

# SENATE BILL No. 1481

November 9, 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), as amended by 2006 PA 275.

## 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) "Department" means the department of environmental  
4 quality.

5 (e) "Fund" means the land and water management permit fee fund  
6 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) "Impoundment" means water held back by a dam, dike,  
14 floodgate, or other barrier.

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

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

1 (j) "Minor offense" means either of the following violations  
2 of this part if the project involved in the offense is a minor  
3 project as listed in R 281.816 of the Michigan administrative code  
4 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) "Ordinary high-water mark" means the line between upland  
9 and bottomland that persists through successive changes in water  
10 levels, below which the presence and action of the water is so  
11 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 (l) "PIPELINE" MEANS THOSE GAS TRANSMISSION PIPELINES SUBJECT  
19 TO THE PIPELINE SAFETY IMPROVEMENT ACT OF 2002, PUBLIC LAW 107-355.

20 (M) ~~—(l)—~~ "Project" means an activity that requires a permit  
21 pursuant to section 30102.

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

27 (O) ~~—(n)—~~ "Riparian owner" means a person who has riparian

1 rights.

2 (P) ~~—(e)—~~ "Riparian rights" means those rights ~~—which—~~ **THAT**  
3 are associated with the ownership of the bank or shore of an inland  
4 lake or stream.

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

9 (R) ~~—(q)—~~ "Structure" includes a marina, wharf, dock, pier,  
10 dam, weir, stream deflector, breakwater, groin, jetty, sewer,  
11 pipeline, cable, and bridge.

12 (S) ~~—(r)—~~ "Upland" means the land area that lies above the  
13 ordinary high-water mark.

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

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

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

drawdown or associated reflooding, or both, of a dam or impoundment for the purpose of weed control that is issued for the first time after October 9, 1995, an initial fee of \$500.00 with subsequent permits for the same purpose being assessed a \$50.00 fee.

(b) For authorization under a general permit, ~~for the removal of a qualifying small dam under section 30105(8),~~ a \$50.00 fee.

(c) For construction or expansion of a marina, a fee of:

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

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

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

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

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

(d) For renewal of a marina operating permit, a fee of \$50.00.

(e) For major projects other than a project described in subdivision (c)(v), involving any of the following, a fee of \$2,000.00:

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

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

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

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

(v) New dredging or upland boat basin excavation in areas of

1 suspected contamination.

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

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

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

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

8 (x) New golf courses.

9 (xi) Subdivisions.

10 (xii) Condominiums.

11 (f) For all other projects not listed in subdivisions (a)  
12 through (e), a fee of \$500.00.

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

17 (a) Part 303.

18 (b) Part 323.

19 (c) Part 325.

20 (d) Section 3104.

21 (e) Section 117 of the land division act, 1967 PA 288, MCL  
22 560.117.

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

1       Sec. 30105. (1) The department shall post on its website all  
2 of the following under this part:

3       (a) A list of pending applications.

4       (b) Public notices.

5       (c) Public hearing schedules.

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

8       (3) Except as otherwise provided in this section, upon  
9 receiving an application, the department shall submit copies for  
10 review to the director of the department of community health or the  
11 local health department designated by the director of the  
12 department of community health, to the city, village, or township  
13 and the county where the project is to be located, to the local  
14 conservation district, to the watershed council ~~organized~~  
15 **ESTABLISHED** under part 311, if any, to the local port commission,  
16 if any, and to the persons required to be included in the  
17 application pursuant to section 30104(1). Each copy of the  
18 application shall be accompanied by a statement that unless a  
19 written request is filed with the department within 20 days after  
20 the submission for review, the department may grant the application  
21 without a public hearing where the project is located. The  
22 department may hold a public hearing upon the written request of  
23 the applicant or a riparian owner or a person or governmental unit  
24 that is entitled to receive a copy of the application pursuant to  
25 this subsection.

26       (4) After completion of a project for which an application is  
27 approved, the department may cause a final inspection to be made

1 and certify to the applicant that the applicant has complied with  
2 the department's permit requirements.

3 (5) At least 10 days' notice of a hearing to be held under  
4 this section shall be given by publication in a newspaper  
5 circulated in the county where the project is to be located, to the  
6 person requesting the hearing, and to the persons and governmental  
7 units that are entitled to receive a copy of the application  
8 pursuant to subsection (3).

9 (6) In an emergency, the department may issue a conditional  
10 permit before the expiration of the 20-day period referred to in  
11 subsection (3).

12 (7) The department, by rule, ~~promulgated under section~~  
13 ~~30110(1),~~ may establish minor project categories of activities and  
14 projects that are similar in nature and have minimal adverse  
15 environmental impact. The department may act upon an application  
16 received pursuant to section 30104 for an activity or project  
17 within a minor project category without providing notices or  
18 holding a public hearing pursuant to subsection (3). A final  
19 inspection or certification of a project completed under a permit  
20 granted pursuant to this subsection is not required, but all other  
21 provisions of this part are applicable to a minor project.

22 (8) The department, after notice and an opportunity for a  
23 public hearing, may issue a general permit on a statewide basis or  
24 within a local unit of government for projects that are similar in  
25 nature for ~~the~~ **EITHER OR BOTH OF THE FOLLOWING:**

26 **(A) THE** removal of qualifying small dams that will cause only  
27 minimal adverse environmental effects when performed separately and



1 that will only have minimal cumulative adverse effect on the  
2 environment. ~~A general permit issued under this subsection shall~~  
3 ~~not be valid for more than 5 years.~~ The department may impose  
4 conditions on the removal of a small dam authorized under a general  
5 permit if the conditions are designed to remove an impairment to  
6 the lake or stream, to mitigate the impact of the project, or to  
7 otherwise restore or rehabilitate the lake or stream. ~~The~~  
8 ~~department may also establish a reasonable time when the proposed~~  
9 ~~project is to be completed or terminated.~~ As used in this  
10 subsection, "qualifying small dam" means a dam that meets all of  
11 the following conditions:

12 (i) ~~(a)~~ The height of the dam is less than 2 feet.

13 (ii) ~~(b)~~ The impoundment from the dam covers less than 2  
14 acres.

15 (iii) ~~(c)~~ The dam does not serve as the first dam upstream  
16 from the Great Lakes or their connecting waterways.

17 (iv) ~~(d)~~ The dam is not serving as a sea lamprey barrier.

18 (v) ~~(e)~~ There are no threatened or endangered species that  
19 have been identified in the area that will be impacted by the  
20 project.

21 (vi) ~~(f)~~ There are no known areas of contaminated sediments  
22 in the area that will be impacted by the project.

23 (vii) ~~(g)~~ The department has received written permission for  
24 the removal of the dam from all riparian property owners adjacent  
25 to the dam's impoundment.

26 (B) THE CROSSING OF AN INLAND LAKE OR STREAM FOR THE  
27 MAINTENANCE, REPAIR, OR RESTORATION OF A PIPELINE THAT UTILIZES

1 PRACTICES DESCRIBED IN THE DEPARTMENT'S "GUIDEBOOK OF BEST  
2 MANAGEMENT PRACTICES FOR MICHIGAN WATERSHEDS", REPRINTED OCTOBER  
3 1998, TO AVOID OR OTHERWISE MINIMIZE TEMPORARY ADVERSE IMPACTS TO  
4 LAKES OR STREAMS.

5 (9) A GENERAL PERMIT ISSUED UNDER SUBSECTION (8) SHALL NOT BE  
6 VALID FOR MORE THAN 5 YEARS. THE DEPARTMENT MAY ALSO ESTABLISH A  
7 REASONABLE TIME WHEN A PROJECT SUBJECT TO A GENERAL PERMIT IS TO BE  
8 COMPLETED OR TERMINATED.