

HOUSE BILL No. 6010

November 9, 2016, Introduced by Rep. Howrylak and referred to the Committee on Natural Resources.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 30301 and 30307 (MCL 324.30301 and 324.30307),
section 30301 as amended by 2012 PA 247 and section 30307 as
amended by 2006 PA 430.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 30301. (1) As used in this part:

2 (a) "Department" means the department of environmental
3 quality.

4 (b) "Director" means the director of the department.

5 (c) "Exceptional wetland" means wetland that provides physical
6 or biological functions essential to the natural resources of ~~the~~
7 **THIS** state and that may be lost or degraded if not preserved

1 through an approved site protection and management plan for the
2 purposes of providing compensatory wetland mitigation.

3 (d) "Fill material" means soil, rocks, sand, waste of any
4 kind, or any other material that displaces soil or water or reduces
5 water retention potential.

6 (e) "Landscape level wetland assessment" means the use of
7 aerial photographs, maps, and other remotely sensed information to
8 predict and evaluate wetland characteristics and functions in the
9 context of all of the following:

10 (i) The wetland's landscape position and hydrologic
11 characteristics.

12 (ii) The surrounding landscape.

13 (iii) The historic extent and condition of the wetland.

14 (f) "Minor drainage" includes ditching and tiling for the
15 removal of excess soil moisture incidental to the planting,
16 cultivating, protecting, or harvesting of crops or improving the
17 productivity of land in established use for agriculture,
18 horticulture, silviculture, or lumbering.

19 (g) "Nationwide permit" means a nationwide permit issued by
20 the United States ~~army corps~~ **ARMY CORPS** of ~~engineers~~ **ENGINEERS**
21 under 72 FR ~~11091~~ **11092** to 11198 (March 12, 2007), including all
22 general conditions, regional conditions, and conditions imposed by
23 this state pursuant to a water quality certification under section
24 401 of title IV of the federal water pollution control act, 33 USC
25 1341, or a coastal zone management consistency determination under
26 section 307 of the coastal zone management act of 1972, 16 USC
27 1456.

1 (h) "Ordinary high-water mark" means the ordinary high-water
2 mark as specified in section 32502.

3 (i) "Person" means an individual, sole proprietorship,
4 partnership, corporation, association, municipality, this state, an
5 instrumentality or agency of this state, the federal government, an
6 instrumentality or agency of the federal government, or other legal
7 entity.

8 (j) "Rapid wetland assessment" means a method for generally
9 assessing the functions, values, and condition of individual
10 wetlands based on existing data and field indicators.

11 (k) "Rare and imperiled wetland" means any of the following:

12 (i) Great Lakes marsh.

13 (ii) Southern wet meadow.

14 (iii) Inland salt marsh.

15 (iv) Intermittent wetland or boggy seepage wetland.

16 (v) Coastal plain marsh.

17 (vi) Interdunal wetland.

18 (vii) Lakeplain wet prairie.

19 (viii) Lakeplain wet-mesic prairie.

20 (ix) Northern wet-mesic prairie.

21 (x) Wet-mesic prairie.

22 (xi) Wet prairie.

23 (xii) Prairie fen.

24 (xiii) Northern fen.

25 (xiv) Patterned fen.

26 (xv) Poor fen.

27 (xvi) Muskeg.

- 1 (xvii) Rich conifer swamp.
- 2 (xviii) Relict conifer swamp.
- 3 (xix) Hardwood-conifer swamp.
- 4 (xx) Northern swamp.
- 5 (xxi) Southern swamp.
- 6 (xxii) Southern floodplain forest.
- 7 (xxiii) Inundated shrub swamp.

8 (l) "Water dependent" means requiring access or proximity to
9 or siting within an aquatic site to fulfill its basic purpose.

10 (m) "Wetland" means land characterized by the presence of
11 water at a frequency and duration sufficient to support, and that
12 under normal circumstances does support, wetland vegetation or
13 aquatic life, and is commonly referred to as a bog, swamp, or
14 marsh, and which is any of the following:

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

17 ~~(ii) Not contiguous to the Great Lakes, an inland lake or~~
18 ~~pond, or a river or stream; and more~~ **MORE** ~~than 5-4~~ acres in size.

19 ~~(iii) Not contiguous to the Great Lakes, an inland lake or~~
20 ~~pond, or a river or stream; and 5 acres or less in size if~~

21 **DETERMINED BY** the department ~~determines that protection of the~~ **TO**
22 **BE AN** area **THE PROTECTION OF WHICH** is essential to the preservation
23 of the natural resources of ~~the~~ **THIS** state from pollution,
24 impairment, or destruction and the department has so notified the
25 owner.

26 (2) The department and local units of government shall apply
27 the technical wetland delineation standards set forth in the United

1 States ~~army corps of engineers~~ **ARMY CORPS OF ENGINEERS** January 1987
2 wetland delineation manual, technical report Y-87-1, and
3 appropriate regional United States ~~army corps of engineers~~ **ARMY**
4 **CORPS OF ENGINEERS** supplements, in identifying wetland boundaries
5 under this part, including, but not limited to, section 30307.

6 Sec. 30307. (1) Within 60 days after receipt of the completed
7 application and fee **UNDER SECTION 30306**, the department may hold a
8 hearing. If a hearing is held, it shall be held in the county where
9 the wetland to which the permit is to apply is located. Notice of
10 the hearing shall be made in the same manner as for the
11 promulgation of rules under the administrative procedures act of
12 1969, 1969 PA 306, MCL 24.201 to 24.328. The department may approve
13 or disapprove a permit application without a public hearing unless
14 a person requests a hearing in writing within 20 days after the
15 mailing of notification of the permit application as required by
16 subsection (3) or unless the department determines that the permit
17 application is of significant impact so as to warrant a public
18 hearing.

19 (2) The action taken by the department on a permit application
20 under this part and part 13 may be appealed pursuant to the
21 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
22 24.328. A property owner may, after exhaustion of administrative
23 remedies, bring appropriate legal action in a court of competent
24 jurisdiction.

25 (3) A person who desires notification of pending permit
26 applications may make a written request to the department
27 accompanied by an annual fee of \$25.00, which shall be credited to

1 the general fund of the state. The department shall prepare a
2 biweekly list of the applications made during the previous 2 weeks
3 and shall promptly mail copies of the list for the remainder of the
4 calendar year to the persons who requested notice. The biweekly
5 list shall state the name and address of each applicant, the
6 location of the wetland in the proposed use or development,
7 including the size of both the proposed use or development and of
8 the wetland affected, and a summary statement of the purpose of the
9 use or development.

10 (4) A local unit of government may regulate wetland within its
11 boundaries, by ordinance, only as provided under this part. This
12 subsection is supplemental to the existing authority of a local
13 unit of government. An ordinance adopted by a local unit of
14 government pursuant to this subsection shall comply with all of the
15 following:

16 (a) The ordinance shall not provide a different definition of
17 wetland than is provided in this part, except that a wetland
18 ordinance may regulate wetland of less than ~~5~~4 acres in size.

19 (b) If the ordinance regulates wetland that is smaller than 2
20 acres in size, the ordinance shall comply with section 30309.

21 (c) The ordinance shall comply with sections 30308 and 30310.

22 (d) The ordinance shall not require a permit for uses that are
23 authorized without a permit under section 30305, and shall
24 otherwise comply with this part.

25 (5) Each local unit of government that adopts an ordinance
26 regulating wetlands under subsection (4) shall notify the
27 department.

1 (6) A local unit of government that adopts an ordinance
2 regulating wetlands shall use an application form supplied by the
3 department, and each person applying for a permit shall make
4 application directly to the local unit of government. Upon receipt,
5 the local unit of government shall forward a copy of each
6 application along with any state fees that may have been submitted
7 under section 30306 to the department. The department shall begin
8 reviewing the application as provided in this part. The local unit
9 of government shall review the application pursuant to its
10 ordinance and shall ~~modify, approve,~~ **APPROVE WITH MODIFICATIONS**, or
11 deny the application within 90 days after receipt. If a local unit
12 of government does not approve or ~~disapprove~~ **DENY** the permit
13 application within the time period provided by this subsection, the
14 permit application ~~shall be~~ **IS** considered **TO BE** approved, and the
15 local unit of government ~~shall be~~ **IS** considered to have made the
16 determinations as listed in section 30311. The denial of a permit
17 shall be accompanied by a written statement of all reasons for
18 denial. The failure to supply complete information with a permit
19 application may be reason for denial of a permit. If requested, the
20 department shall inform a person whether or not a local unit of
21 government has an ordinance regulating wetlands. If the department
22 receives an application with respect to a wetland located in a
23 local unit of government that has an ordinance regulating wetlands,
24 the department immediately shall forward the application to the
25 local unit of government, which shall ~~modify, deny, or approve,~~
26 **APPROVE WITH MODIFICATIONS, OR DENY** the application under this
27 subsection. The local unit of government shall notify the

1 department of its decision. The department shall proceed as
2 provided in this part.

3 (7) If a local unit of government does not have an ordinance
4 regulating wetlands, the department shall promptly send a copy of
5 the permit application to the local unit of government where the
6 wetland is located. The local unit of government may review the
7 application; may hold a hearing on the application; may recommend
8 approval, **APPROVAL WITH** modification, or denial of the application
9 to the department or may notify the department that the local unit
10 of government declines to make a recommendation. The recommendation
11 of the local unit of government, if any, shall be made and returned
12 to the department ~~at any time~~ within 45 days after the local unit
13 of government's receipt of the permit application.

14 (8) In addition to the requirements of subsection (7), the
15 department shall notify the local unit of government that the
16 department has issued a permit under this part **FOR AN ACTIVITY**
17 within the jurisdiction of that local unit of government within 15
18 days of issuance of the permit. The department shall enclose a copy
19 of the permit with the notice.

20 Enacting section 1. This amendatory act takes effect 90 days
21 after the date it is enacted into law.