

HOUSE BILL No. 4372

February 22, 2005, Introduced by Reps. Palmer, Gosselin, Stahl, Schuitmaker, Casperson, Pastor, Moore, 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 sections 30301 and 30307 (MCL 324.30301 and 324.30307),
section 30301 as amended by 2003 PA 14 and section 30307 as amended
by 2004 PA 325.

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.

1 (ii) Mowing of vegetation.

2 (iii) Manual de minimis removal of vegetation.

3 (iv) Grooming of soil.

4 (v) Construction and maintenance of a path.

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

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

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

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

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

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

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

25 (j) "Minor drainage" includes ditching and tiling for the
26 removal of excess soil moisture incidental to the planting,
27 cultivating, protecting, or harvesting of crops or improving the

1 productivity of land in established use for agriculture,
2 horticulture, silviculture, or lumbering.

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

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

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

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

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

21 (p) "Wetland", **EXCEPT AS PROVIDED IN SUBDIVISION (Q)**, means
22 land characterized by the presence of water at a frequency and
23 duration sufficient to support, and that under normal circumstances
24 does support, wetland vegetation or aquatic life, and is commonly
25 referred to as a bog, swamp, or marsh and ~~which is any of the~~
26 ~~following~~ **THAT IS REGULATED BY THE FEDERAL GOVERNMENT UNDER**
27 **SECTION 404(A) OF THE CLEAN WATER ACT, 33 USC 1344, AND RULES**

PROMULGATED TO IMPLEMENT THAT SECTION.

(Q) "WETLAND", FOR THE PURPOSES OF A LOCAL ORDINANCE UNDER SECTION 30307(4), MEANS LAND CHARACTERIZED BY THE PRESENCE OF WATER AT A FREQUENCY AND DURATION SUFFICIENT TO SUPPORT, AND THAT UNDER NORMAL CIRCUMSTANCES DOES SUPPORT, WETLAND VEGETATION OR AQUATIC LIFE, AND IS COMMONLY REFERRED TO AS A BOG, SWAMP, OR MARSH, AND TO WHICH 1 OR MORE OF THE FOLLOWING APPLY:

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

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

~~—— (iii) Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream; and 5 acres or less in size if the department determines that protection of the area~~

(ii) IS LOCATED IN A COUNTY WITH A POPULATION OF 100,000 OR MORE.

(iii) IS LOCATED IN A COUNTY FOR WHICH THE DEPARTMENT HAS SUBSTANTIALLY COMPLETED ITS INVENTORY OF WETLANDS, AS CERTIFIED BY THE DEPARTMENT TO THE COMMISSION.

(iv) IS AN AREA THAT THE DEPARTMENT HAS DETERMINED is essential to the preservation of the natural resources of the state from pollution, impairment, or destruction, ~~and~~ IF the department has so notified the owner. ~~; except this subparagraph may be utilized~~

~~1 regardless of wetland size in a county in which subparagraph (ii) is~~
~~2 of no effect; except for the purpose of inventorying, at the time.~~

3 Sec. 30307. (1) Within 60 days after receipt of the completed
4 application and fee, the department may hold a hearing. If a
5 hearing is held, it shall be held in the county where the wetland
6 to which the permit is to apply is located. Notice of the hearing
7 shall be made in the same manner as for the promulgation of rules
8 under the administrative procedures act of 1969, 1969 PA 306, MCL
9 24.201 to 24.328. The department may approve or disapprove a permit
10 application without a public hearing unless a person requests a
11 hearing in writing within 20 days after the mailing of notification
12 of the permit application as required by subsection (3) or unless
13 the department determines that the permit application is of
14 significant impact **SO AS** to warrant a public hearing.

15 (2) The action taken by the department on a permit application
16 under this part and part 13 may be appealed pursuant to the
17 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
18 24.328. A property owner may, after exhaustion of administrative
19 remedies, bring appropriate legal action in a court of competent
20 jurisdiction.

21 (3) A person who desires notification of pending permit
22 applications may make a written request to the department
23 accompanied by an annual fee of \$25.00, which shall be credited to
24 the general fund of the state. The department shall prepare a
25 biweekly list of the applications made during the previous 2 weeks
26 and shall promptly mail copies of the list for the remainder of the
27 calendar year to the persons who requested notice. The biweekly

1 list shall state the name and address of each applicant, the
2 location of the wetland in the proposed use or development,
3 including the size of both the proposed use or development and of
4 the wetland affected, and a summary statement of the purpose of the
5 use or development.

6 (4) A local unit of government may regulate wetland within its
7 boundaries, by ordinance, only as provided under this part. This
8 subsection is supplemental to the existing authority of a local
9 unit of government. An ordinance adopted by a local unit of
10 government pursuant to this subsection shall comply with all of the
11 following:

12 (a) The ordinance shall not provide a different definition of
13 wetland than is provided in this part ~~—, except that a wetland~~
14 ~~ordinance may regulate wetland of less than 5 acres in size~~ **FOR**
15 **THE PURPOSE OF LOCAL ORDINANCES.**

16 (b) If the ordinance regulates wetland that is smaller than 2
17 acres in size, the ordinance shall comply with section 30309.

18 (c) The ordinance shall comply with sections 30308 and 30310.

19 (d) The ordinance shall not require a permit for uses that are
20 authorized without a permit under section 30305, and shall
21 otherwise comply with this part.

22 (5) Each local unit of government that adopts an ordinance
23 regulating wetlands under subsection (4) shall notify the
24 department.

25 (6) A local unit of government that adopts an ordinance
26 regulating wetlands shall use an application form supplied by the
27 department, and ~~each~~ **A** person ~~applying for a permit shall make~~

1 ~~application~~ **SHALL APPLY FOR A PERMIT** directly to the local unit of
2 government. Upon receipt, the local unit of government shall
3 forward a copy of each application along with any state fees that
4 may have been submitted under section 30306 to the department. The
5 department shall begin reviewing the application as provided in
6 this part. The local unit of government shall review the
7 application pursuant to its ordinance and shall modify, approve, or
8 deny the application within 90 days after receipt. If a
9 municipality does not approve or disapprove the permit application
10 within the time period provided by this subsection, the permit
11 application shall be considered approved, and the municipality
12 shall be considered to have made the determinations as listed in
13 section 30311. The denial of a permit shall be accompanied by a
14 written statement of all reasons for denial. The failure to supply
15 complete information with a permit application may be reason for
16 denial of a permit. ~~The~~ **UPON REQUEST, THE** department shall inform
17 ~~any interested~~ **A** person whether or not a local unit of government
18 has an ordinance regulating wetlands. If the department receives an
19 application with respect to a wetland located in a local unit of
20 government that has an ordinance regulating wetlands, the
21 department immediately shall forward the application to the local
22 unit of government, which shall modify, deny, or approve the
23 application under this subsection. The local unit of government
24 shall notify the department of its decision. The department shall
25 proceed as provided in this part.

26 (7) If a local unit of government does not have an ordinance
27 regulating wetlands, the department shall promptly send a copy of

1 the permit application to the local unit of government where the
2 wetland is located. The local unit of government may review the
3 application; may hold a hearing on the application; and may
4 recommend approval, modification, or denial of the application to
5 the department. The recommendations of the local unit of government
6 shall be made and returned to the department within 45 days after
7 the local unit of government's receipt of the permit application.

8 (8) In addition to the requirements of subsection (7), the
9 department shall notify ~~the~~ **A** local unit of government that the
10 department has issued a permit under this part **FOR ACTIVITIES**
11 **AFFECTING A WETLAND LOCATED** within the jurisdiction of that local
12 unit of government within 15 days ~~of~~ **AFTER** issuance of the
13 permit. The department shall enclose a copy of the permit with the
14 notice.