



Senate Fiscal Agency
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Senate Bill 398 (Substitute S-3 as passed by the Senate)
Sponsor: Senator Sean McCann
Committee: Energy and Environment

Date Completed: 4-11-24

CONTENT

The bill would add Section 30111d to Part 301 (Inland Lakes and Streams) of the Natural Resources and Environmental Protection Act to require any person that the Department of Environment, Great Lakes, and Energy (EGLE) determined to be in violation of Part 301 to take emergency action necessary to prevent significant harm to natural resources upon emergency order from the Director of EGLE.

Specifically, the bill would allow EGLE's Director to issue a written emergency order that would require any person EGLE determined to be in violation of Part 301 to take emergency action necessary to prevent significant harm to public health, safety, welfare, property, or natural resources or the public trust in natural resources. The emergency action could include, but would not be limited to, immediate repair or removal of a structure or fill owned by the person and located on bottomlands.¹ The bill could not expand EGLE's authority under Part 315.

If a person failed to comply with an order or was unavailable or unable to be contacted, EGLE could take the action necessary and could recover the costs incurred from the owner in a civil action in a court of competent jurisdiction. The Director could modify an emergency order. The Director also could terminate an emergency order upon a determination in writing that all necessary emergency actions had been completed and that an emergency no longer existed.

Within 15 days after the Director issued an emergency order, EGLE would have to provide the owner with an opportunity for a hearing pursuant to the Administrative Procedures Act. At the hearing, the Director would have to determine, based on information and fact, if the emergency order would have to be continued, modified, suspended, or terminated as necessary for or consistent with the protection of public health, safety, welfare, property, or natural resources or the public trust in natural resources.

The bill would not apply to a structure or fill failure that caused damage limited to agriculture, uninhabited buildings or structures, or minor collector roads, local roads, or nonrated roadways as defined in the National Functional Classification system, if environmental degradation were minimal and danger to individuals was slight or nonexistent (see **BACKGROUND**).

BRIEF RATIONALE

According to testimony, when privately operated dams lower waters without consulting EGLE, built-up silt and sediment can be sent downriver, ruining the ecology of the environment below. Some have argued that this is what happened in the Kalamazoo River in 2019, leading

¹ "Bottomland" means the land area of an inland lake or stream that lies below the ordinary high-water mark and that may or may not be covered by water.

to an ongoing legal battle. It is thought that giving EGLE more tools to combat situations like this before they occur could prevent and disincentivize bad behavior.

Proposed MCL 324.30111d

BACKGROUND

Generally, the National Functional Classification system classifies roadways by their mobility and property access functions. The major classifications include interstates, arterials, collector roads, and local roads; arterials consist of freeways and multilane highways that supplement the interstate system; minor collector roads connect local roads with arterials; local roads provide primary access to residential areas, businesses, and farms and generally have speed limits between 25 and 40 miles per hour.²

Legislative Analyst: Nathan Leaman

FISCAL IMPACT

This bill would have a minimal negative fiscal impact on EGLE. The impact would be determined by the frequency with which these emergency orders were issued and the number of hearings held. Costs associated with any cleanup actions taken by EGLE could be recuperated through civil action. The costs to EGLE would be limited to the administrative costs of holding any necessary hearings.

Fiscal Analyst: Jonah Houtz

² "Definitions: Federal-aid Highways, Federal-aid Systems, and Federal-aid Eligible", <https://www.michigan.gov/mdot/programs/highway-programs/nfc/definitions>. Retrieved 4-10-2024.

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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.