

**Testimony to the House Natural Resources and Outdoor Recreation Committee
Representative Gary Howell, Chair**

Presented by
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Introduction

Good morning Chairman Howell and committee Members. Thank you for the opportunity to provide testimony regarding the substitute for Senate Bill 714.

My name is Jennifer McKay, I am the policy director with Tip of the Mitt Watershed Council. I am pleased to submit testimony on behalf of the board, staff, and over 2,200 members of Tip of the Mitt Watershed Council.

As a means of introduction, Tip of the Mitt Watershed Council is a nonprofit, founded in 1979. Our purpose is to protect, restore, and enhance water resources, including inland lakes, rivers, wetlands, groundwater, and the Great Lakes. We base all of our programs on sound science and policy analysis, and have garnered respect for our work from local, state, and federal agencies, businesses, fellow environmental organizations, and citizens.

Regulatory Authority

After 35 years, the Michigan Department of Environment, Great Lakes, and Energy's (EGLE) authority or jurisdiction for projects along the Great Lakes was changed this past year. For 35 years, EGLE has exercised jurisdiction over waters of the Great Lakes even at times when those waters exceed the level of the statutorily determined ordinary high water mark. The reasoning is two-fold: the public trust doctrine and the Michigan Environmental Protection Act.

Per Part 325, Michigan's Great Lakes Submerged Lands Act, "this act shall be construed so as to preserve and protect the interests of the general public in the aforesaid...waters...and to provide for...the private and public use of waters of patented and unpatented lands and to permit the filling of patented submerged lands whenever it is determined...that the private or public use of such...waters will not substantially affect the public use thereof for...fishing, swimming, pleasure boating or navigation."

MEPA recognizes public rights to a quality environment and imposes a duty upon all state agencies to respect and protect those rights. In considering permit application or activities under the Great Lakes Submerged Lands Act, broad environmental policies and protective features of MEPA must be applied.

This authority was altered earlier this year. It was determined that instead of implementing the public trust and MEPA, the Ordinary High Water Mark elevation listed in the statute was the defining factor for jurisdictional authority. With high waters, above the ordinary high water

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mark, this resulted in projects such as seawalls, riprap, and massive boulders could be placed along the Great Lakes shoreline in the water without approval from EGLE.

Not only is this detrimental to the health of our lakes, a problem for adjacent homeowners who suffer erosion from over-engineered and unauthorized projects, but it also hurts Michigan's economy in the long term. It has caused confusion for property owners and staff and simply is not manageable.

This bill would address the jurisdictional authority issues and provide clear regulatory authority that has existed for the past 35 years. The Watershed Council is extremely supportive of this.

Permitting Concerns

However, the bill comes with concessions, particularly an expedited permitting process that promotes that hardening and armoring of our Great Lakes.

As an organization supported in large part by shoreline property owners, I can empathize with the concerns associated with high water. The Watershed Council works directly with our members, the public and our local governments to address high water issues, but we do so in a manner that considers the dynamic nature of the Great Lakes and considers the health of our waters, the impacts to neighboring properties, and the economics of shoreline protection measures.

I urge you to also consider the larger picture...not only that of short and long term ecological impacts of hardening or armoring the shoreline, but the interests of other property owners and commercial entities, as well as the 40 million people who rely in the Great Lakes for their drinking water, jobs, and recreational activities.

In the interest of time, I urge you to review the letter submitted by Dr. Richard Norton and Dr. Guy Meadows. They have spent decades researching Great Lakes coastal shoreline dynamics and coastal shoreland management. Based upon their decades of scientific research, hard shoreline armoring leads only to shoreline destruction, not shoreline protection. It causes long-term destruction of the natural shoreline and adverse impacts to adjacent shoreline.

The mission of EGLE is to protect Michigan's environment and public health by managing air, water, land, and energy resources. Therefore, EGLE should be required to protect Michigan's Great Lakes and shoreline, first and foremost. That means we should not institute a policy that promotes the hardening and armoring of the shoreline. Should a special Minor Project Category be instituted for high water levels, EGLE should be required to collaborate with environmental organizations and academia who are knowledgeable about the adverse impacts

Furthermore, mandating such short processing times could result in a failure of EGLE to conduct the required environmental assessment per Part 325 in which "[a]pproval shall not be granted unless the department has determined both of the following: (a) That the adverse effects to the environment, public trust, and riparian interests of adjacent owners are minimal and will be mitigated to the extent possible. (b) That there is no feasible and prudent alternative to the

applicant's proposed activity which is consistent with the reasonable requirements of the public health, safety, and welfare.”

The Watershed Council reviews all permit applications within our four county service area in Northern Michigan. After raising multiple concerns about shoreline protection permits, here is part of the response we received from EGLE staff:

The issues are “the workload stresses, staff limitations, and high water issues District staff are dealing with resulting in more consistency problems. These pressures are increasing problems with project reviews, including that we are not always putting as much effort into scrutinizing these and pushing for changes to the proposed projects, as we should.” “Some of the examples of recently permitted shoreline protection projects...illustrate the problems discussed above, and are not consistent with the WRD efforts on shoreline permitting. We acknowledge that we need to be more consistent on these kinds of reviews, particularly in this area....”

These issues arose when EGLE implemented a voluntary expedited timeline. Such issues will only be exacerbated should a mandatory timeframe be implemented. EGLE could chose to dismiss the timeframe and refund part of the application fee. However, maintaining EGLE’s Water Resources program requires adequate funding levels. Without adequate funds, EGLE will be forced to reduce programs and staff, severely compromising the ability of the EGLE to fulfill its statutory obligations, if not making it impossible. In recent years there has been a shift in funding for EGLE and taxpayer contributions to EGLE’s budget from Michigan’s General Fund has dropped significantly. To lose permit fee revenue would be detrimental to the department charged with the protection of our vital natural resources and threatens the very attributes that allow our tourism industry to thrive and, therefore, Michigan’s economic vitality.

Conclusion

The Great Lakes are some of the most magnificent natural resources on Earth, holding nearly 20% of the planet's fresh surface water. The Michigan Legislature and the Governor hold a responsibility to the citizens of Michigan to ensure that EGLE is able to fully meet its statutory stewardship responsibility. In order for EGLE to live up to its constitutional and statutory duty, the Legislature must provide EGLE with the jurisdictional authority and ability to permit projects that could have long-lasting impacts upon the health of our Great Lakes.

On behalf of the board, staff, and members of Tip of the Mitt Watershed Council, thank you for the opportunity to share these comments with you.