



SENATE BILL No. 238

January 26, 1993, Introduced by Senator EHLERS and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend the title and sections 2, 5, 6, 10, and 13 of Act No. 346 of the Public Acts of 1972, entitled "Inland lakes and streams act 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; and to add section 16.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

TITLE

1

2 An act to regulate inland lakes and streams; to protect
3 riparian rights and the public trust in inland lakes and streams;
4 TO CREATE A FUND AND PROVIDE FOR ITS USE; to prescribe powers and
5 duties; to provide remedies and PRESCRIBE penalties; and to
6 repeal certain acts and parts of acts.

7 Sec. 2. As used in this act:

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

11 (b) "Bulkhead line" means a line ~~which~~ THAT is established
12 pursuant to this act beyond which dredging, filling, or construc-
13 tion of any kind is not allowed without a permit.

14 (c) "Commission" means the ~~natural resources~~ commission OF
15 NATURAL RESOURCES.

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

17 (E) "FUND" MEANS THE LAND AND WATER MANAGEMENT PERMIT FEE
18 FUND CREATED IN SECTION 16.

19 (F) ~~(e)~~ "Impoundment" means water held back by a dam,
20 dike, floodgate or other barrier.

21 (G) ~~(f)~~ "Inland lake or stream" means a natural or artifi-
22 cial lake, pond or impoundment; a river, stream or creek which
23 may or may not be serving as a drain as defined by THE DRAIN CODE
24 OF 1956, Act No. 40 of the Public Acts of 1956, as amended,
25 being sections 280.1 to ~~280.623~~ 280.630 of the MICHIGAN
26 Compiled Laws, ~~of 1948~~ or any other body of water ~~which~~ THAT
27 has definite banks, a bed, and visible evidence of a continued

1 flow or continued occurrence of water, including the St. Marys,
2 St. Clair, and Detroit rivers. ~~It~~ INLAND LAKE OR STREAM does
3 not include the Great Lakes, Lake St. Clair and a lake or pond
4 ~~which~~ THAT has a surface area of less than 5 acres.

5 (H) ~~(g)~~ "Marina" means a facility ~~which~~ THAT is owned or
6 operated by a person, extends into or over an inland lake or
7 stream, and offers service to the public or members of the marina
8 for docking, loading, or other servicing of recreational
9 watercraft.

10 (I) "MINOR OFFENSE" MEANS EITHER OF THE FOLLOWING VIOLATIONS
11 OF THIS ACT IF THE PROJECT INVOLVED IN THE OFFENSE IS A MINOR
12 PROJECT AS LISTED IN R 281.816 OF THE MICHIGAN ADMINISTRATIVE
13 CODE OR THE DEPARTMENT DETERMINES THAT RESTORATION OF THE
14 AFFECTED PROPERTY IS NOT REQUIRED:

15 (i) THE FAILURE TO OBTAIN A PERMIT UNDER THIS ACT.

16 (ii) A VIOLATION OF A PERMIT ISSUED UNDER THIS ACT.

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

1 (K) ~~(i)~~ "Person" means any individual, partnership,
2 corporation, association, political subdivision of the state, the
3 department or other instrumentality or agency of the state,
4 political subdivision thereof, or other legal entity.

5 (L) ~~(j)~~ "Project" means an activity ~~which~~ THAT requires
6 a permit pursuant to section 3.

7 (M) ~~(k)~~ "Property owners' association" means any group of
8 organized property owners publishing a directory of their member-
9 ship, the majority of which are riparian owners and are located
10 on the inland lake or stream ~~which~~ THAT is affected by the pro-
11 posed project.

12 (N) ~~(l)~~ "Riparian owner" means a person who has riparian
13 rights.

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

17 (P) ~~(n)~~ "Seasonal structure" includes any type of dock,
18 boat hoist, ramp, raft, or other recreational structure ~~which~~
19 THAT is placed into an inland lake or stream and removed at the
20 end of the boating season.

21 (Q) ~~(o)~~ "Structure" includes a marina, wharf, dock, pier,
22 dam, weir, stream deflector, breakwater, groin, jetty, sewer,
23 pipeline, cable, and bridge.

24 (R) ~~(p)~~ "Upland" means the land area ~~which~~ THAT lies
25 above the ordinary high water mark.

26 Sec. 5. (1) Before a project ~~which~~ THAT is subject to
27 this act is undertaken, a person shall file an application and

1 receive a permit from the department. The application shall be
2 on a form prescribed by the department and shall include any
3 information that may be required by the department. If a project
4 includes activities at multiple locations, 1 application may be
5 filed for the combined activities.

6 (2) ~~An~~ EXCEPT AS PROVIDED IN SUBSECTIONS (3) AND (4), AN
7 application for a permit shall be accompanied by a fee ~~to be~~
8 ~~credited to the state general fund~~ based on an administrative
9 cost ~~of \$25.00. An administrative fee shall not be charged for~~
10 ~~an application which is received from a governmental unit created~~
11 ~~by law or which is solely for the maintenance of an existing~~
12 ~~project.~~ IN ACCORDANCE WITH THE FOLLOWING SCHEDULE:

13 (A) FOR A MINOR PROJECT LISTED IN R 281.816 OF THE MICHIGAN
14 ADMINISTRATIVE CODE, A FEE OF \$50.00.

15 (B) FOR CONSTRUCTION OF A MARINA, A FEE OF:

16 (i) \$100.00 FOR A MARINA WITH 1-10 PROPOSED MARINA SLIPS.

17 (ii) \$500.00 FOR A MARINA WITH 11-50 PROPOSED MARINA SLIPS.

18 (iii) \$500.00 PLUS \$10.00 FOR EACH MARINA SLIP OVER 50 FOR A
19 MARINA WITH OVER 50 PROPOSED MARINA SLIPS.

20 (C) FOR RENEWAL OF A MARINA OPERATING PERMIT, A FEE OF
21 \$50.00.

22 (D) FOR MAJOR PROJECTS, INVOLVING ANY OF THE FOLLOWING, A
23 FEE OF \$2,000.00:

24 (i) MAINTENANCE DREDGING OF 10,000 CUBIC YARDS OR MORE.

25 (ii) FILLING OF 10,000 CUBIC YARDS OR MORE.

26 (iii) SEAWALLS, BULKHEADS, OR REVETMENT OF 500 FEET OR
27 MORE.

1 (iv) FILLING OR DRAINING OF 1 ACRE OR MORE OF WETLAND
2 CONTIGUOUS TO A LAKE OR STREAM.

3 (v) NEW DREDGING OR UPLAND BOAT BASIN EXCAVATION IN AREAS OF
4 SUSPECTED CONTAMINATION.

5 (vi) SHORE PROJECTIONS, SUCH AS GROINS AND UNDERWATER STABI-
6 LIZERS, THAT EXTEND 150 FEET OR MORE INTO A LAKE OR STREAM.

7 (vii) NEW COMMERCIAL DOCKS OR WHARVES OF 300 FEET OR MORE IN
8 LENGTH.

9 (viii) STREAM ENCLOSURES 100 FEET OR MORE IN LENGTH.

10 (ix) STREAM RELOCATIONS 500 FEET OR MORE IN LENGTH.

11 (x) NEW GOLF COURSES.

12 (xi) SUBDIVISIONS.

13 (xii) CONDOMINIUMS.

14 (E) FOR ALL OTHER PROJECTS, A FEE OF \$500.00.

15 (3) A PROJECT THAT REQUIRES REVIEW AND APPROVAL UNDER THIS
16 ACT AND 1 OR MORE OF THE FOLLOWING ACTS IS SUBJECT TO ONLY THE
17 SINGLE HIGHEST PERMIT FEE REQUIRED UNDER THIS ACT OR THE FOLLOW-
18 ING ACTS:

19 (A) THE GOEMAERE-ANDERSON WETLAND PROTECTION ACT, ACT
20 NO. 203 OF THE PUBLIC ACTS OF 1979, BEING SECTIONS 281.701 TO
21 281.722 OF THE MICHIGAN COMPILED LAWS.

22 (B) THE GREAT LAKES SUBMERGED LANDS ACT, ACT NO. 247 OF THE
23 PUBLIC ACTS OF 1955, BEING SECTIONS 322.701 TO 322.715 OF THE
24 MICHIGAN COMPILED LAWS.

25 (C) THE SHORELANDS PROTECTION AND MANAGEMENT ACT OF 1970,
26 ACT NO. 245 OF THE PUBLIC ACTS OF 1970, BEING SECTIONS 281.631 TO
27 281.644 OF THE MICHIGAN COMPILED LAWS.

1 (D) ACT NO. 245 OF THE PUBLIC ACTS OF 1929, BEING
2 SECTIONS 323.1 TO 323.12A OF THE MICHIGAN COMPILED LAWS.

3 (4) IF WORK HAS BEEN DONE IN VIOLATION OF A PERMIT REQUIRE-
4 MENT UNDER THIS ACT AND RESTORATION IS NOT ORDERED BY THE DEPART-
5 MENT, THE DEPARTMENT MAY ACCEPT AN APPLICATION FOR A PERMIT IF
6 THE APPLICATION IS ACCOMPANIED BY A FEE EQUAL TO 2 TIMES THE
7 PERMIT FEE REQUIRED UNDER THIS SECTION.

8 Sec. 6. (1) A person who desires notification of pending
9 applications may ~~make~~ SUBMIT a written request to the depart-
10 ment accompanied by an annual fee of ~~-\$25.00-~~ \$75.00. ~~which-~~
11 THE DEPARTMENT shall ~~be credited~~ FORWARD ALL ANNUAL FEES to the
12 state ~~general~~ TREASURER FOR DEPOSIT INTO THE fund. The depart-
13 ment shall prepare a monthly list of the applications made during
14 the previous month and shall promptly mail copies of the list for
15 the remainder of the calendar year to the persons who have so
16 requested notice. The monthly list shall state the name and
17 address of each applicant, the legal description of the lands
18 included in the applicant's project and a summary statement of
19 the purpose of the project. The department may hold a public
20 hearing on pending applications.

21 (2) ~~Upon~~ EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,
22 UPON receiving an application, the department shall submit copies
23 for review to the director of public health or THE local health
24 department designated by the director of public health, the city,
25 village, or township, and the county where the project is to be
26 located, the local soil conservation district, the local
27 watershed council organized under THE LOCAL RIVER MANAGEMENT ACT,

1 Act No. 253 of the Public Acts of 1964, as amended, being
2 sections 323.301 to 323.320 of the Michigan Compiled Laws, if
3 any, the local port commission, if any, and the persons required
4 to be included in the application pursuant to section 5(1). ~~—~~
5 EACH COPY OF THE APPLICATION SHALL BE accompanied by a statement
6 that unless a written request is filed with the department within
7 20 days after the submission for review, the department may grant
8 the application without a public hearing where the project is
9 located. The department ~~shall~~ MAY hold a public hearing upon
10 the written request of the applicant or a riparian owner or a
11 person or governmental unit ~~which~~ THAT is entitled to receive a
12 copy of the application pursuant to this subsection.

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

17 (4) At least 10 days' notice of a hearing to be held pursu-
18 ant to this section shall be given by the publication in a news-
19 paper circulated in the county where the project is to be located
20 and by mailing copies of the notice to the persons who have
21 requested the ~~weekly~~ MONTHLY list pursuant to subsection (1),
22 the person requesting the hearing, and the persons and governmen-
23 tal units ~~which~~ THAT are entitled to receive a copy of the
24 application pursuant to subsection (2).

25 (5) The department shall grant or deny the permit within 60
26 days, or within 90 days if a public hearing is held, after the
27 filing of an application pursuant to section 5. ~~When~~ IF a

1 permit is denied, the department shall provide to the applicant a
2 concise written statement of its reasons for denial of the
3 permit, and if it appears that a minor modification of the appli-
4 cation would result in the granting of the permit, the nature of
5 the modification shall be stated. In an emergency, the depart-
6 ment may issue a conditional permit before the expiration of the
7 20-day period referred to in subsection (2).

8 (6) The department, by rule promulgated pursuant to section
9 11(1), may establish minor project categories of activities and
10 projects that are similar in nature and have minimal adverse
11 environmental impact. The department may act upon an application
12 received pursuant to section 5 for an activity or project within
13 a minor project category after an on-site inspection of the land
14 and water involved without providing notices or holding a public
15 hearing ~~as required by~~ PURSUANT TO subsection (2). A final
16 inspection or certification of a project completed under a permit
17 granted pursuant to this subsection ~~shall~~ IS not ~~be~~ required,
18 but all other provisions of this act ~~shall be~~ ARE applicable to
19 a minor project.

20 Sec. 10. Upon the written request of a riparian owner and
21 upon payment of a service fee of ~~\$50.00 to be credited to the~~
22 ~~state general fund~~ \$500.00, the department may enter into a
23 written agreement with a riparian owner ~~fixing~~ ESTABLISHING the
24 location of the ordinary high water mark for his OR HER
25 property. In the absence of substantially changed conditions,
26 the agreement shall be conclusive proof of the location in all
27 matters between the state and the riparian owner and his OR HER

1 successors in interest. THE DEPARTMENT SHALL FORWARD ALL SERVICE
2 FEES TO THE STATE TREASURER FOR DEPOSIT INTO THE FUND.

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

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

16 (3) Except as provided in subsection (4), a person who vio-
17 lates this act or a permit ~~condition,~~ ISSUED UNDER THIS ACT is
18 guilty of a misdemeanor, punishable by a fine of not more than
19 \$10,000.00 per day for each day of violation.

20 (4) A PERSON WHO COMMITS A MINOR OFFENSE IS GUILTY OF A MIS-
21 DEMEANOR, PUNISHABLE BY A FINE OF NOT MORE THAN \$500.00 FOR EACH
22 VIOLATION. A LAW ENFORCEMENT OFFICER MAY ISSUE AND SERVE AN
23 APPEARANCE TICKET UPON A PERSON FOR A MINOR OFFENSE PURSUANT TO
24 SECTIONS 9A TO 9G OF CHAPTER IV OF THE CODE OF CRIMINAL PROCE-
25 DURE, ACT NO. 175 OF THE PUBLIC ACTS OF 1927, BEING SECTIONS
26 764.9A TO 764.9G OF THE MICHIGAN COMPILED LAWS.

1 (5) ~~—(4)—~~ A person who knowingly makes a false statement,
2 representation, or certification in an application for a permit;
3 in a notice or report required by a permit; or a person who know-
4 ingly renders inaccurate any monitoring device or method required
5 to be maintained by a permit is guilty of a misdemeanor, punish-
6 able by a fine of not more than \$10,000.00 per day for each day
7 of violation.

8 (6) ~~—(5)—~~ Any civil penalty assessed, sought or agreed to by
9 the department shall be appropriate to the violation.

10 SEC. 16. (1) THE LAND AND WATER MANAGEMENT PERMIT FEE FUND
11 IS CREATED WITHIN THE STATE TREASURY.

12 (2) THE STATE TREASURER MAY RECEIVE MONEY OR OTHER ASSETS
13 FROM ANY SOURCE FOR DEPOSIT INTO THE FUND. THE STATE TREASURER
14 SHALL DIRECT THE INVESTMENT OF THE FUND. THE STATE TREASURER
15 SHALL CREDIT TO THE FUND INTEREST AND EARNINGS FROM FUND
16 INVESTMENTS. THE STATE TREASURER SHALL ANNUALLY PRESENT TO THE
17 DEPARTMENT AN ACCOUNTING OF THE AMOUNT OF MONEY IN THE FUND.

18 (3) MONEY IN THE FUND AT THE CLOSE OF THE FISCAL YEAR SHALL
19 REMAIN IN THE FUND AND SHALL NOT LAPSE TO THE GENERAL FUND.

20 (4) THE DEPARTMENT SHALL EXPEND MONEY FROM THE FUND, UPON
21 APPROPRIATION, ONLY TO IMPLEMENT THIS ACT AND THE FOLLOWING ACTS
22 OR PARTS OF ACT:

23 (A) SECTIONS 2A, 5A, AND 5B OF ACT NO. 245 OF THE PUBLIC
24 ACTS OF 1929, BEING SECTIONS 323.2A, 323.5A, AND 323.5B OF THE
25 MICHIGAN COMPILED LAWS.

1 (B) THE GREAT LAKES SUBMERGED LANDS ACT, ACT NO. 247 OF THE
2 PUBLIC ACTS OF 1955, BEING SECTIONS 322.701 TO 322.715 OF THE
3 MICHIGAN COMPILED LAWS.

4 (C) THE GOEMAERE-ANDERSON WETLAND PROTECTION ACT, ACT
5 NO. 203 OF THE PUBLIC ACTS OF 1979, BEING SECTIONS 281.701 TO
6 281.722 OF THE MICHIGAN COMPILED LAWS.

7 (D) SECTION 12562 OF THE PUBLIC HEALTH CODE, ACT NO. 368 OF
8 THE PUBLIC ACTS OF 1978, BEING SECTION 333.12562 OF THE MICHIGAN
9 COMPILED LAWS.

10 (E) THE SHORELANDS PROTECTION AND MANAGEMENT ACT OF 1970,
11 ACT NO. 245 OF THE PUBLIC ACTS OF 1970, BEING SECTIONS 281.631 TO
12 281.644 OF THE MICHIGAN COMPILED LAWS.

13 (F) SECTION 117 OF THE SUBDIVISION CONTROL ACT OF 1967, ACT
14 NO. 288 OF THE PUBLIC ACTS OF 1967, BEING SECTION 560.117 OF THE
15 MICHIGAN COMPILED LAWS.

16 (G) THE DAM SAFETY ACT, ACT NO. 300 OF THE PUBLIC ACTS OF
17 1989, BEING SECTIONS 281.1301 TO 281.1365 OF THE MICHIGAN
18 COMPILED LAWS.

19 (H) SECTIONS 16 TO 44 OF THE SAND DUNE PROTECTION AND MAN-
20 AGEMENT ACT, ACT NO. 222 OF THE PUBLIC ACTS OF 1976, BEING SEC-
21 TIONS 281.666 TO 281.694 OF THE MICHIGAN COMPILED LAWS.

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

25 (a) Senate Bill No. 239.

26

1 (b) Senate Bill No. 240.

2

3 (c) Senate Bill No. 241.

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5 (d) Senate Bill No. 242.

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7 (e) Senate Bill No. 243.

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9 (f) Senate Bill No. 244.

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11 (g) Senate Bill No. 245.

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13 (h) Senate Bill No. 246.

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