

HOUSE BILL No. 4371

February 22, 2005, Introduced by Reps. Palmer, Gosselin, Stahl, Schuitmaker, Casperson, Pastor, Moore, Walker, Huizenga, Nitz and Stakoe and referred to the Committee on Natural Resources, Great Lakes, Land Use, and Environment.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 1101 (MCL 324.1101), and by adding part 6.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

PART 6 DEPARTMENT OF ENVIRONMENTAL QUALITY

SEC. 601. AS USED IN THIS PART:

(A) "COMMISSION" MEANS THE PUBLIC ADVISORY COMMISSION CREATED
IN SECTION 603.

(B) "DEPARTMENT" MEANS THE DEPARTMENT OF ENVIRONMENTAL
QUALITY.

(C) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT.

SEC. 602. THE DEPARTMENT OF ENVIRONMENTAL QUALITY IS CREATED
AS A PRINCIPAL STATE DEPARTMENT. THE DEPARTMENT SHALL POSSESS THE

1 POWERS AND PERFORM THE DUTIES GRANTED AND IMPOSED BY THIS ACT AND
2 AS OTHERWISE PROVIDED BY LAW.

3 SEC. 603. (1) THE PUBLIC ADVISORY COMMISSION IS CREATED AS THE
4 HEAD OF THE DEPARTMENT AND MAY ESTABLISH GENERAL POLICIES RELATED
5 TO NATURAL RESOURCES MANAGEMENT AND ENVIRONMENTAL PROTECTION FOR
6 THE GUIDANCE OF THE DIRECTOR. IN ADDITION, THE COMMISSION HAS
7 APPELLATE AUTHORITY AS PROVIDED IN SECTION 1101. THE COMMISSION
8 SHALL BE COMPOSED OF 7 MEMBERS, NOT MORE THAN 4 OF WHOM SHALL BE
9 MEMBERS OF THE SAME POLITICAL PARTY, APPOINTED BY THE GOVERNOR BY
10 AND WITH THE ADVICE AND CONSENT OF THE SENATE. A MEMBER OF THE
11 COMMISSION SHALL BE SELECTED WITH SPECIAL REFERENCE TO THAT
12 PERSON'S TRAINING AND EXPERIENCE RELATED TO AT LEAST 1 OF THE
13 PRINCIPAL LINES OF ACTIVITIES VESTED IN THE DEPARTMENT AND THE
14 ABILITY AND FITNESS OF THAT PERSON TO DEAL WITH THOSE ACTIVITIES.
15 THE COMMISSION SHALL INCLUDE INDIVIDUALS WITH A BACKGROUND IN
16 AGRICULTURE, CONSERVATION, HEALTH AND SAFETY, MANUFACTURING,
17 PROPERTY DEVELOPMENT, RESEARCH, AND TOURISM. THE TERM OF OFFICE OF
18 EACH MEMBER OF THE COMMISSION SHALL BE 4 YEARS. THE GOVERNOR SHALL
19 FILL A VACANCY OCCURRING IN THE MEMBERSHIP OF THE COMMISSION AND
20 MAY REMOVE A MEMBER OF THE COMMISSION FOR CAUSE AFTER A HEARING.
21 EACH MEMBER OF THE COMMISSION SHALL HOLD OFFICE UNTIL THE
22 APPOINTMENT AND QUALIFICATION OF THAT MEMBER'S SUCCESSOR.

23 (2) THE COMMISSION, WITHIN 30 DAYS AFTER ITS MEMBERS HAVE
24 QUALIFIED FOR OFFICE UNDER SUBSECTION (5) AND ANNUALLY AFTER THAT
25 TIME, SHALL MEET AT ITS OFFICE IN LANSING AND ORGANIZE BY
26 APPOINTING A SECRETARY, WHO NEED NOT BE A MEMBER OF THE COMMISSION.
27 THE GOVERNOR SHALL APPOINT A CHAIRPERSON OF THE COMMISSION FROM

1 AMONG ITS MEMBERS, WHO SHALL SERVE AS CHAIRPERSON AT THE PLEASURE
2 OF THE GOVERNOR. FOUR MEMBERS OF THE COMMISSION CONSTITUTE A QUORUM
3 FOR THE TRANSACTION OF BUSINESS. THE BUSINESS WHICH THE COMMISSION
4 MAY PERFORM SHALL BE CONDUCTED AT A PUBLIC MEETING OF THE
5 COMMISSION HELD IN COMPLIANCE WITH THE OPEN MEETINGS ACT, 1976 PA
6 267, MCL 15.261 TO 15.275. PUBLIC NOTICE OF THE TIME, DATE, AND
7 PLACE OF THE MEETING SHALL BE GIVEN IN THE MANNER REQUIRED BY THAT
8 ACT. A MEETING MAY BE CALLED BY THE CHAIRPERSON AND SHALL BE CALLED
9 ON REQUEST OF A MAJORITY OF THE MEMBERS OF THE COMMISSION. MEETINGS
10 MAY BE HELD AS OFTEN AS NECESSARY AND AT PLACES OTHER THAN THE
11 COMMISSIONERS' OFFICES AT LANSING. HOWEVER, THE COMMISSION SHALL
12 MEET AT LEAST ONCE EACH MONTH.

13 (3) THE COMMISSION SHALL APPOINT AND EMPLOY A DIRECTOR WHO
14 SHALL CONTINUE IN OFFICE AT THE PLEASURE OF THE COMMISSION. THE
15 DIRECTOR SHALL APPOINT 1 OR MORE DEPUTY DIRECTORS AND OTHER
16 ASSISTANTS AND EMPLOYEES AS ARE NECESSARY TO CARRY OUT THE
17 RESPONSIBILITIES OF THE DEPARTMENT. A PERSON TO WHOM THE DIRECTOR
18 HAS LAWFULLY DELEGATED DECISION MAKING AUTHORITY IN WRITING MAY
19 PERFORM A DUTY OR EXERCISE A POWER CONFERRED BY LAW UPON THE
20 DEPARTMENT AT THE TIME AND TO THE EXTENT THE DUTY AND POWER IS
21 DELEGATED TO THAT PERSON BY THE DIRECTOR. IF A VACANCY IN THE
22 OFFICE OF DIRECTOR OCCURS, OR THE DIRECTOR IS UNABLE TO PERFORM THE
23 DIRECTOR'S DUTIES OR IS ABSENT FROM THE STATE, THE POWERS AND
24 DUTIES OF THE DIRECTOR AS PRESCRIBED BY LAW SHALL BE IMPOSED ON AND
25 TRANSFERRED TO A DEPUTY DIRECTOR UNTIL THE VACANCY IS FILLED OR THE
26 DIRECTOR'S INABILITY OR ABSENCE FROM THE STATE CEASES.

27 (4) THE COMPENSATION OF THE DEPUTY DIRECTORS, THE ASSISTANTS,

1 AND THE EMPLOYEES AND THE NUMBER OF ASSISTANTS AND EMPLOYEES SHALL
2 BE SUBJECT TO THE APPROVAL OF THE STATE ADMINISTRATIVE BOARD. THE
3 MEMBERS OF THE COMMISSION SHALL NOT RECEIVE COMPENSATION, BUT EACH
4 MEMBER AND THE OTHER OFFICERS AND EMPLOYEES OF THE DEPARTMENT SHALL
5 BE ENTITLED TO REASONABLE EXPENSES WHILE TRAVELING IN THE
6 PERFORMANCE OF THEIR DUTIES PRESCRIBED BY THIS ACT. THE SALARIES
7 AND EXPENSES AUTHORIZED UNDER THIS SUBSECTION SHALL BE PAID OUT OF
8 THE STATE TREASURY IN THE SAME MANNER AS THE SALARIES OF OTHER
9 STATE OFFICERS AND EMPLOYEES ARE PAID. THE DEPARTMENT OF MANAGEMENT
10 AND BUDGET SHALL FURNISH SUITABLE OFFICES AND OFFICE EQUIPMENT, AT
11 LANSING, FOR THE USE OF THE DEPARTMENT.

12 (5) EACH MEMBER OF THE COMMISSION AND THE DIRECTOR SHALL
13 QUALIFY BY TAKING AND SUBSCRIBING TO THE CONSTITUTIONAL OATH OF
14 OFFICE AND BY FILING IT IN THE OFFICE OF THE SECRETARY OF STATE.

15 Sec. 1101. (1) If a person has legal standing to challenge a
16 final decision of the department under this act regarding the
17 issuance, denial, suspension, revocation, annulment, withdrawal,
18 recall, cancellation, or amendment of a permit or operating
19 license, the commission, upon request of that person, shall review
20 the decision and make the final agency decision. A preliminary,
21 procedural, or intermediate decision of the department is
22 reviewable by the commission only if the commission elects to grant
23 a review. If a person is granted review by the commission under
24 this section, the person is considered to have exhausted his or her
25 administrative remedies with regard to that matter. The commission
26 may utilize administrative law judges or hearing officers to
27 conduct the review of decisions as contested case hearings and to

1 issue proposals for decisions as provided by law or rule.

2 (2) In all instances, except those described in subsection
3 (1), if a person has legal standing to challenge a final decision
4 of the department under this act, that person may seek direct
5 review by the courts as provided by law. Direct review by the
6 courts is available to that person as an alternative to any
7 administrative remedy that is provided in this act. A preliminary,
8 procedural, or intermediate action or ruling of the department is
9 not immediately reviewable, except that the court may grant leave
10 for review of a preliminary, procedural, or intermediate action or
11 ruling if the court determines that review of the final decision
12 would not provide an adequate remedy. If a person is granted direct
13 review by the courts under this section, the person is considered
14 to have exhausted his or her administrative remedies with regard to
15 that matter.

16 (3) If the court does not review a decision of the department
17 brought before the court as provided in this section, the person
18 with legal standing retains any administrative appeal rights that
19 are otherwise provided by law.

20 (4) If the court reviews a preliminary, procedural, or
21 intermediate decision of the department brought before the court as
22 provided in this section, the person with legal standing retains
23 the right to judicial review of the final decision of the
24 department as provided by law.

25 **(5) AS USED IN THIS SECTION:**

26 **(A) "COMMISSION" MEANS THE NATURAL RESOURCES COMMISSION OR THE**
27 **PUBLIC ADVISORY COMMISSION, AS APPROPRIATE.**

1 (B) "DEPARTMENT" MEANS THE DEPARTMENT OF NATURAL RESOURCES OR
2 THE DEPARTMENT OF ENVIRONMENTAL QUALITY, AS APPROPRIATE.