

SENATE BILL No. 1040

February 8, 2006, Introduced by Senator BIRKHOLZ and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 30101, 30104, and 30105 (MCL 324.30101,
324.30104, and 324.30105), section 30101 as amended by 1999 PA 106
and sections 30104 and 30105 as amended by 2004 PA 325.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 30101. As used in this part:

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

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

8 (c) "DAM" MEANS AN ARTIFICIAL BARRIER, INCLUDING DIKES,

1 EMBANKMENTS, AND APPURTENANT WORKS, THAT IMPOUNDS, DIVERTS, OR IS
2 DESIGNED TO IMPOUND OR DIVERT WATER.

3 (D) ~~—(e)—~~ "Department" means the department of environmental
4 quality.

5 (E) ~~—(d)—~~ "Fund" means the land and water management permit
6 fee fund created in section 30113.

7 (F) "HEIGHT OF THE DAM" MEANS THE DIFFERENCE IN ELEVATION
8 MEASURED VERTICALLY BETWEEN THE NATURAL BED OF AN INLAND LAKE OR
9 STREAM AT THE DOWNSTREAM TOE OF THE DAM, OR, IF IT IS NOT ACROSS A
10 STREAM CHANNEL OR WATERCOURSE, FROM THE LOWEST ELEVATION OF THE
11 DOWNSTREAM TOE OF THE DAM, TO THE DESIGN FLOOD ELEVATION OR TO THE
12 LOWEST POINT OF THE TOP OF THE DAM, WHICHEVER IS LESS.

13 (G) ~~—(e)—~~ "Impoundment" means water held back by a dam, dike,
14 floodgate, or other barrier.

15 (H) ~~—(f)—~~ "Inland lake or stream" means a natural or
16 artificial lake, pond, or impoundment; a river, stream, or creek
17 which may or may not be serving as a drain as defined by the drain
18 code of 1956, 1956 PA 40, MCL 280.1 to 280.630; or any other body
19 of water that has definite banks, a bed, and visible evidence of a
20 continued flow or continued occurrence of water, including the St.
21 Marys, St. Clair, and Detroit rivers. Inland lake or stream does
22 not include the Great Lakes, Lake St. Clair, or a lake or pond that
23 has a surface area of less than 5 acres.

24 (I) ~~—(g)—~~ "Marina" means a facility that is owned or operated
25 by a person, extends into or over an inland lake or stream, and
26 offers service to the public or members of the marina for docking,
27 loading, or other servicing of recreational watercraft.

1 **(J)** ~~—(h)—~~ "Minor offense" means either of the following
2 violations of this part if the project involved in the offense is a
3 minor project as listed in R 281.816 of the Michigan administrative
4 code or the department determines that restoration of the affected
5 property is not required:

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

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

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

18 **(I)** ~~—(j)—~~ "Project" means an activity that requires a permit
19 pursuant to section 30102.

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

25 **(N)** ~~—(l)—~~ "Riparian owner" means a person who has riparian
26 rights.

27 **(O)** ~~—(m)—~~ "Riparian rights" means those rights which are

1 associated with the ownership of the bank or shore of an inland
2 lake or stream.

3 (P) ~~—(n)—~~ "Seasonal structure" includes any type of dock, boat
4 hoist, ramp, raft, or other recreational structure that is placed
5 into an inland lake or stream and removed at the end of the boating
6 season.

7 (Q) ~~—(e)—~~ "Structure" includes a marina, wharf, dock, pier,
8 dam, weir, stream deflector, breakwater, groin, jetty, sewer,
9 pipeline, cable, and bridge.

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

12 Sec. 30104. (1) A person shall not undertake a project subject
13 to this part except as authorized by a permit issued by the
14 department pursuant to part 13. An application for a permit shall
15 include any information that may be required by the department. If
16 a project includes activities at multiple locations, 1 application
17 may be filed for the combined activities.

18 (2) Except as provided in subsections (3) and (4), until
19 October 1, 2008, an application for a permit shall be accompanied
20 by a fee based on an administrative cost in accordance with the
21 following schedule:

22 (a) For a minor project listed in R 281.816 of the Michigan
23 administrative code, or a seasonal drawdown or the associated
24 reflooding, or both, of a dam or impoundment for the purpose of
25 weed control, a fee of \$50.00. However, for a permit for a seasonal
26 drawdown or associated reflooding, or both, of a dam or impoundment
27 for the purpose of weed control that is issued for the first time

1 after October 9, 1995, an initial fee of \$500.00 with subsequent
2 permits for the same purpose being assessed a \$50.00 fee.

3 **(B) FOR AUTHORIZATION UNDER A GENERAL PERMIT FOR THE REMOVAL**
4 **OF A QUALIFYING SMALL DAM UNDER SECTION 30105(8), A \$50.00 FEE.**

5 **(C) —(b)—** For construction or expansion of a marina, a fee of:

6 (i) \$50.00 for an expansion of 1-10 slips to an existing
7 permitted marina.

8 (ii) \$100.00 for a new marina with 1-10 proposed marina slips.

9 (iii) \$250.00 for an expansion of 11-50 slips to an existing
10 permitted marina, plus \$10.00 for each slip over 50.

11 (iv) \$500.00 for a new marina with 11-50 proposed marina slips,
12 plus \$10.00 for each slip over 50.

13 (v) \$1,500.00 if an existing permitted marina proposes
14 maintenance dredging of 10,000 cubic yards or more or the addition
15 of seawalls, bulkheads, or revetments of 500 feet or more.

16 **(D) —(e)—** For renewal of a marina operating permit, a fee of
17 \$50.00.

18 **(E) —(d)—** For major projects other than a project described in
19 subdivision ~~—(b)-(v)—~~ **(C) (v)**, involving any of the following, a fee
20 of \$2,000.00:

21 (i) Dredging of 10,000 cubic yards or more.

22 (ii) Filling of 10,000 cubic yards or more.

23 (iii) Seawalls, bulkheads, or revetments of 500 feet or more.

24 (iv) Filling or draining of 1 acre or more of wetland
25 contiguous to a lake or stream.

26 (v) New dredging or upland boat basin excavation in areas of
27 suspected contamination.

(vi) Shore projections, such as groins and underwater stabilizers, that extend 150 feet or more into a lake or stream.

(vii) New commercial docks or wharves of 300 feet or more in length.

(viii) Stream enclosures 100 feet or more in length.

(ix) Stream relocations 500 feet or more in length.

(x) New golf courses.

(xi) Subdivisions.

(xii) Condominiums.

(F) ~~—(e)—~~ For all other projects not listed in subdivisions (a) through ~~—(d)—~~ **(E)**, a fee of \$500.00.

(3) A project that requires review and approval under this part and 1 or more of the following acts or parts of acts is subject to only the single highest permit fee required under this part or the following acts or parts of acts:

(a) Part 303.

(b) Part 323.

(c) Part 325.

(d) Section 3104.

(e) Section 117 of the land division act, 1967 PA 288, MCL 560.117.

(4) If work has been done in violation of a permit requirement under this part and restoration is not ordered by the department, the department may accept an application for a permit if the application is accompanied by a fee equal to 2 times the permit fee required under this section.

Sec. 30105. ~~—(1) Until October 1, 2003, a person who desires~~

~~notification of pending applications may submit a written request to the department accompanied by an annual fee of \$25.00. The department shall forward all annual fees to the state treasurer for deposit into the fund. The department shall prepare a monthly list of the applications made during the previous month and shall promptly mail copies of the list for the remainder of the calendar year to the persons who have so requested notice. The monthly list shall state the name and address of each applicant, the legal description of the lands included in the applicant's project, and a summary statement of the purpose of the project.~~

(1) THE DEPARTMENT SHALL POST ON ITS WEBSITE ALL OF THE FOLLOWING UNDER THIS PART:

(A) A LIST OF PENDING APPLICATIONS.

(B) PUBLIC NOTICES.

(C) PUBLIC HEARING SCHEDULES.

(2) The department may hold a public hearing on pending applications.

(3) ~~—(2)—~~ Except as otherwise provided in this section, upon receiving an application, the department shall submit copies for review to the director of the department of community health or the local health department designated by the director of the department of community health, to the city, village, or township and the county where the project is to be located, to the local conservation district, to the watershed council organized under part 311, if any, to the local port commission, if any, and to the persons required to be included in the application pursuant to section 30104(1). Each copy of the application shall be accompanied

1 by a statement that unless a written request is filed with the
2 department within 20 days after the submission for review, the
3 department may grant the application without a public hearing where
4 the project is located. The department may hold a public hearing
5 upon the written request of the applicant or a riparian owner or a
6 person or governmental unit that is entitled to receive a copy of
7 the application pursuant to this subsection.

8 (4) ~~—(3)—~~ After completion of a project for which an
9 application is approved, the department may cause a final
10 inspection to be made and certify to the applicant that the
11 applicant has complied with the department's permit requirements.

12 (5) ~~—(4)—~~ At least 10 days' notice of a hearing to be held
13 under this section shall be given by publication in a newspaper
14 circulated in the county where the project is to be located, ~~and~~
15 ~~by mailing copies of the notice to the persons who have requested~~
16 ~~the monthly list pursuant to subsection (1),~~ to the person
17 requesting the hearing, and to the persons and governmental units
18 that are entitled to receive a copy of the application pursuant to
19 subsection ~~—(2)—~~ (3).

20 (6) ~~—(5)—~~ In an emergency, the department may issue a
21 conditional permit before the expiration of the 20-day period
22 referred to in subsection ~~—(2)—~~ (3).

23 (7) ~~—(6)—~~ The department, by rule promulgated under section
24 30110(1), may establish minor project categories of activities and
25 projects that are similar in nature and have minimal adverse
26 environmental impact. The department may act upon an application
27 received pursuant to section 30104 for an activity or project

1 within a minor project category ~~after an on-site inspection of the~~
2 ~~land and water involved~~ without providing notices or holding a
3 public hearing pursuant to subsection ~~(2)~~ (3). A final inspection
4 or certification of a project completed under a permit granted
5 pursuant to this subsection is not required, but all other
6 provisions of this part are applicable to a minor project.

7 (8) THE DEPARTMENT, AFTER NOTICE AND AN OPPORTUNITY FOR A
8 PUBLIC HEARING, MAY ISSUE A GENERAL PERMIT ON A STATEWIDE BASIS OR
9 WITHIN A LOCAL UNIT OF GOVERNMENT FOR PROJECTS FOR THE REMOVAL OF
10 QUALIFYING SMALL DAMS THAT ARE SIMILAR IN NATURE, THAT WILL CAUSE
11 ONLY MINIMAL ADVERSE ENVIRONMENTAL EFFECTS WHEN PERFORMED
12 SEPARATELY, AND THAT WILL ONLY HAVE MINIMAL CUMULATIVE ADVERSE
13 EFFECT ON THE ENVIRONMENT. A GENERAL PERMIT ISSUED UNDER THIS
14 SUBSECTION SHALL NOT BE VALID FOR MORE THAN 5 YEARS. THE DEPARTMENT
15 MAY IMPOSE CONDITIONS ON THE REMOVAL OF A SMALL DAM AUTHORIZED
16 UNDER A GENERAL PERMIT IF THE CONDITIONS ARE DESIGNED TO REMOVE AN
17 IMPAIRMENT TO THE LAKE OR STREAM, TO MITIGATE THE IMPACT OF THE
18 PROJECT, OR TO OTHERWISE RESTORE OR REHABILITATE THE LAKE OR
19 STREAM. THE DEPARTMENT MAY ALSO ESTABLISH A REASONABLE TIME WHEN
20 THE PROPOSED PROJECT IS TO BE COMPLETED OR TERMINATED. AS USED IN
21 THIS SUBSECTION, "QUALIFYING SMALL DAM" MEANS A DAM THAT MEETS ALL
22 OF THE FOLLOWING CONDITIONS:

23 (A) THE HEIGHT OF THE DAM IS LESS THAN 2 FEET.

24 (B) THE IMPOUNDMENT FROM THE DAM COVERS LESS THAN 2 ACRES.

25 (C) THE DAM DOES NOT SERVE AS THE FIRST DAM UPSTREAM FROM THE
26 GREAT LAKES OR THEIR CONNECTING WATERWAYS.

27 (D) THE DAM IS NOT SERVING AS A SEA LAMPREY BARRIER.

1 (E) THERE ARE NO THREATENED OR ENDANGERED SPECIES THAT HAVE
2 BEEN IDENTIFIED IN THE AREA THAT WILL BE IMPACTED BY THE PROJECT.

3 (F) THERE ARE NO KNOWN AREAS OF CONTAMINATED SEDIMENTS IN THE
4 AREA THAT WILL BE IMPACTED BY THE PROJECT.

5 (G) THE DEPARTMENT HAS RECEIVED WRITTEN PERMISSION FOR THE
6 REMOVAL OF THE DAM FROM ALL RIPARIAN PROPERTY OWNERS ADJACENT TO
7 THE DAM'S IMPOUNDMENT.