

HOUSE BILL No. 5359

October 24, 2007, Introduced by Reps. Pastor, Knollenberg, Stakoe, Stahl, Meekhof, Polidori, Huizenga and LaJoy and referred to the Committee on Great Lakes and Environment.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 30301, 30306, and 30307 (MCL 324.30301,
324.30306, and 324.30307), sections 30301 and 30306 as amended by
2003 PA 14 and section 30307 as amended by 2006 PA 430.

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:

1 (i) Manual or mechanized leveling of sand.

2 (ii) Mowing of vegetation.

3 (iii) Manual de minimis removal of vegetation.

4 (iv) Grooming of soil.

5 (v) Construction and maintenance of a path.

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

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

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

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

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

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

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

26 (j) "Minor drainage" includes ditching and tiling for the
27 removal of excess soil moisture incidental to the planting,

1 cultivating, protecting, or harvesting of crops or improving the
2 productivity of land in established use for agriculture,
3 horticulture, silviculture, or lumbering.

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

7 (l) "Ordinary high-water mark" means ~~that term as it is defined~~
8 **THE ORDINARY HIGH-WATER MARK AS SPECIFIED** in section 32502.

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

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

19 (o) **"QUALIFIED CONSULTANT" MEANS AN INDIVIDUAL WHO MEETS ALL**
20 **OF THE FOLLOWING REQUIREMENTS:**

21 (i) **IS CERTIFIED AS A PROFESSIONAL WETLANDS SCIENTIST BY THE**
22 **SOCIETY OF WETLANDS CONSULTANTS.**

23 (ii) **HAS BEEN PERMANENTLY EMPLOYED AS A WETLANDS CONSULTANT IN**
24 **THIS STATE FOR AT LEAST THE PRECEDING 3 YEARS.**

25 (iii) **HAS PARTICIPATED WITHIN THE PRECEDING 3 YEARS IN**
26 **PREPARATION OF A WETLAND DELINEATION THAT HAS BEEN SUBMITTED TO THE**
27 **DEPARTMENT FOR THE PURPOSES OF THIS PART.**

1 (P) ~~(e)~~ "Removal of vegetation" means the manual or mechanized
 2 removal of vegetation, other than the manual de minimis removal of
 3 vegetation.

4 (Q) ~~(p)~~ "Wetland" means land characterized by the presence of
 5 water at a frequency and duration sufficient to support, and that
 6 under normal circumstances does support, wetland vegetation or
 7 aquatic life, and is commonly referred to as a bog, swamp, or marsh
 8 and which is any of the following:

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

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

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

26 Sec. 30306. (1) Except as provided in section 30307(6), to
 27 obtain a permit for a use or development listed in section 30304, a

1 person shall file an application with the department on a form
2 provided by the department. The application shall include all of
3 the following:

4 (a) The person's name and address.

5 (b) The location of the wetland.

6 (c) A description of the wetland on which the use or
7 development is to be made.

8 (d) A statement and appropriate drawings describing the
9 proposed use or development.

10 (e) The wetland owner's name and address.

11 (f) An environmental assessment of the proposed use or
12 development if requested by the department, which assessment shall
13 include the effects upon wetland benefits and the effects upon the
14 water quality, flow, and levels, and the wildlife, fish, and
15 vegetation within a contiguous lake, river, or stream.

16 (2) AN APPLICATION UNDER SUBSECTION (1) MAY BE ACCOMPANIED BY
17 1 OF THE FOLLOWING:

18 (A) A WETLAND DELINEATION PREPARED BY A QUALIFIED CONSULTANT.
19 THE DEPARTMENT MAY ACCEPT THE DELINEATION AS DETERMINATIVE.

20 (B) AN OFFER TO HAVE A WETLAND DELINEATION PREPARED BY A
21 QUALIFIED CONSULTANT IDENTIFIED IN THE OFFER. UNLESS THE DEPARTMENT
22 REJECTS THE OFFER WITHIN 7 BUSINESS DAYS AFTER RECEIPT OF THE
23 PERMIT APPLICATION, THE OFFER SHALL BE CONSIDERED TO BE ACCEPTED.
24 IF THE OFFER IS ACCEPTED, THE PROCESSING PERIOD FOR THE PERMIT
25 APPLICATION UNDER PART 13 IS TOLLED UNTIL THE PERMIT APPLICANT
26 SUBMITS A WETLAND DELINEATION BY THE IDENTIFIED QUALIFIED
27 CONSULTANT OR NOTIFIES THE DEPARTMENT IN WRITING THAT THE APPLICANT

1 WILL NOT SUBMIT A WETLAND DELINEATION. IF THE OFFER IS ACCEPTED BY
2 THE DEPARTMENT AND THE PERMIT APPLICANT SUBMITS A WETLAND
3 DELINEATION BY THE IDENTIFIED QUALIFIED CONSULTANT, THE DEPARTMENT
4 SHALL ACCEPT THE DELINEATION AS DETERMINATIVE.

5 (3) ~~(2)~~—For the purposes of subsection (1), a proposed use or
6 development of a wetland shall be considered as a single permit
7 application under this part if the scope, extent, and purpose of a
8 use or development are made known at the time of the application
9 for the permit.

10 (4) ~~(3)~~—Except as provided in subsections ~~(4)~~ and ~~(5)~~ **AND (6)**,
11 an application for a permit submitted under subsection (1) shall be
12 accompanied by the following fee:

13 (a) For a project in a category of activities for which a
14 general permit is issued under section 30312, a fee of \$100.00.

15 (b) For a permit for the removal of vegetation in an area that
16 is not more than 100 feet wide or the width of the property,
17 whichever is less, or the mowing of vegetation in excess of what is
18 allowed in section 30305(2)(p)(ii), in the area between the ordinary
19 high-water mark and the water's edge, a fee of \$50.00.

20 (c) For a major project, including any of the following, a fee
21 of \$2,000.00:

22 (i) Filling or draining of 1 acre or more of coastal or inland
23 wetland.

24 (ii) 10,000 cubic yards or more of wetland fill.

25 (iii) A new golf course impacting wetland.

26 (iv) A subdivision impacting wetland.

27 (v) A condominium impacting wetland.

1 (d) For all other projects, a fee of \$500.00.

2 (5) ~~(4)~~—A project that requires review and approval under this
3 part and 1 or more of the following is subject to only the single
4 highest permit fee required under this part or the following:

5 (a) Section 3104.

6 (b) Part 301.

7 (c) Part 323.

8 (d) Part 325.

9 (e) Section 117 of the land division act, 1967 PA 288, MCL
10 560.117.

11 (6) ~~(5)~~—If work has been done in violation of a permit
12 requirement under this part and restoration is not ordered by the
13 department, the department may accept an application for a permit
14 if the application is accompanied by a fee equal to twice the
15 permit fee required under this section.

16 (7) ~~(6)~~—If the department determines that a permit is not
17 required under this part, the department shall promptly refund the
18 fee paid under this section.

19 Sec. 30307. (1) Within 60 days after receipt of the completed
20 application and fee, the department may hold a hearing. If a
21 hearing is held, it shall be held in the county where the wetland
22 to which the permit is to apply is located. Notice of the hearing
23 shall be made in the same manner as for the promulgation of rules
24 under the administrative procedures act of 1969, 1969 PA 306, MCL
25 24.201 to 24.328. The department may approve or disapprove a permit
26 application without a public hearing unless a person requests a
27 hearing in writing within 20 days after the mailing of notification

1 of the permit application as required by subsection (3) or unless
2 the department determines that the permit application is of
3 significant impact so as to warrant a public hearing. **THE**
4 **DEPARTMENT SHALL NOT DISAPPROVE A PERMIT APPLICATION UNLESS THE**
5 **DEPARTMENT HAS INSPECTED THE PREMISES WHERE THE ACTIVITY DESCRIBED**
6 **IN SECTION 30304 IS PROPOSED TO TAKE PLACE. THIS INSPECTION**
7 **REQUIREMENT DOES NOT APPLY IF THE DEPARTMENT IS DENIED ENTRY TO THE**
8 **PREMISES.**

9 (2) The action taken by the department on a permit application
10 under this part and part 13 may be appealed pursuant to the
11 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
12 24.328. A property owner may, after exhaustion of administrative
13 remedies, bring appropriate legal action in a court of competent
14 jurisdiction.

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

27 (4) A local unit of government may regulate wetland within its

1 boundaries, by ordinance, only as provided under this part. This
2 subsection is supplemental to the existing authority of a local
3 unit of government. An ordinance adopted by a local unit of
4 government pursuant to this subsection shall comply with all of the
5 following:

6 (a) The ordinance shall not provide a different definition of
7 wetland than is provided in this part, except that a wetland
8 ordinance may regulate wetland of less than 5 acres in size.

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

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

12 (d) The ordinance shall not require a permit for uses that are
13 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 receipt,
22 the local unit of government shall forward a copy of each
23 application along with any state fees that may have been submitted
24 under section 30306 to the department. The department shall begin
25 reviewing the application as provided in this part. The local unit
26 of government shall review the application pursuant to its
27 ordinance and shall modify, approve, or deny the application within

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

1 the department at any time within 45 days after the local unit of
2 government's receipt of the permit application.

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