

Act No. 181  
Public Acts of 1993  
Approved by the Governor  
September 29, 1993  
Filed with the Secretary of State  
September 30, 1993

**STATE OF MICHIGAN  
87TH LEGISLATURE  
REGULAR SESSION OF 1993**

Introduced by Senator Ehlers

# **ENROLLED SENATE BILL No. 238**

AN ACT to amend the title and sections 2, 5, 6, 10, and 13 of Act No. 346 of the Public Acts of 1972, entitled "An act to regulate inland lakes and streams; to protect riparian rights and the public trust in inland lakes and streams; to prescribe powers and duties; to provide remedies and penalties; and to repeal certain acts and parts of acts," sections 5, 6, and 13 as amended by Act No. 262 of the Public Acts of 1980, being sections 281.952, 281.955, 281.956, 281.960, and 281.963 of the Michigan Compiled Laws; and to add section 16.

*The People of the State of Michigan enact:*

Section 1. The title and sections 2, 5, 6, 10, and 13 of Act No. 346 of the Public Acts of 1972, sections 5, 6, and 13 as amended by Act No. 262 of the Public Acts of 1980, being sections 281.952, 281.955, 281.956, 281.960, and 281.963 of the Michigan Compiled Laws, are amended and section 16 is added to read as follows:

## **TITLE**

An act to regulate inland lakes and streams; to protect riparian rights and the public trust in inland lakes and streams; to create a fund and provide for its use; to prescribe powers and duties; to provide remedies and prescribe penalties; and to repeal certain acts and parts of acts.

Sec. 2. As used in this act:

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

(b) "Bulkhead line" means a line that is established pursuant to this act beyond which dredging, filling, or construction of any kind is not allowed without a permit.

(c) "Commission" means the commission of natural resources.

(d) "Department" means the department of natural resources.

(e) "Fund" means the land and water management permit fee fund created in section 16.

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

(g) "Inland lake or stream" means a natural or artificial lake, pond or impoundment; a river, stream or creek which may or may not be serving as a drain as defined by the drain code of 1956, Act No. 40 of the Public Acts of 1956, as amended, being sections 280.1 to 280.630 of the Michigan Compiled Laws, or any other body of water that has definite banks, a bed, and visible evidence of a continued flow or continued occurrence of water, including the St. Marys, St. Clair, and Detroit rivers. Inland lake or stream does not include the Great Lakes, Lake St. Clair and a lake or pond that has a surface area of less than 5 acres.

(h) "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.

(i) "Minor offense" means either of the following violations of this act if the project involved in the offense is a minor project as listed in R 281.816 of the Michigan administrative code or the department determines that restoration of the affected property is not required:

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

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

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

(k) "Person" means any individual, partnership, corporation, association, political subdivision of the state, the department or other instrumentality or agency of the state, political subdivision thereof, or other legal entity.

(l) "Project" means an activity that requires a permit pursuant to section 3.

(m) "Property owners' association" means any group of 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.

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

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

(p) "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.

(q) "Structure" includes a marina, wharf, dock, pier, dam, weir, stream deflector, breakwater, groin, jetty, sewer, pipeline, cable, and bridge.

(r) "Upland" means the land area that lies above the ordinary high water mark.

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

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

(a) Until October 1, 1995:

(i) For a minor project listed in R 281.816 of the Michigan administrative code, a fee of \$50.00.

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

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

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

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

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

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

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

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

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

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

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

(D) Filling or draining of 1 acre or more of wetland contiguous to a lake or stream.

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

(F) Shore projections, such as groins and underwater stabilizers, that extend 150 feet or more into a lake or stream.

(G) New commercial docks or wharves of 300 feet or more in length:

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

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

(J) New golf courses.

(K) Subdivisions.

(L) Condominiums.

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

(b) Beginning October 1, 1995, a fee of \$25.00 for any project listed in subdivision (a).

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

(a) The Goemaere-Anderson wetland protection act, Act No. 203 of the Public Acts of 1979, being sections 281.701 to 281.722 of the Michigan Compiled Laws.

(b) The Great Lakes submerged lands act, Act No. 247 of the Public Acts of 1955, being sections 322.701 to 322.715 of the Michigan Compiled Laws.

(c) The shorelands protection and management act of 1970, Act No. 245 of the Public Acts of 1970, being sections 281.631 to 281.644 of the Michigan Compiled Laws.

(d) Section 2a of Act No. 245 of the Public Acts of 1929, being section 323.2a of the Michigan Compiled Laws.

(e) Section 117 of the subdivision control act of 1967, Act No. 288 of the Public Acts of 1967, being section 560.117 of the Michigan Compiled Laws.

(4) If work has been done in violation of a permit requirement under this act and restoration is not ordered by the department, the department may accept an application for a permit if the application is accompanied by a fee equal to 2 times the permit fee required under this section.

Sec. 6. (1) Until October 1, 1995, a person who desires notification of pending applications may submit a written request to the department accompanied by an annual fee of \$25.00. The department shall forward all annual fees to the state treasurer for deposit into the fund. The department shall prepare a monthly list of the applications made during the previous month and shall promptly mail copies of the list for the remainder of the calendar year to the persons who have so requested notice. The monthly list shall state the name and address of each applicant, the legal description of the lands included in the applicant's project and a summary statement of the purpose of the project. The department may hold a public hearing on pending applications.

(2) Except as otherwise provided in this section, upon receiving an application, the department shall submit copies for review to the director of public health or the local health department designated by the director of public health, the city, village, or township, and the county where the project is to be located, the local soil conservation district, the local watershed council organized under the local river management act, Act No. 253 of the Public Acts of 1964, as amended, being sections 323.301 to 323.320 of the Michigan Compiled Laws, if any, the local port commission, if any, and the persons required to be included in the application pursuant to section 5(1). Each copy of the application shall be accompanied by a statement that unless a written request is filed with the department within 20 days after the submission for review, the department may grant the application without a public hearing where the project is located. The department may hold a public hearing upon the written request of the applicant or a riparian owner or a person or governmental unit that is entitled to receive a copy of the application pursuant to this subsection.

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

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

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

(6) The department, by rule promulgated pursuant to section 11(1), may establish minor project categories of activities and projects that are similar in nature and have minimal adverse environmental impact. The department may act upon an application received pursuant to section 5 for an activity or project within a minor project category after an on-site inspection of the land and water involved without providing notices or holding a public hearing pursuant to

subsection (2). A final inspection or certification of a project completed under a permit granted pursuant to this subsection is not required, but all other provisions of this act are applicable to a minor project.

Sec. 10. Upon the written request of a riparian owner and upon payment of a service fee, the department may enter into a written agreement with a riparian owner establishing the location of the ordinary high water mark for his or her property. In the absence of substantially changed conditions, the agreement shall be conclusive proof of the location in all matters between the state and the riparian owner and his or her successors in interest. Until October 1, 1995, the service fee provided for in this section shall be \$500.00. Beginning October 1, 1995, the service fee provided for in this section shall be \$50.00. The department shall forward all service fees to the state treasurer for deposit into the fund.

Sec. 13. (1) The department may commence a civil action in the circuit court of the county in which a violation occurs to enforce compliance with this act, to restrain violation of this act or any action contrary to an order of the department denying a permit, to enjoin the further performance of, or order the removal of, any project that is undertaken contrary to this act or after denial of a permit by the department, or to order the restoration of the affected area to its prior condition.

(2) In a civil action commenced under this act the circuit court, in addition to any other relief granted, may assess a civil fine of not more than \$5,000.00 per day for each day of violation.

(3) Except as provided in subsection (4), a person who violates this act or a permit issued under this act is guilty of a misdemeanor, punishable by a fine of not more than \$10,000.00 per day for each day of violation.

(4) A person who commits a minor offense is guilty of a misdemeanor, punishable by a fine of not more than \$500.00 for each violation. A law enforcement officer may issue and serve an appearance ticket upon a person for a minor offense pursuant to sections 9a to 9g of chapter IV of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 764.9a to 764.9g of the Michigan Compiled Laws.

(5) A person who knowingly makes a false statement, representation, or certification in an application for a permit; in a notice or report required by a permit; or a person who knowingly renders inaccurate any monitoring device or method required to be maintained by a permit is guilty of a misdemeanor, punishable by a fine of not more than \$10,000.00 per day for each day of violation.

(6) Any civil penalty assessed, sought or agreed to by the department shall be appropriate to the violation.

Sec. 16. (1) The land and water management permit fee fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. The state treasurer shall annually present to the department an accounting of the amount of money in the fund.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department shall expend money from the fund, upon appropriation, only to implement this act and the following acts or parts of acts:

(a) Sections 2a, 5a, and 5b of Act No. 245 of the Public Acts of 1929, being sections 323.2a, 323.5a, and 323.5b of the Michigan Compiled Laws.

(b) The Great Lakes submerged lands act, Act No. 247 of the Public Acts of 1955, being sections 322.701 to 322.715 of the Michigan Compiled Laws.

(c) The Goemaere-Anderson wetland protection act, Act No. 203 of the Public Acts of 1979, being sections 281.701 to 281.722 of the Michigan Compiled Laws.

(d) Section 12562 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.12562 of the Michigan Compiled Laws.

(e) The shorelands protection and management act of 1970, Act No. 245 of the Public Acts of 1970, being sections 281.631 to 281.644 of the Michigan Compiled Laws.

(f) Section 117 of the subdivision control act of 1967, Act No. 288 of the Public Acts of 1967, being section 560.117 of the Michigan Compiled Laws.

(g) The dam safety act, Act No. 300 of the Public Acts of 1989, being sections 281.1301 to 281.1365 of the Michigan Compiled Laws.

(h) Sections 16 to 44 of the sand dune protection and management act, Act No. 222 of the Public Acts of 1976, being sections 281.666 to 281.694 of the Michigan Compiled Laws.

(5) The department shall process permit applications for the public acts cited in subsection (4) within 60 days after receiving a completed permit application.

(6) The department shall annually report to the legislature on both of the following:

(a) How money in the fund was expended during the previous fiscal year.

(b) For permit programs funded with money in the fund, the average length of time for department action on permit applications for each class of permits reviewed.

Section 2. This amendatory act shall not take effect unless all of the following bills of the 87th Legislature are enacted into law:

(a) Senate Bill No. 239.

(b) Senate Bill No. 241.

(c) Senate Bill No. 719.

(d) Senate Bill No. 243.

(e) Senate Bill No. 244.

(f) Senate Bill No. 245.

(g) Senate Bill No. 246.

This act is ordered to take immediate effect.

-----  
Secretary of the Senate.

-----  
Co-Clerk of the House of Representatives.

Approved -----

-----  
Governor.