

HOUSE BILL No. 5712

March 30, 2004, Introduced by Reps. Kolb, Minore, Tobocman, Lipsey, Gleason and Anderson and referred to the Committee on Conservation and Outdoor Recreation.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 30301 (MCL 324.30301), as amended by 2003 PA
14, and by adding section 30312a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 30301. As used in this part:

2 (a) "Beach" means the area landward of the shoreline of the
3 Great Lakes as the term shoreline is defined in section 32301.

4 (b) "Beach maintenance activities" means any of the following
5 in the area of Great Lakes bottomlands lying below the ordinary
6 high-water mark and above the water's edge:

7 (i) Manual or mechanized leveling of sand.

8 (ii) Mowing of vegetation.

9 (iii) Manual de minimis removal of vegetation.

10 (iv) Grooming of soil.

(v) Construction and maintenance of a path.

(c) "Debris" means animal or fish carcasses, zebra mussel shells, dead vegetation, trash, and discarded materials of human-made origin.

(d) "Department" means the department of environmental quality.

(e) "Director" means the director of the department.

(f) "Fill material" means soil, rocks, sand, waste of any kind, or any other material that displaces soil or water or reduces water retention potential.

(g) "Environmental area" means an environmental area as defined in section 32301.

(h) "Grooming of soil" means raking or dragging, pushing, or pulling metal teeth through the top 4 inches of soil without disturbance of or destruction to plant roots, for the purpose of removing debris.

(i) "Leveling of sand" means the relocation of sand within areas being leveled that are predominantly free of vegetation, including the redistribution, grading, and spreading of sand that has been deposited through wind or wave action onto upland riparian property.

(j) "Minor drainage" includes ditching and tiling for the removal of excess soil moisture incidental to the planting, cultivating, protecting, or harvesting of crops or improving the productivity of land in established use for agriculture, horticulture, silviculture, or lumbering.

(k) "Mitigation wetland" means wetland created under section

1 30312, as a condition of a permit, to mitigate the impact of a
2 discharge of fill material.

3 (l) ~~-(k)-~~ "Mowing of vegetation" means the cutting of
4 vegetation to a height of not less than 2 inches, without
5 disturbance of soil or plant roots.

6 (m) ~~-(l)-~~ "Ordinary high-water mark" means that term as it is
7 defined in section 32502.

8 (n) ~~-(m)-~~ "Path" means a temporary access walkway from the
9 upland riparian property directly to the shoreline across swales
10 with standing water, not exceeding 6 feet in bottom width and
11 consisting of sand and pebbles obtained from the exposed,
12 nonvegetated bottomlands or from the upland riparian property.

13 (o) ~~-(n)-~~ "Person" means an individual, sole proprietorship,
14 partnership, corporation, association, municipality, this state,
15 an instrumentality or agency of this state, the federal
16 government, an instrumentality or agency of the federal
17 government, or other legal entity.

18 (p) ~~-(o)-~~ "Removal of vegetation" means the manual or
19 mechanized removal of vegetation, other than the manual de
20 minimis removal of vegetation.

21 (q) ~~-(p)-~~ "Wetland" means land characterized by the presence
22 of water at a frequency and duration sufficient to support, and
23 that under normal circumstances does support, wetland vegetation
24 or aquatic life, and is commonly referred to as a bog, swamp, or
25 marsh and which is any of the following:

26 (i) Contiguous to the Great Lakes or Lake St. Clair, an
27 inland lake or pond, or a river or stream.

1 (ii) Not contiguous to the Great Lakes, an inland lake or
 2 pond, or a river or stream; and more than 5 acres in size; except
 3 this subparagraph ~~shall not be of effect~~ **does not apply**, except
 4 for the purpose of inventorying, in counties of less than 100,000
 5 population until the department certifies to the commission it
 6 has substantially completed its inventory of wetlands in that
 7 county.

8 (iii) Not contiguous to the Great Lakes, an inland lake or
 9 pond, or a river or stream; and 5 acres or less in size if the
 10 department determines that protection of the area is essential to
 11 the preservation of the natural resources of the state from
 12 pollution, impairment, or destruction and the department has so
 13 notified the owner; except this subparagraph may be utilized
 14 regardless of wetland size in a county in which subparagraph (ii)
 15 ~~is of no effect~~ **does not apply**; except for the purpose of
 16 inventorying, at the time.

17 **Sec. 30312a. (1) Within 60 days after the effective date of**
 18 **the amendatory act that added this section, the director shall**
 19 **convene a mitigation wetland workgroup. The workgroup shall**
 20 **include at least 1 representative of each of the following:**

- 21 (a) The department.
- 22 (b) Business and industry interests.
- 23 (c) Environmental protection organizations.
- 24 (d) Conservation organizations.
- 25 (e) Local government.
- 26 (f) The general public.
- 27 (2) Members of the workgroup shall serve without

1 compensation from the department, except that department
2 representatives shall receive their normal salary. Members of
3 the workgroup may be reimbursed for their actual and necessary
4 expenses incurred in the performance of their official duties as
5 members of the workgroup.

6 (3) The workgroup shall do all of the following:

7 (a) Determine whether the department has been complying with
8 standards set forth in this part and rules promulgated under this
9 part in determining whether to issue permits under this part.

10 (b) Determine why mitigation wetland has in some cases failed
11 to perform its intended function.

12 (c) Determine why mitigation wetland has in some cases not
13 been created as required by the department.

14 (d) Recommend standards for tracking compliance with
15 requirements to create mitigation wetland.

16 (e) Recommend construction standards for mitigation wetland.

17 (f) Recommend standards to determine whether mitigation
18 wetland performs its intended function.

19 (g) Recommend changes in sanctions for failure to create
20 mitigation wetland such as increased fines and being ineligible
21 to obtain a permit under this part.

22 (4) By 1 year after the effective date of the amendatory act
23 that added this section, the workgroup created under subsection
24 (1) shall submit a report of its findings and recommendations to
25 the standing committees of the senate and the standing committees
26 of the house of representatives with primary jurisdiction over
27 natural resources and environmental protection issues.