



HOUSE BILL No. 5179

October 3, 1995, Introduced by Reps. Alley, Dolan, Freeman and Wetters and referred to the Committee on Conservation, Environment and Great Lakes.

A bill to amend section 301 of Act No. 451 of the Public Acts of 1994, entitled "Natural resources and environmental protection act," being section 324.301 of the Michigan Compiled Laws; and to add sections 1102 and 1103.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 301 of Act No. 451 of the Public Acts of
2 1994, being section 324.301 of the Michigan Compiled Laws, is
3 amended and sections 1102 and 1103 are added to read as follows:

4 Sec. 301. Except as otherwise defined in this act, as used
5 in this act:

6 (A) "BOARD" MEANS THE PERMIT REVIEW BOARD CREATED IN
7 SECTION 1103.

8 (B) ~~-(a)-~~ "Commission" means the commission of natural
9 resources.

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

4 (D) ~~(c)~~ "Department of natural resources" means the prin-
5 cipal state department created in section 501.

6 (E) ~~(d)~~ "Director" means the director of the department of
7 natural resources.

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

10 (G) ~~(f)~~ "Municipality" means a city, village, or
11 township.

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

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

16 (J) ~~(i)~~ "Rule" means a rule promulgated pursuant to the
17 administrative procedures act of 1969, Act No. 306 of the Public
18 Acts of 1969, being sections 24.201 to 24.328 of the Michigan
19 Compiled Laws.

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

1 BOARD ONLY IF THE BOARD ELECTS TO GRANT A REVIEW. IF A PERSON IS
2 GRANTED REVIEW BY THE BOARD UNDER THIS SECTION, THE PERSON IS
3 CONSIDERED TO HAVE EXHAUSTED HIS OR HER ADMINISTRATIVE REMEDIES
4 WITH REGARD TO THAT MATTER. THE BOARD MAY UTILIZE ADMINISTRATIVE
5 LAW JUDGES OR HEARING OFFICERS TO CONDUCT THE REVIEW OF DECISIONS
6 AS CONTESTED CASE HEARINGS AND TO ISSUE PROPOSALS FOR DECISIONS
7 AS PROVIDED BY LAW OR RULE.

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

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

1 (4) IF THE COURT REVIEWS A PRELIMINARY, PROCEDURAL, OR
2 INTERMEDIATE DECISION OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY
3 BROUGHT BEFORE THE COURT AS PROVIDED IN THIS SECTION, THE PERSON
4 WITH LEGAL STANDING RETAINS THE RIGHT TO JUDICIAL REVIEW OF THE
5 FINAL DECISION OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY AS PRO-
6 VIDED BY LAW.

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

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

15 (3) THE MEMBERS FIRST APPOINTED TO THE BOARD SHALL BE
16 APPOINTED WITHIN 90 DAYS AFTER THE EFFECTIVE DATE OF THIS
17 SECTION.

18 (4) MEMBERS OF THE BOARD SHALL SERVE FOR TERMS OF 3 YEARS,
19 OR UNTIL A SUCCESSOR IS APPOINTED, WHICHEVER IS LATER, EXCEPT
20 THAT OF THE MEMBERS FIRST APPOINTED, 1 SHALL SERVE FOR 1 YEAR, 1
21 SHALL SERVE FOR 2 YEARS, AND 1 SHALL SERVE FOR 3 YEARS.

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

25 (6) THE GOVERNOR MAY REMOVE A MEMBER OF THE BOARD FOR INCOM-
26 PETENCY, DERELICTION OF DUTY, MALFEASANCE, MISFEASANCE, OR
27 NONFEASANCE IN OFFICE, OR ANY OTHER GOOD CAUSE.

1 (7) THE FIRST MEETING OF THE BOARD SHALL BE CALLED BY THE
2 DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY. AT THE
3 FIRST MEETING, THE BOARD SHALL ELECT FROM AMONG ITS MEMBERS A
4 CHAIRPERSON AND OTHER OFFICERS AS IT CONSIDERS NECESSARY OR
5 APPROPRIATE. AFTER THE FIRST MEETING, THE BOARD SHALL MEET AT
6 LEAST ANNUALLY TO ELECT A CHAIRPERSON AND OTHER OFFICERS, AND
7 OTHERWISE AS NECESSARY TO CARRY OUT ITS DUTIES AND
8 RESPONSIBILITIES.

9 (8) A MAJORITY OF THE MEMBERS OF THE BOARD CONSTITUTES A
10 QUORUM FOR THE TRANSACTION OF BUSINESS AT A MEETING OF THE
11 BOARD. A MAJORITY OF THE MEMBERS OF THE BOARD ARE REQUIRED FOR
12 OFFICIAL ACTION OF THE BOARD.

13 (9) THE BUSINESS WHICH THE BOARD MAY PERFORM SHALL BE CON-
14 DUCTED AT A PUBLIC MEETING OF THE BOARD HELD IN COMPLIANCE WITH
15 THE OPEN MEETINGS ACT, ACT NO. 267 OF THE PUBLIC ACTS OF 1976,
16 BEING SECTIONS 15.261 TO 15.275 OF THE MICHIGAN COMPILED LAWS.

17 (10) A WRITING PREPARED, OWNED, USED, IN THE POSSESSION OF,
18 OR RETAINED BY THE BOARD IN THE PERFORMANCE OF AN OFFICIAL FUNC-
19 TION IS SUBJECT TO THE FREEDOM OF INFORMATION ACT, ACT NO. 442 OF
20 THE PUBLIC ACTS OF 1976, BEING SECTIONS 15.231 TO 15.246 OF THE
21 MICHIGAN COMPILED LAWS.

22 (11) MEMBERS OF THE BOARD SHALL BE REIMBURSED FOR THEIR
23 ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF
24 THEIR OFFICIAL DUTIES AS MEMBERS OF THE BOARD.

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