

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5055

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 30101, 30102, 30103, and 30104 (MCL 324.30101,
324.30102, 324.30103, and 324.30104), section 30101 as amended by
2006 PA 275, section 30102 as added by 1995 PA 59, section 30103 as
amended by 2006 PA 33, and section 30104 as amended by 2008 PA 276,
and by adding section 30106a.

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

1 kind is not allowed without a permit.

2 (c) "Dam" means an artificial barrier, including dikes,
3 embankments, and appurtenant works, that impounds, diverts, or is
4 designed to impound or divert water.

5 (d) "Department" means the department of environmental
6 quality.

7 **(E) "EXPAND" MEANS TO OCCUPY A LARGER AREA OF AN INLAND LAKE**
8 **OR STREAM THAN AUTHORIZED BY A PERMIT ISSUED UNDER THIS PART FOR**
9 **MARINA MOORING STRUCTURES AND WATERCRAFT MOORED AT THE MARINA.**

10 (F) ~~(e)~~—"Fund" means the land and water management permit fee
11 fund created in section 30113.

12 (G) ~~(f)~~—"Height of the dam" means the difference in elevation
13 measured vertically between the natural bed of an inland lake or
14 stream at the downstream toe of the dam, or, if it is not across a
15 stream channel or watercourse, from the lowest elevation of the
16 downstream toe of the dam, to the design flood elevation or to the
17 lowest point of the top of the dam, whichever is less.

18 (H) ~~(g)~~—"Impoundment" means water held back by a dam, dike,
19 floodgate, or other barrier.

20 (I) ~~(h)~~—"Inland lake or stream" means a natural or artificial
21 lake, pond, or impoundment; a river, stream, or creek which may or
22 may not be serving as a drain as defined by the drain code of 1956,
23 1956 PA 40, MCL 280.1 to 280.630; or any other body of water that
24 has definite banks, a bed, and visible evidence of a continued flow
25 or continued occurrence of water, including the St. Marys, St.
26 Clair, and Detroit rivers. Inland lake or stream does not include
27 the Great Lakes, Lake St. Clair, or a lake or pond that has a

1 surface area of less than 5 acres.

2 (J) ~~(i)~~—"Marina" means a facility that is owned or operated by
3 a person, extends into or over an inland lake or stream, and offers
4 service to the public or members of the marina for docking,
5 loading, or other servicing of recreational watercraft.

6 (K) ~~(j)~~—"Minor offense" means either of the following
7 violations of this part if the project involved in the offense is a
8 minor project as listed in R 281.816 of the Michigan administrative
9 code or the department determines that restoration of the affected
10 property is not required:

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

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

13 (I) **"MOORING STRUCTURES" MEANS STRUCTURES USED TO MOOR**
14 **WATERCRAFT, INCLUDING, BUT NOT LIMITED TO, DOCKS, PIERS, PILINGS,**
15 **MOORING ANCHORS, LINES AND BUOYS, AND BOAT HOISTS.**

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

26 (N) ~~(l)~~—"Project" means an activity that requires a permit
27 pursuant to section 30102.

1 (O) ~~(m)~~—"Property owners' association" means any group of
2 organized property owners publishing a directory of their
3 membership, the majority of which are riparian owners and are
4 located on the inland lake or stream that is affected by the
5 proposed project.

6 (P) "RECONFIGURE" MEANS TO, WITHOUT EXPANDING THE MARINA, DO
7 EITHER OF THE FOLLOWING:

8 (i) CHANGE THE LOCATION OF THE DOCK OR DOCKS AND OTHER MOORING
9 STRUCTURES AT THE MARINA TO OCCUPY AN AREA OF THE INLAND LAKE OR
10 STREAM THAT WAS NOT PREVIOUSLY AUTHORIZED BY A PERMIT ISSUED UNDER
11 THIS PART.

12 (ii) DECREASE THE DISTANCE AVAILABLE FOR INGRESS AND EGRESS TO
13 AN OUTSIDE SLIP AS DESCRIBED IN SECTION 30106A.

14 (Q) "RIPARIAN INTEREST AREA" MEANS THAT PORTION OF AN INLAND
15 LAKE OR STREAM OVER WHICH A RIPARIAN OWNER HAS AN OWNERSHIP
16 INTEREST.

17 (R) ~~(n)~~—"Riparian owner" means a person who has riparian
18 rights.

19 (S) ~~(o)~~—"Riparian rights" means those rights which are
20 associated with the ownership of the bank or shore of an inland
21 lake or stream.

22 (T) ~~(p)~~—"Seasonal structure" includes any type of dock, boat
23 hoist, ramp, raft, or other recreational structure that is placed
24 into an inland lake or stream and removed at the end of the boating
25 season.

26 (U) ~~(q)~~—"Structure" includes a ~~marina~~, wharf, dock, pier, dam,
27 weir, stream deflector, breakwater, groin, jetty, sewer, pipeline,

1 cable, and bridge.

2 (V) ~~(r)~~—"Upland" means the land area that lies above the
3 ordinary high-water mark.

4 Sec. 30102. Except as provided in this part, a person without
5 a permit from the department shall not do any of the following:

6 (a) Dredge or fill bottomland.

7 (b) Construct, enlarge, extend, remove, or place a structure
8 on bottomland.

9 (c) ~~Erect, maintain, or operate~~ **CONSTRUCT, RECONFIGURE, OR**
10 **EXPAND** a marina.

11 (d) Create, enlarge, or diminish an inland lake or stream.

12 (e) Structurally interfere with the natural flow of an inland
13 lake or stream.

14 (f) Construct, dredge, commence, extend, or enlarge an
15 artificial canal, channel, ditch, lagoon, pond, lake, or similar
16 waterway where the purpose is ultimate connection with an existing
17 inland lake or stream, or where any part of the artificial waterway
18 is located within 500 feet of the ordinary high-water mark of an
19 existing inland lake or stream.

20 (g) Connect any natural or artificially constructed waterway,
21 canal, channel, ditch, lagoon, pond, lake, or similar water with an
22 existing inland lake or stream for navigation or any other purpose.

23 Sec. 30103. (1) A permit is not required under this part for
24 any of the following:

25 (a) Any fill or structure existing before April 1, 1966, in
26 waters covered by former 1965 PA 291, and any fill or structures
27 existing before January 9, 1973, in waters covered for the first

1 time by former 1972 PA 346.

2 (b) A seasonal structure placed on bottomland to facilitate
3 private noncommercial recreational use of the water if it does not
4 unreasonably interfere with the use of the water by others entitled
5 to use the water or interfere with water flow.

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

8 (d) Construction or maintenance of a private agricultural
9 drain regardless of outlet.

10 (e) A waste collection or treatment facility that is ordered
11 to be constructed or is approved for construction by the
12 department.

13 (f) Construction and maintenance of minor drainage structures
14 and facilities which are identified by rule promulgated by the
15 department pursuant to section ~~30110(1)~~ **30110**. Before such a rule
16 is promulgated, the rule shall be approved by the majority of a
17 committee consisting of the director **OF THE DEPARTMENT**, the
18 director of the department of agriculture, and the director of the
19 state transportation department or their designated
20 representatives. The rules shall be reviewed at least annually.

21 (g) Maintenance and improvement of all drains legally
22 established or constructed prior to January 1, 1973, pursuant to
23 the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630, except
24 those legally established drains constituting mainstream portions
25 of certain natural watercourses identified in rules promulgated by
26 the department under section 30110.

27 (h) Projects constructed under the watershed protection and

1 flood prevention act, chapter 656, 68 Stat. 666, 16 USC 1001 to
2 1008 and 1010.

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

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

10 (k) A water withdrawal.

11 **(l) ANNUAL INSTALLATION OF A SEASONAL DOCK OR DOCKS, PILINGS,**
12 **MOORING BUOYS, OR OTHER MOORING STRUCTURES PREVIOUSLY AUTHORIZED BY**
13 **AND IN ACCORDANCE WITH A PERMIT ISSUED UNDER THIS PART.**

14 (2) As used in this section, "water withdrawal" means the
15 removal of water from its source for any purpose.

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

22 (2) Except as provided in subsections (3) and (4), until
23 October 1, 2011, an application for a permit shall be accompanied
24 by a fee based on an administrative cost in accordance with the
25 following schedule:

26 (a) For a minor project listed in R 281.816 of the Michigan
27 administrative code, or a seasonal drawdown or the associated

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

7 (b) For authorization under a general permit, a \$50.00 fee.

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

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

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

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

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

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

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

20 (D) ~~(e)~~ For major projects other than a project described in
21 subdivision (c)(v), involving any of the following, a fee of
22 \$2,000.00:

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

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

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

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

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

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

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

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

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

9 (x) New golf courses.

10 (xi) Subdivisions.

11 (xii) Condominiums.

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

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

18 (a) Part 303.

19 (b) Part 323.

20 (c) Part 325.

21 (d) Section 3104.

22 (e) Section 117 of the land division act, 1967 PA 288, MCL
23 560.117.

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

1 required under this section.

2 SEC. 30106A. (1) THE DEPARTMENT SHALL ISSUE A PERMIT TO
3 CONSTRUCT, EXPAND, OR RECONFIGURE A MARINA IF THE DEPARTMENT
4 DETERMINES THAT THE MARINA MEETS THE CONDITIONS OF SECTION 30106
5 AND ALL OF THE FOLLOWING CONDITIONS:

6 (A) THE MARINA EXTENDS FROM RIPARIAN PROPERTY OF THE
7 APPLICANT.

8 (B) THE MARINA DOES NOT UNREASONABLY INTERFERE WITH
9 NAVIGATION.

10 (C) THE MARINA IS LOCATED AND DESIGNED TO BE OPERATED
11 CONSISTENTLY WITH THE CORRELATIVE RIGHTS OF OTHER RIPARIANS,
12 INCLUDING THE RIGHTS OF ADJACENT RIPARIANS.

13 (2) IN ORDER TO BE DESIGNED CONSISTENTLY WITH THE CORRELATIVE
14 RIGHTS OF OTHER RIPARIANS AS REQUIRED UNDER SUBSECTION (1), THE
15 MARINA SHALL BE CONFIGURED SO THAT ALL BOAT MOORING UNDER ANY WIND
16 CONDITION WILL OCCUR SOLELY WITHIN THE MARINA'S RIPARIAN INTEREST
17 AREA. ADDITIONALLY, BOAT MOORING AND INGRESS AND EGRESS FOR AN
18 OUTSIDE SLIP SHALL REQUIRE A MINIMUM MANEUVERING DISTANCE OF 1.5
19 TIMES THE LENGTH OF THE SLIP. THIS MINIMUM DISTANCE SHALL BE
20 MEASURED FROM THE END OF THE SLIP OR, FOR BROADSIDE MOORAGE, THE
21 OUTSIDE BEAM OF A WATERCRAFT MOORED AT THE SLIP, TO THE BOUNDARY OF
22 THE MARINA'S RIPARIAN INTEREST AREA.

23 (3) IN ORDER TO SUPPORT THE DETERMINATIONS UNDER THIS SECTION,
24 THE DEPARTMENT MAY REQUIRE THE APPLICANT TO DO EITHER OF THE
25 FOLLOWING:

26 (A) SUBMIT A RIPARIAN INTEREST AREA ESTIMATE SURVEY, SEALED BY
27 A LICENSED SURVEYOR. IN MAKING ITS DETERMINATION ON THE NEED FOR A

1 RIPARIAN INTEREST AREA ESTIMATE SURVEY, THE DEPARTMENT SHALL
2 CONSIDER FACTORS SUCH AS THE SHAPE OF THE WATER BODY, THE LOCATION
3 OF THE MARINA ON THE WATER BODY, HOW MUCH FRONTAGE IS AVAILABLE TO
4 LOCATE THE MARINA, AND THE DOCK AND MOORING CONFIGURATIONS.

5 (B) OBTAIN AN EASEMENT FROM ANY AFFECTED ADJACENT RIPARIAN
6 OWNER AUTHORIZING AN INCURSION AND RECORD THE EASEMENT WITH THE
7 REGISTER OF DEEDS FOR THE COUNTY IN WHICH THE MARINA IS LOCATED.

8 (4) THE OWNER OR OPERATOR OF A MARINA EXISTING ON THE
9 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION THAT
10 HAS NOT BEEN AUTHORIZED BY A PERMIT ISSUED UNDER THIS PART SHALL
11 OBTAIN A PERMIT UNDER THIS SECTION BEFORE EXPANDING OR
12 RECONFIGURING THE MARINA, OR BY JANUARY 1, 2012, WHICHEVER COMES
13 FIRST. THE OWNER OR OPERATOR OF A MARINA EXISTING ON THE EFFECTIVE
14 DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION THAT HAS BEEN
15 AUTHORIZED BY A CONSTRUCTION PERMIT UNDER THIS PART DOES NOT NEED
16 TO OBTAIN A NEW CONSTRUCTION PERMIT EXCEPT TO EXPAND OR
17 RECONFIGURE.

18 (5) AS USED IN THIS SECTION:

19 (A) "MARINA'S RIPARIAN INTEREST AREA" MEANS THE RIPARIAN
20 INTEREST AREA OF AN APPLICANT FOR A PERMIT UNDER SUBSECTION (1) AND
21 ANY ADJACENT AREA FOR WHICH THE APPLICANT HAS SECURED WRITTEN
22 AUTHORIZATION FROM THE RIPARIAN OWNER WHOSE INTEREST IS OR MAY BE
23 AFFECTED.

24 (B) "OUTSIDE SLIP" MEANS A SLIP THAT IS ACCESSED FROM A
25 LOCATION BETWEEN THE BOUNDARY OF THE MARINA'S RIPARIAN INTEREST
26 AREA AND THE MOORING STRUCTURE.

27 (C) "SLIP LENGTH" MEANS THE LONGER OF EITHER OF THE FOLLOWING:

1 (i) THE TOTAL LENGTH OF ALL MOORING STRUCTURES, INCLUDING THE
2 DOCKS AND PILINGS.

3 (ii) THE TOTAL LENGTH OF THE VESSEL MOORED IN THE SLIP,
4 INCLUDING, BUT NOT LIMITED TO, OUTBOARD ENGINES, BOAT HOISTS,
5 BOWSPRITS, AND SWIM PLATFORMS.