

# HOUSE BILL No. 5107

October 29, 2013, Introduced by Reps. Graves, Bumstead, Denby, Zorn, Kurtz, Rendon, Daley, Brown, Kowall, Forlini, Lauwers, Jenkins, Shirkey, Schmidt, Goike, Potvin, Kelly, Franz, Glardon, Jacobsen and VerHeulen and referred to the Committee on Natural Resources.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 30101 and 30105 (MCL 324.30101 and 324.30105), section 30101 as amended by 2009 PA 139 and section 30105 as amended by 2013 PA 98.

**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.

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

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

6 (e) "Expand" means to occupy a larger area of an inland lake  
7 or stream than authorized by a permit issued under this part for  
8 marina mooring structures and watercraft moored at the marina.

9 (f) "Fund" means the land and water management permit fee fund  
10 created in section 30113.

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

17 (h) "Impoundment" means water held back by a dam, dike,  
18 floodgate, or other barrier.

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

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

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

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

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

12 (l) "Mooring structures" means structures used to moor  
13 watercraft, including, but not limited to, docks, piers, pilings,  
14 mooring anchors, lines and buoys, and boat hoists.

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

25 (n) "Project" means an activity that requires a permit  
26 pursuant to section 30102.

27 (o) "Property owners' association" means any group of

1 organized property owners publishing a directory of their  
2 membership, the majority of which are riparian owners and are  
3 located on the inland lake or stream that is affected by the  
4 proposed project.

5 (p) "Reconfigure" means to, without expanding the marina, do  
6 either of the following:

7 (i) Change the location of the dock or docks and other mooring  
8 structures at the marina to occupy an area of the inland lake or  
9 stream that was not previously authorized by a permit issued under  
10 this part.

11 (ii) Decrease the distance available for ingress and egress to  
12 an outside slip as described in section 30106a.

13 (q) "Riparian interest area" means that portion of an inland  
14 lake or stream over which a riparian owner has an ownership  
15 interest.

16 (r) "Riparian owner" means a person who has riparian rights.

17 (s) "Riparian rights" means those rights which are associated  
18 with the ownership of the bank or shore of an inland lake or  
19 stream.

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

24 (U) **"SEAWALL" MEANS A VERTICALLY SLOPED WALL CONSTRUCTED TO**  
25 **BREAK THE FORCE OF WAVES AND RETAIN SOIL FOR THE PURPOSE OF SHORE**  
26 **PROTECTION.**

27 (V) ~~(u)~~—"Structure" includes a wharf, dock, pier, **SEAWALL,**

1 dam, weir, stream deflector, breakwater, groin, jetty, sewer,  
2 pipeline, cable, and bridge.

3 (W) ~~(v)~~—"Upland" means the land area that lies above the  
4 ordinary high-water mark.

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

7 (a) A list of pending applications.

8 (b) Public notices.

9 (c) Public hearing schedules.

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

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

1 receive a copy of the application pursuant to this subsection.

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

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

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

15 (7) After providing notice and an opportunity for a public  
16 hearing, the department shall establish minor project categories of  
17 activities and projects that are similar in nature, have minimal  
18 adverse environmental effects when performed separately, and will  
19 have only minimal cumulative adverse effects on the environment.  
20 The department may act upon an application received pursuant to  
21 section 30104 for an activity or project within a minor project  
22 category without providing notices pursuant to subsection (3). All  
23 other provisions of this part, except provisions applicable only to  
24 general permits, are applicable to a minor project. **THE DEPARTMENT**  
25 **SHALL ESTABLISH A MINOR PROJECT CATEGORY UNDER THIS SUBSECTION FOR**  
26 **REPAIR OR REPLACEMENT OF A FAILED SEAWALL.**

27 (8) The department, after notice and an opportunity for a

1 public hearing, shall issue general permits on a statewide basis or  
2 within a local unit of government for projects that are similar in  
3 nature, that will cause only minimal adverse environmental effects  
4 when performed separately, and that will only have minimal  
5 cumulative adverse effects on the environment. Before authorizing a  
6 specific project to proceed under a general permit, the department  
7 may provide notice pursuant to subsection (3) but shall not hold a  
8 public hearing and shall not typically require a site inspection. A  
9 general permit issued under this subsection shall not be valid for  
10 more than 5 years. Among the activities the department may consider  
11 for general permit eligibility under this subsection are the  
12 following:

13 (a) The removal of qualifying small dams.

14 (b) The maintenance or repair of an existing pipeline, if the  
15 pipeline is maintained or repaired in a manner to ensure that any  
16 adverse effects on the inland lake or stream will be minimized.

17 (9) The department may issue, deny, or impose conditions on  
18 project activities authorized under a minor project category or a  
19 general permit if the conditions are designed to remove an  
20 impairment to the inland lake or stream, to mitigate the effects of  
21 the project, or to otherwise improve water quality. The department  
22 may also establish a reasonable time when the proposed project is  
23 to be completed or terminated.

24 (10) If the department determines that activity in a proposed  
25 project, although within a minor project category or a general  
26 permit, is likely to cause more than minimal adverse environmental  
27 effects, the department may require that the application be

1 processed according to subsection (3) and reviewed for compliance  
2 with section 30106.

3 (11) The department shall develop by December 31, 2013 and  
4 maintain a general permit for activities in drains legally  
5 established pursuant to the drain code of 1956, 1956 PA 40, MCL  
6 280.1 to 280.630. The general permit is subject to all of the  
7 following:

8 (a) The general permit shall cover installation and  
9 replacement of culverts, clear span bridges, and end sections;  
10 culvert extensions; drain realignments; installation of bank  
11 stabilization structures and grade stabilization structures; spoil  
12 placement; and other common drain activities that use best  
13 management practices.

14 (b) A drain commissioner or drainage board may submit an  
15 application for an authorization under the general permit on a  
16 countywide basis. The department of agriculture and rural  
17 development may submit an application for an authorization under  
18 the general permit on behalf of an intercounty drainage board on a  
19 drainage-district-wide basis.

20 (c) The department shall grant or deny an authorization under  
21 the general permit by March 1 if the drain commissioner or drainage  
22 board applies for the authorization by the preceding January 20. An  
23 authorization under the general permit is valid until March 30 of  
24 the year after the year in which the authorization is granted.

25 (d) By December 31 of each year, the drain commissioner or  
26 drainage board shall submit a report to the department that  
27 includes the names of the drains on which activities were performed

1 under the general permit during that calendar year, the locations  
 2 and nature of the activities, and plans and other documentation  
 3 demonstrating that those activities met the general permit  
 4 requirements.

5 (e) A drain commissioner or drainage board is not eligible to  
 6 be granted a new authorization under the general permit if  
 7 significant violations of the general permit under a previous  
 8 authorization granted to that drain commissioner or drainage board  
 9 have not been corrected.

10 (12) As used in this section: ~~,"qualifying~~

11 (A) **"FAILED SEAWALL" MEANS A SEAWALL THAT HAS DETERIORATED TO**  
 12 **THE POINT THAT IT NO LONGER EFFECTIVELY BREAKS THE FORCE OF WAVES**  
 13 **OR RETAINS SOIL FOR THE PURPOSE OF SHORE PROTECTION AND MEETS**  
 14 **EITHER OR BOTH OF THE FOLLOWING:**

15 (i) **THE SEAWALL IS CURRENTLY BREAKING THE FORCE OF WAVES AND**  
 16 **RETAINING SOIL ACROSS A MINIMUM OF 50% OF ITS LENGTH AND THERE IS**  
 17 **EVIDENCE OF A PREVIOUS SEAWALL ALONG THE OTHER 50% OF ITS LENGTH.**

18 (ii) **THE SEAWALL WAS BREAKING THE FORCE OF WAVES AND RETAINING**  
 19 **SOIL BUT WAS DAMAGED BY A SINGLE CATASTROPHIC EVENT WHICH OCCURRED**  
 20 **WITHIN THE 2 YEARS PRIOR TO THE REPAIR OR REPLACEMENT OF THE**  
 21 **SEAWALL.**

22 (B) **"QUALIFYING small dam"** means a dam that meets all of the  
 23 following conditions:

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

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

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

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

2           (v) ~~(e)~~—There are no threatened or endangered species that  
3 have been identified in the area that will be affected by the  
4 project.

5           (vi) ~~(f)~~—There are no known areas of contaminated sediments in  
6 the area that will be affected by the project.

7           (vii) ~~(g)~~—The department has received written permission for  
8 the removal of the dam from all riparian property owners adjacent  
9 to the dam's impoundment.