

HOUSE BILL No. 5055

June 9, 2009, Introduced by Rep. Bennett and referred to the Committee on Great Lakes and Environment.

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

1 to this part beyond which dredging, filling, or construction of any
2 kind is not allowed without a permit.

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

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

8 **(E) "EXPAND" MEANS TO INCREASE THE AREA OF AN INLAND LAKE OR**
9 **STREAM OCCUPIED BY A MARINA'S MOORING STRUCTURES AND THE WATERCRAFT**
10 **MOORED AT THE MARINA.**

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

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

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

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

1 the Great Lakes, Lake St. Clair, or a lake or pond that has a
2 surface area of less than 5 acres.

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

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

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

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

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

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

26 (N) ~~(m)~~—"Property owners' association" means any group of
27 organized property owners publishing a directory of their

1 membership, the majority of which are riparian owners and are
2 located on the inland lake or stream that is affected by the
3 proposed project.

4 (O) "RECONFIGURE" MEANS TO DECREASE THE DISTANCE AVAILABLE FOR
5 INGRESS AND EGRESS TO AN OUTSIDE SLIP AS DESCRIBED IN SECTION
6 30106A, WITHOUT ENLARGING THE AREA OF THE INLAND LAKE OR STREAM
7 OCCUPIED BY THE MOORING STRUCTURES AND WATERCRAFT MOORED AT THE
8 MARINA.

9 (P) "RIPARIAN INTEREST AREA" MEANS THAT PORTION OF AN INLAND
10 LAKE OR STREAM OVER WHICH A RIPARIAN OWNER HAS AN OWNERSHIP
11 INTEREST.

12 (Q) ~~(n)~~—"Riparian owner" means a person who has riparian
13 rights.

14 (R) ~~(e)~~—"Riparian rights" means those rights which are
15 associated with the ownership of the bank or shore of an inland
16 lake or stream.

17 (S) ~~(p)~~—"Seasonal structure" includes any type of dock, boat
18 hoist, ramp, raft, or other recreational structure that is placed
19 into an inland lake or stream and removed at the end of the boating
20 season.

21 (T) ~~(q)~~—"Structure" includes a ~~marina,~~ wharf, dock, pier, dam,
22 weir, stream deflector, breakwater, groin, jetty, sewer, pipeline,
23 cable, and bridge.

24 (U) ~~(r)~~—"Upland" means the land area that lies above the
25 ordinary high-water mark.

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

1 (a) Dredge or fill bottomland.

2 (b) Construct, enlarge, extend, remove, or place a structure
3 on bottomland.

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

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

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

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

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

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

20 (a) Any fill or structure existing before April 1, 1966, in
21 waters covered by former 1965 PA 291, and any fill or structures
22 existing before January 9, 1973, in waters covered for the first
23 time by former 1972 PA 346.

24 (b) A seasonal structure placed on bottomland to facilitate
25 private noncommercial recreational use of the water if it does not
26 unreasonably interfere with the use of the water by others entitled
27 to use the water or interfere with water flow.

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

3 (d) Construction or maintenance of a private agricultural
4 drain regardless of outlet.

5 (e) A waste collection or treatment facility that is ordered
6 to be constructed or is approved for construction by the
7 department.

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

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

22 (h) Projects constructed under the watershed protection and
23 flood prevention act, chapter 656, 68 Stat. 666, 16 USC 1001 to
24 1008 and 1010.

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

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

5 (k) A water withdrawal.

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

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

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

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

21 (a) For a minor project listed in R 281.816 of the Michigan
22 administrative code, or a seasonal drawdown or the associated
23 reflooding, or both, of a dam or impoundment for the purpose of
24 weed control, a fee of \$50.00. However, for a permit for a seasonal
25 drawdown or associated reflooding, or both, of a dam or impoundment
26 for the purpose of weed control that is issued for the first time
27 after October 9, 1995, an initial fee of \$500.00 with subsequent

1 permits for the same purpose being assessed a \$50.00 fee.

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

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

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

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

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

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

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

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

15 (D) ~~(e)~~ For major projects other than a project described in
16 subdivision (c)(v), involving any of the following, a fee of
17 \$2,000.00:

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

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

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

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

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

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

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

1 length.

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

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

4 (x) New golf courses.

5 (xi) Subdivisions.

6 (xii) Condominiums.

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

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

13 (a) Part 303.

14 (b) Part 323.

15 (c) Part 325.

16 (d) Section 3104.

17 (e) Section 117 of the land division act, 1967 PA 288, MCL
18 560.117.

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

24 **SEC. 30106A. (1) THE DEPARTMENT SHALL ISSUE A PERMIT TO**
25 **CONSTRUCT, EXPAND, OR RECONFIGURE A MARINA IF THE DEPARTMENT**
26 **DETERMINES THAT THE MARINA MEETS THE CONDITIONS OF SECTION 30106**
27 **AND ALL OF THE FOLLOWING CONDITIONS:**

1 (A) THE MARINA EXTENDS FROM RIPARIAN PROPERTY OF THE
2 APPLICANT.

3 (B) THE MARINA DOES NOT INTERFERE WITH NAVIGATION.

4 (C) THE MARINA IS LOCATED AND DESIGNED TO BE OPERATED
5 CONSISTENTLY WITH THE CORRELATIVE RIGHTS OF OTHER RIPARIANS,
6 INCLUDING THE RIGHTS OF ADJACENT RIPARIANS.

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

18 (3) IN ORDER TO SUPPORT THE DETERMINATIONS UNDER THIS SECTION,
19 THE DEPARTMENT MAY REQUIRE THE APPLICANT TO DO EITHER OF THE
20 FOLLOWING:

21 (A) SUBMIT A RIPARIAN INTEREST AREA ESTIMATE SURVEY, SEALED BY
22 A LICENSED SURVEYOR.

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

26 (4) THE OWNER OR OPERATOR OF A MARINA EXISTING ON THE
27 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION THAT

1 HAS NOT BEEN AUTHORIZED BY A PERMIT ISSUED UNDER THIS PART SHALL
2 OBTAIN A PERMIT UNDER THIS SECTION BEFORE EXPANDING OR
3 RECONFIGURING THE MARINA, OR BY JANUARY 1, 2012, WHICHEVER COMES
4 FIRST.

5 (5) THIS SECTION DOES NOT LIMIT THE AUTHORITY OF A LOCAL UNIT
6 OF GOVERNMENT OR GRANT AUTHORITY TO A LOCAL UNIT OF GOVERNMENT TO
7 REGULATE THE LOCATION OR OPERATION OF A MARINA. THE ISSUANCE OF A
8 PERMIT UNDER THIS SECTION DOES NOT ELIMINATE THE NEED TO OBTAIN
9 OTHER APPLICABLE AUTHORIZATIONS, INCLUDING THOSE BY THE LOCAL UNIT
10 OF GOVERNMENT.

11 (6) AS USED IN THIS SECTION:

12 (A) "MARINA'S RIPARIAN INTEREST AREA" MEANS THE RIPARIAN
13 INTEREST AREA OF AN APPLICANT FOR A PERMIT UNDER SUBSECTION (1) AND
14 ANY ADJACENT AREA FOR WHICH THE APPLICANT HAS SECURED WRITTEN
15 AUTHORIZATION FROM THE RIPARIAN OWNER WHOSE INTEREST IS OR MAY BE
16 AFFECTED.

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

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

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

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