

HOUSE BILL No. 4118

January 31, 2001, Introduced by Reps. Basham, Kolb, Schermesser, Bernero and Lemmons 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, horti-
5 culture, silviculture, or lumbering.

6 (E) ~~(c)~~ "Person" means an individual, sole proprietorship,
7 partnership, corporation, association, municipality, this state
8 ~~—, and~~ OR AN instrumentality or agency of this state, the fed-
9 eral government ~~—,~~ or an instrumentality or agency of the fed-
10 eral government, or ANY other legal entity.

11 (F) "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
15 SEASON.

16 (ii) PROVIDES HABITAT FOR AMPHIBIANS OR OTHER SPECIES DETER-
17 MINED BY THE DEPARTMENT OF NATURAL RESOURCES TO DEPEND UPON
18 VERNAL PONDS FOR ALL OR PART OF THEIR LIFE CYCLE.

19 (iii) LACKS AN ADULT FISH POPULATION.

20 (iv) LACKS ABUNDANT HERBACEOUS VEGETATION.

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

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

1 (ii) Not contiguous to the Great Lakes, an inland lake or
2 pond, or a river or stream; and more than ~~5 acres~~ 1 ACRE in
3 size; except this subparagraph shall not be of effect, except for
4 the purpose of inventorying, in counties of less than 100,000
5 population until the department certifies to the commission it
6 has substantially completed its inventory of wetlands in that
7 county.

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

17 SEC. 30301A. (1) TO DETERMINE THAT PROTECTION OF AN AREA
18 THAT IS NOT CONTIGUOUS TO THE GREAT LAKES, AN INLAND LAKE OR
19 POND, OR A RIVER OR STREAM AND THAT IS 1 ACRE OR LESS IN SIZE IS
20 ESSENTIAL TO THE PRESERVATION OF THE NATURAL RESOURCES OF THIS
21 STATE AS PROVIDED IN SECTION 30301(G)(iii), THE DEPARTMENT MUST
22 FIND THAT 1 OR MORE OF THE FOLLOWING APPLY TO THE SITE:

23 (A) THE SITE SUPPORTS STATE OR FEDERAL ENDANGERED OR THREAT-
24 ENED PLANTS, FISH, OR WILDLIFE APPEARING ON A LIST SPECIFIED IN
25 SECTION 36505.

26 (B) THE SITE REPRESENTS WHAT IS IDENTIFIED AS A STATE RARE
27 OR UNIQUE ECOSYSTEM.

1 (C) THE SITE SUPPORTS PLANTS OR ANIMALS OF AN IDENTIFIED
2 STATE IMPORTANCE.

3 (D) THE SITE PROVIDES GROUNDWATER RECHARGE DOCUMENTED BY A
4 PUBLIC AGENCY.

5 (E) THE SITE PROVIDES FLOOD AND STORM WATER CONTROL BY THE
6 HYDROLOGIC ABSORPTION AND STORAGE CAPACITY OF THE WETLAND.

7 (F) THE SITE PROVIDES WILDLIFE HABITAT BY PROVIDING BREED-
8 ING, NESTING, OR FEEDING GROUNDS OR COVER FOR WATERFOWL, INCLUD-
9 ING MIGRATORY WATERFOWL, AND RARE, THREATENED, OR ENDANGERED
10 WILDLIFE SPECIES.

11 (G) THE SITE PROTECTS VALUABLE WATERSHEDS AND GROUNDWATER,
12 INCLUDING THE RECHARGING OF GROUNDWATER SUPPLIES.

13 (H) THE SITE PROVIDES POLLUTION TREATMENT BY SERVING AS A
14 BIOLOGICAL AND CHEMICAL OXIDATION BASIN.

15 (I) THE SITE PROVIDES EROSION CONTROL BY SERVING AS A SEDI-
16 MENTATION AREA AND FILTERING BASIN, ABSORBING SILT AND ORGANIC
17 MATTER.

18 (J) THE SITE PROVIDES SOURCES OF NUTRIENTS IN AQUATIC FOOD
19 CYCLES AND NURSERY GROUNDS AND SANCTUARIES FOR FISH.

20 (2) A PERSON MAY REQUEST THE DEPARTMENT IN WRITING TO MAKE A
21 DETERMINATION UNDER SUBSECTION (1) WITH RESPECT TO AN AREA
22 DESCRIBED IN SUBSECTION (1). IF THE PERSON MAKING THE REQUEST IS
23 NOT THE OWNER OF THE PROPERTY WHERE THE AREA IS LOCATED, WITHIN 1
24 MONTH AFTER RECEIPT OF THE REQUEST, THE DEPARTMENT SHALL, IN
25 WRITING, NOTIFY THE OWNER THAT THE REQUEST HAS BEEN RECEIVED.
26 THE NOTICE SHALL EXPLAIN THAT THE OWNER MAY, WITHIN 3 MONTHS
27 AFTER THE NOTICE IS SENT, SUBMIT TO THE DEPARTMENT IN WRITING

1 INFORMATION RELEVANT TO THE DEPARTMENT'S DETERMINATION. IN
2 MAKING ITS DETERMINATION, THE DEPARTMENT SHALL CONSIDER INFORMA-
3 TION SUBMITTED BY THE OWNER, RELEVANT WRITTEN INFORMATION SUBMIT-
4 TED BY THE REQUESTOR WITH THE REQUEST, AND OTHER INFORMATION THE
5 DEPARTMENT CONSIDERS RELEVANT. THE DEPARTMENT SHALL MAKE THE
6 DETERMINATION AND NOTIFY THE REQUESTOR AND OWNER OF THE DETERMI-
7 NATION IN WRITING WITHIN 5 MONTHS AFTER RECEIPT OF THE REQUEST.

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

21 (2) If a hearing is not held, the department shall approve
22 or 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 condi-
8 tions necessary for compliance with this part. If the department
9 does not approve or disapprove the permit application within the
10 time provided by this subsection, the permit application shall be
11 considered approved, and the department shall be considered to
12 have made the determinations required by section 30311. The
13 action taken by the department may be appealed pursuant to the
14 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
15 24.328. A property owner may, after exhaustion of administrative
16 remedies, bring appropriate legal action in a court of competent
17 jurisdiction.

18 (3) A person who desires notification of pending permit
19 applications may make a written request to the department accom-
20 panied by an annual fee of \$25.00, which shall be credited to the
21 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 remain-
24 der of the calendar year to the persons who requested notice.
25 The biweekly list shall state the name and address of each appli-
26 cant, the location of the wetland in the proposed use or
27 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
10 of 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 reg-
25 ulating 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 applica-
9 tion within the time period provided by this subsection, the
10 permit application shall be considered approved, and the munici-
11 pality shall be considered to have made the determinations as
12 listed in section 30311. The denial of a permit shall be accom-
13 panied by a written statement of all reasons for denial. The
14 failure to supply complete information with a permit application
15 may be reason for denial of a permit. ~~The~~ UPON REQUEST, THE
16 department shall inform ~~any interested~~ A person whether or not
17 a local unit of government has an ordinance regulating wetlands.
18 If the department receives an application with respect to a wet-
19 land ~~which is~~ located in a local unit of government which has
20 an ordinance regulating wetlands, the department immediately
21 shall forward the application to the local unit of government,
22 which shall modify, deny, or approve the application under this
23 subsection. The local unit of government shall notify the
24 department of its decision. The department shall proceed as pro-
25 vided 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 rec-
4 ommend approval, modification, or denial of the application to
5 the department. The recommendations of the local unit of govern-
6 ment shall be made and returned to the department within 45 days
7 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 juris-
13 diction 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 wet-
20 land use permit in a wetland that is ~~less than 2 acres~~ 1 ACRE
21 OR LESS in size, the local unit of government shall approve the
22 permit unless the local unit of government determines that the
23 wetland is essential to the preservation of the natural resources
24 of the local unit of government and provides these findings, in
25 writing, to the permit applicant stating the reasons for this
26 determination. ~~In making~~ TO MAKE this determination, the local

1 unit of government must find that 1 or more of the following
2 exist at the particular site:

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

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

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

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

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

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

18 (g) The site ~~provides protection of subsurface water~~
19 ~~resources and provision of~~ PROTECTS valuable watersheds and
20 GROUNDWATER, INCLUDING THE recharging OF groundwater supplies.

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

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

1 (j) The site provides sources of nutrients in ~~water~~
 2 AQUATIC food cycles and nursery grounds and sanctuaries for
 3 fish.

4 SEC. 30324. THE DEPARTMENT OF NATURAL RESOURCES SHALL
 5 ESTABLISH A VERNAL POND CONSERVATION AND EDUCATION PROGRAM.
 6 UNDER THIS PROGRAM, THE DEPARTMENT OF NATURAL RESOURCES SHALL DO
 7 ALL OF THE FOLLOWING:

8 (A) EDUCATE THE GENERAL PUBLIC AND OWNERS OF LAND CONTAINING
 9 VERNAL PONDS ON THE SIGNIFICANT PLANT, WILDLIFE, AND ECOSYSTEM
 10 VALUES SUPPORTED BY VERNAL PONDS.

11 (B) PROMOTE THE IDENTIFICATION AND PROTECTION OF VERNAL
 12 PONDS.

13 (C) PROVIDE RECOGNITION TO OWNERS OF LAND CONTAINING VERNAL
 14 PONDS WHO CERTIFY IN WRITING THAT THEY WILL PRESERVE THESE VERNAL
 15 PONDS FOR A PERIOD OF NOT LESS THAN 10 YEARS.

16 (D) OBTAIN CONSERVATION EASEMENTS FROM WILLING OWNERS OF
 17 LAND CONTAINING VERNAL PONDS TO PROTECT VERNAL PONDS AND VERNAL
 18 POND BUFFER ZONES.