

# HOUSE BILL No. 4049

January 28, 2003, Introduced by Reps. Bradstreet, Hager, Casperson, Pappageorge and Drolet 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,  
7 cultivating, 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  
5 government, or other legal entity.

6 (d) "Wetland", **subject to subdivision (e)**, means land  
7 characterized by the presence of water at a frequency and  
8 duration sufficient to support, and that under normal  
9 circumstances does support, wetland vegetation or aquatic life,  
10 and is commonly referred to as a bog, swamp, or marsh and ~~which~~  
11 **that** is any of 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~~  
18 ~~population until the department certifies to the commission it~~  
19 ~~has substantially completed its inventory of wetlands in that~~  
20 ~~county.~~

21 (iii) Not contiguous to the Great Lakes, an inland lake or  
22 pond, or a river or stream; and 5 acres or less in size if the  
23 department determines that protection of the area is essential to  
24 the preservation of the natural resources of the state from  
25 pollution, impairment, or destruction and the department has so  
26 notified the owner. ~~;~~ ~~except this subparagraph may be utilized~~  
27 ~~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  
11 agricultural extension office, register of deeds, and county  
12 clerk.

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

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

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

8 — (d) Include a map showing the location of the parcel.

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

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

17 — (a) Identify in detail the location of any wetland in the  
18 area assessed.

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

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

27 — (d) Contain the date of the assessment.

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

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

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

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

19 ~~—— (ii) Part 91.~~

20 ~~—— (iii) Part 301.~~

21 ~~—— (iv) Part 323.~~

22 ~~—— (v) Part 325.~~

23 ~~—— (vi) Part 353.~~

24 ~~—— (5) A person may request the department to reassess any area~~  
25 ~~assessed under subsections (3) and (4) that the person believes~~  
26 ~~the department erroneously determined to be wetland. The~~  
27 ~~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~~  
4 ~~information relied upon by the department. The assessment report~~  
5 ~~shall not contain the information required by subsection (4)(c).~~  
6 ~~—— (6) If an assessment report determines that the area assessed~~  
7 ~~or part of the area assessed is not a wetland regulated by the~~  
8 ~~department under this part, then the area determined by the~~  
9 ~~assessment report not to be a wetland is not a wetland regulated~~  
10 ~~by the department under this part for a period of 3 years after~~  
11 ~~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~~  
14 ~~department of conducting an assessment.~~