

# HOUSE BILL No. 5127

September 6, 2005, Introduced by Reps. Amos, Gosselin, Pastor, Shaffer, Booher, Robertson, Hoogendyk, Emmons, Mortimer, Acciavatti, Nitz, Green, Casperson, Garfield, Rocca, Baxter, Sheen, Vander Veen, Stahl, Phillips, Gaffney and Lemmons, III 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 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 part  
2       325 or part 301 or a discharge that is authorized by a discharge  
3       permit under section 3112 or 3113 ~~do~~ **DOES** not require a permit  
4       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.

1 (b) Swimming or boating.

2 (c) Hiking.

3 (d) Grazing of animals.

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

11 (f) Maintenance or operation of serviceable structures in  
12 existence on October 1, 1980 or constructed pursuant to this part  
13 or former 1979 PA 203.

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

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

19 (i) An existing private agricultural drain.

20 (ii) That portion of a drain legally established pursuant to  
21 the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630, which has  
22 been constructed or improved for drainage purposes.

23 (iii) A drain constructed pursuant to other provisions of this  
24 part or former 1979 PA 203.

25 (i) Construction or maintenance of farm roads, forest roads,  
26 or temporary roads for moving mining or forestry equipment, if the  
27 roads are constructed and maintained in a manner to assure that any

1 adverse effect on the wetland will be otherwise 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 nonfarming  
8 purposes without a permit from the department. This subdivision  
9 does not apply to a wetland that is contiguous to a lake or stream,  
10 or to a tributary of a lake or stream, or to a wetland that the  
11 department has determined by clear and convincing evidence to be a  
12 wetland that is necessary to be preserved for the public interest,  
13 in which case a permit is required.

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

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

25 (m) Maintenance, repair, or operation of electric transmission  
26 and distribution power lines and construction of distribution power  
27 lines, if the distribution power lines are constructed, maintained,

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

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

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

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

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

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

17 (iii) All collected debris shall be disposed of properly outside  
18 of any wetland.

19 (q) Until ~~3 years after the effective date of the amendatory~~  
20 ~~act that added this subdivision~~ **JUNE 5, 2006**, removal of  
21 vegetation as authorized under section 32516.

22 **(R) CONSTRUCTION OF A DRIVEWAY THAT WILL MEET ALL OF THE**  
23 **FOLLOWING REQUIREMENTS OR MAINTENANCE OR WIDENING OF A DRIVEWAY**  
24 **THAT MEETS, AND UPON COMPLETION OF THE PROJECT WILL CONTINUE TO**  
25 **MEET, ALL OF THE FOLLOWING REQUIREMENTS:**

26 **(i) ALTERNATIVES TO USING WETLAND, SUCH AS USING UPLAND**  
27 **PROPERTY OR OBTAINING AN EASEMENT FOR ACCESS FROM ADJACENT LAND OR**

1 A SHARED DRIVEWAY, ARE UTILIZED TO THE GREATEST DEGREE POSSIBLE.

2 (ii) THE PORTION OR PORTIONS OF THE DRIVEWAY THAT CROSS WETLAND  
3 ARE AS SHORT AS POSSIBLE OR ARE LOCATED IN THE AREA OF LEAST IMPACT  
4 TO THE WETLAND.

5 (iii) THE PORTION OR PORTIONS OF THE DRIVEWAY THAT CROSS WETLAND  
6 ARE NOT LONGER THAN A TOTAL OF 200 LINEAR FEET.

7 (iv) THE PORTION OR PORTIONS OF THE DRIVEWAY THAT CROSS WETLAND  
8 ARE NOT MORE THAN 16 FEET WIDE AT THE BASE, INCLUDING ASSOCIATED  
9 FILL. HOWEVER, THE DRIVEWAY MAY BE WIDER THAN 16 FEET AT THE  
10 INTERSECTION WITH A PUBLIC ROAD IF THE ADDITIONAL WIDTH IS REQUIRED  
11 BY THE AGENCY WITH JURISDICTION OVER THE ROAD.

12 (v) THERE ARE NO DITCHES ASSOCIATED WITH THE PORTION OR  
13 PORTIONS OF THE DRIVEWAY THAT CROSS WETLAND.

14 (vi) THE DRIVEWAY TERMINATES AT A BUILDABLE UPLAND SITE.

15 (vii) CULVERTS ARE PLACED AS NECESSARY TO PROVIDE FOR THE FREE  
16 FLOW OF SURFACE WATER AND THE MOVEMENT OF ORGANISMS.

17 (viii) FILL MATERIAL IS PLACED ON FILTER FABRIC, OR EQUIVALENT  
18 MATERIAL IF WARRANTED BY SOIL CONDITIONS.

19 (ix) IN A FLOODPLAIN, THE GRADE ELEVATION CHANGE IS NOT MORE  
20 THAN 6 INCHES.

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

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

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

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

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