

HOUSE BILL No. 6066

July 6, 2004, Introduced by Reps. Palmer, Farhat, Stahl, Hoogendyk, Brandenburg, Taub, Vander Veen, Robertson, Steil, Casperson, Voorhees, Pappageorge, Hummel, Acciavatti, Nofs and Pastor and referred to the Committee on 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 324.30101 and 324.30307), section 30301 as amended by 2003 PA 14 and section 30307 as amended by 1998 PA 228.

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.

1 (iv) Grooming of soil.

2 (v) Construction and maintenance of a path.

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (p) "Wetland", **except as provided in subdivision (q)**, means
20 land characterized by the presence of water at a frequency and
21 duration sufficient to support, and that under normal
22 circumstances does support, wetland vegetation or aquatic life,
23 and is commonly referred to as a bog, swamp, or marsh and ~~which~~
24 ~~is any of the following:~~ **that is regulated by the federal**
25 **government under section 404(a) of the clean water act, 33 USC**
26 **1344, and rules promulgated to implement that section.**

27 (q) "Wetland", for the purposes of a local ordinance under

1 section 30307(4), means land characterized by the presence of
2 water at a frequency and duration sufficient to support, and that
3 under normal circumstances does support, wetland vegetation or
4 aquatic life, and is commonly referred to as a bog, swamp, or
5 marsh, and to which 1 or more of the following apply:

6 (i) ~~Contiguous~~ **Is contiguous** to the Great Lakes or Lake
7 St. Clair, an inland lake or pond, or a river or stream.

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

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

18 (ii) **Is located in a county with a population of 100,000 or**
19 **more.**

20 (iii) **Is located in a county for which the department has**
21 **substantially completed its inventory of wetlands, as certified**
22 **by the department to the commission.**

23 (iv) **Is an area that the department has determined is**
24 **essential to the preservation of the natural resources of the**
25 **state from pollution, impairment, or destruction, and if the**
26 **department has so notified the owner. ; except this subparagraph**
27 **may be utilized regardless of wetland size in a county in which**

1 ~~subparagraph (ii) is of no effect; except for the purpose of~~
2 ~~inventorying, at the time.~~

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

16 (2) If a hearing is not held, the department shall approve or
17 disapprove the permit application within 90 days after the
18 completed permit application is filed with the department. If a
19 hearing is held, the department shall approve or disapprove the
20 permit application within 90 days after the conclusion of the
21 hearing. The department may approve a permit application,
22 request modifications in the application, or deny the permit
23 application. If the department approves the permit application,
24 the department shall prepare and send the permit to the
25 applicant. If the department denies, or requests a modification
26 of, the permit application, the department shall send notice of
27 the denial or modification request and the reasons for the denial

1 or the modifications requested to the applicant. Department
2 approval may include the issuance of a permit containing
3 conditions necessary for compliance with this part. If the
4 department does not approve or disapprove the permit application
5 within the time provided by this subsection, the permit
6 application shall be considered approved, and the department
7 shall be considered to have made the determinations required by
8 section 30311. The action taken by the department may be
9 appealed pursuant to the administrative procedures act of 1969,
10 1969 PA 306, MCL 24.201 to 24.328. A property owner may, after
11 exhaustion of administrative remedies, bring appropriate legal
12 action in a court of competent jurisdiction.

13 (3) A person who desires notification of pending permit
14 applications may make a written request to the department
15 accompanied by an annual fee of \$25.00, which shall be credited
16 to the general fund of the state. The department shall prepare a
17 biweekly list of the applications made during the previous 2
18 weeks and shall promptly mail copies of the list for the
19 remainder of the calendar year to the persons who requested
20 notice. The biweekly list shall state the name and address of
21 each applicant, the location of the wetland in the proposed use
22 or development, including the size of both the proposed use or
23 development and of the wetland affected, and a summary statement
24 of the purpose of the use or development.

25 (4) A local unit of government may regulate wetland within
26 its boundaries, by ordinance, only as provided under this part.
27 This subsection is supplemental to the existing authority of a

1 local unit of government. An ordinance adopted by a local unit
2 of government pursuant to this subsection shall comply with all
3 of the following:

4 (a) The ordinance shall not provide a different definition of
5 wetland than is provided in this part ~~—, except that a wetland~~
6 ~~ordinance may regulate wetland of less than 5 acres in size for~~
7 **the purpose of local ordinances.**

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

10 (c) The ordinance shall comply with sections 30308 and
11 30310.

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

15 (5) Each local unit of government that adopts an ordinance
16 regulating wetlands under subsection (4) shall notify the
17 department.

18 (6) A local unit of government that adopts an ordinance
19 regulating wetlands shall use an application form supplied by the
20 department, and each person applying for a permit shall make
21 application directly to the local unit of government. Upon
22 receipt, the local unit of government shall forward a copy of
23 each application along with any state fees that may have been
24 submitted under section 30306 to the department. The department
25 shall begin reviewing the application as provided in this part.
26 The local unit of government shall review the application
27 pursuant to its ordinance and shall modify, approve, or deny the

1 application within 90 days after receipt. If a municipality does
2 not approve or disapprove the permit application within the time
3 period provided by this subsection, the permit application shall
4 be considered approved, and the municipality shall be considered
5 to have made the determinations as listed in section 30311. The
6 denial of a permit shall be accompanied by a written statement of
7 all reasons for denial. The failure to supply complete
8 information with a permit application may be reason for denial of
9 a permit. The department shall inform any interested person
10 whether or not a local unit of government has an ordinance
11 regulating wetlands. If the department receives an application
12 with respect to a wetland which is located in a local unit of
13 government ~~which~~ **that** has an ordinance regulating wetlands, the
14 department immediately shall forward the application to the local
15 unit of government, which shall modify, deny, or approve the
16 application under this subsection. The local unit of government
17 shall notify the department of its decision. The department
18 shall proceed as provided in this part.

19 (7) If a local unit of government does not have an ordinance
20 regulating wetlands, the department shall promptly send a copy of
21 the permit application to the local unit of government where the
22 wetland is located. The local unit of government may review the
23 application; may hold a hearing on the application; and may
24 recommend approval, modification, or denial of the application to
25 the department. The recommendations of the local unit of
26 government shall be made and returned to the department within 45
27 days after the local unit of government's receipt of the permit

1 application. The department shall approve, modify, or deny the
2 application as provided in this part.

3 (8) In addition to the requirements of subsection (7), the
4 department shall notify ~~the~~ a local unit of government that the
5 department has issued a permit under this part **for activities**
6 **affecting wetland located** within the jurisdiction of that local
7 unit of government, within 15 days of issuance of the permit.
8 The department shall enclose a copy of the permit with the
9 notice.