

HOUSE BILL No. 4180

February 11, 2003, Introduced by Reps. Kolb, Law, Gielegem, Stallworth, McConico and Minore 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 sections 30301, 30307, and 30309 (MCL 324.30301, 324.30307, and 324.30309), sections 30301 and 30309 as added by 1995 PA 59 and section 30307 as amended by 1998 PA 228, and by adding sections 30301a and 30324.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 30301. As used in this part:

2 (a) "Conservation easement" means that term as defined in
3 section 2140.

4 (b) "Department" means the department of environmental
5 quality.

6 (c) ~~-(a)-~~ "Fill material" means **pilings**, soil, rocks, sand,
7 waste of any kind, or any other material that displaces soil or
8 water or reduces water retention potential.

1 **(d)** ~~-(b)-~~ "Minor drainage" includes ditching and tiling for
2 the removal of excess soil moisture incidental to the planting,
3 cultivating, protecting, or harvesting of crops or improving the
4 productivity of land in established use for agriculture,
5 horticulture, silviculture, or lumbering.

6 ~~(c) "Person" means an individual, sole proprietorship,~~
7 ~~partnership, corporation, association, municipality, this state,~~
8 ~~and instrumentality or agency of this state, the federal~~
9 ~~government, or an instrumentality or agency of the federal~~
10 ~~government, or other legal entity.~~

11 **(e) "Vernal pond" means a naturally occurring confined**
12 **depression of any size without a permanent aboveground outlet**
13 **that meets all of the following requirements:**

14 **(i) Has surface water at any time during the growing season.**

15 **(ii) Provides habitat for amphibians or other species**
16 **determined by the department of natural resources to depend upon**
17 **vernal ponds for all or part of their life cycle.**

18 **(iii) Lacks an adult fish population.**

19 **(iv) Lacks abundant herbaceous vegetation.**

20 **(f)** ~~-(d)-~~ "Wetland" means land characterized by the presence
21 of water at a frequency and duration sufficient to support, and
22 that under normal circumstances does support, wetland vegetation
23 or aquatic life, and is commonly referred to as a bog, swamp,
24 **vernal pond**, or marsh and which is any of the following:

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

27 **(ii) Not contiguous to the Great Lakes, an inland lake or**

1 pond, or a river or stream; and more than ~~5 acres~~ **1 acre** in
2 size; except this subparagraph shall not be of effect, except for
3 the purpose of inventorying, in counties of less than 100,000
4 population until the department certifies to the commission it
5 has substantially completed its inventory of wetlands in that
6 county.

7 (iii) Not contiguous to the Great Lakes, an inland lake or
8 pond, or a river or stream; and ~~5 acres~~ **1 acre** or less in size
9 if, **subject to section 30301a**, the department determines that
10 protection of the area is essential to the preservation of the
11 natural resources of the state from pollution, impairment, or
12 destruction and the department has so notified the owner; except
13 this subparagraph may be utilized regardless of wetland size in a
14 county in which subparagraph (ii) is of no effect; except for the
15 purpose of inventorying, at the time.

16 **Sec. 30301a. (1) To determine that protection of an area**
17 **that is not contiguous to the Great Lakes, an inland lake or**
18 **pond, or a river or stream and that is 1 acre or less in size is**
19 **essential to the preservation of the natural resources of this**
20 **state as provided in section 30301(f)(iii), the department must**
21 **find that 1 or more of the following apply to the site:**

22 (a) The site supports state or federal endangered or
23 threatened plants, fish, or wildlife appearing on a list
24 specified in section 36505.

25 (b) The site represents what is identified as a state rare or
26 unique ecosystem.

27 (c) The site supports plants or animals of an identified

1 state importance.

2 (d) The site provides groundwater recharge documented by a
3 public agency.

4 (e) The site provides flood and storm water control by the
5 hydrologic absorption and storage capacity of the wetland.

6 (f) The site provides wildlife habitat by providing breeding,
7 nesting, or feeding grounds or cover for waterfowl, including
8 migratory waterfowl, and rare, threatened, or endangered wildlife
9 species.

10 (g) The site protects valuable watersheds and groundwater,
11 including the recharging of groundwater supplies.

12 (h) The site provides pollution treatment by serving as a
13 biological and chemical oxidation basin.

14 (i) The site provides erosion control by serving as a
15 sedimentation area and filtering basin, absorbing silt and
16 organic matter.

17 (j) The site provides sources of nutrients in aquatic food
18 cycles and nursery grounds and sanctuaries for fish.

19 (2) A person may request the department in writing to make a
20 determination under subsection (1) with respect to an area
21 described in subsection (1). If the person making the request is
22 not the owner of the property where the area is located, within 1
23 month after receipt of the request, the department shall, in
24 writing, notify the owner that the request has been received.
25 The notice shall explain that the owner may, within 3 months
26 after the notice is sent, submit to the department in writing
27 information relevant to the department's determination. In

1 making its determination, the department shall consider
2 information submitted by the owner, relevant written information
3 submitted by the requester with the request, and other
4 information the department considers relevant. The department
5 shall make the determination and notify the requester and owner
6 of the determination in writing within 5 months after receipt of
7 the request.

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

21 (2) If a hearing is not held, the department shall approve or
22 disapprove the permit application within 90 days after the
23 completed permit application is filed with the department. If a
24 hearing is held, the department shall approve or disapprove the
25 permit application within 90 days after the conclusion of the
26 hearing. The department may approve a permit application,
27 request modifications in the application, or deny the permit

1 application. If the department approves the permit application,
2 the department shall prepare and send the permit to the
3 applicant. If the department denies, or requests a modification
4 of, the permit application, the department shall send notice of
5 the denial or modification request and the reasons for the denial
6 or the modifications requested to the applicant. Department
7 approval may include the issuance of a permit containing
8 conditions necessary for compliance with this part. If the
9 department does not approve or disapprove the permit application
10 within the time provided by this subsection, the permit
11 application shall be considered approved, and the department
12 shall be considered to have made the determinations required by
13 section 30311. The action taken by the department may be
14 appealed pursuant to the administrative procedures act of 1969,
15 1969 PA 306, MCL 24.201 to 24.328. A property owner may, after
16 exhaustion of administrative remedies, bring appropriate legal
17 action in a court of competent jurisdiction.

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

1 development and of the wetland affected, and a summary statement
2 of the purpose of the use or development.

3 (4) A local unit of government may regulate wetland within
4 its boundaries, by ordinance, only as provided under this part.
5 This subsection is supplemental to the existing authority of a
6 local unit of government. An ordinance adopted by a local unit
7 of government pursuant to this subsection shall comply with all
8 of the following:

9 (a) The ordinance shall not provide a different definition of
10 wetland than is provided in this part, except that a wetland
11 ordinance may regulate wetland of ~~less than 5 acres~~ **1 acre or**
12 **less** in size.

13 (b) If the ordinance regulates wetland that is ~~smaller than~~
14 ~~2 acres~~ **1 acre or less** in size, the ordinance shall comply with
15 section 30309.

16 (c) The ordinance shall comply with sections 30308 and
17 30310.

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

21 (5) Each local unit of government that adopts an ordinance
22 regulating wetlands under subsection (4) shall notify the
23 department.

24 (6) A local unit of government that adopts an ordinance
25 regulating wetlands shall use an application form supplied by the
26 department, and ~~each a person applying for a permit shall make~~
27 ~~application~~ **shall apply** directly to the local unit of government

1 **for a permit.** Upon receipt, the local unit of government shall
2 forward a copy of each application along with any state fees that
3 may have been submitted under section 30306 to the department.
4 The department shall begin reviewing the application as provided
5 in this part. The local unit of government shall review the
6 application pursuant to its ordinance and shall modify, approve,
7 or deny the application within 90 days after receipt. If a
8 municipality does not approve or disapprove the permit
9 application within the time period provided by this subsection,
10 the permit application shall be considered approved, and the
11 municipality shall be considered to have made the determinations
12 as listed in section 30311. The denial of a permit shall be
13 accompanied by a written statement of all reasons for denial.
14 The failure to supply complete information with a permit
15 application may be reason for denial of a permit. ~~The~~ **Upon**
16 **request, the** department shall inform ~~any interested~~ a person
17 whether or not a local unit of government has an ordinance
18 regulating wetlands. If the department receives an application
19 with respect to a wetland ~~which is~~ located in a local unit of
20 government which has an ordinance regulating wetlands, the
21 department immediately shall forward the application to the local
22 unit of government, which shall modify, deny, or approve the
23 application under this subsection. The local unit of government
24 shall notify the department of its decision. The department
25 shall proceed as provided in this part.

26 (7) If a local unit of government does not have an ordinance
27 regulating wetlands, the department shall promptly send a copy of

1 the permit application to the local unit of government where the
2 wetland is located. The local unit of government may review the
3 application; may hold a hearing on the application; and may
4 recommend approval, modification, or denial of the application to
5 the department. The recommendations of the local unit of
6 government shall be made and returned to the department within 45
7 days after the local unit of government's receipt of the permit
8 application. The department shall approve, modify, or deny the
9 application as provided in this part.

10 (8) In addition to the requirements of subsection (7), the
11 department shall notify the local unit of government that the
12 department has issued a permit under this part within the
13 jurisdiction of that local unit of government within 15 days ~~of~~
14 **after** issuance of the permit. The department shall enclose a
15 copy of the permit with the notice.

16 Sec. 30309. A local unit of government that has adopted an
17 ordinance under section 30307(4) that regulates wetland within
18 its jurisdiction that is ~~less than 2 acres~~ **1 acre or less** in
19 size shall comply with this section. Upon application for a
20 wetland use permit in a wetland that is ~~less than 2 acres~~ **1**
21 **acre or less** in size, the local unit of government shall approve
22 the permit unless the local unit of government determines that
23 the wetland is essential to the preservation of the natural
24 resources of the local unit of government and provides these
25 findings, in writing, to the permit applicant stating the reasons
26 for this determination. ~~In making~~ **To make** this determination,
27 the local unit of government must find that 1 or more of the

1 following exist at the particular site:

2 (a) The site supports state or federal endangered or
3 threatened plants, fish, or wildlife appearing on a list
4 specified in section 36505.

5 (b) The site represents what is identified as a locally rare
6 or unique ecosystem.

7 (c) The site supports plants or animals of an identified
8 local importance.

9 (d) The site provides groundwater recharge documented by a
10 public agency.

11 (e) The site provides flood and storm **water** control by the
12 hydrologic absorption and storage capacity of the wetland.

13 (f) The site provides wildlife habitat by providing breeding,
14 nesting, or feeding grounds or cover for ~~forms of wildlife,~~
15 waterfowl, including migratory waterfowl, and rare, threatened,
16 or endangered wildlife species.

17 (g) The site ~~provides protection of subsurface water~~
18 ~~resources and provision of~~ **protects** valuable watersheds and
19 **groundwater, including the** recharging **of** groundwater supplies.

20 (h) The site provides pollution treatment by serving as a
21 biological and chemical oxidation basin.

22 (i) The site provides erosion control by serving as a
23 sedimentation area and filtering basin, absorbing silt and
24 organic matter.

25 (j) The site provides sources of nutrients in ~~water~~ **aquatic**
26 food cycles and nursery grounds and sanctuaries for fish.

27 **Sec. 30324. The department of natural resources shall**

1 establish a vernal pond conservation and education program.
2 Under this program, the department of natural resources shall do
3 all of the following:

4 (a) Educate the general public and owners of land containing
5 vernal ponds on the significant plant, wildlife, and ecosystem
6 values supported by vernal ponds.

7 (b) Promote the identification and protection of vernal
8 ponds.

9 (c) Provide recognition to owners of land containing vernal
10 ponds who certify in writing that they will preserve these vernal
11 ponds for a period of not less than 10 years.

12 (d) Obtain conservation easements from willing owners of land
13 containing vernal ponds to protect vernal ponds and vernal pond
14 buffer zones.