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Senate Bill 785 (Substitute S-1 as reported)
Sponsor: Senator Patricia L. Birkholz
Committee: Natural Resources and Environmental Affairs

CONTENT

The bill would amend the Natural Resources and Environmental Protection Act (NREPA) to do all of the following:

- Expand uses of the Clean Water Fund to include the implementation of Parts 301 (Inland Lakes and Streams), 303 (Wetlands Protection), 315 (Dam Safety), 323 (Shorelands Protection and Management), and 325 (Great Lakes Submerged Lands); the floodplain permit program under NREPA; and the review of preliminary plats by the Department of Environmental Quality (DEQ) under the Land Division Act.
- Revise provisions regarding the DEQ's establishment of minor project categories of wetlands activities and projects.
- Require, rather than allow, the DEQ to issue general permits under Parts 301 and 325 on a statewide basis or within a local unit of government for projects that are similar in nature, that will cause only minimal adverse environmental effects when performed separately, and that will have only minimal cumulative adverse effects on the environment.
- Revise notice and hearing requirements for wetland project permits.
- Require the DEQ and local units of government to apply the technical wetland delineation standards set forth by the U.S. Army Corps of Engineers (USACE) in identifying wetlands boundaries.
- Require the DEQ to implement a pilot program aimed at increasing the efficiency of the wetlands project permitting process, and a pilot program to facilitate the development of wetland mitigation banks.
- Require the DEQ to report pilot program results and recommendations to a proposed Wetland Advisory Council.
- Require the Agriculture Commission, in consultation with the DEQ, to identify Michigan land suitable for cranberry production activities.
- Provide that a demonstration by an applicant that there was no feasible and prudent alternative to the construction of cranberry beds would not be subject to the presumptions that feasible and prudent alternatives not involving a wetland were available, and that a feasible and prudent alternative not affecting a wetland would have less adverse effects on the aquatic ecosystem.
- Require the DEQ to adopt a new guidance document for the evaluation of feasible and prudent alternatives under Part 303, within one year after the bill took effect; and require the DEQ to interpret administrative rules pertaining to the evaluation of reasonable and prudent alternatives to not be more restrictive than Federal rules.
- Require a proposed permit denial to be reviewed by a DEQ deputy director and require the DEQ to request information from the Michigan Economic Development Corporation and local economic development authorities relative to the project in order to deny a permit application, before the new guidance document took effect.

- Authorize the DEQ to impose on certain wetland permits a requirement for compensatory wetland mitigation.
- Require the DEQ to coordinate permits under Parts 301, 303, and 325 consistent with nationwide permits, as appropriate.
- Require the DEQ to pursue an agreement with the USACE to issue State programmatic general permits under Federal law.
- Require the DEQ to develop a program to facilitate wetland restoration and enhancement projects in coordination with government entities and nongovernmental groups.
- Require the DEQ to pursue an agreement with the U.S. Environmental Protection Agency to expand the categories of discharges subject to a waiver from certain requirements under Federal law.
- Authorize the DEQ to provide certification that a discharge into navigable water complied with applicable requirements.
- Create the Wetland Advisory Council and require it to report to the Governor and the Legislature on the administration and enforcement of the State's wetlands program, including recommendations on potential long-term changes in program structure.

The provisions regarding the pilot programs and the USACE agreement would be repealed on October 1, 2012. The provisions pertaining to the Wetland Advisory Council would be repealed on April 1, 2013.

MCL 324.5202 et al.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would require the DEQ, in conjunction with the Department of Agriculture, to complete a map identifying 2,500 acres of land suitable for cranberry cultivation. This project would require the time of some staff with cartographic and other skills at a cost to both Departments.

Two pilot programs, one to help make the wetland permit application process more efficient, and another to help local governments and other participating organizations develop wetland mitigation banks, would need to be funded.

The DEQ would have to develop and fund a distinct program to facilitate voluntary wetland restoration and conservation projects in coordination with Federal, State, tribal, and nongovernmental groups.

The bill would establish the Wetland Advisory Council. Associated costs would likely include the rent of a venue for the Council to meet, support staff costs, and other minor administrative costs. Council members would not receive compensation for serving on the Council.

The bill would require that general permits be issued without public notice or the opportunity for a public hearing. Additionally, the bill would allow most general permit applications to be considered without the need for a site inspection. These changes would result in some savings to the Department due to the reduction of staff workload.

Date Completed: 9-18-09

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.