

HOUSE BILL No. 5818

March 20, 2002, Introduced by Reps. Bradstreet, Sheltroun, DeVuyst, Voorhees, Drolet, Tabor and Kowall 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 sections 30301 and 30321 (MCL 324.30301 and
324.30321), section 30301 as added by 1995 PA 59 and
section 30321 as amended by 1996 PA 530.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 30301. As used in this part:

2 (a) "Fill material" means soil, rocks, sand, waste of any
3 kind, or any other material that displaces soil or water or
4 reduces water retention potential.

5 (b) "Minor drainage" includes ditching and tiling for the
6 removal of excess soil moisture incidental to the planting, cul-
7 tivating, protecting, or harvesting of crops or improving the
8 productivity of land in established use for agriculture,
9 horticulture, silviculture, or lumbering.

1 (c) "Person" means an individual, sole proprietorship,
2 partnership, corporation, association, municipality, this state,
3 ~~and~~ AN instrumentality or agency of this state, the federal
4 government, ~~or~~ an instrumentality or agency of the federal gov-
5 ernment, or other legal entity.

6 (d) "Wetland", SUBJECT TO SUBDIVISION (E), means land char-
7 acterized by the presence of water at a frequency and duration
8 sufficient to support, and that under normal circumstances does
9 support, wetland vegetation or aquatic life, and is commonly
10 referred to as a bog, swamp, or marsh and ~~which~~ THAT is any of
11 the following:

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

14 (ii) Not contiguous to the Great Lakes, an inland lake or
15 pond, or a river or stream; and more than 5 acres in size. ~~→~~
16 ~~except this subparagraph shall not be of effect, except for the~~
17 ~~purpose of inventorying, in counties of less than 100,000 popula-~~
18 ~~tion until the department certifies to the commission it has sub-~~
19 ~~stantially completed its inventory of wetlands in that county.~~

20 (iii) Not contiguous to the Great Lakes, an inland lake or
21 pond, or a river or stream; and 5 acres or less in size if the
22 department determines that protection of the area is essential to
23 the preservation of the natural resources of the state from pol-
24 lution, impairment, or destruction and the department has so
25 notified the owner. ~~→ except this subparagraph may be utilized~~
26 ~~regardless of wetland size in a county in which subparagraph (ii)~~

1 ~~is of no effect; except for the purpose of inventorying, at the~~
2 ~~time.~~

3 (E) "WETLAND", EXCEPT FOR THE PURPOSE OF INVENTORYING UNDER
4 SECTION 30321, DOES NOT INCLUDE LAND LOCATED IN A PARTICULAR
5 COUNTY UNLESS THE DEPARTMENT HAS CERTIFIED TO THE COMMISSION THAT
6 THE DEPARTMENT HAS ISSUED ITS FINAL INVENTORY OF WETLANDS IN THAT
7 COUNTY.

8 Sec. 30321. (1) The department shall make or cause to be
9 made a preliminary inventory of all wetland in this state on a
10 county by county basis and file the inventory with the agricul-
11 tural extension office, register of deeds, and county clerk.

12 (2) At least 2 hearings shall be held in each state planning
13 and development region created by Executive Directive
14 No. 1973-1. The hearing shall be held by the department after
15 publication and due notice so that interested parties may comment
16 on the inventory. After the hearings, the department shall issue
17 a final inventory which shall be sent and kept by the agricul-
18 tural extension office, register of deeds, and county clerk.
19 Legislators shall receive an inventory of a county or regional
20 classification for their districts including both preliminary and
21 final inventories unless the legislators request not to receive
22 the materials.

23 ~~(3) Before an inventory is made of a county, a person who~~
24 ~~owns or leases a parcel of property located in that county may~~
25 ~~request that the department of environmental quality assess~~
26 ~~whether the parcel of property or a portion of the parcel is~~

1 ~~wetland. The request shall satisfy all of the following~~
2 ~~requirements:~~

3 ~~(a) Be made on a form provided by the department.~~

4 ~~(b) Be signed by the person who owns or leases the~~
5 ~~property.~~

6 ~~(c) Contain a legal description of the parcel and, if only a~~
7 ~~portion of the parcel is to be assessed, a description of the~~
8 ~~portion to be assessed.~~

9 ~~(d) Include a map showing the location of the parcel.~~

10 ~~(e) Grant the department or its agent permission to enter on~~
11 ~~the parcel for the purpose of conducting the assessment.~~

12 ~~(4) The department shall assess the parcel within a reason=~~
13 ~~able time after the request is made. The department may enter~~
14 ~~upon the parcel to conduct the assessment. Upon completion of~~
15 ~~the assessment, the department shall provide the person with a~~
16 ~~written assessment report. The assessment report shall do all of~~
17 ~~the following:~~

18 ~~(a) Identify in detail the location of any wetland in the~~
19 ~~area assessed.~~

20 ~~(b) If wetland is present in the area assessed, describe the~~
21 ~~types of activities that require a permit under this part.~~

22 ~~(c) If the assessment report determines that the area~~
23 ~~assessed or part of the area assessed is not wetland, state that~~
24 ~~the department lacks jurisdiction under this part as to the area~~
25 ~~that the report determines is not wetland and that this determi=~~
26 ~~nation is binding on the department for 3 years from the date of~~
27 ~~the assessment.~~

~~(d) Contain the date of the assessment.~~

~~(e) Advise that the person may request the department to reassess the parcel or any part of the parcel that the person believes was erroneously determined to be wetland if the request is accompanied by evidence pertaining to wetland vegetation, soils, or hydrology that is different from or in addition to the information relied upon by the department.~~

~~(f) Advise that the assessment report does not constitute a determination of wetland that may be regulated under local ordinance or wetland areas that may be regulated under federal law and advise how a determination of wetland areas regulated under federal law may be obtained.~~

~~(g) List regulatory programs that may limit land use activities on the parcel, advise that the list is not exhaustive, and advise that the assessment report does not constitute a determination of jurisdiction under those programs. The regulatory programs listed shall be those under the following parts:~~

~~(i) Part 31, with respect to floodplains and floodways.~~

~~(ii) Part 91.~~

~~(iii) Part 301.~~

~~(iv) Part 323.~~

~~(v) Part 325.~~

~~(vi) Part 353.~~

~~(5) A person may request the department to reassess any area assessed under subsections (3) and (4) that the person believes the department erroneously determined to be wetland. The requirements of subsections (3) and (4) apply to the request,~~

1 ~~assessment, and assessment report. However, the request shall be~~
2 ~~accompanied by evidence pertaining to wetland vegetation, soils,~~
3 ~~or hydrology that is different from or in addition to the infor-~~
4 ~~mation relied upon by the department. The assessment report~~
5 ~~shall not contain the information required by subsection (4)(e).~~

6 ~~(6) If an assessment report determines that the area~~
7 ~~assessed or part of the area assessed is not a wetland regulated~~
8 ~~by the department under this part, then the area determined by~~
9 ~~the assessment report not to be a wetland is not a wetland regu-~~
10 ~~lated by the department under this part for a period of 3 years~~
11 ~~after the date of the assessment.~~

12 ~~(7) The department may charge a fee for an assessment~~
13 ~~requested under subsection (3) based upon the cost to the depart-~~
14 ~~ment of conducting an assessment.~~