

HOUSE BILL No. 5441

February 3, 2004, Introduced by Reps. Pastor, Amos, Milosch, Robertson, LaJoy, Hager, Drolet, Hoogendyk, Stahl, Vander Veen, Caswell, Shaffer, Nofs, Stakoe, Wenke, Nitz, Casperson, Brandenburg, Garfield, Hummel, Palmer, Farhat, Meyer, Steil, Shackleton, Pappageorge, Gaffney, Ward, Moolenaar, Van Regenmorter, Ehardt, Acciavatti, Emmons, Bradstreet, DeRoche, Kooiman, Huizenga, Ruth Johnson, Mortimer, Howell, Hune, Sheen, Rocca, Newell, Pumford, Palsrok, Tabor and Voorhees 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 30305 (MCL 324.30305), as amended by 2003 PA
14.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 30305. (1) Activities that require a permit under
2 part 325 or part 301 or a discharge that is authorized by a
3 discharge permit under section 3112 or 3113 do not require a
4 permit under this part.

5 (2) The following uses are allowed in a wetland without a
6 permit, subject to other laws of this state and the owner's
7 regulation:

8 (a) Fishing, trapping, or hunting.

9 (b) Swimming or boating.

10 (c) Hiking.

(d) Grazing of animals.

(e) Farming, horticulture, silviculture, lumbering, and ranching activities, including plowing, 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 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, 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 1979 PA 203.

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

1 minimized.

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

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

21 (l) Maintenance, repair, or operation of gas or oil pipelines
22 and construction of gas or oil pipelines having a diameter of 6
23 inches or less, if the pipelines are constructed, maintained, or
24 repaired in a manner to assure that any adverse effect on the
25 wetland will be otherwise minimized.

26 (m) Maintenance, repair, or operation of electric
27 transmission and distribution power lines and construction of

1 distribution power lines, if the distribution power lines are
 2 constructed, maintained, or repaired in a manner to assure that
 3 any adverse effect on the wetland will be otherwise minimized.

4 (n) Operation or maintenance, including reconstruction of
 5 recently damaged parts, of serviceable dikes and levees in
 6 existence on October 1, 1980 or constructed pursuant to this part
 7 or former 1979 PA 203.

8 (o) Construction of iron and copper mining tailings basins
 9 and water storage areas.

10 (p) Until November 1, 2007, beach maintenance activities that
 11 meet all of the following conditions:

12 (i) The activities shall not occur in environmental areas and
 13 shall not violate part 365 or rules promulgated under that part,
 14 or the endangered species act of 1973, ~~Public Law 93-205, 87~~
 15 ~~Stat. 884~~ **15 USC 1531 to 1544**, or rules promulgated under that
 16 act.

17 (ii) The width of any mowing of vegetation shall not exceed
 18 the width of the riparian property or 100 feet, whichever is
 19 less.

20 (iii) All collected debris shall be disposed of properly
 21 outside of any wetland.

22 (q) Until ~~3 years after the effective date of the amendatory~~
 23 ~~act that added this subdivision~~ **June 5, 2006**, removal of
 24 vegetation as authorized under section 32516.

25 (r) **Construction of a driveway that will meet all of the**
 26 **following requirements or maintenance or widening of a driveway**
 27 **that meets, and upon completion of the project will continue to**

1 meet, all of the following requirements:

2 (i) Alternatives to using wetland, such as using upland
3 property or obtaining an easement for access from adjacent land
4 or a shared driveway, are utilized to the greatest degree
5 possible.

6 (ii) The portion or portions of the driveway that cross
7 wetland are as short as possible or are located in the area of
8 least impact to the wetland.

9 (iii) The portion or portions of the driveway that cross
10 wetland are not longer than a total of 200 linear feet.

11 (iv) The portion or portions of the driveway that cross
12 wetland are not more than 16 feet wide at the base, including
13 associated fill. However, the driveway may be wider than 16 feet
14 at the intersection with a public road if the additional width is
15 required by the agency with jurisdiction over the road.

16 (v) There are no ditches associated with the portion or
17 portions of the driveway that cross wetland.

18 (vi) The driveway terminates at a buildable upland site.

19 (vii) Culverts are placed as necessary to provide for the
20 free flow of surface water and the movement of organisms.

21 (viii) Fill material is placed on filter fabric, or
22 equivalent material if warranted by soil conditions.

23 (ix) In a floodplain, the grade elevation change is not more
24 than 6 inches.

25 (3) An activity in a wetland that was effectively drained for
26 farming before October 1, 1980 and that on and after October 1,
27 1980 has continued to be effectively drained as part of an

1 ongoing farming operation is not subject to regulation under this
2 part.

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

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

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

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