SUBSTITUTE FOR

HOUSE BILL NO. 5107

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:

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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.

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

4 (d) "Department" means the department of environmental5 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 fund10 created in section 30113.

(g) "Height of the dam" means the difference in elevation measured vertically between the natural bed of an inland lake or stream at the downstream toe of the dam, or, if it is not across a stream channel or watercourse, from the lowest elevation of the downstream toe of the dam, to the design flood elevation or to the 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. Clair, and Detroit rivers. Inland lake or stream does not include 25 26 the Great Lakes, Lake St. Clair, or a lake or pond that has a 27 surface area of less than 5 acres.

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(j) "Marina" means a facility that is owned or operated by a
 person, extends into or over an inland lake or stream, and offers
 service to the public or members of the marina for docking,
 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:

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

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

12 (1) "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.

(m) "Ordinary high-water mark" means the line between upland 15 and bottomland that persists through successive changes in water 16 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 permit26 pursuant to section 30102.

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

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

5 (p) "Reconfigure" means to, without expanding the marina, do6 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 to12 an outside slip as described in section 30106a.

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

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

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

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

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dam, weir, stream deflector, breakwater, groin, jetty, sewer,
 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 all6 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 pending11 applications.

12 (3) Except as otherwise provided in this section, upon receiving an application, the department shall submit copies for 13 14 review to the director of the department of community health or the 15 local health department designated by the director of the department of community health, to the city, village, or township 16 17 and the county where the project is to be located, to the local conservation district, to the watershed council established under 18 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

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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).

(7) After providing notice and an opportunity for a public 15 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 section 30104 for an activity or project within a minor project 21 22 category without providing notices pursuant to subsection (3). THE DEPARTMENT SHALL DEVELOP A MINOR PROJECT CATEGORY UNDER THIS 23 24 SUBSECTION FOR REPAIR OR REPLACEMENT OF A FAILED SEAWALL. All other 25 provisions of this part, except provisions applicable only to 26 general permits, are applicable to a minor project.

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

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

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(a) The removal of qualifying small dams.

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

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

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

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processed according to subsection (3) and reviewed for compliance
 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.

(b) A drain commissioner or drainage board may submit an
application for an authorization under the general permit on a
countywide basis. The department of agriculture and rural
development may submit an application for an authorization under
the general permit on behalf of an intercounty drainage board on a
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

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

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

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

(i) THE SEAWALL IS CURRENTLY BREAKING THE FORCE OF WAVES AND
RETAINING SOIL ACROSS A MINIMUM OF 50% OF ITS LENGTH AND THERE IS
EVIDENCE OF A PREVIOUS SEAWALL ALONG THE OTHER 50% OF ITS LENGTH.
(ii) THE SEAWALL WAS BREAKING THE FORCE OF WAVES AND RETAINING
SOIL BUT WAS DAMAGED BY A SINGLE CATASTROPHIC EVENT WHICH OCCURRED
WITHIN THE 2 YEARS PRIOR TO THE REPAIR OR REPLACEMENT OF THE
SEAWALL.

(B) "QUALIFYING small dam" means a dam that meets all of thefollowing conditions:

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

(ii) (b) The impoundment from the dam covers less than 2 acres.
(iii) (c) The dam does not serve as the first dam upstream from
the Great Lakes or their connecting waterways.

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(*iv*) (d) The dam is not serving as a sea lamprey barrier.

(ν) (e) There are no threatened or endangered species that
 have been identified in the area that will be affected by the
 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.

Enacting section 1. This amendatory act takes effect upon theexpiration of 90 days after the date it is enacted into law.