

# Legislative Analysis



## EXEMPT CERTAIN MINING ACTIVITY FROM PART 301 PERMIT REQUIREMENTS

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House Bill 4401 (reported from committee as Substitute H-4)

Sponsor: Rep. Peter Pettalia

Committee: Natural Resources

Complete to 10-14-14

**BRIEF SUMMARY:** House Bill 4401 would amend Part 301 (Inland Lakes and Streams) of the Natural Resources and Environmental Protection Act (MCL 324.30103) to exempt certain excavation and mining activities from needing a permit under Part 301. The process for renewing this type of permit would also be modified for projects which meet certain criteria.

**FISCAL IMPACT:** House Bill 4401 would have no significant fiscal impact on the Department of Environmental Quality or local units of government.

### **THE APPARENT PROBLEM:**

Generally, under Part 301, individuals cannot do any of the following without obtaining a permit from the Department of Environmental Quality:

- Dredge or fill bottomland.
- Build, expand, or remove a structure on bottomland.
- Build, reconfigure, or expand a marina.
- Create, expand, or diminish an inland lake or stream.
- Structurally interfere with the natural flow of an inland lake or stream.
- Connect a natural or artificially created waterway with an existing inland lake or stream.

As part of the definition of an inland lake under Part 301, it must be larger than five acres. According to committee testimony, the issue addressed by the bill arises from whether the language in Part 301 allows the DEQ to require a permit for certain projects if the potential exists for a basin created by a project to eventually meet the five-acre threshold, making it an inland lake and subject to the permit process. Some permit holders have testified they believe the law does not require a permit to be issued until the basin fills with water, actually creating the lake. The DEQ believes that if the project is going to create a lake that would be defined under Part 301 as an inland lake, then they can require a permit prior to the basin being filled with water.

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

The bill would exempt excavation or mining activities associated with an active mining operation from needing a permit under Part 301, unless the activities create an inland lake

with a surface area of five acres or more. If the activities do not result in the creation of an inland lake, or if an inland lake is created but is maintained at less than five acres, a Part 301 permit would not be required unless the means of controlling the lake's surface area fails to keep it below five acres.

The bill also would prohibit the DEQ from requiring any additional studies for a project seeking a renewal of its permit if the scope of the project has not materially increased. A material increase in the scope of a project would be defined as an increase of 10% or more to the horizontal or vertical extent of excavation below the water table compared with the maximum excavation below the water table allowed under the original permit.

If the scope has not materially increased, the department would be required to approve the renewal application within 30 days, unless the department demonstrates by a preponderance of sound scientific evidence that the originally permitted activity has had an adverse effect on human health or the environment. The cost of a permit renewal for such a project which has not materially increased its scope would be limited to not more than \$250, other provisions of Part 301 notwithstanding.

#### ***ARGUMENTS:***

##### ***For:***

Proponents of the legislation argue that as long as the basins which could eventually hold water are under five acres, no permit is necessary because the basin would not become an inland lake under Part 301 when the pumps are turned off at the end of the project. By approving this bill, supporters say, the cost of a project can be reduced and it can be completed in a shorter time, given that the studies required under the permit process would not need to be completed. Supporters testified that it is their view that the DEQ currently lacks authority to require a permit prior to the point where the basin contains five acres or greater, but note that passage of this legislation will make it emphatically clear.

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

Opponents of the bill note that while the intent of a particular project may not be to create a body of water five acres or larger, it is easier to study the effect of creating a new inland lake and make any potential changes to project plans prior to allowing the project to proceed than it is to study and make any corrective changes after the fact, if it is found that the body of water meets the size requirement of an inland lake.

#### ***POSITIONS:***

##### **Support:**

Michigan Manufacturers Association (9-23-14)

Lafarge- Alpena (9-23-14)

##### **Oppose:**

Department of Environmental Quality (9-23-14)

Michigan Environmental Council (9-23-14)

Michigan League of Conservation Voters (9-23-14)

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