

SUBSTITUTE FOR
HOUSE BILL NO. 4257

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 30301, 30305, 32501, and 32512
(MCL 324.30301, 324.30305, 324.32501, and 324.32512), sections
30301, 32501, and 32512 as added by 1995 PA 59 and section 30305
as amended by 1996 PA 550.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 30301. As used in this part:

2 (a) "Beach maintenance activities" includes manual or
3 mechanized leveling of sand, mowing, removal of vegetation, and
4 grooming, affecting not more than the top 4 inches of soil in an
5 area of Great Lakes riparian lands that lies between the ordinary
6 high-water mark and the water's edge but does not lie within an
7 environmental area as defined in section 32301.

8 (b) ~~—(a)—~~ "Fill material" means soil, rocks, sand, waste of

1 any kind, or any other material that displaces soil or water or
2 reduces water retention potential.

3 (c) "Grooming" means raking or dragging, pushing, or pulling
4 metal teeth through soil.

5 (d) "Leveling of sand" means the relocation of sand within
6 areas of the property being leveled, including the
7 redistribution, grading, and spreading of sand that has been
8 deposited through wind or wave action onto upland riparian
9 property.

10 (e) ~~-(b)-~~ "Minor drainage" includes ditching and tiling for
11 the removal of excess soil moisture incidental to the planting,
12 cultivating, protecting, or harvesting of crops or improving the
13 productivity of land in established use for agriculture,
14 horticulture, silviculture, or lumbering.

15 (f) "Mowing" means the cutting of vegetation.

16 (g) "Ordinary high-water mark" means that term as it is
17 defined in section 32502.

18 (h) ~~-(e)-~~ "Person" means an individual, sole proprietorship,
19 partnership, corporation, association, municipality, this state,
20 ~~and~~ an instrumentality or agency of this state, the federal
21 government, ~~or~~ an instrumentality or agency of the federal
22 government, or ~~other~~ another legal entity.

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

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

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

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

19 Sec. 30305. (1) Activities that require a permit under
20 part 325 or part 301 or a discharge that is authorized by a
21 discharge permit under section 3112 or 3113 do not require a
22 permit under this part.

23 (2) The following uses are allowed in a wetland without a
24 permit subject to other laws of this state and the owner's
25 regulation:

26 (a) Fishing, trapping, or hunting.

27 (b) Swimming or boating.

(c) Hiking.

(d) Grazing of animals.

(e) Farming, horticulture, silviculture, lumbering, and ranching activities, including plowing, irrigation, irrigation ditching, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices. Wetland altered under this subdivision shall not be used for a purpose other than a purpose described in this subsection without a permit from the department.

(f) Maintenance or operation of serviceable structures in existence on October 1, 1980 or constructed pursuant to this part or former ~~Act No. 203 of the Public Acts of 1979~~ **1979 PA 203**.

(g) Construction or maintenance of farm or stock ponds.

(h) Maintenance, operation, or improvement which includes straightening, widening, or deepening of the following which is necessary for the production or harvesting of agricultural products:

(i) An existing private agricultural drain.

(ii) That portion of a drain legally established pursuant to the drain code of 1956, ~~Act No. 40 of the Public Acts of 1956, being sections 280.1 to 280.630 of the Michigan Compiled Laws~~ **1956 PA 40, MCL 280.1 to 280.630**, which has been constructed or improved for drainage purposes.

(iii) A drain constructed pursuant to other provisions of this part or former ~~Act No. 203 of the Public Acts of 1979~~ **1979 PA 203**.

1 (i) Construction or maintenance of farm roads, forest roads,
2 or temporary roads for moving mining or forestry equipment, if
3 the roads are constructed and maintained in a manner to assure
4 that any adverse effect on the wetland will be otherwise
5 minimized.

6 (j) Drainage necessary for the production and harvesting of
7 agricultural products if the wetland is owned by a person who is
8 engaged in commercial farming and the land is to be used for the
9 production and harvesting of agricultural products. Except as
10 otherwise provided in this part, wetland improved under this
11 subdivision after October 1, 1980 shall not be used for
12 nonfarming purposes without a permit from the department. This
13 subdivision ~~shall~~ **does** not apply to a wetland ~~which~~ **that** is
14 contiguous to a lake or stream, or to a tributary of a lake or
15 stream, or to a wetland that the department has determined by
16 clear and convincing evidence to be a wetland that is necessary
17 to be preserved for the public interest, in which case a permit
18 is required.

19 (k) Maintenance or improvement of public streets, highways,
20 or roads, within the right-of-way and in such a manner as to
21 assure that any adverse effect on the wetland will be otherwise
22 minimized. Maintenance or improvement does not include adding
23 extra lanes, increasing the right-of-way, or deviating from the
24 existing location of the street, highway, or road.

25 (l) Maintenance, repair, or operation of gas or oil pipelines
26 and construction of gas or oil pipelines having a diameter of 6
27 inches or less, if the pipelines are constructed, maintained, or

1 repaired in a manner to assure that any adverse effect on the
2 wetland will be otherwise minimized.

3 (m) Maintenance, repair, or operation of electric
4 transmission and distribution power lines and construction of
5 distribution power lines, if the distribution power lines are
6 constructed, maintained, or repaired in a manner to assure that
7 any adverse effect on the wetland will be otherwise minimized.

8 (n) Operation or maintenance, including reconstruction of
9 recently damaged parts, of serviceable dikes and levees in
10 existence on October 1, 1980 or constructed pursuant to this part
11 or former ~~Act No. 203 of the Public Acts of 1979~~ **1979 PA 203**.

12 (o) Construction of iron and copper mining tailings basins
13 and water storage areas.

14 (p) **Beach maintenance activities that meet both of the**
15 **following conditions:**

16 (i) **The activities shall not violate part 365 or rules**
17 **promulgated under that part, or the endangered species act of**
18 **1973, Public Law 93-205, 87 Stat. 884, or rules promulgated under**
19 **that act.**

20 (ii) **All collected human-made debris shall be removed from**
21 **the Great Lakes and riparian lands lying lakeward of the ordinary**
22 **high-water mark.**

23 (3) An activity in a wetland that was effectively drained for
24 farming before October 1, 1980 and that on and after October 1,
25 1980 has continued to be effectively drained as part of an
26 ongoing farming operation is not subject to regulation under this
27 part.

1 (4) A wetland that is incidentally created as a result of 1
2 or more of the following activities is not subject to regulation
3 under this part:

4 (a) Excavation for mineral or sand mining, if the area was
5 not a wetland before excavation. This exemption does not include
6 a wetland on or adjacent to a water body of 1 acre or more in
7 size.

8 (b) Construction and operation of a water treatment pond or
9 lagoon in compliance with the requirements of state or federal
10 water pollution control regulations.

11 (c) A diked area associated with a landfill if the landfill
12 complies with the terms of the landfill construction permit and
13 if the diked area was not a wetland before diking.

14 Sec. 32501. As used in this part: ~~—, "marina~~

15 (a) **"Beach maintenance activities"** includes manual or
16 mechanized leveling of sand, mowing, removal of vegetation, and
17 grooming, affecting not more than the top 4 inches of soil in an
18 area of Great Lakes riparian lands that lies between the ordinary
19 high-water mark and the water's edge but does not lie within an
20 environmental area as defined in section 32301.

21 (b) **"Grooming"** means raking or dragging, pushing, or pulling
22 metal teeth through soil.

23 (c) **"Leveling of sand"** means the relocation of sand within
24 areas of the property being leveled, including the
25 redistribution, grading, and spreading of sand that has been
26 deposited through wind or wave action onto upland riparian
27 property.

1 **(d) "Marina purposes"** means an operation making use of
2 submerged bottomlands or filled-in bottomlands of the Great Lakes
3 for the purpose of service to boat owners or operators, which
4 operation may restrict or prevent the free public use of the
5 affected bottomlands or filled-in lands.

6 **(e) "Mowing" means the cutting of vegetation.**

7 **(f) "Wetland" means that term as it is defined in section**
8 **30301.**

9 Sec. 32512. **(1)** Unless a permit has been granted by the
10 department or authorization has been granted by the legislature,
11 or except as to boat wells and slips facilitating private,
12 noncommercial, recreational boat use, not exceeding 50 feet in
13 length where the spoil is not disposed of below the ordinary
14 high-water mark of the body of water to which it is connected, a
15 person shall not do any of the following:

16 (a) Construct, dredge, commence, or do any work with respect
17 to an artificial canal, channel, ditch, lagoon, pond, lake, or
18 similar waterway where the purpose is ultimate connection of the
19 waterway with any of the Great Lakes, including Lake St. Clair.

20 (b) Connect any natural or artificially constructed waterway,
21 canal, channel, ditch, lagoon, pond, lake, or similar waterway
22 with any of the Great Lakes, including Lake St. Clair, for
23 navigation or any other purpose.

24 (c) Dredge or place spoil or other material on bottomland.

25 (d) Construct a marina.

26 **(2) Notwithstanding subsection (1), a permit or other**
27 **approval is not required under this act for beach maintenance**

1 activities that meet both of the following conditions:

2 (a) The activities shall not violate part 365 or rules
3 promulgated under that part, or the endangered species act of
4 1973, Public Law 93-205, 87 Stat. 884, or rules promulgated under
5 that act.

6 (b) All collected human-made debris shall be removed from the
7 Great Lakes and riparian lands lying lakeward of the ordinary
8 high-water mark.