

HOUSE BILL No. 6303

November 4, 2004, 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 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 public advisory commission created
4 in section 603.

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 is
9 created as a principal state department. The department shall
10 possess the powers and perform the duties granted and imposed by
11 this act and as otherwise provided by law.

1 Sec. 603. (1) The public advisory commission is created as
2 the head of the department and may establish general policies
3 related to natural resources management and environmental
4 protection for the guidance of the director. In addition, the
5 commission has appellate authority as provided in section 1101.
6 The commission shall be composed of 7 members, not more than 4 of
7 whom shall be members of the same political party, appointed by
8 the governor by and with the advice and consent of the senate. A
9 member of the commission shall be selected with special reference
10 to that person's training and experience related to at least 1 of
11 the principal lines of activities vested in the department and
12 the ability and fitness of that person to deal with those
13 activities. Activities vested in the department include
14 agriculture, conservation, health and safety, manufacturing,
15 property development, research, and tourism. The term of office
16 of each member of the commission shall be 4 years. The governor
17 shall fill a vacancy occurring in the membership of the
18 commission and may remove a member of the commission for cause
19 after a hearing. Each member of the commission shall hold office
20 until the appointment and qualification of that member's
21 successor.

22 (2) The commission, within 30 days after its members have
23 qualified for office under subsection (5) and annually after that
24 time, shall meet at its office in Lansing and organize by
25 appointing a secretary, who need not be a member of the
26 commission. The governor shall appoint a chairperson of the
27 commission from among its members, who shall serve as chairperson

1 at the pleasure of the governor. Four members of the commission
2 constitute a quorum for the transaction of business. The
3 business which the commission may perform shall be conducted at a
4 public meeting of the commission held in compliance with the open
5 meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice
6 of the time, date, and place of the meeting shall be given in the
7 manner required by that act. A meeting may be called by the
8 chairperson and shall be called on request of a majority of the
9 members of the commission. Meetings may be held as often as
10 necessary and at places other than the commissioners' offices at
11 Lansing. However, the commission shall meet at least once each
12 month.

13 (3) The commission shall appoint and employ a director who
14 shall continue in office at the pleasure of the commission. The
15 director shall appoint 1 or more deputy directors and other
16 assistants and employees as are necessary to carry out the
17 responsibilities of the department. A person to whom the
18 director has lawfully delegated decision making authority in
19 writing may perform a duty or exercise a power conferred by law
20 upon the department at the time and to the extent the duty and
21 power is delegated to that person by the director. If a vacancy
22 in the office of director occurs, or the director is unable to
23 perform the director's duties or is absent from the state, the
24 powers and duties of the director as prescribed by law shall be
25 imposed on and transferred to a deputy director until the vacancy
26 is filled or the director's inability or absence from the state
27 ceases.

1 (4) The compensation of the deputy directors, the
2 assistants, and the employees and the number of assistants and
3 employees shall be subject to the approval of the state
4 administrative board. The members of the commission shall not
5 receive compensation under this part, but each member and the
6 other officers and employees of the department shall be entitled
7 to reasonable expenses while traveling in the performance of
8 their duties prescribed by this act. The salaries and expenses
9 authorized under this act shall be paid out of the state treasury
10 in the same manner as the salaries of other state officers and
11 employees are paid. The department of management and budget
12 shall furnish suitable offices and office equipment, at Lansing,
13 for the use of the department.

14 (5) Each member of the commission and the director shall
15 qualify by taking and subscribing to the constitutional oath of
16 office and by filing it in the office of the secretary of state.

17 Sec. 1101. (1) If a person has legal standing to challenge
18 a final decision of the department under this act regarding the
19 issuance, denial, suspension, revocation, annulment, withdrawal,
20 recall, cancellation, or amendment of a permit or operating
21 license, the commission, upon request of that person, shall
22 review the decision and make the final agency decision. A
23 preliminary, procedural, or intermediate decision of the
24 department is reviewable by the commission only if the commission
25 elects to grant a review. If a person is granted review by the
26 commission under this section, the person is considered to have
27 exhausted his or her administrative remedies with regard to that

1 matter. The commission may utilize administrative law judges or
2 hearing officers to conduct the review of decisions as contested
3 case hearings and to issue proposals for decisions as provided by
4 law or rule.

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

19 (3) If the court does not review a decision of the department
20 brought before the court as provided in this section, the person
21 with legal standing retains any administrative appeal rights that
22 are otherwise provided by law.

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

1 (5) As used in this section:

2 (a) "Commission" means the natural resources commission or
3 the public advisory commission, as appropriate.

4 (b) "Department" means the department of natural resources or
5 the department of environmental quality, as appropriate.