



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #552

### Permit Fees for Activities in Navigable Waters (DNR -- Water Quality)

[LFB 2005-07 Budget Summary: Page 373, #4]

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#### CURRENT LAW

DNR is required to charge a fee for carrying out duties related to the issuance of waterway ("Chapter 30") and wetland (Chapter 281.22) permits based on the estimated time spent by the Department in reviewing, investigating, and making determinations whether to grant the permit or approval for a given activity.

#### GOVERNOR

Eliminate the requirement that DNR charge only the highest applicable fee for permits or approvals relating to activities affecting navigable waters, dams, bridges, and wetlands. Instead, the Department could charge for each applicable permit or approval required for a given project or activity. Increased revenues are estimated to be \$134,700 annually.

#### DISCUSSION POINTS

1. Waterway and wetland permits are required for proposed private uses of public waters adjacent to riparian lands, upland alterations that connect to, or are on the banks of, public waters, and alterations to wetlands. Examples of such projects include commercial marina facilities, private multi-boat mooring, pipelines crossing lake and stream beds, stormwater facilities, and large-scale grading, dredging, enlargements, and enclosures to create developable land.

2. In 2003, DNR received 5,014 permit applications for activities related to waterway projects. Of those, just under one-half (2,347) were decided during that year. Of the resolved permits, 97% were approved, 2% were withdrawn after consultation with DNR staff, and 1% were denied. On permits where action was taken, the Department made a determination on 53% of the

permit applications in 30 days or less, and on 28% of the permits in 31 to 90 days. The remaining 19% took more than 90 days to resolve. A portion of the remaining permits that were unresolved at the end of the calendar year were voluntarily withdrawn, and the remaining permits were re-evaluated under the revised permit structure created by Act 118 for the 2004 construction season.

3. 2003 Act 118, which took effect in February, 2004, implemented a new permit structure for waterway projects. Under that Act, projects meeting certain criteria that were not located in areas identified by the Department as an "area of special natural resource interest" could be designated as exempt from permit requirements. Examples of activities eligible for exemptions under certain circumstances include biological shore erosion control, culvert replacement, dry fire hydrants, placement of fish habitat structures, intake or outfall structures, manual dredging, placement of a pier or warf, riprap repair or replacement, and the installation of seasonal boat shelters, hoists, or lifts. Individuals who are uncertain of whether or not their project meets the standards for an exemption may seek an exemption determination from DNR. The Department is required to respond to these requests within 15 days of having received a completed request, or the individual may assume that the project has been approved as exempt.

4. Activities not designated as exempt may be determined to need either a general or individual permit. Activities that may require general permits include certain biological shore erosion control measures, boat ramps, clear span bridges, certain dredging activities, some grading projects, some intake outfall structures, piers, and riprap projects that were not determined to be exempt, seawall replacement projects, and the construction or modification of some ponds. The Department has 30 days after receiving a general permit application to determine whether or not the application is complete, and if necessary to request additional information from the applicant. Once DNR has determined the application to be complete, the Department has 30 days in which to notify the applicant that their permit is approved, denied, or that their project lies outside of the scope of a general permit and an individual permit is required instead. If DNR does not notify the applicant of its decision within 30 days after the Department has determined the general permit application to be complete, the applicant may assume that the general permit has been approved.

5. Applicants wishing to undertake activities not qualifying for either an exemption or a general permit are required to seek an individual permit. Activities that may require an individual permit include certain habitat or riprap placement projects, dam construction or modification projects, and projects requiring the filling of a wetland area. The Department has 30 days after receiving an individual permit application to request additional information from the applicant. Once DNR has determined the application to be complete, the Department must provide notice of a completed application to potentially interested members of the public (as determined by DNR) within 15 days. If the applicant has requested a public hearing, this notification is required to contain that information. Any individual may request a public hearing in writing, and DNR may decide to hold a public hearing on an application for an individual permit without a request being submitted if the Department determines that there is significant public interest in holding a hearing. Individuals have 30 days after the DNR provides notification of a completed application to request a hearing, and the Department is required to hold any requested hearing within 30 days after the hearing has been requested. If the Department does not issue a determination on the individual

permit within 30 days after the public hearing is held (or within 30 days of the public comment period, if no public hearing is held), the applicant may assume that the permit has been approved.

6. During 2004, DNR issued 3,977 decisions on permits (70% more than in 2003). This total includes 358 requests for a determination as to whether a project was exempt from general or individual permit requirements. Of those, 184 were determined to be exempt. The average time for these determinations of exemption was 12 days. Further, DNR received applications for 1,373 general permits. Of the applications received, 94% were determined to be eligible for a general permit. The average length of time it took DNR to issue a decision on a general permit was 17 days. The remaining 2,246 applications were for individual permits. Individual permit applications took an average of 43 days to be decided. To date, DNR staff indicate that they have been able to evaluate and respond to all permit inquiries and applications within the time frame provided under Act 118. Consequently, no permits have been presumptively approved.

7. In an effort to estimate the general level of compliance with the new regulations, DNR water regulation staff completed 122 compliance inspections in 2004. Compliance for the projects surveyed was reported as 100% for exempt activities, 77% for activities undertaken with a general permit, and 83% for activities undertaken with an individual permit.

8. Revenues generated by permit fees have recently averaged about \$750,000 to \$775,000 annually and support 9.0 water regulation and zoning staff and associated costs to review and evaluate permit applications. Under the budget reductions in the bill, 1.0 PR vacant position would be deleted in 2006-07 (8.0 would remain). While the effect of the modifications to the permit (and permit fee) structure included under Act 118 are still somewhat uncertain, it appears reasonable to assume that revenues from permit fees are likely to decrease over time due to the creation of a larger classification of activities defined as exempt and modifications to the fee that may be charged for other types of permits. Overall, fewer total permits (and therefore, less revenue) are anticipated as a result of the changes implemented under the Act. However, the extent of any revenue decrease is unclear at this time.

9. The anticipated change in revenue may not necessarily signal a reduction in workload for permitting staff. For example, while fewer permits would be required as a result of the creation of a class of exempted activities, water regulation staff are still required to respond to determinations of exemptions within 15 days. Further, the requirements to resolve permit applications within specific timelines included under Act 118 have reduced staff's flexibility somewhat in its workload management, particularly in relation to grouping site inspections by location (rather than by permit deadline).

10. Further, while revenues are expected to decrease somewhat, costs are expected to increase over the biennium. (Although a vacant position is deleted under the bill, this position had not been filled for some time in order to limit expenditures from the appropriation.) In addition to staff related expenses (such as pay plan adjustments and health insurance cost increases), new requirements implementing deadlines for DNR decisions have affected permit staff operations. Under the new rules, if water regulation staff do not respond to a request for determination of

exemption, general permit application, or individual permit application within the time frame specified in statute, the individual requesting this determination may assume that their project has been approved and proceed. The requirement to meet these timelines increases pressure on staff to review applications, request additional information, conduct any necessary site visits, and notify applicants of decisions within the timeframe specified by statute. Consequently, other services provided by water regulation staff (such as work on wetland mapping, providing information to the general public on water permit issues, water quality assessment, providing technical assistance to local governments, and work relating to dam and bridge construction) may suffer. Further, to the extent that lowered revenues could lead to a corresponding decrease in permit-revenue supported staff, the Department may have difficulty resolving permit requests within the required time limit during periods of high activity. This could, potentially, lead to projects being "presumptively approved" without Department oversight.

11. The adjustment provided under the bill would remove the statutory limit where individuals undertaking projects that would normally require multiple permits would only be required to pay for the single most expensive permit. Rather, applicants would be required to pay the fee for each permit required for the activity. Extreme examples of this include the development of golf courses and marinas, where activities may include grading, installing bridges, digging ponds, filling wetlands, enlarging waterbodies, and installing riprap. While these larger-scale projects require a significant investment of staff time to assess the impact of each of the different activities, the applicant only pays the fee associated with the single activity that would have the highest permit fee.

12. In calendar year 2004, there were 384 projects that required multiple permits. Of those projects, 84% would have been required to pay the fee for two or three permits under the proposed change (at an average increase of \$105 per project). Four of the 384 projects would have required 20 or more permits each. While varying dramatically by project, on average, the fee increase for these 384 projects would have been \$710. If the requirement that applicants pay the fees associated with each permit applied for had been in effect for calendar year 2004, additional revenues totaling \$272,500 would have been generated to support water regulation staff, an increase of 30% over revenues actually collected in that year (approximately \$817,000). Therefore, under the bill, revenues of perhaps \$135,000 in 2005-06 and \$270,000 annually beginning in 2006-07 may be expected.

13. In addition to providing increased funds to meet program expenditures, DNR indicates that requiring applicants to pay for all required permits would address fairness issues by requiring larger projects that demand significant staff time and oversight to pay for the services provided by water regulation staff, just as individual applicants requesting a single permit do. As the majority of projects (90%) do not require more than one permit, it could be argued that current practice requires smaller projects to subsidize the cost of larger developments. Therefore, proponents argue the fees under the bill would more equitably fund program costs and avoid, or delay, potential fee increases for single purpose projects.

14. Alternatively, it may be argued that certain limits to the fees may be desirable. In

2004, four of the 384 projects requiring multiple permits would have required 20 or more permits. If applicants had been required to pay the fee for each required permit, costs would have ranged from \$8,800 to \$19,000. Larger projects requiring multiple permits demand significant DNR staff time to review and implement. However, it could also be argued that some efficiencies should result from processing multiple permits for one project. For example, capping the maximum allowable fee charged to applicants for multiple permits at \$5,000 (excluding fees for expedited permits) would help address the concern that smaller projects were subsidizing the costs of permitting larger scale developments while also taking into account some of the anticipated efficiencies achieved through issuing multiple permits for a single project. Revenues would be expected to decline by approximately \$30,000 annually from previous estimates if this cap were implemented. With a \$10,000 cap revenues would be approximately \$11,500 lower than under the bill on an annual basis.

15. Revenues under the Act 118 provisions are uncertain. Further, DNR workload requirements under the recent legislation are also somewhat unclear. If the Committee adopts the Governor's recommendation it could also consider changing the program revenue appropriation from continuing to annual. In the event that revenues exceeded authorized expenditures (\$837,100 and 9.0 positions in 2005-06 and \$777,800 with 8.0 positions in 2006-07) under the continuing appropriation in the bill, DNR could expend excess revenues with the approval of DOA. However, under an annual appropriation, DNR could only expend additional revenues with the approval of the Legislature (either by bill, or by the Joint Committee on Finance under a 14-day passive review request from DNR and DOA). In the event of surplus revenues, an annual appropriation would allow greater legislative oversight over whether additional DNR staff or resources were required to regulate waterway activities, or whether fee reductions could be considered.

**ALTERNATIVES**

1. Adopt the Governor's recommendation to eliminate the requirement that DNR charge only the highest applicable fee for permits or approvals relating to activities affecting navigable waters, dams, bridges, and wetlands. Instead, the Department could charge for each applicable permit or approval required for a given project or activity. Reestimated revenues would be \$135,000 in 2005-06 and \$270,000 in 2006-07.

<b><u>Alternative 1</u></b>	<b><u>PR-REV</u></b>
<b>2005-07 REVENUE</b> (Change to Bill)	\$135,600

2. Adopt the Governor's recommendation. However, specify that the program revenue appropriation be converted from continuing to annual.

<b><u>Alternative 2</u></b>	<b><u>PR-REV</u></b>
<b>2005-07 REVENUE</b> (Change to Bill)	\$135,600

3. In addition to Alternative 1 or 2, specify that the maximum amount that may be

charged by the Department for a single project requiring multiple permits (excluding fees for expedited services) be one of the following:

- a. \$5,000 (revenues would be estimated to be \$45,000 lower than under the bill).

<u>Alternative 3a</u>	<u>PR-REV</u>
2005-07 REVENUE (Change to Bill)	\$90,600

- b. \$10,000 (revenues would be estimated to be \$17,200 lower than under the bill).

<u>Alternative 3b</u>	<u>PR-REV</u>
2005-07 REVENUE (Change to Bill)	\$118,400

- 4. Maintain current law.

<u>Alternative 4</u>	<u>PR-REV</u>
2005-07 REVENUE (Change to Bill)	- \$269,400

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