

HOUSE BILL No. 6418

September 24, 2002, Introduced by Rep. Palmer 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, 30305, 32501, 32511, and 32512
(MCL 324.30301, 324.30305, 324.32501, 324.32511, and 324.32512),
sections 30301, 32501, 32511, and 32512 as added by 1995 PA 59
and section 30305 as amended by 1996 PA 550.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 30301. As used in this part:

2 (A) "BEACH MAINTENANCE ACTIVITIES" INCLUDES, BUT IS NOT
3 LIMITED TO, MANUAL OR MECHANIZED MOWING, LEVELING OF SAND, AND
4 REMOVAL OF VEGETATION AND GROOMING OF THE TOP 4 INCHES OF SOIL OF
5 THE AREA OF GREAT LAKES RIPARIAN LANDS LYING BETWEEN THE ORDINARY
6 HIGH-WATER MARK AND THE WATER'S EDGE.

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

4 (C) "GREAT LAKES RIPARIAN LANDS" MEANS PROPERTY BORDERING ON
5 THE GREAT LAKES.

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

11 (E) "ORDINARY HIGH-WATER MARK" MEANS THAT TERM AS IT IS
12 DEFINED IN SECTION 32502.

13 (F) ~~-(c)-~~ "Person" means an individual, sole proprietorship,
14 partnership, corporation, association, municipality, this state,
15 ~~and~~ AN instrumentality or agency of this state, the federal
16 government, ~~or~~ an instrumentality or agency of the federal gov-
17 ernment, or ~~other~~ ANOTHER legal entity.

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

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

25 (ii) Not contiguous to the Great Lakes, an inland lake or
26 pond, or a river or stream; and more than 5 acres in size; except
27 this subparagraph shall not be of effect, except for the purpose

1 of inventorying, in counties of less than 100,000 population
2 until the department certifies to the commission it has substan-
3 tially completed its inventory of wetlands in that county.

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

13 Sec. 30305. (1) Activities that require a permit under
14 part 325 or part 301 or a discharge that is authorized by a dis-
15 charge permit under section 3112 or 3113 do not require a permit
16 under this part.

17 (2) The following uses are allowed in a wetland without a
18 permit subject to other laws of this state and the owner's
19 regulation:

20 (a) Fishing, trapping, or hunting.

21 (b) Swimming or boating.

22 (c) Hiking.

23 (d) Grazing of animals.

24 (e) Farming, horticulture, silviculture, lumbering, and
25 ranching activities, including plowing, irrigation, irrigation
26 ditching, seeding, cultivating, minor drainage, harvesting for
27 the production of food, fiber, and forest products, or upland

1 soil and water conservation practices. Wetland altered under
2 this subdivision shall not be used for a purpose other than a
3 purpose described in this subsection without a permit from the
4 department.

5 (f) Maintenance or operation of serviceable structures in
6 existence on October 1, 1980 or constructed pursuant to this part
7 or former ~~Act No. 203 of the Public Acts of 1979~~ 1979 PA 203.

8 (g) Construction or maintenance of farm or stock ponds.

9 (h) Maintenance, operation, or improvement which includes
10 straightening, widening, or deepening of the following which is
11 necessary for the production or harvesting of agricultural
12 products:

13 (i) An existing private agricultural drain.

14 (ii) That portion of a drain legally established pursuant to
15 the drain code of 1956, ~~Act No. 40 of the Public Acts of 1956,~~
16 ~~being sections 280.1 to 280.630 of the Michigan Compiled Laws~~
17 1956 PA 40, MCL 280.1 TO 280.630, which has been constructed or
18 improved for drainage purposes.

19 (iii) A drain constructed pursuant to other provisions of
20 this part or former ~~Act No. 203 of the Public Acts of 1979~~ 1979
21 PA 203.

22 (i) Construction or maintenance of farm roads, forest roads,
23 or temporary roads for moving mining or forestry equipment, if
24 the roads are constructed and maintained in a manner to assure
25 that any adverse effect on the wetland will be otherwise
26 minimized.

1 (j) Drainage necessary for the production and harvesting of
2 agricultural products if the wetland is owned by a person who is
3 engaged in commercial farming and the land is to be used for the
4 production and harvesting of agricultural products. Except as
5 otherwise provided in this part, wetland improved under this sub-
6 division after October 1, 1980 shall not be used for nonfarming
7 purposes without a permit from the department. This subdivision
8 ~~shall~~ DOES not apply to a wetland ~~which~~ THAT is contiguous to
9 a lake or stream, or to a tributary of a lake or stream, or to a
10 wetland that the department has determined by clear and convinc-
11 ing evidence to be a wetland that is necessary to be preserved
12 for the public interest, in which case a permit is required.

13 (k) Maintenance or improvement of public streets, highways,
14 or roads, within the right-of-way and in such a manner as to
15 assure that any adverse effect on the wetland will be otherwise
16 minimized. Maintenance or improvement does not include adding
17 extra lanes, increasing the right-of-way, or deviating from the
18 existing location of the street, highway, or road.

19 (l) Maintenance, repair, or operation of gas or oil pipe-
20 lines and construction of gas or oil pipelines having a diameter
21 of 6 inches or less, if the pipelines are constructed, main-
22 tained, or repaired in a manner to assure that any adverse effect
23 on the wetland will be otherwise minimized.

24 (m) Maintenance, repair, or operation of electric transmis-
25 sion and distribution power lines and construction of distribu-
26 tion power lines, if the distribution power lines are

1 constructed, maintained, or repaired in a manner to assure that
2 any adverse effect on the wetland will be otherwise minimized.

3 (n) Operation or maintenance, including reconstruction of
4 recently damaged parts, of serviceable dikes and levees in exis-
5 tence on October 1, 1980 or constructed pursuant to this part or
6 former ~~Act No. 203 of the Public Acts of 1979~~ 1979 PA 203.

7 (o) Construction of iron and copper mining tailings basins
8 and water storage areas.

9 (P) BEACH MAINTENANCE ACTIVITIES.

10 (3) An activity in a wetland that was effectively drained
11 for farming before October 1, 1980 and that on and after
12 October 1, 1980 has continued to be effectively drained as part
13 of an ongoing farming operation is not subject to regulation
14 under this part.

15 (4) A wetland that is incidentally created as a result of 1
16 or more of the following activities is not subject to regulation
17 under this part:

18 (a) Excavation for mineral or sand mining, if the area was
19 not a wetland before excavation. This exemption does not include
20 a wetland on or adjacent to a water body of 1 acre or more in
21 size.

22 (b) Construction and operation of a water treatment pond or
23 lagoon in compliance with the requirements of state or federal
24 water pollution control regulations.

25 (c) A diked area associated with a landfill if the landfill
26 complies with the terms of the landfill construction permit and
27 if the diked area was not a wetland before diking.

1 Sec. 32501. As used in this part: ~~—, "marina~~

2 (A) "BEACH MAINTENANCE ACTIVITIES" INCLUDES, BUT IS NOT
3 LIMITED TO, MANUAL OR MECHANIZED MOWING, LEVELING OF SAND, AND
4 REMOVAL OF VEGETATION AND GROOMING OF THE TOP 4 INCHES OF SOIL OF
5 THE AREA OF GREAT LAKES RIPARIAN LANDS LYING BETWEEN THE ORDINARY
6 HIGH-WATER MARK AND THE WATER'S EDGE.

7 (B) "MARINA purposes" means an operation making use of sub-
8 merged bottomlands or filled-in bottomlands of the Great Lakes
9 for the purpose of service to boat owners or operators, which
10 operation may restrict or prevent the free public use of the
11 affected bottomlands or filled-in lands.

12 (C) "GREAT LAKES RIPARIAN LANDS" MEANS PROPERTY BORDERING ON
13 THE GREAT LAKES.

14 Sec. 32511. A riparian owner may apply to the department
15 for a certificate suitable for recording indicating the location
16 of THE ORDINARY HIGH-WATER MARK ON his or her ~~—lakeward boundary~~
17 PROPERTY or indicating that the land involved has accreted to his
18 or her property as a result of natural accretions or placement of
19 a lawful, permanent structure. The application shall be accom-
20 panied by a fee of \$200.00 and proof of upland ownership.

21 Sec. 32512. (1) Unless a permit has been granted by the
22 department or authorization has been granted by the legislature,
23 or except as to boat wells and slips facilitating private, non-
24 commercial, recreational boat use, not exceeding 50 feet in
25 length where the spoil is not disposed of below the ordinary
26 high-water mark of the body of water to which it is connected, a
27 person shall not do any of the following:

1 (a) Construct, dredge, commence, or do any work with respect
2 to an artificial canal, channel, ditch, lagoon, pond, lake, or
3 similar waterway where the purpose is ultimate connection of the
4 waterway with any of the Great Lakes, including Lake St. Clair.

5 (b) Connect any natural or artificially constructed water-
6 way, canal, channel, ditch, lagoon, pond, lake, or similar water-
7 way with any of the Great Lakes, including Lake St. Clair, for
8 navigation or any other purpose.

9 (c) Dredge or place spoil or other material on bottomland.

10 (d) Construct a marina.

11 (2) NOTWITHSTANDING SUBSECTION (1), A PERMIT OR OTHER
12 APPROVAL IS NOT REQUIRED UNDER THIS ACT FOR BEACH MAINTENANCE
13 ACTIVITIES.