

HOUSE BILL No. 4402

March 22, 2017, Introduced by Reps. Lasinski, Elder, Kivela, Love, Dianda, Yanez, Ellison, Sneller, Sowerby, LaGrand, Gay-Dagnogo, Robinson, Pagan and Lucido and referred to the Committee on Natural Resources.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 30103 (MCL 324.30103), as amended by 2014 PA
253.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 30103. (1) A permit is not required under this part for
2 any of the following:

3 (a) Any fill or structure existing before April 1, 1966, in
4 waters covered by former 1965 PA 291, and any fill or structures
5 existing before January 9, 1973, in waters covered for the first
6 time by former 1972 PA 346.

7 (b) A seasonal structure placed on bottomland to facilitate
8 private noncommercial recreational use of the water if it does not
9 unreasonably interfere with the use of the water by others entitled
10 to use the water or interfere with water flow.

1 (c) Reasonable sanding of beaches to the existing water's edge
2 by the riparian owner or a person authorized by the riparian owner.

3 (d) Maintenance of an agricultural drain, regardless of
4 outlet, if all of the following requirements are met:

5 (i) The maintenance includes only activities that maintain the
6 location, depth, and bottom width of the drain as constructed or
7 modified at any time before July 1, 2014.

8 (ii) The maintenance is performed by the landowner or pursuant
9 to the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630.

10 (e) A waste collection or treatment facility that is ordered
11 to be constructed or is approved for construction under state or
12 federal water pollution control law, if constructed in upland.

13 (f) Construction and maintenance of minor drainage structures
14 and facilities ~~which~~**THAT** are identified by rule promulgated by the
15 department pursuant to section 30110. Before ~~such~~ a rule is
16 promulgated, the rule ~~shall~~**MUST** be approved by the majority of a
17 committee consisting of the director of the department, the
18 director of the department of agriculture and rural development,
19 and the director of the state transportation department or their
20 designated representatives. The rules shall be reviewed at least
21 annually.

22 (g) Maintenance of a drain that either was legally established
23 and constructed before January 1, 1973, pursuant to the drain code
24 of 1956, 1956 PA 40, MCL 280.1 to 280.630, except those legally
25 established drains constituting mainstream portions of certain
26 natural watercourses identified in rules promulgated by the
27 department under section 30110, or was constructed or modified

1 under a permit issued pursuant to this part. As used in this
2 subdivision, "maintenance of a drain" means the physical
3 preservation of the location, depth, and bottom width of a drain
4 and appurtenant structures to restore the function and approximate
5 capacity of the drain as constructed or modified at any time before
6 July 1, 2014, and includes, but is not limited to, the following
7 activities if performed with best management practices:

8 (i) Excavation of accumulated sediments back to original
9 contours.

10 (ii) Reshaping of the side slopes.

11 (iii) Bank stabilization ~~where~~ **IF** reasonably necessary to
12 prevent erosion. Materials used for stabilization must be
13 compatible with existing bank or bed materials.

14 (iv) Armoring, lining, or piping if a previously armored,
15 lined, or piped section is being repaired and all work occurs
16 within the footprint of the previous work.

17 (v) Replacement of existing control structures, if the
18 original function of the drain is not changed and the original
19 approximate capacity of the drain is not increased.

20 (vi) Repair of stabilization structures.

21 (vii) Culvert replacement, including culvert extensions of not
22 more than 24 additional feet per culvert.

23 (viii) Emergency reconstruction of recently damaged parts of
24 the drain. Emergency reconstruction must occur within a reasonable
25 period of time after damage occurs in order to qualify for this
26 exemption.

27 (h) Projects constructed under the watershed protection and

1 flood prevention act, ~~chapter 656, 68 Stat. 666, 16 USC 1001 to~~
2 ~~1008, 1010, and 1011.~~**1012.**

3 (i) Construction and maintenance of privately owned cooling or
4 storage ponds used in connection with a public utility except at
5 the interface with public waters.

6 (j) Maintenance of a structure constructed under a permit
7 issued pursuant to this part and identified by rule promulgated
8 under section 30110, if the maintenance is in place and in kind
9 with no design or materials modification.

10 (k) A water withdrawal.

11 (l) Annual installation of a seasonal dock or docks, pilings,
12 mooring buoys, or other mooring structures previously authorized by
13 and in accordance with a permit issued under this part.

14 (m) Controlled access of livestock to streams for watering or
15 crossing if constructed in accordance with applicable practice
16 standards set by the United States ~~department of agriculture,~~
17 ~~natural resources conservation service.~~**DEPARTMENT OF AGRICULTURE,**
18 **NATURAL RESOURCES CONSERVATION SERVICE.**

19 (n) Temporary drawdowns of impoundments at hydroelectric
20 projects licensed by the ~~federal energy regulatory commission~~
21 **FEDERAL ENERGY REGULATORY COMMISSION** (FERC) and subject to FERC's
22 authority if both of the following apply:

23 (i) The FERC licensee has consulted this state during the
24 drawdown plan development and this state's concerns have been
25 addressed in the drawdown plan as FERC considers appropriate.

26 (ii) Adverse environmental impacts, including stream flow,
27 aquatic resources, and timing, have been avoided and minimized to

1 the extent practical.

2 (o) Removal, by the riparian owner or a person authorized by
3 the riparian owner, of plants that are an aquatic nuisance as
4 defined in section 3301, if the removal is accomplished by hand-
5 pulling without using a powered or mechanized tool and all plant
6 fragments are removed from the water and properly disposed of on
7 land above the ordinary high-water mark as defined in section
8 30101.

9 (p) Raking of lake bottomlands by the riparian owner or a
10 person authorized by the riparian owner. To minimize effects on the
11 lake bottomlands, the areas raked ~~shall~~**MUST** be unvegetated before
12 raking and predominantly composed of sand or pebbles, and the
13 raking ~~shall~~**MUST** be performed without using a powered or
14 mechanized tool. For the purposes of this subdivision, the pulling
15 of a nonpowered, nonmechanized tool with a boat is not the use of a
16 powered or mechanized tool.

17 **(Q) INSTALLING STREAM GAUGES DESIGNED TO MEASURE WATER LEVELS**
18 **IN INLAND LAKES AND STREAMS IF ALL OF THE FOLLOWING REQUIREMENTS**
19 **ARE MET:**

20 **(i) THE STREAM GAUGE CONSISTS OF A FACE THAT IS NOT MORE THAN**
21 **FOUR FEET IN HEIGHT BY SIX INCHES IN WIDTH, CONTAINS READABLE**
22 **CALIBRATION MARKS FOR MEASURING WATER LEVELS, AND IS ATTACHED TO**
23 **BOTTOMLAND THROUGH THE USE OF A WOODEN OR STEEL STAKE THAT IS NOT**
24 **MORE THAN SIX FEET IN LENGTH.**

25 **(ii) THE STREAM GAUGE IS INSTALLED WITHOUT CHANGING SITE**
26 **ELEVATIONS AND WITHOUT THE USE OF ANY OTHER STRUCTURE OR FILL, SUCH**
27 **AS A FOUNDATION, ANCHOR, OR BUOY LINE.**

1 (iii) THE STREAM GAUGE IS INSTALLED WITH THE WRITTEN
2 PERMISSION OF THE LANDOWNER.

3 (iv) THE STREAM GAUGE DOES NOT CAUSE MORE THAN A MINIMAL
4 ADVERSE EFFECT ON NAVIGATION AND FISH AND WILDLIFE HABITAT, DOES
5 NOT UNREASONABLY INTERFERE WITH THE USE OF THE WATER BY OTHERS WHO
6 ARE ENTITLED TO USE THE WATER, AND DOES NOT INTERFERE WITH WATER
7 FLOW.

8 (v) UPON COMPLETION OF USE, THE STREAM GAUGE IS FULLY REMOVED.

9 (2) As used in this section, "water withdrawal" means the
10 removal of water from its source for any purpose.

11 (3) As used in this part, "agricultural drain" means a human-
12 made conveyance of water that meets all of the following
13 requirements:

14 (a) Does not have continuous flow.

15 (b) Flows primarily as a result of precipitation-induced
16 surface runoff or groundwater drained through subsurface drainage
17 systems.

18 (c) Serves agricultural production.

19 (d) Was constructed before January 1, 1973, or was constructed
20 in compliance with this part or former 1979 PA 203.

21 Enacting section 1. This amendatory act takes effect 90 days
22 after the date it is enacted into law.