

HOUSE BILL No. 4471

April 14, 1999, Introduced by Reps. DeVuyst and Birkholz and referred to the Committee on Conservation and Outdoor Recreation.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 3104, 30101, 30104, 30105, 30109, 32312, 32501, and 32513 (MCL 324.3104, 324.30101, 324.30104, 324.30105, 324.30109, 324.32312, 324.32501, and 324.32513), section 3104 as amended by 1995 PA 169, sections 30101 and 32501 as added by 1995 PA 59, section 30104 as amended by 1996 PA 97, sections 30105 and 30109 as amended by 1995 PA 171, section 32312 as amended by 1995 PA 168, and section 32513 as amended by 1995 PA 170.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3104. (1) The department is designated the state
2 agency to cooperate and negotiate with other governments, govern-
3 mental units, and governmental agencies in matters concerning the
4 water resources of the state, including, but not limited to,
5 flood control, beach erosion control, and water quality control

1 planning, development, and management. The department shall have
2 control over the alterations of natural or present watercourses
3 of all rivers and streams in the state to assure that the chan-
4 nels and the portions of the floodplains that are the floodways
5 are not inhabited and are kept free and clear of interference or
6 obstruction that will cause any undue restriction of the capacity
7 of the floodway. The department may take steps as may be neces-
8 sary to take advantage of any act of congress that may be of
9 assistance in carrying out the purposes of this part, including
10 the water resources planning act, Public Law 89-80,
11 42 U.S.C. 1962 to 1962-1 and 1962a to 1962d-3, and the federal
12 water pollution control act, chapter 758, 86 Stat. 816,
13 33 U.S.C. 1251 to 1252, 1253 to 1254, 1255 to 1257, 1258 to 1263,
14 1265 to 1270, 1281, 1282 to 1293, 1294 to 1299, 1311 to 1313,
15 1314 to ~~1326, 1328 to~~ 1330, 1341 to 1345, 1361 to 1377, and
16 1381 to 1387.

17 (2) The department shall report to the governor and to the
18 legislature at least annually any plans or projects being imple-
19 mented or considered for implementation and shall include in the
20 report requests for any legislation needed to implement any pro-
21 posed projects or agreements made necessary as a result of a plan
22 or project, together with any requests for appropriations. The
23 department may make recommendations to the governor on the desig-
24 nation of areawide water quality planning regions and organiza-
25 tions relative to the governor's responsibilities under the fed-
26 eral water pollution control act.

1 (3) A person shall submit an application for a permit to
2 alter a floodplain on a form approved by the department and shall
3 include information that may be required by the department to
4 assess the proposed alteration's impact on the floodplain. If an
5 alteration includes activities at multiple locations in a flood-
6 plain, 1 application may be filed for combined activities.

7 (4) Except as provided in subsections (5) and (6), until
8 October 1, ~~1999~~ 2003, an application for a floodplain permit
9 shall be accompanied by a fee of \$500.00. Until October 1,
10 ~~1999~~ 2003, if the department determines that engineering compu-
11 tations are required to assess the impact of a proposed flood-
12 plain alteration on flood stage or discharge characteristics, the
13 department shall assess the applicant an additional \$1,500.00 to
14 cover the department's cost of review.

15 (5) Until October 1, ~~1999~~ 2003, an application for a
16 floodplain permit for a minor project category shall be accom-
17 panied by a fee of \$100.00. Minor project categories shall be
18 established by rule and shall include activities and projects
19 that are similar in nature and have minimal potential for causing
20 harmful interference.

21 (6) If work has been done in violation of a permit require-
22 ment under this part and restoration is not ordered by the
23 department, the department may accept an application for a permit
24 if the application is accompanied by a fee equal to 2 times the
25 permit fee required under subsection (4) or (5).

1 (7) The department shall forward fees collected under this
2 section to the state treasurer for deposit in the land and water
3 management permit fee fund created in section 30113.

4 (8) A project that requires review and approval under this
5 part and 1 or more of the following ~~acts~~ is subject to only the
6 single highest permit fee required under this part or the
7 following: ~~acts:~~

8 (a) Part 301.

9 (b) Part 303.

10 (c) Part ~~325~~ 323.

11 (d) Part ~~323~~ 325.

12 (e) Section 117 of the ~~subdivision control act of 1967, Act~~
13 ~~No. 288 of the Public Acts of 1967, being section 560.117 of the~~
14 ~~Michigan Compiled Laws~~ LAND DIVISION ACT, 1967 PA 288, MCL
15 560.117.

16 Sec. 30101. As used in this part:

17 (a) "Bottomland" means the land area of an inland lake or
18 stream that lies below the ordinary high-water mark and that may
19 or may not be covered by water.

20 (b) "Bulkhead line" means a line that is established pursu-
21 ant to this part beyond which dredging, filling, or construction
22 of any kind is not allowed without a permit.

23 (C) "DEPARTMENT" MEANS THE DEPARTMENT OF ENVIRONMENTAL
24 QUALITY.

25 (D) ~~(c)~~ "Fund" means the land and water management permit
26 fee fund created in section 30113.

1 (E) ~~(d)~~ "Impoundment" means water held back by a dam,
2 dike, floodgate, or other barrier.

3 (F) ~~(e)~~ "Inland lake or stream" means a natural or artifi-
4 cial lake, pond, or impoundment; a river, stream, or creek which
5 may or may not be serving as a drain as defined by the drain code
6 of 1956, ~~Act No. 40 of the Public Acts of 1956, being sections~~
7 ~~280.1 to 280.630 of the Michigan Compiled Laws~~ 1956 PA 40, MCL
8 280.1 TO 280.630; or any other body of water that has definite
9 banks, a bed, and visible evidence of a continued flow or contin-
10 ued occurrence of water, including the St. Marys, St. Clair, and
11 Detroit rivers. Inland lake or stream does not include the Great
12 Lakes, Lake St. Clair, or a lake or pond that has a surface area
13 of less than 5 acres.

14 (G) ~~(f)~~ "Marina" means a facility that is owned or oper-
15 ated by a person, extends into or over an inland lake or stream,
16 and offers service to the public or members of the marina for
17 docking, loading, or other servicing of recreational watercraft.

18 (H) ~~(g)~~ "Minor offense" means either of the following vio-
19 lations of this part if the project involved in the offense is a
20 minor project as listed in R 281.816 of the Michigan administra-
21 tive code or the department determines that restoration of the
22 affected property is not required:

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

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

25 (I) ~~(h)~~ "Ordinary high-water mark" means the line between
26 upland and bottomland that persists through successive changes in
27 water levels, below which the presence and action of the water is

1 so common or recurrent that the character of the land is marked
2 distinctly from the upland and is apparent in the soil itself,
3 the configuration of the surface of the soil, and the
4 vegetation. On an inland lake that has a level established by
5 law, it means the high established level. Where water returns to
6 its natural level as the result of the permanent removal or aban-
7 donment of a dam, it means the natural ordinary high-water mark.

8 (J) ~~(i)~~ "Project" means an activity that requires a permit
9 pursuant to section 30102.

10 (K) ~~(j)~~ "Property owners' association" means any group of
11 organized property owners publishing a directory of their member-
12 ship, the majority of which are riparian owners and are located
13 on the inland lake or stream that is affected by the proposed
14 project.

15 (L) ~~(k)~~ "Riparian owner" means a person who has riparian
16 rights.

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

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

24 (O) ~~(n)~~ "Structure" includes a marina, wharf, dock, pier,
25 dam, weir, stream deflector, breakwater, groin, jetty, sewer,
26 pipeline, cable, and bridge.

1 (P) ~~(o)~~ "Upland" means the land area that lies above the
2 ordinary high-water mark.

3 Sec. 30104. (1) Before a project that is subject to this
4 part is undertaken, a person shall file an application and
5 receive a permit from the department. The application shall be
6 on a form prescribed by the department and shall include any
7 information that may be required by the department. If a project
8 includes activities at multiple locations, 1 application may be
9 filed for the combined activities.

10 (2) Except as provided in subsections (3) and (4), an appli-
11 cation for a permit shall be accompanied by a fee based on an
12 administrative cost in accordance with the following schedule:

13 (a) Until October 1, ~~1999~~ 2003:

14 (i) For a minor project listed in R 281.816 of the Michigan
15 administrative code, or a seasonal drawdown or the associated
16 reflooding, or both, of a dam or impoundment for the purpose of
17 weed control, a fee of \$50.00. However, for a permit for a sea-
18 sonal drawdown or associated reflooding, or both, of a dam or
19 impoundment for the purpose of weed control that is issued for
20 the first time after ~~the effective date of the 1995 amendatory~~
21 ~~act that added this sentence~~ OCTOBER 9, 1995, an initial fee of
22 \$500.00 with subsequent permits for the same purpose being
23 assessed a \$50.00 fee.

24 (ii) For construction or expansion of a marina, a fee of:

25 (A) \$50.00 for an expansion of 1-10 slips to an existing
26 permitted marina.

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

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

5 (D) \$500.00 for a new marina with 11-50 proposed marina
6 slips, plus \$10.00 for each slip over 50.

7 (E) \$1,500.00 if an existing permitted marina proposes main-
8 tenance dredging of 10,000 cubic yards or more or the addition of
9 seawalls, bulkheads, or revetments of 500 feet or more.

10 (iii) For renewal of a marina operating permit, a fee of
11 \$50.00.

12 (iv) For major projects other than a project described in
13 subparagraph (ii)(E), involving any of the following, a fee of
14 \$2,000.00:

15 (A) Dredging of 10,000 cubic yards or more.

16 (B) Filling of 10,000 cubic yards or more.

17 (C) Seawalls, bulkheads, or revetment of 500 feet or more.

18 (D) Filling or draining of 1 acre or more of wetland conti-
19 guous to a lake or stream.

20 (E) New dredging or upland boat basin excavation in areas of
21 suspected contamination.

22 (F) Shore projections, such as groins and underwater stabi-
23 lizers, that extend 150 feet or more into a lake or stream.

24 (G) New commercial docks or wharves of 300 feet or more in
25 length.

26 (H) Stream enclosures 100 feet or more in length.

1 (I) Stream relocations 500 feet or more in length.

2 (J) New golf courses.

3 (K) Subdivisions.

4 (L) Condominiums.

5 (v) For all other projects not listed in subparagraphs (i)
6 through (iv), a fee of \$500.00.

7 (b) Beginning October 1, ~~1999~~ 2003, a fee of \$25.00 for
8 any project listed in subdivision (a).

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 ~~325~~ 323.

15 (c) Part ~~323~~ 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 require-
20 ment under this part and restoration is not ordered by the
21 department, the department may accept an application for a permit
22 if the application is accompanied by a fee equal to 2 times the
23 permit fee required under this section.

24 Sec. 30105. (1) Until October 1, ~~1999~~ 2003, a person who
25 desires notification of pending applications may submit a written
26 request to the department accompanied by an annual fee of
27 \$25.00. The department shall forward all annual fees to the

1 state treasurer for deposit into the fund. The department shall
2 prepare a monthly list of the applications made during the previ-
3 ous month and shall promptly mail copies of the list for the
4 remainder of the calendar year to the persons who have so
5 requested notice. The monthly list shall state the name and
6 address of each applicant, the legal description of the lands
7 included in the applicant's project, and a summary statement of
8 the purpose of the project. The department may hold a public
9 hearing on pending applications.

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

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

5 (4) At least 10 days' notice of a hearing to be held under
6 this section shall be given by publication in a newspaper circu-
7 lated in the county where the project is to be located and by
8 mailing copies of the notice to the persons who have requested
9 the monthly list pursuant to subsection (1), to the person
10 requesting the hearing, and to the persons and governmental units
11 that are entitled to receive a copy of the application pursuant
12 to subsection (2).

13 (5) The department shall grant or deny the permit within 60
14 days, or within 90 days if a public hearing is held, after the
15 filing of an application pursuant to section 30104. If a permit
16 is denied, the department shall provide to the applicant a con-
17 cise written statement of its reasons for denial of the permit,
18 and, if it appears that a minor modification of the application
19 would result in the granting of the permit, the nature of the
20 modification shall be stated. In an emergency, the department
21 may issue a conditional permit before the expiration of the
22 20-day period referred to in subsection (2).

23 (6) The department, by rule promulgated under section
24 30110(1), may establish minor project categories of activities
25 and projects that are similar in nature and have minimal adverse
26 environmental impact. The department may act upon an application
27 received pursuant to section 30104 for an activity or project

1 within a minor project category after an on-site inspection of
2 the land and water involved without providing notices or holding
3 a public hearing pursuant to subsection (2). A final inspection
4 or certification of a project completed under a permit granted
5 pursuant to this subsection is not required, but all other provi-
6 sions of this part are applicable to a minor project.

7 Sec. 30109. Upon the written request of a riparian owner
8 and upon payment of a service fee, the department may enter into
9 a written agreement with a riparian owner establishing the loca-
10 tion of the ordinary high-water mark for his or her property. In
11 the absence of substantially changed conditions, the agreement
12 shall be conclusive proof of the location in all matters between
13 the state and the riparian owner and his or her successors in
14 interest. Until October 1, ~~1999~~ 2003, the service fee provided
15 for in this section shall be \$500.00. Beginning October 1,
16 ~~1999~~ 2003, the service fee provided for in this section shall
17 be \$50.00. The department shall forward all service fees to the
18 state treasurer for deposit into the fund.

19 Sec. 32312. (1) The department, in order to regulate the
20 uses and development of high-risk areas, flood risk areas, and
21 environmental areas and to implement the purposes of this part,
22 shall promulgate rules. Until October 1, ~~1999~~ 2003, if permits
23 are required pursuant to rules promulgated under this part, a fee
24 of \$500.00 shall be submitted to the department with each appli-
25 cation for a commercial or multi-family residential project, a
26 fee of \$100.00 shall be submitted with each application for a
27 single-family home construction, and a fee of \$50.00 shall be

1 submitted with each application for an addition to an existing
2 single-family home or for a project that has a minor impact on
3 fish and wildlife resources in environmental areas as determined
4 by the department.

5 (2) A project that requires review and approval under this
6 part and under 1 or more of the following is subject to only the
7 single highest permit fee required under this part or the
8 following:

9 (a) Part ~~303~~ 301.

10 (b) Part ~~325~~ 303.

11 (c) Part ~~301~~ 325.

12 (d) Section 3104.

13 (E) SECTION 117 OF THE LAND DIVISION ACT, 1967 PA 288, MCL
14 560.117.

15 (3) The department shall forward fees collected under this
16 section to the state treasurer for deposit in the land and water
17 management permit fee fund created in section 30113.

18 (4) A circuit court, upon petition and a showing by the
19 department that a violation of a rule promulgated under subsec-
20 tion (1) exists, shall issue any necessary order to the defendant
21 to correct the violation or to restrain the defendant from fur-
22 ther violation of the rule.

23 Sec. 32501. As used in this part: ~~, "marina"~~

24 (A) "DEPARTMENT" MEANS THE DEPARTMENT OF ENVIRONMENTAL
25 QUALITY.

26 (B) "MARINA purposes" means an operation making use of
27 submerged bottomlands or filled-in bottomlands of the Great Lakes

1 for the purpose of service to boat owners or operators, which
2 operation may restrict or prevent the free public use of the
3 affected bottomlands or filled-in lands.

4 Sec. 32513. (1) Before any work or connection specified in
5 section 32512 is undertaken, a person shall file an application
6 with the department setting forth the following:

7 (a) The name and address of the applicant.

8 (b) The legal description of the lands included in the
9 project.

10 (c) A summary statement of the purpose of the project.

11 (d) A map or diagram showing the proposal on an adequate
12 scale with contours and cross-section profiles of the waterway to
13 be constructed.

14 (e) Other information required by the department.

15 (2) Except as provided in subsections (3) and (4), an appli-
16 cation for a permit under this section shall be accompanied by a
17 fee according to the following schedule:

18 (a) Until October 1, ~~1999~~ 2003:

19 (i) For activities included in the minor project category as
20 described in rules promulgated under this part, \$50.00.

21 (ii) For construction or expansion of a marina, a fee of:

22 (A) \$50.00 for an expansion of 1-10 slips to an existing
23 permitted marina.

24 (B) \$100.00 for a new marina with 1-10 proposed marina
25 slips.

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

1 (D) \$500.00 for a new marina with 11-50 proposed marina
2 slips, plus \$10.00 for each slip over 50.

3 (E) \$1,500.00 if an existing permitted marina proposes main-
4 tenance dredging of 10,000 cubic yards or more or the addition of
5 seawalls, bulkheads, or revetments of 500 feet or more.

6 (iii) For major projects other than a project described in
7 subparagraph (ii)(E), involving any of the following, a fee of
8 \$2,000.00:

9 (A) Dredging of 10,000 cubic yards or more.

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

11 (C) Seawalls, bulkheads, or revetment of 500 feet or more.

12 (D) Filling or draining of 1 acre or more of coastal
13 wetland.

14 (E) New dredging or upland boat basin excavation in areas of
15 suspected contamination.

16 (F) New breakwater or channel jetty.

17 (G) Shore protection, such as groins and underwater stabi-
18 lizers, that extend 150 feet or more on Great Lakes bottomlands.

19 (H) New commercial dock or wharf of 300 feet or more in
20 length.

21 (iv) For all other projects not listed in subparagraphs (i)
22 through (iii), \$500.00.

23 (b) Beginning October 1, ~~1999~~ 2003, a fee of \$50.00 for
24 any project listed in subdivision (a).

25 (3) A project that requires review and approval under this
26 part and 1 or more of the following is subject to only the single
27 highest permit fee required under this part or the following:

1 (a) Part 301.

2 (b) Part 303.

3 (c) Part 323.

4 (d) Section 3104.

5 (e) Section 117 of the ~~subdivision control act of 1967, Act~~
6 ~~No. 288 of the Public Acts of 1967, being section 560.117 of the~~
7 ~~Michigan Compiled Laws~~ LAND DIVISION ACT, 1967 PA 288, MCL
8 560.117.

9 (4) If work has been done in violation of a permit require-
10 ment under this part and restoration is not ordered by the
11 department, the department may accept an application for a permit
12 if the application is accompanied by a fee equal to 2 times the
13 permit fee required under this section.

14 (5) The department shall forward all fees collected under
15 this section to the state treasurer for deposit into the land and
16 water management permit fee fund created in section 30113.