

## WETLAND MANAGEMENT

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### **House Bill 5463 (Substitute H-3)**

**Sponsor: Rep. Dan Scripps**

**House Committee: Great Lakes and Environment**

### **Senate Bill 785 (Proposed Substitute H-1)**

**Sponsor: Sen. Patricia L. Birkholz**

**House Committee: Great Lakes and Environment**

**Senate Committee: Natural Resources and Environmental Affairs**

**Complete to 9-25-09**

## **A PRELIMINARY SUMMARY OF HOUSE BILL 5463 (H-3) & SENATE BILL 785 (H-1)**

[Note: According to the Legislative Service Bureau, House Bill 5463 (Proposed Substitute H-3) and Senate Bill 785 (Proposed Substitute H-1) are identical.]

In general, the bills would amend Parts 13 (Permits), 301 (Inland Lakes and Streams), 303 (Wetlands Protection), and 325 (Great Lakes Submerged Lands) of the Natural Resources and Environmental Protection Act (NREPA) to do the following:

- Require, rather than allow, the Department of Environmental Quality (DEQ) to establish minor project categories under Parts 301, 303, and 325, after notice and an opportunity for a public hearing; thereafter, allow the DEQ to process applications for minor projects without notice.
- Require the DEQ to process authorizations to proceed under general permits without public hearings, and, in most cases, without site inspections; allow, but not require, notice.
- Require the DEQ to issue an authorization to proceed under a Part 303 general permit if certain conditions were met; set a 90-day processing period (150 days, if a hearing is held) for an authorization under a general permit issued under Section 30312; allow the DEQ to require an application to be processed under Section 30307, even if in a minor project or general permit category, if the project is likely to cause more than minimal adverse effects on aquatic resources.
- Require the DEQ and local units of government to apply Army Corps of Engineers standards to identify wetland boundaries under Part 303.
- Require the Agriculture Commission to identify and make a map publicly available showing at least 2,500 acres suitable for cranberry production (and after 2,000 of these acres were developed, to identify at least 2,500 more); classify certain cranberry production activities as "water dependent" or not; specify that certain presumptions would not apply to applicants who have demonstrated that there was no feasible and prudent alternative to the construction of cranberry beds; and waive the fee for the first pre-application

meeting relating to a cranberry project at a particular site, whether held at a DEQ district office or the project site.

- Require the DEQ to implement two new pilot programs, one to improve the efficiency of the permitting process, and one to facilitate the development of wetland mitigation banks.
- Require the DEQ to issue a new guidance document under Part 303 for evaluating feasible and prudent alternatives within one year after consultation with interested parties, including the Wetland Advisory Council.
- Revise provisions dealing with conditions that may be imposed on permits and authorizations under permits under Part 303, including allowing the DEQ to establish reasonable deadlines by which actions authorized under a permit are to be completed; allowing compensatory wetland mitigation conditions (obtaining credits from a wetland mitigation bank, restoring a previously existing wetland, creating a new wetland, or maintaining an exceptional wetland) to be imposed on certain wetland permits; establishing relevant factors for approving compensatory mitigation plans when required; allowing the DEQ to accept conservation easements to protect wetland mitigation and associated upland; and allowing the DEQ to require financial assurance to make sure a compensatory mitigation project was completed as specified.
- Require the DEQ to coordinate general permit and minor project categories under Parts 301, 303, and 325 to be more consistent with nationwide permits; require the DEQ to adopt or maintain general permits or minor project categories equivalent to certain nationwide permits without modifications; require other nationwide permits to be adopted but with modifications allowed; require the DEQ to adopt or maintain other specified general permits or minor project categories.
- Require the DEQ to seek an agreement with the Army Corps of Engineers within 180 days that the Corps would issue state programmatic general permits under Section 404(e) of the federal Clean Water Act for activities in waters over which the Corps retains jurisdiction under Section 10 of the federal Rivers and Harbors Appropriations Act of 1899.
- Require the DEQ to establish a program to facilitate ecologically responsible voluntary wetland restoration and enhancement projects in coordination with state, federal, tribal, and nongovernmental groups.
- Require the DEQ to pursue an agreement with the federal EPA to expand the categories of discharges subject to a waiver from specified federal clean water requirements.
- Allow the DEQ to provide certifications under Section 401 of the Clean Water Act that a discharge into navigable water complied with applicable requirements.
- Create a 17 to 20 member Wetland Advisory Council; require the council to prepare reports on specified topics by October 1, 2010, and August 15, 2012.
- Provide that the bills will not take effect unless four million dollars from each of two funds created in Initiated Law 1 of 1976 (the Bottle Bill) are appropriated by the Legislature to the Environmental Protection Fund created

in Section 503a of NREPA. The two funds are the Cleanup and Redevelopment Trust Fund and the Community Pollution Prevention Fund.

**FISCAL IMPACT:**

The bills would not take effect unless \$4 million from the Cleanup and Redevelopment Trust Fund and \$4 million from the Community Pollution Prevention Fund are appropriated by the Legislature to the Environmental Protection Fund created in Section 503a of NREPA. The budget requirements for the wetlands program as revised by these bills will be addressed, if necessary, in the annual appropriations bill for the Department of Environmental Quality.

The bills would add some additional program responsibilities to the Michigan Department of Agriculture related to identification of suitable acreage for cranberry production, development of a map showing acreage suitable for cranberry production, and participation in a Wetlands Advisory Council, without providing additional funding for these activities. Costs would be absorbed by the department from appropriated program funding.

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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.