

SENATE BILL NO. 471

May 20, 2021, Introduced by Senators STAMAS, OUTMAN, BAYER, HORN, WOJNO, ZORN, VICTORY and CHANG and referred to the Committee on Environmental Quality.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 30702, 30708, 31515, 31520, and 31521 (MCL
324.30702, 324.30708, 324.31515, 324.31520, and 324.31521), as
added by 1995 PA 59.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 30702. (1) The county board of a county in which an
2 inland lake is located ~~may upon the board's own motion, or shall,~~
3 within 45 days following receipt of a petition to the board of 2/3

1 of the owners of lands abutting the inland lake, initiate ~~action to~~
 2 ~~take the necessary steps to cause to be determined~~ **a proceeding, as**
 3 **provided in section 30704, for the determination of** the normal
 4 level of the inland lake. **The county board may also initiate such a**
 5 **proceeding on its own motion.**

6 (2) Unless required to act by resolution as provided in this
 7 part, the county board may delegate powers and duties under this
 8 part to that county's commissioner, ~~or~~ road commission, ~~or other~~
 9 ~~delegated authority to another person.~~

10 ~~(3) If a court-determined normal level is established pursuant~~
 11 ~~to this part, the delegated authority of the county or counties in~~
 12 ~~which the lake is located shall maintain that normal level.~~

13 Sec. 30708. (1) After the court determines the normal level of
 14 an inland lake **under section 30707** in a proceeding initiated by the
 15 county, the delegated authority of any county or counties in which
 16 the inland lake is located shall provide for and maintain that
 17 normal level, **subject to sections 31520 and 31521.**

18 (2) A county may ~~acquire,~~ **do any of the following:**

19 **(a) Acquire** in the name of the county, by gift, grant,
 20 purchase, or condemnation, ~~proceedings,~~ an existing dam that may
 21 affect the normal level of the inland lake, sites for dams, or
 22 rights in land ~~needed~~ **necessary** or convenient ~~in order to~~ implement
 23 this part. ~~A county may enter~~

24 **(b) Enter** into a contract for operation and maintenance of an
 25 existing dam **owned by the county.** ~~The county may construct~~

26 **(c) Construct** and maintain a dam ~~that is determined by~~ **if** the
 27 delegated authority ~~to be~~ **determines that the dam is** necessary ~~for~~
 28 ~~the purpose of maintaining to maintain~~ the normal level.

29 ~~A dam may be acquired, constructed, or maintained in a county~~

1 ~~adjoining the county in which the lake is located.~~

2 (d) **If it may affect the normal level of an inland lake in the**
3 **county, acquire, construct, or maintain a dam in an adjoining**
4 **county.**

5 (3) ~~For the purpose of maintaining~~ **To maintain** the normal
6 level, a delegated authority may ~~drill~~ **do any of the following:**

7 (a) **Drill** wells or pump water from another source to supply an
8 inland lake with additional water. ~~, may lower~~

9 (b) **Lower** the level of the lake by pumping water from the
10 **inland** lake. ~~, and may purchase~~

11 (c) **Purchase** power to operate pumps, wells, or other devices
12 installed as part of a **project to maintain the** normal level.
13 ~~project.~~

14 Sec. 31515. (1) Except as otherwise provided in this section,
15 a permit issued by the department under this part shall require
16 that plans and specifications be approved by the department before
17 construction begins. The department shall approve or reject
18 complete plans and specifications within 60 days after their
19 receipt. The permitted activity shall be completed within a
20 ~~specified time~~ **as specified in the permit**, not to exceed 2 years
21 after the date of issuance of the permit. Upon the written
22 application of the permittee, and for good cause shown, the
23 department may extend the time for completing construction. The
24 permittee shall notify the department at least 10 days before
25 beginning construction and shall ~~otherwise~~ notify the department as
26 the department may **otherwise** require.

27 (2) ~~A~~ **The permittee shall not implement a** change in approved
28 plans and specifications ~~shall not be implemented~~ unless the
29 department gives its prior approval. The department shall approve

1 or reject changes in plans and specifications within 30 days after
2 **receipt of** the request for the changes.

3 (3) A permit is effective for the length of time specified in
4 the permit unless it is revoked pursuant to this part. The
5 department may renew a permit.

6 (4) A permit to alter, repair, or construct a new dam,
7 reconstruct a failed dam, or enlarge the surface area of an
8 impoundment by more than 10% may specify the terms and conditions
9 including, but not limited to, requirements for minimum flows, cold
10 water release, impoundment fluctuations, portage, contingency
11 plans, and conditions under which the work is to be performed. The
12 terms and conditions of a permit shall be effective for the life of
13 the project. The department may consider, in issuing a permit, any
14 mitigating measures in conjunction with the permitted activities
15 and may make recommendations as to **means of** fish passage that may
16 be required by part 483.

17 (5) A permit to construct a new dam or reconstruct a failed
18 dam may require a performance bond to ~~assure~~**ensure** completion of
19 the project or to provide for complete or partial restoration of
20 the project site, as determined by the department in rules
21 promulgated by the department. **If the dam will impound an inland
22 lake for which a normal level has been established under section
23 30707, a permit to construct a new dam or reconstruct a failed dam
24 shall require a performance bond to ensure completion of the
25 project, to provide for complete or partial restoration of the
26 project site, and to ensure safe operation and maintenance of the
27 dam.**

28 ~~(6) A permit may be suspended, revoked, annulled, withdrawn,
29 recalled, canceled, or amended after~~ **After** a hearing, **the**

1 **department may suspend, revoke, or modify a permit** for a violation
 2 of ~~any of its provisions, a violation of the permit,~~ this part, a
 3 ~~violation of or~~ a rule promulgated under this part ~~,~~ **or for** any
 4 misrepresentation contained in the application **for the permit.**

5 ~~Hearings~~ **The hearing** shall be conducted by the department ~~in~~
 6 ~~accordance with the provisions for contested cases in~~ **pursuant to**
 7 **chapter 4 of** the administrative procedures act of 1969, **1969 PA**
 8 **306, MCL 24.271 to 24.288.**

9 Sec. 31520. (1) The owner ~~or his or her agent~~ **of a dam** shall
 10 advise the department and the affected off-site public authorities
 11 and safety agencies of any sudden or unprecedented flood or unusual
 12 ~~or alarming~~ circumstance or occurrence, **whether** existing or
 13 anticipated, that may affect the safety of the dam within 24 hours
 14 ~~of~~ **after** the flood, circumstance, or occurrence.

15 (2) The owner **of a dam** shall notify the department as soon as
 16 possible of any ~~necessary~~ emergency drawdowns, repairs, breaching,
 17 or other action being taken in response to an emergency condition.

18 (3) **Notwithstanding the establishment of a normal level for an**
 19 **inland lake under section 30707, the owner of a dam that impounds**
 20 **that inland lake may, after providing written notice to the**
 21 **department and affected offsite public authorities and safety**
 22 **agencies, draw down the impoundment below the normal level to**
 23 **mitigate or prevent existing or anticipated flooding or heavy flows**
 24 **that pose a danger to public health, safety, welfare, property, or**
 25 **the natural resources or the public trust in those natural**
 26 **resources. The dam owner shall resume operations to restore and**
 27 **maintain the normal level by the earlier of the following times:**

28 (a) Not more than 14 days after the draw down began.

29 (b) When there is no longer a threat of flooding or heavy

1 flows.

2 Sec. 31521. (1) The department may issue **to the owner of a dam**
 3 **a written** emergency ~~orders as provided in this section.~~ The
 4 department ~~may, by written notice, order an owner to immediately~~
 5 **order that requires the owner to do either of the following:**

6 (a) **Immediately** repair, draw down, breach, or cease operation
 7 of a dam ~~where a~~ **if the** dam is in imminent danger of failure and is
 8 causing or threatening to cause harm to public health, safety,
 9 welfare, property, or the natural resources or the public trust in
 10 those natural resources.

11 (b) **Notwithstanding the establishment of a normal level for an**
 12 **inland lake under section 30707, draw down the impoundment below**
 13 **the normal level to mitigate or prevent existing or anticipated**
 14 **flooding or heavy flows that pose a danger to public health,**
 15 **safety, welfare, property, or the natural resources or the public**
 16 **trust in those natural resources.**

17 (2) If ~~an~~ **the owner of a dam** fails to comply with an order
 18 **under this section,** or is unavailable or ~~unable to~~ **cannot** be
 19 contacted, ~~then~~ the department may undertake immediate repair,
 20 drawdown, breaching, or cessation of operation, as may be necessary
 21 to alleviate the danger. ~~, and~~ **The department** may recover from the
 22 owner the costs incurred in a civil action commenced in a court of
 23 competent jurisdiction. ~~The department may terminate an emergency~~
 24 ~~order upon a determination in writing that all necessary emergency~~
 25 ~~actions have been complied with by the owner and that an emergency~~
 26 ~~no longer exists.~~

27 (3) ~~(2)~~ When ordering emergency actions under subsection (1),
 28 the department may ~~specify~~ **do any of the following:**

29 (a) **Specify a** maximum drawdown level. ~~and~~

1 **(b) Specify** discharge rates. ~~and require sediment~~

2 **(c) Require any of the following:**

3 **(i) Sediment** surveys. ~~, water~~

4 **(ii) Water** quality sampling. ~~, monitoring, or any~~

5 **(iii) Monitoring.**

6 **(iv) Any** other action determined necessary by the department to
7 ensure adequate protection of the public health, safety, welfare,
8 property, or natural resources or the public trust in those natural
9 resources.

10 **(4)** The department may modify the requirements of an emergency
11 order if, during the conduct of ordered actions, it determines that
12 the modification is necessary to protect the public health, safety,
13 welfare, property, or natural resources or the public trust in
14 those natural resources.

15 **(5)** ~~(3) Upon~~ **Within 15 days after** the issuance of an emergency
16 order **under subsection (1) (a)**, the department shall provide the
17 owner with an opportunity for a hearing pursuant to **chapter 4 of**
18 the administrative procedures act of 1969, **1969 PA 306, MCL 24.271**
19 **to 24.288.** ~~within 15 days of the date of its issuance.~~ At the
20 hearing, the department shall determine, based on information and
21 fact, if the emergency order shall be continued, modified, or
22 suspended as necessary to protect public health, safety, welfare,
23 property, or natural resources or the public trust in those natural
24 resources.

25 **(6) An emergency order under subsection (1) expires and the**
26 **dam owner shall resume operations to restore and maintain the**
27 **normal level established under section 30707 by the earliest of the**
28 **following times:**

29 **(a) The time set forth in the order.**

1 (b) When the department provides written notice to the dam
2 owner that the department has determined that all necessary
3 emergency actions have been taken and that an emergency no longer
4 exists.

5 (c) For an order under subsection (1)(b), not more than 14
6 days after the drawdown began.