

HOUSE BILL No. 5862

September 13, 2016, Introduced by Rep. LaFontaine 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 30103 (MCL 324.30101 and 324.30103),
section 30101 as amended by 2014 PA 351 and section 30103 as
amended by 2014 PA 253.

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,
9 embankments, and appurtenant works, that impounds, diverts, or is

1 designed to impound or divert water.

2 (d) "Department" means the department of environmental
3 quality.

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

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

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

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

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

26 (j) "Marina" means a facility that is owned or operated by a
27 person, extends into or over an inland lake or stream, and offers

1 service to the public or members of the marina for docking,
2 loading, or other servicing of recreational watercraft.

3 (k) "Minor offense" means either of the following violations
4 of this part if the project involved in the offense is a minor
5 project or the department determines that restoration of the
6 affected property is not required:

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

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

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

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

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

24 (o) "Property owners' association" means any group of
25 organized property owners publishing a directory of their
26 membership, the majority of which are riparian owners and are
27 located on the inland lake or stream that is affected by the

1 proposed project.

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

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

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

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

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

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

17 (t) "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 (u) "Seawall" means a vertically sloped wall constructed to
22 break the force of waves and retain soil for the purpose of shore
23 protection.

24 (v) "SMALL SCALE NONCOMMERCIAL GOLD MINING" MEANS SEARCHING
25 FOR AND REMOVING GOLD, SILVER, OR OTHER PRECIOUS MINERALS FROM
26 AMONG SMALL QUANTITIES OF AGGREGATE OR A VEIN OF ORE IN A MANNER
27 THAT IS CONSISTENT WITH A HOBBY OR CASUAL ACTIVITY, USING ANY OF

1 THE FOLLOWING:

2 (i) PANS.

3 (ii) SLUICES.

4 (iii) ROCKER BOXES.

5 (iv) OTHER NONMOTORIZED EQUIPMENT.

6 (v) DREDGES WITH MOTORS OF NOT MORE THAN 10 HORSEPOWER AND
7 SUCTION NOZZLES NOT MORE THAN 4 INCHES IN DIAMETER.

8 (W) ~~(v)~~—"Structure" includes a wharf, dock, pier, seawall,
9 dam, weir, stream deflector, breakwater, groin, jetty, sewer,
10 pipeline, cable, and bridge.

11 (X) ~~(w)~~—"Upland" means the land area that lies above the
12 ordinary high-water mark.

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

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

19 (b) A seasonal structure placed on bottomland to facilitate
20 private noncommercial recreational use of the water if it does not
21 unreasonably interfere with the use of the water by others entitled
22 to use the water or interfere with water flow.

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

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

27 (i) The maintenance includes only activities that maintain the

1 location, depth, and bottom width of the drain as constructed or
2 modified at any time before July 1, 2014.

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

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

8 (f) Construction and maintenance of minor drainage structures
9 and facilities ~~which~~**THAT** are identified by rule promulgated by the
10 department ~~pursuant to~~**UNDER** section 30110. Before such a rule is
11 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 rural development,
14 and the director of the state transportation department or their
15 designated representatives. The rules shall be reviewed at least
16 annually.

17 (g) Maintenance of a drain that either was legally established
18 and constructed before January 1, 1973, pursuant to the drain code
19 of 1956, 1956 PA 40, MCL 280.1 to 280.630, except those legally
20 established drains constituting mainstream portions of certain
21 natural watercourses identified in rules promulgated by the
22 department under section 30110, or was constructed or modified
23 under a permit issued pursuant to this part. As used in this
24 subdivision, "maintenance of a drain" means the physical
25 preservation of the location, depth, and bottom width of a drain
26 and appurtenant structures to restore the function and approximate
27 capacity of the drain as constructed or modified at any time before

July 1, 2014, and includes, but is not limited to, the following activities if performed with best management practices:

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

(ii) Reshaping of the side slopes.

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

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

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

(vi) Repair of stabilization structures.

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

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

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

(i) Construction and maintenance of privately owned cooling or storage ponds used in connection with a public utility except at 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, if the maintenance is in place and in kind
4 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 (m) Controlled access of livestock to streams for watering or
10 crossing if constructed in accordance with applicable practice
11 standards set by the United States ~~department of agriculture,~~
12 ~~natural resources conservation service.~~ **DEPARTMENT OF AGRICULTURE,**
13 **NATURAL RESOURCES CONSERVATION SERVICE.**

14 (n) Temporary drawdowns of impoundments at hydroelectric
15 projects licensed by the ~~federal energy regulatory commission~~
16 **FEDERAL ENERGY REGULATORY COMMISSION** (FERC) and subject to FERC's
17 authority if both of the following apply:

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

21 (ii) Adverse environmental impacts, including stream flow,
22 aquatic resources, and timing, have been avoided and minimized to
23 the extent practical.

24 (o) Removal, by the riparian owner or a person authorized by
25 the riparian owner, of plants that are an aquatic nuisance as
26 defined in section 3301, if the removal is accomplished by hand-
27 pulling without using a powered or mechanized tool and all plant

1 fragments are removed from the water and properly disposed of on
2 land above the ordinary high-water mark as defined in section
3 30101.

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

12 **(Q) SMALL SCALE NONCOMMERCIAL GOLD MINING.**

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

15 (3) As used in this part, "agricultural drain" means a human-
16 made conveyance of water that meets all of the following
17 requirements:

18 (a) Does not have continuous flow.

19 (b) Flows primarily as a result of precipitation-induced
20 surface runoff or groundwater drained through subsurface drainage
21 systems.

22 (c) Serves agricultural production.

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

25 Enacting section 1. This amendatory act takes effect 90 days
26 after the date it is enacted into law.