisdiction of the U.S. Army Corps of Engineers under federal law and permits would have to be obtained from them.

- The DEQ has offered a substitute version of the bill that would allow some beach maintenance activities to be carried out without a permit if they met certain specified conditions. For example, it would limit the width of any mowing and the area in which grooming would take place. The substitute would put more reasonable limits on these activities and would address other defects in the bill as introduced. The current bill defines beach maintenance activities too broadly and does not define the term "grooming" at all. As written, the bill might result in property owners permanently converting bottomland into upland (meaning they will not become inundated when higher water levels return).

***POSITIONS:***

Save Our Shoreline supports the bill. (3-20-03)

The West Michigan Tourist Association testified in support of the bill. (3-20-03)

The Bay Area of Chamber of Commerce testified in support of the bill. (3-20-03)

The Michigan Hotel, Motel and Resort Association has indicated support of the bill. (3-20-03)

The National Federation of Independent Business supports the goal of the bill. (3-11-03)

The Michigan Boating Industries Association has indicated support for the bill. (3-20-03)

The Michigan Association of Realtors has indicated support for the bill. (3-20-03)

The Department of Environmental Quality is opposed to the bill. (3-20-03)

The Michigan Environmental Council is opposed to the bill. (3-20-03)

The Michigan League of Conservation Voters testified in opposition to the bill. (3-20-03)

The Michigan United Conservation Clubs (MUCC) has indicated opposition to the bill. (3-20-03)

Analyst: C. Couch

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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.