

HOUSE BILL No. 4342

February 18, 1997, Introduced by Reps. Alley, Callahan, Hale, Varga, Kaza, Gire, Freeman, Martinez, Horton, McNutt, Dalman, Anthony, Mans, Prusi, LaForge, Tesanovich, Gernaat, Cherry, Lowe, Goschka, Green, LeTarte and Wetters and referred to the Committee on Conservation, Environment and Recreation.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 301 (MCL 324.301) and by adding sections 1102
and 1103.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 301. Except as otherwise defined in this act, as used
2 in this act:

3 (A) "BOARD" MEANS THE PERMIT REVIEW BOARD CREATED IN
4 SECTION 1103.

5 (B) ~~-(a)-~~ "Commission" means the commission of natural
6 resources.

7 (C) ~~-(b)-~~ "Department" means the director of the department
8 of natural resources or his or her designee to whom the director
9 delegates a power or duty by written instrument.

1 (D) ~~(c)~~ "Department of natural resources" means the
2 principal state department created in section 501.

3 (E) ~~(d)~~ "Director" means the director of the department of
4 natural resources.

5 (F) ~~(e)~~ "Local unit of government" means a municipality or
6 county.

7 (G) ~~(f)~~ "Municipality" means a city, village, or
8 township.

9 (H) ~~(g)~~ "Person" means an individual, partnership, corpo-
10 ration, association, governmental entity, or other legal entity.

11 (I) ~~(h)~~ "Public domain" means all land owned by the state
12 or land deeded to the state under state law.

13 (J) ~~(i)~~ "Rule" means a rule promulgated pursuant to the
14 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
15 ~~Acts of 1969, being sections 24.201 to 24.328 of the Michigan~~
16 ~~Compiled Laws~~ 1969 PA 306, MCL 24.201 TO 24.328.

17 SEC. 1102. (1) IF A PERSON HAS LEGAL STANDING TO CHALLENGE
18 A FINAL DECISION OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY UNDER
19 THIS ACT REGARDING THE ISSUANCE, DENIAL, SUSPENSION, REVOCATION,
20 ANNULMENT, WITHDRAWAL, RECALL, CANCELLATION, OR AMENDMENT OF A
21 PERMIT OR OPERATING LICENSE, THE BOARD, UPON REQUEST OF THAT
22 PERSON, SHALL REVIEW THE DECISION AND MAKE THE FINAL AGENCY
23 DECISION. A PRELIMINARY, PROCEDURAL, OR INTERMEDIATE DECISION OF
24 THE DEPARTMENT OF ENVIRONMENTAL QUALITY IS REVIEWABLE BY THE
25 BOARD ONLY IF THE BOARD ELECTS TO GRANT A REVIEW. IF A PERSON IS
26 GRANTED REVIEW BY THE BOARD UNDER THIS SECTION, THE PERSON IS
27 CONSIDERED TO HAVE EXHAUSTED HIS OR HER ADMINISTRATIVE REMEDIES

1 WITH REGARD TO THAT MATTER. THE BOARD MAY UTILIZE ADMINISTRATIVE
2 LAW JUDGES OR HEARING OFFICERS TO CONDUCT THE REVIEW OF DECISIONS
3 AS CONTESTED CASE HEARINGS AND TO ISSUE PROPOSALS FOR DECISIONS
4 AS PROVIDED BY LAW OR RULE.

5 (2) IN ALL INSTANCES EXCEPT THOSE DESCRIBED IN
6 SUBSECTION (1), IF A PERSON HAS LEGAL STANDING TO CHALLENGE A
7 FINAL DECISION OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY UNDER
8 THIS ACT, THAT PERSON MAY SEEK DIRECT REVIEW BY THE COURTS AS
9 PROVIDED BY LAW. DIRECT REVIEW BY THE COURTS IS AVAILABLE TO
10 THAT PERSON AS AN ALTERNATIVE TO ANY ADMINISTRATIVE REMEDY THAT
11 IS PROVIDED IN THIS ACT. A PRELIMINARY, PROCEDURAL, OR INTERME-
12 DIATE ACTION OR RULING OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY
13 IS NOT IMMEDIATELY REVIEWABLE, EXCEPT THAT THE COURT MAY GRANT
14 LEAVE FOR REVIEW OF A PRELIMINARY, PROCEDURAL, OR INTERMEDIATE
15 ACTION OR RULING IF THE COURT DETERMINES THAT REVIEW OF THE FINAL
16 DECISION WOULD NOT PROVIDE AN ADEQUATE REMEDY. IF A PERSON IS
17 GRANTED DIRECT REVIEW BY THE COURTS UNDER THIS SECTION, THE
18 PERSON IS CONSIDERED TO HAVE EXHAUSTED HIS OR HER ADMINISTRATIVE
19 REMEDIES WITH REGARD TO THAT MATTER.

20 (3) IF THE COURT DOES NOT REVIEW A DECISION OF THE DEPART-
21 MENT OF ENVIRONMENTAL QUALITY BROUGHT BEFORE THE COURT AS PRO-
22 VIDED IN THIS SECTION, THE PERSON WITH LEGAL STANDING RETAINS ANY
23 ADMINISTRATIVE APPEAL RIGHTS THAT ARE OTHERWISE PROVIDED BY LAW.

24 (4) IF THE COURT REVIEWS A PRELIMINARY, PROCEDURAL, OR
25 INTERMEDIATE DECISION OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY
26 BROUGHT BEFORE THE COURT AS PROVIDED IN THIS SECTION, THE PERSON
27 WITH LEGAL STANDING RETAINS THE RIGHT TO JUDICIAL REVIEW OF THE

1 FINAL DECISION OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY AS
2 PROVIDED BY LAW.

3 SEC. 1103. (1) THE PERMIT REVIEW BOARD IS CREATED WITHIN
4 THE DEPARTMENT OF ENVIRONMENTAL QUALITY.

5 (2) THE BOARD SHALL CONSIST OF THE DIRECTOR OF THE DEPART-
6 MENT OF ENVIRONMENTAL QUALITY, THE ATTORNEY GENERAL, AND 3 INDI-
7 VIDUALS APPOINTED BY THE GOVERNOR, WITH THE ADVICE AND CONSENT OF
8 THE SENATE, WHO HAVE KNOWLEDGE AND EXPERTISE IN 1 OR MORE SUBJECT
9 AREAS THAT ARE UNDER THE REGULATORY JURISDICTION OF THE DEPART-
10 MENT OF ENVIRONMENTAL QUALITY.

11 (3) THE MEMBERS FIRST APPOINTED TO THE BOARD SHALL BE
12 APPOINTED WITHIN 90 DAYS AFTER THE EFFECTIVE DATE OF THIS
13 SECTION.

14 (4) MEMBERS OF THE BOARD SHALL SERVE FOR TERMS OF 3 YEARS,
15 OR UNTIL A SUCCESSOR IS APPOINTED, WHICHEVER IS LATER, EXCEPT
16 THAT OF THE MEMBERS FIRST APPOINTED, 1 SHALL SERVE FOR 1 YEAR, 1
17 SHALL SERVE FOR 2 YEARS, AND 1 SHALL SERVE FOR 3 YEARS.

18 (5) IF A VACANCY OCCURS ON THE BOARD, THE BOARD SHALL MAKE
19 AN APPOINTMENT FOR THE UNEXPIRED TERM IN THE SAME MANNER AS THE
20 ORIGINAL APPOINTMENT.

21 (6) THE GOVERNOR MAY REMOVE A MEMBER OF THE BOARD FOR INCOM-
22 PETENCY, DERELICTION OF DUTY, MALFEASANCE, MISFEASANCE, OR NON-
23 FEASANCE IN OFFICE, OR ANY OTHER GOOD CAUSE.

24 (7) THE FIRST MEETING OF THE BOARD SHALL BE CALLED BY THE
25 DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY. AT THE
26 FIRST MEETING, THE BOARD SHALL ELECT FROM AMONG ITS MEMBERS A
27 CHAIRPERSON AND OTHER OFFICERS AS IT CONSIDERS NECESSARY OR

1 APPROPRIATE. AFTER THE FIRST MEETING, THE BOARD SHALL MEET AT
2 LEAST ANNUALLY TO ELECT A CHAIRPERSON AND OTHER OFFICERS, AND
3 OTHERWISE AS NECESSARY TO CARRY OUT ITS DUTIES AND
4 RESPONSIBILITIES.

5 (8) A MAJORITY OF THE MEMBERS OF THE BOARD CONSTITUTES A
6 QUORUM FOR THE TRANSACTION OF BUSINESS AT A MEETING OF THE
7 BOARD. A MAJORITY OF THE MEMBERS OF THE BOARD ARE REQUIRED FOR
8 OFFICIAL ACTION OF THE BOARD.

9 (9) THE BUSINESS WHICH THE BOARD MAY PERFORM SHALL BE CON-
10 DUCTED AT A PUBLIC MEETING OF THE BOARD HELD IN COMPLIANCE WITH
11 THE OPEN MEETINGS ACT, 1976 PA 267, MCL 15.261 TO 15.275.

12 (10) A WRITING PREPARED, OWNED, USED, IN THE POSSESSION OF,
13 OR RETAINED BY THE BOARD IN THE PERFORMANCE OF AN OFFICIAL FUNC-
14 TION IS SUBJECT TO THE FREEDOM OF INFORMATION ACT, 1976 PA 442,
15 MCL 15.231 TO 15.246.

16 (11) MEMBERS OF THE BOARD SHALL BE REIMBURSED FOR THEIR
17 ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF
18 THEIR OFFICIAL DUTIES AS MEMBERS OF THE BOARD.

19 (12) THE BOARD SHALL CARRY OUT ITS DUTIES AND RESPONSIBILI-
20 TIES AS PROVIDED IN THIS ACT AND AS OTHERWISE PROVIDED BY LAW.