

HOUSE BILL No. 4730

May 22, 2003, Introduced by Reps. Stakoe, Amos, Stahl, Nofs, Newell, Gaffney, Ward, Garfield, Nitz, Hune, Accavitti, Rocca, Walker, Pastor, Hoogendyk, LaJoy, Brandenburg, Shaffer, Moolenaar, Koetje, Emmons, Farhat and Hummel and referred to the Committee on Great Lakes and Tourism.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 30113 (MCL 324.30113), as amended by 1995 PA
171, and by adding part 33 and section 8316a; and to repeal acts
and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 PART 33 AQUATIC NUISANCE CONTROL

2 Sec. 3301. As used in this part:

3 (a) "Applicator" means a person who performs or proposes to
4 perform control work.

5 (b) "Aquatic nuisance" means any organism, including, but not
6 limited to, aquatic vegetation, that lives or propagates or both,
7 within the aquatic environment and that impairs the use or
8 enjoyment of the waters of the state, including the intermediate
9 aquatic hosts for schistosomes that cause swimmer's itch.

1 (c) "Aquatic vegetation" means algae and higher aquatic
2 plants.

3 (d) "Class A control work" means control work that meets both
4 of the following criteria:

5 (i) The treatment area has a surface area of more than 2
6 acres but less than 10 acres.

7 (ii) The treatment area has associated bottomlands under
8 private ownership.

9 (e) "Class B control work" means control work that is not
10 class A control work and that meets 1 or more of the following
11 criteria:

12 (i) The water body where the control work will take place has
13 a surface area of less than 20 acres and does not have an
14 outlet.

15 (ii) The treatment area is in the littoral zone, and
16 represents less than 50% of the total shoreline length.

17 (iii) The treatment area is a marina that was constructed in
18 an area above the ordinary high-water mark of and that is
19 directly connected to an inland lake, a Great Lake, Lake
20 St. Clair, or the St. Marys, St. Clair, or Detroit rivers.

21 (iv) The treatment area is a canal that is directly connected
22 to an inland lake, that was constructed in an area above the
23 ordinary high-water mark of that inland lake, and that does not
24 connect 2 or more water bodies.

25 (f) "Class C control work" means control work that is not
26 class A or class B control work and for which the treatment area
27 has a surface area of more than 2 acres.

1 (g) "Control work" means eradicating, suppressing, reducing,
2 or managing nuisance or invasive species populations, preventing
3 the spread of nuisance or invasive species from areas where they
4 are present, or reducing the effects of nuisance or invasive
5 species.

6 (h) "Declaration of intent" means a notice to the department
7 that control work will be performed.

8 (i) "Department" means the department of agriculture.

9 (j) "Emergency notification procedure" means a department
10 approved procedure submitted annually by a commercial applicator
11 that specifies all available means of contacting the commercial
12 applicator such as a home telephone number, business telephone
13 number, mobile telephone number, or pager number.

14 (k) "Endangered or threatened species" means a species
15 appearing on a list described in section 36505.

16 (l) "Eradication program" means a method for the control of
17 nuisance aquatic vegetation in which control techniques are
18 utilized in a coordinated manner in an attempt to kill all the
19 target aquatic plants on a permanent basis in a given
20 geographical area.

21 Sec. 3303. As used in this part:

22 (a) "FIFRA" means the federal insecticide, fungicide, and
23 rodenticide act, chapter 125, 86 Stat. 973, 7 U.S.C. 136 to 136i,
24 136j to 136r, and 136s to 136y.

25 (b) "Higher aquatic plant" means a plant that lives in water
26 and that belongs to the phylum bryophyta, which includes the
27 mosses, or to the phylum trachaeophyta, which includes the ferns,

1 horsetails, and flowering plants.

2 (c) "Label" means that term as defined in part 83.

3 (d) "Labeling" means that term as defined in part 83.

4 (e) "Lake association" means a local, incorporated, nonprofit
5 organization, the membership of which is open on a
6 nondiscriminatory basis to all residents with riparian rights to
7 a water body.

8 (f) "Lake board" means a lake board as established under
9 section 30902.

10 (g) "Lake management plan" means a plan for the management of
11 an inland lake that includes goals for preparing all of the
12 following plans or gathering all of the following information, as
13 applicable:

14 (i) All of the information required for a declaration of
15 intent for class C control work under section 3313(3).

16 (ii) A map showing all known wetlands, public land, access
17 sites, and water control structures in or bordering the water
18 body.

19 (iii) A description of the aquatic vegetation communities.

20 (iv) The size of the littoral zone.

21 (v) Shoreline length.

22 (vi) A proposed action plan and timeline, including
23 vegetation goals and goal maps and vegetation management
24 activities.

25 (vii) A basic description of water quality.

26 (viii) Available information on water quality problems and
27 causes.

1 (ix) A brief description of water quality goals and options
2 to achieve those goals.

3 (x) Land uses surrounding the water body.

4 (xi) Monitoring and evaluation.

5 (xii) A brief description of the fish community in the water
6 body.

7 (h) "Littoral zone" means the portion of a water body from
8 the water's edge to the limit of the depth of light penetration
9 where rooted aquatic vegetation typically grows.

10 (i) "Maintenance program" means a method for the management
11 of aquatic plants in which techniques are used in a coordinated
12 manner, on a continuous or periodic basis, in order to maintain
13 the target plant population at the lowest feasible level.

14 Sec. 3305. As used in this part:

15 (a) "Offshore area" means the area of a water body that is
16 not the littoral zone.

17 (b) "Ordinary high-water mark" means that term as defined in
18 section 30101 or, for a Great Lake, the ordinary high-water mark
19 as designated in section 32502.

20 (c) "Outlet" means any natural or artificially created
21 watercourse or structure that allows passage of water out of a
22 water body into other surface waters of the state, with
23 continuous flow.

24 (d) "Pesticide" means a substance or mixture of substances
25 intended for preventing, destroying, repelling, or mitigating
26 aquatic nuisances.

27 (e) "Standard information" means all of the following:

1 (i) The name, address, and telephone number of the
2 applicator.

3 (ii) The part 83 license and certification number of the
4 applicator, if applicable.

5 (iii) The name and size of the water body.

6 (iv) The location of the water body, including a map showing
7 the location. The map shall clearly delineate the treatment area
8 for each pesticide.

9 (v) The active ingredient, trade name, and application rate
10 for each pesticide that will be used.

11 (vi) Subject to section 3317, the approximate dates of the
12 control work, if known, except for algaecide application.

13 (vii) Information whether drinking water for riparian
14 property adjacent to the treatment area is from a municipal
15 system or private wells.

16 (viii) The name and daytime and evening telephone numbers of
17 the applicator, and, if different, the person on whose behalf the
18 control work is being performed.

19 (f) "Swimmer's itch" means the inflammation of a swimmer's
20 skin resulting from an allergic reaction to the penetration of
21 the skin by the immature stages of blood-fluke parasites that
22 live a part of their life cycle in certain aquatic snails.

23 (g) "Treatment area" means the area of pesticide application
24 and any buffer zone or other area specified on the pesticide
25 label.

26 (h) "Vegetation management plan" means a plan for the
27 management of vegetation in a water body that includes all of the

1 following:

2 (i) All of the information required for a declaration of
3 intent for class C control work under section 3313(3).

4 (ii) A map showing all known wetlands, public land, access
5 sites, and water control structures in or bordering the water
6 body.

7 (iii) A description of the aquatic vegetation communities.

8 (iv) Proposed vegetation goals and goal maps and vegetation
9 management activities for the vegetation plan as submitted.

10 (i) "Waters of the state" or "water body" means any of the
11 following:

12 (i) A lake, pond, river, stream, or other surface water under
13 the jurisdiction of this state including the Great Lakes
14 bordering this state.

15 (ii) A wetland, as defined in section 30301.

16 Sec. 3307. (1) The application of pesticides to the waters
17 of the state for the control of aquatic nuisances is lawful and
18 not in contravention of part 31 or the private or public rights
19 to the use and enjoyment of abutting property by the owners or
20 occupants of that property if the application is made in
21 compliance with this part, part 83, and rules promulgated under
22 part 83.

23 (2) Subject to this part, control work may be performed by
24 this state or a political subdivision of this state, including,
25 but not limited to, a drainage board, by a lake board or lake
26 association, or by a person with riparian rights to the affected
27 water body.

1 Sec. 3309. (1) Class A control work shall be performed by
2 an applicator licensed under part 83 or by the owner or owners of
3 the bottomlands associated with the treatment area.

4 (2) Except as provided in section 3315, not less than 5 days
5 before performing class A control work, the applicator shall
6 submit a signed declaration of intent to the department on a form
7 provided by the department.

8 (3) Unless the class A control work is being performed
9 pursuant to a vegetation management plan or lake management plan,
10 the declaration of intent shall be accompanied by a fee as
11 provided under section 3321 and shall include all of the
12 following information:

13 (a) The standard information.

14 (b) The target species.

15 (c) A brief explanation of the need for the control work.

16 Sec. 3311. (1) Class B control work shall be performed by
17 an applicator licensed under part 83. However, class B control
18 work described in subparagraph (i) of the definition of class B
19 control work may be performed by the owner or owners of the
20 bottomlands associated with the treatment area.

21 (2) Except as provided in section 3315, not less than 10 days
22 before performing class B control work, the applicator shall
23 submit a signed declaration of intent to the department on a form
24 provided by the department.

25 (3) Unless the class B control work is being performed
26 pursuant to a vegetation management plan or lake management plan,
27 the declaration of intent shall be accompanied by a fee as

1 provided under section 3321 and shall include all of the
2 following information:

3 (a) The standard information.

4 (b) The target species.

5 (c) A brief explanation of the need for the control work.

6 (d) The size of the treatment area, a map of the treatment
7 area, and, for control work in the littoral zone, the total
8 shoreline length.

9 (e) For class B control work described in section 3301(e)(i),
10 the total shoreline length.

11 (4) If the class B control work is being performed pursuant
12 to a vegetation management plan or lake management plan, the
13 declaration of intent shall include all of the following
14 information:

15 (a) The name, address, and telephone number of the
16 applicator.

17 (b) The part 83 certification and, if applicable, license
18 number of the applicator.

19 (c) The name of the water body.

20 (d) The location of the water body.

21 (e) The active ingredient, trade name, and intended
22 application rate for each pesticide that will be used.

23 (f) Subject to section 3317, the approximate dates of control
24 work, except for algaecide application.

25 (g) The name and daytime and evening telephone numbers of the
26 applicator, and the person on whose behalf the control work is
27 being performed if that person is not the applicator.

1 Sec. 3313. (1) Class C control work shall be performed by
2 an applicator licensed or certified under part 83.

3 (2) Except as provided in section 3315, not less than 14 days
4 before performing class C control work, the applicator shall
5 submit a signed declaration of intent to the department on a form
6 provided or approved by the department.

7 (3) Unless the class C control work is being performed
8 pursuant to a vegetation management plan or a lake management
9 plan, the declaration of intent shall be accompanied by a fee as
10 provided under section 3321 and shall include all of the
11 following information:

12 (a) The standard information.

13 (b) The target species.

14 (c) The size of the treatment area and a map of the treatment
15 area. The map shall show the littoral zone and known inlets,
16 outlets, and wetlands within or adjacent to the treatment area.

17 (d) The size of the littoral zone.

18 (4) If the class C control work is being performed pursuant
19 to a vegetation management plan or lake management plan, the
20 declaration of intent shall include all of the information
21 required under section 3311 for a declaration of intent for class
22 B control work being performed pursuant to a vegetation
23 management plan or lake management plan.

24 Sec. 3315. (1) A declaration of intent is not required for
25 control work in any of the following water bodies:

26 (a) A water body wholly owned by 1 person, other than the
27 state, that is not connected to waters of the state.

1 (b) A water body used exclusively for agricultural purposes,
2 that is not connected to waters of the state.

3 (c) Electrical power plant cooling ponds, reservoirs, or
4 canals that are not used as or connected to waters of the state.

5 (d) A water body of 10 surface acres or less without an
6 outlet.

7 (e) In that specific area of a water body where a dredge and
8 fill activity is permitted by the department of environmental
9 quality and aquatic plants are removed as a part of the permitted
10 activity.

11 (f) A drain under the drain code of 1956, 1956 PA 40, MCL
12 280.1 to 280.630.

13 (2) Whether or not a declaration of intent is required, all
14 control work shall be conducted in a manner so as to protect
15 human health, safety, and recreational use and to prevent injury
16 to nontarget plant and animal life, and property, to the greatest
17 degree practicable. A person performing control work with a
18 herbicide shall comply with label rates, instructions, cautions,
19 and directions and shall follow the public notice requirements.

20 Sec. 3317. (1) If, after a person submits a declaration of
21 intent, the intended application rate of the pesticide to be used
22 for control work changes or if the date on which the control work
23 is to be performed changes or was not known at the time the
24 declaration of intent was submitted, the person shall amend the
25 declaration of intent to update that information. The amendment
26 shall be submitted in writing or by electronic mail.

27 (2) If, after a person submits a declaration of intent, any

1 information in the declaration of intent other than that
2 specified in subsection (1) changes, an amended declaration of
3 intent shall be submitted.

4 (3) Beginning 5, 10, or 15 business days after a person
5 submits a declaration of intent for class A control work, class B
6 control work, or class C control work, respectively, or 48 hours
7 after the department receives an amendment to a declaration of
8 intent, whichever period expires later, a person may proceed with
9 the control work as described in the declaration of intent unless
10 the director of the department issues an order prohibiting the
11 control work. The director of the department may issue such an
12 order for any of the following causes:

13 (a) The use of a pesticide, although otherwise in accordance
14 with the labeling would result in either or both of the
15 following:

16 (i) A public health hazard.

17 (ii) Substantial and identifiable negative impacts to the
18 natural resources or the public trust therein of a type or
19 magnitude not considered by the United States environmental
20 protection agency or the department of agriculture in the
21 decision to register the pesticide under FIFRA or part 83,
22 respectively.

23 (b) The declaration of intent lacks the required information
24 or contains false information.

25 (c) The required fee did not accompany the declaration of
26 intent.

27 (4) An order under subsection (3) shall include findings of

1 fact. Findings of fact, as set forth in the language of
2 subsection (3), shall be accompanied by a concise and explicit
3 statement of the underlying facts supporting the findings.

4 Sec. 3319. (1) A political subdivision of this state, or a
5 lake board or lake association or other group having demonstrated
6 support from lake riparian owners, may submit a vegetation
7 management plan or lake management plan to the department on a
8 form provided by the department. A vegetation management plan or
9 lake management plan shall be signed and accompanied by a fee as
10 provided in section 3321.

11 (2) A vegetation management plan or lake management plan
12 takes effect as submitted beginning 42 days after it is submitted
13 unless, before that time, the department, by certified mail or
14 other personal delivery, notifies the person who submitted the
15 plan that the plan is lacking required information and identifies
16 the specific reasons for the department's determination.

17 (3) Within 42 days after the department mails a notification
18 under subsection (2), the person may submit a revised plan to the
19 department. Subsections (1) and (2) apply to the revised plan,
20 except that an additional fee need not be paid. If the
21 department sends a notification under subsection (2) that the
22 revised plan lacks the required information, the department shall
23 return the fee that accompanied the submittal of the original
24 plan and the plan shall not receive further consideration from
25 the department. However, the person may subsequently submit a
26 new plan under subsection (1) accompanied by the fee as provided
27 in section 3321.

1 (4) Before March 1 of each year in which a vegetation
2 management plan or lake management plan is in effect, except the
3 first year, the person who submitted the plan shall submit a
4 signed plan update to the department. A lake management plan
5 update may specify progress made in achieving goals for preparing
6 plans or gathering information, as set forth in the lake
7 management plan. A lake management plan or vegetation management
8 plan update shall not propose major modifications to the plan.

9 Sec. 3321. (1) Subject to subsection (2), a declaration of
10 intent shall be accompanied by the following nonrefundable fee:

11 (a) For treatment areas less than 1/2 acre, \$25.00.

12 (b) For treatment areas equal to or greater than 1/2 acre and
13 less than 2 acres, \$75.00.

14 (c) For treatment areas equal to or greater than 2 acres and
15 less than 10 acres, \$175.00.

16 (d) For treatment areas equal to or greater than 10 acres,
17 \$300.00.

18 (2) A declaration of intent for control work being performed
19 pursuant to a vegetation management plan or lake management plan
20 shall be accompanied by a fee during the first year such a
21 declaration of intent is submitted and every fifth year
22 thereafter. The fee shall be 4 times the fee determined under
23 subsection (1) for the size of the treatment areas in the year in
24 which the fee is paid.

25 (3) The department shall forward fees collected under this
26 section to the state treasurer for deposit in the land and water
27 management permit fee fund created in section 30113.

1 Sec. 3323. (1) Control work shall not result in less than
2 25% cover with native submergent aquatic vegetation in the
3 littoral zone of the lake, except for any of the following:

4 (a) Control work in a pond included on the department's
5 reduced review list, if control work is conducted when there is
6 no continuous outflow.

7 (b) Control work in a marina constructed in an area above the
8 ordinary high-water mark of an inland lake, Great Lake, Lake
9 St. Clair, or a connecting channel.

10 (c) An eradication program.

11 (2) Floating leaf and emergent vegetation shall not be
12 damaged except under 1 or more of the following conditions:

13 (a) An area of not more than 20,000 square feet may be
14 cleared by control work along each developed riparian property,
15 regardless of the shoreline length of the riparian property.

16 (b) A 25-foot-wide channel may be cleared by control work to
17 allow access to open water. However, if an area is cleared
18 pursuant to subdivision (a), the channel must be added to the
19 lakeward side of the 200 x 200 foot area such that the total
20 width of the area of plant removal does not exceed 200 feet.

21 (c) The target area is in a pond included on the department's
22 reduced review list and control work is conducted when there is
23 no continuous outflow.

24 (d) The target area is in a marina constructed in an area
25 above the ordinary high-water mark of an inland lake, Great Lake,
26 Lake St. Clair, or a connecting channel.

27 (3) Control work is authorized only in areas where the

1 riparian property is developed except that selective control of
2 invasive aquatic vegetation and control of nuisance vegetation in
3 an area not to exceed 200 x 200 feet adjacent to privately owned
4 undeveloped riparian property is authorized.

5 (4) Control work shall not result in substantial and
6 identifiable damage to aquatic vegetation or in water use
7 restrictions in areas not described as a target area in the
8 declaration of intent.

9 Sec. 3325. (1) The department shall provide any declaration
10 of intent forms required under this part to a person upon request
11 and at no charge. The department shall post each declaration of
12 intent form required under this part in downloadable form on the
13 department's internet site.

14 (2) The department, in conjunction with the department of
15 environmental quality, may institute a campaign to inform the
16 public and the pesticide application industry about the
17 requirements of this part. The department, in conjunction with
18 the department of environmental quality, shall seek the voluntary
19 cooperation of lake boards and lake associations, local units of
20 government, businesses that sell pesticides, licensed and
21 certified applicators, and environmental and conservation
22 organizations in the education campaign.

23 Sec. 3327. The department may promulgate rules to implement
24 this part.

25 Sec. 3329. A person shall not knowingly give false
26 information to the department or the department of agriculture in
27 a matter pertaining to this part, or knowingly resist, impede, or

1 hinder the representative of the department in the discharge of
2 his or her duties under this part.

3 Sec. 3331. A person who violates this part is subject to
4 applicable sanctions under part 83.

5 Sec. 3333. The commission of agriculture and the director
6 of the department of agriculture shall enter into a memorandum of
7 understanding with the director of the department of
8 environmental quality. The investigation and resolution of
9 violations of this part shall be conducted in accordance with the
10 memorandum of understanding. The memorandum of understanding
11 shall provide for both of the following:

12 (a) That the department of environmental quality and the
13 department of agriculture shall provide notice to each other of
14 suspected violations of this part.

15 (b) Any other matters relevant to the investigation and
16 resolution of violations of this part that the parties to the
17 memorandum of understanding consider advisable.

18 Sec. 3335. A person aggrieved by an order issued pursuant
19 to section 3317, or pursuant to section 8329 as it relates to
20 this part, is entitled to a contested case hearing pursuant to
21 the administrative procedures act of 1969, 1969 PA 306, MCL
22 24.201 to 24.328.

23 Sec. 8316a. (1) Not less than 3 days before performing
24 control work, an applicator shall provide notice of the pesticide
25 to be used, the treatment area, and restrictions on the use of
26 treated water by at least 1 of the following:

27 (a) Publication of a notice in a newspaper of general

1 circulation in the area where the water body is located.

2 (b) Broadcasting an announcement on a radio station that
3 serves the area where the water body is located.

4 (c) First-class mail addressed to residents with riparian
5 rights to the water body.

6 (2) Before performing control work, an applicator shall post
7 the treatment area with signs as follows:

8 (a) For a treatment area that is less than 2 acres in size,
9 signs shall be posted along the shoreline of the treatment area
10 not more than 100 feet apart. To allow for drift of pesticide
11 from the treatment area, riparian lands adjacent to the treatment
12 area shall also be posted, if permitted by the riparian owners.

13 (b) For a treatment area that is 2 or more acres in size,
14 signs shall be posted as in subdivision (a). In addition, all
15 known public access sites, boat launching areas, and private and
16 public parks located on the water body shall be posted
17 conspicuously, at the entrances, boat ramps, and bulletin boards,
18 if permitted by their managers or owners. If these sites,
19 launching areas, and parks are not to be treated or are not
20 adjacent to the treatment area, the signs shall clearly indicate
21 the location of the treatment area and shall outline the
22 restrictions on the use of the water in the treatment area.

23 (c) A sign posted under this subsection shall be a printed
24 sign approved by the department and shall include all of the
25 following:

26 (i) The name, address, and telephone number of the
27 applicator.

1 (ii) The name of the pesticides and the restrictions on the
2 use of treated water pursuant to the labeling.

3 (3) An applicator is not liable if signs posted under
4 subsection (2) are removed without the applicator's consent.

5 (4) The applicator shall allow representatives of the
6 department to collect a sample of the pesticide used, before or
7 during the control work, as determined by the department. The
8 sample shall not be a larger quantity than is required for
9 analysis.

10 (5) The department may conduct spot checks to monitor
11 compliance with this part.

12 (6) As used in this section, "control work", "pesticide",
13 "treatment area", and "water body" mean those terms as defined in
14 part 33.

15 Sec. 30113. (1) The land and water management permit fee
16 fund is created within the state treasury.

17 (2) The state treasurer may receive money or other assets
18 from any source for deposit into the fund. The state treasurer
19 shall direct the investment of the fund. The state treasurer
20 shall credit to the fund interest and earnings from fund
21 investments. The state treasurer shall annually present to the
22 department an accounting of the amount of money in the fund.

23 (3) Money in the fund at the close of the fiscal year shall
24 remain in the fund and shall not lapse to the general fund.

25 (4) The department shall expend money from the fund, upon
26 appropriation, only to implement this part and the following:

27 (a) Sections 3104, 3107, and 3108.

~~(b) Part 325.~~

~~(c) Part 303.~~

~~(d) Section 12562 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.12562 of the Michigan Compiled Laws.~~

(b) Part 33.

(c) Part 303.

(d) Part 315.

(e) Part 323.

(f) Part 325.

(g) Part 353.

(h) —(f)— Section 117 of the subdivision control act of 1967, Act No. 288 of the Public Acts of 1967, being section 560.117 of the Michigan Compiled Laws **land division act, 1967 PA 288, MCL 560.117.**

~~(g) Part 315.~~

~~(h) Part 353.~~

(5) The department shall process permit applications for ~~the~~ **those** acts and parts of acts cited in subsection (4) **under which permits are issued** within 60 days after receiving a completed permit application unless the act or part specifically provides for permit application processing time limits.

(6) The department shall annually report to the legislature on both of the following:

(a) How money in the fund was expended during the previous fiscal year.

(b) For permit programs funded with money in the fund, the

1 average length of time for department action on permit
2 applications for each class of permits reviewed.

3 Enacting section 1. Sections 12561, 12562, and 12563 of the
4 public health code, 1978 PA 368, MCL 333.12561, 333.12562, and
5 333.12563, are repealed.

6 Enacting section 2. This amendatory act does not take
7 effect unless Senate Bill No. _____ or House Bill No. 4729
8 (request no. 03724'03) of the 92nd Legislature is enacted into
9 law.