



# HOUSE BILL No. 4784

May 4, 1995, Introduced by Reps. Munsell, Gnodtke, Bodem, Kukuk, Cropsey, DeMars, Brewer, LeTarte, Middleton, Bobier and Oxender and referred to the Committee on Conservation, Environment and Great Lakes.

A bill to amend Act No. 451 of the Public Acts of 1994, entitled  
"Natural resources and environmental protection act,"  
as amended, being sections 324.101 to 324.90101 of the Michigan  
Compiled Laws, by adding section 3106b.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Act No. 451 of the Public Acts of 1994, as  
2 amended, being sections 324.101 to 324.90101 of the Michigan  
3 Compiled Laws, is amended by adding section 3106b to read as  
4 follows:

5       SEC. 3106B. (1) THE LEGISLATURE HEREBY FINDS AND DECLARES:

6       (A) THAT HYDROELECTRIC POWER GENERATING PROJECTS ARE COMPRE-  
7 HENSIVELY REGULATED BY THE FEDERAL ENERGY REGULATORY COMMISSION.

1 (B) THAT THE STATE SHOULD NOT DUPLICATE FEDERAL REGULATORY  
2 EFFORTS EXCEPT AS IS CLEARLY NECESSARY TO PROTECT THE ENVIRONMENT  
3 AND THE PUBLIC HEALTH, SAFETY, OR WELFARE.

4 (C) THAT HYDROELECTRIC POWER GENERATING FACILITIES PROVIDE  
5 ALL OF THE FOLLOWING:

6 (i) A STABLE SOURCE OF ENERGY.

7 (ii) POWER THAT IS A PRIMARY SOURCE OF RENEWABLE ENERGY.

8 (iii) RECREATIONAL OPPORTUNITIES BY INCREASING THE WIDTH OF  
9 WATER BODIES AND REGULATING THE DEPTH OF THOSE WATERS.

10 (iv) FLOOD CONTROL.

11 (D) THAT DAMS WITH 35 FEET OR LESS OF DAM HEAD AND HYDRO-  
12 ELECTRIC POWER GENERATING FACILITIES OF 5 MEGAWATTS OR SMALLER IN  
13 SIZE ARE DIFFERENT IN NATURE THAN LARGER DAMS AND HYDROELECTRIC  
14 POWER GENERATING FACILITIES AND HAVE ONLY A DE MINIMIS ENVIRON-  
15 MENTAL IMPACT AND DO NOT SIGNIFICANTLY IMPACT FISH POPULATIONS IN  
16 THE RIVERS ON WHICH THEY ARE LOCATED.

17 (2) AS USED IN THIS SECTION:

18 (A) "AQUATIC, BIOLOGICAL, HYDROGEOLOGICAL, OR GEOLOGICAL  
19 STUDY" MEANS A STUDY THAT PERTAINS TO 1 OR MORE OF THE  
20 FOLLOWING:

21 (i) FISH ENTRAINMENT.

22 (ii) FISH MORTALITY.

23 (iii) RECREATION PLANNING OR REQUIREMENTS TO ADDRESS RECRE-  
24 ATION RELATED CONCERNS.

25 (iv) MITIGATION RELATED TO ENVIRONMENTAL OR RESOURCE  
26 DAMAGES.

(v) FISH PROTECTION.

(vi) HYDROGRAPHIC MAPPING OF IMPOUNDMENT.

(vii) SPECIES INVENTORIES.

(viii) FLOW STUDIES OR REQUIREMENTS.

(ix) ANY OTHER STUDY TOPIC EXCLUDING A STUDY SPECIFICALLY REQUIRED UNDER THIS SECTION FOR A HYDROELECTRIC POWER GENERATING FACILITY.

(B) "FEDERAL POWER ACT" MEANS CHAPTER 285, 41 STAT. 1063, 16 U.S.C. 791a TO 793, 796 TO 797, 798 TO 800, 802 TO 818, 820 TO 824a, AND 824b TO 825r.

(C) "NORMAL OPERATION" MEANS A PATTERN THAT INCLUDES ANY OPERATIONAL PROCEDURES CUSTOMARY TO THE OPERATION OF A HYDROELECTRIC POWER GENERATING FACILITY IN A RUN-OF-RIVER MODE, INCLUDING, BUT NOT LIMITED TO, THE SHUTDOWN OF EQUIPMENT FOR MAINTENANCE, IF THE DURATION OF THE MAINTENANCE DOES NOT EXCEED RECENT ANNUAL AVERAGES FOR THE FACILITY.

(D) "STATE" MEANS THE DEPARTMENT OR ANY OTHER STATE DEPARTMENT OR ENTITY TO WHICH AUTHORITY REGARDING REVIEW OR ISSUANCE OF WATER QUALITY CERTIFICATES FOR HYDROELECTRIC POWER GENERATING FACILITIES IS DELEGATED.

(E) "STUDY" MEANS ANY REQUIREMENT THAT A PERSON COLLECT, COMPILE, ANALYZE, MAP, OR TEST AQUATIC, BIOLOGICAL, HYDROGEOLOGICAL, OR GEOLOGICAL DATA.

(F) "WATER QUALITY CERTIFICATE" MEANS A WATER QUALITY CERTIFICATE ISSUED PURSUANT TO SECTION 401 OF TITLE IV OF THE FEDERAL WATER POLLUTION CONTROL ACT, CHAPTER 758, 86 STAT. 877, 33 U.S.C. 1341.

1       (3) FOR AN OWNER OR OPERATOR OF A DAM, OR A HYDROELECTRIC  
2 POWER GENERATING FACILITY ASSOCIATED WITH A DAM THAT, PRIOR TO  
3 DECEMBER 1, 1995, RECEIVED AN EXEMPTION FROM FEDERAL LICENSURE  
4 UNDER THE FEDERAL ENERGY REGULATORY COMMISSION'S REGULATIONS  
5 PROMULGATED PURSUANT TO THE FEDERAL POWER ACT, THE STATE SHALL  
6 NOT REQUIRE THAT THE EXEMPT OWNER OR OPERATOR CONDUCT, PARTICI-  
7 PATE IN, OR COMPLETE ANY AQUATIC, BIOLOGICAL, HYDROGEOLOGICAL, OR  
8 GEOLOGICAL STUDIES, EXCEPT STUDIES REQUIRED UNDER  
9 SUBSECTION (4)(A) TO (C) FOR SUCH A HYDROELECTRIC POWER GENERAT-  
10 ING FACILITY. IN ADDITION, THE STATE SHALL NOT MAKE A REQUEST OR  
11 SUGGESTION TO ANY FEDERAL AGENCY THAT THE OWNER OR OPERATOR OF A  
12 DAM OR FACILITY DESCRIBED IN THIS SUBSECTION BE REQUIRED TO CON-  
13 DUCT, PARTICIPATE IN, OR COMPLETE ANY STUDY OTHER THAN THOSE  
14 REQUIRED UNDER THE APPLICABLE CATEGORY UNDER SUBSECTION (4)(A) TO  
15 (C).

16       (4) FOR AN OWNER OR OPERATOR OF A DAM WITH A HYDROELECTRIC  
17 POWER GENERATING FACILITY THAT REQUIRES A WATER QUALITY CERTIFI-  
18 CATE UNDER THE FEDERAL POWER ACT, THE STATE SHALL COMPLY WITH THE  
19 FOLLOWING REGARDING APPLICATION FOR AND ISSUANCE OF A WATER QUAL-  
20 ITY CERTIFICATE FOR THE HYDROELECTRIC POWER GENERATING FACILITY:

21       (A) THE OWNER OR OPERATOR OF A DAM WITH A DAM HEAD OF 15  
22 FEET OR LESS THAT OPERATES AS A RUN-OF-RIVER HYDROELECTRIC POWER  
23 GENERATING FACILITY, UPON APPLICATION, IS AUTOMATICALLY ENTITLED  
24 TO RECEIVE A WATER QUALITY CERTIFICATE FROM THE STATE AND IS NOT  
25 REQUIRED TO CONDUCT OR PARTICIPATE IN ANY AQUATIC, BIOLOGICAL,  
26 HYDROGEOLOGICAL, OR GEOLOGICAL STUDY, OR COMPLETE ANY STUDY, TO  
27 BE ELIGIBLE FOR A WATER QUALITY CERTIFICATE UNDER THIS PART.

1 UPON APPLICATION BY THE OWNER OR OPERATOR OF A FACILITY DESCRIBED  
2 IN THIS SUBDIVISION, INCLUDING AN AFFIDAVIT THAT THE FACILITY  
3 MEETS THE REQUIREMENTS OF THIS SUBDIVISION, THE STATE SHALL ISSUE  
4 A WATER QUALITY CERTIFICATE WITHOUT CONDITION WITHIN 45 DAYS OF  
5 RECEIPT OF THE APPLICATION.

6 (B) THE OWNER OR OPERATOR OF A DAM WITH A DAM HEAD OF MORE  
7 THAN 15 FEET BUT NOT MORE THAN 35 FEET THAT FUNCTIONS AS A  
8 RUN-OF-RIVER HYDROELECTRIC POWER GENERATING FACILITY IS ENTITLED  
9 TO RECEIVE A WATER QUALITY CERTIFICATE FROM THE STATE, PENDING  
10 COMPLIANCE WITH THIS SUBDIVISION. A FACILITY DESCRIBED IN THIS  
11 SUBDIVISION SHALL CONDUCT BIWEEKLY TESTS FOR DISSOLVED OXYGEN AND  
12 TEMPERATURE FOR 3 CONSECUTIVE MONTHS FROM MAY THROUGH OCTOBER  
13 UPSTREAM AT EVERY METER OF DEPTH IN THE IMPOUNDMENT, UPSTREAM  
14 BEYOND THE IMPACT OF IMPOUNDMENT AT MID-DEPTH, AND DOWNSTREAM IN  
15 THE DISCHARGE MID-RANGE OF THE FACILITY. IF THE RESULTS OF THIS  
16 TESTING INDICATE COMPLIANCE WITH APPLICABLE WATER QUALITY STAN-  
17 DARDS ESTABLISHED IN RULES PROMULGATED UNDER THIS PART, THEN  
18 ADDITIONAL MONITORING FOR DISSOLVED OXYGEN AND TEMPERATURE SHALL  
19 NOT BE REQUIRED BY THE STATE. ADDITIONAL MONITORING SHALL NOT BE  
20 REQUIRED IF A NONCONFORMING RESULT OCCURS BECAUSE OF STORM WATER  
21 RUNOFF OR OTHER REASON UNRELATED TO THE OPERATION OF THE  
22 PROJECT. THE DISSOLVED OXYGEN AND TEMPERATURE TESTING REQUIRED  
23 UNDER THIS SUBDIVISION IS THE ONLY TESTING DATA THAT IS REQUIRED  
24 FOR THE ISSUANCE OF A WATER QUALITY CERTIFICATE FOR A FACILITY  
25 DESCRIBED IN THIS SUBDIVISION. THE DISSOLVED OXYGEN AND TEMPERA-  
26 TURE DATA THAT THE APPLICANT SUBMITS TO THE STATE IN SUPPORT OF  
27 ITS APPLICATION FOR A WATER QUALITY CERTIFICATE SHALL BE

1 COLLECTED WITHIN 2 YEARS PRIOR TO THE DATE THE APPLICATION IS  
2 SUBMITTED TO THE DEPARTMENT. THE OWNER OR OPERATOR OF A HYDRO-  
3 ELECTRIC POWER GENERATING FACILITY DESCRIBED IN THIS SUBDIVISION  
4 SHALL NOT BE REQUIRED TO CONDUCT OR PARTICIPATE IN AQUATIC, BIO-  
5 LOGICAL, HYDROGEOLOGICAL, OR GEOLOGICAL STUDIES, OR COMPLETE  
6 PENDING STUDIES OR ADDITIONAL DISSOLVED OXYGEN AND TEMPERATURE  
7 MONITORING, EXCEPT AS OTHERWISE PROVIDED IN THIS SUBDIVISION, TO  
8 BE ELIGIBLE FOR A WATER QUALITY CERTIFICATION UNDER THIS  
9 SUBDIVISION. THE STATE SHALL ISSUE A WATER QUALITY CERTIFICATE  
10 WITHIN 45 DAYS OF RECEIPT OF AN APPLICATION OR INFORM THE APPLI-  
11 CANT OF ANY DEFICIENCIES WITHIN THAT TIME PERIOD. IF THE WATER  
12 DISCHARGE FROM A FACILITY DESCRIBED IN THIS SUBDIVISION IS DETER-  
13 MINED NOT TO BE IN COMPLIANCE WITH THE REQUIREMENTS OF THIS SUB-  
14 DIVISION, THE STATE SHALL ISSUE A WATER QUALITY CERTIFICATE CON-  
15 TINGENT UPON APPROVAL OF A PLAN TO MEET THE APPLICABLE WATER  
16 QUALITY STANDARDS WITHIN A PERIOD OF 60 DAYS FOLLOWING ISSUANCE  
17 OF THE STATE'S RESPONSE.

18 (C) FOR HYDROELECTRIC POWER GENERATING FACILITIES THAT ARE  
19 NOT DESCRIBED IN SUBDIVISION (A) OR (B) THE ISSUANCE OF A WATER  
20 QUALITY CERTIFICATE BY THE STATE SHALL BE PREDICATED SOLELY UPON  
21 COMPLIANCE WITH APPLICABLE WATER QUALITY STANDARDS ESTABLISHED IN  
22 RULES PROMULGATED UNDER THIS PART AND SHALL NOT BE PREDICATED ON  
23 PERFORMING AQUATIC, BIOLOGICAL, HYDROGEOLOGICAL, OR GEOLOGICAL  
24 STUDIES. THE DETERMINATION THAT THE QUALITY OF THE WATER DIS-  
25 CHARGED FROM THE DAM IS OR IS NOT IN COMPLIANCE WITH THE WATER  
26 QUALITY STANDARDS ESTABLISHED IN RULES PROMULGATED UNDER THIS  
27 PART SHALL BE BASED ON TESTING THAT DOES NOT EXCEED 12 MONTHS IN

1 DURATION, IF THE DAM IS IN NORMAL OPERATION DURING THAT PERIOD.  
2 THE STATE SHALL ISSUE A WATER QUALITY CERTIFICATE WITHIN 45 DAYS  
3 OF RECEIPT OF AN APPLICATION OR INFORM THE APPLICANT OF ANY DEFICI-  
4 CENCIES IN THE APPLICATION WITHIN THAT TIME PERIOD. IF THE STATE  
5 DETERMINES THAT THE WATER DISCHARGE FROM THE FACILITY IS NOT IN  
6 COMPLIANCE WITH APPLICABLE WATER QUALITY STANDARDS ESTABLISHED IN  
7 RULES PROMULGATED UNDER THIS PART, THE WATER QUALITY CERTIFICATE  
8 SHALL BE ISSUED CONTINGENT UPON APPROVAL OF A PLAN TO MEET THE  
9 WATER QUALITY STANDARDS WITHIN A PERIOD OF 60 DAYS FOLLOWING  
10 ISSUANCE OF THE STATE'S RESPONSE.

11 (5) IF THE OWNER OR OPERATOR OF A HYDROELECTRIC POWER GENER-  
12 ATING FACILITY REGULATED UNDER THIS SECTION IS AGGRIEVED BY AN  
13 ACTION OR INACTION OF THE STATE UNDER THIS SECTION, THE DISPUTE  
14 SHALL BE HEARD AS A CONTESTED CASE HEARING UNDER THE ADMINISTRA-  
15 TIVE PROCEDURES ACT OF 1969, ACT NO. 306 OF THE PUBLIC ACTS OF  
16 1969, BEING SECTIONS 24.201 TO 24.328 OF THE MICHIGAN COMPILED  
17 LAWS. DURING THE PENDENCY OF AN APPEAL, A HYDROELECTRIC POWER  
18 GENERATING FACILITY MAY CONTINUE TO GENERATE POWER UNTIL THE  
19 OWNER OR OPERATOR OF THE FACILITY EXHAUSTS ALL AVAILABLE APPEL-  
20 LATE RIGHTS. DURING THE PENDENCY OF SUCH AN APPEAL, THE STATE  
21 SHALL NOT NOTIFY OR REQUEST ANY FEDERAL OR APPELLATE AUTHORITY TO  
22 SUGGEST THAT A HYDROELECTRIC POWER GENERATING FACILITY DISCON-  
23 TINUE GENERATION OF POWER UNTIL THE OWNER OR OPERATOR HAS  
24 EXHAUSTED HIS OR HER APPELLATE RIGHTS.