

HOUSE BILL No. 5685

February 20, 2002, Introduced by Reps. Lipsey, Gielegem, Woodward, Spade, Basham, Murphy, Hale, Dennis, McConico, Schauer, Rich Brown, Bernero, Bogardus, Whitmer, Mans, Plakas, Phillips, Bovin and Kolb and referred to the Committee on Land Use and Environment.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 1101 (MCL 324.1101) and by adding part 6.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 PART 6 DEPARTMENT OF ENVIRONMENTAL QUALITY

2 SEC. 601. AS USED IN THIS PART:

3 (A) "COMMISSION" MEANS THE ENVIRONMENTAL QUALITY
4 COMMISSION.

5 (B) "DEPARTMENT" MEANS THE DEPARTMENT OF ENVIRONMENTAL
6 QUALITY.

7 (C) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT.

8 SEC. 602. THE DEPARTMENT OF ENVIRONMENTAL QUALITY CREATED
9 UNDER EXECUTIVE REORGANIZATION ORDER NO. 1995-18 SHALL POSSESS
10 THE POWERS AND PERFORM THE DUTIES GRANTED AND IMPOSED BY THIS ACT
11 AND AS OTHERWISE PROVIDED BY LAW.

1 SEC. 603. (1) THE ENVIRONMENTAL QUALITY COMMISSION IS
2 CREATED AS THE HEAD OF THE DEPARTMENT. THE COMMISSION SHALL BE
3 COMPOSED OF 7 MEMBERS, NOT MORE THAN 4 OF WHOM SHALL BE MEMBERS
4 OF THE SAME POLITICAL PARTY, APPOINTED BY THE GOVERNOR BY AND
5 WITH THE ADVICE AND CONSENT OF THE SENATE. A MEMBER OF THE COM-
6 MISSION SHALL BE SELECTED WITH SPECIAL REFERENCE TO THAT PERSON'S
7 ABILITY AND FITNESS TO DEAL WITH AT LEAST 1 OF THE PRINCIPAL
8 LINES OF ACTIVITY VESTED IN THE DEPARTMENT. THE TERM OF OFFICE
9 OF EACH MEMBER OF THE COMMISSION SHALL BE 4 YEARS. HOWEVER, OF
10 THE MEMBERS FIRST APPOINTED, 2 SHALL SERVE FOR 2 YEARS, 3 SHALL
11 SERVE FOR 3 YEARS, AND 2 SHALL SERVE FOR 4 YEARS. THE GOVERNOR
12 SHALL FILL A VACANCY OCCURRING IN THE MEMBERSHIP OF THE COMMIS-
13 SION AND MAY REMOVE A MEMBER OF THE COMMISSION FOR CAUSE AFTER A
14 HEARING. EACH MEMBER OF THE COMMISSION SHALL HOLD OFFICE UNTIL
15 THE APPOINTMENT AND QUALIFICATION OF THAT MEMBER'S SUCCESSOR.

16 (2) THE COMMISSION, WITHIN 30 DAYS AFTER HAVING QUALIFIED
17 AND ANNUALLY AFTER THAT TIME, SHALL MEET AT ITS OFFICE IN LANSING
18 AND ORGANIZE BY APPOINTING A SECRETARY, WHO NEED NOT BE A MEMBER
19 OF THE COMMISSION. THE GOVERNOR SHALL APPOINT A CHAIRPERSON OF
20 THE COMMISSION FROM AMONG ITS MEMBERS, WHO SHALL SERVE AS CHAIR-
21 PERSON AT THE PLEASURE OF THE GOVERNOR. FOUR MEMBERS OF THE COM-
22 MISSION CONSTITUTE A QUORUM FOR THE TRANSACTION OF BUSINESS. THE
23 BUSINESS WHICH THE COMMISSION MAY PERFORM SHALL BE CONDUCTED AT A
24 PUBLIC MEETING OF THE COMMISSION HELD IN COMPLIANCE WITH THE OPEN
25 MEETINGS ACT, 1976 PA 267, MCL 15.261 TO 15.275. PUBLIC NOTICE
26 OF THE TIME, DATE, AND PLACE OF THE MEETING SHALL BE GIVEN IN THE
27 MANNER REQUIRED BY THE OPEN MEETINGS ACT, 1976 PA 267, MCL 15.261

1 TO 15.275. A MEETING MAY BE CALLED BY THE CHAIRPERSON AND SHALL
2 BE CALLED ON REQUEST OF A MAJORITY OF THE MEMBERS OF THE
3 COMMISSION. MEETINGS MAY BE HELD AS OFTEN AS NECESSARY AND AT
4 OTHER PLACES THAN THE COMMISSIONERS' OFFICES AT LANSING. THE
5 COMMISSION SHALL MEET AT LEAST ONCE EACH MONTH.

6 (3) THE MEMBERS OF THE COMMISSION SHALL NOT RECEIVE COMPEN-
7 SATION UNDER THIS PART, BUT ARE ENTITLED TO REASONABLE EXPENSES
8 WHILE TRAVELING IN PERFORMANCE OF THEIR DUTIES AS PRESCRIBED BY
9 THIS ACT AND AS OTHERWISE PROVIDED BY LAW.

10 (4) THE COMMISSION SHALL APPOINT AND EMPLOY A DIRECTOR TO
11 ADMINISTER THE DEPARTMENT. THE DIRECTOR SHALL CONTINUE IN OFFICE
12 AT THE PLEASURE OF THE COMMISSION. THE COMMISSION SHALL ESTAB-
13 LISH GENERAL POLICIES RELATED TO NATURAL RESOURCES MANAGEMENT AND
14 ENVIRONMENTAL PROTECTION FOR THE GUIDANCE OF THE DIRECTOR IN
15 ADMINISTERING HIS OR HER RESPONSIBILITIES AS PROVIDED IN THIS ACT
16 AND AS OTHERWISE PROVIDED BY LAW.

17 (5) EACH MEMBER OF THE COMMISSION AND THE DIRECTOR SHALL
18 QUALIFY BY TAKING AND SUBSCRIBING TO THE CONSTITUTIONAL OATH OF
19 OFFICE AND BY FILING IT IN THE OFFICE OF THE SECRETARY OF STATE.

20 (6) THE COMMISSION SHALL HAVE APPELLATE POWERS AS ESTAB-
21 LISHED IN SECTION 1101.

22 SEC. 604. (1) THE DIRECTOR SHALL APPOINT 1 OR MORE DEPUTY
23 DIRECTORS AND OTHER ASSISTANTS AND EMPLOYEES AS ARE NECESSARY TO
24 ADMINISTER THE POWERS AND DUTIES OF THE DEPARTMENT AS PROVIDED IN
25 THIS ACT AND AS OTHERWISE PROVIDED BY LAW. A PERSON TO WHOM THE
26 DIRECTOR HAS LAWFULLY DELEGATED DECISION MAKING AUTHORITY IN
27 WRITING MAY PERFORM A DUTY OR EXERCISE A POWER CONFERRED BY LAW

1 UPON THE DEPARTMENT AT THE TIME AND TO THE EXTENT THE DUTY AND
2 POWER ARE DELEGATED TO THAT PERSON BY THE DIRECTOR. IF A VACANCY
3 IN THE OFFICE OF DIRECTOR OCCURS, OR THE DIRECTOR IS UNABLE TO
4 PERFORM THE DUTIES OF THAT OFFICE OR IS ABSENT FROM THE STATE,
5 THE POWERS AND DUTIES OF THE DIRECTOR AS PRESCRIBED BY LAW SHALL
6 BE TRANSFERRED TO AND EXERCISED BY A DEPUTY DIRECTOR UNTIL THE
7 VACANCY IS FILLED OR THE INABILITY OR ABSENCE FROM THE STATE OF
8 THE DIRECTOR CEASES.

9 (2) THE COMPENSATION OF THE DEPUTY DIRECTORS, THE ASSIST-
10 ANTS, AND THE EMPLOYEES AND THE NUMBER OF ASSISTANTS AND EMPLOY-
11 EES OF THE DEPARTMENT SHALL BE SUBJECT TO THE APPROVAL OF THE
12 STATE ADMINISTRATIVE BOARD. THE OFFICERS AND EMPLOYEES OF THE
13 DEPARTMENT ARE ENTITLED TO REASONABLE EXPENSES WHILE TRAVELING IN
14 THE PERFORMANCE OF THEIR DUTIES AS PRESCRIBED BY THIS ACT AND AS
15 OTHERWISE PROVIDED BY LAW. THE SALARIES AND EXPENSES AUTHORIZED
16 UNDER THIS PART SHALL BE PAID OUT OF THE STATE TREASURY IN THE
17 SAME MANNER AS THE SALARIES OF OTHER STATE OFFICERS AND EMPLOYEES
18 ARE PAID. THE DEPARTMENT OF MANAGEMENT AND BUDGET SHALL FURNISH
19 SUITABLE OFFICES AND OFFICE EQUIPMENT, AT LANSING, FOR THE USE OF
20 THE DEPARTMENT.

21 Sec. 1101. (1) If a person has legal standing to challenge
22 a final decision of the department under this act regarding the
23 issuance, denial, suspension, revocation, annulment, withdrawal,
24 recall, cancellation, or amendment of a permit or operating
25 license, the commission, upon request of that person, shall
26 review the decision and make the final agency decision. A
27 preliminary, procedural, or intermediate decision of the

1 department is reviewable by the commission only if the commission
2 elects to grant a review. If a person is granted review by the
3 commission under this section, the person is considered to have
4 exhausted his or her administrative remedies with regard to that
5 matter. The commission may utilize administrative law judges or
6 hearing officers to conduct the review of decisions as contested
7 case hearings and to issue proposals for decisions as provided by
8 law or rule.

9 (2) In all instances, except those described in
10 subsection (1), if a person has legal standing to challenge a
11 final decision of the department under this act, that person may
12 seek direct review by the courts as provided by law. Direct
13 review by the courts is available to that person as an alterna-
14 tive to any administrative remedy that is provided in this act.
15 A preliminary, procedural, or intermediate action or ruling of
16 the department is not immediately reviewable, except that the
17 court may grant leave for review of a preliminary, procedural, or
18 intermediate action or ruling if the court determines that review
19 of the final decision would not provide an adequate remedy. If a
20 person is granted direct review by the courts under this section,
21 the person is considered to have exhausted his or her administra-
22 tive remedies with regard to that matter.

23 (3) If the court does not review a decision of the depart-
24 ment brought before the court as provided in this section, the
25 person with legal standing retains any administrative appeal
26 rights that are otherwise provided by law.

1 (4) If the court reviews a preliminary, procedural, or
2 intermediate decision of the department brought before the court
3 as provided in this section, the person with legal standing
4 retains the right to judicial review of the final decision of the
5 department as provided by law.

6 (5) AS USED IN THIS SECTION:

7 (A) "COMMISSION" MEANS THE COMMISSION OF NATURAL RESOURCES
8 CREATED IN SECTION 501 OR THE ENVIRONMENTAL QUALITY COMMISSION
9 CREATED IN SECTION 603, AS APPLICABLE.

10 (B) "DEPARTMENT" MEANS THE DEPARTMENT OF NATURAL RESOURCES
11 OR THE DEPARTMENT OF ENVIRONMENTAL QUALITY, AS APPLICABLE.