

HOUSE BILL No. 4847

May 31, 2005, Introduced by Rep. Condino and referred to the Committee on Conservation, Forestry, and Outdoor Recreation.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 30301, 30312, and 30318 (MCL 324.30301,
324.30312, and 324.30318), sections 30301 and 30312 as amended by
2003 PA 14 and section 30318 as added by 1995 PA 59, and by adding
section 30312b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 30301. As used in this part:

2 (a) "Beach" means the area landward of the shoreline of the
3 Great Lakes as the term shoreline is defined in section 32301.

4 (b) "Beach maintenance activities" means any of the following
5 in the area of Great Lakes bottomlands lying below the ordinary
6 high-water mark and above the water's edge:

1 (i) Manual or mechanized leveling of sand.

2 (ii) Mowing of vegetation.

3 (iii) Manual de minimis removal of vegetation.

4 (iv) Grooming of soil.

5 (v) Construction and maintenance of a path.

6 (c) "Debris" means animal or fish carcasses, zebra mussel
7 shells, dead vegetation, trash, and discarded materials of human-
8 made origin.

9 (d) "Department" means the department of environmental
10 quality.

11 (e) "Director" means the director of the department.

12 (F) "ECOREGION" MEANS A GEOGRAPHIC REGION OF RELATIVELY
13 HOMOGENOUS ECOLOGICAL SYSTEMS DELINEATED AS A MAPPED SUB-SUBSECTION
14 IN "REGIONAL LANDSCAPE ECOSYSTEMS OF MICHIGAN, MINNESOTA, AND
15 WISCONSIN", BY DENNIS A. ALBERT, NORTH CENTRAL FOREST EXPERIMENT
16 STATION, UNITED STATES DEPARTMENT OF AGRICULTURE (1994).

17 (G) "ENVIRONMENTAL AREA" MEANS AN ENVIRONMENTAL AREA AS
18 DEFINED IN SECTION 32301.

19 (H) ~~-(f)-~~ "Fill material" means soil, rocks, sand, waste of
20 any kind, or any other material that displaces soil or water or
21 reduces water retention potential.

22 ~~——-(g) "Environmental area" means an environmental area as~~
23 ~~defined in section 32301.~~

24 (I) ~~-(h)-~~ "Grooming of soil" means raking or dragging,
25 pushing, or pulling metal teeth through the top 4 inches of soil
26 without disturbance of or destruction to plant roots, for the
27 purpose of removing debris.

1 (J) ~~-(i)-~~ "Leveling of sand" means the relocation of sand
2 within areas being leveled that are predominantly free of
3 vegetation, including the redistribution, grading, and spreading of
4 sand that has been deposited through wind or wave action onto
5 upland riparian property.

6 (K) ~~-(j)-~~ "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,
10 horticulture, silviculture, or lumbering.

11 (L) "MITIGATION BANK" MEANS A SITE WHERE WETLANDS ARE RESTORED,
12 CREATED, OR, IN EXCEPTIONAL CIRCUMSTANCES, PRESERVED EXPRESSLY FOR
13 THE PURPOSE OF PROVIDING COMPENSATORY MITIGATION PURSUANT TO THIS
14 PART IN ADVANCE OF AUTHORIZED, UNAVOIDABLE IMPACTS TO WETLANDS.

15 (M) "MITIGATION BANKING" MEANS THE PROCESS OF RESTORING OR
16 CREATING SELF-SUSTAINING FUNCTIONING WETLANDS, OR, IN EXCEPTIONAL
17 CIRCUMSTANCES, PRESERVING HIGH-QUALITY AND THREATENED WETLANDS, AS
18 PRIOR REPLACEMENT FOR WETLANDS THAT ARE EXPECTED TO BE UNAVOIDABLY
19 IMPACTED BY DEVELOPMENT WITHIN A WATERSHED OR ECOREGION FOR THE
20 PURPOSE OF PROTECTING AND ENHANCING THE WETLAND RESOURCES OF THE
21 STATE WHILE EXPEDITING THE REGULATORY PROCESS.

22 (N) ~~-(k)-~~ "Mowing of vegetation" means the cutting of
23 vegetation to a height of not less than 2 inches, without
24 disturbance of soil or plant roots.

25 (O) ~~-(l)-~~ "Ordinary high-water mark" means that term as it is
26 defined in section 32502.

27 (P) ~~-(m)-~~ "Path" means a temporary access walkway from ~~the~~

upland riparian property directly to the shoreline across swales with standing water, not exceeding 6 feet in bottom width and consisting of sand and pebbles obtained from the exposed, nonvegetated bottomlands or from the upland riparian property.

(Q) ~~-(n)-~~ "Person" means an individual, sole proprietorship, partnership, corporation, association, municipality, this state, an instrumentality or agency of this state, the federal government, an instrumentality or agency of the federal government, or other legal entity.

(R) ~~-(e)-~~ "Removal of vegetation" means the manual or mechanized removal of vegetation, other than the manual de minimis removal of vegetation.

(S) ~~-(p)-~~ "Wetland" means land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp, or marsh and ~~which is any~~ **THAT MEETS 1 OR MORE** of the following

REQUIREMENTS:

(i) ~~Contiguous~~ **THE LAND IS CONTIGUOUS** to the Great Lakes or Lake St. Clair, an inland lake or pond, or a river or stream.

(ii) ~~Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream; and~~ **THE LAND IS** more than 5 acres in size ~~;~~ ~~except this subparagraph shall not be of effect~~ **AND**, except for the purpose of inventorying, ~~in counties of less than 100,000 population until the department certifies to the commission it has substantially completed its inventory of wetlands in that county.~~ **MEETS 1 OR MORE OF THE FOLLOWING REQUIREMENTS:**

1 (A) IS LOCATED IN A COUNTY WITH A POPULATION OF 100,000 OR
2 MORE.

3 (B) IS LOCATED IN A COUNTY IN WHICH THE DEPARTMENT HAS
4 SUBSTANTIALLY COMPLETED ITS INVENTORY OF WETLANDS, AS CERTIFIED BY
5 THE DEPARTMENT TO THE COMMISSION.

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

15 Sec. 30312. (1) The department, after notice and opportunity
16 for a public hearing, may issue general permits on a statewide
17 basis or within a local unit of government for a category of
18 activities if the department determines that the activities are
19 similar in nature, will cause only minimal adverse environmental
20 effects when performed separately, and will have only minimal
21 cumulative adverse effect on the environment. A general permit
22 issued under this subsection shall be based on the requirements of
23 this part and the rules promulgated under this part, and shall set
24 forth the requirements and standards that shall apply to an
25 activity authorized by the general permit.

26 (2) The department may impose conditions on a permit for a use
27 or development if the conditions are designed to remove an

1 impairment to the wetland benefits, to mitigate the impact of a
2 discharge of fill material, or to otherwise improve the water
3 quality.

4 (3) The department may establish a reasonable time when ~~the~~
5 **A PERMIT FOR** construction, development, or use is to be completed
6 or terminated. A ~~general~~ permit, **INCLUDING ANY EXTENSIONS**, shall
7 not be valid for more than 5 years.

8 (4) A general permit under this section may be issued for the
9 mowing of vegetation or the removal of vegetation in the area
10 between the ordinary high-water mark and the water's edge. An
11 application under this subsection may be submitted by a local unit
12 of government on behalf of property owners within its jurisdiction
13 or by 1 or more adjacent property owners for riparian property
14 located within the same county.

15 **SEC. 30312B. (1) THE DEPARTMENT MAY REQUIRE COMPENSATORY**
16 **WETLAND MITIGATION TO ASSURE THAT, UPON COMPLETION OF THE PERMITTED**
17 **ACTIVITY, THERE WILL BE NO NET LOSS OF WETLANDS. THE APPLICANT**
18 **SHALL PROVIDE FOR THE PERMANENT PROTECTION OF THE NATURAL RESOURCE**
19 **FUNCTIONS AND VALUES OF THE COMPENSATORY WETLAND MITIGATION SITE.**

20 (2) THE DEPARTMENT SHALL CONSIDER COMPENSATORY WETLAND
21 MITIGATION ONLY AFTER ALL OF THE FOLLOWING CONDITIONS ARE MET:

22 (A) THE WETLAND IMPACTS CAN OTHERWISE BE AUTHORIZED BY A
23 PERMIT UNDER SECTION 30311.

24 (B) NO FEASIBLE AND PRUDENT ALTERNATIVE TO AVOID WETLAND
25 IMPACTS EXISTS.

26 (C) AN APPLICANT HAS USED ALL PRACTICAL MEANS TO MINIMIZE
27 IMPACTS TO WETLANDS. THIS MAY INCLUDE THE PERMANENT PROTECTION OF

1 WETLANDS ON THE SITE NOT DIRECTLY IMPACTED BY THE PROPOSED
2 ACTIVITY.

3 (3) THE DEPARTMENT MAY ACCEPT A CONSERVATION EASEMENT AND
4 AUTHORIZE THE USE OF CREDITS FROM AN APPROVED MITIGATION BANK TO
5 SATISFY ALL OR A PART OF THE COMPENSATORY WETLAND MITIGATION
6 REQUIREMENTS ASSOCIATED WITH ANY PERMIT APPLICATION IN ACCORDANCE
7 WITH APPLICABLE STATUTORY CRITERIA.

8 (4) THE ESTABLISHMENT AND USE OF A MITIGATION BANK ARE
9 VOLUNTARY. THE PERMIT APPLICANT HAS THE OPTION OF PROVIDING
10 COMPENSATORY WETLAND MITIGATION FOR A SINGLE PERMITTED ACTION AT
11 THE TIME OF PERMIT ISSUANCE.

12 (5) ANY PERSON MAY ESTABLISH A MITIGATION BANK AND MAY BUY,
13 SELL, OR USE MITIGATION CREDITS AS APPROVED BY THE DEPARTMENT TO
14 MEET THE REQUIREMENTS OF THIS PART.

15 (6) A PERSON WHO CHOOSES TO ESTABLISH AND OPERATE A MITIGATION
16 BANK THAT HAS BEEN APPROVED BY THE DEPARTMENT SHALL ENTER INTO A
17 WRITTEN MITIGATION BANKING AGREEMENT WITH THE DEPARTMENT BEFORE
18 CONSTRUCTION OF THE MITIGATION BANK OR ANY SALE OR USE OF CREDITS
19 FROM THE BANK.

20 (7) THE DEPARTMENT SHALL FACILITATE THE ESTABLISHMENT OF
21 WETLAND MITIGATION BANKS BY PROVIDING AVAILABLE DIGITAL INFORMATION
22 REGARDING DESIRABLE LOCATIONS FOR MITIGATION BANKS.

23 Sec. 30318. ~~If a permit is denied for a proposed wetland~~
24 ~~activity, the~~ A landowner may request a revaluation of ~~the~~
25 ~~affected~~ WETLAND property for TAX assessment purposes to determine
26 its fair market value ~~under the use restriction.~~ IF 1 OF THE
27 FOLLOWING APPLIES:

1 (A) A PERMIT FOR A PROPOSED ACTIVITY IN THAT WETLAND IS DENIED
2 UNDER THIS PART.

3 (B) THE LANDOWNER VOLUNTARILY GRANTS TO A QUALIFIED
4 ORGANIZATION, INCLUDING, BUT NOT LIMITED TO, A LAND CONSERVANCY OR
5 THE DEPARTMENT OR ANOTHER GOVERNMENTAL AGENCY, A PERMANENT
6 CONSERVATION EASEMENT OVER WETLANDS AND ASSOCIATED UPLANDS
7 EXCLUSIVELY FOR THE PURPOSE OF PROVIDING PRESERVATION OF THE
8 WETLAND RESOURCES. THE GRANT MUST CONSTITUTE A QUALIFIED
9 CONSERVATION CONTRIBUTION UNDER 26 USC 170. THE TAXABLE VALUE OF
10 LANDS SUBJECT TO THE CONSERVATION EASEMENT SHALL BE REDUCED IN
11 PROPORTION TO THE REDUCTION IN STATE EQUALIZED VALUE TO REFLECT THE
12 PLACEMENT OF PERMANENT LIMITATIONS ON THE PROPERTY.