

WETLAND ADVISORY COUNCIL MEETING
MUCC FACILITY
JUNE 18, 2012
Meeting Minutes

Council Members Present: Susan Harley, Joseph Rivet, Dan Coffey, Gary Dawson, Lee Schwartz, John Konik, Andy Such, Stephen Shine, Erin McDonough, Jeff King, and Donald Uzarski

Council Members Absent: Dan Wyant, Grenetta Thomassay, Chris Reidy, and Sue Elston

Conference Call Participation: Todd Wyett, Deena Bosworth, Scott Piggott, John Niemela, and Chris Reidy

Others Present: Kim Fish, Dina Klemons, Amy Lounds, Jason Geer, Mike O'Malley, Dave Forseberg, Kenneth Sikkema, and Shanna Draheim

Meeting started at 1:17 p.m.

The minutes from the January 23, 2012, and May 8, 2012, Wetland Advisory Council (Council) meetings were approved.

SB 744

744 passed out of the House Committee about a week ago. It is now on to the floor, but have not heard about the floor vote. 744 is the recommendation that came out of this Council to allow applicants to extend the permit processing timeframes under Part 13. There were no House amendments.

A member asked if there was anything on 1052, Beach Grooming. There has not been anything yet. However, it passed, on a party line vote, out of the Senate Committee last week. There have been no amendments. The Department opposes the bill as written.

Report from Public Sector Consultants

Physical copies of final report were not distributed in advance. Public Sector Consultants (PSC) looked at the history, the function of the program, the background as it stands today, and what other states are doing. Most states are doing what Michigan is doing – they are funding their programs through general funds and fees. PSC looked at 11 different funding options; i.e., a substantial increase in fees, various license or permit increases, increasing real estate transfers, current option of bottle fund, general fund options, new bond proposals, increase or expansion of the severance tax, dedicating part of the sales tax or increasing the sales tax, and program funding for foundations. The one they think that has the best value, in terms of a sustainable dedicated source of funding to stabilize this program, is the one that we currently use. PSC's recommendation is that the unclaimed bottle deposits be used to fund the wetlands program. Plan B is to use the general fund. The current funding has a lot of value to it. You can take a piece of money that is dedicated to environmental clean-up and actually help stabilize and sustain this important environmental program in its entirety. That piece will come from the unused or unclaimed bottle fees, general fund, and increase in user fees. If policymakers do not embrace these suggestions, then go back to the general fund. The report explains how it

gets from the unclaimed bottle fund to the various parts of the program and includes all the pros and cons of each recommendation. PCS stated that if you get more money from other funding, there is flexibility in their recommendation that can be adjusted appropriately.

A member asked about federal funding. The Department of Environmental Quality (DEQ) reported that that is an ongoing discussion. The response was that they have a budget process that's driven through Congress and that they cannot just allocate money. They are now working through the Governor's Office and Michigan Delegation to try to get Congress to take a look at some funding options to provide funding to states who have assumed the 404 program. Right now the Governor's Washington staff is working to try to get a hearing scheduled and we are working through the Associated State Wetland Managers and ECOS in trying to contact states to come testify if we are successful in getting a congressional hearing scheduled.

The current recommendation from the current administration is to use general fund money for FY13, which is included in the Governor's proposed budget. PSC suggests that there ought to be an increase in fees, the level of fee increases may depend on the improvements of the program. In Michigan customers pay one fee to go through all the steps to get a permit. In some states customers pay their state and the Corp, and then some states are totally different. It also depends on how much other states cover. If applicants were not paying fees to the state, a fee would be paid to the Corp. However, there would probably still be a fee to the state for water quality 401 certification.

PSC did crude comparisons of the number of permits other states process and Michigan is at the high end. And where Michigan is compared with other states, we have more water and more wetland; given that fact, we are at the top.

The Director complimented the group on how much has been accomplished. He would still like to get feedback from the group to move forward. The current budget recommendation supports the program through a one time general fund commitment because the Governor wanted to keep the program. He said a lot has happened to get us here today, and he thinks we are moving in the right direction.

A member talked about expedited fees in that if you are going to have an expedited fee, you have got to find a way that it gets done quickly without retarding the process for the others. A member asked about the expedited process and FTEs. The response was that we have a wetland identification model where the applicant pays an additional fee for a quicker turnaround. That means it is their request to go to the top of the pile. We also have a similar model with Part 41 with an additional fee for expedited review. In that program there is not enough additional funds from the expedited process to hire another person.

A member asked if there were limits to where the legislature could reallocate the funds to anything other than the designated uses for that fund. The response was that the legislature can always amend those laws. PSC thinks it is very appropriate to use unclaimed bottle deposits for the wetland program. Yes, they can change the purposes of how these funds are used and they can change expenditures, but they would probably not use them for other than environmental purposes.

A member asked about what other states were using such as in-lieu fees, wetland grants, etc., and were regulatory issues looked at in this report. The response was that some states used wildlife fees, license plate fees, and bond funds.

A member asked if we were going to meet the legislative timeline. The Director said his take was that we won't affect the current legislative timeline, so we should have time. He thought we were good for the year and has commitments from the legislature and Governor. He anticipates the budget for this fall will be done this summer.

A member suggested that if this Council decides that the funding mechanism that makes the most sense is using bottle deposit money and an increase in fees; that this Council should only say that this is a funding mechanism, not actually determine what the fee will be. It should be up to the legislature to do that.

Draft Legislation

Copies of the draft legislation were passed out to the members. The Director wanted to thank Kim, Dina, Maggie, Amy, and Todd. The Director asked that Council members indicate what you like and do not like, what is in it that has changed, what did we miss?

A member indicated that most of this language has been seen by the Council before and most of it is the same as what was passed out at the last meeting. LSB made some of their own adjustments and edits. We are having ongoing discussions with some groups that still have concerns and issues.

Amy started going over the draft legislation. First section are changes of Part 301 - Corrections to our program in response to EPA's audit. Page 2, line 11 - Maintenance of agricultural drains. Private vs. public by saying that it is not meant for residential. These drains are typically high up in the watershed. These are trying to get to those little drains that are maintained by the farmer, for the most part. We think it is broadening the language, so it can serve multiple property owners for agricultural purposes.

Page 3, line 8 is the county drain exemption. This takes the existing exemption and defines that it can be only for activities maintained as constructed, and the depth and location of the drain.

Page 4, line 25, fee fix in Part 301. We are trying to make fees consistent in all statutes and to also provide a minor project (MP) category fee under wetlands; currently there is no MP category fee under wetlands so they end up being \$500 for "any other projects." This legislation would have a general permit (GP) fee of \$50 and an MP fee of \$100.

A member asked why the definition for environmental area was struck on Page 7. It is still used in statute so it still needs to be included.

Page 12, line 19 - The Department will basically be able to assist local governments in identification of potential mitigation banks, etc. The intent is that locals would do the planning and the Department would help with technical assistance.

Top of page 13, language that says the Department must submit revised administrative rules for wetland mitigation banking with a deadline. Line 8, a new funding mechanism with wetland mitigation banking that goes along with some state revolving fund legislation that is in discussion right now. This would provide a revolving loan program for local communities to build mitigation banks.

On top of page 14 - farming exemptions and ongoing farming activities. Started with federal language and made some improvements based on discussions with the Farm Bureau.

Bottom of 14, the number of five years of crop rotation was discussed and we tried to provide a little clarity; this was also used by other states.

Page 18, deletion of an exemption - we needed to do as part of our corrections for the 404 program.

A member mentioned Wisconsin/St. Paul District and discussed how they handled their permitting with nonreporting GPs. There is a list of conditions that you do have to report, if these were similar. Amy responded that she thought with utilities, we have tried to make everything exempt that can be exempt. Some of the things that you want nonreporting can actually fit in with the exemptions.

A member wanted to know what the difference was between a nonreporting GP and an exemption. Exempt means it is not regulated. Nonreporting means that somebody has made the determination that if you do this activity; that is it going to be so insignificant that some kind of GP or nationwide permit is issued that you can do that. But if you do not meet the conditions of that nationwide or GP, it is a regulated activity. There are really a number of things that are nonreporting. I do not think this is subject to audit unless they go to a specific site and ask to see their permit.

A member wanted to know what kinds of categories would be appropriate for a nonreporting permit. Kim responded that we are still waiting for a list from the utilities.

Page 20, line 15 – fixing the fees for MP categories.

Page 21, line 16. This would give the Department emergency permit authority under Part 303, which we do not have right now and it is something that we would like to have. Kim said that this is the same language that is already in Part 301 that allows us to issue permits under Lakes and Streams before the Public Notice expires.

Page 21, took out parts of statute that were added in 2009; that has already been done.

Page 24, proposed mitigation reforms. It has language that the Department must modify its mitigation rules by a certain date to provide more flexibility in our mitigation requirements.

Page 25, is beach mowing language. There is already another bill in the legislature for beach grooming; the Department opposes it as written.

Fee fix for Part 325 on page 27. On page 29, amendment gives us emergency permit authority under 325, which we currently do not have.

A member commented that they had major concerns with both a and c on page 12. The MAHB has always opposed wetland ordinances. They believe the environmental regulation should come from the state and the state alone. One of the things that locals have to do in order to regulate the wetlands is to prove that the wetlands fall in the category of public benefits if they are of a certain size. If we are talking about allowing the DEQ to do the identification of the wetland benefits, they think it undercuts the locals. The other one is with c on page 12. In their opinion, the DEQ is not economic specialists. Then on page 22, the language could be interpreted to mean the DEQ is going to determine what the economical benefits are for the cities, townships, or the counties. They have a real problem with that concept. A member

responded by saying that the DEQ is not saying we are doing the planning; the DEQ is saying that they are going to provide local communities assistance to do the planning.

A member commented that local communities have no desire or expertise to get involved with wetland mitigation building. This should include qualified nonprofits or municipalities. Nonprofits are much more skilled on this than municipalities and they can leverage state money with private money. Is there something in the law that dictates you can only give loans to municipalities? The response was that the idea was to carve out a funding program for mitigation banking that would be in the spirit of the existing law.

The Director said the bond or the source of funds we are using for this might have some restrictions on it. It is not that we do not think we should look at nonprofits. We need to take a look at the law to see if that can be done. There could be a partnership with the nonprofit and municipalities.

Subsection 6 is to apply to municipalities, and it was suggested to add a subsection 7 to apply to non-profits. Transportation Agencies and Drain Commissioners have actually been very interested in this and want to use Part 52 funds. (Drain Commissioners are considered a municipality). A member said that subsection 7 could read something like, "The Department could establish wetland funding program sources providing grants and loans and eligible nonprofits for the purpose of wetland mitigation banks."

Joseph asked members to e-mail comments on specific issues ASAP. Maggie explained that the legislative sponsor is now working on the bill, and has called a meeting with some stakeholders to hear their comments. The sponsor will now control the speed of work on the bill; he may have several meetings before introducing it or he may introduce the bill soon.

Group discussed meeting again soon to continue discussion of bill, some time in July or August. The DEQ will check schedules and notify members.

Meeting ended at 4:25 p.m.