

# HOUSE BILL No. 5442

January 24, 2018, 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  
8       through an approved site protection and management plan for the  
9       purposes of providing compensatory wetland mitigation.

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

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

8 (i) The wetland's landscape position and hydrologic  
9 characteristics.

10 (ii) The surrounding landscape.

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

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

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

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

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

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

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

10 (i) Great Lakes marsh.

11 (ii) Southern wet meadow.

12 (iii) Inland salt marsh.

13 (iv) Intermittent wetland or boggy seepage wetland.

14 (v) Coastal plain marsh.

15 (vi) Interdunal wetland.

16 (vii) Lakeplain wet prairie.

17 (viii) Lakeplain wet-mesic prairie.

18 (ix) Northern wet-mesic prairie.

19 (x) Wet-mesic prairie.

20 (xi) Wet prairie.

21 (xii) Prairie fen.

22 (xiii) Northern fen.

23 (xiv) Patterned fen.

24 (xv) Poor fen.

25 (xvi) Muskeg.

26 (xvii) Rich conifer swamp.

27 (xviii) Relict conifer swamp.

1 (xix) Hardwood-conifer swamp.

2 (xx) Northern swamp.

3 (xxi) Southern swamp.

4 (xxii) Southern floodplain forest.

5 (xxiii) Inundated shrub swamp.

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

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

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

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

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

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

24 (2) The department and local units of government shall apply  
25 the technical wetland delineation standards set forth in the United  
26 States ~~army corps of engineers~~ **ARMY CORPS OF ENGINEERS** January 1987  
27 wetland delineation manual, technical report Y-87-1, and

1 appropriate regional United States ~~army corps of engineers~~ **ARMY**  
2 **CORPS OF ENGINEERS** supplements, in identifying wetland boundaries  
3 under this part, including, but not limited to, section 30307.

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

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

23 (3) A person who desires notification of pending permit  
24 applications may make a written request to the department  
25 accompanied by an annual fee of \$25.00, which shall be credited to  
26 the general fund of the state. The department shall prepare a  
27 biweekly list of the applications made during the previous 2 weeks

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

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

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

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