

SENATE SUBSTITUTE FOR  
HOUSE BILL NO. 4730

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
by amending section 30113 (MCL 324.30113), as amended by 1995 PA  
171, and by adding part 33; and to repeal acts and parts of  
acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1                   PART 33 AQUATIC NUISANCE CONTROL

2           Sec. 3301. As used in this part:

3           (a) "Aquatic nuisance" means an organism that lives or  
4 propagates, or both, within the aquatic environment and that  
5 impairs the use or enjoyment of the waters of the state,  
6 including the intermediate aquatic hosts for schistosomes that  
7 cause swimmer's itch.

8           (b) "Certificate of coverage" means written authorization  
9 from the department to implement a project under a general

1 permit.

2 (c) "Department" means the department of environmental  
3 quality.

4 (d) "Director" means the director of the department.

5 Sec. 3302. As used in this part:

6 (a) "General permit" means a permit for a category of  
7 activities that the department determines will not negatively  
8 impact human health and will have no more than minimal short-term  
9 adverse impacts on the natural resources and environment.

10 (b) "Lake management plan" means a document that contains  
11 all of the following:

12 (i) A description of the physical, chemical, and biological  
13 attributes of a waterbody.

14 (ii) A description of the land uses surrounding a  
15 waterbody.

16 (iii) A detailed description of the historical and planned  
17 future management of the waterbody.

18 (c) "Violation of this part" means a violation of a  
19 provision of this part or a permit, certificate of coverage, or  
20 order issued under or rule promulgated under this part.

21 (d) "Waters of the state" or "waterbody" means groundwaters,  
22 lakes, ponds, rivers, streams, and wetlands and all other  
23 watercourses and waters within the jurisdiction of this state  
24 including the Great Lakes bordering this state.

25 Sec. 3303. (1) Subject to subsections (2), (4), and (5), a  
26 person shall not chemically treat either of the following for  
27 purposes of aquatic nuisance control unless the person has

1 obtained from the department an individual permit or a  
2 certificate of coverage under this part:

3 (a) Any waters of the state, if water is visibly present or  
4 contained in the area of impact at the time of chemical  
5 treatment.

6 (b) The Great Lakes or Lake St. Clair if the area of impact  
7 is exposed bottomland located below the ordinary high-water  
8 mark.

9 (2) Subject to subsections (3), (4), and (5), a person may  
10 chemically treat waters of the state for purposes of aquatic  
11 nuisance control without obtaining from the department an  
12 individual permit or a certificate of coverage if all of the  
13 following criteria are met:

14 (a) The waterbody does not have an outlet.

15 (b) There is no record of species on a list of endangered or  
16 threatened species referred to in part 365.

17 (c) The waterbody has a surface area of less than 10 acres.

18 (d) If the bottomlands of the waterbody are owned by more  
19 than 1 person, written permission for the proposed chemical  
20 treatment is obtained from each owner.

21 (e) The person posts the area of impact in the manner  
22 provided in section 3310(d).

23 (3) A person conducting a chemical treatment authorized under  
24 subsection (2) shall maintain any written permissions required  
25 under subsection (2) and records of treatment, including  
26 treatment date, chemicals applied, amounts applied, and a map  
27 indicating the area of impact, for 1 year from the date of each

1 chemical treatment. The records shall be made available to the  
2 department upon request.

3 (4) A person shall not apply for a permit or certificate of  
4 coverage under subsection (1) or conduct a chemical treatment  
5 described in this section unless the person is 1 or more of the  
6 following:

7 (a) An owner of bottomland within the proposed area of  
8 impact.

9 (b) A lake board established under part 309 for the affected  
10 waterbody.

11 (c) A state or local governmental entity.

12 (d) A person who has written authorization to act on behalf  
13 of a person described in subdivision (a), (b), or (c).

14 (5) The chemical treatment of waters authorized pursuant to  
15 part 31 is not subject to this part.

16 Sec. 3304. (1) An applicant shall provide a lake management  
17 plan as part of an application for permit, if a whole lake  
18 treatment is proposed.

19 (2) An applicant for a permit for a whole lake evaluation  
20 treatment may provide scientific evidence and documentation that  
21 the use of a specific pesticide, application rate, or means of  
22 application will selectively control an aquatic nuisance but not  
23 cause unacceptable impacts on native aquatic vegetation, other  
24 aquatic or terrestrial life, or human health. Such evaluation  
25 treatments include the use of fluridone at rates in excess of 6  
26 parts per billion. The department may place special conditions  
27 in a permit issued under this subsection to require additional

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1 ambient monitoring to document possible adverse impacts on native  
2 aquatic vegetation or other aquatic life. If the department  
3 denies the application, the department shall provide to the  
4 applicant the scientific rationale for the denial, in writing.

5       Sec. 3305. (1) A chemical shall not be used in waters of  
6 the state for aquatic nuisance control unless it is registered  
7 with the EPA, pursuant to section 3 of the federal insecticide,  
8 fungicide, and rodenticide act, 7 USC 136a, and the Michigan  
9 department of agriculture, pursuant to <<part 83>>, for the  
10 aquatic nuisance control activity for which it is used.

11       (2) The department may conduct evaluations of the impacts and  
12 effectiveness of any chemicals that are proposed for use for  
13 aquatic nuisance control in waters of the state. This may  
14 include the issuance of permits for field assessments of the  
15 chemicals.

16       (3) The director, in consultation with the director of the  
17 Michigan department of agriculture, may issue an order to  
18 prohibit or suspend the use of a chemical for aquatic nuisance  
19 control if, based on substantial scientific evidence, use of the  
20 chemical causes unacceptable negative impacts to human health or  
21 the environment. The department shall not issue permits  
22 authorizing the use of such chemicals. In addition, a person  
23 shall cease the use of such chemicals upon notification by the  
24 department.

25       Sec. 3306. (1) Until October 1, 2008, an application for a  
26 certificate of coverage under this part shall be accompanied by a  
27 fee of \$75.00. Until October 1, 2008, subject to subsection (2),

1 an application for an individual permit under this part shall be  
2 accompanied by the following fee, based on the size of the area  
3 of impact:

4 (a) Less than 1/2 acre, \$75.00.

5 (b) One-half acre or more but less than 5 acres, \$200.00.

6 (c) Five acres or more but less than 20 acres, \$400.00.

7 (d) Twenty acres or more but less than 100 acres, \$800.00.

8 (e) One hundred acres or more, \$1,500.00.

9 (2) The department shall forward fees collected under this  
10 section to the state treasurer for deposit in the land and water  
11 management permit fee fund created in section 30113.

12 Sec. 3307. (1) The department shall either approve or deny  
13 an application for a certificate of coverage by May 1 or within  
14 15 working days after receipt of a complete application,  
15 whichever is later. If the department denies an application for  
16 a certificate of coverage, the department shall notify the  
17 applicant, in writing, of the reasons for the denial.

18 (2) The department shall approve an application for a permit  
19 in whole or part and issue the permit, or shall deny the  
20 application, by May 1 or within 30 working days after receipt of  
21 a complete application, whichever is later. If the department  
22 approves the application in part or denies the application, the  
23 department shall, by the same deadline, notify the applicant, in  
24 writing, of the reasons for the partial approval or denial.

25 (3) If the department fails to satisfy the requirements of  
26 subsection (1) or (2) with respect to an application for a  
27 certificate of coverage or a permit, the department shall pay the

1 applicant an amount equal to 15% of the application fee for that  
2 certificate of coverage or permit.

3       Sec. 3308. An applicant shall obtain authorization to  
4 chemically treat the proposed area of impact by obtaining written  
5 permission from each person who owns bottomlands in the area of  
6 impact. The applicant shall maintain the written permission for  
7 1 year from the expiration date of the permit and shall make the  
8 records available to the department upon request. Written  
9 permission from each bottomland owner is not required if the  
10 applicant is providing, or has contracted to provide, chemical  
11 treatment for either of the following:

12       (a) A lake board established under part 309 for the  
13 waterbody for which chemical treatment is proposed.

14       (b) This state or a local unit of government acting under  
15 authority of state law to conduct lake improvement projects or to  
16 control aquatic vegetation.

17       Sec. 3309. (1) A permit under this part shall, at a  
18 minimum, include all of the following information:

19       (a) The active ingredient or the trade name of each chemical  
20 to be applied.

21       (b) The application rate of each chemical.

22       (c) The maximum amount of each chemical to be applied per  
23 treatment.

24       (d) Minimum length of time between treatments for each  
25 chemical.

26       (e) A map or maps that clearly delineate the approved area  
27 of impact.

1           (2) The department may impose additional conditions on a  
2 permit under this part to protect the natural resources or the  
3 public health, to prevent economic loss or impairment of  
4 recreational uses, to protect nontarget organisms, or to help  
5 ensure control of the aquatic nuisance.

6           Sec. 3310. As a condition of a permit under this part, the  
7 department may require the permittee to do any of the following:

8           (a) Notify the department not less than 2 working days in  
9 advance of chemical treatment.

10           (b) Proceed with chemical treatment only if a department  
11 representative is present.

12           (c) Allow the department or its representative to collect a  
13 sample of the chemical or chemicals used before or during any  
14 chemical treatment.

15           (d) Post the area of impact before chemical treatment with  
16 signs, as follows:

17           (i) Each sign shall be of a brilliant color and made of  
18 sturdy, weather-resistant material. Each sign shall be at least  
19 8-1/2 by 11 inches and shall be attached to a supporting device  
20 with the bottom of the sign at least 12 inches above the ground  
21 surface.

22           (ii) Signs shall be posted in the following locations:

23           (A) Subject to sub-subparagraph (C), along the shoreline of  
24 the area of impact not more than 100 feet apart. Signs shall  
25 also be posted in riparian lands adjacent to that portion of the  
26 shoreline.

27           (B) Subject to sub-subparagraph (C), for an area of impact of



1 2 or more acres, at all access sites, boat launching areas, and  
2 private and public parks located on the waterbody in conspicuous  
3 locations, such as at the entrances, boat ramps, and bulletin  
4 boards, if permitted by managers or owners. If the access sites,  
5 launching areas, and parks are not to be treated or are not  
6 adjacent to the area of impact, then the signs shall clearly  
7 indicate the location of the area of impact.

8 (C) At alternative posting locations approved by the  
9 department upon a determination that the locations where signs  
10 are otherwise required to be posted are impractical or  
11 unfeasible. The department's determination shall be based on a  
12 written request from the applicant that includes an explanation  
13 of the need for alternative posting locations and a description  
14 of the proposed alternative posting locations.

15 (iii) The department shall specify by rule the information  
16 required to be on the signs.

17 (e) Publish a notice in a local newspaper or make an  
18 announcement on a local radio station regarding the chemical  
19 treatment. The notice or announcement shall include all of the  
20 following information:

21 (i) The permit number.

22 (ii) The name of the waterbody.

23 (iii) A list of the chemicals to be used with corresponding  
24 water use restrictions.

25 (iv) A description of the area of impact.

26 (v) The proposed treatment dates.

27 (f) Apply chemicals so that swimming restrictions and fish

1 consumption restrictions are not imposed on any Saturday, Sunday,  
2 or state-declared holiday.

3 (g) Take special precautions to avoid or minimize potential  
4 impacts to human health, the environment, and nontarget  
5 organisms.

6 (h) Notify, in writing, an owner of any waterfront property  
7 within 100 feet of the area of impact, not less than 7 days and  
8 not more than 45 days before the initial chemical treatment.  
9 However, if the owner is not the occupant of the waterfront  
10 property or the dwelling located on the property, then the owner  
11 is responsible for notifying the occupant. Written notification  
12 shall include all of the following information:

13 (i) Name, address, and telephone number of the permittee.

14 (ii) A list of chemicals proposed for use with corresponding  
15 water use restrictions.

16 (iii) Approximate treatment dates for each chemical to be  
17 used.

18 (i) Complete and return the treatment report form provided by  
19 the department for each treatment season.

20 (j) Perform lake water residue analysis to verify the  
21 chemical concentrations in the waterbody according to a  
22 frequency, timing, and methodology approved by the department.

23 (k) Before submitting a permit application, perform aquatic  
24 vegetation surveys according to a frequency, timing, and  
25 methodology approved by the department.

26 (l) Use chemical control methods for nuisance aquatic  
27 vegetation that are consistent with the approved vegetation

1 management plan submitted separately or as part of a lake  
2 management plan. The department may approve modifications to the  
3 vegetation management plan upon receipt of a written request from  
4 the permittee that includes supporting documentation.

5 (m) Perform pretreatment monitoring of the target aquatic  
6 nuisance population according to a frequency, timing, and  
7 methodology that has been approved by the department before  
8 submittal of a permit application.

9 Sec. 3311. The department may make minor revisions to a  
10 permit under this part, to minimize the impacts to the natural  
11 resources, public health, and safety, or to improve aquatic  
12 nuisance control, if the proposed revisions do not involve a  
13 change in the scope of the project, and the permittee requests  
14 the revisions in writing. The request shall include all of the  
15 following information:

16 (a) The proposed changes to the permit.

17 (b) An explanation of the necessity for the proposed  
18 changes.

19 (c) Maps that clearly delineate any proposed changes to the  
20 area of impact.

21 (d) Additional information that would help the department  
22 reach a decision on a permit amendment.

23 Sec. 3312. The department may promulgate rules to implement  
24 this part.

25 Sec. 30113. (1) The land and water management permit fee  
26 fund is created within the state treasury.

27 (2) The state treasurer may receive money or other assets

1 from any source for deposit into the fund. The state treasurer  
2 shall direct the investment of the fund. The state treasurer  
3 shall credit to the fund interest and earnings from fund  
4 investments. The state treasurer shall annually present to the  
5 department an accounting of the amount of money in the fund.

6 (3) Money in the fund at the close of the fiscal year shall  
7 remain in the fund and shall not lapse to the general fund.

8 (4) The department shall expend money from the fund, upon  
9 appropriation, only to implement this part and the following:

10 (a) Sections 3104, 3107, and 3108.

11 ~~(b) Part 325.~~

12 ~~(c) Part 303.~~

13 ~~(d) Section 12562 of the public health code, Act No. 368 of~~  
14 ~~the Public Acts of 1978, being section 333.12562 of the Michigan~~  
15 ~~Compiled Laws.~~

16 (b) Part 33.

17 (c) Part 303.

18 (d) Part 315.

19 (e) Part 323.

20 (f) Part 325.

21 (g) Part 353.

22 (h) ~~(f)~~ Section 117 of the ~~subdivision control act of~~  
23 ~~1967, Act No. 288 of the Public Acts of 1967, being~~  
24 ~~section 560.117 of the Michigan Compiled Laws~~ **land division act,**  
25 **1967 PA 288, MCL 560.117.**

26 ~~(g) Part 315.~~

27 ~~(h) Part 353.~~

**House Bill No. 4730 as amended July 1, 2004**

1 (5) The department shall process permit applications for  
2 ~~the~~ **those** acts and parts of acts cited in subsection (4) **under**  
3 **which permits are issued** within 60 days after receiving a  
4 completed permit application unless the act or part specifically  
5 provides for permit application processing time limits.

6 (6) The department shall annually report to the legislature  
7 on both of the following:

8 (a) How money in the fund was expended during the previous  
9 fiscal year.

10 (b) For permit programs funded with money in the fund, the  
11 average length of time for department action on permit  
12 applications for each class of permits reviewed.

13 Enacting section 1. Sections 12561, 12562, and 12563 of the  
14 public health code, 1978 PA 368, MCL 333.12561, 333.12562, and  
15 333.12563, are repealed.

16 Enacting section 2. This amendatory act takes effect  
17 October 1, <<2004>>.

18 Enacting section 3. This amendatory act does not take  
19 effect unless House Bill No. 4729 of the 92nd Legislature is  
20 enacted into law.