



HOUSE BILL No. 6161

November 28, 2000, Introduced by Rep. Rick Johnson and referred to the Committee on Conservation and Outdoor Recreation.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 30101, 30103, 30106, 30110, and 30112
(MCL 324.30101, 324.30103, 324.30106, 324.30110, and 324.30112),
section 30101 as amended by 1999 PA 106 and sections 30103,
30106, 30110, and 30112 as added by 1995 PA 59.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 30101. As used in this part:

(a) "Bottomland" means the land area of an inland lake or
stream that lies below the ordinary high-water mark and that may
or may not be covered by water.

(b) "Bulkhead line" means a line that is established pursu-
ant to this part beyond which dredging, filling, or construction
of any kind is not allowed without a permit.

1 (c) "Department" means the department of environmental
2 quality.

3 (d) "Fund" means the land and water management permit fee
4 fund created in section 30113.

5 (e) "Impoundment" means water held back by a dam, dike,
6 floodgate, or other barrier.

7 (f) "Inland lake or stream" means a natural or artificial
8 lake, pond, or impoundment; a river, stream, or creek which may
9 or may not be serving as a drain as defined by the drain code of
10 1956, 1956 PA 40, MCL 280.1 to 280.630; or any other body of
11 water that has definite banks, a bed, and visible evidence of a
12 continued flow or continued occurrence of water, including the
13 St. Marys, St. Clair, and Detroit rivers. Inland lake or stream
14 does not include the Great Lakes, Lake St. Clair, or a lake or
15 pond that has a surface area of less than 5 acres.

16 (g) "Marina" means a ~~facility~~ STRUCTURE that ~~is owned or~~
17 ~~operated by a person,~~ extends into or over an inland lake or
18 stream ~~,~~ and ~~offers service to the public or members of the~~
19 ~~marina~~ IS USED BY 1 OR MORE PERSONS for docking, loading,
20 MOORING, or other servicing of recreational watercraft.

21 (h) "Minor offense" means either of the following violations
22 of this part if the project involved in the offense is a minor
23 project as listed in R 281.816 of the Michigan administrative
24 code or the department determines that restoration of the
25 affected property is not required:

26 (i) The failure to obtain a permit under this part.

(ii) A violation of a permit issued under this part.

(i) "Ordinary high-water mark" means the line between upland and bottomland that persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation. On an inland lake that has a level established by law, it means the high established level. Where water returns to its natural level as the result of the permanent removal or abandonment of a dam, it means the natural ordinary high-water mark.

(j) "Project" means an activity that requires a permit pursuant to section 30102.

(k) "Property owners' association" means any group of organized property owners publishing a directory of their membership, the majority of which are riparian owners and are located on the inland lake or stream that is affected by the proposed project.

(l) "Riparian owner" means a person who has riparian rights. A RIPARIAN OWNER DOES NOT INCLUDE AN ASSOCIATION, CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR A JOINT VENTURE.

(m) "Riparian rights" means those rights ~~which~~ THAT are associated with the ownership of the bank or shore of an inland lake or stream.

(n) "Seasonal structure" includes any type of dock, boat hoist, ramp, raft, or other recreational structure that is placed

1 into an inland lake or stream and removed at the end of the
2 boating season.

3 (o) "Structure" includes a marina, wharf, dock, pier, dam,
4 weir, stream deflector, breakwater, groin, jetty, sewer, pipe-
5 line, cable, and bridge.

6 (P) "UNREASONABLY INTERFERE" MEANS A DETERMINATION BY THE
7 DEPARTMENT AS TO WHETHER OR NOT THE SIZE AND DIMENSIONS OF THE
8 STRUCTURE OR SEASONAL STRUCTURE PROPOSED BY THE APPLICANT ARE
9 CONSISTENT WITH THE USE OF THE WATER BY RIPARIAN OWNERS ADJACENT
10 TO THE PROPOSED STRUCTURE.

11 (Q) ~~(p)~~ "Upland" means the land area that lies above the
12 ordinary high-water mark.

13 Sec. 30103. A permit is not required for any of the
14 following:

15 (a) Any fill or structure existing before April 1, 1966, in
16 waters covered by former ~~Act No. 291 of the Public Acts of 1965~~
17 1965 PA 291, and any fill or structures existing before January
18 9, 1973, in waters covered for the first time by former ~~Act~~
19 ~~No. 346 of the Public Acts of 1972~~ 1972 PA 346.

20 (b) A seasonal structure placed on bottomland to facilitate
21 ~~private noncommercial recreational~~ A RIPARIAN OWNER'S use of
22 the water ~~if it~~ AS LONG AS THE USE does not unreasonably inter-
23 fere with the use of the water by others entitled to use the
24 water or interfere with water flow.

25 (c) Reasonable sanding of beaches to the existing water's
26 edge by a riparian owner.

1 (d) Construction or maintenance of a private agricultural
2 drain regardless of outlet.

3 (e) A waste collection or treatment facility that is
4 approved for construction by the department of public health or
5 ordered or approved by the department.

6 (f) Construction and maintenance of minor drainage struc-
7 tures and facilities ~~which~~ THAT are identified by rule promul-
8 gated by the department ~~pursuant to~~ UNDER section 30110(1).
9 Before such a rule is promulgated, the rule shall be approved by
10 the majority of a committee consisting of the director, the
11 director of the department of agriculture, and the director of
12 the state transportation department or their designated
13 representatives. The ~~initial~~ rules ~~shall be issued before~~
14 ~~July 8, 1973, and~~ PROMULGATED UNDER THIS SUBDIVISION shall be
15 reviewed at least annually. ~~after that date.~~

16 (g) Maintenance and improvement of all drains legally estab-
17 lished or constructed prior to January 1, 1973, pursuant to the
18 drain code of 1956, ~~Act No. 40 of the Public Acts of 1956, being~~
19 ~~sections 280.1 to 280.630 of the Michigan Compiled Laws~~ 1956
20 PA 40, MCL 280.1 TO 280.630, except those legally established
21 drains constituting mainstream portions of certain natural water-
22 courses identified in rules promulgated by the department under
23 section ~~30110~~ 30110(1).

24 (h) Projects constructed under the watershed protection and
25 flood prevention act, chapter 656, 68 Stat. 666, 16 U.S.C. 1001
26 to 1008 and 1010.

1 (i) Construction and maintenance of privately owned cooling
2 or storage ponds used in connection with a public utility except
3 at the interface with public waters.

4 (j) Maintenance of a structure constructed under a permit
5 issued pursuant to this part and identified by rule promulgated
6 under section 30110(1), if the maintenance is in place and in
7 kind with no design or materials modification.

8 Sec. 30106. The department ~~shall~~ MAY issue a permit if it
9 finds that the structure or project will not adversely affect the
10 public trust, ~~or~~ riparian rights OF ALL AFFECTED PARTIES, AND
11 THE RIPARIAN RIGHTS OF THE ADJACENT RIPARIAN OWNERS. In ~~passing~~
12 ~~upon~~ REVIEWING an application, the department shall consider the
13 possible effects of the proposed action upon the inland lake or
14 stream and upon THE waters from which or into which its waters
15 flow and the uses of all such waters, including uses for recre-
16 ation, fish and wildlife, aesthetics, local government, agricul-
17 ture, commerce, and industry. IN REVIEWING AN APPLICATION, THE
18 DEPARTMENT SHALL ALSO CONSIDER THE SIZE AND DIMENSION OF THE
19 APPLICANT'S PROPOSED STRUCTURE AND THE NUMBER OF RECREATIONAL
20 WATERCRAFT THE APPLICANT PROPOSES TO SERVICE AT THE STRUCTURE.
21 The department shall not grant a permit if the proposed project
22 or structure will unlawfully impair or destroy any of the waters,
23 BOTTOMLAND, HABITAT, or other natural resources of the state.
24 THE DEPARTMENT SHALL NOT GRANT A PERMIT IF THE PROPOSED PROJECT
25 OR STRUCTURE UNREASONABLY INTERFERES WITH THE USE OF THE WATER OR
26 RIPARIAN RIGHTS. This part does not modify the rights and
27 responsibilities of any riparian owner to the use of his or her

1 riparian water. A permit shall specify that a project completed
2 in accordance with this part shall not cause unlawful pollution
3 as defined by part 31.

4 Sec. 30110. (1) The department may promulgate and enforce
5 rules to implement this part.

6 (2) If a person, INCLUDING A PROPERTY OWNERS' ASSOCIATION,
7 is aggrieved by any action or inaction of the department, ~~he or~~
8 ~~she may request~~ INCLUDING THE ACTION OF THE DEPARTMENT IN GRANT-
9 ING A PERMIT, a formal hearing MAY BE REQUESTED BY THE AGGRIEVED
10 PARTY on the matter involved. The hearing shall be conducted by
11 the commission in accordance with the provisions for contested
12 cases in the administrative procedures act of 1969, ~~Act No. 306~~
13 ~~of the Public Acts of 1969, being sections 24.201 to 24.328 of~~
14 ~~the Michigan Compiled Laws~~ 1969 PA 306, MCL 24.201 TO 24.328.

15 (3) A determination, action, or inaction by the commission
16 following the hearing is subject to judicial review as provided
17 in ~~Act No. 306 of the Public Acts of 1969~~ THE ADMINISTRATIVE
18 PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328.

19 (4) This section does not limit the right of a riparian
20 owner to institute proceedings in any circuit court of the state
21 against any person when necessary to protect his or her rights.

22 Sec. 30112. (1) The department OR AN AGGRIEVED PERSON,
23 INCLUDING A PROPERTY OWNERS' ASSOCIATION, may commence a civil
24 action in the circuit court of the county in which a violation
25 occurs to enforce compliance with this part, to restrain viola-
26 tion of this part or any action contrary to an order of the
27 department IN denying OR GRANTING a permit, to enjoin the further

1 performance of, or order the removal of, any project that is
2 undertaken contrary to this part or after denial OR GRANTING of a
3 permit by the department, or to order the restoration of the
4 affected area to its prior condition.

5 (2) In a civil action commenced under this part, the circuit
6 court, in addition to any other relief granted, may assess a
7 civil fine of not more than \$5,000.00 per day for each day of
8 violation.

9 (3) Except as provided in subsection (4), a person who vio-
10 lates this part or a permit issued under this part is guilty of a
11 misdemeanor, punishable by a fine of not more than \$10,000.00 per
12 day for each day of violation.

13 (4) A person who commits a minor offense is guilty of a mis-
14 demeanor, punishable by a fine of not more than \$500.00 for each
15 violation. A law enforcement officer may issue and serve an
16 appearance ticket upon a person for a minor offense pursuant to
17 sections ~~9a~~ 9C to 9g of chapter IV of the code of criminal pro-
18 cedure, ~~Act No. 175 of the Public Acts of 1927, being sections~~
19 ~~764.9a to 764.9g of the Michigan Compiled Laws~~ 1927 PA 175,
20 MCL 764.9C TO 764.9G.

21 (5) A person who knowingly makes a false statement, repre-
22 sentation, or certification in an application for a permit or in
23 a notice or report required by a permit, or a person who know-
24 ingly renders inaccurate any monitoring device or method required
25 to be maintained by a permit, is guilty of a misdemeanor, punish-
26 able by a fine of not more than \$10,000.00 per day for each day
27 of violation.

1 (6) Any civil penalty assessed, sought, or agreed to by the
2 department shall be appropriate to the violation.