

# SENATE BILL No. 244

March 4, 2003, Introduced by Senators BARCIA, GOSCHKA, PRUSI, THOMAS, CLARKE, PATTERSON, JACOBS, KUIPERS, CROPSEY, STAMAS, SCOTT, GARCIA, ALLEN and HAMMERSTROM and referred to the Committee on Natural Resources and Environmental Affairs.

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 manual or  
 3 mechanized leveling of sand, mowing, and removal of vegetation  
 4 and grooming of the top 4 inches of soil of the area of Great  
 5 Lakes riparian lands lying between the ordinary high-water mark  
 6 and the water's edge.

7       (b) ~~—(a)—~~ "Fill material" means soil, rocks, sand, waste of  
 8 any kind, or any other material that displaces soil or water or

1 reduces water retention potential.

2       **(c) "Great Lakes riparian lands" means property bordering on**  
3 **the Great Lakes.**

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

9       **(e) "Ordinary high-water mark" means that term as it is**  
10 **defined in section 32502.**

11       **(f) —(e)— "Person" means an individual, sole proprietorship,**  
12 partnership, corporation, association, municipality, this state,  
13 ~~and~~ **an** instrumentality or agency of this state, the federal  
14 government, ~~or~~ an instrumentality or agency of the federal  
15 government, or ~~other~~ **another** legal entity.

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

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

23       *(ii)* Not contiguous to the Great Lakes, an inland lake or  
24 pond, or a river or stream; and more than 5 acres in size; except  
25 this subparagraph shall not be of effect, except for the purpose  
26 of inventorying, in counties of less than 100,000 population  
27 until the department certifies to the commission it has

1 substantially completed its inventory of wetlands in that  
2 county.

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

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

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

19 (a) Fishing, trapping, or hunting.

20 (b) Swimming or boating.

21 (c) Hiking.

22 (d) Grazing of animals.

23 (e) Farming, horticulture, silviculture, lumbering, and  
24 ranching activities, including plowing, irrigation, irrigation  
25 ditching, seeding, cultivating, minor drainage, harvesting for  
26 the production of food, fiber, and forest products, or upland  
27 soil and water conservation practices. Wetland altered under

1 this subdivision shall not be used for a purpose other than a  
2 purpose described in this subsection without a permit from the  
3 department.

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

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

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

12 (i) An existing private agricultural drain.

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

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

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

26 (j) Drainage necessary for the production and harvesting of  
27 agricultural products if the wetland is owned by a person who is

1 engaged in commercial farming and the land is to be used for the  
2 production and harvesting of agricultural products. Except as  
3 otherwise provided in this part, wetland improved under this  
4 subdivision after October 1, 1980 shall not be used for  
5 nonfarming purposes without a permit from the department. This  
6 subdivision ~~shall~~ **does** not apply to a wetland ~~which~~ **that** is  
7 contiguous to a lake or stream, or to a tributary of a lake or  
8 stream, or to a wetland that the department has determined by  
9 clear and convincing evidence to be a wetland that is necessary  
10 to be preserved for the public interest, in which case a permit  
11 is required.

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

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

23 (m) Maintenance, repair, or operation of electric  
24 transmission and distribution power lines and construction of  
25 distribution power lines, if the distribution power lines are  
26 constructed, maintained, or repaired in a manner to assure that  
27 any adverse effect on the wetland will be otherwise minimized.

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

5 (o) Construction of iron and copper mining tailings basins  
 6 and water storage areas.

7 **(p) Beach maintenance activities.**

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

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

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

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

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

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

27 **(a) "Beach maintenance activities" includes manual or**

1 mechanized leveling of sand, mowing, and removal of vegetation  
2 and grooming of the top 4 inches of soil of the area of Great  
3 Lakes riparian lands lying between the ordinary high-water mark  
4 and the water's edge.

5 (b) "Marina purposes" means an operation making use of  
6 submerged bottomlands or filled-in bottomlands of the Great Lakes  
7 for the purpose of service to boat owners or operators, which  
8 operation may restrict or prevent the free public use of the  
9 affected bottomlands or filled-in lands.

10 (c) "Great Lakes riparian lands" means property bordering on  
11 the Great Lakes.

12 Sec. 32511. A riparian owner may apply to the department  
13 for a certificate suitable for recording indicating the location  
14 of **the ordinary high-water mark on** his or her ~~lakeward boundary~~  
15 **property** or indicating that the land involved has accreted to his  
16 or her property as a result of natural accretions or placement of  
17 a lawful, permanent structure. The application shall be  
18 accompanied by a fee of \$200.00 and proof of upland ownership.

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

26 (a) Construct, dredge, commence, or do any work with respect  
27 to an artificial canal, channel, ditch, lagoon, pond, lake, or

1 similar waterway where the purpose is ultimate connection of the  
2 waterway with any of the Great Lakes, including Lake St. Clair.

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

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

8 (d) Construct a marina.

9 (2) Notwithstanding subsection (1), a permit or other  
10 approval is not required under this act for beach maintenance  
11 activities.