

HOUSE BILL No. 4542

March 10, 2009, Introduced by Reps. Pearce, Agema, Horn, Crawford, Stamas, Proos and Sheltrown and referred to the Committee on Great Lakes and Environment.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 1301, 30104b, 30301, 30302, 30303, 30305,
30307, 30308, 30309, 30310, 30317, 30321, and 30323 (MCL 324.1301,
324.30104b, 324.30301, 324.30302, 324.30303, 324.30305, 324.30307,
324.30308, 324.30309, 324.30310, 324.30317, 324.30321, and
324.30323), section 1301 as amended by 2008 PA 18, section 30104b
as added by 2006 PA 592, sections 30301 and 30305 as amended by
2003 PA 14, sections 30302, 30303, 30308, 30309, 30310, and 30323
as added by 1995 PA 59, section 30307 as amended by 2006 PA 430,
section 30317 as amended by 1998 PA 228, and section 30321 as
amended by 1996 PA 530; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1301. As used in this part:

1

1 (a) "Application period" means the period beginning when an
2 application for a permit is received by the state and ending when
3 the application is considered to be administratively complete under
4 section 1305 and any applicable fee has been paid.

5 (b) "Department" means the department, agency, or officer
6 authorized by this act to approve or deny an application for a
7 particular permit.

8 (c) "Director" means the director of the state department
9 authorized under this act to approve or deny an application for a
10 particular permit or the director's designee.

11 (d) "Permit" means a permit or operating license required by
12 any of the following sections or by rules promulgated thereunder,
13 or, in the case of section 9112, by an ordinance ~~or resolution~~
14 adopted thereunder:

15 (i) Section 3104, floodplain alteration permit.

16 (ii) Section 3503, permit for use of water in mining iron ore.

17 (iii) Section 4105, sewerage system construction permit.

18 (iv) Section 6516, vehicle testing license.

19 (v) Section 6521, motor vehicle fleet testing permit.

20 (vi) Section 8310, restricted use pesticide dealer license.

21 (vii) Section 8310a, agricultural pesticide dealer license.

22 (viii) Section 8504, license to manufacture or distribute
23 fertilizer.

24 (ix) Section 9112, local soil erosion and sedimentation control
25 permit.

26 (x) Section 11509, solid waste disposal area construction
27 permit.

1 (xi) Section 11512, solid waste disposal area operating
2 license.

3 (xii) Section 11542, municipal solid waste incinerator ash
4 landfill operating license amendment.

5 (xiii) Section 11702, septage waste servicing license or septage
6 waste vehicle license.

7 (xiv) Section 11709, septage waste site permit.

8 (xv) Section 30104, inland lakes and streams project permit.

9 ~~(xvi) Section 30304, state permit for dredging, filling, or~~
10 ~~other activity in wetland.~~

11 (xvi) ~~(xvii)~~ Section 31509, dam construction, repair, removal
12 permit.

13 (xvii) ~~(xviii)~~ Section 32312, flood risk, high risk, or
14 environmental area permit.

15 (xviii) ~~(xix)~~ Section 32503, permit for dredging and filling
16 bottomland.

17 (xix) ~~(xx)~~ Section 35304, department permit for critical dune
18 area use.

19 (xx) ~~(xxi)~~ Section 36505, endangered species permit.

20 (xxi) ~~(xxii)~~ Section 41702, game bird hunting preserve license.

21 (xxii) ~~(xxiii)~~ Section 42101, dog training area permit.

22 (xxiii) ~~(xxiv)~~ Section 42501, fur dealer's license.

23 (xxiv) ~~(xxv)~~ Section 42702, game dealer's license.

24 (xxv) ~~(xxvi)~~ Section 44513, charter boat operating permit under
25 reciprocal agreement.

26 (xxvi) ~~(xxvii)~~ Section 44517, boat livery operating permit.

27 (xxvii) ~~(xxviii)~~ Section 45503, permit to take frogs for

1 scientific use.

2 (~~xxviii~~) (~~xxxix~~)—Section 45902, game fish propagation license.

3 (~~xxix~~) (~~xxx~~)—Section 45906, game fish import license.

4 (~~xxx~~) (~~xxxi~~)—Section 61525, oil or gas well drilling permit.

5 (~~xxxi~~) (~~xxxii~~)—Section 62509, brine, storage, or waste disposal
6 well drilling or conversion permit or test well drilling permit.

7 (~~xxxii~~) (~~xxxiii~~)—Section 63103a, metallic mineral mining permit.

8 (~~xxxiii~~) (~~xxxiv~~)—Section 63514 or 63525, surface coal mining and
9 reclamation permit or revision of the permit during the term of the
10 permit, respectively.

11 (~~xxxiv~~) (~~xxxv~~)—Section 63704, sand dune mining permit.

12 (~~xxxv~~) (~~xxxvi~~)—Section 72108, use permits for Michigan trailway.

13 (~~xxxvi~~) (~~xxxvii~~)—Section 76109, sunken aircraft or watercraft
14 abandoned property recovery permit.

15 (~~xxxvii~~) (~~xxxviii~~)—Section 76504, Mackinac Island motor vehicle and
16 land use permits.

17 (~~xxxviii~~) (~~xxxix~~)—Section 80159, buoy or beacon permit.

18 (e) "Processing deadline" means the last day of the processing
19 period.

20 (f) "Processing period" means the following time period after
21 the close of the application period, for the following permit, as
22 applicable:

23 (i) Twenty days for a permit under section 61525 or 62509.

24 (ii) Thirty days for a permit under section 9112.

25 (iii) Thirty days after the department consults with the
26 underwater salvage and preserve committee created under section
27 76103, for a permit under section 76109.

(iv) Sixty days, for a permit under section 30104 for a minor project as established by rule under section 30105(7) or for a permit under section 32312.

(v) Sixty days or, if a hearing is held, 90 days for a permit under section 35304.

(vi) Sixty days or, if a hearing is held, 120 days for a permit under section 30104, other than a permit for a minor project as established by rule under section 30105(7), or for a permit under section 31509.

(vii) Ninety days for a permit under section 11512, a revision of a surface coal mining and reclamation permit during the term of the permit under section 63525, or a permit under section 72108.

(viii) Ninety days or, if a hearing is held, 150 days for a permit under section 3104 ~~, 30304,~~ or 32503.

(ix) One hundred and twenty days for a permit under section 11509, 11542, 63103a, 63514, or 63704.

(x) One hundred fifty days for a permit under section 36505. However, if a site inspection or federal approval is required, the 150-day period is tolled pending completion of the inspection or receipt of the federal approval.

(xi) For any other permit, 150 days or, if a hearing is held, 90 days after the hearing, whichever is later.

Sec. 30104b. (1) ~~Section 30306b applies to a proposed project or a permit application under this part.~~ **IF A PREAPPLICATION MEETING IS REQUESTED IN WRITING BY THE LANDOWNER OR ANOTHER PERSON WHO IS AUTHORIZED IN WRITING BY THE LANDOWNER, THE DEPARTMENT SHALL MEET WITH THE PERSON OR HIS OR HER REPRESENTATIVES TO REVIEW A**

1 PROPOSED PROJECT OR A PROPOSED PERMIT APPLICATION IN ITS ENTIRETY.
2 THE PREAPPLICATION MEETING SHALL TAKE PLACE AT THE DEPARTMENT'S
3 DISTRICT OFFICE FOR THE DISTRICT THAT INCLUDES THE PROJECT SITE OR
4 AT THE PROJECT SITE ITSELF, AS SPECIFIED IN THE REQUEST.

5 (2) EXCEPT AS PROVIDED IN THIS SUBSECTION, A REQUEST UNDER
6 SUBSECTION (1) SHALL BE ACCOMPANIED BY A FEE. THE FEE FOR A
7 PREAPPLICATION MEETING AT THE DISTRICT OFFICE IS \$150.00. THE FEE
8 FOR A PREAPPLICATION MEETING AT THE PROJECT SITE IS \$250.00 FOR THE
9 FIRST ACRE OR PORTION OF AN ACRE OF PROJECT AREA, PLUS \$50.00 FOR
10 EACH ACRE OR PORTION OF AN ACRE IN EXCESS OF THE FIRST ACRE, BUT
11 NOT TO EXCEED A FEE OF \$1,000.00. HOWEVER, IF THE LOCATION OF THE
12 PROJECT IS A SINGLE FAMILY RESIDENTIAL LOT THAT IS LESS THAN 1 ACRE
13 IN SIZE, THERE IS NO FEE FOR A PREAPPLICATION MEETING AT THE
14 DISTRICT OFFICE, AND THE FEE FOR A PREAPPLICATION MEETING AT THE
15 PROJECT SITE IS \$100.00.

16 (3) IF THE PERSON WHO SUBMITTED A REQUEST UNDER SUBSECTION (1)
17 WITHDRAWS THE REQUEST AT LEAST 24 HOURS BEFORE THE PREAPPLICATION
18 MEETING, THE DEPARTMENT MAY AGREE WITH THE PERSON TO RESCHEDULE THE
19 MEETING OR SHALL PROMPTLY REFUND THE FEE AND NEED NOT MEET AS
20 PROVIDED IN THIS SECTION. OTHERWISE, IF, AFTER AGREEING TO THE TIME
21 AND PLACE FOR A PREAPPLICATION MEETING, THE PERSON IS NOT
22 REPRESENTED AT THE MEETING, THE PERSON SHALL FORFEIT THE FEE FOR
23 THE MEETING. IF, AFTER AGREEING TO THE TIME AND PLACE FOR A
24 PREAPPLICATION MEETING, THE DEPARTMENT IS NOT REPRESENTED AT THE
25 MEETING, THE DEPARTMENT SHALL REFUND THE FEE AND SEND A
26 REPRESENTATIVE TO A RESCHEDULED MEETING TO BE HELD WITHIN 10 DAYS
27 OF THE FIRST SCHEDULED MEETING DATE.

1 (4) ANY WRITTEN AGREEMENT PROVIDED BY THE DEPARTMENT AS A
2 RESULT OF A PREAPPLICATION MEETING REGARDING THE NEED TO OBTAIN A
3 PERMIT IS BINDING ON THE DEPARTMENT FOR 2 YEARS FROM THE DATE OF
4 THE AGREEMENT.

5 (5) ~~(2)~~—This section is repealed effective October 1, 2010.

6 Sec. 30301. As used in this part:

7 ~~—(a) "Beach" means the area landward of the shoreline of the~~
8 ~~Great Lakes as the term shoreline is defined in section 32301.~~

9 (A) ~~(b)~~—"Beach maintenance activities" means any of the
10 following in the area of Great Lakes bottomlands lying below the
11 ordinary high-water mark and above the water's edge:

12 (i) Manual or mechanized leveling of sand.

13 (ii) Mowing of vegetation.

14 (iii) Manual de minimis removal of vegetation.

15 (iv) Grooming of soil.

16 (v) Construction and maintenance of a path.

17 (B) ~~(c)~~—"Debris" means animal or fish carcasses, zebra mussel
18 shells, dead vegetation, trash, and discarded materials of human-
19 made origin.

20 (C) ~~(d)~~—"Department" means the department of environmental
21 quality.

22 ~~—(e) "Director" means the director of the department.~~

23 (D) "ENVIRONMENTAL AREA" MEANS AN ENVIRONMENTAL AREA AS
24 DEFINED IN SECTION 32301.

25 (E) ~~(f)~~—"Fill material" means soil, rocks, sand, waste of any
26 kind, or any other material that displaces soil or water or reduces
27 water retention potential.

~~(g) "Environmental area" means an environmental area as defined in section 32301.~~

(F) ~~(h)~~—"Grooming of soil" means raking or dragging, pushing, or pulling metal teeth through the top 4 inches of soil without disturbance of or destruction to plant roots, for the purpose of removing debris.

(G) ~~(i)~~—"Leveling of sand" means the relocation of sand within areas being leveled that are predominantly free of vegetation, including the redistribution, grading, and spreading of sand that has been deposited through wind or wave action onto upland riparian property.

(H) ~~(j)~~—"Minor drainage" includes ditching and tiling for the removal of excess soil moisture incidental to the planting, cultivating, protecting, or harvesting of crops or improving the productivity of land in established use for agriculture, horticulture, silviculture, or lumbering.

(I) ~~(k)~~—"Mowing of vegetation" means the cutting of vegetation to a height of not less than 2 inches, without disturbance of soil or plant roots.

(J) ~~(l)~~—"Ordinary high-water mark" means ~~that term as it is defined~~ **THE ORDINARY HIGH-WATER MARK AS SPECIFIED** in section 32502.

(K) ~~(m)~~—"Path" means a temporary access walkway from the upland riparian property directly to the shoreline across swales with standing water, not exceeding 6 feet in bottom width and consisting of sand and pebbles obtained from the exposed, nonvegetated bottomlands or from the upland riparian property.

(L) ~~(n)~~—"Person" means an individual, sole proprietorship,

partnership, corporation, association, municipality, this state, an instrumentality or agency of this state, the federal government, an instrumentality or agency of the federal government, or other legal entity.

(M) ~~(e)~~ "Removal of vegetation" means the manual or mechanized removal of vegetation, other than the manual de minimis removal of vegetation.

(N) ~~(p)~~ "Wetland" means land **THAT IS** characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, ~~and THAT~~ is commonly referred to as a bog, swamp, or marsh, and ~~which THAT~~ is any of the following:

(i) Contiguous to the Great Lakes or Lake St. Clair, an inland lake or pond, or a river or stream.

~~(ii) Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream, and more~~ **MORE** than 5 acres in size; except this subparagraph ~~shall not be of effect~~ **DOES NOT APPLY**, except for the purpose of inventorying, in counties of less than 100,000 population until the department certifies to the commission it has substantially completed its inventory of wetlands in that county.

~~(iii) Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream, and 5 acres or less in size if the department determines that protection of the area is~~ **AN AREA WHOSE PROTECTION IS DETERMINED BY THE DEPARTMENT TO BE** essential to the preservation of the natural resources of the state from pollution, impairment, or destruction, ~~and IF~~ the department has so notified the owner. ~~+~~ ~~except this subparagraph may be utilized regardless of wetland size~~

~~in a county in which subparagraph (ii) is of no effect, except for the purpose of inventorying, at the time.~~

Sec. 30302. ~~(1)~~ The legislature finds that:

~~(a) Wetland conservation is a matter of state concern since a wetland of 1 county may be affected by acts on a river, lake, stream, or wetland of other counties.~~

(A) ~~(b)~~ A loss of a wetland may deprive the people of the state of some or all of the following benefits to be derived from the wetland:

(i) Flood and storm control by the hydrologic absorption and storage capacity of the wetland.

(ii) Wildlife habitat by providing breeding, nesting, and feeding grounds and cover for many forms of wildlife, waterfowl, including migratory waterfowl, and rare, threatened, or endangered wildlife species.

(iii) Protection of subsurface water resources, ~~and~~ provision of valuable watersheds, and recharging **OF** ground water supplies.

(iv) Pollution treatment by serving as a biological and chemical oxidation basin.

(v) Erosion control by serving as a sedimentation area and filtering basin, absorbing silt and organic matter.

(vi) Sources of nutrients in water food cycles and nursery grounds and sanctuaries for fish.

(B) ~~(c)~~ Wetlands are valuable as an agricultural resource for the production of food and fiber, including certain crops ~~which~~ **THAT** may only be grown on sites developed from wetland.

(C) ~~(d)~~ ~~That the~~ **THE** extraction and processing of nonfuel

1 minerals may necessitate the use of wetland. ~~, if it is determined~~
2 ~~pursuant to section 30311 that the proposed activity is dependent~~
3 ~~upon being located in the wetland and that a prudent and feasible~~
4 ~~alternative does not exist.~~

5 ~~—— (2) In the administration of this part, the department shall~~
6 ~~consider the criteria provided in subsection (1).~~

7 Sec. 30303. ~~The department may enter into an agreement to make~~
8 ~~contracts with the federal government, other state agencies, local~~
9 ~~units of government, private agencies, or persons for the purposes~~
10 ~~of making studies for the efficient preservation, management,~~
11 ~~protection, and use of wetland resources. A study shall be~~
12 ~~available as a public record for distribution at cost as provided~~
13 ~~in section 4 of the freedom of information act, Act No. 442 of the~~
14 ~~Public Acts of 1976, being section 15.234 of the Michigan Compiled~~
15 ~~Laws.~~

16 (1) BEGINNING JANUARY 1, 2010, THE DEPARTMENT SHALL NOT
17 REGULATE ACTIVITIES IN WETLAND UNDER THIS PART OR ADMINISTER A
18 PERMIT PROGRAM UNDER SECTION 404 OF TITLE IV OF THE FEDERAL WATER
19 POLLUTION CONTROL ACT, 33 USC 1344.

20 (2) THE DEPARTMENT SHALL PROVIDE NOTICE TO THE SECRETARY OF
21 THE ARMY, ACTING THROUGH THE CHIEF OF ENGINEERS, AND THE
22 ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
23 AND TAKE OTHER ACTIONS REQUIRED BY FEDERAL LAW FOR THE VOLUNTARY
24 TRANSFER TO THE FEDERAL GOVERNMENT OF PERMIT PROGRAM ACTIVITIES
25 UNDER SECTION 404 OF TITLE IV OF THE FEDERAL WATER POLLUTION
26 CONTROL ACT, 33 USC 1344.

27 (3) THE DEPARTMENT SHALL NOT CONTRACT TO PROVIDE SERVICES TO

1 THE FEDERAL GOVERNMENT IN CONNECTION WITH THE PERMIT PROGRAM
2 TRANSFERRED TO THE FEDERAL GOVERNMENT UNDER SUBSECTION (2).

3 Sec. 30305. (1) ~~Activities that require a permit under part~~
4 ~~325 or part 301 or a discharge that is authorized by a discharge~~
5 ~~permit under section 3112 or 3113 do not require a permit under~~
6 ~~this part.~~

7 ~~— (2) The following uses are allowed in a wetland without a~~
8 ~~permit subject to other laws of this state and the owner's~~

9 ~~regulation.~~ **A LOCAL ORDINANCE UNDER SECTION 30307 SHALL NOT REQUIRE**
10 **A PERMIT FOR ANY OF THE FOLLOWING USES IN A WETLAND:**

11 (a) Fishing, trapping, or hunting.

12 (b) Swimming or boating.

13 (c) Hiking.

14 (d) Grazing of animals.

15 (e) Farming, horticulture, silviculture, lumbering, and
16 ranching activities, including plowing, irrigation, irrigation
17 ditching, seeding, cultivating, minor drainage, harvesting for the
18 production of food, fiber, and forest products, or upland soil and
19 water conservation practices. ~~Wetland altered under this~~
20 ~~subdivision shall not be used for a purpose other than a purpose~~
21 ~~described in this subsection without a permit from the department.~~

22 (f) Maintenance or operation of serviceable structures in
23 existence on October 1, 1980 or constructed pursuant to this part
24 or former 1979 PA 203.

25 (g) Construction or maintenance of farm or stock ponds.

26 (h) Maintenance, operation, or improvement, ~~which includes~~
27 **INCLUDING** straightening, widening, or deepening, of the following

1 ~~which~~**THAT** is necessary for the production or harvesting of
2 agricultural products:

3 (i) An existing private agricultural drain.

4 (ii) That portion of a drain legally established pursuant to
5 the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630, ~~which~~
6 **THAT** has been constructed or improved for drainage purposes.

7 (iii) A drain constructed pursuant to other provisions of this
8 part or former 1979 PA 203.

9 (i) Construction or maintenance of farm roads, forest roads,
10 or temporary roads for moving mining or forestry equipment, if the
11 roads are constructed and maintained in a manner to ~~assure~~**ENSURE**
12 that any adverse effect on the wetland will be ~~otherwise~~ minimized.

13 (j) Drainage necessary for the production and harvesting of
14 agricultural products if the wetland is owned by a person who is
15 engaged in commercial farming and the land is to be used for the
16 production and harvesting of agricultural products. ~~Except as~~
17 ~~otherwise provided in this part, wetland improved under this~~
18 ~~subdivision after October 1, 1980 shall not be used for nonfarming~~
19 ~~purposes without a permit from the department. This subdivision~~
20 does not apply to a wetland that is contiguous to a lake or stream,
21 or to a tributary of a lake or stream, or to a wetland that the
22 ~~department~~**LOCAL UNIT OF GOVERNMENT** has determined by clear and
23 convincing evidence to be a wetland that is necessary to be
24 preserved for the public interest. ~~, in which case a permit is~~
25 ~~required.~~

26 (k) Maintenance or improvement of public streets, highways, or
27 roads, within the right-of-way and in such a manner as to ~~assure~~

1 **ENSURE** that any adverse effect on the wetland will be ~~otherwise~~
2 minimized. Maintenance or improvement does not include adding extra
3 lanes, increasing the right-of-way, or deviating from the existing
4 location of the street, highway, or road.

5 (l) Maintenance, repair, or operation of gas or oil pipelines
6 and construction of gas or oil pipelines having a diameter of 6
7 inches or less, if the pipelines are constructed, maintained, or
8 repaired in a manner to ~~assure~~-**ENSURE** that any adverse effect on
9 the wetland will be ~~otherwise~~-minimized.

10 (m) Maintenance, repair, or operation of electric transmission
11 and distribution power lines and construction of distribution power
12 lines, if the distribution power lines are constructed, maintained,
13 or repaired in a manner to ~~assure~~-**ENSURE** that any adverse effect on
14 the wetland will be ~~otherwise~~-minimized.

15 (n) Operation or maintenance, including reconstruction of
16 recently damaged parts, of serviceable dikes and levees in
17 existence on October 1, 1980 or constructed pursuant to this part
18 or former 1979 PA 203.

19 (o) Construction of iron and copper mining tailings basins and
20 water storage areas.

21 (p) Until November 1, 2007, beach maintenance activities that
22 meet all of the following conditions:

23 (i) The activities shall not occur in environmental areas and
24 shall not violate part 365 or rules promulgated under that part, or
25 the endangered species act of 1973, Public Law 93-205, ~~87-Stat-~~
26 ~~884,~~ or rules promulgated under that act.

27 (ii) The width of any mowing of vegetation shall not exceed the

width of the riparian property or 100 feet, whichever is less.

(iii) All collected debris shall be disposed of properly outside of any wetland.

~~— (g) Until 3 years after the effective date of the amendatory act that added this subdivision, removal of vegetation as authorized under section 32516.~~

(Q) ~~(3)~~ An activity in a wetland that was effectively drained for farming before October 1, 1980 and that on and after October 1, 1980 has continued to be effectively drained as part of an ongoing farming operation. ~~is not subject to regulation under this part.~~

(2) ~~(4)~~ A wetland that is incidentally created as a result of 1 or more of the following activities is not subject to regulation under ~~this part~~ **A LOCAL ORDINANCE ADOPTED UNDER SECTION 30307:**

(a) Excavation for mineral or sand mining, if the area was not a wetland before excavation. This exemption does not include a wetland on or adjacent to a water body of 1 acre or more in size.

(b) Construction and operation of a water treatment pond or lagoon in compliance with the requirements of state or federal water pollution control regulations.

(c) A diked area associated with a landfill if the landfill complies with the terms of the landfill construction permit and if the diked area was not a wetland before diking.

Sec. 30307. ~~(1) Within 60 days after receipt of the completed application and fee, the department may hold a hearing. If a hearing is held, it shall be held in the county where the wetland to which the permit is to apply is located. Notice of the hearing shall be made in the same manner as for the promulgation of rules~~

~~under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The department may approve or disapprove a permit application without a public hearing unless a person requests a hearing in writing within 20 days after the mailing of notification of the permit application as required by subsection (3) or unless the department determines that the permit application is of significant impact so as to warrant a public hearing.~~

~~—— (2) The action taken by the department on a permit application under this part and part 13 may be appealed pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A property owner may, after exhaustion of administrative remedies, bring appropriate legal action in a court of competent jurisdiction.~~

~~—— (3) A person who desires notification of pending permit applications may make a written request to the department accompanied by an annual fee of \$25.00, which shall be credited to the general fund of the state. The department shall prepare a biweekly list of the applications made during the previous 2 weeks and shall promptly mail copies of the list for the remainder of the calendar year to the persons who requested notice. The biweekly list shall state the name and address of each applicant, the location of the wetland in the proposed use or development, including the size of both the proposed use or development and of the wetland affected, and a summary statement of the purpose of the use or development.~~

~~(1) (4) A local unit of government may regulate wetland within its boundaries, by ordinance, only as provided under this part.~~

1 This subsection is supplemental to the existing authority of a
2 local unit of government. An ordinance adopted by a local unit of
3 government pursuant to this subsection shall comply with all of the
4 following:

5 (a) The ordinance shall not provide a different definition of
6 wetland than is provided in this part, except that a wetland
7 ordinance may regulate wetland of less than 5 acres in size.

8 (b) If the ordinance regulates wetland that is smaller than 2
9 acres in size, the ordinance shall comply with section 30309.

10 (c) The ordinance shall comply with sections 30308 and 30310.

11 (d) The ordinance shall not require a permit for uses that are
12 authorized without a permit under section 30305, and shall
13 otherwise comply with this part.

14 (2) ~~(5)~~ Each local unit of government that adopts an ordinance
15 regulating wetlands under subsection ~~(4)~~ **(1)** shall notify the
16 department.

17 (3) ~~(6)~~ A local unit of government that adopts an ordinance
18 regulating wetlands shall use an application form supplied by the
19 department, and each person applying for a permit shall make
20 application directly to the local unit of government. ~~Upon receipt,~~
21 ~~the local unit of government shall forward a copy of each~~
22 ~~application along with any state fees that may have been submitted~~
23 ~~under section 30306 to the department. The department shall begin~~
24 ~~reviewing the application as provided in this part. The local unit~~
25 of government shall review the application pursuant to its
26 ordinance and shall modify, approve, or deny the application within
27 90 days after receipt. If a local unit of government does not

1 approve or disapprove the permit application within ~~the time period~~
2 ~~provided by this subsection~~ **90 DAYS AFTER RECEIPT**, the permit
3 application shall be considered approved. ~~, and the local unit of~~
4 ~~government shall be considered to have made the determinations as~~
5 ~~listed in section 30311.~~ The denial of a permit shall be
6 accompanied by a written statement of all reasons for denial. The
7 failure to supply complete information with a permit application
8 may be reason for denial of a permit. If requested, the department
9 shall inform a person whether or not a local unit of government has
10 an ordinance regulating wetlands. ~~If the department receives an~~
11 ~~application with respect to a wetland located in a local unit of~~
12 ~~government that has an ordinance regulating wetlands, the~~
13 ~~department immediately shall forward the application to the local~~
14 ~~unit of government, which shall modify, deny, or approve the~~
15 ~~application under this subsection. The local unit of government~~
16 ~~shall notify the department of its decision. The department shall~~
17 ~~proceed as provided in this part.~~

18 ~~—— (7) If a local unit of government does not have an ordinance~~
19 ~~regulating wetlands, the department shall promptly send a copy of~~
20 ~~the permit application to the local unit of government where the~~
21 ~~wetland is located. The local unit of government may review the~~
22 ~~application; may hold a hearing on the application; may recommend~~
23 ~~approval, modification, or denial of the application to the~~
24 ~~department or may notify the department that the local unit of~~
25 ~~government declines to make a recommendation. The recommendation of~~
26 ~~the local unit of government, if any, shall be made and returned to~~
27 ~~the department at any time within 45 days after the local unit of~~

1 ~~government's receipt of the permit application.~~

2 ~~—— (8) In addition to the requirements of subsection (7), the~~
3 ~~department shall notify the local unit of government that the~~
4 ~~department has issued a permit under this part within the~~
5 ~~jurisdiction of that local unit of government within 15 days of~~
6 ~~issuance of the permit. The department shall enclose a copy of the~~
7 ~~permit with the notice.~~

8 Sec. 30308. (1) Prior to the effective date of an ordinance
9 authorized under section ~~30307(4)~~**30307**, a local unit of government
10 that wishes to adopt such an ordinance shall complete and make
11 available to the public at a reasonable cost an inventory of all
12 wetland within the local unit of government, except that a local
13 unit of government located in a county that has a population of
14 less than 100,000 is not required to include public lands on its
15 map. A local unit of government shall make a draft of the inventory
16 map available to the public, shall provide for public notice and
17 comment opportunity prior to finalizing the inventory map, and
18 shall respond in writing to written comments received by the local
19 unit of government regarding the contents of the inventory. ~~A local~~
20 ~~unit of government that has a wetland ordinance on December 18,~~
21 ~~1992 has until June 18, 1994 to complete an inventory map and to~~
22 ~~otherwise comply with this part, or the local unit of government~~
23 ~~shall not continue to enforce that ordinance.~~ Upon completion of an
24 inventory map or upon a subsequent amendment of an inventory map,
25 the local unit of government shall notify each record owner of
26 property on the property tax roll of the local unit of government
27 that the inventory maps exist or have been amended, where the maps

1 may be reviewed, that the owner's property may be designated as a
2 wetland on the inventory map, and that the local unit of government
3 has an ordinance regulating wetland. The notice shall also inform
4 the property owner that the inventory map does not necessarily
5 include all of the wetlands within the local unit of government
6 that may be subject to the wetland ordinance. The notice may be
7 given by including the required information with the annual notice
8 of the property owner's property tax assessment. A wetland
9 inventory map does not create any legally enforceable presumptions
10 regarding whether property that is or is not included on the
11 inventory map is or is not a wetland.

12 (2) A local unit of government that adopts a wetland ordinance
13 shall process wetland use applications in a manner that ensures
14 that the same entity makes decisions on site plans, plats, and
15 related matters, and wetland determinations, and that the applicant
16 is not required to submit to a hearing on the application before
17 more than 1 local unit of government decision making body. This
18 requirement does not apply to either of the following:

19 (a) A preliminary review by a planning department, planning
20 consultant, or planning commission, prior to submittal to the
21 decision making body if required by an ordinance.

22 (b) An appeal process that is provided for appeal to the
23 legislative body or other body designated to hear appeals.

24 Sec. 30309. A local unit of government that has adopted an
25 ordinance under section ~~30307(4)~~ **30307** that regulates wetland
26 within its jurisdiction that is less than 2 acres in size shall
27 comply with this section. Upon application for a wetland use permit

1 in a wetland that is less than 2 acres in size, the local unit of
2 government shall approve the permit unless the local unit of
3 government determines that the wetland is essential to the
4 preservation of the natural resources of the local unit of
5 government and provides these findings, in writing, to the permit
6 applicant stating the reasons for this determination. In making
7 this determination, the local unit of government must find that 1
8 or more of the following ~~exist at~~ **APPLY TO** the particular site:

9 (a) The site supports state or federal endangered or
10 threatened plants, fish, or wildlife appearing on a list specified
11 in section 36505.

12 (b) The site represents what is identified as a locally rare
13 or unique ecosystem.

14 (c) The site supports plants or animals of an identified local
15 importance.

16 (d) The site provides groundwater recharge documented by a
17 public agency.

18 (e) The site provides flood and storm control by the
19 hydrologic absorption and storage capacity of the wetland.

20 (f) The site provides wildlife habitat by providing breeding,
21 nesting, or feeding grounds or cover for forms of wildlife,
22 waterfowl, including migratory waterfowl, and rare, threatened, or
23 endangered wildlife species.

24 (g) The site provides protection of subsurface water resources
25 and provision of valuable watersheds and recharging groundwater
26 supplies.

27 (h) The site provides pollution treatment by serving as a

1 biological and chemical oxidation basin.

2 (i) The site provides erosion control by serving as a
3 sedimentation area and filtering basin, absorbing silt and organic
4 matter.

5 (j) The site provides sources of nutrients in water food
6 cycles and nursery grounds and sanctuaries for fish.

7 Sec. 30310. (1) A local unit of government that adopts an
8 ordinance authorized under section ~~30307(4)~~ **30307** shall include in
9 the ordinance a provision that allows a landowner to request a
10 revaluation of the affected property for assessment purposes to
11 determine its fair market value under the use restriction if a
12 permit is denied by a local unit of government for a proposed
13 wetland use. A landowner who is aggrieved by a determination,
14 action, or inaction under this subsection may protest and appeal
15 that determination, action, or inaction pursuant to the general
16 property tax act, ~~Act No. 206 of the Public Acts of 1893, being~~
17 ~~sections 211.1 to 211.157 of the Michigan Compiled Laws 1893 PA~~
18 **206, MCL 211.1 TO 211.155.**

19 (2) If a permit applicant is aggrieved by a determination,
20 action, or inaction by the local unit of government regarding the
21 issuance of a permit, that person may seek judicial review in the
22 same manner as provided in the administrative procedures act of
23 1969, ~~Act No. 306 of the Public Acts of 1969, being sections 24.201~~
24 ~~to 24.328 of the Michigan Compiled Laws 1969 PA 306, MCL 24.201 TO~~
25 **24.328.**

26 (3) This section does not limit the right of a wetland owner
27 to institute proceedings in any circuit of the circuit court of the

1 state against any person when necessary to protect the wetland
2 owner's rights.

3 Sec. 30317. **THE 2009 AMENDATORY ACT THAT AMENDED THIS SECTION**
4 **DOES NOT INVALIDATE ANY PERMIT ISSUED BEFORE THE EFFECTIVE DATE OF**
5 **THAT AMENDATORY ACT OR ANY ENFORCEMENT ACTION PENDING BEFORE THE**
6 **EFFECTIVE DATE OF THAT AMENDATORY ACT WITH RESPECT TO SUCH A**
7 **PERMIT.** The civil fines collected **BY THIS STATE** under this part
8 shall be forwarded to the state treasurer for deposit in the
9 general fund of the state. ~~The fees collected under this part shall~~
10 ~~be deposited in the land and water management permit fee fund~~
11 ~~created in section 30113. Subject to section 30113, the department~~
12 ~~shall expend money from the land and water management permit fee~~
13 ~~fund, upon appropriation, to support guidance for property owners~~
14 ~~and applicants, permit processing, compliance inspections, and~~
15 ~~enforcement activities under this part. Not more than 90 days after~~
16 ~~the end of each state fiscal year ending after 1997, the department~~
17 ~~shall prepare a report describing how money from the land and water~~
18 ~~management permit fee fund~~ **CREATED IN SECTION 30113** was expended
19 during that fiscal year ~~and an evaluation of the current statutory~~
20 ~~and department rules, bulletins, and letters definition of a~~
21 ~~wetland and any appropriate changes to that definition in the first~~
22 ~~report submitted to the legislature under this section and shall~~
23 submit the report to the standing committees of the house of
24 representatives and the senate that primarily address issues
25 pertaining to the protection of natural resources and the
26 environment, and the appropriations committees in the house of
27 representatives and the senate. Other than civil fines and costs,

1 the disposition of which is governed by section 8379 of the revised
 2 judicature act of 1961, 1961 PA 236, MCL 600.8379, or criminal
 3 fines, ~~funds~~**MONEY** collected by a local unit of government under an
 4 ordinance authorized under section ~~30307(4)~~**30307** shall be
 5 deposited in the general fund of the local unit of government.

6 Sec. 30321. (1) The department shall make or cause to be made
 7 a preliminary inventory of all wetland in this state on a county by
 8 county basis and file the inventory with the agricultural extension
 9 office, register of deeds, and county clerk.

10 (2) At least 2 hearings shall be held in each state planning
 11 and development region created by Executive Directive No. 1973-1.
 12 The hearing shall be held by the department after publication and
 13 due notice so that interested parties may comment on the inventory.
 14 After the hearings, the department shall issue a final inventory
 15 which shall be sent **TO** and kept by the agricultural extension
 16 office, register of deeds, and county clerk. Legislators shall
 17 receive an inventory of a county or regional classification for
 18 their districts including both preliminary and final inventories
 19 unless the legislators request not to receive the materials.

20 ~~—— (3) Before an inventory is made of a county, a person who owns~~
 21 ~~or leases a parcel of property located in that county may request~~
 22 ~~that the department of environmental quality assess whether the~~
 23 ~~parcel of property or a portion of the parcel is wetland. The~~
 24 ~~request shall satisfy all of the following requirements:~~

25 ~~—— (a) Be made on a form provided by the department.~~

26 ~~—— (b) Be signed by the person who owns or leases the property.~~

27 ~~—— (c) Contain a legal description of the parcel and, if only a~~

~~portion of the parcel is to be assessed, a description of the
portion to be assessed.~~

~~—— (d) Include a map showing the location of the parcel.~~

~~—— (e) Grant the department or its agent permission to enter on
the parcel for the purpose of conducting the assessment.~~

~~—— (4) The department shall assess the parcel within a reasonable
time after the request is made. The department may enter upon the
parcel to conduct the assessment. Upon completion of the
assessment, the department shall provide the person with a written
assessment report. The assessment report shall do all of the
following:~~

~~—— (a) Identify in detail the location of any wetland in the area
assessed.~~

~~—— (b) If wetland is present in the area assessed, describe the
types of activities that require a permit under this part.~~

~~—— (c) If the assessment report determines that the area assessed
or part of the area assessed is not wetland, state that the
department lacks jurisdiction under this part as to the area that
the report determines is not wetland and that this determination is
binding on the department for 3 years from the date of the
assessment.~~

~~—— (d) Contain the date of the assessment.~~

~~—— (e) Advise that the person may request the department to
reassess the parcel or any part of the parcel that the person
believes was erroneously determined to be wetland if the request is
accompanied by evidence pertaining to wetland vegetation, soils, or
hydrology that is different from or in addition to the information~~

1 ~~relied upon by the department.~~

2 ~~—— (f) Advise that the assessment report does not constitute a~~
3 ~~determination of wetland that may be regulated under local~~
4 ~~ordinance or wetland areas that may be regulated under federal law~~
5 ~~and advise how a determination of wetland areas regulated under~~
6 ~~federal law may be obtained.~~

7 ~~—— (g) List regulatory programs that may limit land use~~
8 ~~activities on the parcel, advise that the list is not exhaustive,~~
9 ~~and advise that the assessment report does not constitute a~~
10 ~~determination of jurisdiction under those programs. The regulatory~~
11 ~~programs listed shall be those under the following parts:~~

12 ~~—— (i) Part 31, with respect to floodplains and floodways.~~

13 ~~—— (ii) Part 91.~~

14 ~~—— (iii) Part 301.~~

15 ~~—— (iv) Part 323.~~

16 ~~—— (v) Part 325.~~

17 ~~—— (vi) Part 353.~~

18 ~~—— (5) A person may request the department to reassess any area~~
19 ~~assessed under subsections (3) and (4) that the person believes the~~
20 ~~department erroneously determined to be wetland. The requirements~~
21 ~~of subsections (3) and (4) apply to the request, assessment, and~~
22 ~~assessment report. However, the request shall be accompanied by~~
23 ~~evidence pertaining to wetland vegetation, soils, or hydrology that~~
24 ~~is different from or in addition to the information relied upon by~~
25 ~~the department. The assessment report shall not contain the~~
26 ~~information required by subsection (4) (c).~~

27 ~~—— (6) If an assessment report determines that the area assessed~~

~~or part of the area assessed is not a wetland regulated by the department under this part, then the area determined by the assessment report not to be a wetland is not a wetland regulated by the department under this part for a period of 3 years after the date of the assessment.~~

~~—— (7) The department may charge a fee for an assessment requested under subsection (3) based upon the cost to the department of conducting an assessment.~~

Sec. 30323. (1) This part shall not be construed to abrogate rights or authority otherwise provided by law.

(2) For the purposes of determining if there has been a taking of property without just compensation under state law, an owner of property who has sought and been denied a permit ~~from the state or~~ from a local unit of government that adopts an ordinance ~~pursuant to~~ **UNDER** section 30307(4) ~~30307~~, who has been made subject to modifications or conditions in ~~the~~ **A** permit ~~under this part~~ **ISSUED UNDER SUCH AN ORDINANCE**, or who has been made subject to ~~the action or inaction of the department pursuant to this part or the action or inaction of a local unit of government that adopts~~ **SUCH** an ordinance ~~pursuant to section 30307(4)~~ may file an action in a court of competent jurisdiction.

(3) If the court determines that an action of ~~the department or~~ a local unit of government pursuant to ~~this part or~~ an ordinance authorized pursuant to section 30307(4) **ADOPTED UNDER SECTION 30307** constitutes a taking of the property of a person, ~~then~~ the court shall order ~~the department or~~ the local unit of government, at ~~the department's or~~ the local unit of government's option, as

1 ~~applicable,~~ to do 1 or more of the following:

2 (a) Compensate the property owner for the full amount of the
3 lost value.

4 (b) Purchase the property in the public interest as determined
5 before its value was affected by ~~this part or~~ the local ordinance
6 ~~authorized~~ **ADOPTED** under section ~~30307(4)~~ **30307** or the action or
7 inaction of ~~the department pursuant to this part or~~ the local unit
8 of government pursuant to its ordinance.

9 (c) Modify its action or inaction with respect to the property
10 so as to minimize the detrimental ~~affect~~ **EFFECT** to the property's
11 value.

12 (4) For the purposes of this section, the value of the
13 property may not exceed that share of the state equalized valuation
14 of the total parcel that the area in dispute occupies of the total
15 parcel of land, multiplied by 2, as determined by an inspection of
16 the most recent assessment roll of the township or city in which
17 the parcel is located.

18 Enacting section 1. Sections 30304, 30306, 30306b, 30311 to
19 30316, 30318 to 30320, and 30322 of the natural resources and
20 environmental protection act, 1994 PA 451, MCL 324.30304,
21 324.30306, 324.30306b, 324.30311 to 324.30316, 324.30318 to
22 324.30320, and 324.30322, are repealed.

23 Enacting section 2. Sections 30104b, 30301, 30302, 30305,
24 30307, 30308, 30309, 30310, 30317, 30321, and 30323 of the natural
25 resources and environmental protection act, 1994 PA 451, MCL
26 324.30104b, 324.30301, 324.30302, 324.30305, 324.30307, 324.30308,
27 324.30309, 324.30310, 324.30317, 324.30321, and 324.30323, as

1 amended by this amendatory act, take effect January 1, 2010.