

**SUBSTITUTE FOR
HOUSE BILL NO. 4401**

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 30103 (MCL 324.30103), as amended by 2014 PA
253.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

7 (b) A seasonal structure placed on bottomland to facilitate
8 private noncommercial recreational use of the water if it does not
9 unreasonably interfere with the use of the water by others entitled

1 to use the water or interfere with water flow.

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

4 (d) Maintenance of an agricultural drain, regardless of
5 outlet, if all of the following requirements are met:

6 (i) The maintenance includes only activities that maintain the
7 location, depth, and bottom width of the drain as constructed or
8 modified at any time before July 1, 2014.

9 (ii) The maintenance is performed by the landowner or pursuant
10 to the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630.

11 (e) A waste collection or treatment facility that is ordered
12 to be constructed or is approved for construction under state or
13 federal water pollution control law, if constructed in upland.

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

23 (g) Maintenance of a drain that either was legally established
24 and constructed before January 1, 1973, pursuant to the drain code
25 of 1956, 1956 PA 40, MCL 280.1 to 280.630, except those legally
26 established drains constituting mainstream portions of certain
27 natural watercourses identified in rules promulgated by the

1 department under section 30110, or was constructed or modified
2 under a permit issued pursuant to this part. As used in this
3 subdivision, "maintenance of a drain" means the physical
4 preservation of the location, depth, and bottom width of a drain
5 and appurtenant structures to restore the function and approximate
6 capacity of the drain as constructed or modified at any time before
7 July 1, 2014, and includes, but is not limited to, the following
8 activities if performed with best management practices:

9 (i) Excavation of accumulated sediments back to original
10 contours.

11 (ii) Reshaping of the side slopes.

12 (iii) Bank stabilization where reasonably necessary to prevent
13 erosion. Materials used for stabilization must be compatible with
14 existing bank or bed materials.

15 (iv) Armoring, lining, or piping if a previously armored,
16 lined, or piped section is being repaired and all work occurs
17 within the footprint of the previous work.

18 (v) Replacement of existing control structures, if the
19 original function of the drain is not changed and the original
20 approximate capacity of the drain is not increased.

21 (vi) Repair of stabilization structures.

22 (vii) Culvert replacement, including culvert extensions of not
23 more than 24 additional feet per culvert.

24 (viii) Emergency reconstruction of recently damaged parts of the
25 drain. Emergency reconstruction must occur within a reasonable
26 period of time after damage occurs in order to qualify for this
27 exemption.

1 (h) Projects constructed under the watershed protection and
2 flood prevention act, ~~chapter 656, 68 Stat. 666,~~ 16 USC 1001 to
3 ~~1008, 1010, and 1011.~~ **1012.**

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

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

11 (k) A water withdrawal.

12 (l) Annual installation of a seasonal dock or docks, pilings,
13 mooring buoys, or other mooring structures previously authorized by
14 and in accordance with a permit issued under this part.

15 (m) Controlled access of livestock to streams for watering or
16 crossing if constructed in accordance with applicable practice
17 standards set by the United States department of agriculture,
18 natural resources conservation service.

19 (n) Temporary drawdowns of impoundments at hydroelectric
20 projects licensed by the federal energy regulatory commission
21 (FERC) and subject to FERC's authority if both of the following
22 apply:

23 (i) The FERC licensee has consulted this state during the
24 drawdown plan development and this state's concerns have been
25 addressed in the drawdown plan as FERC considers appropriate.

26 (ii) Adverse environmental impacts, including stream flow,
27 aquatic resources, and timing, have been avoided and minimized to

1 the extent practical.

2 (o) Removal, by the riparian owner or a person authorized by
3 the riparian owner, of plants that are an aquatic nuisance as
4 defined in section 3301, if the removal is accomplished by hand-
5 pulling without using a powered or mechanized tool and all plant
6 fragments are removed from the water and properly disposed of on
7 land above the ordinary high-water mark as defined in section
8 30101.

9 (p) Raking of lake bottomlands by the riparian owner or a
10 person authorized by the riparian owner. To minimize effects on the
11 lake bottomlands, the areas raked shall be unvegetated before
12 raking and predominantly composed of sand or pebbles, and the
13 raking shall be performed without using a powered or mechanized
14 tool. For the purposes of this subdivision, the pulling of a
15 nonpowered, nonmechanized tool with a boat is not the use of a
16 powered or mechanized tool.

17 **(Q) EXCAVATION OR MINING ACTIVITIES ASSOCIATED WITH AN ACTIVE**
18 **MINING OPERATION UNLESS THE EXCAVATION OR MINING ACTIVITIES CREATE**
19 **AN INLAND LAKE WITH A SURFACE AREA OF 5 ACRES OR GREATER. IF THE**
20 **CREATION OF AN INLAND LAKE IS PREVENTED, OR IF A BODY OF WATER IS**
21 **CREATED BUT THE SURFACE AREA OF THE BODY OF WATER IS MAINTAINED AT**
22 **LESS THAN 5 ACRES, THROUGH PUMPING OR OTHER NATURAL OR ARTIFICIAL**
23 **MEANS, A PERMIT IS NOT REQUIRED UNLESS PUMPING OR OTHER NATURAL OR**
24 **ARTIFICIAL MEANS FAILS TO MAINTAIN THE SURFACE AREA OF THE BODY OF**
25 **WATER AT LESS THAN 5 ACRES.**

26 **(2) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART, IN**
27 **CONSIDERING AN APPLICATION FOR A PERMIT RENEWAL UNDER THIS PART FOR**

1 EXCAVATION OR MINING ACTIVITIES ASSOCIATED WITH AN ACTIVE MINING
2 OPERATION THAT HAS CREATED OR AFFECTS AN INLAND LAKE, IF THE SCOPE
3 OF THE PROJECT SUBJECT TO THE ORIGINAL PERMIT HAS NOT MATERIALLY
4 INCREASED, THE DEPARTMENT SHALL NOT REQUIRE ANY ADDITIONAL STUDIES
5 TO BE SUBMITTED AND SHALL APPROVE THE RENEWAL APPLICATION WITHIN 30
6 DAYS, UNLESS THE DEPARTMENT DEMONSTRATES BY A PREPONDERANCE OF
7 SOUND SCIENTIFIC EVIDENCE THAT THE ORIGINALLY PERMITTED ACTIVITY
8 HAS HAD A MATERIALLY ADVERSE EFFECT ON HUMAN HEALTH OR THE
9 ENVIRONMENT. FOR PURPOSES OF THIS SUBSECTION, THE SCOPE OF A
10 PROJECT SHALL BE CONSIDERED TO HAVE "MATERIALLY INCREASED" ONLY IF
11 THERE HAS BEEN, OR IS PROPOSED IN THE APPLICATION, AN INCREASE OF
12 10% OR MORE TO THE HORIZONTAL OR VERTICAL EXTENT OF EXCAVATION
13 BELOW THE WATER TABLE COMPARED WITH THE MAXIMUM EXCAVATION BELOW
14 THE WATER TABLE ALLOWED UNDER THE ORIGINAL PERMIT.

15 (3) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART, THE
16 APPLICATION FEE FOR AN APPLICATION FOR A PERMIT RENEWAL UNDER THIS
17 PART FOR EXCAVATION OR MINING ACTIVITIES ASSOCIATED WITH AN ACTIVE
18 MINING OPERATION THAT HAS CREATED OR AFFECTS AN INLAND LAKE, IF THE
19 SCOPE OF THE PROJECT SUBJECT TO THE ORIGINAL PERMIT HAS NOT
20 MATERIALLY INCREASED, SHALL NOT EXCEED \$250.00.

21 (4) ~~(2)~~—As used in this section, "water withdrawal" means the
22 removal of water from its source for any purpose.

23 (5) ~~(3)~~—As used in this part, "agricultural drain" means a
24 human-made conveyance of water that meets all of the following
25 requirements:

26 (a) Does not have continuous flow.

27 (b) Flows primarily as a result of precipitation-induced

1 surface runoff or groundwater drained through subsurface drainage
2 systems.

3 (c) Serves agricultural production.

4 (d) Was constructed before January 1, 1973, or was constructed
5 in compliance with this part or former 1979 PA 203.