

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)**  
**Act 451 of 1994**

CHAPTER 1  
HABITAT PROTECTION

INLAND WATERS

PART 301

INLAND LAKES AND STREAMS

**324.30101 Definitions.**

Sec. 30101. As used in this part:

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

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

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

(d) "Department" means the department of environmental quality.

(e) "Expand" means to occupy a larger area of an inland lake or stream than authorized by a permit issued under this part for marina mooring structures and watercraft moored at the marina.

(f) "Fund" means the land and water management permit fee fund 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.

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

(i) "Inland lake or stream" means either of the following:

(i) An artificial or natural lake, pond, or impoundment that is a water of the United States as that term is used in section 502(7) of the federal water pollution control act, 33 USC 1362.

(ii) 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, 1956 PA 40, MCL 280.1 to 280.630; 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, or a lake or pond that has a surface area of less than 5 acres.

(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.

(k) "Minor offense" means either of the following violations of this part if the project involved in the offense is a minor project or the department determines that restoration of the affected property is not required:

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

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

(l) "Mooring structures" means structures used to moor watercraft, including, but not limited to, docks, piers, pilings, mooring anchors, lines and buoys, and boat hoists.

(m) "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.

(n) "Project" means an activity that requires a permit pursuant to section 30102.

(o) "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.

(p) "Reconfigure" means to, without expanding the marina, do either of the following:

(i) Change the location of the dock or docks and other mooring structures at the marina to occupy an area

of the inland lake or stream that was not previously authorized by a permit issued under this part.

(ii) Decrease the distance available for ingress and egress to 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.

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

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

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

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

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1999, Act 106, Imd. Eff. July 7, 1999;—Am. 2006, Act 275, Imd. Eff. July 7, 2006;—Am. 2009, Act 139, Imd. Eff. Nov. 4, 2009;—Am. 2014, Act 351, Eff. Jan. 16, 2015;—Am. 2018, Act 631, Eff. Mar. 29, 2019.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30101a Applicability of powers and duties of department to "navigable waters" and "waters of the United States" as defined in federal law.**

Sec. 30101a. For the purposes of this part, the powers, duties, functions, and responsibilities exercised by the department because of federal approval of Michigan's permit program under section 404(g) and (h) of the federal water pollution control act, 33 USC 1344, apply only to "navigable waters" and "waters of the United States" as defined under section 502(7) of the federal water pollution control act, 33 USC 1362, and further refined by federally promulgated rules and court decisions that have the full effect and force of federal law. Determining whether additional regulation is necessary to protect Michigan waters beyond the scope of federal law is the responsibility of the Michigan legislature based on its determination of what is in the best interest of the citizens of this state.

**History:** Add. 2013, Act 98, Imd. Eff. July 2, 2013.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30102 Operations prohibited without permit; exception.**

Sec. 30102. (1) Except as provided in this part, a person without a permit from the department shall not do any of the following:

(a) Dredge or fill bottomland.

(b) Construct, enlarge, extend, remove, or place a structure on bottomland.

(c) Construct, reconfigure, or expand a marina.

(d) Create, enlarge, or diminish an inland lake or stream.

(e) Structurally interfere with the natural flow of an inland lake or stream.

(f) Construct, dredge, commence, extend, or enlarge an artificial canal, channel, ditch, lagoon, pond, lake, or similar waterway where the purpose is ultimate connection with an existing inland lake or stream, or where any part of the artificial waterway is located within 500 feet of the ordinary high-water mark of an existing inland lake or stream.

(g) Connect any natural or artificially constructed waterway, canal, channel, ditch, lagoon, pond, lake, or similar water with an existing inland lake or stream for navigation or any other purpose.

(2) A person shall not remove submerged logs from rivers or streams for the purpose of submerged log recovery. This subsection does not prohibit the department from issuing a permit under this part for other purposes, including removing logjams or removing logs that interfere with navigation of the river or stream.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2009, Act 139, Imd. Eff. Nov. 4, 2009;—Am. 2011, Act 218, Imd. Eff. Nov. 10, 2011.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management

Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30103 Exceptions; "water withdrawal" and "agricultural drain" defined.**

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

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

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

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

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

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

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

(e) Maintenance and operation of a waste collection or treatment facility either ordered to be constructed or approved for operation under a state or a federal water pollution control law and this part. For purposes of this subdivision, "operation" includes dredging, filling, or construction and placement of structures in the waste collection or treatment facility in compliance with this act.

(f) Construction and maintenance of minor drainage structures and facilities that are identified by rule promulgated by the department under section 30110. Before a rule is promulgated pursuant to this subsection, the rule must be approved by the majority of a committee consisting of the director of the department, the director of the department of agriculture and rural development, and the director of the state transportation department or their designated representatives. The rules shall be reviewed at least annually.

(g) Maintenance of a drain that either was legally established and constructed before January 1, 1973, pursuant to the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630, except those legally established drains constituting mainstream portions of certain natural watercourses identified in rules promulgated by the department under section 30110, or was constructed or modified under a permit issued pursuant to this part. As used in this subdivision, "maintenance of a drain" means the physical preservation of the location, depth, and bottom width of a drain and appurtenant structures to restore the function and approximate capacity of the drain as constructed or modified at any time before July 1, 2014, and includes, but is not limited to, the following activities if performed with best management practices:

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

(ii) Reshaping of the side slopes.

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

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

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

(vi) Repair of stabilization structures.

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

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

(h) Projects constructed under the watershed protection and flood prevention act, 16 USC 1001 to 1012.

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

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

(k) A water withdrawal.

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

(m) Controlled access of livestock to streams for watering or crossing if constructed in accordance with applicable practice standards set by the United States Department of Agriculture, Natural Resources Conservation Service.

(n) Temporary drawdowns of impoundments at hydroelectric projects licensed by the federal energy regulatory commission (FERC) and subject to FERC's authority if both of the following apply:

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

(ii) Adverse environmental impacts, including stream flow, aquatic resources, and timing, have been avoided and minimized to the extent practical.

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

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

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

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

(a) Does not have continuous flow.

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

(c) Serves agricultural production.

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

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2009, Act 139, Imd. Eff. Nov. 4, 2009;—Am. 2013, Act 98, Imd. Eff. July 2, 2013;—Am. 2014, Act 253, Imd. Eff. June 30, 2014;—Am. 2018, Act 163, Eff. Aug. 21, 2018.

**Popular name:** Act 451

**Administrative rules:** R 281.811 et seq. of the Michigan Administrative Code.

**Popular name:** NREPA

### **324.30104 Application for permit; fees; refund.**

Sec. 30104. (1) A person shall not undertake a project subject to this part except as authorized by a permit issued by the department pursuant to part 13. An application for a permit must 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), until October 1, 2025, an application for a permit must be accompanied by an application fee based on an administrative cost in accordance with the following schedule:

(a) For an initial permit for a seasonal drawdown or associated reflooding, or both, of a dam or impoundment for the purpose of weed control that is issued for the first time after October 9, 1995, a fee of \$500.00, but for subsequent permits for the same purpose a fee of \$50.00.

(b) For activities included in a minor project category established under section 30105(7), a fee of \$100.00.

(c) For activities included in a general permit category established under section 30105(8), a fee of \$50.00.

(d) For construction or expansion of a marina, a fee as follows:

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

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

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

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

(v) \$1,500.00 if an existing permitted marina proposes maintenance dredging of 10,000 cubic yards or more, unless the dredge material is determined through testing to be 90% or more sand, or the addition of seawalls, bulkheads, or revetments of 500 feet or more.

(e) For major projects other than a project described in subdivision (d)(v), involving any of the following, a

fee of \$2,000.00:

(i) Dredging of 10,000 cubic yards or more, unless the dredge material is determined through testing to be 90% or more sand.

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

(iii) Seawalls, bulkheads, or revetments of 500 feet or more.

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

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

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

(vii) New commercial docks or wharves of 300 feet or more in length.

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

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

(x) New golf courses.

(xi) Subdivisions.

(xii) Condominiums.

(f) For the removal of submerged logs from bottomland of an inland lake, a \$500.00 fee.

(g) For all other projects not listed in subdivisions (a) to (f), a fee of \$500.00.

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

(a) Section 3104.

(b) Part 303.

(c) Part 323.

(d) Part 325.

(e) Section 117 of the land division act, 1967 PA 288, MCL 560.117.

(4) If work has been done in violation of a permit requirement under this part 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.

(5) If the department denies an application for a permit under this part, the department shall promptly refund the application fee paid under this section.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1995, Act 171, Imd. Eff. Oct. 9, 1995;—Am. 1996, Act 97, Imd. Eff. Feb. 28, 1996;—Am. 1999, Act 106, Imd. Eff. July 7, 1999;—Am. 2003, Act 163, Imd. Eff. Aug. 12, 2003;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2006, Act 275, Imd. Eff. July 7, 2006;—Am. 2006, Act 531, Imd. Eff. Dec. 29, 2006;—Am. 2008, Act 276, Imd. Eff. Sept. 29, 2008;—Am. 2009, Act 139, Imd. Eff. Nov. 4, 2009;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2011, Act 218, Imd. Eff. Nov. 10, 2011;—Am. 2013, Act 13, Imd. Eff. Mar. 27, 2013;—Am. 2013, Act 98, Imd. Eff. July 2, 2013;—Am. 2015, Act 76, Eff. Oct. 1, 2015;—Am. 2019, Act 84, Imd. Eff. Sept. 30, 2019;—Am. 2021, Act 91, Imd. Eff. Oct. 20, 2021.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30104b Applicability of MCL 324.30306b to proposed project or proposed permit application.**

Sec. 30104b. Section 30306b applies to a proposed project or a proposed permit application under this part.

**History:** Add. 2006, Act 592, Imd. Eff. Jan. 3, 2007;—Am. 2010, Act 179, Imd. Eff. Sept. 30, 2010;—Am. 2015, Act 76, Eff. Oct. 1, 2015.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30105 Pending applications; posting on website; public hearing; review of application; statement; final inspection and certification; notice of hearing; conditional permit in emergency; provisions applicable to minor project; issuance of general permits; minor project category; general permit for activities in drains; definitions.**

Sec. 30105. (1) The department shall post on its website all of the following under this part:

(a) A list of pending applications.

(b) Public notices.

(c) Public hearing schedules.

(2) The department may hold a public hearing on pending applications.

(3) Except as otherwise provided in this section, upon receiving an application, the department shall submit copies for review to the director of the department of community health or the local health department designated by the director of the department of community health, to the city, village, or township and the

county where the project is to be located, to the local conservation district, to the watershed council established under part 311, if any, to the local port commission, if any, and to the persons required to be included in the application pursuant to section 30104. 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 governmental unit or other person that is entitled to receive a copy of the application pursuant to this subsection.

(4) 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.

(5) At least 10 days' notice of a hearing to be held under this section shall be given by publication in a newspaper circulated in the county where the project is to be located, to the person requesting the hearing, and to the governmental units and other persons that are entitled to receive a copy of the application pursuant to subsection (3).

(6) In an emergency, the department may issue a conditional permit before the expiration of the 20-day period referred to in subsection (3).

(7) After providing notice and an opportunity for a public hearing, the department shall establish minor project categories of activities and projects that are similar in nature, have minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment. The department may act upon an application received pursuant to section 30104 for an activity or project within a minor project category without providing notices pursuant to subsection (3). The department shall develop a minor project category under this subsection for repair or replacement of a failed seawall. All other provisions of this part, except provisions applicable only to general permits, are applicable to a minor project.

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

(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 processed according to subsection (3) and reviewed for compliance with section 30106.

(11) The department shall develop by December 31, 2013 and maintain a general permit for activities in drains legally established pursuant to the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630. The general permit is subject to all of the following:

(a) The general permit shall cover installation and replacement of culverts, clear span bridges, and end sections; culvert extensions; drain realignments; installation of bank stabilization structures and grade stabilization structures; spoil placement; and other common drain activities that use best 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.

(c) The department shall grant or deny an authorization under the general permit by March 1 if the drain commissioner or drainage board applies for the authorization by the preceding January 20. An authorization under the general permit is valid until March 30 of the year after the year in which the authorization is

granted.

(d) By December 31 of each year, the drain commissioner or drainage board shall submit a report to the department that includes the names of the drains on which activities were performed 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.

(e) A drain commissioner or drainage board is not eligible to be granted a new authorization under the general permit if significant violations of the general permit under a previous authorization granted to that drain commissioner or drainage board have not been corrected.

(12) As used in this section:

(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 the following conditions:

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

(ii) The impoundment from the dam covers less than 2 acres.

(iii) The dam does not serve as the first dam upstream from the Great Lakes or their connecting waterways.

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

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

(vi) There are no known areas of contaminated sediments in the area that will be affected by the project.

(vii) The department has received written permission for the removal of the dam from all riparian property owners adjacent to the dam's impoundment.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1995, Act 171, Imd. Eff. Oct. 9, 1995;—Am. 1999, Act 106, Imd. Eff. July 7, 1999;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2006, Act 275, Imd. Eff. July 7, 2006;—Am. 2006, Act 531, Imd. Eff. Dec. 29, 2006;—Am. 2009, Act 120, Eff. Nov. 6, 2009;—Am. 2013, Act 98, Imd. Eff. July 2, 2013;—Am. 2014, Act 351, Eff. Jan. 16, 2015.

**Compiler's note:** Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

**Popular name:** Act 451

**Popular name:** NREPA

**Administrative rules:** R 281.811 et seq. of the Michigan Administrative Code.

### **324.30106 Prerequisite to issuance of permit; specification in permit.**

Sec. 30106. The department shall issue a permit if it finds that the structure or project will not adversely affect the public trust or riparian rights. In passing upon an application, the department shall consider the possible effects of the proposed action upon the inland lake or stream and upon waters from which or into which its waters flow and the uses of all such waters, including uses for recreation, fish and wildlife, aesthetics, local government, agriculture, commerce, and industry. The department shall not grant a permit if the proposed project or structure will unlawfully impair or destroy any of the waters or other natural resources of the state. This part does not modify the rights and responsibilities of any riparian owner to the use of his or her riparian water. A permit shall specify that a project completed in accordance with this part shall not cause unlawful pollution as defined by part 31.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30106a Construction, expansion, or reconfiguration of marina; issuance of permit; conditions; definitions.**

Sec. 30106a. (1) The department shall issue a permit to construct, expand, or reconfigure a marina if the department determines that the marina meets the conditions of section 30106 and all of the following

conditions:

- (a) The marina extends from riparian property of the applicant.
- (b) The marina does not unreasonably interfere with navigation.

(c) The marina is located and designed to be operated consistently with the correlative rights of other riparians, including the rights of adjacent riparians.

(2) In order to be designed consistently with the correlative rights of other riparians as required under subsection (1), the marina shall be configured so that all boat mooring under any wind condition will occur solely within the marina's riparian interest area. Additionally, boat mooring and ingress and egress for an outside slip shall require a minimum maneuvering distance of 1.5 times the length of the slip. This minimum distance shall be measured from the end of the slip or, for broadside moorage, the outside beam of a watercraft moored at the slip, to the boundary of the marina's riparian interest area.

(3) In order to support the determinations under this section, the department may require the applicant to do either of the following:

(a) Submit a riparian interest area estimate survey, sealed by a licensed surveyor. In making its determination on the need for a riparian interest area estimate survey, the department shall consider factors such as the shape of the water body, the location of the marina on the water body, how much frontage is available to locate the marina, and the dock and mooring configurations.

(b) Obtain an easement from any affected adjacent riparian owner authorizing an incursion and record the easement with the register of deeds for the county in which the marina is located.

(4) The owner or operator of a marina existing on the effective date of the amendatory act that added this section that has not been authorized by a permit issued under this part shall obtain a permit under this section before expanding or reconfiguring the marina, or by January 1, 2012, whichever comes first. The owner or operator of a marina existing on the effective date of the amendatory act that added this section that has been authorized by a construction permit under this part does not need to obtain a new construction permit except to expand or reconfigure.

(5) As used in this section:

(a) "Marina's riparian interest area" means the riparian interest area of an applicant for a permit under subsection (1) and any adjacent area for which the applicant has secured written authorization from the riparian owner whose interest is or may be affected.

(b) "Outside slip" means a slip that is accessed from a location between the boundary of the marina's riparian interest area and the mooring structure.

(c) "Slip length" means the longer of either of the following:

(i) The total length of all mooring structures, including the docks and pilings.

(ii) The total length of the vessel moored in the slip, including, but not limited to, outboard engines, boat hoists, bowsprits, and swim platforms.

**History:** Add. 2009, Act 139, Imd. Eff. Nov. 4, 2009.

**Popular name:** Act 451

**Compiler's note:** NREPA

### **324.30106b Dredging or placing dredged spoils on bottomland; permit; conditions.**

Sec. 30106b. A permit under this part to dredge or place dredged spoils on bottomland is subject to both of the following:

(a) The permit shall be valid for a period of 5 years.

(b) During the term of the permit, the department shall not require additional environmental studies or surveys unless an act of God results in significant geological or ecological changes to the permitted area.

**History:** Add. 2013, Act 87, Imd. Eff. June 28, 2013.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30107 Duration, terms, and revocation of permit; hearing; modification or revocation of general permit.**

Sec. 30107. (1) A permit is effective until revoked for cause but not beyond its term and may be subject to renewal. A permit may specify the term and conditions under which the work is to be carried out. A permit may be revoked after a hearing for violation of any of its provisions, any provision of this part, any rule promulgated under this part, or any misrepresentation in application.

(2) A general permit may be modified or revoked if, after opportunity for a public hearing, the department determines that the activities authorized by the general permit have more than a minimal adverse impact on the environment on an individual or cumulative basis, or the activities generally would be more appropriately



processed according to section 30105(3) and reviewed for compliance with section 30106.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 531, Imd. Eff. Dec. 29, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30108 Bulkhead line; establishment; application; jurisdiction; duties.**

Sec. 30108. The department may establish by permit a bulkhead line on its own application or on the application of a local unit of government. The application shall be filed as provided in section 30104(1) with public notice and hearings as provided in section 30105. Upon acceptance of the bulkhead line by the affected units of government, the area landward of the bulkhead line shall after that acceptance be under the jurisdiction of those units of government as to the placement of structures and fills in the waters unless jurisdiction is returned to the state. In establishing a bulkhead line, the department shall provide for local requirements and ensure the public trust in the adjacent waters against unreasonable interferences.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30109 Ordinary high-water mark agreement with riparian owner; agreement as proof of location; fee.**

Sec. 30109. Upon the written request of a riparian owner and upon payment of a service fee, the department may enter into a written agreement with the 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 is conclusive proof of the location in all matters between this state and the riparian owner and his or her successors in interest. Until October 1, 2025, the service fee provided for in this section is \$500.00. The department shall forward service fees collected under this section to the state treasurer for deposit into the fund.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1995, Act 171, Imd. Eff. Oct. 9, 1995;—Am. 1999, Act 106, Imd. Eff. July 7, 1999;—Am. 2003, Act 163, Imd. Eff. Aug. 12, 2003;—Am. 2008, Act 276, Imd. Eff. Sept. 29, 2008;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2015, Act 76, Eff. Oct. 1, 2015;—Am. 2019, Act 84, Imd. Eff. Sept. 30, 2019;—Am. 2021, Act 91, Imd. Eff. Oct. 20, 2021.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30110 Rules; promulgation and enforcement; hearing; review; proceeding by riparian owner.**

Sec. 30110. (1) The department may promulgate and enforce rules to implement this part.

(2) If a person is aggrieved by any action or inaction of the department, he or she may request a formal hearing on the matter involved. The hearing shall be conducted by the commission in accordance with the provisions for contested cases in the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(3) A determination, action, or inaction by the commission following the hearing is subject to judicial review as provided in Act No. 306 of the Public Acts of 1969.

(4) This section does not limit the right of a riparian owner to institute proceedings in any circuit court of the state against any person when necessary to protect his or her rights.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Administrative rules:** R 281.811 et seq. of the Michigan Administrative Code.

### **324.30111 Rights of riparian owner as to water frontage and exposed bottomland.**

Sec. 30111. This part does not deprive a riparian owner of rights associated with his or her ownership of water frontage. A riparian owner among other rights controls any temporarily or periodically exposed bottomland to the water's edge, wherever it may be at any time, and holds the land secure against trespass in the same manner as his or her upland subject to the public trust to the ordinary high-water mark.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.30111b Public road end; prohibited use; violation as misdemeanor; fine; civil action; definitions.**

Sec. 30111b. (1) A public road end shall not be used for any of the following unless a recorded deed, recorded easement, or other recorded dedication expressly provides otherwise:

- (a) Construction, installation, maintenance, or use of boat hoists or boat anchorage devices.
- (b) Mooring or docking of a vessel between 12 midnight and sunrise.
- (c) Any activity that obstructs ingress to or egress from the inland lake or stream.

(2) A public road end shall not be used for the construction, installation, maintenance, or use of a dock or wharf other than a single seasonal public dock or wharf that is authorized by the local unit of government, subject to any permit required under this part. This subsection does not prohibit any use that is expressly authorized by a recorded deed, recorded easement, or other recorded dedication. This subsection does not permit any use that exceeds the uses authorized by a recorded deed, recorded easement, other recorded dedication, or a court order.

(3) A local unit of government may prohibit a use of a public road end if that use violates this section.

(4) A person who violates subsection (1) or (2) is guilty of a misdemeanor punishable by a fine of not more than \$500.00. Each 24-hour period in which a violation exists represents a separate violation of this section. A peace officer may issue an appearance ticket as authorized by sections 9c to 9g of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.9c to 764.9g, to a person who violates subsection (1) or (2).

(5) This section does not prohibit a person or agency from commencing a civil action for conduct that violates this section.

(6) As used in this section:

- (a) "Local unit of government" means a township, city, or village in which the public road end is located.
- (b) "Public road end" means the terminus at an inland lake or stream of a road that is lawfully open for use by the public.

**History:** Add. 2012, Act 56, Imd. Eff. Mar. 22, 2012;—Am. 2014, Act 168, Imd. Eff. June 12, 2014.

**Popular name:** Act 451

**Popular name:** NREPA

\*\*\*\*\* 324.30111d.added THIS ADDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE \*\*\*\*\*

**324.30111d.added Issuance of written emergency order; violation of Part 301.**

Sec. 30111d. (1) The director of the department may issue a written emergency order that requires any person that the department determines to be in violation of this part to take emergency action necessary to prevent significant harm to public health, safety, welfare, property, or natural resources or the public trust in natural resources. The emergency action may include, but is not limited to, immediate repair or removal of a structure or fill owned by the person and located on bottomlands. This subsection does not expand the department's authority under part 315 as limited by section 31506(2)(a). If a person fails to comply with an order under this subsection, or is unavailable or unable to be contacted, the department may take the action necessary and may recover the costs incurred from that person in a civil action in a court of competent jurisdiction. The director of the department may modify an emergency order. The director of the department may terminate an emergency order upon a determination in writing that all necessary emergency actions have been completed and that an emergency no longer exists.

(2) Within 15 days after the director of the department issues an emergency order to a person under subsection (1), the department shall provide the person with an opportunity for a hearing pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.288. At the hearing, the director of the department shall determine, based on information and fact, if the emergency order must be continued, modified, suspended, or terminated as necessary for or consistent with the protection of public health, safety, welfare, property, or natural resources or the public trust in natural resources.

(3) Before taking action to recover costs incurred under subsection (1), the department shall consider any evidence, provided by the person liable for the costs, that the person is unable to pay the costs.

**History:** Add. 2024, Act 102, Eff. (sine die).

**Popular name:** Act 451

**Popular name:** NREPA

**324.30112 Civil action; commencement by department; fine; violation as misdemeanor; penalty; civil sanction as appropriate to violation.**

Sec. 30112. (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 part, to restrain violation of this part 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 part 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 part, 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 part or a permit issued under this part 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 9c to 9g of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.9c to 764.9g.

(5) A person who knowingly makes a false statement, representation, or certification in an application for a permit or 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 sanction assessed, sought, or agreed to by the department shall be appropriate to the violation.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2018, Act 631, Eff. Mar. 29, 2019.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30113 Land and water management permit fee fund.**

Sec. 30113. (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. The department shall be the administrator of the fund for auditing purposes.

(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 part and the following:

(a) Sections 3104, 3107, and 3108.

(b) Part 303.

(c) Part 315.

(d) Part 323.

(e) Part 325.

(f) Part 339.

(g) Part 353.

(h) Section 117 of the land division act, 1967 PA 288, MCL 560.117.

(5) The department shall annually report to the legislature how money in the fund was expended during the previous fiscal year.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1995, Act 171, Imd. Eff. Oct. 9, 1995;—Am. 2004, Act 246, Eff. Oct. 1, 2004;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006;—Am. 2014, Act 253, Imd. Eff. June 30, 2014.

**Popular name:** Act 451

**Popular name:** NREPA

## PART 303 WETLANDS PROTECTION

\*\*\*\*\* 324.30301 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) \*\*\*\*\*

### **324.30301 Definitions; technical wetland delineation standards.**

Sec. 30301. (1) As used in this part:

- (a) "Department" means the department of environmental quality.
- (b) "Director" means the director of the department.
- (c) "Exceptional wetland" means wetland that provides physical or biological functions essential to the natural resources of this state and that may be lost or degraded if not preserved through an approved site protection and management plan for the purposes of providing compensatory wetland mitigation.
- (d) "Fill material" means soil, rocks, sand, waste of any kind, or any other material that displaces soil or water or reduces water retention potential.
- (e) "Hydric soil" means a soil that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part.
- (f) "Landscape level wetland assessment" means the use of aerial photographs, maps, and other remotely sensed information to predict and evaluate wetland characteristics and functions in the context of all of the following:
  - (i) The wetland's landscape position and hydrologic characteristics.
  - (ii) The surrounding landscape.
  - (iii) The historic extent and condition of the wetland.
- (g) "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.
- (h) "Nationwide permit" means a nationwide permit issued by the United States Army Corps of Engineers under 72 FR 11091 to 11198 (March 12, 2007), including all general conditions, regional conditions, and conditions imposed by this state pursuant to a water quality certification under section 401 of title IV of the federal water pollution control act, 33 USC 1341, or a coastal zone management consistency determination under section 307 of the coastal zone management act of 1972, 16 USC 1456.
- (i) "Ordinary high-water mark" means the ordinary high-water mark as specified in section 32502.
- (j) "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.
- (k) "Rapid wetland assessment" means a method for generally assessing the functions, values, and condition of individual wetlands based on existing data and field indicators.
- (l) "Rare and imperiled wetland" means any of the following:
  - (i) Great Lakes marsh.
  - (ii) Southern wet meadow.
  - (iii) Inland salt marsh.
  - (iv) Coastal plain marsh.
  - (v) Interdunal wetland.
  - (vi) Lakeplain wet prairie.
  - (vii) Lakeplain wet-mesic prairie.
  - (viii) Coastal fen.
  - (ix) Wet-mesic prairie.
  - (x) Wet prairie.
  - (xi) Prairie fen.
  - (xii) Northern fen.
  - (xiii) Patterned fen.
  - (xiv) Poor fen.
  - (xv) Muskeg.
  - (xvi) Relict conifer swamp.
  - (xvii) Southern floodplain forest.
- (m) "Water dependent" means requiring access or proximity to or siting within an aquatic site to fulfill its basic purpose.
- (n) "Wetland" means a land or water feature, commonly referred to as a bog, swamp, or marsh, inundated or saturated by water at a frequency and duration sufficient to support, and that under normal circumstances does support, hydric soils and a predominance of wetland vegetation or aquatic life. A land or water feature is not a wetland unless it meets any of the following:
  - (i) Is a water of the United States as that term is used in section 502(7) of the federal water pollution control act, 33 USC 1362.

(ii) Is contiguous to the Great Lakes, Lake St. Clair, an inland lake or pond, or a stream. As used in this subparagraph, "pond" does not include a farm or stock pond constructed consistent with the exemption under section 30305(2)(g).

(iii) Is more than 5 acres in size.

(iv) Has the documented presence of an endangered or threatened species under part 365 or the endangered species act of 1973, Public Law 93-205.

(v) Is a rare and imperiled wetland.

(2) In 2019 and every 5 years thereafter, the department of natural resources may make recommendations to the legislature for changes in the list of rare and imperiled wetlands to reflect the status of each type of wetland to be included on the list as rare and imperiled throughout this state.

(3) As used in section 30312f:

(a) "Altered or degraded wetland" means wetland that meets any of the following criteria:

(i) Has been partially or fully drained, such as by ditching, tiling, or pumping.

(ii) Has been partially or fully filled by direct placement of material in the wetland or significant sedimentation.

(iii) Invasive plant species dominate in a majority of the vegetated surface area of the wetland.

(iv) Has undergone land use conversion or alteration to vegetation, soil, or hydrology that currently affects the wetland functions and services.

(b) "Former wetland" means land that was wetland but that has been modified to the point that it no longer has the hydrologic characteristics of wetland.

(c) "Net increase in wetland functions and services" means an increase in 1 or more wetland functions and services with not more than a minimal decrease in other wetland functions and services.

(d) "Voluntary wetland restoration project", subject to subdivision (e), means any of the following:

(i) Activities that are voluntarily undertaken to restore, reestablish, rehabilitate, or enhance altered or degraded wetland or former wetland and that result in a net increase in wetland functions and services.

(ii) Activities to maintain or manage sites where activities described in subparagraph (i) have taken place, including sites restored before October 1, 1980, the effective date of former 1979 PA 203.

(e) Voluntary wetland restoration project does not include an activity undertaken to fulfill, currently or in the future, a federal, state, or local wetland permit mitigation requirement.

(f) "Wetland functions and services" means any of the following:

(i) Wetland hydrology that approximates the predisturbance condition or that emulates the natural condition of the wetland.

(ii) Fish and wildlife habitat quality or quantity.

(iii) Plant community quality, characterized by native vegetation types and diversity.

(iv) Water- and soil-related functions of the wetland, such as nutrient removal, sediment retention, flood control, or groundwater recharge.

(v) Recreational use of the wetland, including, but not limited to, fishing, hunting, trapping, and birdwatching.

(4) The department and local units of government shall apply the technical wetland delineation standards set forth in the United States Army Corps of Engineers January, 1987, Wetland Delineation Manual, technical report Y-87-1, and appropriate regional United States Army Corps of Engineers supplements, in identifying wetland boundaries under this part, including, but not limited to, section 30307.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2003, Act 14, Imd. Eff. June 5, 2003;—Am. 2009, Act 120, Eff. Nov. 6, 2009;—Am. 2012, Act 247, Imd. Eff. July 2, 2012;—Am. 2018, Act 562, Eff. Mar. 28, 2019;—Am. 2018, Act 631, Eff. Mar. 29, 2019.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

\*\*\*\*\* 324.30302 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) \*\*\*\*\*

**324.30302 Legislative findings; criteria to be considered in administration of part.**

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.

(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 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.

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

(d) That the extraction and processing of nonfuel minerals may necessitate the use of wetland, if it is determined pursuant to section 30311 that the proposed activity is dependent upon being located in the wetland and that a prudent and feasible alternative does not exist.

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

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

\*\*\*\*\* 324.30303 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) \*\*\*\*\*

**324.30303 Studies regarding wetland resources; contracts; study as public record for distribution at cost; identification of land suitable for cranberry production activities.**

Sec. 30303. (1) The department may enter into an agreement to make contracts with the federal government, other state agencies, local units of government, private agencies, or persons for the purposes of making studies for the efficient preservation, management, protection, and use of wetland resources. A study shall be available as a public record for distribution at cost as provided in section 4 of the freedom of information act, 1976 PA 442, MCL 15.234.

(2) Within 180 days after the effective date of the 2009 amendatory act that added this subsection, the commission of agriculture in consultation with the department of environmental quality shall identify at least 2,500 acres of land suitable for cranberry production activities. Priority shall be given to upland sites, sites that have been drained for agricultural use and are no longer wetland, and sites that have been drained for agricultural use and continue to be wetland. The department and the department of agriculture shall make available to the public a map of the areas identified as provided in this section. The map is for informational purposes and does not constitute a regulatory determination for purposes of this part.

(3) After 2,000 acres of sites identified under subsection (2) have been developed for cranberry production activities, at least an additional 2,500 acres shall be identified as provided in subsection (2).

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2009, Act 120, Eff. Nov. 6, 2009.

**Compiler's note:** Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

### **324.30303b Repealed. 2009, Act 120, Eff. Oct. 1, 2012.**

**Compiler's note:** The repealed section pertained to implementation of pilot program to facilitate role of local units of government, conservation districts, nonprofit organizations, and wetland professionals seeking assistance with certain proposed projects.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

### **324.30303d Repealed. 2009, Act 120, Eff. Oct. 1, 2012.**

**Compiler's note:** The repealed section pertained to pilot program for development of wetland mitigation banks, participants, and report.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

\*\*\*\*\* 324.30304 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) \*\*\*\*\*

### **324.30304 Prohibited activities.**

Sec. 30304. Except as otherwise provided in this part or by a permit issued by the department under this part and pursuant to part 13, a person shall not do any of the following:

- (a) Deposit or permit the placing of fill material in a wetland.
- (b) Dredge, remove, or permit the removal of soil or minerals from a wetland.
- (c) Construct, operate, or maintain any use or development in a wetland.
- (d) Drain surface water from a wetland.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2018, Act 631, Eff. Mar. 29, 2019.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

\*\*\*\*\* 324.30304b THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) \*\*\*\*\*

### **324.30304b Issuance of state programmatic general permits; agreement with United States army corps of engineers; applicability of subsections (2) and (3).**

Sec. 30304b. (1) The department shall pursue an agreement with the United States army corps of engineers for the corps to issue state programmatic general permits under section 404(e) of title IV of the federal water pollution control act, 33 USC 1344, for activities regulated under this part in waters over which the corps retains jurisdiction under section 404(g)(1) of title IV of the federal water pollution control act, 33 USC 1344.

(2) This subsection applies beginning January 1, 2011. This subsection applies to an application for a permit under this part only if the application is for an activity or use in waters over which the corps retains jurisdiction under section 404(g)(1) of title IV of the federal water pollution control act, 33 USC 1344, and if

the corps has not issued a state programmatic general permit for the activity or use. In such a case, if requested by the applicant in the application, all of the following apply:

(a) The department shall approve or deny the application for a permit under this part not more than 30 days after the corps grants or denies an application for a permit for the project under section 404(a) of title IV of the federal water pollution control act, 33 USC 1344, or by the end of the processing period otherwise provided for in section 1301, whichever is later. If a project proposed in a permit application processed under this subsection also requires authorization under 1 or more of parts 31, 301, 315, 323, 325, or 353, the requirements of this subdivision also apply to the department's decision under that part or parts.

(b) Subject to subsection (3), if the corps grants a permit for the project, the department shall grant a permit under this part without conditions or limitations other than those imposed by the corps unless any of the following apply:

(i) The wetland is a rare and imperiled wetland.

(ii) The wetland is regionally significant for the protection of fisheries, wildlife, or migratory birds.

(iii) The site is described in section 30309(a), (e), or (g).

(iv) The proposed project involves a use or activity not regulated under section 404(a) of title IV of the federal water pollution control act, 33 USC 1344.

(3) The department shall inform the applicant in writing of the basis for a finding that the requirements of subsection (2)(b)(i), (ii), (iii), or (iv) are met and the specific reasons why denial of the permit or the imposition of additional conditions or limitations on the permit is consistent with this part and rules promulgated under this part.

(4) Subsections (2)(b) and (3) apply only to the department's decision under this part notwithstanding that the project proposed in the application also requires authorization under 1 or more of parts 31, 301, 315, 323, 325, and 353.

**History:** Add. 2009, Act 120, Eff. Nov. 6, 2009.

**Compiler's note:** Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

\*\*\*\*\* 324.30305 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) \*\*\*\*\*

**324.30305 Activities not requiring permit under part; uses allowed without permit; farming operation in wetland not requiring permit; incidental creation of wetland; area created as result of commercial excavation; activities not subject to regulation; subsection (6) inapplicable to certain lands; "agricultural drain" defined.**

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

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

(a) Fishing, trapping, or hunting.

(b) Swimming or boating.

(c) Hiking.

(d) Grazing of animals, including fencing and post placement if the fence is designed to control livestock, does not exceed 11 feet in height, and utilizes an amount of material that does not exceed that of a woven wire fence utilizing 6-inch vertical spacing and posts.

(e) Farming, horticulture, silviculture, lumbering, and ranching activities, including plowing, irrigation, irrigation ditching, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices. All of the following apply for the purposes of



this subdivision:

(i) Beginning October 1, 2013, to be allowed in a wetland without a permit, these activities shall be part of an established ongoing farming, ranching, horticultural, or silvicultural operation. Farming and silvicultural activities on areas lying fallow as part of a conventional rotational cycle are part of an established ongoing operation, unless modifications to the hydrological regime or mechanized land clearing are necessary to resume operation. Activities that bring into farming, ranching, horticultural, or silvicultural use an area not in any of these uses, or that convert an area from a forested or silvicultural use to a farming, ranching, or horticultural use, are not part of an established ongoing operation.

(ii) Minor drainage does not include drainage associated with the immediate or gradual conversion of a wetland to a nonwetland, or conversion from 1 wetland use to another. Minor drainage does not include the construction of a canal, ditch, dike, or other waterway or structure that drains or otherwise significantly modifies a stream, lake, or wetland.

(iii) Wetland altered under this subdivision shall not be used for a purpose other than a purpose described in this section without a permit from the department.

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

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

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

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

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

(iii) The maintenance does not include any modification that results in additional wetland drainage or conversion of a wetland to a use to which it was not previously subject.

(i) Maintenance of a drain that was legally established and constructed pursuant to the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630, if the drain was constructed before January 1, 1973 or under a permit issued pursuant to this part. As used in this subdivision, "maintenance of a drain" means the physical preservation of the location, depth, and bottom width of a drain and appurtenant structures to restore the function and approximate capacity of the drain as constructed or modified at any time before July 1, 2014, including the placement of spoils removed from the drain in locations along that drain where spoils have been previously placed. Maintenance of a drain under this subdivision does not include any modification that results in additional wetland drainage or conversion of a wetland to a use to which it was not previously subject.

(j) Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining or forestry equipment, if the roads are constructed and maintained in a manner to ensure that any adverse effect on the wetland will be minimized. Borrow material for road construction or maintenance shall be taken from upland sources if feasible. In determining whether an alternative will minimize any adverse effect on the wetland, the department shall consider cost, existing technology, and logistics in light of overall project purposes.

(k) Maintenance of public streets, highways, or roads that meets all of the following requirements:

(i) Does not include any modification that changes the original location or footprint.

(ii) Is done in a manner that minimizes any adverse effect on the wetland.

(l) Maintenance or repair of utility lines and associated support structures that meets all of the following requirements:

(i) Is done in a manner that minimizes any adverse effect on the wetland.

(ii) Does not include any modification to the character, scope, or size of the originally constructed design.

(iii) Does not convert a wetland area to a use to which it was not previously subject.

For the purposes of this subdivision and subdivision (m), "utility line" means any pipe or pipeline used for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone or telegraph messages, or radio or television communication.

(m) Installation of utility lines having a diameter of 6 inches or less using directional drilling or boring, or knifing-in, and the placement of poles with minimal (less than 1 cubic yard) structure support, if the utility lines and poles are installed in a manner that minimizes any adverse effect on the wetland. Directional drilling or boring under this subdivision shall meet all of the following requirements:

(i) The top of the utility line is at least 4 feet below the soil surface of the wetland. However, if the presence of rock prevents the placement of the utility line at the depth otherwise required by this subparagraph, the bottom of the utility line is not placed higher than the top of the rock.

(ii) The entry and exit holes are located a sufficient distance from the wetland to ensure that disturbance of the wetland does not occur.

(iii) The operation does not result in the eruption or release of any drilling fluids up through the ground and into the wetland and there is an adequate plan to respond to any release of drilling mud or other fill material.

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

(o) Placement of biological residuals from activities, including the cutting of woody vegetation or the in-place grinding of tree stumps, performed under this section within a wetland, if all the biological residuals originate within that wetland.

(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.

(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) Excavation as part of commercial sand, gravel, or mineral mining, if the area was not a wetland before excavation. This exemption from regulation applies until the property on which the wetland is located meets both of the following requirements:

(i) Is no longer used for excavation as part of commercial sand, gravel, or mineral mining.

(ii) Is being used for another purpose unrelated to excavation as part of commercial sand, gravel, or mineral mining.

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

(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.

(d) Construction of drains in upland for the sole purpose of removing excess soil moisture from upland areas that are primarily in agricultural use.

(e) Construction of roadside ditches in upland for the sole purpose of removing excess soil moisture from upland.

(f) An agricultural soil and water conservation practice designed, constructed, and maintained for the purpose of enhancing water quality.

(5) An area that becomes contiguous to a water body created as a result of commercial excavation for sand, gravel, or mineral mining is not subject to regulation under this part solely because it is contiguous to the created water body. This exemption from regulation applies until the property on which the wetland is located meets both of the following requirements:

(a) Is no longer used for excavation as part of commercial sand, gravel, or mineral mining.

(b) Is being used for another purpose unrelated to excavation as part of commercial sand, gravel, or mineral mining.

(6) Except as provided in subsection (7), the following activities are not subject to regulation under this part:

(a) Leveling of sand, removal of vegetation, grooming of soil, or removal of debris, in an area of unconsolidated material predominantly composed of sand, rock, or pebbles, located between the ordinary high-water mark and the water's edge.

(b) Mowing of vegetation between the ordinary high-water mark and the water's edge.

(7) Subsection (6) does not apply to lands included in the survey of the delta of the St. Clair River, otherwise referred to as the St. Clair flats, located within Clay township, St. Clair county, as provided for in 1899 PA 175.

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

(a) Does not have continuous flow.

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

(c) Serves agricultural production.

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

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 550, Imd. Eff. Jan. 15, 1997;—Am. 2003, Act 14, Imd. Eff. June 5, 2003;—Am. 2012, Act 247, Imd. Eff. July 2, 2012;—Am. 2013, Act 98, Imd. Eff. July 2, 2013;—Am. 2018, Act 631, Eff. Mar. 29, 2019.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

\*\*\*\*\* 324.30305b THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) \*\*\*\*\*

### **324.30305b Cranberry beds.**

Sec. 30305b. (1) The department shall consider construction of cranberry beds, including associated dikes and water control structures associated with dikes, such as headgates, weirs, and drop inlet structures, to be a water dependent activity.

(2) The following activities associated with cranberry operations are not considered to be water dependent:

(a) The construction of roads, ditches, reservoirs, and pump houses that are used during the cultivation of cranberries.

(b) The construction of secondary support facilities for shipping, storage, packaging, parking, and similar purposes.

(3) The demonstration by an applicant under section 30311 that there is no feasible and prudent alternative to the construction of cranberry beds, including dikes and water control structures associated with dikes, is not subject to either of the following presumptions:

(a) That feasible and prudent alternatives that do not involve a wetland are available.

(b) That a feasible and prudent alternative that does not affect a wetland will have less adverse effects on the aquatic ecosystem.

**History:** Add. 2009, Act 120, Eff. Nov. 6, 2009.

**Compiler's note:** Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

\*\*\*\*\* 324.30306 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) \*\*\*\*\*

### **324.30306 Permit for use or development listed in MCL 324.30304; filing, form, and contents of application; proposed use or development as single permit application; fee; work done in violation of permit requirement; fee refund; conditional permit.**

Sec. 30306. (1) Except as provided in section 30307(6), to obtain a permit for a use or development listed in section 30304, a person shall file an application with the department on a form provided by the department. The application shall include all of the following:

(a) The person's name and address.

(b) The location of the wetland.

(c) A description of the wetland.

(d) A statement and appropriate drawings describing the proposed use or development.

(e) The wetland owner's name and address.

(f) An environmental assessment of the proposed use or development if requested by the department. The assessment shall include the effects upon wetland benefits and the effects upon the water quality, flow, and levels, and the wildlife, fish, and vegetation within any contiguous inland lake or stream.

(2) For the purposes of subsection (1), a proposed use or development of a wetland shall be covered by a single permit application under this part if the scope, extent, and purpose of a use or development are made known at the time of the application for the permit.

(3) Except as provided in subsections (4) and (5), an application for a permit submitted under subsection (1) shall be accompanied by the following application fee, as applicable:

(a) For a project in a category of activities for which a general permit is issued under section 30312(2), a fee of \$50.00.

(b) For activities included in a minor project category established under section 30312(1), a fee of \$100.00.

(c) For a major project, including any of the following, a fee of \$2,000.00:

(i) Filling or draining of 1 acre or more of coastal or inland wetland.

(ii) 10,000 cubic yards or more of wetland fill.

(iii) A new golf course affecting wetland.

(iv) A subdivision affecting wetland.

(v) A condominium affecting wetland.

(d) For all other projects, a fee of \$500.00.

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

(a) Section 3104.

(b) Part 301.

(c) Part 323.

(d) Part 325.

(e) Section 117 of the land division act, 1967 PA 288, MCL 560.117.

(5) If work has been done in violation of a permit requirement under this part, the department shall consider accepting and may accept an application for a permit if the application is accompanied by a fee equal to twice the application fee otherwise required under this section.

(6) If the department determines that a permit is not required under this part or denies an application for a permit under this part, the department shall promptly refund the application fee paid under this section.

(7) The department may issue a conditional permit before the expiration of the 20-day period referred to in section 30307 if emergency conditions warrant a project to protect property or the public health, safety, or welfare.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1998, Act 228, Imd. Eff. July 3, 1998;—Am. 2003, Act 14, Imd. Eff. June 5, 2003;—Am. 2009, Act 120, Eff. Nov. 6, 2009;—Am. 2012, Act 247, Imd. Eff. July 2, 2012;—Am. 2013, Act 98, Imd. Eff. July 2, 2013;—Am. 2018, Act 631, Eff. Mar. 29, 2019.

**Compiler's note:** Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

\*\*\*\*\* 324.30306b THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) \*\*\*\*\*

### **324.30306b Preapplication meeting; fee; withdrawal of request; refund of fee; duration of written agreement.**

Sec. 30306b. (1) 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 proposed project or a proposed permit application in its entirety. The preapplication meeting shall take place at the department's district office for the district that includes the project site or at the project site itself, as specified in the request.

(2) Except as provided in this subsection, the request shall be accompanied by a fee. The fee for a preapplication meeting at the district office is \$150.00. The fee for a preapplication meeting at the project site is \$250.00 for the first acre or portion of an acre of project area, plus \$50.00 for each acre or portion of an acre in excess of the first acre, but not to exceed a fee of \$1,000.00. However, both of the following apply:

(a) If the location of the project is a single family residential lot that is less than 1 acre in size, there is no fee for a preapplication meeting at the district office, and the fee for a preapplication meeting at the project site is \$100.00.

(b) There is no fee for a preapplication meeting for cranberry and blueberry production activities, whether at the district office or project site.

(3) If the person withdraws the request at least 24 hours before the preapplication meeting, the department may agree with the person to reschedule the meeting or shall promptly refund the fee and need not meet as provided in this section. Otherwise, if, after agreeing to the time and place for a preapplication meeting, the person requesting the meeting is not represented at the meeting, the person shall forfeit the fee for the meeting. If, after agreeing to the time and place for a preapplication meeting, the department is not represented at the meeting, the department shall refund the fee and send a representative to a rescheduled meeting to be held within 10 days after the first scheduled meeting date.

(4) Any written agreement provided by the department as a result of the preapplication meeting regarding the need to obtain a permit is binding on the department for 2 years after the date of the agreement.

**History:** Add. 2006, Act 435, Imd. Eff. Oct. 5, 2006;—Am. 2009, Act 120, Eff. Nov. 6, 2009;—Am. 2010, Act 180, Imd. Eff. Sept. 30, 2010;—Am. 2013, Act 98, Imd. Eff. July 2, 2013.

**Compiler's note:** Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

\*\*\*\*\* 324.30307 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) \*\*\*\*\*

**324.30307 Hearing; location; notice; approval or disapproval of permit application; appeal; legal action; website and electronic notification of pending permit applications, public notices, and public hearing schedules; effect of ordinance regulating wetlands; review of permit application by local unit of government; effect of failure to approve or disapprove within time period; recommendations; notice of permit issuance.**

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 given 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 or 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) The department shall post on its website, and shall have a process to provide electronic mail notification of, all of the following under this part:

(a) A list of pending applications.

(b) Public notices.

(c) Public hearing schedules.

(4) A local unit of government may regulate wetland within its boundaries, by ordinance, only as provided under this part. This subsection is supplemental to the existing authority of a local unit of government. An ordinance adopted by a local unit of government pursuant to this subsection shall comply with all of the following:

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

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

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

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

(5) A local unit of government that adopts an ordinance regulating wetlands under subsection (4) shall notify the department.

(6) A local unit of government that adopts an ordinance regulating wetlands shall use an application form supplied by the department, and each person applying for a permit shall make application directly to the local unit of government. Upon receipt, the local unit of government shall forward a copy of each application along with any state fees that may have been submitted under section 30306 to the department. The department shall begin reviewing the application as provided in this part. The local unit of government shall review the application pursuant to its ordinance and shall modify, approve, or deny the application within 90 days after receipt. If a local unit of government does not approve or disapprove the permit application within the time period provided by this subsection, the permit application shall be considered approved, and the local unit of government shall be considered to have made the determinations as listed in section 30311. The denial of a permit shall be accompanied by a written statement of all reasons for denial. The failure to supply complete information with a permit application may be reason for denial of a permit. If requested, the department shall inform a person whether or not a local unit of government has an ordinance regulating wetlands. If the department receives an application with respect to a wetland located in a local unit of government that has an ordinance regulating wetlands, the department immediately shall forward the application to the local unit of government, which shall modify, deny, or approve the application under this subsection. The local unit of government shall notify the department of its decision. The department shall proceed as provided in this part.

(7) If a local unit of government does not have an ordinance regulating wetlands, the department shall promptly send a copy of the permit application to the local unit of government where the wetland is located. The local unit of government may review the application; may hold a hearing on the application; may recommend approval, modification, or denial of the application to the department or may notify the department that the local unit of government declines to make a recommendation. The recommendation of the local unit of government, if any, shall be made and returned to the department within 45 days after the local unit of government's receipt of the permit application.

(8) In addition to the requirements of subsection (7), the department shall notify the local unit of government that the department has issued a permit under this part pertaining to wetland located within the jurisdiction of that local unit of government within 15 days of issuance of the permit. The department shall enclose a copy of the permit with the notice.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1995, Act 103, Imd. Eff. June 23, 1995;—Am. 1998, Act 228, Imd. Eff. July 3, 1998;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2006, Act 430, Imd. Eff. Oct. 5, 2006;—Am. 2018, Act 631, Eff. Mar. 29, 2019.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

\*\*\*\*\* 324.30308 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) \*\*\*\*\*

### **324.30308 Adoption of wetlands ordinance by local unit of government; availability of wetland inventory; completion of inventory map; notice; enforceable presumptions not created; processing wetland use applications.**

Sec. 30308. (1) Prior to the effective date of an ordinance authorized under section 30307(4), a local unit of government that wishes to adopt such an ordinance shall complete and make available to the public at a reasonable cost an inventory of all wetland within the local unit of government, except that a local unit of government located in a county that has a population of less than 100,000 is not required to include public lands on its map. A local unit of government shall make a draft of the inventory map available to the public, shall provide for public notice and comment opportunity prior to finalizing the inventory map, and shall

respond in writing to written comments received by the local unit of government regarding the contents of the inventory. A local unit of government that has a wetland ordinance on December 18, 1992 has until June 18, 1994 to complete an inventory map and to otherwise comply with this part, or the local unit of government shall not continue to enforce that ordinance. Upon completion of an inventory map or upon a subsequent amendment of an inventory map, the local unit of government shall notify each record owner of property on the property tax roll of the local unit of government that the inventory maps exist or have been amended, where the maps may be reviewed, that the owner's property may be designated as a wetland on the inventory map, and that the local unit of government has an ordinance regulating wetland. The notice shall also inform the property owner that the inventory map does not necessarily include all of the wetlands within the local unit of government that may be subject to the wetland ordinance. The notice may be given by including the required information with the annual notice of the property owner's property tax assessment. A wetland inventory map does not create any legally enforceable presumptions regarding whether property that is or is not included on the inventory map is or is not a wetland.

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

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

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

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

\*\*\*\*\* 324.30309 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) \*\*\*\*\*

### **324.30309 Regulation by local unit of government of wetland less than 2 acres; permit application; determination.**

Sec. 30309. A local unit of government that has adopted an ordinance under section 30307(4) that regulates wetland within its jurisdiction that is less than 2 acres in size shall comply with this section. Upon application for a wetland use permit in a wetland that is less than 2 acres in size, the local unit of government shall approve the permit unless the local unit of government determines that the wetland is essential to the preservation of the natural resources of the local unit of government and provides these findings, in writing, to the permit applicant stating the reasons for this determination. In making this determination, the local unit of government must find that 1 or more of the following exist at the particular site:

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

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

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

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

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

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

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

(h) The site provides pollution treatment by serving as a biological and chemical oxidation basin.

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

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

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451  
**Popular name:** NREPA  
**Popular name:** Wetland Protection Act

\*\*\*\*\* 324.30310 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) \*\*\*\*\*

**324.30310 Regulation by local unit of government of wetland less than 2 acres; revaluation for assessment purposes; protest and appeal; judicial review; right to initiate proceedings not limited by section.**

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

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

(3) This section does not limit the right of a wetland owner to institute proceedings in any circuit of the circuit court of the state against any person when necessary to protect the wetland owner's rights.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451  
**Popular name:** NREPA  
**Popular name:** Wetland Protection Act

\*\*\*\*\* 324.30311 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) \*\*\*\*\*

**324.30311 Permit for activity listed in MCL 324.30304; approval conditioned on certain determinations; criteria; findings of necessity; criteria for determining unacceptable disruption to aquatic resources; additional showing; feasible and prudent alternatives; determination of unreasonable costs.**

Sec. 30311. (1) A permit for an activity listed in section 30304 shall not be approved unless the department determines that the issuance of a permit is in the public interest, that the permit is necessary to realize the benefits derived from the activity, and that the activity is otherwise lawful.

(2) In determining whether the activity is in the public interest, the benefit which reasonably may be expected to accrue from the proposal shall be balanced against the reasonably foreseeable detriments of the activity. The decision shall reflect the national and state concern for the protection of natural resources from pollution, impairment, and destruction. The following general criteria shall be considered:

- (a) The relative extent of the public and private need for the proposed activity.
- (b) The availability of feasible and prudent alternative locations and methods to accomplish the expected benefits from the activity.
- (c) The extent and permanence of the beneficial or detrimental effects that the proposed activity may have on the public and private uses to which the area is suited, including the benefits the wetland provides.
- (d) The probable effects of each proposal in relation to the cumulative effects created by other existing and anticipated activities in the watershed.
- (e) The probable effects on recognized historic, cultural, scenic, ecological, or recreational values and on the public health or fish or wildlife.
- (f) The size of the wetland being considered.



- (g) The amount of remaining wetland in the general area.
  - (h) Proximity to any waterway.
  - (i) Economic value, both public and private, of the proposed land change to the general area.
- (3) In considering a permit application, the department shall give serious consideration to findings of necessity for the proposed activity which have been made by other state agencies.
- (4) A permit shall not be issued unless it is shown that an unacceptable disruption will not result to the aquatic resources. In determining whether a disruption to the aquatic resources is unacceptable, the criteria set forth in section 30302 and subsection (2) shall be considered. A permit shall not be issued unless the applicant also shows either of the following:
- (a) The proposed activity is primarily dependent upon being located in the wetland.
  - (b) A feasible and prudent alternative does not exist.
- (5) If it is otherwise a feasible and prudent alternative, a property not presently owned by the applicant which could reasonably be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed activity may be considered. If all of the following requirements are met, there is a rebuttable presumption that alternatives located on property not presently owned by the applicant are not feasible and prudent:
- (a) The activity is described in section 30304(a) or (b).
  - (b) The activity will affect not more than 2 acres of wetland.
  - (c) The activity is undertaken for the construction or expansion of a single-family home and attendant features, the construction or expansion of a barn or other farm building, or the expansion of a small business facility.
  - (d) The activity is not covered by a general permit.
- (6) Consideration of feasible and prudent alternatives regarding the size of a proposed structure shall be based on the footprint of the structure and not the square footage of the structure.
- (7) The choice of and extent of the proposed activity within a proposed structure shall not be considered in determining feasible and prudent alternatives.
- (8) An alternative that entails higher costs, as described in R 281.922a(11) of the Michigan administrative code, is not feasible and prudent if those higher costs are unreasonable. In determining whether such costs are unreasonable, the department shall consider both of the following:
- (a) The relation of the increased cost to the overall scope and cost of the project.
  - (b) Whether the projected cost is substantially greater than the costs normally associated with the particular type of project.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2009, Act 120, Eff. Nov. 6, 2009;—Am. 2013, Act 98, Imd. Eff. July 2, 2013.

**Compiler's note:** Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

\*\*\*\*\* 324.30311a THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) \*\*\*\*\*

### **324.30311a Guideline, bulletin, interpretive statement, or form with instructions; effect.**

Sec. 30311a. A guideline, bulletin, interpretive statement, or form with instructions under this part shall not be given the force and effect of law. A guideline, bulletin, interpretive statement, or form with instructions under this part is not legally binding on the public or the regulated community and shall not be cited by the department for compliance and enforcement purposes.

**History:** Add. 2009, Act 120, Eff. Nov. 6, 2009;—Am. 2013, Act 98, Imd. Eff. July 2, 2013.

**Compiler's note:** Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

\*\*\*\*\* 324.30311b THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) \*\*\*\*\*

### **324.30311b Permit; validity; duration; conditions.**

Sec. 30311b. (1) A permit issued under this part shall not be valid for more than 5 years.

(2) The department may establish a reasonable time when the construction, development, or use authorized under any permit issued under this part is to be completed or terminated.

(3) The department may impose on any permit or authorization under a general permit under this part conditions designed to do any of the following:

(a) Remove or reduce an impairment to wetland benefits, as set forth in section 30302, that would otherwise result from the project.

(b) Improve the water quality that would otherwise result from the project.

(c) Remove or reduce the effect of a discharge of fill material.

(4) The department may impose a condition on an authorization under a general permit under subsection (3) only after consultation with the applicant or applicant's agent.

**History:** Add. 2009, Act 120, Eff. Nov. 6, 2009.

**Compiler's note:** Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

\*\*\*\*\* 324.30311d THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) \*\*\*\*\*

### **324.30311d Compensatory wetland mitigation; methods; submission of mitigation plan; financial assurance.**

Sec. 30311d. (1) The department may impose as a condition on any permit, other than a general permit, under this part a requirement for compensatory wetland mitigation. The department may approve 1 or more of the following methods of compensatory wetland mitigation:

(a) The acquisition of approved credits from a wetland mitigation bank. The department shall not require a permit applicant to provide compensatory wetland mitigation under subdivision (b), (c), or (d) if the applicant prefers and qualifies to use approved credits from the wetland mitigation bank to provide required compensatory wetland mitigation under this subdivision.

(b) The restoration of previously existing wetland. The restoration of previously existing wetland is preferred over the creation of new wetland where none previously existed.

(c) The creation of new wetlands, if the permit applicant demonstrates that ecological conditions necessary for establishment of a self-sustaining wetland ecosystem exist or will be created.

(d) The preservation of exceptional wetlands.

(2) If compensatory wetland mitigation under subsection (1)(b), (c), or (d) is required, a permit applicant shall submit a mitigation plan to the department for approval. In approving a compensatory mitigation plan, the department shall consider how the location and type of wetland mitigation supports the sustainability or improvement of aquatic resources in the watershed where the activity is permitted. The permit applicant shall provide for permanent protection of the wetland mitigation site. The department may accept a conservation easement to protect wetland mitigation and associated upland.

(3) If a permittee carries out compensatory wetland mitigation under subsection (1)(b), (c), or (d) in cooperation with public agencies, private organizations, or other parties, the permittee remains responsible for the compensatory wetland mitigation to the extent otherwise provided by law.

(4) The department may require financial assurance to ensure that compensatory wetland mitigation is accomplished as specified. To ensure that wetland benefits are replaced by compensatory wetland mitigation, the department may release financial assurance only after the permit applicant or mitigation bank sponsor has completed monitoring of the mitigation site and demonstrated compliance with performance standards in accordance with a schedule in the permit or mitigation banking agreement.

(5) If compensatory wetland mitigation is required, in setting the mitigation ratio the department shall consider the method of compensatory mitigation, the likelihood of success, differences between the functions lost at the impacted site and the functions expected to be produced by the compensatory mitigation project, temporary losses of aquatic resource functions, the difficulty of restoring or establishing the desired aquatic resource type and functions, and the distance between the affected aquatic resource and the mitigation site.

(6) For agricultural activities, a permit applicant may provide for protection and restoration of the impacted site under a conservation easement with the department as part of mitigation requirements. A permit applicant may make a payment into the stewardship fund, if established under subsection (7), as part of mitigation requirements, as an alternative to providing financial assurances required under subsection (4).

(7) The department may establish a stewardship fund in the state treasury. 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. Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund. The department shall be the administrator of the fund for auditing purposes. The department shall expend money from the fund, upon appropriation, only to develop mitigation for impacted sites or as an alternative to financial assurance required under subsection (4).

(8) By 1 year after the effective date of the amendatory act that added this subsection, the department shall submit to the office of regulatory reform for informal review revised administrative rules on mitigation that do all of the following:

- (a) Reduce the preference for on-site mitigation.
- (b) Allow flexibility in mitigation ratios for uses of wetlands.
- (c) Allow a reduction of mitigation ratios when approved credits from a wetland mitigation bank are used.
- (d) Allow consideration of additional ecologically beneficial features.
- (e) Allow any excess mitigation for any project to be credited to another project at a later date.

(9) The department shall submit revised administrative rules that encourage the development of wetland mitigation banks to the office of regulatory reform for informal review within 1 year after the effective date of the amendatory act that added this subsection. The rules shall do all of the following:

(a) Enlarge mitigation bank service areas. However, a service area shall be located within the same watershed or ecoregion as the permitted project or activity, ensure no net loss of the wetland resources, and protect the predominant wetland functions of the service area. The department shall consider enlarging the size of ecoregions for mitigation bank service areas.

(b) Allow earlier release of credits if the benefits of a mitigation bank have been properly established and the credits are revocable or covered by a financial assurance.

(c) Allow wetland preservation to be used in areas where wetland restoration opportunities do not exist, if an unacceptable disruption of the aquatic resources will not result.

(10) The department shall establish a wetland mitigation bank funding program under part 52 that provides grants and loans to eligible municipalities for the purposes of establishing mitigation banks.

**History:** Add. 2009, Act 120, Eff. Nov. 6, 2009;—Am. 2013, Act 98, Imd. Eff. July 2, 2013.

**Compiler's note:** Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994

PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

\*\*\*\*\* 324.30312 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) \*\*\*\*\*

**324.30312 Minor project categories of activities; general permit for category of activities; notice and public hearing; determinations; requirements and standards; duration of general permit; determination of more than minimal adverse effects; coordination of general permit and minor project categories; conversion to blueberry farming or certain other agriculture.**

Sec. 30312. (1) After providing notice and an opportunity for a public hearing, the department shall establish minor project categories of activities that are similar in nature, have minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment. The department may act upon an application received pursuant to section 30306 for an activity within a minor project category without holding a public hearing or providing notice pursuant to section 30307(1) or (3). A minor project category shall not be valid for more than 5 years, but may be reestablished. All other provisions of this part, except provisions applicable only to general permits, are applicable to a minor project.

(2) The department, after notice and opportunity for a public hearing, shall issue general permits on a statewide basis or within a local unit of government for a category of activities if the department determines that the activities are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment. A general permit shall be based on the requirements of this part and the rules promulgated under this part, and shall set forth the requirements and standards that shall apply to an activity authorized by the general permit. A general permit shall not be valid for more than 5 years, but may be reissued.

(3) Before authorizing a specific project to proceed under a general permit, the department may provide notice pursuant to section 30307(3) but shall not hold a public hearing and shall not typically require a site inspection. The department shall issue an authorization under a general permit if the conditions of the general permit and the requirements of section 30311 are met. However, in determining whether to issue an authorization under a general permit, the department shall not consider off-site alternatives to be feasible and prudent alternatives.

(4) 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 effects on aquatic resources, including high-value aquatic habitats, the department may require that the application be processed under section 30307.

(5) The department shall coordinate general permit and minor project categories under this part and parts 301 and 325 and may develop and maintain new general permit and minor project categories consistent with nationwide permits, as appropriate. The department may alter the scope of the activities covered under general permit and minor project categories corresponding to nationwide permits if any adverse environmental effects will be minimal.

(6) The department shall develop by October 1, 2013 and maintain a general permit for alteration of wetland for blueberry farming that includes minimal drainage and earth moving if all of the following requirements are met:

(a) The wetland will be restored when farming activities in the wetland cease.

(b) The farmed wetland is placed under conservation easement protection until the wetland is restored when farming activities cease.

(c) Activities that convert the wetland to a nonwetland are prohibited.

(d) Roads, ditches, reservoirs, pump houses, and secondary support facilities for shipping, storage, packaging, parking, and similar purposes are prohibited unless authorized under section 30305.

(7) By December 31, 2013, the department shall propose new general permits or minor project categories

for conversion of wetland to blueberry farming or other agriculture that includes more than minimal drainage or earth moving.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2003, Act 14, Imd. Eff. June 5, 2003;—Am. 2009, Act 120, Eff. Nov. 6, 2009;—Am. 2012, Act 247, Imd. Eff. July 2, 2012;—Am. 2013, Act 98, Imd. Eff. July 2, 2013.

**Compiler's note:** Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

### **324.30312b Repealed. 2009, Act 120, Eff. Oct. 1, 2012.**

**Compiler's note:** The repealed section pertained to new or existing general permits or minor project categories equivalent to certain nationwide permits.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

\*\*\*\*\* *324.30312d THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.)* \*\*\*\*\*

### **324.30312d Blueberry production assistance program.**

Sec. 30312d. The department shall develop a blueberry production assistance program to provide wetland delineation and preapplication services and assistance with avoidance and minimization. The department shall coordinate this program with the department of agriculture and rural development. The department shall also provide education and outreach on wetland regulations and agricultural activities and assist interested parties with the development of wetland mitigation banks for the purpose of providing required compensatory mitigation for agricultural impacts.

**History:** Add. 2009, Act 120, Eff. Nov. 6, 2009;—Am. 2013, Act 98, Imd. Eff. July 2, 2013;—Am. 2018, Act 561, Eff. Apr. 27, 2019.

**Compiler's note:** Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

### **324.30312f Voluntary wetland restoration program; permit applications; exceptions; eligible applicants; review and approval process; joint agency restoration committee; qualified activities; applicability to former wetlands.**

Sec. 30312f. (1) The legislature finds that voluntary restoration of altered or degraded wetland or former wetland by qualified agencies and organizations helps to restore lost wetland functions and services, and is therefore valuable to the people of this state. Accordingly, the department shall develop a program to facilitate voluntary wetland restoration projects in coordination with state, federal, tribal, and nongovernmental agencies and organizations specializing in wetland restoration and conservation. The program shall include, but not be limited to, enhancing coordination, consistency, and operational procedures and improving and streamlining the permitting process, to facilitate a net increase in wetland functions and services. The

department shall convene these agencies and organizations at least quarterly to review the program, suggest and develop improvements, and provide training and guidance in voluntary wetland restoration.

(2) The department and the department of natural resources shall develop and lead a voluntary wetland restoration group to simplify and streamline the permit process for voluntary wetland restoration projects with the intent of giving greater credence and flexibility to agencies and organizations specializing in wetland restoration and conservation. The voluntary wetland restoration group shall consist of designated staff from the department and the department of natural resources, working in collaboration on the review of permit applications. The group shall, after seeking input from agencies and organizations specializing in wetland restoration and conservation, develop voluntary wetland restoration permit applications and guidelines to implement a voluntary wetland restoration permit program consistent with this section.

(3) A permit is not required for voluntary wetland restoration activities that meet any of the following:

(a) The section 30305(2)(f) exemption for maintenance or operation of serviceable structures. Operation of serviceable structures as used in section 30305(2)(f) includes management of water levels using serviceable structures.

(b) The section 30305(2)(n) exemption for operation or maintenance of serviceable dikes and levees.

(4) There is no fee for a preapplication meeting under section 30306b with the voluntary wetland restoration group for a voluntary wetland restoration project conducted with a person described in subsection (5). The purpose of such a preapplication meeting is an outcome-based assessment of a project made by evaluating overall net increases in wetland functions and services and acreage. Such a preapplication meeting may include, but is not limited to, any of the following:

(a) Presentation of project outcomes related to net increases in wetland functions and services and project purposes and justifications.

(b) Suggestions that will minimize permitting delays, including information needed for permit application review.

(c) Options for maximizing net increases in wetland functions and services while minimizing other impacts.

(d) Coordination with the United States Environmental Protection Agency, United States Army Corps of Engineers, and United States Fish and Wildlife Service, if applicable.

(5) Any of the following persons may apply for a permit under this part, including authorization to proceed under a general permit, for a voluntary wetland restoration project:

(a) A state or federal agency, including the department of natural resources, the United States Fish and Wildlife Service, the United States Forest Service, or the United States Department of Agriculture, Natural Resources Conservation Service.

(b) A tribal agency.

(c) A nongovernmental organization whose stated primary mission, purpose, or programs include wetland conservation.

(d) A person that is in partnership through a written agreement with an entity described in subdivision (a), (b), or (c).

(6) Voluntary wetland restoration applications shall be processed subject to all of the following:

(a) Not more than 30 days after submission of an application for a permit for a voluntary wetland restoration project, the voluntary wetland restoration group shall review the application and do 1 of the following:

(i) Notify the applicant of the status of the application.

(ii) Recommend issuance of a permit to the department.

(iii) If the application is not administratively complete, request additional information from the applicant to make the application administratively complete as provided in part 13.

(b) If the department has not made a permit decision within 60 days after an application for a permit is considered administratively complete, at the request of the applicant, any conflict shall be mediated by the joint agency restoration committee created under subsection (9).

(c) The department, voluntary wetland restoration group, and the joint agency restoration committee shall expedite permit review for voluntary wetland restoration projects to the extent possible.

(d) Except for sections 1313 to 1317, part 13 applies to a voluntary wetland restoration permit application. Applicable time periods under part 13 and this section run concurrently.

(7) In reviewing a permit application for a voluntary wetland restoration project, the voluntary wetland restoration group shall evaluate the net increase in wetland functions and services from the project. An applicant shall provide justification for the asserted net increase in wetland functions and services based on federal or state agency programmatic authority, published research, case studies, ecological reference, demonstration projects, or federal, regional, or statewide wetland or wildlife restoration and management

plans.

(8) The department shall issue a permit for a voluntary wetland restoration project if the project contributes to a net increase in wetland functions and services and meets the requirements of this part and section 404 of title IV of the federal water pollution control act, 33 USC 1344.

(9) The department shall create a joint agency restoration committee comprised of the directors or their designees of the department, the department of natural resources, and the office of the Great Lakes to mediate permit conflicts regarding voluntary wetland restoration projects and make a recommendation to the department. The department shall give serious consideration to recommendations of the joint agency restoration committee in its permit decision. The applicant may further request review under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(10) The department shall not require compensatory mitigation for voluntary wetland restoration project activities that result in a net increase in wetland functions and services.

(11) The department, in cooperation with the department of natural resources and voluntary wetland restoration agencies and organizations, shall develop new or modified general permit or minor project categories for voluntary wetland restoration projects that address the scope and intent of this section.

(12) A voluntary wetland restoration project may include, but is not limited to, any of the following activities in altered or degraded wetland or previously restored wetland if the activity results in a net increase in wetland functions and services:

(a) The removal of accumulated sediments.

(b) The installation, removal, and maintenance of water control structures, dikes, and berms; as well as discharges of dredged or fill material to restore appropriate grade configuration after water control structures, dikes, and berms are removed.

(c) The installation of water supply devices.

(d) The removal of existing drainage structures, such as drain tiles, and the filling, blocking, grading, or reshaping of drainage ditches to restore wetland hydrology.

(e) The installation of structures or fills necessary to restore or enhance wetland hydrology.

(f) The construction of open water areas.

(g) Activities needed to establish or reestablish native vegetation, including plowing or disking for seedbed preparation and the planting of appropriate species.

(h) The reestablishment of submerged aquatic vegetation.

(i) Mechanized land clearing or other activities to remove nonnative or invasive vegetation.

(j) The installation of nesting structures and islands, micro and macro topography reestablishment, dredging, soil manipulation, controlling, disking, and other activities related to a specific wetland habitat or species conservation practices.

(k) The installation and removal of temporary coffer dams, soil mats, and other devices used during voluntary wetland restoration construction activities.

(l) Construction of ancillary facilities that increase recreational access, such as a parking lot or boat ramp. However, such ancillary facilities and their use, alone, do not constitute an increase in wetland functions and services.

(13) All of the following apply to a voluntary wetland restoration project:

(a) A change in wetland plant communities that occurs when wetland hydrology is more fully restored during voluntary wetland restoration activities is not considered a conversion to another aquatic habitat type.

(b) The placement of fill in an area of altered or degraded wetland is not considered a loss of wetland if that area continues to sustain the characteristics of wetland as described in section 30301(1)(m).

(c) Voluntary wetland restoration projects or activities are not considered a major discharge as defined in the memorandum of agreement between the United States Environmental Protection Agency and the department under section 404 of title IV of the federal water pollution control act, 33 USC 1344, upon approval by the United States Environmental Protection Agency of an amendment to the memorandum so providing.

(14) Former wetland is not regulated under this part unless the wetland was modified in violation of this part or former 1979 PA 203.

**History:** Add. 2018, Act 561, Eff. Apr. 27, 2019.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

\*\*\*\*\* 324.30313 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE

*EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) \*\*\*\*\**

**324.30313 Grounds for revocation or modification of general permit; grounds for termination or modification for cause of general permit.**

Sec. 30313. (1) A general permit may be revoked or modified if, after opportunity for a public hearing or a contested case hearing under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, the department determines that the activities authorized by the general permit have an adverse impact on the environment or the activities would be more appropriately authorized by an individual permit.

(2) A permit may be terminated or modified for cause, including:

(a) A violation of a condition of the permit.

(b) Obtaining a permit by misrepresentation or failure to fully disclose relevant facts.

(c) A change in a condition that requires a temporary or permanent change in the activity.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

*\*\*\*\*\* 324.30313b THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) \*\*\*\*\**

**324.30313b Minor permit revisions.**

Sec. 30313b. (1) The department may make minor revisions in a permit issued under this part if all of the following apply:

(a) The project is in compliance with the permit and this part.

(b) The minor revisions are requested by the permittee in writing.

(c) The request is accompanied by a fee of \$250.00.

(d) If the request is for a transfer of the permit, the request is accompanied by a written agreement between the current and new owners or operators containing a specific date for transfer of responsibility, coverage, and liability under the permit.

(2) The department shall approve or deny the request within 20 business days. However, if the only minor revision requested is a transfer under subsection (4)(a), the department shall approve or deny the request within 10 business days. If the department fails to approve or deny the request within the time required by this subsection, the department shall refund the fee.

(3) If the department determines that none of the changes requested are minor revisions, the department shall retain the fee but the permittee may apply the fee toward a new permit for a project at that site.

(4) As used in this section, "minor revision" means either of the following with respect to a permit issued under this part:

(a) A transfer.

(b) A revision that does not increase the overall impact of a project on wetlands and that is within the scope of the project as described in the original permit.

**History:** Add. 2006, Act 431, Imd. Eff. Oct. 5, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

*\*\*\*\*\* 324.30314 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) \*\*\*\*\**



**324.30314 Information required to obtain compliance with part; conditions for entering on premises.**

Sec. 30314. (1) The department shall require the holder of a permit to provide information the department reasonably requires to obtain compliance with this part.

(2) The department may enter on, upon, or through the premises on which an activity listed in section 30304 is located or on which information required to be maintained under subsection (1) is located under any of the following circumstances, as applicable:

(a) Upon obtaining a search warrant, an administrative warrant issued by the director of the department, or the consent of the person who owns or controls the premises.

(b) If there is an imminent threat to the public health or environment.

(c) Upon reasonable cause, if the wetland is a water of the United States as that term is used in section 502(7) of the federal water pollution control act, 33 USC 1362.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2018, Act 631, Eff. Mar. 29, 2019.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

\*\*\*\*\* 324.30315 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) \*\*\*\*\*

**324.30315 Violation; order requiring compliance; civil action.**

Sec. 30315. (1) If, on the basis of information available to the department, the department finds that a person is in violation of this part or a condition set forth in a permit issued under section 30311 or 30312, the department shall issue an order requiring the person to comply with the prohibitions or conditions or the department shall request the attorney general to bring a civil action under section 30316(1).

(2) An order issued under subsection (1) shall state with reasonable specificity the nature of the violation and shall specify a time for compliance, not to exceed 30 days, which the department determines is reasonable, taking into account the seriousness of the violation and good faith efforts to comply with applicable requirements.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

\*\*\*\*\* 324.30316 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) \*\*\*\*\*

**324.30316 Civil action; commencement; request; venue; jurisdiction; violations; civil fines and penalties; restoration of wetland; award of attorney fees.**

Sec. 30316. (1) The attorney general may commence a civil action for appropriate relief, including injunctive relief upon request of the department under section 30315(1). An action under this subsection may be brought in the circuit court for the county of Ingham or for a county in which the defendant is located, resides, or is doing business. The court has jurisdiction to restrain the violation and to require compliance with this part. In addition to any other relief granted under this section, the court may impose a civil fine of not more than \$10,000.00 per day of violation. A person who violates an order of the court is subject to a civil fine not to exceed \$10,000.00 for each day of violation.

(2) A person who violates this part is guilty of a misdemeanor punishable by a fine of not more than \$2,500.00.

(3) A person who willfully or recklessly violates a condition or limitation in a permit issued by the department under this part, or a corporate officer who has knowledge of or is responsible for a violation, is guilty of a misdemeanor punishable by a fine of not less than \$2,500.00 or more than \$25,000.00 per day of violation or by imprisonment for not more than 1 year, or both. A person who commits a violation described

in this section a second or subsequent time is guilty of a felony punishable by a fine of not more than \$50,000.00 for each day of violation or by imprisonment for not more than 2 years, or both.

(4) In addition to the civil fines and penalties provided under subsections (1), (2), and (3), the court may order a person who violates this part to restore as nearly as possible the wetland that was affected by the violation to its original condition immediately before the violation. The restoration may include the removal of fill material deposited in the wetland or the replacement of soil, sand, or minerals.

(5) The award of attorney fees in a civil action under this part is subject to applicable provisions of chapter 24 of the revised judiciary act of 1961, 1961 PA 235, MCL 600.2401 to 600.2461. However, regardless of whether this state's position was substantially justifiable, reasonable expert professional witness fees, as determined by the court, shall be awarded to a landowner that prevails against this state on the issue of whether the landowner's property is wetland.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2018, Act 631, Eff. Mar. 29, 2019.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

\*\*\*\*\* 324.30317 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) \*\*\*\*\*

### **324.30317 Disposition of fees and civil fines; expenditures; report.**

Sec. 30317. (1) The civil fines collected under this part shall be forwarded to the state treasurer for deposit in the general fund of the state. The fees collected under this part shall be deposited in the land and water management permit fee fund created in section 30113.

(2) Subsection (1) does not apply to fines or fees collected under an ordinance adopted under section 30307(4).

(3) Subject to section 30113, the department shall expend money from the land and water management permit fee fund, upon appropriation, to support guidance for property owners and applicants, permit processing, compliance inspections, and enforcement activities under this part. Not more than 90 days after the end of each state fiscal year, the department shall prepare a report describing how money from the land and water management permit fee fund was expended during that fiscal year and shall submit the report to the standing committees of the house of representatives and the senate that primarily address issues pertaining to the protection of natural resources and the environment, and the appropriations committees in the house of representatives and the senate. Other than civil fines and costs, the disposition of which is governed by section 8379 of the revised judiciary act of 1961, 1961 PA 236, MCL 600.8379, or criminal fines, funds collected by a local unit of government under an ordinance authorized under section 30307(4) shall be deposited in the general fund of the local unit of government.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 530, Imd. Eff. Jan. 13, 1997;—Am. 1998, Act 228, Imd. Eff. July 3, 1998;—Am. 2009, Act 120, Eff. Nov. 6, 2009.

**Compiler's note:** Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

\*\*\*\*\* 324.30318 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) \*\*\*\*\*

### **324.30318 Revaluation of property for assessment purposes.**

Sec. 30318. If a permit is denied for a proposed wetland activity, the landowner may request a revaluation of the affected property for assessment purposes to determine its fair market value under the use restriction.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

\*\*\*\*\* 324.30319 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) \*\*\*\*\*

### **324.30319 Rules; hearing; award of costs; judicial review; proceedings to protect wetland owner's rights.**

Sec. 30319. (1) The department shall promulgate and enforce rules to implement this part.

(2) If a person is aggrieved by any action or inaction of the department, the person may request a formal hearing on the matter involved. The hearing shall be conducted by the department pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(3) The award of costs in a contested case under this part and the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, is subject to chapter 8 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.321 to 24.328. However, regardless of whether the department's position was substantially justifiable, reasonable expert professional witness fees, as determined by the presiding officer, shall be awarded to a landowner that prevails on the issue of whether the landowner's property is wetland.

(4) A determination, action, or inaction by the department following the hearing is subject to judicial review as provided in the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(5) This section does not limit the right of a wetland owner to institute proceedings in any circuit of the circuit court of the state against any person if necessary to protect the wetland owner's rights.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2018, Act 631, Eff. Mar. 29, 2019.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

**Administrative rules:** R 281.921 et seq. of the Michigan Administrative Code.

\*\*\*\*\* 324.30320 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) \*\*\*\*\*

### **324.30320 Inventories of wetland; use; updating; maps, ground surveys, and descriptions as public documents; availability and cost of aerial photographs and satellite telemetry data reproduction to county register of deeds.**

Sec. 30320. (1) As inventories of wetland are completed, the inventories shall be used as 1 of the criteria by the department in issuing permits. The inventories shall be periodically updated. The maps, ground surveys, and descriptions of wetlands included in the inventories shall be submitted to the respective county register of deeds and shall become a public document available to review by any member of the public.

(2) Aerial photographs and satellite telemetry data reproductions shall be made available to the respective county register of deeds for cost as determined by the department.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

\*\*\*\*\* 324.30321 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE

**324.30321 Basis and filing of preliminary inventory of wetland; assessment of property; report; determination; agricultural drain; culvert, ditch, or channel; assessment; fee; providing copy of delineation forms.**

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

(2) A person who owns or leases a parcel of property may request that the department of environmental quality assess whether the parcel of property or a portion of the parcel is wetland. The request shall satisfy all of the following requirements:

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

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

(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.

(3) 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 relied upon by the department.

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

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

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

(ii) Part 91.

(iii) Part 301.

(iv) Part 323.

(v) Part 325.

(vi) Part 353.

(4) A wetland is not contiguous to the Great Lakes or Lake St. Clair, an inland lake or pond, or a river or stream if the department determines that there is no direct physical contact and no surface water or interflowing groundwater connection to such a body of water.

(5) A person may request that, as part of an assessment, the department make a determination whether a wetland is contiguous to the Great Lakes, Lake St. Clair, an inland lake or pond, or a stream. The department shall make the determination in writing within 30 days after an on-site evaluation. As used in this subsection, "pond" does not include a farm or stock pond constructed consistent with the exemption under section 30305(2)(g).

(6) The department shall not consider an agricultural drain, as defined in section 30305, in determining whether a wetland is contiguous to the Great Lakes or Lake St. Clair, an inland lake or pond, or a river or stream.

(7) A drainage structure such as a culvert, ditch, or channel, in and of itself, is not a wetland. A temporary obstruction of drainage, in and of itself, is not a wetland until the presence of water is of sufficient frequency and duration to be identified as wetland pursuant to section 30301(4).

(8) A person may request the department to reassess any area assessed under subsections (2) and (3) that the person believes the department erroneously determined to be wetland. The requirements of subsections (2) and (3) apply to the request, assessment, and assessment report. However, the request shall be accompanied by evidence pertaining to wetland vegetation, soils, or hydrology that is different from or in addition to the information relied upon by the department. The assessment report shall not contain the information required by subsection (3)(e).

(9) 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.

(10) The department may charge a fee for an assessment requested under subsection (2) based upon the cost to the department of conducting an assessment.

(11) There shall be no fee for an assessment under the blueberry production assistance program.

(12) The department shall, upon request of the applicant and without charge, provide to the applicant a copy of any delineation forms completed by the department associated with a permit application.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 530, Imd. Eff. Jan. 13, 1997;—Am. 2013, Act 98, Imd. Eff. July 2, 2013;—Am. 2018, Act 631, Eff. Mar. 29, 2019.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

\*\*\*\*\* 324.30322 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) \*\*\*\*\*

### **324.30322 Notice to owners of record of change in status of property.**

Sec. 30322. As wetland inventories are completed as specified in section 30321, owners of record as identified by the current property tax roll shall be notified of the possible change in the status of their property. Notification shall be printed on the next property tax bill mailed to property owners in the county. It shall contain information specifying that a wetland inventory has been completed and is on file with the agricultural extension office, register of deeds, and county clerk, and that property owners may be subject to regulation under this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

\*\*\*\*\* 324.30323 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) \*\*\*\*\*

### **324.30323 Legal rights or authority not abrogated; action to determine if property taken without just compensation; court order; limitation on value of property.**

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 section 30307(4), who has been made subject to modifications or conditions in the permit under this part, 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 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) 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 applicable, to do 1 or more of the following:

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

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

(c) Modify its action or inaction with respect to the property so as to minimize the detrimental affect to the property's value.

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

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

### **324.30325 Repealed. 2013, Act 98, Imd. Eff. July 2, 2013.**

**Compiler's note:** The repealed section pertained to agreement with United States environmental protection agency to expand categories of discharge subject to waiver.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

\*\*\*\*\* 324.30327 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) \*\*\*\*\*

### **324.30327 Certifications by department under federal water pollution control act.**

Sec. 30327. The department may provide certifications under section 401 of title IV of the federal water pollution control act, 33 USC 1341.

**History:** Add. 2009, Act 120, Eff. Nov. 6, 2009.

**Compiler's note:** Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

\*\*\*\*\* 324.30328 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) \*\*\*\*\*

### **324.30328 Applicability to "navigable waters" and "waters of the United States" as defined under federal law.**

Sec. 30328. For the purposes of this part, the powers, duties, functions, and responsibilities exercised by the department because of federal approval of Michigan's permit program under section 404(g) and (h) of the federal water pollution control act, 33 USC 1344, apply only to "navigable waters" and "waters of the United States" as defined under section 502(7) of the federal water pollution control act, 33 USC 1362, and further

refined by federally promulgated rules and court decisions that have the full effect and force of federal law. Determining whether additional regulation is necessary to protect Michigan waters beyond the scope of federal law is the responsibility of the Michigan legislature based on its determination of what is in the best interest of the citizens of this state.

**History:** Add. 2013, Act 98, Imd. Eff. July 2, 2013.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30329 Repealed. 2009, Act 120, Eff. Apr. 1, 2013.**

**Compiler's note:** The repealed section pertained to the wetland advisory council.

**Popular name:** Act 451

**Popular name:** NREPA

**Popular name:** Wetland Protection Act

## PART 305 NATURAL RIVERS

### **324.30501 Definitions.**

Sec. 30501. As used in this part:

(a) "Free flowing" means existing or flowing in natural condition without impoundment, diversion, straightening, riprapping, or other modification.

(b) "Natural river" means a river that has been designated by the department for inclusion in the wild, scenic, and recreational rivers system.

(c) "River" means a flowing body of water or a portion or tributary of a flowing body of water, including streams, creeks, or impoundments and small lakes thereon.

(d) "System" means all of those rivers or portions of rivers designated under this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30502 Natural river; designation; purpose; long-range plans; publicity; cooperation.**

Sec. 30502. The department, in the interest of the people of the state and future generations, may designate a river or portion of a river as a natural river area for the purpose of preserving and enhancing its values for water conservation, its free flowing condition, and its fish, wildlife, boating, scenic, aesthetic, floodplain, ecologic, historic, and recreational values and uses. The area shall include adjoining or related lands as appropriate to the purposes of the designation. The department shall prepare and adopt a long-range comprehensive plan for a designated natural river area that sets forth the purposes of the designation, proposed uses of lands and waters, and management measures designed to accomplish the purposes. State land within the designated area shall be administered and managed in accordance with the plan, and state management of fisheries, streams, waters, wildlife, and boating shall take cognizance of the plan. The department shall publicize and inform private and public landowners or agencies as to the plan and its purposes, so as to encourage their cooperation in the management and use of their land in a manner consistent with the plan and the purposes of the designation. The department shall cooperate with federal agencies administering any federal program concerning natural river areas, and with any watershed council established under part 311, when such cooperation furthers the interest of the state.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30503 Qualifications for designation; categories of rivers.**

Sec. 30503. A river qualifying for designation as a natural river area shall possess 1 or more of the natural or outstanding existing values cited in section 30502 and shall be permanently managed for the preservation or enhancement of such values. Categories of natural rivers shall be defined and established by the department, based on the characteristics of the waters and the adjoining lands and their uses, both as existing and as proposed, including such categories as wild, scenic, and recreational. The categories shall be specified in the designation and the long-range comprehensive plan.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.30504 Land acquisition; purpose; interest acquired; consent.**

Sec. 30504. The department may acquire lands or interests in lands adjacent to a designated natural river for the purpose of maintaining or improving the river and its environment in conformance with the purposes of the designation and the plan. Interests that may be acquired include, but are not limited to, easements designed to provide for preservation and to limit development, without providing public access and use. Lands or interests in lands shall be acquired under this part only with the consent of the owner.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.30505 Federal financial assistance programs; leases; expenditures; purposes.**

Sec. 30505. (1) The department may administer federal financial assistance programs for natural river areas.

(2) The department may enter into a lease or agreement with any person or political subdivision to administer all or part of their lands in a natural river area.

(3) The department may expend funds for works designed to preserve and enhance the values and uses of a natural river area and for construction, management, maintenance, and administration of facilities in a natural river area conforming to the purposes of the designation, if the funds are appropriated by the legislature.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.30506 Public hearings; notice.**

Sec. 30506. Before designating a river as a natural river area, the department shall conduct public hearings in the county seat of any county in which a portion of the designated natural river area is located. Notices of the hearings shall be advertised at least twice, not less than 30 days before the hearing, in a newspaper having general circulation in each such county and in at least 1 newspaper having general circulation in the state and 1 newspaper published in the Upper Peninsula.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.30507 Land uses; zoning; local ordinances; state rule.**

Sec. 30507. After designation of a river or portion of a river as a natural river area and following the preparation of the long-range comprehensive plan, the department may determine that the uses of land along the river, except within the limits of an incorporated municipality, shall be controlled by zoning contributing to accomplishment of the purposes of this part and the natural river plan. County and township governments are encouraged to establish these zoning controls and additional controls as may be appropriate, including, but not limited to, building and subdivision controls. The department may provide advisory, planning, and cooperative assistance in the drafting of ordinances to establish these controls. If the local unit does not, within 1 year after notice from the department, have in full force and effect a zoning ordinance or interim zoning ordinance established under authority of the acts cited in section 30510, the department, on its own motion, may promulgate a zoning rule in accordance with section 30512. A zoning rule may also be promulgated if the department finds that an adopted or existing zoning ordinance fails to meet adequately guidelines consistent with this part as provided by the department and transmitted to the local units concerned, does not take full cognizance of the purposes and objectives of this part, or is not in accord with the purposes of designation of the river as established by the department.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.30508 Zoning ordinance or rule; purpose.**

Sec. 30508. A zoning ordinance adopted by a local unit of government or a zoning rule promulgated by the department shall provide for the protection of the river and its related land resources consistent with the preservation and enhancement of their values and the objectives set forth in section 30502. The ordinance or rule shall protect the interest of the people of the state as a whole. It shall take cognizance of the



characteristics of the land and water concerned, surrounding development, and existing uses and provide for conservation of soil, water, stream bed and banks, floodplains, and adjoining uplands.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30509 Zoning ordinance or rule; establishment of districts; powers; distance.**

Sec. 30509. The ordinance or rule shall establish zoning districts within which such uses of land as for agriculture, forestry, recreation, residence, industry, commerce, and additional uses may be encouraged, regulated, or prohibited. It may limit or prohibit the placement of structures of any class or designate their location with relation to the water's edge, to property or subdivision lines, and to flood flows and may limit the subdivision of lands for platting purposes. It may control the location and design of highways and roads and of public utility transmission and distribution lines, except on lands or other interests in real property owned by the utility on January 1, 1971. It may prohibit or limit the cutting of trees or other vegetation, but such limits shall not apply for a distance of more than 100 feet from the river's edge. It may specifically prohibit or limit mining and drilling for oil and gas, but such limits shall not apply for a distance of more than 300 feet from the river's edge. It may contain other provisions necessary to accomplish the objectives of this part. A zoning rule promulgated by the department shall not control lands more than 400 feet from the river's edge.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30510 Local zoning ordinance; conformance with applicable law; construction.**

Sec. 30510. A local unit of government, in establishing a zoning ordinance, in addition to the authority and requirements of this part, shall conform to the township zoning act, 1943 PA 184, MCL 125.271 to 125.310, or the county zoning act, 1943 PA 183, MCL 125.201 to 125.240, including, but not limited to, the variance provisions of those acts. Any conflict shall be resolved in favor of the provisions of this part. The powers granted under this part shall be liberally construed in favor of the local unit or the department exercising them, in such manner as to promote the orderly preservation or enhancement of the values of the rivers and related land resources and their use in accordance with a long-range comprehensive general plan to ensure the greatest benefit to the state as a whole.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2000, Act 17, Imd. Eff. Mar. 8, 2000.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30511 Districts; valuation for tax purposes.**

Sec. 30511. Upon adoption of a zoning ordinance or rule, certified copies of the maps showing districts shall be filed with the local tax assessing officer and the state tax commission. In establishing true cash value of property within the districts zoned, the assessing officer shall take cognizance of the effect of limits on use established by the ordinance or rule.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30512 Rules; enforcement; promulgation; variance; existing use.**

Sec. 30512. (1) The department shall prescribe administrative procedures and rules and provide personnel as it considers necessary for the enforcement of a zoning ordinance or rule enacted in accordance with this part. A circuit court, upon petition and a showing by the department that there exists a violation of a rule properly promulgated under this part, shall issue any necessary order to the defendant to correct the violation or to restrain the defendant from further violation of the rule.

(2) The department shall promulgate a zoning rule to implement this part. The rule shall include procedures for receiving and acting upon applications from local units of government or landowners for change of boundaries or change in permitted uses in accordance with chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. An aggrieved party may seek judicial review under chapter 6 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.301 to 24.306.

(3) A variance from a zoning rule promulgated by the department to implement this part may be applied for and granted pursuant to section 4 of the uniform condemnation procedures act, 1980 PA 87, MCL 213.54,

and the variance provisions of the zoning rule.

(4) The lawful use of any building or structure and of any land or premise as existing and lawful at the time of enactment of a zoning ordinance or rule or of an amendment of a zoning ordinance or rule may be continued although the use does not conform with the ordinance, rule, or amendment. The ordinance or rule shall provide for the completion, restoration, reconstruction, extension, or substitution of nonconforming uses upon reasonable terms as set forth in the zoning ordinance or rule.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2000, Act 17, Imd. Eff. Mar. 8, 2000.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30513 National wild and scenic river system; administration.**

Sec. 30513. This part does not preclude a component of the system from becoming a part of the national wild and scenic river system under the wild and scenic rivers act, Public Law 90-542, 16 U.S.C. 1271 to 1287. The department may enter into written cooperative agreements for joint federal-state administration of rivers that may be designated under the wild and scenic rivers act.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30514 Area plans; approval; rules.**

Sec. 30514. The department shall approve preliminary and final plans for site or route location, construction, or enlargement of utility transmission lines, publicly provided recreation facilities, access sites, highways, roads, bridges, or other structures and for publicly developed water management projects, within a designated natural river area, except within the limits of a city or incorporated village. The department may require any measure necessary to control damaging erosion or flow alteration during or in consequence of construction. The department shall promulgate rules concerning the approvals and requirements provided for in this section.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30515 Construction of part.**

Sec. 30515. This part does not prohibit a reasonable and lawful use of any other natural resource that benefits the general welfare of the people of this state and that is not inconsistent with the purpose of this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

## PART 307 INLAND LAKE LEVELS

\*\*\*\*\* 324.30701 THIS SECTION IS AMENDED EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE: See 324.30701.amended \*\*\*\*\*

### **324.30701 Definitions.**

Sec. 30701. As used in this part:

(a) "Commissioner" means the county drain commissioner or the county road commission in counties not having a drain commissioner, and, if more than 1 county is involved, each of the drain commissioners or drain commissioner and road commission in counties having no drain commissioner.

(b) "County board" means the county board of commissioners, and if more than 1 county is involved, the boards of commissioners of each of those counties.

(c) "Court" means a circuit court, and if more than 1 judicial circuit is involved, the circuit court designated by the county board or otherwise authorized by law to preside over an action.

(d) "Dam" means an artificial barrier, structure, or facility, and appurtenant works, used to regulate or maintain the level of an inland lake.

(e) "Delegated authority" means the county drain commissioner or any other person designated by the county board to perform duties required under this part.

(f) "Inland lake" means a natural or artificial lake, pond, impoundment, or a part of 1 of those bodies of

water. Inland lake does not include the Great Lakes or Lake St. Clair.

(g) "Interested person" means the department and a person who has a record interest in the title to, right of ingress to, or reversionary right to land that would be affected by a permanent change in the natural or normal level of an inland lake.

(h) "Normal level" means the level or levels of the water of an inland lake that provide the most benefit to the public; that best protect the public health, safety, and welfare; that best preserve the natural resources of the state; and that best preserve and protect the value of property around the lake. A normal level shall be measured and described as an elevation based on national geodetic vertical datum.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

**Popular name:** Act 451

**Popular name:** NREPA

\*\*\*\*\* 324.30701.amended THIS AMENDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE \*\*\*\*\*

### **324.30701.amended Definitions.**

Sec. 30701. As used in this part:

(a) "Commissioner" means the county drain commissioner, or the board of county road commissioners in counties not having a drain commissioner. However, if more than 1 county is involved, commissioner means the drain commissioner or board of county road commissioners, as applicable, for each county.

(b) "County board" means the county board of commissioners. However, if more than 1 county is involved, county board means the county board of commissioners of each of those counties.

(c) "Court" means a circuit court. However, if more than 1 judicial circuit is involved, court means the circuit court designated by the county board or otherwise authorized by law to preside over an action.

(d) "Dam" means an artificial barrier, structure, or facility, and appurtenant works, used to regulate or maintain the level of an inland lake.

(e) "Delegated authority" means the county drain commissioner or any other person designated by the county board to perform duties required under this part.

(f) "Department" means the department of environment, Great Lakes, and energy.

(g) "Inland lake" means a natural or artificial lake, pond, impoundment, or a part of 1 of those bodies of water. Inland lake does not include the Great Lakes or Lake St. Clair.

(h) "Interested person" means the department and a person who has a record interest in the title to, a right of ingress to, or a reversionary right to land that would be affected by a permanent change in the natural or normal level of an inland lake.

(i) "Normal level" means the target level or levels of the water of an inland lake, around which actual levels may fluctuate, that provide the most benefit to the public; that best protect the public health, safety, and welfare; that best preserve the natural resources of this state; and that best preserve and protect the value of property around the inland lake. A normal level shall be measured and described as an elevation or elevations based on a geodetic vertical datum including ranges based on tolerance, operational or weather conditions, seasonality, or other similar natural and regional considerations. An inland lake shall be considered to be maintained at its normal level during temporary water level fluctuations resulting from weather or natural events, during construction activities authorized by the department, or if a county or its delegated authority operates lake level infrastructure in a manner that may affect water levels but is reasonably intended to maintain a normal level. The application of this definition includes, but is not limited to, all normal levels established before the effective date of the amendatory act of the 2023-2024 legislative session that amended this section.

(j) "Normal level project" means a project to establish or maintain a normal level.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2024, Act 112, Eff. (sine die).

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

**Popular name:** Act 451

**Popular name:** NREPA

**324.30702 Determination of normal inland lake level; motion or petition to initiate action; delegation of powers and duties by county board; maintenance.**

Sec. 30702. (1) The county board of a county in which an inland lake is located may upon the board's own motion, or shall within 45 days following receipt of a petition to the board of 2/3 of the owners of lands abutting the inland lake, initiate action to take the necessary steps to cause to be determined the normal level of the inland lake.

(2) Unless required to act by resolution as provided in this part, the county board may delegate powers and duties under this part to that county's commissioner, road commission, or other delegated authority.

(3) If a court-determined normal level is established pursuant to this part, the delegated authority of the county or counties in which the lake is located shall maintain that normal level.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

**Popular name:** Act 451

**Popular name:** NREPA

**324.30703 Preliminary study; costs; contents of study.**

Sec. 30703. (1) Before proceeding on a motion made or a petition filed under section 30702, the county board may require that a preliminary study be conducted by a licensed professional engineer. The county board, by resolution, may require a cash payment from the petitioners sufficient to cover the actual preliminary study costs or of \$10,000.00, whichever is less.

(2) A preliminary study shall include all of the following:

(a) The feasibility of a project to establish and maintain a normal level of the inland lake.

(b) The expediency of the normal level project.

(c) Feasible and prudent alternative methods and designs for controlling the normal level.

(d) The estimated costs of construction and maintenance of the normal level project.

(e) A method of financing initial costs.

(f) The necessity of a special assessment district and the tentative boundaries if a district is necessary.

(g) Other information that the county board resolves is necessary.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.30704 Initiating proceeding for determining normal inland lake level and establishing special assessment district; required finding; multicounty lake; joinder permitted.**

Sec. 30704. (1) If the county board, based on the preliminary study, finds it expedient to have and resolves to have determined and established the normal level of an inland lake, the county board shall direct the prosecuting attorney or other legal counsel of the county to initiate a proceeding by proper petition in the court of that county for determination of the normal level for that inland lake and for establishing a special assessment district if the county board determines by resolution that one is necessary as provided in section 30711.

(2) If the waters of an inland lake are located in 2 or more counties, the normal level of the lake may be determined in the same manner if the county boards of all counties involved, by resolution, direct the prosecuting attorney or other legal counsel of 1 or more of the counties to institute proceedings. All counties may make a single preliminary study.

(3) The department may join a proceeding initiated under this section.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.30705 Special assessment bonds or notes; lake level orders; proceedings; full faith and credit.**

Sec. 30705. (1) A special assessment district provided for in section 30704 may issue any of the following in anticipation of the collection of special assessments:

(a) Bonds or notes, subject to section 30716.

(b) Lake level orders.

(2) Bonds or notes issued under subsection (1) shall have a final maturity date not more than 40 years after the date of original issuance.

(3) All proceedings relating to the making, levying, and collection of special assessments authorized by this part and the issuance of bonds, notes, or lake level orders in anticipation of the collection of the special assessments shall conform as nearly as possible to the proceedings for levying special assessments and issuing special assessment bonds as set forth in the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630.

(4) A county board by a vote of 2/3 of its members may pledge the full faith and credit of the county for payment of bonds or notes issued by a special assessment district under subsection (1).

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2002, Act 215, Imd. Eff. Apr. 29, 2002;—Am. 2020, Act 221, Imd. Eff. Oct. 16, 2020.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30706 Initiation of proceedings by director of department.**

Sec. 30706. If the department finds it expedient to have the normal level of an inland lake determined, the department may initiate by civil action on behalf of the state, in the court of any county in which the lake is located, a proceeding for determination of the normal level.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30707 Hearing; notice; service; powers and duties of court.**

Sec. 30707. (1) Upon filing of a civil action under this part, the court shall set a day for a hearing. The prosecuting attorney or other legal counsel of the county or counties or the department shall give notice of the hearing by publication in 1 or more newspapers of general circulation in the county and, if the waters of the inland lake are situated in 2 or more counties, in 1 or more newspapers of general circulation in each of the counties in which the inland lake is located. The notice shall be published at least once each week for 3 successive weeks before the date set for the hearing.

(2) The commissioner shall serve a copy of the published notice of hearing by first-class mail at least 3 weeks prior to the date set for the hearing to each person whose name appears upon the latest city or township tax assessment roll as owning land within a tentative special assessment district at the address shown on the roll; to the governing body of each political subdivision of the state in which the lake is located; and to the governing body of each affected political subdivision of the state. If an address does not appear on the roll, then a notice need not be mailed to the person. The commissioner shall make an affidavit of mailing. The failure to receive a notice properly mailed shall not constitute a jurisdictional defect invalidating proceedings under this part.

(3) The prosecuting attorney or the legal counsel of the county shall serve notice on the department at least 21 days prior to the date of the hearing.

(4) In a determination of the normal level of an inland lake, the court shall consider all of the following:

- (a) Past lake level records, including the ordinary high-water mark and seasonal fluctuations.
- (b) The location of septic tanks, drain fields, sea walls, docks, and other pertinent physical features.
- (c) Government surveys and reports.
- (d) The hydrology of the watershed.
- (e) Downstream flow requirements and impacts on downstream riparians.
- (f) Fisheries and wildlife habitat protection and enhancement.
- (g) Upstream drainage.
- (h) Rights of riparians.
- (i) Testimony and evidence offered by all interested persons.
- (j) Other pertinent facts and circumstances.

(5) The court shall determine the normal level to be established and maintained, shall have continuing jurisdiction, and may provide for departure from the normal level as necessary to accomplish the purposes of this part. The court shall confirm the special assessment district boundaries within 60 days following the lake level determination. The court may determine that the normal level shall vary seasonally.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.30708 Maintenance of normal level; acquisition by gift, grant, purchase, or condemnation; contract for operation and maintenance of existing dam; dam in adjoining county; operation of pumps and wells.**

Sec. 30708. (1) After the court determines the normal level of an inland lake in a proceeding initiated by the county, the delegated authority of any county or counties in which the inland lake is located shall provide for and maintain that normal level.

(2) A county may acquire, in the name of the county, by gift, grant, purchase, or condemnation proceedings, an existing dam that may affect the normal level of the inland lake, sites for dams, or rights in land needed or convenient in order to implement this part. A county may enter into a contract for operation and maintenance of an existing dam. The county may construct and maintain a dam that is determined by the delegated authority to be necessary for the purpose of maintaining the normal level. A dam may be acquired, constructed, or maintained in a county adjoining the county in which the lake is located.

(3) For the purpose of maintaining the normal level, a delegated authority may drill wells or pump water from another source to supply an inland lake with additional water, may lower the level of the lake by pumping water from the lake, and may purchase power to operate pumps, wells, or other devices installed as part of a normal level project.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.30709 Powers of department.**

Sec. 30709. (1) After the court determines the normal level of an inland lake in a proceeding initiated by the department, the department may provide for and maintain that normal level.

(2) In a proceeding initiated by the department, the department has the same powers in connection with a normal level project as a county has under sections 30708, 30713, and 30718.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.30710 Condemnation of private property.**

Sec. 30710. If the department or the delegated authority determines that it is necessary to condemn private property for the purpose of this part, the department or county may condemn the property in accordance with the uniform condemnation procedures act, Act No. 87 of the Public Acts of 1980, being sections 213.51 to 213.77 of the Michigan Compiled Laws.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

\*\*\*\*\* 324.30711 THIS SECTION IS AMENDED EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE: See 324.30711.amended \*\*\*\*\*

**324.30711 Defraying project costs by special assessment; special assessment roll; reassessment.**

Sec. 30711. (1) The county board may determine by resolution that the whole or a part of the cost of a project to establish and maintain a normal level for an inland lake shall be defrayed by special assessments against the following that are benefited by the project: privately owned parcels of land, political subdivisions of the state, and state owned lands under the jurisdiction and control of the department. If the county board determines that a special assessment district is to be established, the delegated authority shall compute the cost of the project and prepare a special assessment roll.

(2) If the revenues raised pursuant to the special assessment are insufficient to meet the computation of cost included in section 30712, or if these revenues are insufficient to meet bond obligations, the special assessment district may be reassessed without hearing using the same apportioned percentage used for the original assessment.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

\*\*\*\*\* 324.30711.amended THIS AMENDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE \*\*\*\*\*

**324.30711.amended Defraying project costs by special assessment; special assessment roll; reassessment.**

Sec. 30711. (1) The county board may determine by resolution that the whole or a part of the cost of a project to establish and maintain a normal level for an inland lake shall be defrayed by special assessments against the following that are benefited by the project: privately owned parcels of land, political subdivisions of this state, and state owned lands under the jurisdiction and control of the department of natural resources. If the county board determines that a special assessment district is to be established, the delegated authority shall compute the cost of the project and prepare a special assessment roll.

(2) If the revenues raised pursuant to the special assessment are insufficient to meet the computation of cost under section 30712, or if these revenues are insufficient to meet bond obligations, the special assessment district may be reassessed without hearing using the same apportioned percentage used for the original assessment.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2024, Act 112, Eff. (sine die).

**Popular name:** Act 451

**Popular name:** NREPA

**324.30712 Computation of project costs.**

Sec. 30712. (1) Computation of the cost of a normal level project shall include the cost of all of the following:

- (a) The preliminary study.
  - (b) Surveys.
  - (c) Establishing a special assessment district, including preparation of assessment rolls and levying assessments.
  - (d) Acquiring land and other property.
  - (e) Locating, constructing, operating, repairing, and maintaining a dam or works of improvement necessary for maintaining the normal level.
  - (f) Legal fees, including estimated costs of appeals if assessments are not upheld.
  - (g) Court costs.
  - (h) Interest on bonds and other financing costs for the first year, if the project is so financed.
  - (i) Any other costs necessary for the project which can be specifically itemized.
- (2) The delegated authority may add as a cost not more than 15% of the sum calculated under subsection (1) to cover contingent expenses.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.30713 Contract with agency or corporation; provisions.**

Sec. 30713. The delegated authority of a county in which an inland lake is located may contract with a state or federal government agency or a public or private corporation in connection with a project for the establishment and maintenance of a normal level. The contract may specify that the agency or corporation will pay the whole or a part of the cost of the project or will perform the whole or a part of the work connected with the project. The contract may provide that payment made or work done relieves the agency or corporation in whole or in part from assessment for the cost of establishment and construction of the project.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.30714 Special assessment roll; public hearing; notice; approval; appeal.**

Sec. 30714. (1) A special assessment roll shall describe the parcels of land to be assessed, the name of the owner of each parcel, if known, and the dollar amount of the assessment against each parcel.

(2) The delegated authority shall set a time and place for a public hearing or hearings on the project cost and the special assessment roll. Notice of a hearing shall be by both of the following:

(a) By publication of notice at least twice prior to the hearing in a newspaper that circulates in the special assessment district, the first publication to be at least 10 days before the hearing.

(b) As provided in Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the

Michigan Compiled Laws.

(3) At or after a public hearing, the delegated authority may approve or revise the cost of the project or the special assessment roll. Before construction of a project is begun, the county board shall approve the cost and the special assessment roll by resolution.

(4) The special assessment roll with the assessments listed shall be final and conclusive unless appealed in a court within 15 days after county board approval.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30715 Assessment payments; installments; amount; interest, penalty, and collection; lien; preliminary study payment credited.**

Sec. 30715. (1) The county board may provide that assessments under this part are payable in installments.

(2) Assessment payments shall be sufficient to meet bond and note obligations of the special assessment district.

(3) Special assessments under this part shall be spread upon the county tax rolls, and shall be subject to the same interest and penalty charges and shall be collected in the same manner as county taxes.

(4) From the date of approval of the special assessment roll by the county board, a special assessment under this part shall constitute a lien on the parcel assessed. The lien shall be of the same character and effect as a lien created for county taxes.

(5) A payment for the cost of the preliminary study under section 30703 shall be credited against an assessment for the amount of the payment made by the person assessed.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

\*\*\*\*\* 324.30716 THIS SECTION IS AMENDED EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE: See 324.30716.amended \*\*\*\*\*

### **324.30716 Bonds and notes; issuance.**

Sec. 30716. With approval of the county board and subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, the district may issue bonds or notes that shall be payable by special assessments under this part. Bonds or notes shall not be issued exceeding the cost of the lake level project that is being financed.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2002, Act 216, Imd. Eff. Apr. 29, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

\*\*\*\*\* 324.30716.amended THIS AMENDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE \*\*\*\*\*

### **324.30716.amended Bonds and notes; issuance; exempt from MCL 141.2505.**

Sec. 30716. (1) With approval of the county board and pursuant to section 30705, the district may issue bonds or notes that are payable by special assessments under this part. Except as provided in subsection (2) and section 30717(3), the issuance of the bonds and notes is subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. Bonds or notes shall not be issued exceeding the cost of the lake level project that is being financed.

(2) Notwithstanding any other provision of this part, bonds, notes, and other obligations issued under this part are exempt from section 505 of the revised municipal finance act, 2001 PA 34, MCL 141.2505.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2002, Act 216, Imd. Eff. Apr. 29, 2002;—Am. 2024, Act 112, Eff. (sine die).

**Popular name:** Act 451

**Popular name:** NREPA

\*\*\*\*\* 324.30717 THIS SECTION IS AMENDED EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE: See 324.30717.amended \*\*\*\*\*

### **324.30717 Acceptance and repayment of advance.**



Sec. 30717. The delegated authority may accept the advance of work, material, or money in connection with a normal level project. The obligation to repay an advance out of special assessments under this part may be evidenced by a note or contract. Notes and contracts issued under this section are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2002, Act 217, Imd. Eff. Apr. 29, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

\*\*\*\*\* 324.30717.amended *THIS AMENDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE* \*\*\*\*\*

### **324.30717.amended Special assessment district; acceptance and repayment of advance.**

Sec. 30717. (1) A special assessment district under this part may borrow money or accept an advance of work, material, or money from a public or private corporation, a partnership, an association, an individual, or the federal government or any agency of the federal government for payment of financing of any costs in connection with a normal level project, including all of the following:

- (a) Costs of easement and land acquisition.
- (b) Engineering fees.
- (c) Financing costs.
- (d) Legal fees.
- (e) Costs of a preliminary, feasibility, practicability, environmental assessment, or impact study.
- (f) Any other permissible costs under this part.

(2) The special assessment district shall pay or provide reimbursement for the obligations under subsection (1), with or without interest as may be agreed, when funds are available. The obligation of the special assessment district under this subsection may be evidenced by a contract or note. The contract or note may pledge the full faith and credit of the special assessment district and may be made payable out of any of the following:

- (a) Assessments made or to be made against public corporations at large or against lands in the special assessment district.
- (b) The proceeds of lake level orders, notes, or bonds issued by the special assessment district pursuant to this act.
- (c) Any other available funds.

(3) A contract or note described in subsection (2) is not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, unless the principal amount of the obligation is more than \$600,000.00. However, if the principal amount of the obligation is \$600,000.00 or less, the contract or note is subject to the agency financing reporting act, 2002 PA 470, MCL 129.171 to 129.177. Projects in which advances or loans are made by any public corporation, the federal government, or any agency of the federal government are not subject to either the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, or the agency financing reporting act, 2002 PA 470, MCL 129.171 to 129.177.

(4) The county board of commissioners by a majority vote of its members may pledge the full faith and credit of the county for the payment of a contract or note of the special assessment district.

(5) All notes previously issued under this section shall be considered to have been validly issued.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2002, Act 217, Imd. Eff. Apr. 29, 2002;—Am. 2024, Act 112, Eff. (sine die).

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30718 Dam construction or maintenance; plans and specifications; approval by department; bids; work relief project.**

Sec. 30718. Plans and specifications for a dam constructed or maintained under this part shall be prepared by a licensed professional engineer under the direction of the delegated authority. The plans and specifications shall be approved by the department before construction begins. The department shall review and approve or reject the plans and specifications within 30 days after they are received by the department. If the plans and specifications are rejected, the department shall propose changes in the plans and specifications that would result in their approval by the department. Bids for doing the work may be advertised in the manner the delegated authority directs. The contract shall be let to the lowest responsible bidder giving adequate security for the performance of the contract, but the delegated authority may reserve the right to reject any and all bids. The county may erect and maintain a dam as a work relief project in accordance with

the law applicable to a work relief project.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30719 Dam construction; underspill device; fish ladder.**

Sec. 30719. (1) The department may require that a new dam that is proposed to be constructed be equipped with an underspill device for the release of cold bottom waters for the protection of downstream fish habitats.

(2) The department may require the installation of a fish ladder or other device to permit the free passage of fish.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30720 Unauthorized change of level; penalty.**

Sec. 30720. A person who is not authorized by a delegated authority or the department to operate a dam or other normal level control facility and who changes, or causes to change, the level of an inland lake, the normal level of which has been established under this part or any previous act governing lake levels, and for which the delegated authority or the department has taken steps to maintain the normal level, is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00 or imprisonment for not more than 1 year, or both, and shall be required to pay the actual cost of restoration or replacement of the dam and any other property including any natural resource that is damaged or destroyed as a result of the violation.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30721 Establishment of normal inland lake level prohibited in certain cases.**

Sec. 30721. A normal level shall not be established for an inland lake in either of the following cases:

(a) The inland lake is used as a reservoir for a municipal water supply system, unless a normal level determination is petitioned for by the governing body of the municipality.

(b) The state has title, flowage rights, or easements to all riparian land surrounding the inland lake, unless a normal level determination is petitioned for by the department.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30722 Inspection; report; repairs; penalty; expenditure.**

Sec. 30722. (1) The delegated authority of a county shall cause an inspection to be made of each dam on an inland lake within the county which has a normal level established under this part or under any previous act governing lake levels. The inspection shall be conducted by a licensed professional engineer. The inspection shall take place every third year from the date of completion of a new dam or every third year from the determination of a normal level for an existing dam. An inspection report shall be submitted promptly to the department in the form and manner the department prescribes.

(2) If a report discloses a need for repairs or a change in condition of the dam that relates to the dam's safety or danger to natural resources, the department shall conduct an inspection to confirm the report. If the report is confirmed and the public safety or natural resources are endangered by the risk of failure of the dam, the department may require the county either to repair or to replace the dam. Plans and specifications for the repairs or replacement shall be prepared by a licensed professional engineer under the direction of the delegated authority. The plans and specifications shall be approved by the department before construction begins. The department shall review and approve or reject the plans and specifications within 30 days after they are received by the department. If the plans and specifications are rejected, the department shall propose changes in the plans and specifications that would result in their approval by the department. If the dam is in imminent danger of failure, the department may order an immediate lowering of the lake level until necessary repair or replacement is complete.

(3) A person failing to comply with this section, or falsely representing dam conditions, is guilty of misconduct in office.

(4) If an inspection discloses the necessity for maintenance or repair, the delegated authority, without approval of the county board, may spend not more than \$10,000.00 annually for maintenance and repair of

each lake level project. An expenditure of more than \$10,000.00 annually shall be approved by resolution of the county board.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30723 Other requirements not abrogated.**

Sec. 30723. This part does not abrogate the requirements of other state statutes.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

## PART 309

### INLAND LAKE IMPROVEMENTS

#### **324.30901 Definitions.**

Sec. 30901. As used in this part:

(a) "Benefit" or "benefits" means advantages resulting from a project to public corporations, the inhabitants of public corporations, the inhabitants of this state, and property within public corporations. Benefit includes benefits that result from elimination of pollution and elimination of flood damage, elimination of water conditions that jeopardize the public health or safety; increase of the value or use of lands and property arising from improving a lake or lakes as a result of the lake project and the improvement or development of a lake for conservation of fish and wildlife and the use, improvement, or development of a lake for fishing, wildlife, boating, swimming, or any other recreational, agricultural, or conservation uses.

(b) "Inland lake" means a public inland lake or a private inland lake.

(c) "Interested person" means a person who has a record interest in the title to, right of ingress to, or reversionary right to a piece or parcel of land that would be affected by a permanent change in the bottomland of a natural or artificial, public or private inland lake, or adjacent wetland. In all cases, whether having such an interest or not, the department is an interested person.

(d) "Local governing body" means the legislative body of a local unit of government.

(e) "Preliminary costs" includes costs of the engineering feasibility report, economic study, estimate of total cost, and cost of setting up the assessment district.

(f) "Private inland lake" means an inland lake other than a public inland lake.

(g) "Public inland lake" means a lake that is accessible to the public by publicly owned lands or highways contiguous to publicly owned lands or by the bed of a stream, except the Great Lakes and connecting waters.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.30902 Petition for improvement of lake or wetland; local governing bodies' powers; lake boards.**

Sec. 30902. (1) The local governing body of any local unit of government in which the whole or any part of the waters of any public inland lake is situated, upon its own motion or by petition of 2/3 of the freeholders owning lands abutting the lake, for the protection of the public health, welfare, and safety and the conservation of the natural resources of this state, or to preserve property values around a lake, may provide for the improvement of a lake, or adjacent wetland, and may take steps necessary to remove and properly dispose of undesirable accumulated materials from the bottom of the lake or wetland by dredging, ditching, digging, or other related work.

(2) Upon receipt of the petition or upon its own motion, the local governing body within 60 days shall set up a lake board as provided in section 30903 that shall proceed with the necessary steps for improving the lake or to void the proposed project.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.30903 Lake board; composition; election of chairperson, treasurer, and secretary; quorum; concurrence of majority required; technical data; recommendations.**

Sec. 30903. (1) The lake board shall consist of all of the following:

(a) A member of the county board of commissioners appointed by the chairperson of the county board of commissioners of each county affected by the lake improvement project; 1 representative of each local unit of government, other than a county, affected by the project, or, if there is only 1 such local unit of government, 2 representatives of that local unit of government, appointed by the legislative body of the local unit of government; and the county drain commissioner or his or her designee, or a member of the county road commission in counties not having a drain commissioner.

(b) A member elected by the members of the lake board serving pursuant to subdivision (a) at the first meeting of the board or at any time a vacancy exists under this subdivision. Only a person who has an interest in a land contract or a record interest in the title to a piece or parcel of land that abuts the lake to be improved is eligible to be elected and to serve under this subdivision. An organization composed of and representing the majority of lakefront property owners on the affected lake may submit up to 3 names to the board, from which the board shall make its selection. The terms served by this member shall be 4 years in length.

(2) The lake board shall elect a chairperson, treasurer, and secretary. The secretary shall attend meetings of the lake board and shall keep a record of the proceedings and perform other duties delegated by the lake board. A majority of the members of the lake board constitutes a quorum. The concurrence of a majority in any matter within the duties of the board is required for the determination of a matter.

(3) The department, upon request of the lake board, shall provide whatever technical data it has available and make recommendations in the interests of conservation.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2004, Act 522, Eff. Mar. 1, 2005.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.30904 Initiation of action by freeholders.**

Sec. 30904. Action may be initiated under section 30902 relating to any private inland lake only upon petition of 2/3 of the freeholders owning lands abutting the lake.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.30905 Preliminary costs; revolving funds; assessments.**

Sec. 30905. The county board of commissioners may provide for a revolving fund to pay for the preliminary costs of improvement projects within the county. The preliminary costs shall be assessed to the property owners in the assessment district by the lake board after notice of the hearing is given pursuant to Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the Michigan Compiled Laws, and shall be repaid to the fund where the project is not finally constructed.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.30906 Institution of proceedings for lake improvement; conflicts with local ordinances and charters.**

Sec. 30906. (1) Whenever a local governing body, in accordance with section 30902, considers it expedient to have a lake improved, it, by resolution, shall direct the lake board to institute proceedings as prescribed in this part.

(2) When the waters of any inland lake are situated in 2 or more local units of government, the improvement of the lake may be determined jointly in the same manner as provided in this part, if the local governing bodies of all local units of government involved determine it to be expedient in accordance with section 30902 and, by resolution, direct the lake board to institute proceedings as prescribed in this part. Where local ordinances and charters conflict, this part shall govern.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.30907 Lake improvement; initiation by department.**

Sec. 30907. If the department considers it expedient, in accordance with section 30902, to have a lake dredged or improved, the department may petition the local governing body or governing bodies in which the lake is located for an improvement of the lake. The department may also join with the local governing body of

any local unit of government in instituting proceedings for improvements as set forth in this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30908 Lake board; determination of scope of project; establishment of special assessment districts; ministerial duties.**

Sec. 30908. The lake board, when instructed by resolution of the local governing body, shall determine the scope of the project and shall establish a special assessment district, including within the special assessment district all parcels of land and local units which will be benefited by the improvement of the lake. The local governing body may delegate to the lake board other ministerial duties including preparation, assembling, and computation of statistical data for use by the board and the superintending, construction, and maintenance of any project under this part, as the local governing body considers necessary.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30909 Engineering and economic reports; cost estimates.**

Sec. 30909. (1) The lake board shall retain a licensed professional engineer to prepare an engineering feasibility report, an economic study report, and an estimate of cost. The report shall include, when applicable, recommendations for normal lake levels and the methods for maintaining those levels.

(2) The engineering feasibility report shall include the methods proposed to implement the recommended improvements, such as dredging, removal, disposal, and disposal areas for undesirable materials from the lake. The report shall include an investigation of the groundwater conditions and possible effects on lake levels from removal of bottom materials. A study of existing nutrients and an estimate of possible future conditions shall be included. Estimate of costs of right-of-way shall be included.

(3) The estimate of cost prepared under subsection (1) shall show probable assessments for the project. The economic report shall analyze the existing local tax structure and the effects of the proposed assessments on the local units of government involved. A copy of the report shall be furnished to each member of the lake board.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30910 Review of reports by board; determinations of practicability; public hearings; notice; determination.**

Sec. 30910. Within 60 days after his or her receipt of the reports, the chairperson shall hold a meeting of the lake board to review the reports required under section 30909 and to determine the practicability of the project. The hearing shall be public, and notice of the hearing shall be published twice in a newspaper of general circulation in each local unit of government to be affected. The first publication shall be not less than 20 days prior to the time of the hearing. The board shall determine the practicability of the project within 10 days after the hearing unless it is determined at the hearing that more information is needed before the determination can be made. Immediately upon receipt of the additional information, the board shall make its determination.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30911 County contributions toward costs of improvement.**

Sec. 30911. The county board of commissioners may provide up to 25% of the cost of a lake improvement project on any public inland lake.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30912 Approval of plans and cost estimates; sufficiency of petition; resolution; publication; assessment roll.**

Sec. 30912. If the lake board passes a resolution in which it determines the project to be practicable, the lake board shall determine to proceed with the project, shall approve the plans and estimate of costs as originally presented or as revised, corrected, amended, or changed, and shall determine the sufficiency of the petition for the improvement. The resolution shall be published once in a newspaper of general circulation in each local unit of government to be affected. After the resolution has been published, the sufficiency of the petition shall not be subject to attack except in an action brought in a court of competent jurisdiction within 30 days after publication. The lake board, after finally accepting the special assessment district, shall prepare an assessment roll based upon the benefits to be derived from the proposed lake improvement, and the lake board shall direct the assessing official of each local unit of government to be affected to join in making an assessment roll in which shall be entered and described all the parcels of land to be assessed, with the names of the respective owners of the parcels of land, if known, and the total amount to be assessed against each parcel of land and against each local unit of government to be affected, which amount shall be such relative portion of the whole sum to be levied against all parcels of land and local units of government in the special assessment district as the benefit to such parcel of land and local unit of government bears to the total benefit to all parcels of land and local units of government in the special assessment district. When the assessment roll has been completed, each assessing official shall affix to the assessment roll his or her certificate stating that it was made pursuant to a resolution of the lake board adopted on a specified date, and that in making the assessment roll he or she has, according to his or her best judgment, conformed in all respects to the directions contained in the resolution and the statutes of the state.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.30913 Report of assessment to lake board; review; notice and hearing; confirmation.**

Sec. 30913. The assessment roll shall be reported to the lake board by the assessing official of the local unit or units of government initiating the proceeding and filed in the office of the clerk of each local unit of government to be affected. Before confirming the assessment roll, the lake board shall appoint a time and place when it will meet and review the assessment roll and hear any objections to the assessment roll, and shall publish notice of the hearing and the filing of the assessment roll twice prior to the hearing in a newspaper of general circulation in each local unit of government to be affected, the first publication to be at least 10 days before the hearing. Notice of the hearing shall also be given in accordance with Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the Michigan Compiled Laws. The hearing may be adjourned from time to time without further notice. Any person or local unit of government objecting to the assessment roll shall file his or her objection in writing with the chairperson before the close of the hearing or within such further time period as the lake board may grant. After the hearing, the lake board may confirm the special assessment roll as reported to it or as amended or corrected by it, may refer it back to the assessing officials for revision, or may annul it and direct a new roll to be made. When a special assessment roll has been confirmed, the clerk of each local unit of government shall endorse on the assessment roll the date of the confirmation. After confirmation, the special assessment roll and all assessments on the assessment roll shall be final and conclusive unless attacked in a court of competent jurisdiction within 30 days after notice of confirmation has been published in the same manner as the notice of hearing.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.30914 Special assessments; installments; interest; penalties.**

Sec. 30914. Upon the confirmation of the assessment roll, the lake board may provide that the assessments be payable in 1 or more approximately equal annual installments, not exceeding 30. The amount of each installment, if more than 1, need not be extended upon the special assessment roll until after confirmation. The first installment of a special assessment shall be due on or before such time after confirmation as the board shall establish, and the several subsequent installments shall be due at intervals of 12 months from the due date of the first installment or from such other date as the board shall establish. All unpaid installments, prior to their transfer to the tax roll of each local unit of government involved, shall bear interest, payable annually on each installment due date, at a rate to be set by the board, not exceeding 6% per annum, from such date as established by the board. Future due installments of an assessment against a parcel of land may be paid to the treasurer of each local unit of government at any time in full, with interest accrued to the due date of the next installment. If any installment of a special assessment is not paid when due, then it shall be considered to be delinquent and there shall be collected on the installment, in addition to interest as above

provided, a penalty at the rate of 1/2 of 1% for each month or fraction of a month that it remains unpaid before being reported to the township board for reassessment upon the tax roll.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30915 Special assessments; liens.**

Sec. 30915. All special assessments contained in any special assessment roll, including any part of the special assessment payment that is deferred, constitute a lien, from the date of confirmation of the roll, upon the respective parcels of land assessed. The lien shall be of the same character and effect as the lien created for taxes in each local unit of government and shall include accrued interest and penalties. A judgment, decree, or any act of the board vacating a special assessment does not destroy or impair the lien upon the premises assessed for the amount of the assessment as may be equitably charged against the premises, or as by a regular mode of proceeding might be lawfully assessed on the premises.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30916 Special assessments; collections.**

Sec. 30916. When any special assessment roll is confirmed, the lake board shall direct the assessments made in the roll to be collected. The clerk of each local unit of government involved shall then deliver to the treasurer of each local unit of government the special assessment roll, to which he or she shall attach his or her warrant commanding the treasurer to collect the assessments in the roll in accordance with the directions of the lake board. The warrant shall further require the treasurer, on September 1 following the date when any assessments or any part of an assessment have become due, to submit to the lake board a sworn statement setting forth the names of delinquent persons, if known, a description of the parcels of land upon which there are delinquent assessments, and the amount of the delinquency, including accrued interest and penalties computed to September 1 of the year. Upon receiving the special assessment roll and warrant, the treasurer shall collect the amounts assessed as they become due.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30917 Delinquent assessments; reassessment.**

Sec. 30917. If the treasurer reports as delinquent any assessment or part of an assessment, the lake board shall certify the delinquency to the assessing official of each local unit of government, who shall reassess, on the annual tax roll of the local unit of government of that year, in a column headed "special assessments", the delinquent sum, with interest and penalties to September 1 of that year, and an additional penalty of 6% of the total amount. Thereafter, the statutes relating to taxes shall be applicable to the reassessments in each local unit of government.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30918 Division of land parcels; uncollected assessment apportioned.**

Sec. 30918. If any parcel of land is divided after a special assessment on the land has been confirmed and before the collection of the assessment, the lake board may require the assessment official to apportion the uncollected amounts between the divisions of the parcel of land, and the report of the apportionment when confirmed by the lake board shall be conclusive upon all parties. If the interested parties do not agree in writing to the apportionment, then, before confirmation, notice of hearing shall be given to all the interested parties, either by personal service or by publication as provided in the case of an original assessment roll.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30919 Additional special assessments.**

Sec. 30919. If the assessments in any special assessment roll prove insufficient for any reason, including the noncollection of the assessment, to pay for the improvement for which they were made or to pay the

principal and interest on the bonds issued in anticipation of the collection of the assessment, then the lake board shall make additional pro rata assessments to supply the deficiency, but the total amount assessed against any parcel of land shall not exceed the value of the benefits received from the improvement.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30920 Special assessments; invalidity and new assessments.**

Sec. 30920. Whenever, in the opinion of the lake board, any special assessment is invalid by reason of irregularities or informalities in the proceedings, or if any court of competent jurisdiction adjudges such assessment illegal, the lake board, whether the improvement has been made or not and whether any part of the assessment has been paid or not, may proceed from the last step at which the proceedings were legal and cause a new assessment to be made for the same purpose for which the former assessment was made. All proceedings on that reassessment and for the collection of the assessment shall be conducted in the same manner as provided for the original assessment. Whenever an assessment or any part of an assessment levied upon any premises has been set aside, if the assessment or part of an assessment has been paid and not refunded, the payment shall be applied upon the reassessment.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30921 Special assessments; exempt lands.**

Sec. 30921. The governing body of any department of the state or any of its political subdivisions, municipalities, school districts, townships, or counties, whose lands are exempt by law, may by resolution agree to pay the special assessments against the lands, in which case the assessment, including all the installments of the assessment, shall be a valid claim against the local unit of government.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30922 Borrowing; issuance of lake level orders and bonds.**

Sec. 30922. The lake board may borrow money and issue lake level orders or the bonds of the special assessment district in anticipation of the collection of special assessments to defray the cost of any improvement made under this part after the special assessment roll has been confirmed. The bonds or lake level orders shall not exceed the amount of the special assessments in anticipation of the collection of which they are issued. Collections on special assessments to the extent pledged for the payment of bonds or lake level orders shall be set aside in a special fund for the payment of the bonds or lake level orders. The issuance of special assessments bonds or lake level orders shall be governed by the general laws of this state applicable to the issuance of special assessments bonds or lake level orders and in accordance with the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. Bonds or lake level orders may be issued in anticipation of the collection of special assessments levied in respect to 2 or more public improvements, but no special assessment district shall be compelled to pay the obligation of any other special assessment district. The local governing body may pledge the full faith and credit of a local unit of government for the prompt payment of the principal of and interest on the bonds or lake level orders as they become due. The pledge of full faith and credit of the local unit of government shall be included within the total limitation prescribed by the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. Bonds and lake level orders issued under this part shall be executed by the chairperson and secretary of the lake board, and the interest coupons to be attached to the bonds and orders shall be executed by the officials causing their facsimile signatures to be affixed to the bonds and orders.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2002, Act 218, Imd. Eff. Apr. 29, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30923 Condemnation; commencement and conduct of proceedings.**

Sec. 30923. Whenever the lake board determines by proper resolution that it is necessary to condemn private property for the purpose of this part, the condemnation proceedings shall be commenced and conducted in accordance with Act No. 149 of the Public Acts of 1911, being sections 213.21 to 213.25 of the Michigan Compiled Laws.



**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.30924 Gifts and grants-in-aid; acceptance by lake board; contract or agreement.**

Sec. 30924. (1) The lake board may receive and accept gifts or grants-in-aid for the purpose of implementing this part.

(2) The lake board may contract or make agreement with the federal government or any agency of the federal government whereby the federal government will pay the whole or any part of the costs of a project or will perform all or any part of the work connected with the project. The contract or agreement may include any specific terms required by act of congress or federal regulation as a condition for the participation of the federal government.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.30925 Gifts and grants-in-aid; acceptance by department.**

Sec. 30925. The department in carrying out the purposes of this part may receive and accept, on behalf of the state, gifts and grants-in-aid.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.30926 Advertising for bids; letting of contracts; work relief project.**

Sec. 30926. (1) Except as provided in subsection (2), the chairperson of the lake board shall advertise for bids. A contract shall be let to the lowest bidder giving adequate security for the performance of the contract, but the lake board shall reserve the right to reject any and all bids.

(2) The lake board may let a contract with a local, incorporated, nonprofit homeowner association, the membership of which is open on a nondiscriminatory basis to all residents within the geographic area to be assessed or serviced, without advertising for public bids. The homeowner association shall give adequate security for the performance of the contract.

(3) The local governing body may improve a lake as a work relief project pursuant to applicable provisions of law.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.30927 Costs of projects; computation; expenditures; representation by attorney.**

Sec. 30927. (1) Within 10 days after the letting of contracts or, in case of an appeal, immediately after the appeal has been decided, the lake board shall make a computation of the entire cost of a project under this part that includes all preliminary costs and engineering and inspection costs incurred and all of the following:

(a) The fees and expenses of special commissioners.

(b) The contracts for dredging or other work to be done on the project.

(c) The estimated cost of an appeal if the apportionment made by the lake board is not sustained.

(d) The estimated cost of inspection.

(e) The cost of publishing all notices required.

(f) All costs of the circuit court.

(g) Any legal expenses incurred in connection with the project, including litigation expenses, the costs of any judgments or orders entered against the lake board or special assessment district, and attorney fees.

(h) Fees for any permits required in connection with the project.

(i) Interest on bonds for the first year, if bonds are to be issued.

(j) Any other costs necessary for the administration of lake board proceedings, including, but not limited to, compensation of the members of the lake board, record compilation and retention, and state, county, or local government professional staff services.

(2) In addition to the amounts computed under subsection (1), the lake board may add not less than 10% or more than 15% of the gross sum to cover contingent expenses, including additional necessary hydrological studies by the department. The sum of the amounts computed under subsection (1) plus the amount added under this subsection is considered to be the cost of the lake improvement project.

(3) A lake board shall not expend money for improvements, services, or other purposes unless the lake board has adopted an annual budget.

(4) A lake board may retain an attorney to advise the lake board in the proper performance of its duties. The attorney shall represent the lake board in actions brought by or against the lake board.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2004, Act 522, Eff. Mar. 1, 2005.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30928 Intervention by department.**

Sec. 30928. Whenever a public inland lake is to be improved, the department may intervene for the protection and conservation of the natural resources of the state.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.30929 Lake board for inland lake; dissolution.**

Sec. 30929. A lake board for an inland lake is dissolved if all of the following requirements are met:

(a) The governing body of each local unit of government in which all or part of the lake is located holds a public hearing on the proposed dissolution, determines that the lake board is no longer necessary for the improvement of the lake because the reasons for the establishment of the lake board no longer exist, and approves the dissolution of the lake board. For a public inland lake, the governing body of each local unit of government in which all or part of the lake is located may hold the public hearing on the dissolution of the lake board on its own initiative. For a public or private inland lake, the governing body of each local unit of government in which all or part of the lake is located shall hold a public hearing on the dissolution of the lake board upon petition of at least 2/3 of the property owners owning land abutting the lake or upon petition of the property owners who have been assessed at least 2/3 of the cost of the most recent improvements, excluding the amount assessed to local units at large. Notice of the public hearing shall be published twice in a newspaper of general circulation in each local unit of government in which all or part of the lake is located. The first notice shall be published not less than 10 days before the date of the hearing.

(b) All outstanding indebtedness and expenses of the lake board are paid in full.

(c) Any excess funds of the lake board are refunded based on the last approved special assessment roll. However, if the amount of excess funds is de minimis, the excess funds shall be distributed to the local units of government in which all or part of the lake is located, apportioned based on the amounts assessed against each local unit of government and lands in that local unit on the last approved special assessment roll.

(d) The lake board determines that it is no longer necessary for the improvement of the lake, because the reasons for its establishment no longer exist, and adopts an order approving its dissolution.

**History:** Add. 2004, Act 522, Eff. Mar. 1, 2005;—Am. 2011, Act 96, Imd. Eff. July 15, 2011.

**Popular name:** Act 451

**Popular name:** NREPA

## PART 311

### LOCAL RIVER MANAGEMENT

#### **324.31101 Definitions.**

Sec. 31101. As used in this part:

(a) "Board" means a river management board created as the governing body of a river management district in accordance with this part.

(b) "Council" means a watershed council created under this part.

(c) "District" means a river management district established under this part.

(d) "Level of stream flow" means a measure of water quantity including the amount of water passing a designated point over a designated period and the levels of lakes that are an integral part of the surface drainage system of the watershed.

(e) "Local agencies" means local units of government, special districts, or other legally constituted agencies of local units of government exercising powers that may affect water resources.

(f) "River management" means the control of river flow by the operation of dams, reservoirs, conduits, and other human-made devices in order to improve and expand the uses of the river for those who depend upon it for a variety of private and public benefits.

(g) "Watershed" means the drainage area of a stream.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31102 Watershed council; petition; contents; organizational meeting; notice.**

Sec. 31102. (1) To promote cooperation among local units of government in river management, a watershed council shall be established by the department upon a petition from 3 or more local units of government lying wholly or partially in the watershed as defined in the petition. The petition shall provide a statement of necessity, a description of general purposes and functions to be performed, a description of the area, including a map, and a list of all local units of government lying wholly or partly within the watershed, which shall be eligible for membership on the watershed council.

(2) Upon finding that the petition is in conformance with this part, the department shall establish the council, schedule an organizational meeting, and notify all local units of government eligible for membership by registered mail. The date for the meeting shall be not less than 60 or more than 90 days after the date of mailing the notice.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31103 Watershed council; membership; voting rights; term; river management board.**

Sec. 31103. (1) The watershed council shall be composed of representatives of local units of government within the watershed who are appointed to and maintain membership in the council in the following manner:

(a) Each local unit of government using the river for water supply or waste disposal shall appoint 1 representative for each 20,000 population or fraction thereof. The governing body of each local unit of government shall determine the method by which its representatives are selected.

(b) Each county having 15% or more of its area in the watershed shall appoint 1 representative, and 1 additional representative for each 20,000 population or fraction thereof, which aggregate total shall be computed from the population of eligible townships not otherwise represented. These townships shall be eligible under this section if they have 15% or more of their respective areas in the basin. The methods by which the county representatives are selected shall be determined by the county board of commissioners.

(c) Any local agency wholly or partly within the basin may appoint a representative to the council upon a finding by the council that the agency is so affected by or concerned with the use and development of water resources in the basin as to warrant representation. If any township is represented under this subdivision, its population shall not be counted in determining the eligible total representatives of its county.

(2) Representatives on the watershed council shall be appointed for 2 years, but are subject to replacement at the pleasure of the appointing authority. A representative is not eligible to vote on the council unless the local government he or she represents has met its financial obligations to the council.

(3) Representatives to the watershed council may also represent their local units of government, if so designated by their local units of government, on river management boards established in accordance with this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31104 Watershed council; duties.**

Sec. 31104. In carrying out its authorized functions, the council shall do all of the following:

(a) Adopt bylaws that govern its operations.

(b) Prepare an annual operating budget, including apportionment of costs to member governments.

(c) Hold an annual meeting at which time it shall elect a chairperson, vice-chairperson, and secretary-treasurer, submit an annual report to the member governments, and adopt an annual budget that constitutes the council's authorization of activities for the year.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31105 Watershed council; powers.**

Sec. 31105. A watershed council may do 1 or more of the following:

(a) Conduct, or cause to be conducted, studies of the water resources of the watershed, including

investigations of water uses, water quality, and the reliability of the water resource.

(b) Prepare periodic reports concerning, among other things, trends in water use and availability, emerging water problems, and recommendations for appropriate public policies and programs necessary to maintain adequate water resources for the watershed area.

(c) Request the department to survey the watershed for the purpose of determining minimum levels of stream flow necessary for health, welfare, and safety as provided in sections 31112 through 31117.

(d) Recommend the creation of a river management district or districts under the provisions of sections 31106 through 31111 when the need for river management seems to warrant such an action.

(e) Advise agencies of federal, state, and local units of government as to the council's view of the watershed's problems and needs.

(f) Cooperate with federal, state, and local agencies in providing stream gauges, water quality sampling stations, or other water resource data-gathering facilities or programs that aid the council in its responsibility for studying and reporting on water conditions.

(g) Employ an executive secretary and such other professional, administrative, or clerical staff, including consultants, as may be provided for in an approved budget.

(h) Establish such subcommittees or advisory committees as are considered helpful in the discharge of its functions.

(i) Establish special project funds as needed to finance special studies outside its annual budget capacity. For this purpose, the council may accept gifts and grants from any person.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.31106 River management district; establishment; powers; consolidation; coordination.**

Sec. 31106. (1) The governing bodies of 2 or more local units of government may petition the department to establish a river management district in order to provide an agency for the acquisition, construction, operation, and financing of water storage and other river control facilities necessary for river management. The petition shall be accompanied by a statement of necessity, a description of the district purposes, functions, and operating procedures, which shall include methods of financing capital improvements and of apportioning benefit charges, and a general plan of development. Not later than 60 days following receipt of such a petition, the department shall establish the time and place for a public hearing on the petition and shall publish notice of the hearing. The notice shall be published twice in each county involved in at least 1 newspaper of general circulation in the county. At the hearing, the applicant and any other interested party may appear, present witnesses, and submit evidence. Following the hearing, the department may establish the district and publish notice of the establishment in the manner provided for publication of notice of hearing, upon finding the following conditions:

(a) That the proposal is consistent with the public interest in the conservation, development, and use of water resources, and the proposed district is geographically suitable to effectuation of the district purposes.

(b) That the establishment and operation of the district will not unreasonably impair the interests of the public or of riparians in lands or waters or the beneficial public use of lands or waters, and will not endanger public health or safety.

(2) A management district shall not be created that affects any city now or hereafter having a population of more than 1,500,000, except with the concurrence of the governing body of that city.

(3) Prior to approving the establishment of a district consisting of a portion of a river basin, the department shall determine the feasibility of establishing the district to include the entire river basin or as large a portion of the basin as possible. Approval of districts consisting of a portion of a river basin shall be on the basis that when in the judgment of the department it becomes feasible to form a district including the entire river basin, the river management boards shall initiate proceedings to combine the smaller districts into larger districts or into an entire watershed-wide district.

(4) Any plans for a river management district shall be coordinated with plans of adjacent river basins, organizations, or agencies and with any comprehensive regional master programs for river management.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.31107 River management district; organizational meeting; notice; date; board; membership; term; voting rights.**

Sec. 31107. (1) Within 60 days after establishing a district, the department shall schedule an organizational

meeting of the district board and shall provide notice of the meeting by registered mail to the governing bodies of all local units of government comprising the district. The date for the meeting shall be not less than 60 or more than 90 days after the date of mailing the notice. At the meeting, the department shall serve as temporary chairperson. The board shall elect a chairperson, vice-chairperson, secretary, and treasurer and adopt bylaws.

(2) A district shall be governed by a river management board composed of representatives of local units of government within the district. The representation of each local unit of government on the board may be provided as part of the operating procedures submitted to the department in the petition of local units of government made in accordance with section 31106. If the composition of the board is not so designated, representation shall be established under section 31103.

(3) Representatives on the river management board shall be appointed for 2 years but are subject to replacement at the pleasure of the appointing authority. A representative is not eligible to vote on the board unless the local government he or she represents has met its financial obligations to the district.

(4) Representatives to the river management board may also serve as representatives of their local units of government, if so designated by their local units of government, on the watershed council.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31108 River management board; powers.**

Sec. 31108. A river management board may do any of the following:

(a) Conduct a continuing study of river use requirements and needs for river management within its area of jurisdiction; analyze alternative methods of meeting needs; and develop and adopt a river management program, including plans for constructing, operating, and financing water storage and river control structures and negotiating coordinated policies and programs relating to river use among local units of government within the district.

(b) Impound and control the waters of the river system within the district, subject to minimum levels of stream flow established pursuant to sections 31112 and 31113, through acquisition, construction, maintenance, and/or operation of water storage reservoirs, dams, or other river control structures as necessary to assure adequate quantity, quality, and stability of river flow to protect the public health, welfare, and safety. A river management district shall not release water in such an amount as to produce or increase flooding or otherwise damage downstream interests.

(c) Contract with or enter into agreement with the federal government or any agency or department of the federal government or with other governmental agencies or with private individuals or corporations that may maintain and operate reservoirs and control structures or that may construct, maintain, and operate new reservoirs and control structures as necessary to carry out the purposes of this part.

(d) Perform, with respect to the area within the district, the functions assigned to a watershed council by sections 31102 through 31105 whenever a relevant watershed council has not been formed, or if the appropriate watershed council's failure to act impairs the functions and programs of a district.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31109 River management district; body corporate; powers; taxing power.**

Sec. 31109. A district formed under this part is a body corporate with powers to contract; to sue and be sued; to exercise the right of eminent domain; to apportion administrative costs and benefit charges for river management and related facilities among the local units of government members, which costs shall be payable from general funds or taxes raised by the local units of government; to collect revenues for services rendered by the exercise of its functions; to issue bonds; to apply for and receive grants, gifts, and other devises from any governmental agency or from the federal government; and to exercise other powers as necessary to implement this part. The river management district shall not have direct taxing power.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31110 River management board; duties.**

Sec. 31110. A river management board shall do all of the following:

(a) Adopt bylaws to govern its operations.

(b) Prepare an annual operating budget and levy an annual assessment of local unit of government members to cover costs of organizing, developing plans, and maintaining general overhead administration.

(c) Adopt and maintain a schedule of benefit assessments upon local units of government in the district levied to help defray the costs of capital improvements, which schedule constitutes a legal obligation upon those assessed.

(d) Hold an annual meeting at which it shall report to its members and to the watershed council, elect officers, and adopt an annual budget.

(e) Maintain a public record of its transactions.

(f) Do all other things necessary for the operation of the district.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.31111 Executive secretary; additional staff.**

Sec. 31111. The executive secretary of a watershed council may serve as executive secretary to the river management board. If a relevant watershed council does not exist, or if the executive secretary of a watershed council is otherwise unavailable, the board may employ an executive secretary. In addition, the board may employ additional staff as it determines appropriate within its approved budget.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.31112 Minimum level of stream flow; industrial use of water.**

Sec. 31112. Upon request of a council or a board, the department shall determine, within the watershed subject to the council, the minimum level of stream flow necessary to safeguard the public health, welfare, and safety, but a determination or order shall not prevent any industry along the stream from using water from the stream for industrial use sufficient for the industry's requirement if all the water used is returned to the stream within 72 hours of the taking.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.31113 Minimum level of stream flow; order of determination; notice; publication; review.**

Sec. 31113. In carrying out its authority to determine minimum levels of stream flow, the department, after public hearing, shall issue an order of determination setting forth minimum levels at locations as necessary to carry out the purposes of this part. Notice of the order of determination shall be published and the order may be reviewed in the circuit court in accordance with the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, upon petition filed by any person within 15 days following the last date of the publication.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.31114 Minimum level of stream flow; determination by watershed council or department; request.**

Sec. 31114. A river management board may request a watershed council to seek a determination of minimum levels of stream flow in accordance with sections 31112 and 31113, or the board may request the department to make the determinations if a watershed council has not been formed for the larger watershed of which the district is a part, or when an appropriately established council fails to act within 90 days upon the district's request.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.31115 Measurement of stream flow, lake levels, and water quality; gauges and sampling devices; entering public property.**

Sec. 31115. The department may maintain gauges and sampling devices to measure stream flow, lake levels, and water quality as necessary to implement this part, and may enter at all reasonable times in or upon

any public property for the purpose of inspecting and investigating conditions relating to implementing this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31116 Preparation of river management plan; advice, assistance, and supervision by department.**

Sec. 31116. The department may cooperate and negotiate with any person in establishing and maintaining gauges and sampling devices to measure stream flow, lake levels, or water quality or in implementing any other provision of this part. When requested by a council or board, the department shall provide technical advice and assistance in the preparation of a river management plan of the district. A river management plan shall not be placed into effect until it has been approved by the department as conforming to the stated objectives of the petition. The department shall maintain supervision over the functioning of the district to the extent it considers necessary for the purpose of ensuring conformance with the plan in the public interest.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31117 Rules.**

Sec. 31117. The department shall promulgate rules to implement this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31118 Authority of department not affected by part.**

Sec. 31118. This part does not abridge the authority vested in the department by part 31. Permits granted by the department in accordance with part 35 are not affected by this part. The granting of future permits under part 35 shall proceed without regard to anything contained in this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31119 Director of public health; powers unaffected.**

Sec. 31119. The functions, powers, and duties of the director of public health as provided for by Act No. 98 of the Public Acts of 1913, being sections 325.201 to 325.214 of the Michigan Compiled Laws, shall remain unaffected by this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

## PART 312 WATERSHED ALLIANCES

### **324.31201 Definitions.**

Sec. 31201. As used in this part:

(a) "County agency" means an agency created or controlled by a county board of commissioners or a county executive, a board of county road commissioners, or an office of the county drain commissioner.

(b) "Member" means a municipality, county, county agency, public school district, public college or university, or other local or regional public agency that is a member of a watershed alliance as provided for in this part.

(c) "Watershed" means a geographic area in the state within which surface water drains into a common river, stream, or body of water.

(d) "Watershed alliance" means an organization established under section 31202.

(e) "Watershed management plan" means a written document prepared and approved by a watershed alliance that identifies water management issues and problems, proposes goals and objectives, and outlines actions to achieve the goals and objectives identified by members of a watershed alliance.

**History:** Add. 2004, Act 517, Imd. Eff. Jan. 3, 2005.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31202 Watershed alliance; establishment by municipalities; purpose; resolution; bylaws; voluntary membership.**

Sec. 31202. (1) Two or more municipalities, by resolution of their respective governing bodies, may establish a watershed alliance for the purpose of studying problems and planning and implementing activities designed to address surface water quality or water flow issues of mutual concern within the portion of a watershed located within their boundaries, including 1 or more of the following:

(a) Preparation of watershed management plans and other required documents as part of state or federal requirements to obtain water discharge permits or grant funding.

(b) Monitoring, sampling, and analyses of data necessary to manage the watershed, including, but not limited to, surface water quality, water quantity and flows, ecosystem health, recreational use, and the publication of results.

(c) Conducting public surveys, preparing and distributing informational and educational materials, and organizing activities involving the public.

(d) Designing and implementing projects and conducting activities to protect or enhance water quality and related beneficial uses, or manage flows to protect or reduce damage to riparian property and aquatic habitat.

(e) Designing and implementing other actions consistent with watershed management plans adopted by a watershed alliance, or required to protect public health, and maintain and restore beneficial public uses of the surface water resources of the watershed.

(2) A resolution under subsection (1) establishing a watershed alliance shall include bylaws that identify, at a minimum, all of the following:

(a) The structure of the organization and decision-making process.

(b) The geographic boundaries of the watershed.

(c) The municipalities, counties, county agencies, public school districts, and other local or regional public agencies eligible for membership in the watershed alliance as provided under subsection (3).

(d) The basis for assessing costs to members.

(e) A mechanism to be used for adoption of an annual budget to support projects and activities.

(3) A watershed alliance shall provide an equitable basis for all municipalities, counties, and county agencies within the geographic boundaries of the watershed to voluntarily join as members. In addition, at its discretion, the watershed alliance may authorize the voluntary membership of any local public school district, public college or university, or any other local or regional public agency that has water management responsibilities. Following establishment of a watershed alliance under subsection (1), by resolution of its governing body, a municipality, county, county agency, public school district, public college or university, or other local or regional public agency established under state law with surface water management responsibility may voluntarily join a watershed alliance as provided for in this subsection.

**History:** Add. 2004, Act 517, Imd. Eff. Jan. 3, 2005.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31203 Watershed alliance as body corporate; powers and authority.**

Sec. 31203. A watershed alliance is a body corporate with power to sue and be sued in any court of this state and with the authority to carry out its responsibilities under this part and as otherwise provided by law.

**History:** Add. 2004, Act 517, Imd. Eff. Jan. 3, 2005.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31204 Watershed alliance; powers and authority; report; assessment or collection of fees or taxes.**

Sec. 31204. (1) A watershed alliance, consistent with the purposes identified in section 31202 and its bylaws, may do 1 or more of the following:

(a) Employ personnel to coordinate and implement actions.

(b) Enter into agreements or contracts with public or private entities to coordinate or implement actions.

(c) Assess and collect fees from members with approval of the governing bodies of the members.

(d) Solicit grants, gifts, and contributions from federal, state, regional, or local public agencies and from private sources.

(e) Expend funds provided by members, or through grants, gifts, and contributions.



(f) Represent members of the watershed alliance before other bodies considering issues affecting water quality or flow management issues within the designated watershed, including obtaining local, state, or federal permits or authorizations that may be required to carry out activities as may be authorized by its members.

(2) A watershed alliance shall prepare and deliver to its members on or before April 1 of each year a report detailing the revenue received and expenditures by the watershed alliance during the immediately prior January 1 through December 31 period.

(3) A watershed alliance shall have no independent authority to assess or collect any fees or taxes directly from individuals or property owners. A watershed alliance member may allocate the use of public funds from fees, taxes, or assessments generated under the provisions of other state laws for use by a watershed alliance.

**History:** Add. 2004, Act 517, Imd. Eff. Jan. 3, 2005.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31205 Audit.**

Sec. 31205. (1) A watershed alliance shall obtain an audit of its financial records, accounts, and procedures at least every other year.

(2) A watershed alliance shall submit the results of an audit under subsection (1) to the governing bodies of its members and to the state treasurer.

(3) An audit under subsection (1) shall satisfy all audit requirements set under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a.

**History:** Add. 2004, Act 517, Imd. Eff. Jan. 3, 2005.

**Popular name:** NREPA

**Popular name:** Act 451

### **324.31206 Additional authority prohibited.**

Sec. 31206. This part does not provide a watershed alliance or any of its members with any additional authority not otherwise provided by law.

**History:** Add. 2004, Act 517, Imd. Eff. Jan. 3, 2005.

**Popular name:** Act 451

**Popular name:** NREPA

## PART 313 SURPLUS WATERS

### **324.31301 Definitions.**

Sec. 31301. As used in this part:

(a) "Board" means the county board of commissioners.

(b) "Dams" means dams, embankments, dikes, pumps, weirs, locks, gates, tubes, ditches, or any other devices or construction to impound or release water.

(c) "Local unit" means any city, village, township, or soil conservation district acting through its governing body.

(d) "Optimum flow" means that rate and quantity of flow in any stream as determined in accordance with this part.

(e) "Plan" means a plan adopted by the board or boards and approved by an order of the department for the best development, utilization, and conservation of the surplus water of the state.

(f) "Surplus water" means water that may be impounded without decreasing the flow of a river or stream below its optimum flow.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31302 Request for surveys; utilization of reports.**

Sec. 31302. Any board or group of boards or local unit or units acting singly or in concert may request the department to undertake a survey of the water in a river basin or watershed located or partially located in the county or counties or in the local unit or units of government to determine whether there is surplus water that may be available and, if so, how it may be best impounded, utilized, and conserved. All studies, surveys, and reports made by public and other competent authorities may be utilized by the department in making this

determination.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31303 Request for surveys; involvement of other boards.**

Sec. 31303. If it appears to the department, after a review of the request, that a feasible plan for the impoundment, utilization, and conservation of surplus water will involve the water in counties or local units other than those making the request, the department shall so inform the requestors. If the request was originally made by a local unit only, the board of the county in which the local unit is situated shall be informed of the decision of the department; and unless the board joins in the request and becomes an originator of the request, the department shall discontinue any further work on the survey. The requesting board may then request the other boards to join in the request so that a complete survey of the surplus water located in all affected counties may be made. Refusal on the part of any of the other boards to join in the request shall be reported to the department, and if the department believes that the plan can be effectuated without the cooperation of the refusing boards, the department shall enter a decision to that effect and the boards requesting the survey may proceed in accordance with this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31304 Request for surveys; determination of optimum flow; plan for improvement, utilization, and conservation of surplus water; factors; limitations.**

Sec. 31304. (1) Upon receipt of a request, the department shall determine the optimum flow for the rivers and streams that may be substantially affected by the impounding and releasing of surplus water and upon its completion shall require the boards to prepare and submit to the department a plan for the impoundment, best utilization, and conservation of the surplus water in accordance with this part. The department shall cooperate and collaborate with the boards in the preparation of the plan. The plan shall specify the persons who may make use of the water and the terms, conditions, and restrictions under which the water may be used.

(2) In making the determination of optimum flow and in preparing the plan, the department and boards shall consider the following factors:

(a) The range of stream flow variation.

(b) The uses that are being made of the water from the stream or that may be made in the foreseeable future by any riparian owner.

(c) The stream's waste assimilation capacity and its practical utility for domestic use, fish and wildlife habitat, recreation, municipal and industrial water supply, commercial and recreational navigation, including portages, public and private utilities, and water storage purposes.

(d) Other factors that appear to the department to be necessary to adequately protect and preserve the rights of riparians on the streams involved.

(3) A plan shall not permit the impounding of water if the flow is below the optimum flow. This part does not authorize the diversion of water from 1 watershed to another.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31305 Public hearing; determination of optimum flow; notice; order; review.**

Sec. 31305. (1) Before making a determination of optimum flow, the department shall hold a public hearing on the issue. The department shall set the time and place for the public hearing and shall publish notice of the hearing. The hearing shall be held not less than 180 days after the date of the first publication. The notice shall be published once during each of 2 separate weeks in at least 1 newspaper of general circulation in each county that requested the survey or later joined in the survey. Notice shall be given by first-class mail to each owner or party in interest of upper and lower riparian property that will be affected by the determination and whose name appears upon the most recent local tax assessment records. The notice shall be mailed at least 60 days prior to the date of the hearing to the address shown on the tax records. At the hearing, any interested person may appear, present witnesses, and submit evidence.

(2) Upon the completion of the public hearing pursuant to subsection (1), the department, if it believes it to further the public interest, shall enter an order making a determination of optimum flow. The order shall become final 30 days after the mailing of a copy of it by certified mail to those interested persons who

appeared and testified or filed a written statement at the hearing. The order is subject to review as to questions of law only by a writ of superintending control in an action in the nature of certiorari brought before the order becomes final. Only an owner or party in interest of upper or lower riparian property affected by the order who appeared, testified, or filed a written statement at the hearing, who considers himself or herself aggrieved by the order, has the right to file a petition for a writ of superintending control in the nature of certiorari in the circuit court for the county of Ingham or in the circuit court for any county that requested the survey or joined in the survey.

(3) After the order of determination becomes final, the department shall hold a public hearing on the proposed plan as submitted by the board. The department shall set the time and place for the public hearing and shall publish notice in the manner provided in subsection (1). The hearing shall be held not less than 30 days after the date of the first publication. Notice shall be given by first-class mail to the persons and in the manner provided in subsection (1) and shall be mailed at least 30 days prior to the date of the hearing. At the hearing, any interested person may appear, present witnesses, and submit evidence. If the department finds that the proposed plan is in the public interest and in compliance with this part, it shall enter an order approving the plan. The order shall become final 30 days after the mailing of a copy of it by certified mail to those interested persons who appeared and testified or filed a written statement at the hearing. The order is subject to review as is provided in subsection (2).

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.31306 Transmission of plans to boards; adoption; dams; supervision.**

Sec. 31306. (1) When the order has become final, the department shall transmit the plan to all of the boards involved, and, if the plan is adopted by the boards involved, the boards may construct, operate, and maintain, either singly or jointly, the dams necessary to impound the surplus waters and to make use or disposition of the surplus water in accordance with the plan. The department shall maintain supervision over the execution of the plan to the extent it considers necessary to protect the public interest of the state.

(2) For the implementation and effectuation of the plan, the boards, either singly or jointly, may establish a governmental agency or commission as may be necessary, may hire employees or assistants as may be required, and may enter into contracts with each other and any person as may be necessary to implement this part. The boards constructing, maintaining, or operating the dams shall be responsible for the proper construction, maintenance, and operation of the dams, and they shall be in full and complete charge of the dams and of the impoundments created by the dams.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.31307 Gifts and grants; buying, selling, exchanging, or condemning land; restrictions on financing dams.**

Sec. 31307. For the purpose of implementing this part, the boards may receive and accept in the name of the county gifts and grants of land and other property and grants-in-aid from any person, and may buy, sell, exchange, or condemn land and other property or property interests, including the rights of riparian owners to surplus waters, in any county where the land and property are located. The department, if direct acceptance by the boards is not possible, may accept the gifts or grants on their behalf. The boards shall not use any money of the county to implement the terms and provisions of this part, but shall finance the construction, operation, and maintenance of the dams wholly and solely from gifts or grants-in-aid that may be received and from fees and charges as may be made for the use of the surplus water.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.31308 Gifts and grants-in-aid; acceptance by department.**

Sec. 31308. The department, in carrying out the purposes of this part, may receive and accept on behalf of the state gifts and grants-in-aid from any person.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31309 Use of increased flowage; waste assimilation; rates for usage.**

Sec. 31309. All increased flowage resulting from operation of a plan shall be available for nonconsumptive use to all riparians. A person shall not utilize for waste assimilation, or divert from the stream, any surplus water created by release from dams operated under this part, except in accordance with the plan. The amount of surplus water released from any impoundment shall be determined by the department by the use of well-recognized engineering computations. The boards may charge users of the surplus water for waste assimilation or consumptive use, except those making an incidental, noncommercial, or recreational use, a reasonable fee or rate for the quantity of water or for the benefits they receive. Those users who contribute to the construction, maintenance, or operation of the dams may be charged a reduced fee or no fee, but the fees and rates charged by the boards shall be sufficient at all times to defray all costs, expenses, and other financial burdens assumed by the boards in the construction, maintenance, and operation of the dams.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31310 Permits granted by department not affected by part.**

Sec. 31310. This part does not abridge the authority of the department as it presently exists. Permits granted by the department in accordance with part 35 are not affected by this part. The granting of future permits under part 35 shall proceed without regard to anything contained in this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31311 Rules.**

Sec. 31311. The department shall promulgate rules to implement this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31312 Redetermination of optimum flow; modification of plan; hearings.**

Sec. 31312. After a determination or plan has been in effect for 5 years, any riparian owner may petition the department for a redetermination of the optimum flow or modification of the plan, and upon a showing of substantial changes in conditions, the department shall hold hearings as provided in section 31305 and may redetermine the optimum flow or modify the plan.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31313 Violation as misdemeanor.**

Sec. 31313. Any person knowingly violating this part, or any rule promulgated under this part, or any written order of the department in pursuance of this part, is guilty of a misdemeanor.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31314 Applicability of part to river management districts.**

Sec. 31314. This part does not apply within the boundaries of any river management district created under part 311.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

## PART 315 DAM SAFETY

### **324.31501 Meanings of words and phrases.**

Sec. 31501. For purposes of this part, the words and phrases defined in sections 31502 to 31505 have the

meanings ascribed to them in those sections.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31502 Definitions; A to D.**

Sec. 31502. (1) "Abandonment" means an affirmative act on the part of an owner to discontinue maintenance or operation of a dam.

(2) "Administrative procedures act of 1969" means Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(3) "Alteration" means a change in the design of an existing dam that directly affects or may directly affect the structural integrity of a dam.

(4) "Appurtenant works" means the structure or machinery incident to or annexed to a dam that is built to operate and maintain a dam, including spillways, either in a dam or separate from the dam; low level outlet works; and water conduits such as tunnels, pipelines, or penstocks, located either through the dam or through the abutments of the dam.

(5) "Auxiliary spillway" means a secondary spillway which is operational at all times and does not require stoplog removal or gate manipulation.

(6) "Dam" means an artificial barrier, including dikes, embankments, and appurtenant works, that impounds, diverts, or is designed to impound or divert water or a combination of water and any other liquid or material in the water; that is or will be when complete 6 feet or more in height; and that has or will have an impounding capacity at design flood elevation of 5 surface acres or more. Dam does not include a storage or processing tank or standpipe constructed of steel or concrete, a roadway embankment not designed to impound water, or a dug pond where there is no impoundment of water or waste materials containing water at levels above adjacent natural grade levels.

(7) "Days" means calendar days, including Sundays and holidays.

(8) "Design flood" means the design flow rate for spillway capacity and dam height design.

(9) "Design flood elevation" means the maximum flood elevation that is considered in the design of the spillway capacity and freeboard for a dam.

(10) "Downstream toe elevation" means the elevation of the lowest point of intersection between the downstream slope of an earthen embankment and the natural ground.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31503 Definitions; E to H.**

Sec. 31503. (1) "Emergency action plan" means a plan developed by the owner that establishes procedures for notification of the department, public off-site authorities, and other agencies of the emergency actions to be taken prior to and following an impending or actual failure of a dam.

(2) "Enlargement" means any change in or addition to an existing dam which raises or may raise the design flood elevation of the water impounded by the dam.

(3) "Failed dam" means a dam not capable of impounding water at its intended level due to a structural deficiency.

(4) "Failure" means an incident resulting in an unplanned or uncontrolled release of water from a dam.

(5) "Flood of record" means the greatest flow rate determined by the department to have occurred at a particular location.

(6) "Freeboard" means the vertical distance between the design flood elevation and the lowest point of the top of the dam.

(7) "Half probable maximum flood" means the largest flood that may reasonably occur over a watershed, and is derived from the combination of hydrologic runoff parameters and the half probable maximum storm that produces the maximum runoff.

(8) "Half probable maximum storm" means the spatial and temporal distribution of the probable maximum precipitation, divided by 2, that produces the maximum volume of precipitation over a watershed.

(9) "Hazard potential classification" means a reference to the potential for loss of life, property damage, and environmental damage in the area downstream of a dam in the event of failure of the dam or appurtenant works.

(10) "Height" means the difference in elevation measured vertically between the natural bed of a stream or watercourse 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.

(11) "High hazard potential dam" means a dam located in an area where a failure may cause serious damage to inhabited homes, agricultural buildings, campgrounds, recreational facilities, industrial or commercial buildings, public utilities, main highways, or class I carrier railroads, or where environmental degradation would be significant, or where danger to individuals exists with the potential for loss of life.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31504 Definitions; I to P.**

Sec. 31504. (1) "Impoundment" means the water held back by a dam.

(2) "Low hazard potential dam" means a dam located in an area where failure may cause damage limited to agriculture, uninhabited buildings, structures, or township or county roads, where environmental degradation would be minimal, and where danger to individuals is slight or nonexistent.

(3) "Maintenance" means the upkeep of a dam and its appurtenant works but does not include alterations or repairs.

(4) "One-hundred year flood" means a flood that has a 1% chance of being equaled or exceeded in any given year.

(5) "Owner" means a person who owns, leases, controls, operates, maintains, manages, or proposes to construct a dam.

(6) "Probable maximum precipitation" means the theoretically greatest depth of precipitation for a given duration that is physically possible over a given size storm area at a particular geographic location at a certain time of year.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31505 Definitions; R to T.**

Sec. 31505. (1) "Removal" means the physical elimination of a dam or impoundment.

(2) "Repair" means to substantially restore a dam to its original condition and includes only such restoration as may directly affect the structural integrity of the dam.

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

(4) "Riparian rights" means rights which accrue by operation of law to a landowner on the banks of an inland lake or stream.

(5) "Significant hazard potential dam" means a dam located in an area where its failure may cause damage limited to isolated inhabited homes, agricultural buildings, structures, secondary highways, short line railroads, or public utilities, where environmental degradation may be significant, or where danger to individuals exists.

(6) "Spillway" means a waterway in or about a dam designed for the discharge of water.

(7) "Spillway capacity" means the maximum rate of discharge that will pass through a spillway at design flood elevation.

(8) "Two-hundred year flood" means a flood that has a 0.5% chance of being equaled or exceeded in any given year.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31506 Jurisdiction of dams and impoundments; exemptions.**

Sec. 31506. (1) Except as otherwise provided in subsections (2) and (3), dams and impoundments in the state are under the jurisdiction of the department.

(2) The following are exempt from this part:

(a) Projects licensed, projects that have preliminary permits, or projects for which an application for licensure has been filed under the federal power act, chapter 285, 41 Stat. 1063, 16 U.S.C. 791a to 793, 796 to 797, 798 to 818, 820 to 824a, and 824b to 825r, if federal dam safety inspection provisions apply during the license period and the inspection reports are provided to the department.

(b) Projects located on boundary waters under the jurisdiction and supervision of the United States army corps of engineers.

(c) Impoundments licensed pursuant to part 115 that contain or are designed to contain type III wastes as defined in rules promulgated under that part.

(3) Until January 1, 1998, a permit shall not be required under this part for the repair, reconstruction, or improvement of a dam, a portion of which is at least 75 years old, was damaged or destroyed by an act of God and is located in a county that has a per capita income of less than \$8,500.00. However, a person who is performing a project for the repair, reconstruction, or improvement of a dam that is exempt from obtaining a permit under this subsection shall submit to the department and the joint capital outlay committee plans and specifications for the project. These plans and specifications shall be prepared by a licensed professional engineer and shall meet acceptable standards in the industry in order for a dam to be repaired, reconstructed, or improved. In reviewing plans and specifications for the project, the joint capital outlay committee may recommend environmental considerations to protect water quality such as underspill devices, minimum flow releases and removal of contaminated sediments that may be resuspended in the water column upon impoundment. Such contaminated sediments shall be disposed of in accordance with state law.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1995, Act 100, Imd. Eff. June 22, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31507 Prohibited conduct; exception.**

Sec. 31507. (1) A person shall not construct, enlarge, repair, reconstruct, alter, remove, or abandon any dam except in a manner provided for in this part.

(2) This section does not apply to maintenance performed on a dam that does not affect the structural integrity of the dam.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31508 Preparation of plans and specifications; licensed professional engineer required; exceptions.**

Sec. 31508. (1) Except as otherwise provided in subsection (2), a licensed professional engineer shall prepare all plans and specifications, except for minor projects undertaken pursuant to section 31513.

(2) A person who is not a licensed professional engineer may prepare plans and specifications only for repairs or alterations to a dam where the application is made by a nonprofit organization under the following circumstances:

(a) The nonprofit organization has assets of less than \$30,000.00, is exempt from taxation under section 501(c)(3) of the internal revenue code of 1986, 26 U.S.C. 501, and is not composed primarily of the owners of property adjacent to or contiguous to an impoundment.

(b) The proposed repairs or alterations have a projected total cost of less than \$25,000.00.

(c) The impoundment is open to the public and a notice of public access is posted.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31509 Activities requiring permit; application for permit; fees; waiver and disposition of fees.**

Sec. 31509. (1) Except as otherwise provided in this part or as authorized by a permit issued by the department pursuant to part 13, a person shall not undertake any of the following activities:

(a) Construction of a new dam.

(b) Enlargement of a dam or an impoundment.

(c) Repair of a dam.

(d) Alteration of a dam.

(e) Removal of a dam.

(f) Abandonment of a dam.

(g) Reconstruction of a failed dam.

(2) An application for a permit shall include information that the department determines is necessary for the administration of this part. If a project includes activities at multiple locations, 1 application may be filed for the combined activities.

(3) An application for a permit for construction of a new dam, reconstruction of a failed dam, or

enlargement of a dam shall be accompanied by the following fees:

- (a) For a dam with a height of 6 feet or more but less than 10 feet, \$500.00.
- (b) For a dam with a height of 10 feet or more but less than 20 feet, \$1,000.00.
- (c) For a dam with a height of 20 feet or more, \$3,000.00.

(4) An application for a permit for the repair, alteration, removal, or abandonment of a dam shall be accompanied by a fee of \$200.00, and an application for a permit for a minor project pursuant to section 31513(1) shall be accompanied by a fee of \$100.00.

(5) The department shall waive the fees under this section for applications from state agencies, department sponsored projects located on public lands, and organizations of the type described in section 31508(2)(a) through (c).

(6) The department shall forward fees collected under this section to the state treasurer for deposit in the land and water management permit fee fund created in section 30113.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31510 Request for notification of pending applications for permits; annual fee; biweekly list of applications; copies; contents.**

Sec. 31510. (1) A person who wants to be notified of pending applications for permits issued under this part may make a written request to the department, accompanied by an annual fee of \$25.00. The fee shall be deposited in the state treasury and credited to the general fund.

(2) The department shall prepare a biweekly list of the applications made during the previous biweekly period and shall promptly mail copies of the list for the remainder of the calendar year to the persons who have requested notice and paid the fee under this section.

(3) The biweekly 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.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31511 Copies of application and statement; submission; public hearing; notice.**

Sec. 31511. (1) Upon receipt of an application for a permit under this part, the department shall submit copies of the application accompanied by a statement indicating that the department may act upon the application without a public hearing unless a written request is filed with the department within 20 days after the submission for review. The department shall submit copies of the application to all of the following:

- (a) The local unit of government where the project is to be located.
- (b) The adjacent riparian owners.
- (c) Any person considered appropriate by the department.
- (d) Any person who requests copies.
- (e) A watershed council, organized pursuant to part 311, of the watershed within which the project is located or is to be located.

(2) The department may hold a public hearing upon the written request of any of the following:

- (a) An applicant.
- (b) A riparian owner.
- (c) A person or local unit of government that is entitled to receive a copy of the application pursuant to subsection (1).

(3) A public hearing held pursuant to this section shall be held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the hearing shall be given in the manner provided by that act. Additionally, the department shall mail copies of the public notice to the persons who have requested the biweekly list pursuant to section 31510, the person requesting the hearing, and the persons and local units of government that are entitled to receive a copy of the application pursuant to subsection (1).

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31512 Necessity for immediate action; emergency conditions; application for permit to**



**reconstruct failed dam.**

Sec. 31512. (1) When immediate action is necessary to protect the structural integrity of a dam, the department may issue a permit before the expiration of the 20-day period referred to in section 31511(1). This subsection does not prohibit an owner from taking action necessary to mitigate emergency conditions if imminent danger of failure exists.

(2) A person applying for a permit to reconstruct a failed dam shall file a complete application not less than 1 year after the date of the failure. If such an application is filed more than 1 year after the date of the failure, the department shall consider the application to be an application to construct a new dam.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

**324.31513 Minor project categories; rules.**

Sec. 31513. (1) The department shall promulgate rules to establish minor project categories for alterations and repairs that have minimal effect on the structural integrity of a dam. The department may act upon an application and grant a permit for an activity or project within a minor project category, after an on-site inspection of the dam, without providing public notice.

(2) All other provisions of this part shall be applicable to minor projects, except that a final inspection by the department or certification of the project by a licensed professional engineer shall not be required for a project completed under a permit granted pursuant to subsection (1).

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.31514 Effect of proposed activity on public health, safety, welfare, property, or natural resources.**

Sec. 31514. The department shall not issue a permit to construct a new dam, reconstruct a failed dam for which a complete application to reconstruct has been submitted more than 1 year after the date of the failure, or enlarge the surface area of an impoundment by more than 10% unless it determines, after a review of the application submitted, that the proposed activity for which a permit is requested will not have a significant adverse effect on public health, safety, welfare, property, or natural resources or the public trust in those natural resources.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.31515 Approval of plans and specifications; completion of permitted activity; time; extension; approval of changes; duration and renewal of permit; terms and conditions; mitigating measures; recommendations; performance bond; suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of permit; hearings.**

Sec. 31515. (1) Except as otherwise provided in this section, a permit issued by the department under this part shall require that plans and specifications be approved by the department before construction begins. The department shall approve or reject complete plans and specifications within 60 days after their receipt. The permitted activity shall be completed within a specified time not to exceed 2 years after the date of issuance of the permit. Upon the written application of the permittee, and for good cause shown, the department may extend the time for completing construction. The permittee shall notify the department at least 10 days before beginning construction and shall otherwise notify the department as the department may require.

(2) A change in approved plans and specifications shall not be implemented unless the department gives its prior approval. The department shall approve or reject changes in plans and specifications within 30 days after the request for the changes.

(3) A permit is effective for the length of time specified in the permit unless it is revoked pursuant to this part. The department may renew a permit.

(4) A permit to alter, repair, or construct a new dam, reconstruct a failed dam, or enlarge the surface area of an impoundment by more than 10% may specify the terms and conditions including, but not limited to, requirements for minimum flows, cold water release, impoundment fluctuations, portage, contingency plans, and conditions under which the work is to be performed. The terms and conditions of a permit shall be effective for the life of the project. The department may consider, in issuing a permit, any mitigating measures

in conjunction with the permitted activities and may make recommendations as to fish passage that may be required by part 483.

(5) A permit to construct a new dam or reconstruct a failed dam may require a performance bond to assure completion of the project or to provide for complete or partial restoration of the project site, as determined by the department in rules promulgated by the department.

(6) A permit may be suspended, revoked, annulled, withdrawn, recalled, canceled, or amended after a hearing for a violation of any of its provisions, a violation of this part, a violation of a rule promulgated under this part, or any misrepresentation contained in the application. Hearings shall be conducted by the department in accordance with the provisions for contested cases in the administrative procedures act of 1969.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31516 Spillway capacity; minimum criteria; freeboard; auxiliary spillway; duty of owner.**

Sec. 31516. (1) Spillway capacity shall meet the following minimum criteria:

(a) Low hazard potential dams shall be capable of passing the 100-year flood, or the flood of record, whichever is greater.

(b) Significant hazard potential dams shall be capable of passing the 200-year flood, or the flood of record, whichever is greater.

(c) High hazard potential dams, less than 40 feet in height, as measured from the 200-year design flood elevation to the lowest downstream toe elevation, shall be capable of passing the 200-year flood, or the flood of record, whichever is greater.

(d) High hazard potential dams, 40 feet or greater in height, as measured from the 200-year design flood elevation to the lowest downstream toe elevation, shall be capable of passing the half probable maximum flood. The half probable maximum flood criterion may be reduced to not less than the 200-year flood, with proper documentation evidencing a failure of a dam under half probable maximum flood conditions will not cause additional flood damage or loss of life.

(e) Spillway design capacity shall not be less than the flood of record.

(2) Freeboard shall be considered when determining spillway capacity.

(3) If a dam cannot pass the design flood, an auxiliary spillway must be provided. The owner must document, to the satisfaction of the department, that the dam has sufficient spillway capacity, and that proper means are available to operate the spillway or spillways during the design flood.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31517 Duties of owner; inspection; notice of final approval; notice of project not completed in accordance with plans, specifications, or conditions; enforcement action.**

Sec. 31517. (1) Except for minor projects authorized pursuant to section 31513, the owner shall do both of the following:

(a) Within 10 days after the completion of a new, reconstructed, enlarged, repaired, or altered dam, notify the department of its completion.

(b) Within 20 days after submitting the notice of completion, file with the department as-built plans and a statement signed by a licensed professional engineer certifying that the project was constructed in conformance with plans and specifications approved by the department.

(2) The department shall inspect the project and shall provide the owner with written notice of final approval if the project is determined to have been completed in accordance with approved plans, specifications, and permit conditions.

(3) If the project is determined not to be completed in accordance with plans and specifications approved by the department and permit conditions, the department shall provide notice to the permittee as to the specific reasons the department determines the project not to be completed in accordance with those plans, specifications, or conditions. The department may then take enforcement action as provided in this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31518 Inspection reports; determination of hazard potential classification; inspection**

**schedule; notice; additional inspection reports; contents of inspection report; visual inspection and report; detailed investigation or evaluation; life or property threatened by breach of dam; cause of action; ordering actions to alleviate danger.**

Sec. 31518. (1) An owner shall submit to the department inspection reports prepared by a licensed professional engineer that evaluate the condition of the dam. The inspection report shall be submitted as follows:

- (a) Not less than once every 3 years for high hazard potential dams.
- (b) Not less than once every 4 years for significant hazard potential dams.
- (c) Not less than once every 5 years for low hazard potential dams.

(2) The department shall determine the hazard potential classification of all dams and shall establish an inspection schedule. The inspection schedule shall require annual submission of inspection reports for approximately 1/3 of all high hazard potential dams, 1/4 of all significant hazard potential dams, and 1/5 of all low hazard potential dams. The department shall notify owners in writing when inspection reports are due. The department may order additional inspection reports following an event or change in condition that could threaten a dam.

(3) An inspection report required by this section shall include, at a minimum, all of the following:

- (a) An evaluation of the dam's condition, spillway capacity, operational adequacy, and structural integrity.
- (b) A determination of whether deficiencies exist that could lead to the failure of the dam.
- (c) Recommendations for maintenance, repair, and alterations of a dam as are necessary to eliminate any deficiencies.

(4) Instead of engaging a licensed professional engineer to prepare an inspection report, local units of government or an organization of the type described in section 31508(2)(a) through (c) may request the department to conduct a visual inspection of a dam owned by that local unit of government and prepare a report on the condition of the dam in accordance with subsection (3). The department shall notify a requesting local unit of government as to when the inspection is to occur.

(5) If an inspection report discloses the need for a more detailed investigation or evaluation of certain dam features for the purpose of determining the condition of the dam, the department may order the completion and submission of that detailed investigation or evaluation at the expense of the owner. An investigation or evaluation required under this subsection shall be conducted under the supervision of a licensed professional engineer.

(6) If an owner does not submit an inspection report as required by subsection (1) or conduct additional investigations if required by subsection (5), the department or any person who would have life or property threatened by a breach of the dam may have a report prepared and recover the costs of preparing the report in a civil action commenced in a court of competent jurisdiction. This subsection does not limit the right of any person to bring a cause of action in a court of proper jurisdiction to compel an owner to comply with the requirements of this part.

(7) If, based on the findings and recommendations of the inspection report and an inspection by the department, the department finds that a condition exists which endangers a dam, it shall order the owner to take actions that the department considers necessary to alleviate the danger.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.31519 Order to limit dam operations; order to remove dam; hearing.**

Sec. 31519. (1) Where significant damage to the public health, safety, welfare, property, and natural resources or the public trust in those natural resources or damage to persons or property occurs or is anticipated to occur due to the operation of a dam, the department may order the owner to limit dam operations. These orders may include, but are not limited to, cold water release, minimum flow releases from dams, impoundment fluctuation restrictions, or requirements for run-of-the-river operation. In issuing these orders, the department shall take into account social, economic, and public trust values.

(2) Where significant damage to persons, property, or natural resources or the public trust in those natural resources occurs as a result of the condition or existence of a dam, the department may order the removal of the dam following a determination by the department that, due to the continued condition or existence of the dam, the dam is likely to continue to cause significant damage. In issuing a removal order, the department shall take into account social and economic values, the natural resources, and the public trust in those natural resources and shall not issue a removal order when those factors exceed adverse impacts on natural resources or present danger to persons or property. The department shall not issue a removal order involving a dam

subject to the regulatory authority of the Michigan public service commission or the federal energy regulatory commission unless that commission has concurred in writing with the order.

(3) Prior to finalizing an order under this section, the department shall provide an owner an opportunity for a hearing pursuant to the administrative procedures act of 1969.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31520 Sudden or unprecedented flood; unusual or alarming circumstance or occurrence; emergency drawdowns, repairs, breaching, or other action; notice.**

Sec. 31520. (1) The owner or his or her agent shall advise the department and the affected off-site public authorities and safety agencies of any sudden or unprecedented flood or unusual or alarming circumstance or occurrence existing or anticipated that may affect the safety of the dam within 24 hours of the flood, circumstance, or occurrence.

(2) The owner shall notify the department as soon as possible of any necessary emergency drawdowns, repairs, breaching, or other action being taken in response to an emergency condition.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31521 Emergency orders.**

Sec. 31521. (1) The department may issue emergency orders as provided in this section. The department may, by written notice, order an owner to immediately repair, draw down, breach, or cease operation of a dam where a dam is in imminent danger of failure and is causing or threatening to cause harm to public health, safety, welfare, property, or the natural resources or the public trust in those natural resources. If an owner fails to comply with an order, or is unavailable or unable to be contacted, then the department may undertake immediate repair, drawdown, breaching, or cessation of operation, as may be necessary to alleviate the danger, and may recover from the owner the costs incurred in a civil action commenced in a court of competent jurisdiction. The department may terminate an emergency order upon a determination in writing that all necessary emergency actions have been complied with by the owner and that an emergency no longer exists.

(2) When ordering emergency actions under subsection (1), the department may specify maximum drawdown level and discharge rates and require sediment surveys, water quality sampling, monitoring, or any other action determined necessary by the department to ensure adequate protection of the public health, safety, welfare, property, or natural resources or the public trust in those natural resources. The department may modify the requirements of an emergency order if, during the conduct of ordered actions, it determines that the modification is necessary to protect the public health, safety, welfare, property, or natural resources or the public trust in those natural resources.

(3) Upon the issuance of an emergency order, the department shall provide the owner with an opportunity for a hearing pursuant to the administrative procedures act of 1969 within 15 days of the date of its issuance. At the hearing, the department shall determine, based on information and fact, if the emergency order shall be continued, modified, or suspended as necessary to protect public health, safety, welfare, property, or natural resources or the public trust in those natural resources.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31522 Structural integrity and operation of dam; investigations and studies.**

Sec. 31522. The department may make, or cause to be made, hydrologic or other investigations and studies as may be required to facilitate its decisions regarding the structural integrity and operation of a dam.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31523 Emergency action plans; submissions; review; consistency with other plans; contents of plans.**

Sec. 31523. (1) An owner shall prepare, and keep current, emergency action plans for all high and significant hazard potential dams owned by that person.

(2) Emergency action plans shall be submitted to the department.

(3) The applicable county or local emergency management coordinators shall review for consistency emergency action plans with the county or local emergency operations plan prior to submission of those plans to the department.

(4) An emergency action plan shall be consistent with the applicable provisions of the affected county or local emergency operations plans and the Michigan emergency preparedness plan as developed pursuant to the emergency preparedness act, Act No. 390 of the Public Acts of 1976, being sections 30.401 to 30.420 of the Michigan Compiled Laws.

(5) Emergency action plans shall include, but not be limited to, the name, address, and telephone number of the person, and of an alternate person, responsible for operation of the dam; the name and telephone number of local emergency management coordinators; and a listing of occupied facilities, buildings, and residences that may be threatened with flooding due to a failure of the dam.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31524 Violation; order; suspension, modification, or revocation of permit; remedies cumulative; civil action.**

Sec. 31524. (1) If the department determines that a person is in violation of this part, a rule promulgated under this part, or a condition set forth in a permit issued under this part, the department may issue an order requiring the person to comply with the conditions or to restore the site affected by the violation as nearly as practicable to its original condition. Restoration may include, but is not limited to, removing fill material deposited or replacing soil, sand, or minerals.

(2) An order shall state the nature of the violation and the required remedial action, and shall specify a time for compliance that the department determines is reasonable, taking into account the seriousness of the violation and the nature of any threat to public health, safety, welfare, property, or natural resources, or the public trust in those natural resources, that may be involved.

(3) If the department determines that a person is in violation of this part, a rule promulgated under this part, an order issued by the department, or a permit, the department, after notice and opportunity for hearing pursuant to the administrative procedures act of 1969, may suspend, modify, or revoke a permit. The remedies under this section and section 31525 are cumulative and do not prevent the department from imposing other penalties available under this part, a rule promulgated under this part, or an order of the department.

(4) If the department determines that a person is in violation of this part, a rule promulgated under this part, an order issued by the department pursuant to this part, or a permit issued pursuant to this part, the department may bring a civil action in the circuit court.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31525 Commencement of civil action; request; place; civil fine; contempt; willful or reckless violation as misdemeanor; penalty; subsequent violations; fine for failure to obtain permit; restoration of site; schedule of administrative monetary penalties for minor violations.**

Sec. 31525. (1) The attorney general may commence a civil action for appropriate relief, including injunctive relief, upon request of the department under section 31524.

(2) Any civil action under this section may be brought in the circuit court for the county of Ingham or for the county in which the dam is located.

(3) In addition to any other relief granted under this section, the court may impose a civil fine of not more than \$10,000.00 for each day of violation of this part, a rule promulgated under this part, or a permit issued under this part.

(4) A person found guilty of contempt of court for the violation of an order of the court shall be subject to a civil fine not to exceed \$10,000.00 for each day of violation.

(5) A person who willfully or recklessly violates this part, a rule promulgated under this part, an order issued by the department, or a condition in a permit issued under this part, which violation places or may place a person in imminent danger of death or serious bodily injury or may cause serious property damage or serious damage to natural resources, or a person who has knowledge of or is responsible for such a violation, is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or a fine of not less than

\$2,500.00 or more than \$25,000.00 for each day of violation, or both. A person who violates this section a second or subsequent time is guilty of a felony, punishable by imprisonment for not more than 2 years or a fine of not less than \$10,000.00 for each day of violation, or both.

(6) A person required to obtain a permit for activity regulated under this part who does not obtain that permit shall be fined not less than twice the fee charged for the appropriate permit application.

(7) In addition to the orders of compliance and penalties provided under this part, the court may order a person who violates this part, a rule promulgated under this part, or a permit issued under this part to restore the site affected by the violation as nearly as practicable to its original condition. Restoration may include, but is not limited to, removing fill material deposited or replacing soil, sand, or minerals.

(8) The department may establish, by rule, a schedule of administrative monetary penalties for minor violations of this part, a rule promulgated under this part, a permit issued pursuant to this part, or an order issued by the department pursuant to this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31526 Person aggrieved by action or inaction of department; hearing; determination; judicial review.**

Sec. 31526. (1) A person aggrieved by any action or inaction of the department under this part or rules promulgated under this part may request a hearing on the matter involved. The hearing shall be conducted by the department in accordance with the provisions for contested cases in the administrative procedures act of 1969.

(2) A determination of action or inaction by the department following the hearing may be subject to judicial review as provided in the administrative procedures act of 1969.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31527 Entering private or public property; time; purpose.**

Sec. 31527. The department may enter in or upon any private or public property anytime where the public safety may be in danger and at all reasonable times, after attempting to contact the owner before entering the site and having shown proper identification, for the purpose of inspecting or investigating conditions relating to the construction, operation, or safety of a dam and for the purpose of determining compliance with the terms, conditions, and requirements of permits, orders, or notices of approval issued under this part and rules promulgated under this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31528 Rules.**

Sec. 31528. The department shall promulgate rules as necessary to implement and enforce this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31529 Construction of part.**

Sec. 31529. (1) This part does not abrogate requirements of parts 31, 91, 301, 303, 305, 307, and 483 or other applicable law.

(2) This part does not relieve an owner of any legal duty, obligation, or liability incident to the ownership or operation of a dam or impoundment.

(3) This part does not deprive an owner of any legal remedy to which he or she may be entitled under the laws of this state.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

## PART 317

## AQUIFER PROTECTION AND DISPUTE RESOLUTION

### 324.31701 Definitions.

Sec. 31701. As used in this part:

(a) "Agricultural well" means a high-capacity well that is located on a farm and is used for an agricultural purpose as that term is defined in section 32701.

(b) "Complaint" means a complaint submitted under section 31702 alleging a potential groundwater dispute.

(c) "Construction" means the process of building a building, road, utility, or another structure, including all of the following:

(i) Assembling materials.

(ii) Disassembling and removing a structure.

(iii) Preparing the construction site.

(iv) Work related to any of the items described in subparagraphs (i) to (iii).

(d) "Department" means the department of environmental quality.

(e) "Dewatering well" means a well or pump that is used to remove water from a mining operation or that is used for a limited time period as part of a construction project to remove or pump water from a surface or subsurface area and ceases to be used upon completion of the construction project or shortly after completion of the construction project.

(f) "Director" means the director of the department or his or her designee.

(g) "Farm" means that term as it is defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(h) "Fund" means the aquifer protection revolving fund created in section 31710.

(i) "Groundwater" means the water in the zone of saturation that fills all of the pore spaces of the subsurface geologic material.

(j) "Groundwater dispute" means a groundwater dispute declared by order of the director or the director of the department of agriculture and rural development under section 31703.

(k) "High-capacity well" means 1 or more water wells associated with an industrial or processing facility, an irrigation facility, or a farm that, in the aggregate from all sources and by all methods, have the capability of withdrawing 100,000 or more gallons of groundwater in 1 day.

(l) "Local health department" means that term as it is defined in section 1105 of the public health code, 1978 PA 368, MCL 333.1105.

(m) "Owner of a high-capacity well" means the person that owns or controls the parcel of property where a high-capacity well is located.

(n) "Owner of a small-quantity well" means the person that owns or controls the parcel of property where a small-capacity well is located.

(o) "Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity.

(p) "Potable water" means water that at the point of use is acceptable for human consumption.

(q) "Small-quantity well" means 1 or more water wells of a person at the same location that, in the aggregate from all sources and by all methods, do not have the capability of withdrawing 100,000 or more gallons of groundwater in 1 day.

(r) "Water well" means an opening in the surface of the earth, however constructed, that is used for the purpose of withdrawing groundwater. Water well does not include a drain as defined in section 3 of the drain code of 1956, 1956 PA 40, MCL 280.3.

(s) "Well drilling contractor" means a well drilling contractor registered under part 127 of the public health code, 1978 PA 368, MCL 333.12701 to 333.12771.

**History:** Add. 2012, Act 602, Imd. Eff. Jan. 9, 2013;—Am. 2013, Act 86, Imd. Eff. June 28, 2013.

**Compiler's note:** Former MCL 324.31701, which pertained to definitions used in part, was repealed by Act 176 of 2009, Imd. Eff. Dec. 15, 2009.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31702 Allegation of potential groundwater dispute; submission of complaint by small-quantity well owner; investigation; on-site evaluation; inability to resolve complaint; toll-free facsimile and telephone line; duties of director of department of environmental quality and director of department of agriculture and rural development; unverified complaints; other resolutions.**

Sec. 31702. (1) The owner of a small-quantity well may submit a complaint alleging a potential groundwater dispute if the small-quantity well has failed to furnish the well's normal supply of water or the well has failed to furnish potable water and the owner has credible reason to believe that the well's problems have been caused by a high-capacity well. A complaint shall be submitted to the director or to the director of the department of agriculture and rural development if the complaint involves an agricultural well. The complaint shall be in writing and shall be submitted in person, via certified mail, via the toll-free facsimile telephone number provided in subsection (6), or via other means of electronic submittal as developed by the department. However, the director or the director of the department of agriculture and rural development may refuse to accept an unreasonable complaint. The complaint shall include all of the following information:

(a) The name, address, and telephone number of the owner of the small-quantity well.

(b) The location of the small-quantity well, including the county, township, township section, and address of the property on which the small-quantity well is situated, and all other available information that indicates the location of that well.

(c) A written assessment by a well drilling contractor that the small-quantity well failure was not the result of well design or equipment failure. The assessment shall include a determination of the static water level in the well at the time of the assessment, if the static water level determination will not result in the well being damaged or decommissioned, and, if readily available, the type of pump and equipment.

(d) An explanation of why the small-quantity well owner believes that a high-capacity well has interfered with the proper function of the small-quantity well and any information available to the small-quantity well owner about the location and operation of the high-capacity well.

(e) The date or dates on which the interference by a high-capacity well occurred.

(f) Sufficient evidence to establish a reasonable belief that the interference was caused by a high-capacity well.

(2) The owner of a small-quantity well may call the toll-free telephone line provided for in subsection (6) to request a complaint form or other information regarding the dispute resolution process provided in this part.

(3) Within 2 business days after receipt of a complaint under subsection (1), the director or the director of the department of agriculture and rural development, as appropriate, shall contact the complainant and the owner of each high-capacity well identified in the complaint, shall provide actual notice of the complaint to the owner of each high-capacity well identified in the complaint, and shall begin an investigation.

(4) Within 5 business days after the owner of each high-capacity well has been provided with actual notice of the complaint under subsection (3), the director or the director of the department of agriculture and rural development, as appropriate, shall conduct an on-site evaluation. If the well is an agricultural well, the department shall consult with and provide technical assistance to the department of agriculture and rural development regarding the on-site evaluation. However, if the complaint is for a small-quantity well that is in close proximity to other small-quantity wells for which documented complaints have been received and investigated during the previous 60 days, the department or the department of agriculture and rural development, as appropriate, need not conduct an on-site evaluation unless it determines that an on-site evaluation is necessary. The director or the director of the department of agriculture and rural development, as appropriate, shall give affected persons an opportunity to contribute to the investigation of a complaint. In conducting the investigation, the director or the director of the department of agriculture and rural development, as appropriate, shall consider whether the owner of the high-capacity well is using industry-recognized water conservation management practices.

(5) After conducting an investigation, the director or the director of the department of agriculture and rural development, as appropriate, shall make a diligent effort to resolve the complaint. In attempting to resolve a complaint, the director or the director of the department of agriculture and rural development, as appropriate, may propose a remedy that he or she believes would equitably resolve the complaint.

(6) The director shall provide for the use of a toll-free facsimile line to receive complaints and a toll-free telephone line for owners of small-quantity wells to request complaint forms and to obtain other information regarding the dispute resolution process provided in this part.

(7) The director and the director of the department of agriculture and rural development shall do both of the following:

(a) Publicize the toll-free facsimile line and the toll-free telephone line provided for in subsection (6).

(b) Enter into a memorandum of understanding that describes the process that will be followed by each director when a complaint involves an agricultural well.

(8) A complainant who submits more than 2 unverified complaints under this section within 1 year may be ordered by the director or the director of the department of agriculture and rural development to pay for the full costs of investigation of any third or subsequent unverified complaint. As used in this subsection, "unverified complaint" means a complaint in response to which the director or the director of the department



of agriculture and rural development determines that there is not reasonable evidence to declare a groundwater dispute.

(9) If an owner of a high-capacity well that is not an agricultural well does not wish to participate in the dispute resolution process under this part, that dispute shall be resolved as otherwise provided by law.

**History:** Add. 2012, Act 602, Imd. Eff. Jan. 9, 2013;—Am. 2013, Act 86, Imd. Eff. June 28, 2013.

**Compiler's note:** Former MCL 324.31702, which pertained to complaints alleging potential groundwater disputes, was repealed by Act 176 of 2009, Imd. Eff. Dec. 15, 2009.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31702a Informal meeting between parties.**

Sec. 31702a. (1) If a complaint regarding an agricultural well is not resolved under section 31702, the director of the department of agriculture and rural development shall schedule and provide written notice of an informal meeting between the parties to the dispute. The informal meeting shall be scheduled at least 10 business days prior to the issuance of an order declaring a groundwater dispute under section 31703. The participants at the informal meeting shall include the director of the department of agriculture and rural development, the owner of the agricultural well, and the owner or owners of the small-quantity wells that are alleged to be impacted by the agricultural well who wish to attend. However, upon written notice provided to the director of the department of agriculture and rural development, the owner of the agricultural well may waive the informal meeting.

(2) At the informal meeting held pursuant to subsection (1), the director of the department of agriculture and rural development shall present the information that he or she has obtained regarding the items listed in section 31703(1)(a) through (f) and (2). The owner of the agricultural well shall be given an opportunity to challenge the department's assertions and may submit information that the problems associated with the small-quantity well or wells are not being caused by the agricultural well. The owner or owners of the small-quantity wells alleged to be impacted may also submit additional information regarding the complaint.

**History:** Add. 2013, Act 86, Imd. Eff. June 28, 2013.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31703 Duties of director or director of department of agriculture and rural development in groundwater dispute.**

Sec. 31703. (1) The director or the director of the department of agriculture and rural development, as appropriate, shall, by order, declare a groundwater dispute if an investigation of a complaint discloses all of the following, based upon reasonable scientifically based evidence, and within a reasonable amount of time the director or the director of the department of agriculture and rural development, as appropriate, is unable to resolve the complaint:

(a) That the small-quantity well has failed to furnish the well's normal supply of water or failed to furnish potable water.

(b) That the small-quantity well and the well's equipment were functioning properly at the time of the failure. The determination under this subdivision shall be made based upon an assessment from a well drilling contractor that is provided by the owner of the small-quantity well.

(c) That the failure of the small-quantity well was caused by the lowering of the groundwater level in the area.

(d) That the lowering of the groundwater level exceeds normal seasonal water level fluctuations and substantially impairs continued use of the groundwater resource in the area.

(e) That the lowering of the groundwater level was caused by at least 1 high-capacity well.

(f) That the owner of the small-quantity well did not unreasonably reject a remedy proposed by the director or the director of the department of agriculture and rural development under section 31702(5).

(2) In addition to the authority under subsection (1) to declare a groundwater dispute, if the director or the director of the department of agriculture and rural development, as appropriate, has clear and convincing scientifically based evidence that indicates that continued groundwater withdrawals from a high-capacity well will exceed the recharge capability of the groundwater resource of the area, the director or the director of the department of agriculture and rural development, as appropriate, by order, may declare a groundwater dispute.

(3) The director or the director of the department of agriculture and rural development, as appropriate, may amend or terminate an order declaring a groundwater dispute at any time. Prior to amending an order declaring a groundwater dispute regarding an agricultural well under this subsection, the director of the department of agriculture and rural development shall schedule an informal meeting and provide notice of the

informal meeting in the manner provided under section 31702a.

**History:** Add. 2012, Act 602, Imd. Eff. Jan. 9, 2013;—Am. 2013, Act 86, Imd. Eff. June 28, 2013.

**Compiler's note:** Former MCL 324.31703, which pertained to declaration of groundwater dispute by order of director, was repealed by Act 176 of 2009, Imd. Eff. Dec. 15, 2009.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31704 Order declaring groundwater dispute.**

Sec. 31704. (1) Subject to subsections (2) and (4), an order declaring a groundwater dispute is effective when a copy of the order is served upon the owner of a high-capacity well that is reasonably believed to have caused the failure of the complainant's small-quantity well.

(2) If a groundwater dispute requires action before service can be completed under subsection (1), oral notification in person by the director or the director of the department of agriculture and rural development, as appropriate, is sufficient until service can be completed. Oral notification is effective for not more than 96 hours.

(3) As soon as possible after an order declaring a groundwater dispute has been issued, the director or the director of the department of agriculture and rural development, as appropriate, shall provide copies of the order to the local units of government in which the high-capacity well and the small-quantity well are located and to the local health departments with jurisdiction over those wells.

(4) Within 14 days after service of an order under subsection (1), the owner of an agricultural well may contest the order by submitting an appeal to the commission of agriculture and rural development. The appeal shall be submitted on a form provided by the department of agriculture and rural development and shall outline the basis for the appeal. Upon receipt of an appeal under this subsection, the commission of agriculture and rural development shall schedule the appeal for consideration at the next scheduled meeting of the commission. Except for the provision of an adequate supply of potable water under section 31705(1), the terms of the order are stayed until a determination is made by the commission of agriculture and rural development regarding the appeal. At the commission's meeting, the commission shall review the order and consider any testimony or other documentation contesting the order and shall make a determination to affirm the order or dismiss the order. If the commission of agriculture and rural development dismisses the order, the department of agriculture and rural development shall reimburse the appellant for the cost of providing potable water under section 31705.

**History:** Add. 2012, Act 602, Imd. Eff. Jan. 9, 2013;—Am. 2013, Act 86, Imd. Eff. June 28, 2013.

**Compiler's note:** Former MCL 324.31704, which pertained to service of order declaring groundwater dispute and effectiveness of oral notification, was repealed by Act 176 of 2009, Imd. Eff. Dec. 15, 2009.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31705 Declaration of groundwater dispute; temporary provision at point of use of adequate supply of potable water; extraction of groundwater; restriction; impact on viability of certain businesses; public water supply owned or operated by local government.**

Sec. 31705. (1) Upon declaration of a groundwater dispute, the director or the director of the department of agriculture and rural development, as appropriate, shall, by order, require the immediate temporary provision at the point of use of an adequate supply of potable water.

(2) Except as provided in subsections (3), (4), and (5), if the director or the director of the department of agriculture and rural development, as appropriate, issues an order declaring a groundwater dispute, the director or the director of the department of agriculture and rural development, as appropriate, may, by order, restrict the quantity of groundwater that may be extracted from a high-capacity well under either of the following conditions:

(a) If the high-capacity well is reasonably believed to have caused the failure of the complainant's small-quantity well and an immediate temporary provision of an adequate supply of potable water has not been provided to the complainant by the owner of the high-capacity well.

(b) If there is clear and convincing scientifically based evidence that continued groundwater withdrawals from the high-capacity well will exceed the recharge capability of the groundwater resource of the area.

(3) In issuing an order under subsection (2), the director or the director of the department of agriculture and rural development, as appropriate, shall consider the impact the order will have on the viability of a business associated with the high-capacity well or other use of the high-capacity well.

(4) If an operator of a high-capacity well withdraws water by a means other than pumping, the director or the director of the department of agriculture and rural development, as appropriate, may, by order, temporarily restrict the quantity of groundwater that may be extracted only if the conditions of subsection (2)(a) or (b) have not been met.

(5) The director or the director of the department of agriculture and rural development, as appropriate, shall not issue an order that diminishes the normal supply of drinking water or the capability for fire suppression of a public water supply system owned or operated by a local unit of government.

**History:** Add. 2012, Act 602, Imd. Eff. Jan. 9, 2013;—Am. 2013, Act 86, Imd. Eff. June 28, 2013.

**Compiler's note:** Former MCL 324.31705, which pertained to duties of director upon issuance of order declaring groundwater dispute, was repealed by Act 176 of 2009, Imd. Eff. Dec. 15, 2009.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31706 Compensation; conditions.**

Sec. 31706. If a groundwater dispute has been declared, the owner of a high-capacity well shall, subject to an order of the director or the director of the department of agriculture and rural development, as appropriate, provide timely and reasonable compensation as provided in section 31707 if there is a failure or substantial impairment of a small-quantity well and the following conditions exist:

(a) The failure or substantial impairment was caused by the groundwater withdrawals of the high-capacity well.

(b) The small-quantity well was constructed prior to February 14, 1967 or, if the small-quantity well was constructed on or after February 14, 1967, the well was constructed in compliance with part 127 of the public health code, 1978 PA 368, MCL 333.12701 to 333.12771.

**History:** Add. 2012, Act 602, Imd. Eff. Jan. 9, 2013;—Am. 2013, Act 86, Imd. Eff. June 28, 2013.

**Compiler's note:** Former MCL 324.31706, which pertained to duty of owner of high-capacity well to provide compensation if there is substantial impairment of small-quantity well and certain other conditions exist, was repealed by Act 176 of 2009, Imd. Eff. Dec. 15, 2009.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31707 Compensation; requirements.**

Sec. 31707. (1) Timely and reasonable compensation under section 31706 consists of and is limited to either or both of the following:

(a) The reimbursement of expenses reasonably incurred by the complainant beginning 30 days prior to the date on which a complaint was made under section 31702 in doing the following:

(i) Paying for the cost of conducting a well assessment to determine that the small-quantity well and the well's equipment were functioning properly at the time of the failure.

(ii) Paying for the cost of obtaining an immediate temporary provision at the prior point of use of an adequate supply of potable water.

(iii) Obtaining 1 of the following:

(A) The restoration of the affected small-quantity well to the well's normal supply of water.

(B) The permanent provision at the point of use of an alternative potable supply of equal quantity.

(b) If an adequate remedy is not achievable under subdivision (a), the restriction or scheduling of the groundwater withdrawals of the high-capacity well so that the affected small-quantity well continues to produce either of the following:

(i) The well's normal supply of water.

(ii) The normal supply of potable water if the well normally furnishes potable water.

(2) The refusal of an owner of an affected small-quantity well to accept timely and reasonable compensation described in subsection (1) is sufficient grounds for the director to terminate an order imposed on the owner of a high-capacity well.

**History:** Add. 2012, Act 602, Imd. Eff. Jan. 9, 2013.

**Compiler's note:** Former MCL 324.31707, which pertained to limitations to timely and reasonable compensation and the effect of small-quantity well owner's refusal to accept compensation, was repealed by Act 176 of 2009, Imd. Eff. Dec. 15, 2009.

**Popular name:** Part 451

**Popular name:** NREPA

### **324.31708 Appeal.**

Sec. 31708. Notwithstanding section 31704(4), the owner of a high-capacity well subject to an order under

this part may appeal that order directly to circuit court pursuant to the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

**History:** Add. 2012, Act 602, Imd. Eff. Jan. 9, 2013;—Am. 2013, Act 86, Imd. Eff. June 28, 2013.

**Compiler's note:** Former MCL 324.31708, which pertained to appeal of order to circuit court, was repealed by Act 176 of 2009, Imd. Eff. Dec. 15, 2009.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31709 Exceptions.**

Sec. 31709. This part does not apply to a potential groundwater dispute involving either of the following:

- (a) A high-capacity well that is a dewatering well.
- (b) A high-capacity well that is used solely for the purpose of fire suppression.

**History:** Add. 2012, Act 602, Imd. Eff. Jan. 9, 2013.

**Compiler's note:** Former MCL 324.31709, which pertained to inapplicability of part to certain groundwater disputes, was repealed by Act 176 of 2009, Imd. Eff. Dec. 15, 2009.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31710 Aquifer protection revolving fund.**

Sec. 31710. (1) The aquifer protection revolving fund is created in the state treasury.

(2) The fund 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.

(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 be the administrator of the fund for auditing purposes.

(5) Money in the fund shall be expended by the department only to implement this part and to reimburse the department of agriculture and rural development for its actual costs incurred in implementing this part.

(6) If money in the fund is used to conduct hydrogeological studies or other studies to gather data on the nature of aquifers or groundwater resources in the state, the department shall include this information in the groundwater inventory and map prepared under section 32802.

**History:** Add. 2012, Act 602, Imd. Eff. Jan. 9, 2013.

**Compiler's note:** Former MCL 324.31710, which pertained to aquifer protection revolving fund, was repealed by Act 176 of 2009, Imd. Eff. Dec. 15, 2009.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31711 Report.**

Sec. 31711. (1) Not later than April 1, 2013, and every 2 years thereafter, the department shall prepare and submit to the legislature a report that includes both of the following:

- (a) An analysis of the department's costs of implementing this part.
- (b) Recommendations on modifications to this part that would improve the overall effectiveness of this part.

(2) The department shall file with the secretary of the senate and the clerk of the house of representatives a report that evaluates the effectiveness of the dispute resolution process during the 5-year period beginning on the effective date of the amendatory act that added this subsection. The report shall be filed within 90 days after the expiration of that 5-year period.

**History:** Add. 2012, Act 602, Imd. Eff. Jan. 9, 2013;—Am. 2013, Act 86, Imd. Eff. June 28, 2013.

**Compiler's note:** Former MCL 324.31711, which pertained to preparation and submission of report to legislative committees, was repealed by Act 176 of 2009, Imd. Eff. Dec. 15, 2009.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31712 Violation of order; civil fine or costs; default; deposit; action to enforce order.**

Sec. 31712. (1) A person who violates an order issued under this part is responsible for a civil fine of not more than \$1,000.00 for each day of violation, but not exceeding a total of \$50,000.00.

(2) A default in the payment of a civil fine or costs ordered under this section or an installment of the fine or costs may be remedied by any means authorized under the revised judicature act of 1961, 1961 PA 236,

MCL 600.101 to 600.9947.

(3) All civil fines recovered under this section shall be forwarded to the state treasurer for deposit into the fund.

(4) The director or the director of the department of agriculture and rural development, as appropriate, may bring an action in a court of competent jurisdiction to enforce an order under this part, including injunctive or other equitable relief.

**History:** Add. 2012, Act 602, Imd. Eff. Jan. 9, 2013;—Am. 2013, Act 86, Imd. Eff. June 28, 2013.

**Compiler's note:** Former MCL 324.31712, which pertained to identification of at-risk geographic areas, was repealed by Act 176 of 2009, Imd. Eff. Dec. 15, 2009.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.31713 Repealed. 2009, Act 176, Imd. Eff. Dec. 15, 2009.**

**Compiler's note:** The repealed section pertained to penalty, default, disposition, and enforcement action relating to violation of an order.

**Popular name:** Act 451

**Popular name:** NREPA

## THE GREAT LAKES

### PART 321

#### THE GREAT LAKES COMPACT AUTHORIZATION

### **324.32101 Great Lakes compact; cooperation with Ontario and bordering states; agreement authority.**

Sec. 32101. So that the state of Michigan can consult and cooperate with the other states bordering on the Great Lakes and the province of Ontario in regard to all matters and things affecting the rights and interests of this state and such other states and province, in the management, control and supervision of the waters of the Great Lakes including the marine life therein, the governor of the state of Michigan is hereby authorized and empowered for and in the name of the state of Michigan to execute an agreement or agreements with any or all the other states bordering on the Great Lakes and the province of Ontario, in conformity with the terms, conditions and provisions contained in this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32102 Compact; ratification.**

Sec. 32102. Such compact shall become operative whenever, in addition to Michigan, any 3 of the states of Wisconsin, Illinois, Indiana, Ohio, Pennsylvania, New York and Minnesota shall have ratified it and congress has given its consent, if needed. The province of Ontario may become a party to this compact by taking such action as its laws and the laws of the Dominion of Canada may prescribe for ratification.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32103 Compact; terms; conditions; provisions.**

Sec. 32103. In addition to other pertinent and necessary provisions which are in consonance with the expressed purposes of the compact as herein provided, such a compact shall contain the following terms, conditions and provisions: Said compact shall authorize the compacting parties to do all things reasonably necessary for carrying out the purposes of this part but such a compact shall be entered into solely for the purpose of empowering the duly appointed representatives of said states and the province of Ontario to meet, consult with and make recommendations to their respective governors, legislative bodies or governmental agencies and to the international joint commission established under the treaty of 1909 between the United States and Great Britain with respect to the management, control and supervision of the waters of the Great Lakes including the marine life therein. However, it is distinctly provided that any such recommendation and any decision or agreement arrived at among the compacting parties shall at no time have any force of law or be binding on any compacting party.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32104 Compact commission; memberships.**

Sec. 32104. Each compacting party shall have the right to designate 5 representatives to such interstate compact commission to be known as the Great Lakes compact commission. The representatives from this state shall be as provided in section 32202.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32105 Compact; effective date; commission meetings; officers; duties; quorum.**

Sec. 32105. The compact herein provided shall become effective upon the adoption of laws by the states referred to in section 2 in conformity with the provisions of this part. When, in addition to Michigan, any 3 of the states of Wisconsin, Illinois, Indiana, Ohio, Pennsylvania, New York, and Minnesota have adopted such laws and the congress of the United States has given its consent, if needed, the designated representatives of the Great Lakes compact commission shall meet upon the call of any governor of any of the ratifying states or the legally designated governmental official of the province of Ontario. At such meeting or at any subsequent meeting the duly designated representatives shall adopt a compact agreement not inconsistent in any way with this part and containing the necessary provisions for enabling the commission to carry out the purposes of this part. At such meeting or at subsequent meetings, the representatives composing such commission shall select a chairman and a secretary from among their numbers and such other officers as to them may seem expedient and shall prescribe the duties of such officers. A 2/3 majority of all representatives designated shall be sufficient to form a quorum for the transaction of business. Said commission shall meet from time to time or at such places or locations as it shall seem necessary and proper or shall meet upon the call of the chairman and such call shall designate the time and place of meeting and the purpose thereof.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32106 Compact; commission; records of meetings and proceedings; reports.**

Sec. 32106. Said commission shall keep a written record of its meetings and proceedings and shall annually make a report thereof to be submitted to the duly designated official of each compacting party.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32107 Compact commission; expenses.**

Sec. 32107. Each compacting party shall pay for the expenses of its representatives on said commission and each compacting party shall pay to the secretary of the commission a pro rata share of the expenses of said commission. No expenditures shall be authorized under the provisions of this part unless and until moneys shall be appropriated therefor by the legislature.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### PART 322

### GREAT LAKES BASIN COMPACT

#### **324.32201 Great Lakes basin compact; ratification; contents.**

Sec. 32201. The great lakes basin compact is hereby ratified, enacted into law, and entered into by this state as a party thereto with any other state or province which, pursuant to article II of said compact, has legally joined therein in the form substantially as follows:

#### GREAT LAKES BASIN COMPACT

The party states solemnly agree:

#### Article I. Purpose

The purposes of this compact are, through means of joint or cooperative action:

1. To promote the orderly, integrated, and comprehensive development, use, and conservation of the water

resources of the Great Lakes Basin (hereinafter called the Basin).

2. To plan for the welfare and development of the water resources of the Basin as a whole as well as for those portions of the Basin which may have problems of special concern.

3. To make it possible for the states of the Basin and their people to derive the maximum benefit from utilization of public works, in the form of navigational aids or otherwise, which may exist or which may be constructed from time to time.

4. To advise in securing and maintaining a proper balance among industrial, commercial, agricultural, water supply, residential, recreational, and other legitimate uses of the water resources of the Basin.

5. To establish and maintain an intergovernmental agency to the end that the purposes of this compact may be accomplished more effectively.

#### Article II. Enactment and Effective Date

A. This compact shall enter into force and become effective and binding when it has been enacted by the legislatures of any 4 of the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin and thereafter shall enter into force and become effective and binding as to any other of said states when enacted by the legislature thereof.

B. The Province of Ontario and the Province of Quebec, or either of them, may become states party to this compact by taking such action as their laws and the laws of the government of Canada may prescribe for adherence thereto. For the purpose of this compact the word "state" shall be construed to include a Province of Canada.

#### Article III. The Basin

The Great Lakes Commission created by Article IV of this compact shall exercise its powers and perform its functions in respect to the Basin which, for the purposes of this compact, shall consist of so much of the following as may be within the party states:

1. Lakes Erie, Huron, Michigan, Ontario, St. Clair, Superior, and the St. Lawrence River, together with any and all natural or man-made water interconnections between or among them.

2. All rivers, ponds, lakes, streams, and other watercourses which, in their natural state or in their prevailing condition, are tributary to Lakes Erie, Huron, Michigan, Ontario, St. Clair, and Superior or any of them or which comprise part of any watershed draining into any of said lakes.

#### Article IV. The Commission

A. There is hereby created an agency of the party states to be known as The Great Lakes Commission (hereinafter called the Commission). In that name the Commission may sue and be sued, acquire, hold and convey real and personal property and any interest therein. The Commission shall have a seal with the words "The Great Lakes Commission" and such other design as it may prescribe engraved thereon by which it shall authenticate its proceedings. Transactions involving real or personal property shall conform to the laws of the state in which the property is located, and the Commission may by bylaws provide for the execution and acknowledgment of all instruments in its behalf.

B. The Commission shall be composed of not less than 3 commissioners nor more than 5 commissioners from each party state designated or appointed in accordance with the law of the state which they represent and serving and subject to removal in accordance with such law.

C. Each state delegation shall be entitled to 3 votes in the Commission. The presence of commissioners from a majority of the party states shall constitute a quorum for the transaction of business at any meeting of the Commission. Actions of the Commission shall be by a majority of the votes cast except that any recommendations made pursuant to Article VI of this compact shall require an affirmative vote of not less than a majority of the votes cast from each of a majority of the states present and voting.

D. The commissioners of any 2 or more party states may meet separately to consider problems of particular interest to their states but no action taken at any such meeting shall be deemed an action of the Commission unless and until the Commission shall specifically approve the same.

E. In the absence of any commissioner, his or her vote may be cast by another representative or commissioner of his or her state provided that said commissioner or other representative casting said vote shall have a written proxy in proper form as may be required by the Commission.

F. The Commission shall elect annually from among its members a chairman and vice-chairman. The Commission shall appoint an Executive Director who shall also act as secretary-treasurer, and who shall be bonded in such amount as the Commission may require. The Executive Director shall serve at the pleasure of the Commission and at such compensation and under such terms and conditions as may be fixed by it. The Executive Director shall be custodian of the records of the Commission with authority to affix the Commission's official seal and to attest to and certify such records or copies thereof.

G. The Executive Director, subject to the approval of the Commission in such cases as its bylaws may provide, shall appoint and remove or discharge such personnel as may be necessary for the performance of the

Commission's functions. Subject to the aforesaid approval, the Executive Director may fix their compensation, define their duties, and require bonds of such of them as the Commission may designate.

H. The Executive Director, on behalf of, as trustee for, and with the approval of the Commission, may borrow, accept, or contract for the services of personnel from any state or government or any subdivision or agency thereof, from any intergovernmental agency, or from any institution, person, firm or corporation; and may accept for any of the Commission's purposes and functions under this compact any and all donations, gifts, and grants of money, equipment, supplies, materials, and services from any state or government or any subdivision or agency thereof or intergovernmental agency or from any institution, person, firm or corporation and may receive and utilize the same.

I. The Commission may establish and maintain 1 or more offices for the transacting of its business and for such purposes the Executive Director, on behalf of, as trustee for, and with the approval of the Commission, may acquire, hold and dispose of real and personal property necessary to the performance of its functions.

J. No tax levied or imposed by any party state or any political subdivision thereof shall be deemed to apply to property, transactions, or income of the Commission.

K. The Commission may adopt, amend and rescind bylaws, rules and regulations for the conduct of its business.

L. The organization meeting of the Commission shall be held within 6 months from the effective date of this compact.

M. The Commission and its Executive Director shall make available to the party states any information within its possession and shall always provide free access to its records by duly authorized representatives of such party states.

N. The Commission shall keep a written record of its meetings and proceedings and shall annually make a report thereof to be submitted to the duly designated official of each party state.

O. The Commission shall make and transmit annually to the legislature and governor of each party state a report covering the activities of the Commission for the preceding year and embodying such recommendations as may have been adopted by the Commission. The Commission may issue such additional reports as it may deem desirable.

#### Article V. Finance

A. The members of the Commission shall serve without compensation, but the expenses of each commissioner shall be met by the state which he or she represents in accordance with the law of that state. All other expenses incurred by the Commission in the course of exercising the powers conferred upon it by this compact unless met in some other manner specifically provided by this compact, shall be paid by the Commission out of its own funds.

B. The Commission shall submit to the executive head or designated officer of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

C. Each of the Commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. Detailed commission budgets shall be recommended by a majority of the votes cast, and the costs shall be allocated equitably among the party states in accordance with their respective interests.

D. The Commission shall not pledge the credit of any party state. The Commission may meet any of its obligations in whole or in part with funds available to it under Article IV (H) of this compact, provided that the Commission takes specific action setting aside such funds prior to the incurring of any obligations to be met in whole or in part in this manner. Except where the Commission makes use of funds available to it under Article IV (H) hereof, the Commission shall not incur any obligations prior to the allotment of funds by the party states adequate to meet the same.

E. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under the bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become a part of the annual report of the Commission.

F. The accounts of the Commission shall be open at any reasonable time for inspection by such agency, representative or representatives of the party states as may be duly constituted for that purpose and by others who may be authorized by the Commission.

#### Article VI. Powers of Commission

The Commission shall have power to:

A. Collect, correlate, interpret, and report on data relating to the water resources and the use thereof in the Basin or any portion thereof.



B. Recommend methods for the orderly, efficient, and balanced development, use, and conservation of the water resources of the Basin or any portion thereof to the party states and to any other governments or agencies having interests in or jurisdiction over the Basin or any portion thereof.

C. Consider the need for and desirability of public works and improvements relating to the water resources in the Basin or any portion thereof.

D. Consider means of improving navigation and port facilities in the Basin or any portion thereof.

E. Consider means of improving and maintaining the fisheries of the Basin or any portion thereof.

F. Recommend policies relating to water resources including the institution and alteration of flood plain and other zoning laws, ordinances and regulations.

G. Recommend uniform or other laws, ordinances, or regulations relating to the development, use and conservation of the Basin's water resources to the party states or any of them and to other governments, political subdivisions, agencies, or intergovernmental bodies having interests in or jurisdiction sufficient to affect conditions in the Basin or any portion thereof.

H. Consider and recommend amendments or agreements supplementary to this compact to the party states or any of them, and assist in the formulation and drafting of such amendments or supplementary agreements.

I. Prepare and publish reports, bulletins, and publications appropriate to this work and fix reasonable sale prices therefor.

J. With respect to the water resources of the Basin or any portion thereof, recommend agreements between the governments of the United States and Canada.

K. Recommend mutual arrangements expressed by concurrent or reciprocal legislation on the part of Congress and the Parliament of Canada including but not limited to such agreements and mutual arrangements as are provided for by Article XIII of the Treaty of 1909 Relating to Boundary Waters and Questions Arising Between the United States and Canada. (Treaty Series, No. 548).

L. Cooperate with the governments of the United States and of Canada, the party states and any public or private agencies or bodies having interests in or jurisdiction sufficient to affect the Basin or any portion thereof.

M. At the request of the United States, or in the event that a Province shall be a party state, at the request of the government of Canada, assist in the negotiation and formulation of any treaty or other mutual arrangement or agreement between the United States and Canada with reference to the Basin or any portion thereof.

N. Make any recommendation and do all things necessary and proper to carry out the powers conferred upon the Commission by this compact; provided that no action of the Commission shall have the force of law in, or be binding upon, any party state.

#### Article VII. State Action

Each party state agrees to consider the action the Commission recommends in respect to:

A. Stabilization of lake levels.

B. Measures for combating pollution, beach erosion, floods, and shore inundation.

C. Uniformity in navigation regulations within the constitutional powers of the states.

D. Proposed navigation aids and improvements.

E. Uniformity or effective coordinating action in fishing laws and regulations and cooperative action to eradicate destructive and parasitical forces endangering the fisheries, wild life and other water resources.

F. Suitable hydroelectric power developments.

G. Cooperative programs for control of soil and bank erosion for the general improvement of the Basin.

H. Diversion of waters from and into the Basin.

I. Other measures the Commission may recommend to the states pursuant to Article VI of this compact.

#### Article VIII. Renunciation

This compact shall continue in force and remain binding upon each party state until renounced by act of the legislature of such state, in such form and manner as it may choose and as may be valid and effective to repeal a statute of said state; provided that such renunciation shall not become effective until 6 months after notice of such action shall have been officially communicated in writing to the executive head of the other party states.

#### Article IX. Construction and Severability

It is intended that the provisions of this compact shall be reasonably and liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States, or in the case of a Province, to the British North America Act of 1867 as amended, or the applicability thereof to any state, agency, person or circumstance is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to any state, agency, person or circumstance shall not be affected thereby, provided further that if this compact shall be held contrary to the constitution of the United States, or

in the case of a Province, to the British North America Act of 1867 as amended, or of any party state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32202 Great Lakes commission; membership; oath; expenses; voting rights.**

Sec. 32202. (1) For purposes of this section through section 32206, "commission" means the Great Lakes commission established in the compact entered into by this part.

(2) In pursuance of article IV of the compact, there shall be 5 commissioners on the Great Lakes commission from this state. Each commissioner shall have all of the powers conferred on a commissioner by the compact or which shall be necessary or incidental to the performance of his or her functions as a commissioner. For this state, the governor, or the governor's designee, the attorney general, or the attorney general's designee, an appointee of the majority leader of the senate, and an appointee of the speaker of the house of representatives shall be members of the Michigan representation. In addition, the governor shall appoint, with the advice and consent of the senate, the remaining 1 member who shall come from groups or organizations interested in or affected by the Great Lakes, which member shall serve at the governor's pleasure. The appointees of the governor, the majority leader of the senate, and of the speaker of the house of representatives, before entering upon the performance of their office, shall take and subscribe to the constitutional oath of office. Each commissioner shall receive necessary expenses incurred in the performance of his or her duties. Each commissioner shall have the right to cast 3/5 of a vote whenever a vote is required by the terms of the compact.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Compiler's note:** For the designation of the director of the department of environment, Great Lakes, and energy as a commissioner on the Great Lakes commission, see E.R.O. 2019-1, compiled at MCL 324.99923.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32203 Commission; cooperation by state officers.**

Sec. 32203. All officers of this state are hereby authorized and directed to do all things falling within their respective jurisdictions necessary to or incidental to the carrying out of said compact in every particular, it being hereby declared to be the policy of this state to perform and carry out the said compact and to accomplish the purposes thereof. All officers, bureaus, departments, and persons of and in the state government or administration of this state are hereby authorized and directed at reasonable times and upon request of said commission to furnish the said commission with information and data possessed by them or any of them and to aid said commission by loan of personnel or other means lying within their legal powers respectively.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32204 Commission; budget; appropriations.**

Sec. 32204. The budget of the estimated expenditures of the commission shall be submitted to the director and to the director of the department of commerce for such period and in form as shall be required by them. Neither the compact nor this part shall be construed to commit, or authorize the expenditure of, any funds of the state except in pursuance of appropriations made by the legislature.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32205 Basin compact; transmission of copy of part and compact to other parties.**

Sec. 32205. The governor is hereby authorized and directed to transmit a duly authenticated copy of this part and the compact contained herein to each jurisdiction now party to the compact and to each jurisdiction which is or subsequently shall become party to the compact.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32206 Limiting diversions of water of Great Lakes.**

Sec. 32206. The commissioners who represent this state shall request the commission to consider and recommend amendments or agreements supplementary to the Great Lakes basin compact that would give the party states the authority to limit diversions of the waters of the Great Lakes.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

## **PART 323**

### **SHORELANDS PROTECTION AND MANAGEMENT**

#### **324.32301 Definitions.**

Sec. 32301. As used in this part:

(a) "Connecting waterway" means the St. Marys river, Detroit river, St. Clair river, or Lake St. Clair.

(b) "Environmental area" means an area of the shoreland determined by the department on the basis of studies and surveys to be necessary for the preservation and maintenance of fish and wildlife.

(c) "High-risk area" means an area of the shoreland that is determined by the department on the basis of studies and surveys to be subject to erosion.

(d) "Land to be zoned or regulated" or "land to be zoned" means the land in this state that borders or is adjacent to a Great Lake or a connecting waterway and that, except for flood risk areas, is situated within 1,000 feet landward from the ordinary high-water mark as defined in section 32501, land bordering or adjacent to waters affected by levels of the Great Lakes landward of the ordinary high-water mark as defined by section 30101, and land between the ordinary high-water mark and the water's edge.

(e) "Shoreland" means the land, water, and land beneath the water that is in close proximity to the shoreline of a Great Lake or a connecting waterway.

(f) "Shoreline" means that area of the shorelands where land and water meet.

(g) "Flood risk area" means the area of the shoreland that is determined by the department on the basis of studies and surveys to be subject to flooding from effects of levels of the Great Lakes and is not limited to 1,000 feet.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2018, Act 631, Eff. Mar. 29, 2019.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32302 Shoreland engineering study; determinations.**

Sec. 32302. By April 1, 1972, the department shall make or cause to be made an engineering study of the shoreland to determine all of the following:

(a) The high-risk areas.

(b) The areas of the shorelands that are platted or have buildings or structures and that require protection from erosion.

(c) The type of protection that is best suited for an area determined in subdivision (b).

(d) A cost estimate of the construction and maintenance for each type of protection determined in subdivision (c).

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32303 Engineering study.**

Sec. 32303. Before January 1, 1975, the department shall make or cause to be made an engineering study of the shoreland to determine:

- (a) Flood risk areas.
- (b) The frequency with which a flood risk area can be expected to be flooded.
- (c) Appropriate rules necessary to prevent damage or destruction to property.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32304 Environmental study.**

Sec. 32304. By April 1, 1972, the department shall make or cause to be made an environmental study of the shoreland to determine all of the following:

- (a) The environmental areas.
- (b) The areas of marshes along and adjacent to the shorelands.
- (c) The marshes and fish and wildlife habitat areas that should be protected by shoreland zoning or regulation.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32305 Use of high risk area; prevention of property loss; notice of determinations and recommendations.**

Sec. 32305. The department pursuant to section 32302 shall determine if the use of a high-risk area shall be regulated to prevent property loss or if suitable methods of protection shall be installed to prevent property loss. The department shall notify a local unit of government, the department of labor, the department of treasury, and the department of commerce or other affected state agencies of its determinations and recommendations relative to a high-risk area that is in a local unit of government.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32306 Use of flood risk area; prevention of property loss; notice of determinations and recommendations.**

Sec. 32306. The department pursuant to section 32303 shall determine if the use of a flood risk area shall be regulated to prevent property loss or if suitable methods of protection shall be installed to prevent property loss. The department shall notify a local unit of government, the department of labor, the department of treasury, and the department of commerce or other affected state agencies of its determinations and recommendations relative to a flood risk area that is in a local unit of government.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32307 Environmental area; use; regulation.**

Sec. 32307. The department in accordance with section 32304 shall notify a local unit of government of the existence of any environmental area that is in a local unit of government and shall formulate appropriate use regulations necessary to protect an environmental area.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32308 County zoning.**

Sec. 32308. Until July 1, 1975, a county, pursuant to rules promulgated under section 32313 and the county rural zoning enabling act, Act No. 183 of the Public Acts of 1943, being sections 125.201 to 125.232 of the Michigan Compiled Laws, may zone any shoreland and land to be zoned that is in the county.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32309 City or village zoning.**

Sec. 32309. Until July 1, 1975, a city or village, pursuant to rules promulgated under section 32313 and

Act No. 207 of the Public Acts of 1921, being sections 125.581 to 125.592 of the Michigan Compiled Laws, may zone any shoreland and land to be zoned that is in the city or village.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32310 Township zoning.**

Sec. 32310. Until July 1, 1975, a township, pursuant to rules promulgated under section 32313 and the township rural zoning act, Act No. 184 of the Public Acts of 1943, being sections 125.271 to 125.301 of the Michigan Compiled Laws, may zone any shoreland and land to be zoned that is in the township.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32311 Approval or disapproval of zoning ordinance regulating high risk area, flood risk area, or environmental area.**

Sec. 32311. An existing zoning ordinance or a zoning ordinance or a modification or amendment to a zoning ordinance that regulates a high-risk area, a flood risk area, or an environmental area shall be submitted to the department for approval or disapproval. The department shall determine if the ordinance, modification, or amendment adequately prevents property damage or prevents damage to an environmental area, a high-risk area, or a flood risk area. If an ordinance, modification, or amendment is disapproved by the department, it shall not have force or effect until modified by the local unit of government and approved by the department.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32312 Rules; fee required with permit application or project; disposition of fees; violation; restraining order.**

Sec. 32312. (1) To regulate the uses and development of high-risk areas, flood risk areas, and environmental areas and to implement the purposes of this part, the department shall promulgate rules. If permits are required under rules promulgated under this part, the permits must be issued pursuant to the rules and part 13. Except as provided under subsection (2), until October 1, 2025, if permits are required pursuant to rules promulgated under this part, an application for a permit must be accompanied by a fee as follows:

(a) For a commercial or multifamily residential project, \$500.00.

(b) For a single-family home construction, \$100.00.

(c) For an addition to an existing single-family home or for a project that has a minor impact on fish and wildlife resources in environmental areas as determined by the department, \$50.00.

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

(a) Part 301.

(b) Part 303.

(c) Part 325.

(d) Section 3104.

(e) Section 117 of the land division act, 1967 PA 288, MCL 560.117.

(3) The department shall forward fees collected under this section to the state treasurer for deposit in the land and water management permit fee fund created in section 30113.

(4) A circuit court, upon petition and a showing by the department that a rule promulgated under subsection (1) has been violated, shall issue any necessary order to the defendant to correct the violation or to restrain the defendant from further violation of the rule.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1995, Act 168, Imd. Eff. Oct. 9, 1995;—Am. 1999, Act 106, Imd. Eff. July 7, 1999;—Am. 2003, Act 163, Imd. Eff. Aug. 12, 2003;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2008, Act 276, Imd. Eff. Sept. 29, 2008;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2015, Act 76, Eff. Oct. 1, 2015;—Am. 2019, Act 84, Imd. Eff. Sept. 30, 2019;—Am. 2021, Act 91, Imd. Eff. Oct. 20, 2021.

**Popular name:** Act 451

**Popular name:** NREPA

**Administrative rules:** R 281.21 et seq. of the Michigan Administrative Code.

### **324.32312a Construction of above grade walls with movable brick.**

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Sec. 32312a. Notwithstanding any other provision of this part or the rules promulgated under this part, the department shall allow above grade walls to be constructed with movable brick.

**History:** Add. 1997, Act 126, Imd. Eff. Nov. 5, 1997.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32313 Use and management plan; contents; hearings; submission of plan copies to governor and legislature.**

Sec. 32313. (1) By October 1, 1972, the department shall, in compliance with the purposes of this part, prepare a plan for the use and management of shoreland. The plan shall include but not be limited to all of the following:

(a) An inventory and identification of the use and development characteristics of the shoreland; the general physical and man-influenced shoreline features; the existing and proposed municipal and industrial water intakes and sewage and industrial waste outfalls; and high-risk areas and environmental areas.

(b) An inventory of existing federal, state, regional, and local plans for the management of the shorelands.

(c) An identification of problems associated with shoreland use, development, conservation, and protection.

(d) A provision for a continuing inventory of shoreland and estuarine resources.

(e) Provisions for further studies and research pertaining to shoreland management.

(f) Identification of the high-risk and environmental areas that need protection.

(g) Recommendations that do all of the following:

(i) Provide procedures for the resolution of conflicts arising from multiple use.

(ii) Foster the widest variety of beneficial uses.

(iii) Provide for the necessary enforcement powers to assure compliance with plans and to resolve conflicts in uses.

(iv) Provide criteria for the protection of shorelands from erosion or inundation, for aquatic recreation, for shore growth and cover, for low-lying lands, and for fish and game management.

(v) Provide criteria for shoreland layout for residential, industrial, and commercial development, and shoreline alteration control.

(vi) Provide for building setbacks from the water.

(vii) Provide for the prevention of shoreland littering, blight harbor development, and pollution.

(viii) Provide for the regulation of mineral exploration and production.

(ix) Provide the basis for necessary future legislation pertaining to efficient shoreland management.

(2) Upon completion of the plan, the department shall hold regional public hearings on the recommendations of the plan. Copies of the plan shall be submitted with the hearing records to the governor and the legislature.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32314 Agreements and contracts.**

Sec. 32314. The department may enter into an agreement or make contracts with the federal government, other state agencies, local units of government, or private agencies for the purposes of making studies and plans for the efficient use, development, preservation, or management of the state's shoreland resources. Any study, plan, or recommendation shall be available to a local unit of government in this state that has shoreland. The recommendations and policies set forth in the studies or plans shall serve as a basis and guideline for establishing zoning ordinances and developing shoreland plans by local units of government and the department.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32315 Money, grants, or grants-in-aid; purpose.**

Sec. 32315. For the purposes of this part, the department may receive, obtain, or accept money, grants, or grants-in-aid for the purpose of research, planning, or management of shoreland.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

Popular name: NREPA

PART 325  
GREAT LAKES SUBMERGED LANDS

**324.32501 Additional definitions.**

Sec. 32501. As used in this part:

(a) "Department" means the department of environmental quality.

(b) "Director" means the director of the department.

(c) "Marina purposes" means an operation making use of submerged bottomlands or filled-in bottomlands of the Great Lakes for the purpose of service to boat owners or operators, which operation may restrict or prevent the free public use of the affected bottomlands or filled-in lands.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2003, Act 14, Imd. Eff. June 5, 2003;—Am. 2012, Act 247, Imd. Eff. July 2, 2012.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

**324.32502 Unpatented lake bottomlands and unpatented made lands in Great Lakes; construction of part.**

Sec. 32502. The lands covered and affected by this part are all of the unpatented lake bottomlands and unpatented made lands in the Great Lakes, including the bays and harbors of the Great Lakes, belonging to the state or held in trust by it, including those lands that have been artificially filled in. The waters covered and affected by this part are all of the waters of the Great Lakes within the boundaries of the state. This part shall be construed so as to preserve and protect the interests of the general public in the lands and waters described in this section, to provide for the sale, lease, exchange, or other disposition of unpatented lands and the private or public use of waters over patented and unpatented lands, and to permit the filling in of patented submerged lands whenever it is determined by the department that the private or public use of those lands and waters will not substantially affect the public use of those lands and waters for hunting, fishing, swimming, pleasure boating, or navigation or that the public trust in the state will not be impaired by those agreements for use, sales, lease, or other disposition. The word "land" or "lands" as used in this part refers to the aforesaid described unpatented lake bottomlands and unpatented made lands and patented lands in the Great Lakes and the bays and harbors of the Great Lakes lying below and lakeward of the natural ordinary high-water mark, but this part does not affect property rights secured by virtue of a swamp land grant or rights acquired by accretions occurring through natural means or reliction. For purposes of this part, the ordinary high-water mark shall be at the following elevations above sea level, international Great Lakes datum of 1955: Lake Superior, 601.5 feet; Lakes Michigan and Huron, 579.8 feet; Lake St. Clair, 574.7 feet; and Lake Erie, 571.6 feet.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

**324.32503 Agreements pertaining to waters over and filling in of submerged patented lands; lease or deed of unpatented lands; terms, conditions, and requirements; reservation of mineral rights; exception; lease or deed allowing drilling operations for exploration of oil or gas purposes; execution of agreement, lease, or deed with United States.**

Sec. 32503. (1) Except as otherwise provided in this section, the department, after finding that the public trust in the waters will not be impaired or substantially affected, may enter into agreements pertaining to waters over and the filling in of submerged patented lands, or to lease or deed unpatented lands, after approval of the state administrative board. Quitclaim deeds, leases, or agreements covering unpatented lands may be issued or entered into by the department with any person, and shall contain such terms, conditions, and requirements as the department determines to be just and equitable and in conformance with the public trust.

The department shall reserve to the state all mineral rights, including, but not limited to, coal, oil, gas, sand, gravel, stone, and other materials or products located or found in those lands, except where lands are occupied or to be occupied for residential purposes at the time of conveyance.

(2) The department shall not enter into a lease or deed that allows drilling operations beneath unpatented lands for the exploration or production of oil or gas.

(3) An agreement, lease, or deed entered into under this part by the department with the United States shall be entered into and executed pursuant to the property rights acquisition act, 1986 PA 201, MCL 3.251 to 3.262.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2002, Act 148, Imd. Eff. Apr. 5, 2002;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2012, Act 247, Imd. Eff. July 2, 2012.

**Compiler's note:** Enrolled House Bill No. 5118 was not signed by the Governor, but, having been presented to him at 3:44 p.m. on March 22, 2002, and not having been returned by him to the House of Representatives within the 14 days prescribed by Const 1963, art IV, sec 33, became law (2002 PA 148) on April 5, 2002, the Legislature having continued in session.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32504 Unpatented lake lands and unpatented made lands; application for conveyance; contents; qualifications of applicant; consent; approval; fee.**

Sec. 32504. (1) Application for a deed or lease to unpatented lands or agreement for use of water areas over patented lands shall be on forms provided by the department. An application shall include a surveyed description of the lands or water area applied for, together with a surveyed description of the riparian or littoral property lying adjacent and contiguous to the lands or water area, certified to by a registered land surveyor. The description shall show the location of the water's edge at the time it was prepared and other information that is required by the department. The applicant shall be a riparian or littoral owner or owners of property touching or situated opposite the unpatented land or water area over patented lands applied for or an occupant of that land. The application shall include the names and mailing addresses of all persons in possession or occupancy or having an interest in the adjacent or contiguous riparian or littoral property or having riparian or littoral rights or interests in the lands or water areas applied for, and the application shall be accompanied by the written consent of all persons having an interest in the lands or water areas applied for in the application.

(2) Before an application is acted upon by the department, the applicant shall secure approval of or permission for his or her proposed use of such lands or water area from any federal agency as provided by law, the department with the advice of the Michigan waterways commission, and the legislative body of the local unit or units of government within which such land or water area is or will be included, or to which it is contiguous or adjacent. A deed, lease, or agreement shall not be issued or entered into by the department without such approvals or permission. The department may also require the applicant to furnish an abstract of title and ownership, and a 20-year tax history on the riparian or littoral property that is contiguous or adjacent to the lands or water area applied for, as well as on the lands applied for, if available.

(3) The department shall require the applicant to deposit a fee of not less than \$50.00 for each application filed. The fee shall be deposited with the state treasurer to the credit of the state's general fund. If a deed, lease, or other agreement is approved by the department, the applicant is entitled to credit for the fee against the consideration that is paid for the deed, lease, or other agreement.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32504a Restoration or maintenance of lighthouse; lease or agreement for use of lands; "approved organization" defined.**

Sec. 32504a. (1) The department may accept an application under this part from an approved organization, whether or not the approved organization is a riparian landowner, and may enter into a lease or agreement for the use of lands described in section 32502 on which a lighthouse is located, including the use of water over those lands immediately adjacent to the lighthouse.

(2) As used in this section, "approved organization" means a lawful nonprofit entity as approved by the department, a local unit of government, a federal or state agency or department, an educational agency, or a community development organization, that is seeking to secure a lease or agreement under this section for the purpose of restoring or maintaining a lighthouse.

**History:** Add. 2002, Act 650, Imd. Eff. Dec. 23, 2002.

**Popular name:** Act 451



Popular name: NREPA

### **324.32505 Unpatented lake bottomlands and unpatented made lands; consideration for conveyances or lease.**

Sec. 32505. (1) If the department determines that it is in the public interest to grant an applicant a deed or lease to lands or enter into an agreement to allow use and improvements in the waters or to enter into any other agreement in regard thereto, the department shall determine the amount of consideration to be paid to this state by the applicant for the conveyance or lease of unpatented lands.

(2) The department may allow, by lease or agreement, the filling in of patented and unpatented submerged lands and allow permanent improvements and structures after finding that the public trust will not be impaired or substantially injured.

(3) The department may issue deeds or may enter into leases of unpatented lands if the lands have been artificially filled in or are proposed to be changed from the condition that exists on October 14, 1955 by filling, sheet piling, shoring, or by any other means, and the lands are used or to be used or occupied in whole or in part for uses other than existing, lawful riparian or littoral purposes. The consideration to be paid to this state for the conveyance or lease of unpatented lands by the applicant shall be not less than the fair, cash market value of the lands determined as of the date of the filing of the application, minus any improvements placed on the lands, but the sale price shall not be less than 30% of the value of the land. In determining the fair, cash market value of the lands applied for, the department may consider the fact that the lands are connected with the riparian or littoral property belonging to the applicant, and the uses, including residential and commercial, being made or which can be made of the lands.

(4) Agreements for the lands or water area described in section 32502 may be granted to or entered into with local units of government for public purposes. The agreements may contain terms and conditions considered just and equitable given the public trust involved and may grant permission to fill those lands as necessary.

(5) If unpatented lands have not been filled in or in any way substantially changed from their natural character and the application to acquire or lease those lands is filed for the purpose of flood control, shore erosion control, drainage and sanitation control, or to straighten irregular shore lines, then the consideration to be paid to this state by the applicant shall be the fair, cash value of the land, giving due consideration to its being adjacent to and connected with the riparian or littoral property owned by the applicant.

(6) Leases or agreements covering unpatented lands may be granted or entered into with riparian or littoral proprietors for commercial marina purposes or for marinas operated by persons for consideration and containing terms and conditions considered by the department to be just and equitable. The leases may include either filled or unfilled lake bottomlands, or both. Rental shall commence as of the date of use of the unpatented lands for the marina operations. Dockage and other uses by marinas in waters over patented lands on October 14, 1955 shall be considered to be lawful riparian or littoral use.

(7) The department may enter into a lease with the owner of riparian or littoral property, occupied only for single-family residential purposes, to use the abutting unpatented lake bottomlands and waters over those bottomlands for a private harbor if all of the following conditions are met:

- (a) The private harbor was formed by a breakwater erected on unpatented lake bottomlands.
- (b) The private harbor is used exclusively for private, noncommercial recreational watercraft.
- (c) The full-term of the lease is 50 years consisting of two 25-year terms.
- (d) The consideration for the lease is as follows:

(i) For a lease entered into on or after the effective date of the amendatory act that amended this section, a lump-sum payment at the beginning of the first 25-year term of the agreement of 0.5% of twice the current state equalized value of the lessee's upland riparian or littoral property or payment of the lump sum pursuant to a schedule as agreed by the department, and a lump-sum payment at the beginning of the second 25-year term of the agreement of 0.5% of twice the current state equalized value of the lessee's upland riparian or littoral property or payment of the lump sum pursuant to a schedule as agreed by the department.

(ii) Unless otherwise requested by the lessee and agreed to by the department, for a lease entered into prior to the effective date of the amendatory act that amended this section, the department shall credit any lease payment made in 2016 against the future payments owed under the terms of subparagraph (i).

(8) If the department after investigation determines that an applicant to acquire or lease lands has willfully and knowingly filled in or in any way substantially changed the lands with an intent to defraud, or if the applicant has acquired the lands with knowledge of such a fraudulent intent and is not an innocent purchaser, the consideration shall be the fair, cash market value of the land or leasehold. An applicant may request a hearing of a determination made under this subsection. The department shall grant a hearing if requested.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2018, Act 18, Eff. May 14, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32506 Unpatented lands and unpatented made lands; value determination by department; appraisal; decision of court.**

Sec. 32506. The fair, cash market value of lands approved for sale under this part shall be determined by the department. Consideration paid to the state shall not be less than \$50.00. If the applicant is not satisfied with the value determined by the department, within 30 days after the receipt of the determination he or she may submit a petition in writing to the circuit court of the county in which the lands are located, and the court shall appoint an appraiser or appraisers as the court shall determine for an appraisal of the lands. The decision of the court is final.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32507 Receipts; disposition; accounting; employees.**

Sec. 32507. (1) All money received by the department from the sale, lease, or other disposition of land and water areas under this part shall be forwarded to the state treasurer and be credited to the land and water management permit fee fund created in section 30113.

(2) The department shall comply with the accounting laws of this state and the requirements with respect to submission of budgets. The department may hire employees, assistants, and services that may be necessary within the appropriation made by the legislature and may delegate this authority as may be necessary to implement this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32508 Lands conveyed; taxation.**

Sec. 32508. All lands conveyed or leased under this part are subject to taxation and the general property tax laws and other laws as other real estate used and taxed by the governmental unit or units within which the land is or may be included.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32509 Rules.**

Sec. 32509. The department may promulgate rules, in accordance with the requirements of law, consistent with this part, that may be necessary to implement this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32510 Land filled, excavated, or modified without approval; misdemeanor; penalty; issuance or service of appearance ticket; "minor offense" defined.**

Sec. 32510. (1) Except as provided in subsection (2), a person who excavates or fills or in any manner alters or modifies any of the land or waters subject to this part without the approval of the department is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both. Land altered or modified in violation of this part shall not be sold to any person convicted under this section at less than fair, cash market value.

(2) 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.

(3) As used in this section, "minor offense" means either of the following violations of this part if the department determines that restoration of the affected property is not required:

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

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

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32511 Certificate of location of lakeward boundary; application; riparian owner; fee.**

Sec. 32511. A riparian owner may apply to the department for a certificate suitable for recording indicating the location of his or her lakeward boundary or indicating that the land involved has accreted to his or her property as a result of natural accretions or placement of a lawful, permanent structure. The application must be accompanied by a fee of \$200.00 and proof of upland ownership.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2018, Act 18, Eff. May 14, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32512 Acts prohibited; exceptions; activities not subject to regulation; applicability of subsection (2) to certain lands.**

Sec. 32512. (1) Except as provided in subsection (2), unless a permit has been granted by the department pursuant to part 13 or authorization has been granted by the legislature, or except as to boat wells and slips facilitating private, noncommercial, recreational boat use, not exceeding 50 feet in length where the spoil is not disposed of below the ordinary high-water mark of the body of water to which it is connected, a person shall not do any of the following:

(a) Construct, dredge, commence, or do any work with respect to an artificial canal, channel, ditch, lagoon, pond, lake, or similar waterway where the purpose is ultimate connection of the waterway with any of the Great Lakes, including Lake St. Clair.

(b) Connect any natural or artificially constructed waterway, canal, channel, ditch, lagoon, pond, lake, or similar waterway with any of the Great Lakes, including Lake St. Clair, for navigation or any other purpose.

(c) Dredge or place spoil or other material on bottomland.

(d) Construct a marina.

(2) Except as provided in subsection (3), the following activities are not subject to regulation under this part:

(a) Leveling of sand, removal of vegetation, grooming of soil, or removal of debris, in an area of unconsolidated material predominantly composed of sand, rock, or pebbles, located between the ordinary high-water mark and the water's edge.

(b) Mowing of vegetation between the ordinary high-water mark and the water's edge.

(3) Subsection (2) does not apply to lands included in the survey of the delta of the St. Clair River, otherwise referred to as the St. Clair flats, located within Clay township, St. Clair county, as provided for in 1899 PA 175.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2003, Act 14, Imd. Eff. June 5, 2003;—Am. 2012, Act 247, Imd. Eff. July 2, 2012.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32512a Minor project categories; activities; conditions; application; notice; general permit.**

Sec. 32512a. (1) After providing notice and an opportunity for a public hearing, the department shall establish minor project categories of activities that are similar in nature, have minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment. The department may act upon an application received pursuant to section 32513 for an activity within a minor project category without providing notice pursuant to section 32514. A minor project category shall not be valid for more than 5 years, but may be reestablished. All other provisions of this part, except provisions applicable only to general permits, are applicable to a minor project.

(2) The department, after notice and opportunity for a public hearing, shall issue general permits on a statewide basis or within a local unit of government for a category of activities if the department determines that the activities are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment. A general permit shall be based on the requirements of this part and the rules promulgated under this part, and shall set forth the requirements and standards that shall apply to an activity authorized by the general permit. Before authorizing a specific project to proceed under a general permit, the department may provide notice pursuant to section 32514 but shall not hold a public hearing and shall not typically require a site inspection. A general permit shall not be valid for more than 5 years, but may be reissued.

**History:** Add. 2003, Act 14, Imd. Eff. June 5, 2003;—Am. 2009, Act 120, Eff. Nov. 6, 2009;—Am. 2012, Act 247, Imd. Eff. July 2, 2012.

**Compiler's note:** Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32513 Application for permit; contents; fees; disposition of fees.**

Sec. 32513. (1) To obtain a permit for any activity specified in section 32512, a person shall file an application with the department on a form provided by the department. The application must include all of the following:

- (a) The name and address of the applicant.
- (b) The legal description of the lands included in the project.
- (c) A summary statement of the purpose of the project.
- (d) A map or diagram showing the proposal on an adequate scale with contours and cross-section profiles of any waterway to be constructed.

(e) Other information required by the department.

(2) Except as provided in subsections (3) and (4), until October 1, 2025, an application for a permit under this section must be accompanied by the following fee, as applicable:

(a) For a project in a category of activities for which a general permit is issued under section 32512a(2), a fee of \$50.00.

(b) For activities included in a minor project category established under section 32512a(1), a fee of \$100.00.

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

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

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

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

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

(v) \$1,500.00 if an existing permitted marina proposes maintenance dredging of 10,000 cubic yards or more, unless the dredge material is determined through testing to be 90% or more sand, or the addition of seawalls, bulkheads, or revetments of 500 feet or more.

(d) For major projects other than a project described in subdivision (c)(v), involving any of the following, a fee of \$2,000.00:

(i) Dredging of 10,000 cubic yards or more, unless the dredge material is determined through testing to be 90% or more sand.

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

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

(iv) Filling or draining of 1 acre or more of coastal wetland.

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

(vi) New breakwater or channel jetty.

(vii) Shore protection, such as groins and underwater stabilizers, that extend 150 feet or more on Great Lakes bottomlands.

(viii) New commercial dock or wharf of 300 feet or more in length.

(e) For all other projects not listed in subdivisions (a) to (d), \$500.00.

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

(a) Section 3104.

(b) Part 301.

(c) Part 303.

(d) Part 323.

(e) Section 117 of the land division act, 1967 PA 288, MCL 560.117.

(4) If work is done in violation of a permit requirement under this part 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 otherwise required under this section.

(5) The department shall forward fees collected under this section to the state treasurer for deposit into the land and water management permit fee fund created in section 30113.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1995, Act 170, Imd. Eff. Oct. 9, 1995;—Am. 1999, Act 106, Imd. Eff. July 7, 1999;—Am. 2003, Act 14, Imd. Eff. June 5, 2003;—Am. 2003, Act 163, Imd. Eff. Aug. 12, 2003;—Am. 2008, Act 276, Imd. Eff. Sept. 29, 2008;—Am. 2009, Act 120, Eff. Nov. 6, 2009;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2012, Act 247, Imd. Eff. July 2, 2012;—Am. 2013, Act 11, Imd. Eff. Mar. 27, 2013;—Am. 2013, Act 98, Imd. Eff. July 2, 2013;—Am. 2015, Act 76, Eff. Oct. 1, 2015;—Am. 2019, Act 84, Imd. Eff. Sept. 30, 2019;—Am. 2021, Act 91, Imd. Eff. Oct. 20, 2021.

**Compiler's note:** Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32514 Application for permit; copies to department of community health, local units, and adjacent riparian owners; objections; public hearing; notice; conditional permit; additional conditions.**

Sec. 32514. (1) Upon receipt of the application, the department shall mail copies of the application to the department of community health, the clerks of the county, city, village, and township, and, if one exists, the drain commissioner of the county, in which the project or body of water affected is located, and to the adjacent riparian owners. Along with the application, the department shall include a statement that unless a written objection is filed with the department within 20 days after the mailing of the copies of the application, the department may take action to grant the application. The department may hold a public hearing on the application. If the department holds a public hearing, the department shall provide notice of the public hearing by publication in a newspaper circulated in the county and by mailing copies of the notice to the persons named in this section at least 10 days prior to the date of the public hearing.

(2) Notwithstanding subsection (1), the department may issue a conditional permit before the expiration of the 20-day period if emergency conditions warrant a project to protect property or public health, safety, or welfare. Following the 20-day period and any public hearing that is held, the department shall take into consideration additional information or objections received and may, consistent with this part, place additional conditions on the final permit.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2013, Act 12, Imd. Eff. Mar. 27, 2013.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32515 Artificial waterway; permit; issuance; conditions; maintenance.**

Sec. 32515. If the department finds that the project will not injure the public trust or interest including fish and game habitat, that the project conforms to the requirements of law for sanitation, and that no material injury to the rights of any riparian owners on any body of water affected will result, the department shall issue a permit authorizing enlargement of the waterway affected. The permit shall provide that the artificial waterway shall be a public waterway, except intake or discharge canals or channels on property owned, controlled, and used by a public utility. The existing and future owners of land fronting on the artificial waterway are liable for maintenance of the waterway in accordance with the conditions of the permit.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32515a Dredging or placing dredged spoils on bottomland; permit; conditions.**

Sec. 32515a. A permit under this part to dredge or place dredged spoil on bottomland is subject to all of the following:

(a) The permit shall be valid for a period of 5 years.

(b) During the term of the permit, the department shall not require additional environmental studies or surveys unless an act of God results in significant geological or ecological changes to the permitted area.

(c) The permit shall allow, at the discretion of the applicant, open lake disposal of dredge material that is not contaminated with toxic substances as defined in R 323.1205 of the Michigan administrative code in waters at the 30-meter depth contour or deeper. However, dredge materials shall not be disposed of within a Great Lakes bottomland preserve established under part 761, a permitted submerged log removal area under part 326, or a lake trout or diporeia refuge.

**History:** Add. 2013, Act 87, Imd. Eff. June 28, 2013.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32516 Repealed. 2012, Act 247, Imd. Eff. July 2, 2012.**

**Compiler's note:** The repealed section pertained to identification of Great Lakes and Lake St. Clair shoreline where removal of vegetation is allowed.

## PART 326 GREAT LAKES SUBMERGED LOGS RECOVERY

### **324.32601 Definitions.**

Sec. 32601. As used in this part:

(a) "Bottomlands" means land in the Great Lakes, and bays and harbors of the Great Lakes, lying below and lakeward of the ordinary high-water mark as described in section 32502.

(b) "Department" means the department of environmental quality.

(c) "Fair market value" means the price based upon the unique historical and physical properties, including, but not limited to, species, growth rates, volume, and condition of the submerged logs as calculated at dockside following delivery to shore.

(d) "Fund" means the submerged log recovery fund created in section 32610.

(e) "Great Lakes" means Lake Superior, Lake Michigan, Lake Huron, and Lake Erie, and includes Lake St. Clair.

(f) "Ordinary high-water mark" means the elevations described in section 32502. When the soil, configuration of the surface, or vegetation has been altered by human activity, the ordinary high-water mark is located where it would have been if this alteration had not occurred.

(g) "Patented lands" means any bottomlands lying within a specific government grant area, including a private claim patent or federal patent.

(h) "Riparian owner" means a person who owns frontage bordering bottomlands.

(i) "Riparian rights" means those rights that are associated with the ownership of frontage bordering bottomlands, subject to the public trust.

(j) "Submerged log" means a portion of the trunk of a felled tree that has not been further processed for any end use and is located on, in, over, or under bottomlands. Submerged log does not include a portion of a tree that is located in the Great Lakes or on, in, over, or under bottomlands that poses a navigational or safety hazard or is of no or little commercial value.

(k) "Unpatented lands" means all bottomlands except patented lands.

**History:** Add. 2000, Act 278, Imd. Eff. July 10, 2000.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32602 Submerged logs; reservation of ownership rights.**

Sec. 32602. This state reserves to itself title and ownership of all submerged logs lying on or over, embedded in, or buried under unpatented lands.

**History:** Add. 2000, Act 278, Imd. Eff. July 10, 2000.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32603 Removal of submerged logs from bottomlands, patented lands, or underwater preserves; permit.**

Sec. 32603. (1) A person shall not remove submerged logs from bottomlands except as authorized by a permit issued by the department pursuant to part 13.

(2) The department may issue a permit under this part to a person for the removal of submerged logs from patented lands if permission is received from the lawful owner of the patented lands.

(3) A person shall not recover, alter, or destroy abandoned property as defined in part 761 while engaging

in submerged log removal operations under a submerged log removal permit issued under this part.

(4) For submerged log recovery in underwater preserves established under part 761, the department shall place reasonable conditions on submerged log removal permits to prevent damage to abandoned watercraft or other features of archaeological, historical, recreational, or environmental significance and to minimize conflicts between recreational activities within the preserve and the submerged log recovery operation.

**History:** Add. 2000, Act 278, Imd. Eff. July 10, 2000;—Am. 2011, Act 218, Imd. Eff. Nov. 10, 2011.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32604 Application for submerged log removal permit; submission; form; information; time period for submission; disposition of fees.**

Sec. 32604. (1) Applications for submerged log removal permits shall be submitted before February 1 of each calendar year.

(2) An application for a submerged log removal permit shall be submitted in writing on a form provided by the department and shall include all of the following:

(a) A description of the proposed bottomland log removal area with boundaries delineated by the use of current technology such as a digital global positioning system or other technology approved by the department. The proposed bottomland log removal area shall be a contiguous area of not more than 320 acres. The area proposed shall be square or rectangular in shape, and the length shall not exceed the width by more than a factor of 6.

(b) A description of the methods to be used to raise the submerged logs, the time of year during which submerged logs will be raised, and the procedures to be used for transferring logs to the shore.

(c) Identification of any adverse environmental impacts associated with the proposed submerged log removal method.

(d) Identification of the steps proposed to mitigate any adverse environmental impacts caused by the proposed submerged log removal operation.

(e) Other information that the department considers necessary in evaluating a submerged log removal permit application.

(f) A \$500.00 application fee.

(3) An application for a submerged log removal permit is not complete until all information requested on the application form and any other information requested by the department are received. Within 30 days of its receipt of an application, the department shall notify the applicant in writing if the application is deficient. The applicant shall submit the requested information to the department within 30 days after the date the notice is provided. If the applicant fails to respond within the 30-day period, the department shall deny the submerged log removal permit unless the applicant requests and the department approves an extension of time based upon the applicant's reasonable justification for the extension.

(4) Application fees received under this section shall be forwarded to the state treasurer for deposit into the fund.

**History:** Add. 2000, Act 278, Imd. Eff. July 10, 2000;—Am. 2011, Act 218, Imd. Eff. Nov. 10, 2011.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32605 Receipt of completed application; review by department; issuance of permit; conditions.**

Sec. 32605. Upon receiving a complete application for a submerged log removal permit, the department shall do both of the following:

(a) Place the application on public notice for a 20-day period for review and comment.

(b) Submit a copy to the department of natural resources and the department of state for their review and comment.

**History:** Add. 2000, Act 278, Imd. Eff. July 10, 2000.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32606 Department review of application; issuance; limitation; time period for making decision; conditions; notification of approval or denial; disposition of fees.**

Sec. 32606. (1) The department shall review each complete application received for a submerged log removal permit and shall not issue a permit unless the department determines both of the following:

(a) That any adverse impacts, including, but not limited to, impacts to the environment, natural resources, riparian rights, and the public trust are minimal and will be mitigated to the extent practicable.

(b) That the proposed activity will not unreasonably affect the public health, safety, and welfare.

(2) The department may determine that certain areas within a proposed bottomland log removal area described in an application for a submerged log removal permit shall not be authorized for submerged log removal based upon adverse impacts, including, but not limited to, adverse impacts to the environment, natural resources, riparian rights, and the public trust.

(3) The department shall make a decision on whether or not to issue a submerged log removal permit under this part within 90 days after the close of the review and comment period under section 32605 or, if a public hearing is held under section 32608, within 90 days after the date of that public hearing.

(4) If the department issues a submerged log removal permit, the department shall condition the permit on compliance with both of the following:

(a) The permittee has provided the department with a \$3,000.00 log recovery fee.

(b) The permittee has provided the department a bond as required in section 32607(7).

(5) The department shall notify the applicant in writing within 10 days after the date the department approves or denies a submerged log removal permit under this section.

(6) The department shall forward log recovery fees received under this subsection to the state treasurer for deposit into the Great Lakes fund created in section 32611.

**History:** Add. 2000, Act 278, Imd. Eff. July 10, 2000;—Am. 2011, Act 218, Imd. Eff. Nov. 10, 2011.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32607 Submerged log removal permit; overlaps; expiration; transfer; bond; termination; "bond" defined.**

Sec. 32607. (1) The department shall not authorize the same bottomland log removal area in more than 1 submerged log removal permit at any 1 time.

(2) The department may modify the boundaries of a proposed bottomland log removal area in a submerged log removal permit to avoid overlaps with other active submerged log removal permits or adverse impacts, including, but not limited to, impacts to the environment, natural resources, riparian rights, and the public trust.

(3) A submerged log removal plan approved by the department shall be included in each submerged log removal permit.

(4) A submerged log removal permit shall contain terms and conditions that are determined by the department to protect the environment, natural resources, riparian rights, and the public trust.

(5) Each submerged log removal permit shall expire 5 years after the date the permit is issued. However, a submerged log removal permit issued prior to the effective date of the 2011 amendatory act that amended this section expires 5 years after the effective date of the 2011 amendatory act that amended this section. If federal approval is required, an applicant shall notify the department of the date on which the federal government issued its approval for the submerged log removal permit.

(6) A submerged log removal permit issued under this section is not transferrable unless the transfer is approved in writing by the department.

(7) An applicant for a submerged log removal permit shall provide a bond acceptable to the department in the amount of not less than \$10,000.00 or more than \$100,000.00 as required by the department, based upon permit conditions including costs of restoration and payments under section 32609. Except as provided in subsection (8), the term of the bond shall extend for 1 year following the expiration of the submerged log removal permit. The bond shall be provided to the department at least 10 days prior to beginning submerged log removal in a bottomland log removal area. The bond shall ensure compliance with the submerged log removal permit and all required payments under section 32609. If a submerged log removal permit is terminated under subsection (8), the department shall issue a written statement releasing the permittee or bonding company, or both, upon satisfaction of the department as to the compliance of the permittee with the terms and conditions of the permit and satisfaction of all payments as required in section 32609.

(8) A permittee may request, in writing, and the department may grant, termination of a submerged log removal permit prior to the expiration date, including release from quarterly reports and bond requirements.

(9) As used in this section, "bond" means a performance bond from a surety company authorized to transact business in this state or an irrevocable letter of credit, in favor of the department.

**History:** Add. 2000, Act 278, Imd. Eff. July 10, 2000;—Am. 2004, Act 546, Imd. Eff. Jan. 3, 2005;—Am. 2011, Act 218, Imd. Eff. Nov. 10, 2011.



**Popular name:** Act 451

**Popular name:** NREPA

### **324.32608 Application for submerged log removal permit; hearing.**

Sec. 32608. (1) The department may hold a public hearing on an application for a submerged log removal permit if the department desires additional information before making a decision on the permit application, or upon request, if such request is made within the public notice period.

(2) An applicant for a submerged log removal permit or a riparian owner who is aggrieved by an action or inaction of the department under this part may request a formal hearing on the matter, pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, within 60 days of the notice of the department's decision.

**History:** Add. 2000, Act 278, Imd. Eff. July 10, 2000.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32609 Sawlog stumpage value; reservation of payments; "sawlog stumpage value" defined; report and payments due; disposition of payments; overdue payment.**

Sec. 32609. (1) The state reserves a payment of 15% of the sawlog stumpage value of each submerged log that is removed from unpatented lands. As used in this subsection, "sawlog stumpage value" means the price received from recovered submerged logs.

(2) The holder of a submerged log removal permit under this part shall provide the department with a detailed report and all payments due under this section within 30 days after the close of each calendar quarter. The report shall include an accurate scaling at dockside of all submerged logs removed, by species. The permittee shall provide for an independent agent, approved by the department in writing, to conduct the scaling and species determination.

(3) All payments received under this section shall be forwarded to the state treasurer for deposit into the fund.

(4) After a permittee is notified in writing that a payment under this section is overdue, the department may order suspension of the submerged log removal permit until the payment is submitted in full. The permittee shall not resume submerged log removal operations until the department provides written authorization for the operations to resume.

**History:** Add. 2000, Act 278, Imd. Eff. July 10, 2000;—Am. 2011, Act 218, Imd. Eff. Nov. 10, 2011.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32610 Submerged log recovery fund.**

Sec. 32610. (1) The submerged log recovery 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.

(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) Subject to subsection (5), money from the fund shall be used, upon appropriation, for the administrative costs of the department, the department of natural resources, and the department of state in implementing this part.

(5) On December 1, 2001 and on December 1 of each following year, the state treasurer shall transfer the balance of the fund as follows:

(a) Fifty percent to the Great Lakes fund created in section 32611.

(b) Fifty percent to the forest development fund established under section 50507.

**History:** Add. 2000, Act 277, Imd. Eff. July 10, 2000.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32611 Great Lakes fund.**

Sec. 32611. (1) The Great Lakes fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the Great Lakes fund. The state treasurer shall direct the investment of the Great Lakes fund. The state treasurer shall credit to the Great Lakes fund interest and earnings from Great Lakes fund investments.

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

(4) The department shall expend money from the Great Lakes fund, upon appropriation, only for environmental projects related to the Great Lakes and areas contiguous to the Great Lakes including, but not limited to, the prevention and management of nonnative species, coastal wetland restoration, contaminated sediment cleanup, and underwater preserve management, and for the administration of this part.

**History:** Add. 2000, Act 277, Imd. Eff. July 10, 2000;—Am. 2011, Act 218, Imd. Eff. Nov. 10, 2011.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32612 Violation; civil action; remedies; civil fine.**

Sec. 32612. (1) The department may bring a civil action against a person in the circuit court of the county in which a violation occurs or in Ingham county circuit court to do 1 or more of the following:

(a) Enforce compliance with this part and the rules promulgated under this part.

(b) Restrain a violation of this part or the rules promulgated under this part.

(c) Enjoin the further performance of, or order the removal of, any project that is undertaken contrary to this part or the rules promulgated under this part.

(d) Enforce a permit issued under this part.

(e) Order the restoration of an area affected by a violation of this part or the rules promulgated under this part to its prior condition.

(2) In an action brought under this section, 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 of this part or the rules promulgated under this part.

(3) Any civil fine or remedy assessed, sought, or agreed to by the department shall be appropriate to the violation.

(4) Civil fines recovered under this section shall be forwarded to the state treasurer for deposit into the fund.

**History:** Add. 2000, Act 278, Imd. Eff. July 10, 2000.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32613 Violation as misdemeanor; penalties.**

Sec. 32613. (1) A person who does any of the following is guilty of a misdemeanor punishable by a fine of not more than \$10,000.00 per day for each day of violation:

(a) Violates this part or a rule promulgated under this part.

(b) Violates a permit issued under this part.

(c) Makes a false statement, representation, or certification in an application for or with regard to a permit or in a notice or report required by a permit.

(d) Renders inaccurate any monitoring device or method required to be maintained by a permit.

(2) In addition to any other penalty provided in this section, a court shall order a person convicted under this section to return to the state any logs removed from bottomlands in violation of this part or the rules promulgated under this part, or to compensate the state for the full market value of the logs. If the person convicted under this section had been issued a permit under this part, the permit is void as of the date of conviction.

**History:** Add. 2000, Act 278, Imd. Eff. July 10, 2000.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32614 Repealed. 2018, Act 237, Eff. Sept. 25, 2018.**

**Compiler's note:** The repealed section pertained to an annual report on great lakes submerged logs recovery program.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32615 Rules.**

Sec. 32615. The department may promulgate rules to implement this part.

**History:** Add. 2000, Act 278, Imd. Eff. July 10, 2000.

**Popular name:** Act 451

PART 327  
GREAT LAKES PRESERVATION

**324.32701 Definitions; retention of established baseline capacity.**

Sec. 32701. (1) As used in this part:

(a) "Adverse resource impact" means any of the following:

(i) Until February 1, 2009, decreasing the flow of a river or stream by part of the index flow such that the river's or stream's ability to support characteristic fish populations is functionally impaired.

(ii) Beginning February 1, 2009, subject to subparagraph (vi), decreasing the flow of a cold river system by part of the index flow as follows:

(A) For a cold stream, the withdrawal will result in a 3% or more reduction in the density of thriving fish populations as determined by the thriving fish curve.

(B) For a cold small river, the withdrawal will result in a 1% or more reduction in the density of thriving fish populations as determined by the thriving fish curve.

(iii) Beginning February 1, 2009, subject to subparagraph (vi), decreasing the flow of a cold-transitional river system by part of the index flow such that the withdrawal will result in a 5% or more reduction in the density of thriving fish populations as determined by the thriving fish curve.

(iv) Beginning February 1, 2009, subject to subparagraph (vi), decreasing the flow of a cool river system by part of the index flow as follows:

(A) For a cool stream, the withdrawal will result in a 10% or more reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

(B) For a cool small river, the withdrawal will result in a 15% or more reduction in the density of thriving fish populations as determined by the thriving fish curve.

(C) For a cool large river, the withdrawal will result in a 12% or more reduction in the density of thriving fish populations as determined by the thriving fish curve.

(v) Beginning February 1, 2009, subject to subparagraph (vi), decreasing the flow of a warm river system by part of the index flow as follows:

(A) For a warm stream, the withdrawal will result in a 5% or more reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

(B) For a warm small river, the withdrawal will result in a 10% or more reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

(C) For a warm large river, the withdrawal will result in a 10% or more reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

(vi) Beginning February 1, 2009, decreasing the flow of a stream or river by more than 25% of its index flow.

(vii) Decreasing the level of a lake or pond with a surface area of 5 acres or more through a direct withdrawal from the lake or pond in a manner that would impair or destroy the lake or pond or the uses made of the lake or pond, including the ability of the lake or pond to support characteristic fish populations, or such that the ability of the lake or pond to support characteristic fish populations is functionally impaired. As used in this subparagraph, lake or pond does not include a retention pond or other artificially created surface water body.

(b) "Agricultural purpose" means the agricultural production of plants and animals useful to human beings and includes, but is not limited to, forages and sod crops, grains and feed crops, field crops, dairy animals and dairy products, poultry and poultry products, cervidae, livestock, including breeding and grazing, equine, fish and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, trees and tree products, mushrooms, and other similar products, or any other product, as determined by the commission of agriculture, that incorporates the use of food, feed, fiber, or fur.

(c) "Assessment tool" means the water withdrawal assessment tool provided for in section 32706a.

(d) "Baseline capacity", subject to subsection (2), means any of the following, which shall be considered the existing withdrawal approval amount under section 4.12.2 of the compact:

(i) The following applicable withdrawal capacity as reported to the department or the department of agriculture, as appropriate, by the person making the withdrawal in the annual report submitted under section 32707 not later than April 1, 2009 or in the water use conservation plan submitted under section 32708 not later than April 1, 2009:

(A) Unless reported under a different provision of this subparagraph, for a quarry or mine that holds an authorization to discharge under part 31 that includes a discharge volume, the discharge volume stated in that

authorization on February 28, 2006.

(B) The system capacity used or developed to make a withdrawal on February 28, 2006, if the system capacity and a description of the system capacity are included in an annual report that is submitted under this part not later than April 1, 2009.

(ii) If the person making the withdrawal does not report under subparagraph (i), the highest annual amount of water withdrawn as reported under this part for calendar year 2002, 2003, 2004, or 2005. However, for a person who is required to report by virtue of the 2008 amendments to section 32705(2)(d), baseline capacity means the person's withdrawal capacity as reported in the April 1, 2009 annual report submitted under section 32707.

(iii) For a community supply, the total designed withdrawal capacity for the community supply under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, on February 28, 2006 as reported to the department in a report submitted not later than April 1, 2009.

(e) "Characteristic fish curve" means a fish functional response curve that describes the abundance of characteristic fish populations in response to reductions in index flow as published in the document entitled "Report to the Michigan Legislature in response to 2006 Public Act 34" by the former groundwater conservation advisory council dated July 2007, which is incorporated by reference.

(f) "Characteristic fish population" means the fish species, including thriving fish, typically found at relatively high densities in stream reaches having specific drainage area, index flow, and summer temperature characteristics.

(g) "Cold river system" means a stream or small river that has the appropriate summer water temperature that, based on statewide averages, sustains a fish community composed predominantly of cold-water fish species, and where small increases in water temperature will not cause a decline in these populations, as determined by a scientific methodology adopted by order of the commission.

(h) "Cold-transitional river system" means a stream or river that has the appropriate summer water temperature that, based on statewide averages, sustains a fish community composed predominantly of cold-water fish species, and where small increases in water temperature will cause a decline in the proportion of cold-water species, as determined by a scientific methodology adopted by order of the commission.

(i) "Community supply" means that term as it is defined in section 2 of the safe drinking water act, 1976 PA 399, MCL 325.1002.

(j) "Compact" means the Great Lakes-St. Lawrence river basin water resources compact provided for in part 342.

(k) "Consumptive use" means that portion of water withdrawn or withheld from the Great Lakes basin and assumed to be lost or otherwise not returned to the Great Lakes basin due to evaporation, incorporation into products or agricultural products, use as part of the packaging of products or agricultural products, or other processes. Consumptive use includes a withdrawal of waters of the Great Lakes basin that is packaged within the Great Lakes basin in a container of 5.7 gallons (20 liters) or less and is bottled drinking water as defined in the food code, 2005 recommendations of the food and drug administration of the United States public health service.

(l) "Cool river system" means a stream or river that has the appropriate summer water temperature that, based on statewide averages, sustains a fish community composed mostly of warm-water fish species, but also contains some cool-water species or cold-water species, or both, as determined by a scientific methodology adopted by order of the commission.

(m) "Council" means the Great Lakes-St. Lawrence river basin water resources council created in the compact.

(n) "Department" means the department of environmental quality.

(o) "Designated trout stream" means a trout stream identified on the document entitled "Designated Trout Streams for the State of Michigan", as issued under order of the director of the department of natural resources, FO-210.04, on October 10, 2003.

(p) "Diversion" means a transfer of water from the Great Lakes basin into another watershed, or from the watershed of 1 of the Great Lakes into that of another by any means of transfer, including, but not limited to, a pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a water course, tanker ship, tanker truck, or rail tanker but does not apply to water that is used in the Great Lakes basin or a Great Lake watershed to manufacture or produce a product that is then transferred out of the Great Lakes basin or watershed. Diverted has a corresponding meaning. Diversion includes a transfer of water withdrawn from the waters of the Great Lakes basin that is removed from the Great Lakes basin in a container greater than 5.7 gallons (20 liters). Diversion does not include any of the following:

(i) A consumptive use.

(ii) The supply of vehicles, including vessels and aircraft, whether for the needs of the persons or animals

being transported or for ballast or other needs related to the operation of vehicles.

(iii) Use in a noncommercial project on a short-term basis for firefighting, humanitarian, or emergency response purposes.

(iv) A transfer of water from a Great Lake watershed to the watershed of its connecting waterways.

(q) "Environmentally sound and economically feasible water conservation measures" means those measures, methods, technologies, or practices for efficient water use and for reduction of water loss and waste or for reducing a withdrawal, consumptive use, or diversion that meet all of the following:

(i) Are environmentally sound.

(ii) Reflect best practices applicable to the water use sector.

(iii) Are technically feasible and available.

(iv) Are economically feasible and cost-effective based on an analysis that considers direct and avoided economic and environmental costs.

(v) Consider the particular facilities and processes involved, taking into account the environmental impact, the age of equipment and facilities involved, the process employed, energy impacts, and other appropriate factors.

(r) "Farm" means that term as it is defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(s) "Flow-based safety factor" means a protective measure of the assessment tool that reduces the portion of index flow available for a withdrawal to 1/2 of the index flow for the purpose of minimizing the risk of adverse resource impacts caused by statistical uncertainty.

(t) "Great Lakes" means Lakes Superior, Michigan and Huron, Erie, and Ontario and their connecting waterways including the St. Marys river, Lake St. Clair, the St. Clair river, and the Detroit river. For purposes of this definition, Lakes Huron and Michigan shall be considered a single Great Lake.

(u) "Great Lakes basin" means the watershed of the Great Lakes and the St. Lawrence river.

(v) "Great Lakes charter" means the document establishing the principles for the cooperative management of the Great Lakes water resources, signed by the governors and premiers of the Great Lakes region on February 11, 1985.

(w) "Great Lakes region" means the geographic region composed of the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, and Wisconsin, the commonwealth of Pennsylvania, and the provinces of Ontario and Quebec, Canada.

(x) "Index flow" means the 50% exceedance flow for the lowest summer flow month of the flow regime, for the applicable stream reach, as determined over the period of record or extrapolated from analyses of the United States geological survey flow gauges in Michigan. Beginning on October 1, 2008, index flow shall be calculated as of that date.

(y) "Intrabasin transfer" means a diversion of water from the source watershed of a Great Lake prior to its use to the watershed of another Great Lake.

(z) "Lake augmentation well" means a water well used to withdraw groundwater for the purpose of maintaining or raising water levels of an inland lake or stream as defined in section 30101.

(aa) "Large quantity withdrawal" means 1 or more cumulative total withdrawals of over 100,000 gallons of water per day average in any consecutive 30-day period that supply a common distribution system.

(bb) "Large river" means a river with a drainage area of 300 or more square miles.

(cc) "New or increased large quantity withdrawal" means a new water withdrawal of over 100,000 gallons of water per day average in any consecutive 30-day period or an increase of over 100,000 gallons of water per day average in any consecutive 30-day period beyond the baseline capacity of a withdrawal.

(dd) "New or increased withdrawal capacity" means new or additional water withdrawal capacity to supply a common distribution system that is an increase from the person's baseline capacity. New or increased capacity does not include maintenance or replacement of existing withdrawal capacity.

(ee) "Online registration process" means the online registration process provided for in section 32706.

(ff) "Preventative measure" means an action affecting a stream or river that prevents an adverse resource impact by diminishing the effect of a withdrawal on stream or river flow or the temperature regime of the stream or river.

(gg) "Registrant" means a person who has registered a water withdrawal under section 32705.

(hh) "River" means a flowing body of water with a drainage area of 80 or more square miles.

(ii) "Site-specific review" means the department's independent review under section 32706c to determine whether the withdrawal is a zone A, zone B, zone C, or zone D withdrawal and whether a withdrawal is likely to cause an adverse resource impact.

(jj) "Small river" means a river with a drainage area of less than 300 square miles.

(kk) "Source watershed" means the watershed from which a withdrawal originates. If water is withdrawn

directly from a Great Lake, then the source watershed shall be considered to be the watershed of that Great Lake and its connecting waterways. If water is withdrawn from the watershed of a direct tributary to a Great Lake, then the source watershed shall be considered to be the watershed of that Great Lake and its connecting waterways, with a preference for returning water to the watershed of the direct tributary from which it was withdrawn.

(ll) "Stream" means a flowing body of water with a drainage area of less than 80 square miles.

(mm) "Stream reach" means a segment of a stream or river.

(nn) "Thriving fish curve" means a fish functional response curve that describes the initial decline in density of thriving fish populations in response to reductions in index flow as published in the document entitled "Report to the Michigan Legislature in response to 2006 Public Act 34" by the former groundwater conservation advisory council dated July 2007, which is incorporated by reference.

(oo) "Thriving fish population" means the fish species that are expected to flourish at very high densities in stream reaches having specific drainage area, index flow, and summer temperature characteristics.

(pp) "Warm river system" means a stream or river that has the appropriate summer water temperature that, based on statewide averages, sustains a fish community composed predominantly of warm-water fish species, as determined by a scientific methodology adopted by order of the commission.

(qq) "Waters of the Great Lakes basin" means the Great Lakes and all streams, rivers, lakes, connecting channels, and other bodies of water, including groundwater, within the Great Lakes basin.

(rr) "Waters of the state" means groundwater, lakes, rivers, and streams and all other watercourses and waters, including the Great Lakes, within the territorial boundaries of the state. Waters of the state do not include drainage ways and ponds designed and constructed solely for wastewater conveyance, treatment, or control.

(ss) "Withdrawal" means the removal of water from surface water or groundwater.

(tt) "Zone A withdrawal" means the following:

(i) For a cold river system, as follows:

(A) For a cold stream, less than a 1% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(B) For a cold small river, less than 50% of the withdrawal that would result in an adverse resource impact.

(ii) For a cold-transitional river system, there is not a zone A withdrawal.

(iii) For a cool river system, as follows:

(A) For a cool stream, less than a 10% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(B) For a cool small river, less than a 5% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(C) For a cool large river, less than an 8% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(iv) For a warm river system, less than a 10% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(uu) "Zone B withdrawal" means the following:

(i) There is not a zone B withdrawal for a cold stream or small river.

(ii) For a cold-transitional river system, less than a 5% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(iii) For a cool river system, as follows:

(A) For a cool stream, a 10% or more but less than a 20% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(B) For a cool small river, a 5% or more but less than a 10% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(C) For a cool large river, an 8% or more but less than a 10% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(iv) For a warm river system, as follows:

(A) For a warm stream, a 10% or more but less than a 15% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(B) For a warm small river or a warm large river, a 10% or more but less than a 20% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(vv) "Zone C withdrawal" means the following as long as the withdrawal will not decrease the flow of a stream or river by more than 25% of its index flow:

(i) For a cold river system, as follows:

(A) For a cold stream, a 1% or more but less than a 3% reduction in the density of thriving fish populations

as determined by the thriving fish curve.

(B) For a cold small river, 50% or more of the withdrawal that would result in an adverse resource impact but less than a 1% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(ii) There is not a zone C withdrawal for a cold-transitional river system.

(iii) For a cool river system, as follows:

(A) For a cool stream, a 20% or more reduction in the density of thriving fish populations as determined by the thriving fish curve but less than a 10% reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

(B) For cool small rivers, a 10% or more but less than a 15% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(C) For cool large rivers, a 10% or more but less than a 12% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(iv) For warm river systems, as follows:

(A) For warm streams, a 15% or more reduction in the density of thriving fish populations as determined by the thriving fish curve but less than a 5% reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

(B) For warm small rivers and warm large rivers, a 20% or more reduction in the density of thriving fish populations as determined by the thriving fish curve but less than a 10% reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

(ww) "Zone D withdrawal" means, beginning February 1, 2009, a withdrawal that is likely to cause an adverse resource impact.

(2) For purposes of determining baseline capacity, a person who replaces his or her surface water withdrawal capacity with the same amount of groundwater withdrawal capacity from the drainage area of the same stream reach may retain the baseline capacity established under this section.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 434, Imd. Eff. Dec. 2, 1996;—Am. 2003, Act 148, Imd. Eff. Aug. 8, 2003;—Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 179, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32702 Legislative findings and declarations; authority.**

Sec. 32702. (1) The legislature finds and declares that:

(a) A diversion of water out of the basin of the Great Lakes may impair or destroy the Great Lakes. The legislature further finds that a limitation on such diversions is authorized by and is consistent with the mandate of section 52 of article IV of the state constitution of 1963 that the legislature provide for the protection of the air, water, and other natural resources of the state from pollution, impairment, and destruction.

(b) Water use registration and reporting are essential to implementing the principles of the Great Lakes charter and necessary to support the state's opposition to diversion of waters of the Great Lakes basin and to provide a source of information on water use to protect Michigan's rights when proposed water losses affect the level, flow, use, or quality of waters of the Great Lakes basin.

(c) The waters of the state are valuable public natural resources held in trust by the state, and the state has a duty as trustee to manage its waters effectively for the use and enjoyment of present and future residents and for the protection of the environment.

(d) The waters of the Great Lakes basin are a valuable public natural resource, and the states and provinces of the Great Lakes region and Michigan share a common interest in the preservation of that resource.

(e) Any new diversion of waters of the Great Lakes basin for use outside of the Great Lakes basin will have significant economic and environmental impact adversely affecting the use of this resource by the Great Lakes states and Canadian provinces.

(f) The continued availability of water for domestic, municipal, industrial, and agricultural water supplies, navigation, hydroelectric power and energy production, recreation, and the maintenance of fish and wildlife habitat and a balanced ecosystem are vital to the future economic health of the states and provinces of the Great Lakes region.

(g) Future interbasin diversions and consumptive uses of waters of the Great Lakes basin may have significant adverse impacts upon the environment, economy, and welfare of the Great Lakes region and of this state.

(h) The states and provinces of the Great Lakes region have a duty to protect, conserve, and manage their shared water resources for the use and enjoyment of present and future residents.

(i) The waters of the Great Lakes basin are capable of concurrently serving multiple uses, and such multiple uses of water resources for municipal, public, industrial, commercial, agriculture, mining, navigation, energy development and production, recreation, water quality maintenance, and the maintenance of fish and wildlife habitat and a balanced ecosystem and other purposes are encouraged, recognizing that such uses are interdependent and must be balanced.

(j) The waters of the Great Lakes basin are interconnected and part of a single hydrologic system.

(2) The legislature has the authority under sections 51 and 52 of article IV of the state constitution of 1963 to regulate the withdrawal and uses of the waters of the state, including both surface water and groundwater, to promote the public health, safety, and welfare and to protect the natural resources of the state from pollution, impairment, and destruction, subject to constitutional protections against unreasonable or arbitrary governmental action and the taking of property without just compensation. This authority extends to all waters within the territorial boundaries of the state.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 180, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32703 Diversion of waters prohibited.**

Sec. 32703. Subject to section 32704, a diversion of the waters of the state out of the Great Lakes basin is prohibited.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 180, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32703a Diversion; authorization; conditions.**

Sec. 32703a. (1) If the prohibition in section 32703 is determined to be invalid, the waters of the state shall not be diverted unless authorized by law.

(2) When considering whether to grant legislative approval for a diversion, the legislature shall consider sections 51 and 52 of article IV of the state constitution of 1963 and whether the project serves a public purpose, whether the project will result in no material harm to the waters of the state, the public trust, or related purposes, and whether the project would result in any improvement to the waters of the state or the water dependent natural resources of the state.

**History:** Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32704 Applicability of MCL 324.32703.**

Sec. 32704. Section 32703 does not apply to a diversion of the waters of the Great Lakes out of the drainage basin of the Great Lakes existing on September 30, 1985.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32704a Diversion; proposal; comment period; notification; waiver.**

Sec. 32704a. The governor shall establish a public comment period with regard to a proposal subject to 42 USC 1962d-20 to divert waters of the Great Lakes basin outside of the Great Lakes basin and shall notify the standing committees of the legislature with jurisdiction over issues primarily pertaining to natural resources and the environment of his or her receipt of the proposal. The governor may waive the comment period under this section if he or she determines that it is necessary to take immediate action to provide humanitarian relief or firefighting capabilities.

**History:** Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32705 Registration of withdrawal; use of assessment tool; exception; agricultural purpose; form; calculating total amount of existing or proposed withdrawal; aggregate information; duration of valid registration.**



Sec. 32705. (1) Except as otherwise provided in this section, the owner of real property who intends to develop capacity on that property to make a new or increased large quantity withdrawal from the waters of this state shall register the withdrawal with the department after using the assessment tool, if required under this part, and prior to beginning that withdrawal. A registration under this section may be made using the online registration process.

(2) The following persons are not required to register under this section:

(a) Subject to subdivision (c), a person who has previously registered for that property under this part or the owner of real property containing the capacity to make a withdrawal that was previously requested under this part, unless the property owner develops new or increased withdrawal capacity on the property of an additional 100,000 gallons of water per day from the waters of the state.

(b) A community supply required to obtain a permit under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

(c) A person required to obtain a permit under section 32723.

(d) The owner of a noncommercial well located on the following residential property:

(i) Single-family residential property unless that well is a lake augmentation well.

(ii) Multifamily residential property not exceeding 4 residential units and not more than 3 acres in size unless that well is a lake augmentation well.

(3) Subsection (1) does not limit a property owner's ability to withdraw water from a test well prior to registration if the test well is constructed in association with the development of new or increased withdrawal capacity and used only to evaluate the development of new or increased withdrawal capacity.

(4) A registration under this section by the owner of a farm in which the withdrawal is intended for an agricultural purpose, including irrigation for an agricultural purpose, may be submitted to the department of agriculture instead of the department.

(5) A registration submitted under this section that is not submitted via the online registration process shall be on a form provided by the department or the department of agriculture, as appropriate.

(6) In calculating the total amount of an existing or proposed withdrawal for the purpose of this section, a person shall combine all separate withdrawals that the person makes or proposes to make, whether or not these withdrawals are for a single purpose or are for related but separate purposes.

(7) The department shall aggregate information received by the state related to large quantity withdrawal capacities within the state and reported large quantity withdrawals in the state.

(8) Unless a property owner develops the capacity to make the new or increased large quantity withdrawal within 18 months after the property owner registers under subsection (1), the registration is no longer valid.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2003, Act 148, Imd. Eff. Aug. 8, 2003;—Am. 2006, Act 35, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 180, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32706 Development of internet-based online registration process; registration; required statement and supporting documentation.**

Sec. 32706. (1) Not later than 1 year after the effective date of the amendatory act that amended this section, the department shall develop and implement an internet-based online registration process that may be used for registrations under section 32705. The online registration process shall be designed to work in conjunction with the assessment tool.

(2) Each registration under this part shall include both of the following:

(a) A statement and supporting documentation that includes all of the following:

(i) The place and source of the proposed withdrawal.

(ii) The location of any discharge or return flow associated with the proposed withdrawal.

(iii) The location and nature of the proposed water use.

(iv) The capacity of the equipment used for making the proposed withdrawal.

(v) The estimated average annual and monthly volumes and rate of the proposed withdrawal.

(vi) The estimated average annual and monthly volumes and rates of consumptive use from the proposed withdrawal.

(b) Beginning 1 year after the effective date of the amendatory act that added this subdivision, for a new or increased large quantity withdrawal from a stream or river or groundwater, the determination from the use of the assessment tool under section 32706b or the determination from a site-specific review, as appropriate.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 434, Imd. Eff. Dec. 2, 1996;—Am. 2008, Act 180, Imd. Eff. July 9, 2008.

Popular name: Act 451

Popular name: NREPA

**324.32706a Internet-based water withdrawal assessment tool; implementation; determination of proposed zone withdrawal; entering and printing data; working in conjunction with online registration process; technical modifications; redesignation of stream or river; report.**

Sec. 32706a. (1) On October 1, 2008, the department shall make available for testing and evaluation an internet-based water withdrawal assessment tool based upon the recommendations of the former groundwater conservation advisory council and the requirements of this part. The assessment tool shall contain a flow-based safety factor. Beginning 1 year after the effective date of the amendatory act that added this section, the department shall implement the assessment tool.

(2) The assessment tool shall determine whether a proposed withdrawal is a zone A, zone B, zone C, or zone D withdrawal and whether a proposed withdrawal is likely to cause an adverse resource impact based upon whether the proposed withdrawal is from a cold river system, a cold-transitional river system, a cool river system, or a warm river system. The assessment tool shall account for impacts due to cumulative withdrawals as provided for in section 32706e. The assessment tool shall also distinguish the impact of a proposed withdrawal based upon whether the proposed withdrawal is from a stream, a small river, or a large river, subject to the following:

(a) Cool streams and warm streams with less than 3 square miles of drainage area shall be integrated into the next largest drainage area for purposes of assessment tool determinations.

(b) Cool streams and warm streams with less than 20 square miles of drainage area and less than 1 cubic foot per second of index flow shall be integrated into the next largest drainage area for purposes of assessment tool determinations.

(c) Cool streams and warm streams with a drainage area of more than 3 square miles but less than 6 square miles shall be integrated into the next largest drainage area for purposes of assessment tool determinations for groundwater withdrawals.

(3) The assessment tool shall allow the user to enter into fields the following data related to a proposed withdrawal:

(a) The capacity of the equipment used for making the withdrawal.

(b) The location of the withdrawal.

(c) The withdrawal source, whether surface water or groundwater.

(d) If the source of the withdrawal is groundwater, whether the source of the withdrawal is a glacial stratum or bedrock.

(e) The depth of the withdrawal if from groundwater.

(f) The amount and rate of water to be withdrawn.

(g) Whether the withdrawal will be intermittent.

(4) The assessment tool shall contain a print function that allows the user, upon receipt of the assessment tool's determination, to print the data submitted and the determination returned along with a date and time.

(5) The assessment tool shall work in conjunction with the online registration process and shall also allow operation independent of the online registration process.

(6) On an ongoing basis, the department shall add verified data to the assessment tool's database from reports submitted under sections 32707, water use conservation plans submitted under section 32708, and permits issued under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, and other sources of data regarding the waters of the state. Additionally, the department shall make technical modifications to the assessment tool related to considerations of temperature, hydrology, and stream or river flow based upon a scientific methodology adopted by order of the commission.

(7) If a person disagrees with the designation of a particular stream or river as a cold river system, a cold-transitional river system, a cool river system, or a warm river system for use in the assessment tool or otherwise under this part, the person may petition for a redesignation of that stream or river. The petition shall be submitted to the commission for its review and determination.

(8) The department shall report annually to the standing committees of the legislature with jurisdiction primarily pertaining to natural resources and the environment on the implementation of the assessment tool and this part. This report shall include, but is not limited to, all of the following:

(a) The number of zone C withdrawal site-specific reviews requested by applicants each 12 months after the effective date of the implementation of the assessment tool under section 32706a.

(b) The number of zone C withdrawal site-specific review determinations that resulted in changes from zone C to zone B and the number of changes from zone C to zone A.

(c) The number of zone C withdrawal site-specific review determinations that result in a zone D withdrawal determination.

(d) The number of site-specific review determinations where the department failed to meet statutory timelines.

(e) The number of registered assessment tool determinations for each zone.

(f) The number of voluntary requests for site-specific reviews that were submitted to the department and whether the department failed to meet statutory timelines on these site-specific reviews.

(g) The number of registrations submitted to the department under this part.

**History:** Add. 2008, Act 185, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32706b Utilization of assessment tool; request for site-specific review; designation of proposed withdrawal; registration; rerun of assessment tool; correction of data.**

Sec. 32706b. (1) Beginning on the effective date of the implementation of the assessment tool under section 32706a, prior to registering a new or increased large quantity withdrawal under section 32705 for a proposed withdrawal from a stream or river, or from groundwater, the property owner proposing to make the withdrawal shall utilize the assessment tool by entering the data related to the proposed withdrawal into the assessment tool. However, a person who intends to make a new or increased large quantity withdrawal for the purpose of dewatering a mine that has a permit under part 31 and is not regulated under part 631, 632, or 637 may choose to submit a request for a site-specific review rather than utilize the assessment tool.

(2) Upon entry of the relevant data under subsection (1), the assessment tool shall indicate to the user whether or not the proposed withdrawal is likely to cause an adverse resource impact and whether the proposed withdrawal falls into the category of zone A, zone B, zone C, or zone D.

(3) If the assessment tool designates a proposed withdrawal as a zone A withdrawal, or a zone B withdrawal in a cool river system or a warm river system, the property owner may register the withdrawal and proceed to make the withdrawal.

(4) If the assessment tool designates a proposed withdrawal as a zone B withdrawal in a cold-transitional river system, or a zone C or zone D withdrawal, the property owner shall not register the withdrawal or make the withdrawal except in accordance with section 32706c.

(5) After a property owner registers a withdrawal, if, in developing the capacity to make the withdrawal, the conditions of the withdrawal deviate from the specific data that were entered into the assessment tool, the property owner shall rerun the assessment tool and shall enter the corrected data into the assessment tool. The property owner shall notify the department of the corrected data and the corrected results from the assessment tool. If the corrected data do not change the determination of the assessment tool, the property owner may proceed with the withdrawal. If the corrected data change the determination from the assessment tool, the property owner shall proceed under the provisions of this part related to the corrected assessment tool determination.

**History:** Add. 2008, Act 185, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32706c Request for site-specific review; analysis; supporting evidence; conditions; form; information to be included; completion of review by department; withdrawals; registration; corrected data; disclosure under freedom of information act; definitions.**

Sec. 32706c. (1) If the assessment tool determines that a proposed withdrawal with a capacity of 1,000,000 gallons of water or less per day from the waters of the state to supply a common distribution system is a zone B withdrawal in a cold-transitional river system, or a zone C or zone D withdrawal, the property owner may submit to the department the information described in section 32706a(3) and either of the following:

(a) An analysis of the proposed withdrawal by a professional hydrologist or hydrogeologist calculating the streamflow depletion of the proposed withdrawal. The analysis shall be based on an aquifer performance test, streamflow depletion calculations, and geological data consisting of at least 1 of the following, which shall be included with the analysis:

(i) Evidence the proposed withdrawal is in the water management unit or units that were part of a regional or watershed based study of water use impacts accepted by the department under this part. The evidence must include an affidavit by the property owner that the proposed withdrawal is located in a river system and aquifer included in the study, and records of applicable data collected in the study.

(ii) A hydrogeologic analysis of the water management unit or units that will potentially be affected by the proposed withdrawal, incorporating data from well logs, gamma ray logs, surficial maps of the glacial geology, geologic cross sections, and any other available hydrogeologic data.

(b) An analysis by a professional hydrologist or hydrogeologist of a proposed withdrawal from an aquifer separated from streams by bedrock, calculating streamflow depletion of the proposed withdrawal as described in this subdivision by providing hydrogeologic data demonstrating the bedrock transmissivity for the formation or relying on published estimates of transmissivity for the bedrock formation.

(2) Within 20 working days after the department's actual receipt of the analysis and supporting evidence and data related to the proposed withdrawal under subsection (1), the department shall determine whether a proposed withdrawal is a zone A, zone B, zone C, or zone D withdrawal and shall provide to the property owner written notification of its determination. However, if upon a preliminary review of the analysis and supporting evidence and data the department determines that the proposed withdrawal will cause a rejection only under subdivision (d)(iv), the department may, within the first 20 working days after actual receipt of the analysis and supporting evidence and data related to the proposed withdrawal under subsection (1), provide written notification to the property owner that up to 5 additional working days are needed for confirmation. If the department does not provide written notification stating a need for up to 5 additional working days or if the department cites any other reason under subdivision (d) for rejection, it must make its determination and provide to the property owner written notification of its determination within 20 working days after actual receipt of the analysis and supporting evidence and data related to the proposed withdrawal under subsection (1). The department's determination is subject to the following:

(a) If the department fails to provide written notification to the property owner within the time period required under this subsection, the property owner may register the withdrawal and proceed with the withdrawal.

(b) If the department determines that the proposed withdrawal is a zone A or a zone B withdrawal, the property owner may register the withdrawal and may proceed with the withdrawal.

(c) If the department determines that the proposed withdrawal is a zone C withdrawal, the property owner may register the withdrawal and proceed to make the withdrawal if the property owner self-certifies that he or she is implementing applicable environmentally sound and economically feasible water conservation measures prepared under section 32708a that the property owner considers to be reasonable or has self-certified that he or she is implementing applicable environmentally sound and economically feasible water conservation measures developed for the water use associated with that specific withdrawal that the property owner considers to be reasonable. A property owner proceeding under this subdivision shall provide 5 sets of water level recovery measurements, as described in an aquifer performance test, taken after pumping between June and October within 2 years after the production well is put in service. The department shall not require submission of additional information or data from a property owner proceeding under this subdivision.

(d) If the department determines that the proposed withdrawal is a zone D withdrawal, the property owner shall not register the withdrawal and shall not make the withdrawal unless the property owner applies for a water withdrawal permit under section 32723 and the withdrawal is authorized under that section, or unless it is authorized under subsection (4). In addition to the written notification of its determination under this subsection, if the department determines that the proposed withdrawal is a zone D withdrawal, the department shall include documentation demonstrating that the proposed water withdrawal is likely to cause an adverse resource impact. The documentation shall include 1 or more of the following:

(i) Identification of specific errors in data collection performed by the professional hydrologist or hydrogeologist that render the analysis of the proposed withdrawal invalid.

(ii) A statement that the professional hydrologist or hydrogeologist used an inapplicable model to analyze the proposed withdrawal, with an explanation including both why the model selected for analysis was inapplicable for the proposed withdrawal and an analysis using an applicable model that shows the proposed withdrawal is likely to cause an adverse resource impact.

(iii) Identification of specific errors in the model analysis performed by the professional hydrologist or hydrogeologist that render the analysis of the proposed withdrawal invalid.

(iv) The cumulative streamflow depletion estimated for all the registered water withdrawals in an impacted watershed management area is likely to cause an adverse resource impact. The cumulative streamflow depletion calculation shall account for reevaluation of previously registered water withdrawals in the affected water management units using the Hunt, 2003; Ward and Lough, 2011; or a similar peer-reviewed model that assesses potential stream depletion.

(3) After a property owner registers a withdrawal pursuant to subsection (2), if, in developing the capacity to make the withdrawal, the conditions of the withdrawal deviate from the specific data that were evaluated, the property owner shall notify the department of the corrected data and the department shall confirm its

determination under subsection (2). If the corrected data do not change the determination, the property owner may proceed with the withdrawal. If the corrected data change the determination, the property owner shall proceed under the provisions of this part related to the corrected determination.

(4) If a proposed withdrawal is a zone B withdrawal in a cold-transitional river system, or a zone C or zone D withdrawal, and a property owner does not submit any of the information described in subsection (1) or the department determines under subsection (2) that the proposed withdrawal is a zone D withdrawal, the property owner may request a site-specific review. A request for a site-specific review shall be submitted to the department in a form required by the department and shall include all of the following:

(a) The information described in section 32706a(3).

(b) The intended maximum monthly and annual volumes and rates of the proposed withdrawal, if different from the capacity of the equipment used for making the proposed withdrawal.

(c) If the amount and rate of the proposed withdrawal will have seasonal fluctuations, the relevant information related to the seasonal use of the proposed withdrawal.

(d) A description of how the water will be used and the location, amount, and rate of any return flow.

(e) Any other information the property owner would like the department to consider in making its determination under this section.

(5) Upon receipt of a request for a site-specific review under subsection (4), the department shall consider the information submitted and shall consider the actual stream or river flow data of any affected stream reach. The department shall also apply the drainage area integration standards provided in section 32706a(2)(a), (b), and (c), if applicable, and account for cumulative withdrawals as provided for in section 32706e. The department shall not rely on the assessment tool's determination in making its determination under a site-specific review. The department may calculate streamflow depletion using Hunt, 2003; Ward and Lough, 2011; or a similar peer-reviewed model that assesses potential stream depletion. The calculation of streamflow depletion may also be conducted on existing withdrawals in the same water management unit or units as the proposed withdrawal if applicable data are available. This data may be used to provide additional evidence as needed to demonstrate whether a proposed withdrawal is likely to cause an adverse resource impact.

(6) The department shall complete a site-specific review within 10 working days of submittal of a request for a site-specific review. If the department determines, based upon a site-specific review, that the proposed withdrawal is a zone A or a zone B withdrawal, the department shall provide written notification to the property owner and the property owner may register the withdrawal and may proceed with the withdrawal.

(7) Subject to subsection (8), if the department determines in conducting a site-specific review that the proposed withdrawal is a zone C withdrawal, the property owner may register the withdrawal and proceed to make the withdrawal if the property owner self-certifies that he or she is implementing applicable environmentally sound and economically feasible water conservation measures prepared under section 32708a that the property owner considers to be reasonable or has self-certified that he or she is implementing applicable environmentally sound and economically feasible water conservation measures developed for the water use associated with that specific withdrawal that the property owner considers to be reasonable.

(8) Except for withdrawals exempt from obtaining a water withdrawal permit under section 32723, if a site-specific review determines that a proposed withdrawal is a zone C withdrawal with capacity in excess of 1,000,000 gallons of water per day from the waters of the state to supply a common distribution system, the person proposing the withdrawal shall not register the withdrawal and shall not proceed with making the withdrawal unless the person obtains a water withdrawal permit under section 32723.

(9) If the department determines, based upon a site-specific review, that the proposed withdrawal is a zone D withdrawal, the property owner shall not register the withdrawal and shall not make the withdrawal unless he or she applies for a water withdrawal permit under section 32723 and the withdrawal is authorized under that section.

(10) After a property owner registers a withdrawal following a site-specific review, if, in developing the capacity to make the withdrawal, the conditions of the withdrawal deviate from the specific data that were evaluated in the site-specific review, the property owner shall notify the department of the corrected data and the department shall confirm its determination under the site-specific review. If the corrected data do not change the determination under the site-specific review, the property owner may proceed with the withdrawal. If the corrected data change the determination under the site-specific review, the property owner shall proceed under the provisions of this part related to the corrected determination.

(11) Nothing in this section alters any requirement to disclose information or any exemption from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, as otherwise provided under sections 32707(6) and 32708(4).

(12) As used in this part:

- (a) "Aquifer performance test" means a controlled field test in which all of the following are done:
- (i) At least 1 monitoring well is installed. The monitoring well must be installed in the same aquifer and screened at or near the same depth as the production well, and be located at a distance of 1 to 5 times the thickness of the aquifer from the proposed production well. A nearby existing well may be used as a monitoring well for the test instead if it meets all the monitoring well requirements.
  - (ii) Static water level elevation measurements are taken at 1-minute intervals for 24 hours before the pumping portion of the test to an accuracy of 0.05 feet.
  - (iii) Pumping is conducted at a rate at or above the desired production rate for the duration of the test and metered or periodically measured to ensure consistency of rate.
  - (iv) The pumping portion of the test is conducted for a period of 24 hours in confined aquifers or 72 hours in unconfined aquifers, during which drawdown measurements are taken at 1-minute intervals to an accuracy of 0.05 feet.
  - (v) After completion of the pumping period, measurements of water level recovery are taken at 1-minute intervals for 24 hours to an accuracy of 0.05 feet.
  - (vi) An analysis is conducted to determine, at a minimum, the aquifer hydraulic characteristics of transmissivity and storage coefficient employing the methods of Cooper and Jacob, 1946; Theis, 1935; Hantush and Jacob, 1955; Hantush and Jacob, 1960; Hantush and Jacob, 1961; Neuman, 1972; Neuman, 1974; or Hunt and Scott, 2007.
- (b) "Cooper and Jacob, 1946" means Cooper and Jacob, 1946: "A Generalized Graphical Method for Evaluating Formation Constants and Summarizing Well-Field History".
- (c) "Hantush and Jacob, 1955" means Hantush and Jacob, 1955: "Non-Steady Radial Flow in an Infinite Leaky Aquifer".
- (d) "Hantush and Jacob, 1960" means Hantush and Jacob, 1960: "Modification of the Theory of Leaky Aquifers".
- (e) "Hantush and Jacob, 1961" means Hantush and Jacob, 1961: "Aquifer Tests on Partially Penetrating Wells".
- (f) "Hunt, 1999" means Hunt, 1999: "Unsteady Stream Depletion from Ground Water Pumping".
- (g) "Hunt, 2003" means Hunt, 2003: "Unsteady Stream Depletion When Pumping from Semiconfined Aquifer".
- (h) "Hunt and Scott, 2007" means Hunt and Scott, 2007: "Flow to a Well in a Two-Aquifer System".
- (i) "Neuman, 1972" means Neuman, 1972: "Theory of Flow in Unconfined Aquifers Considering Delayed Gravity Response of the Water Table".
- (j) "Neuman, 1974" means Neuman, 1974: "Effect of Partial Penetration on Flow in Unconfined Aquifers Considering Delayed Gravity Response".
- (k) "Professional hydrologist or hydrogeologist" means an individual holding a license or registration from any state as a professional hydrologist, hydrogeologist, or geologist, or a current certification as a professional geologist by the American Institute of Professional Geology.
- (l) "Streamflow depletion calculation" means an evaluation of the potential streamflow depletion in which all of the following are done:
- (i) The streambed conductance of the potentially impacted streams shall be measured in-situ using slug testing, seepage meter testing, or both.
  - (ii) An aquifer performance test representing the proposed withdrawal location has been completed.
  - (iii) An analysis shall be conducted to calculate streamflow depletion using the applicable method of Hunt, 1999; Hunt, 2003; Ward and Lough, 2011; or a similar peer-reviewed model that assesses potential stream depletion. The analysis may also be conducted on existing withdrawals in the same water management unit or units as the proposed withdrawal if applicable data are available. This may be used to provide additional evidence as needed to demonstrate a proposed withdrawal is unlikely to cause an adverse resource impact.
- (m) "Theis, 1935" means Theis, 1935: "The Relation Between the Lowering of the Piezometric Surface and the Rate and Duration of Discharge of a Well Using Groundwater Storage".
- (n) "Ward and Lough, 2011" means Ward and Lough, 2011: "Stream Depletion from Pumping a Semiconfined Aquifer in a Two-Layer Leaky Aquifer System".

**History:** Add. 2008, Act 181, Imd. Eff. July 9, 2008;—Am. 2018, Act 209, Eff. June 22, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

**324.32706d Collection of stream or river flow measurements by persons other than department; development and use of protocol; training program.**

Sec. 32706d. (1) The department shall develop a protocol for the collection of stream or river flow measurements by persons other than the department for use by the department in the administration of this part. The protocol may specify a minimum number of measurements, stream or river flow and weather conditions when the measurements are to be made, and any other conditions necessary to ensure the adequacy and quality of the measurements. The protocol shall ensure that stream or river flow measurements collected for this purpose meet the same data quality standards as stream or river flow measurements collected by the United States geological survey. The department shall consult with the United States geological survey and other recognized scientific experts in developing this protocol.

(2) The department may use stream or river flow data collected using the protocol under subsection (1) in conducting site-specific reviews, in making water withdrawal permit decisions under section 32723, in issuing permits under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, in updating the water withdrawal assessment tool as appropriate, or in other actions requiring an evaluation of stream or river flow.

(3) The department may establish a program to train and certify individuals in the collection of stream or river flow measurements. The department shall charge a fee sufficient to reimburse the department for the cost of a program developed under this subsection. The department may enter into a cooperative agreement with the United States geological survey to provide training and certification under this section.

**History:** Add. 2008, Act 181, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32706e Cumulative withdrawals; determination of adverse impact.**

Sec. 32706e. The department shall determine whether an adverse resource impact has occurred under this part and whether a withdrawal is a zone A, a zone B, a zone C, or a zone D withdrawal under this part based upon cumulative withdrawals affecting the same stream reach. In accounting for these cumulative withdrawals, the department shall apply both of the following:

(a) Beginning on October 1, 2008, the department shall begin water withdrawal accounting for cumulative withdrawals affecting the same stream reach.

(b) Beginning on February 1, 2009, the department shall adjust the water withdrawal accounting under subdivision (a) such that if cumulative withdrawals beginning on October 1, 2008 have removed a sufficient flow of water from a stream reach to change the zone classification of that stream reach, the department shall reset the water withdrawal accounting benchmark for that stream reach as follows:

(i) If the cumulative impact of withdrawals on February 1, 2009 results in a classification as a zone B withdrawal, the accounting benchmark shall be reset at the beginning point for zone B withdrawals.

(ii) If the cumulative impact of withdrawals on February 1, 2009 results in a classification as a zone C withdrawal, the accounting benchmark shall be reset at the beginning point for zone C withdrawals.

(iii) If the cumulative impact of withdrawals on February 1, 2009 results in a classification as a zone D withdrawal, the accounting benchmark shall be reset at the beginning point for zone C withdrawals. If there is not a zone C for the classification of the stream reach, the water withdrawal accounting benchmark shall be reset at the beginning point for zone B withdrawals.

**History:** Add. 2008, Act 185, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.32707 Reporting requirements; forms; water use reporting fees.**

Sec. 32707. (1) Except as provided in subsections (2) and (3), a person who is required to register under section 32705 or holds a permit under section 32723 shall file a report annually with the department on a form provided by the department. Reports shall be submitted by April 1 of each year. Except as provided in subsection (8), reports shall include the following information:

(a) The amount and rate of water withdrawn on an annual and monthly basis.

(b) The source or sources of the water supply.

(c) The use or uses of the water withdrawn.

(d) The amount of consumptive use of water withdrawn.

(e) If the source of the water withdrawn is groundwater, the location of the well or wells in latitude and longitude, with the accuracy of the reported location data to within 25 feet.

(f) If the source of water withdrawn is groundwater, the static water level of the aquifer or aquifers, if practicable.

(g) Other information specified by rule of the department.

(h) At the discretion of the registrant or permit holder, the baseline capacity of the withdrawal and, if

applicable, a description of the system capacity.

(i) At the discretion of the registrant or permit holder, the amount of water returned to the source watershed.

(j) Beginning in 2010, an acknowledgment that the registrant has reviewed applicable environmentally sound and economically feasible water conservation measures prepared under section 32708a.

(2) If a person reports the information required by this section to the department in conjunction with a permit or for any other purpose, that reporting, upon approval of the department, satisfies the reporting requirements of this section.

(3) The owner of a farm who reports water use under section 32708 is not required to report under subsection (1).

(4) The department may, upon request from a person required to report under this section, accept a formula or model that provides to the department's satisfaction the information required in subsection (1).

(5) The department shall develop forms for reporting under this section that minimize paperwork and allow for a notification to the department instead of a report if the annual amount of water withdrawn by a person required to report under this section is within 4% of the amount last reported and the other information required in subsection (1) has not changed since the last year in which a report was filed.

(6) Information described in section 32701(d)(i)(B) that is provided to the department under subsection (1)(h) is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed unless the department determines that the withdrawal is causing an adverse resource impact.

(7) Except as otherwise provided in this subsection, a person who files an annual report or notification under this section shall annually remit a water use reporting fee of \$200.00 to the department. Water use reporting fees shall be remitted to the department in conjunction with the annual report or notification submitted under this section. The department shall transmit water use reporting fees collected under this section to the state treasurer to be credited to the water use protection fund created in section 32714. A water use reporting fee is not required for a report or notification related to a farm that reports withdrawals under section 32708 or for a report under subsection (8).

(8) A person who withdraws less than 1,500,000 gallons of water in any year shall indicate this fact on the reporting form and is not required to provide information under subsection (1)(a) or (d). A person who withdraws less than 1,500,000 gallons of water in any year is not required to pay the water use reporting fee under subsection (7).

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 434, Imd. Eff. Dec. 2, 1996;—Am. 2003, Act 148, Imd. Eff. Aug. 8, 2003;—Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 182, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32708 Water use conservation plan; formula or model to estimate consumptive use of withdrawals for agricultural purposes; inclusion of information in statewide groundwater inventory and map; disclosure.**

Sec. 32708. (1) The owner of a farm that is registered under this part who makes a withdrawal for an agricultural purpose, including irrigation for an agricultural purpose, may report the water use on the farm by annually submitting to the department of agriculture a water use conservation plan. Conservation plans shall be submitted by April 1 of each year. The water use conservation plan shall include, but need not be limited to, all of the following information:

(a) The amount and rate of water withdrawn on an annual and monthly basis in either gallons or acre inches.

(b) The type of crop irrigated, if applicable.

(c) The acreage of each irrigated crop, if applicable.

(d) The source or sources of the water supply.

(e) If the source of the water withdrawn is groundwater, the location of the well or wells in latitude and longitude, with the accuracy of the reported location data to within 25 feet.

(f) If the water withdrawn is not used entirely for irrigation, the use or uses of the water withdrawn.

(g) If the source of water withdrawn is groundwater, the static water level of the aquifer or aquifers, if practicable.

(h) Applicable water conservation practices and an implementation plan for those practices. Beginning in 2010, the water use conservation plan shall include an acknowledgment that the owner of the farm has reviewed applicable environmentally sound and economically feasible water conservation measures prepared



under section 32708a.

(i) At the discretion of the registrant, the baseline capacity of the withdrawal based upon system capacity and a description of the system capacity.

(2) The department and the department of agriculture in consultation with Michigan state university shall validate and use a formula or model to estimate the consumptive use of withdrawals made for agricultural purposes consistent with the objectives of section 32707.

(3) Subject to subsection (4), information provided to the department of agriculture under subsection (1)(a), (d), and (e) shall be forwarded to the department for inclusion in the statewide groundwater inventory and map prepared under section 32802.

(4) Information provided under subsection (1)(a), (e), and (i) is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed by the department, the department of agriculture, or the department of natural resources unless the department determines that the withdrawal is causing an adverse resource impact.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 434, Imd. Eff. Dec. 2, 1996;—Am. 2003, Act 148, Imd. Eff. Aug. 8, 2003;—Am. 2006, Act 35, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 182, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32708a Generic water conservation measures; preparation; posting on website; submission of water conservation measures by water user's sector; acceptance by department; water conservation measures for agricultural purposes; report; notification of zone C withdrawal; definitions.**

Sec. 32708a.

(1) Not later than March 31, 2009, the department shall prepare, based upon recommendations from representative trade associations, a set of generic water conservation measures that are applicable to all persons making large quantity withdrawals. The department shall post these generic water conservation measures on its website.

(2) Subject to subsection (3), each water user's sector may prepare and submit to the department water conservation measures that are applicable for water users within its sector. Upon receipt of water conservation measures from a water user's sector, the department shall review the water conservation measures, and, if the department determines that those water conservation measures are appropriate for that sector, the department shall accept those water conservation measures. Upon acceptance, the department shall post the water conservation measures on its website and those water conservation measures shall supersede the generic water conservation measures prepared under subsection (1) for water users within that sector. If the department determines that the water conservation measures are not appropriate for the water user's sector, the department shall provide comments to the water user's sector and suggestions that would result in the department's acceptance of the water conservation measures. A water user's sector may resubmit water conservation measures in response to the department's comments and suggestions.

(3) Water conservation measures for agricultural purposes shall be developed and approved by the commission of agriculture and shall be updated annually as part of the process for review and update of generally accepted agricultural and management practices under the Michigan right to farm act, 1981 PA 93, MCL 286.471 to 286.474. Water conservation measures approved under this subsection shall be posted on the department of agriculture's website and shall be forwarded to the department for posting on its website.

(4) By April 1, 2010, the department shall report to the standing committees of the legislature with jurisdiction primarily related to natural resources and the environment on the status of the preparation and acceptance of water user sector conservation measures.

(5) If the department receives a registration for a zone C withdrawal, the department shall notify all other registrants and permit holders whose withdrawals are from the same water source as the zone C withdrawal of the status of the water source. Upon receipt of notification under this subsection, each of these registrants and permit holders shall review and consider implementing the applicable water conservation measures prepared under this section.

(6) Compliance with water conservation measures does not authorize a water withdrawal that is otherwise prohibited by law.

(7) As used in this section:

(a) "Permit holders" means persons holding a permit under section 32723 and persons holding a permit under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

(b) "Water conservation measures" means environmentally sound and economically feasible water

conservation measures.

**History:** Add. 2006, Act 35, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 182, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32709 Informational materials.**

Sec. 32709. The department may contract for the preparation and distribution of informational materials to members of the public related to any of the following:

(a) The purposes, benefits, and requirements of this part.

(b) Information on complying with the registration requirement of this part and on any general or applicable methods for calculating or estimating water withdrawals or consumptive uses.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2008, Act 182, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32710 Duties of department; electronic mail notification of withdrawals; formation of water resources assessment and education committee.**

Sec. 32710. (1) The department shall do all of the following:

(a) Cooperate with the states and provinces in the Great Lakes region to develop and maintain a common base of information on the use and management of the water of the Great Lakes basin and to establish systematic arrangements for the exchange of this information.

(b) Collect and maintain information regarding the locations, types, and quantities of water use, including water withdrawals and consumptive uses, in a form that the department determines is comparable to the form used by other states and provinces in the Great Lakes region.

(c) Collect, maintain, and exchange information on current and projected future water needs with the other states and provinces in the Great Lakes region.

(d) Cooperate with other states and provinces in the Great Lakes region in developing a long-range plan for developing, conserving, and managing the water of the Great Lakes basin.

(e) Participate in the development of a regional consultation procedure for use in exchanging information on the effects of proposed water withdrawals and consumptive uses from the Great Lakes basin.

(f) Develop procedures for notifying water users and potential water users of the requirements of this part.

(g) If the department receives a registration for a zone B or a zone C withdrawal or issues a permit under section 32723 or the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, for a zone B or zone C withdrawal, place a notice on the department's website and notify by electronic mail all of the following that have requested under subsection (2) an electronic mail notification:

(i) Conservation districts.

(ii) Regional planning agencies.

(iii) Watershed management planning committees.

(iv) Storm water committees established under part 31.

(v) The chief elected officials of the local units of government.

(vi) Community supplies owned by political subdivisions.

(vii) A water users committee established under section 32725.

(2) An organization listed in subsection (1)(g) that wishes to receive an electronic mail notification of withdrawals described in subsection (1)(g) that are located in its vicinity shall provide to the department an electronic mail address.

(3) Upon receipt of notification from the department under subsection (1)(g), the notified entities may form a water resources assessment and education committee in order to assess trends in water use in the vicinity of the withdrawal and educate water users. The department shall assist in the formation of these water resources assessment and education committees and may provide them with technical information regarding water use and capacity within their vicinity, aggregated at the stream reach level. Meetings of water resources assessment and education committees shall be open to the general public. A water resources assessment and education committee formed under this subsection may provide educational materials and recommendations regarding any of the following:

(a) Long-term water resources planning.

(b) Use of conservation measures.

(c) Drought management activities.

(d) Other topics related to water use as identified by the committee.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2008, Act 184, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32711, 324.32712 Repealed. 2006, Act 33, Imd. Eff. Feb. 28, 2006.**

**Compiler's note:** The repealed sections pertained to an exemption from water withdrawal reporting requirements for a public water supply and the prohibition on the department to mandate a permit or regulate water withdrawal.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32713 Civil action; commencement; civil fine; recovery of surveillance and enforcement costs.**

Sec. 32713. (1) The department may request the attorney general to commence a civil action for appropriate relief, including a permanent or temporary injunction, for a violation of this part or a rule promulgated under this part, including falsifying a record submitted under this part. An action under this section shall be brought in the circuit court for the county of Ingham or for the county in which the defendant is located, resides, or is doing business. The court has jurisdiction to restrain the violation and to require compliance.

(2) In addition to any other relief granted under subsection (1), the court may impose a civil fine as follows:

(a) For a person who knowingly violates section 32721 or 32723 or the terms of a permit issued under section 32723, a civil fine of not more than \$10,000.00 per day of violation.

(b) For all other violations of this part, a civil fine of not more than \$1,000.00.

(3) In addition to a fine imposed under subsection (2), the attorney general may file a suit in a court of competent jurisdiction to recover the full value of the costs of surveillance and enforcement by the state resulting from the violation.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 186, Eff. Oct. 7, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32714 Water use protection fund; creation; disposition of assets; investments; money remaining in fund; expenditures.**

Sec. 32714. (1) The water use protection 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, and shall credit to the fund interest and earnings from fund investments.

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

(4) The department may expend money from the fund, upon appropriation, only for 1 or more of the following:

(a) The implementation and administration of this part.

(b) The preparation of the statewide groundwater inventory and map under section 32802.

(c) The expenses of the groundwater conservation advisory council under part 328.

(d) The implementation and administration of part 317.

**History:** Add. 1996, Act 434, Imd. Eff. Dec. 2, 1996;—Am. 2003, Act 148, Imd. Eff. Aug. 8, 2003;—Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32721 Large quantity withdrawal; prohibition; exception; certain large quantity withdrawals subject to definition of adverse resource impact existing on February 28, 2006.**

Sec. 32721. (1) A person shall not make a new or increased large quantity withdrawal from the waters of the state that causes an adverse resource impact.

(2) This section does not apply to the baseline capacity of a large quantity withdrawal or a well capable of making a large quantity withdrawal that existed on February 28, 2006.

(3) This section does not apply to a withdrawal that is utilized solely for fire suppression.

(4) A person who developed the capacity to make a new or increased large quantity withdrawal on or after February 28, 2006 and prior to February 1, 2009 or who received a determination under former section 32724 during that period is subject to the definition of adverse resource impact that existed on February 28, 2006.

**History:** Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 183, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32722 Presumption.**

Sec. 32722. (1) For new or increased large quantity withdrawals developed on or after February 28, 2006 and prior to the implementation date of the assessment tool under section 32706a, there is a rebuttable presumption that the withdrawal will not cause an adverse resource impact in violation of section 32721 under either of the following circumstances:

(a) The location of the withdrawal is more than 1,320 feet from the banks of an affected stream reach.

(b) The withdrawal depth of the well is at least 150 feet.

(2) If the assessment tool determines that a withdrawal is a zone A or a zone B withdrawal and is not likely to cause an adverse resource impact, there is a rebuttable presumption that the withdrawal under the conditions that were the basis for the assessment tool's determination will not cause an adverse resource impact in violation of section 32721.

(3) If the department determines, based upon a site-specific review, or in connection with a permit or approval issued under section 32723 or the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, that a withdrawal is not likely to cause an adverse resource impact, there is a rebuttable presumption that the withdrawal under the conditions that were the basis of the department's determination will not cause an adverse resource impact in violation of section 32721.

(4) A presumption under this section is not valid if the capacity to make the withdrawal is not developed within 18 months after the withdrawal is registered. A presumption under this section may be rebutted by a preponderance of evidence that a new or increased large quantity withdrawal from the waters of the state has caused or is likely to cause an adverse resource impact.

**History:** Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 183, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32723 Water withdrawal permit; persons required to obtain; application; fee; issuance; conditions; revocation; petition for contested case hearing; exemptions from permit requirements.**

Sec. 32723. (1) Except as provided in subsection (13), the following persons shall obtain a water withdrawal permit prior to making the withdrawal:

(a) A person who proposes to develop withdrawal capacity to make a new withdrawal of more than 2,000,000 gallons of water per day from the waters of the state to supply a common distribution system.

(b) A person who proposes to develop increased withdrawal capacity beyond baseline capacity of more than 2,000,000 gallons of water per day from the waters of the state to supply a common distribution system.

(c) A person who proposes to develop withdrawal capacity to make a new or increased large quantity withdrawal of more than 1,000,000 gallons of water per day from the waters of the state to supply a common distribution system that a site-specific review has determined is a zone C withdrawal.

(d) A person who proposes to develop a new or increased withdrawal capacity that will result in an intrabasin transfer of more than 100,000 gallons per day average over any 90-day period.

(2) A person shall apply for a water withdrawal permit under this section by submitting an application to the department containing the information described in section 32706c(1)(a) to (e) and an evaluation of existing hydrological and hydrogeological conditions. If the applicant proposes to undertake a preventative measure along with the withdrawal, the property owner shall provide the department with a detailed description of the preventative measure and relevant information as to how the preventative measure will be implemented. In addition, the applicant shall submit an application fee in the amount of \$2,000.00. The department shall transmit application fees collected under this section to the state treasurer to be credited to the water use protection fund created in section 32714.

(3) An application submitted under subsection (2) is considered to be administratively complete effective 30 days after it is received by the department unless the department notifies the applicant, in writing, during this 30-day period that the application is not administratively complete or that the fee required to be accompanied with the application has not been paid. If the department determines that the application is not

administratively complete, the notification shall specify the information necessary to make the application administratively complete. If the department notifies the applicant as provided in this subsection, the 30-day period is tolled until the applicant submits to the department the specified information or fee.

(4) The department shall provide public notification of its receipt of applications under this section and shall provide a public comment period of not less than 45 days before applications are acted upon under subsection (5).

(5) The department shall make a decision whether to grant or deny a water withdrawal permit under this section within 120 days of receipt of an administratively complete application.

(6) The department shall issue a water withdrawal permit under subsection (1)(a), (b), or (c) if all of the following conditions are met:

(a) All water withdrawn, less any consumptive use, is returned, either naturally or after use, to the source watershed.

(b) The withdrawal will be implemented so as to ensure that the proposal will result in no individual or cumulative adverse resource impacts. Cumulative adverse resource impacts under this subdivision shall be evaluated by the department based upon available information gathered by the department.

(c) Subject to section 32726, the withdrawal will be implemented so as to ensure that it is in compliance with all applicable local, state, and federal laws as well as all legally binding regional interstate and international agreements, including the boundary waters treaty of 1909.

(d) The proposed use is reasonable under common law principles of water law in Michigan.

(e) For permit applications received on or after January 1, 2009, the applicant has self-certified that he or she is in compliance with environmentally sound and economically feasible water conservation measures developed by the applicable water user's sector under section 32708a or has self-certified that he or she is in compliance with environmentally sound and economically feasible water conservation measures developed for the water use associated with that specific withdrawal.

(f) The department determines that the proposed withdrawal will not violate public or private rights and limitations imposed by Michigan water law or other Michigan common law duties.

(7) The department shall issue a water withdrawal permit under subsection (1)(d) if the transfer complies with section 4.9 of the compact.

(8) In reviewing a proposed preventative measure, the department shall consider the effect of the preventative measure on preventing an adverse resource impact by diminishing the effect of the withdrawal on stream or river flow or the temperature regime of the stream or river. If the department approves a preventative measure in conjunction with a water withdrawal permit under this section, the department shall enter into a legally enforceable implementation schedule for completion of the preventative measure.

(9) A proposed use for which a water withdrawal permit is issued under this section shall be considered to satisfy the requirements of section 4.11 of the compact.

(10) A permit issued under part 31 pursuant to 33 USC 1326(b) shall be considered sufficient to demonstrate that there will not be an adverse resource impact under section 32721 and satisfies the conditions for a water withdrawal permit under this section. Upon receipt of an application under this section and evidence that the applicant holds a part 31 permit described in this subsection, the department shall grant the applicant a water withdrawal permit under this subsection.

(11) The department may revoke a water withdrawal permit issued under this section if the department determines following a hearing, based upon clear and convincing scientific evidence, that the withdrawal is causing an adverse resource impact.

(12) A person who is aggrieved by a determination of the department under this section related to a water withdrawal permit may file a sworn petition with the department setting forth the grounds and reasons for the complaint and asking for a contested case hearing on the matter pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A petition filed more than 60 days after action on the water withdrawal permit may be rejected by the department as being untimely. The department shall issue a final decision on a petition for a contested case hearing within 6 months after receiving the petition. A determination, action, or inaction by the department following a contested case hearing is subject to judicial review as provided in the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(13) The following withdrawals are not required to obtain a water withdrawal permit under this section:

(a) A withdrawal by a community supply that holds a permit under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

(b) Seasonal withdrawals of not more than 2,000,000 gallons of water per day average in any consecutive 90-day period to supply a common distribution system unless the withdrawals result in a diversion.

(c) A withdrawal for the production of bottled drinking water approved by the department under a water source review conducted under section 17 of the safe drinking water act, 1976 PA 399, MCL 325.1017.

**History:** Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 180, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

**324.32724 324.32724 Repealed. 2008, Act 181, Imd. Eff. July 9, 2008.**

**Compiler's note:** The repealed section pertained to persons exempt from permit requirements.

**Popular name:** Act 451

**Popular name:** NREPA

**324.32725 Water users committee; establishment; purpose; composition; notice of withdrawal; occurrence of adverse resource impacts; recommended solution proposed by department; order by director; petition; "unverified petition" and "permit holders" defined.**

Sec. 32725. (1) All persons making large quantity withdrawals within a watershed are encouraged to establish a water users committee to evaluate the status of current water resources, water use, and trends in water use within the watershed and to assist in long-term water resources planning. A water users committee may be composed of all registrants, permit holders, and local government officials within the watershed. Upon establishment of a water users committee, a participating local government official may create an ad hoc subcommittee of residents of that local unit of government to provide that local government official with information and advice on water resources, water use, and trends in water use within the local unit of government.

(2) If the department authorizes a zone B withdrawal in a cold-transitional river system or a zone C withdrawal, the department shall notify all registrants, permit holders, and local government officials within the watershed of the withdrawal and of the authority under this section to establish a water users committee and may provide them technical information regarding water use and capacity within their vicinity aggregated at the stream reach level.

(3) If the department determines by reasonable scientifically-based evidence that adverse resource impacts are occurring or are likely to occur from 1 or more large quantity withdrawals, the department shall notify the water users committee in the watershed or shall convene a meeting of all registrants and permit holders within the watershed and shall attempt to facilitate an agreement on voluntary measures that would prevent adverse resource impacts.

(4) If, within 30 days after the department has notified the water users committee or convened the meeting under subsection (3), the registrants and permit holders are not able to voluntarily agree to measures that would prevent adverse resource impacts, the department may propose a solution that the department believes would equitably resolve the situation and prevent adverse resource impacts. The recommended solution is not binding on any of the parties.

(5) The director may, without a prior hearing, order permit holders to immediately restrict a withdrawal if the director determines by clear and convincing scientific evidence that there is a substantial and imminent threat that the withdrawal is causing or is likely to cause an adverse resource impact. The order shall specify the date on which the withdrawal must be restricted and the date on which it may be resumed. An order issued under this section shall remain in force and effect for not more than 30 days and may be renewed for an additional 30 days if the director determines by clear and convincing scientific evidence that conditions continue to pose a substantial and imminent threat that the withdrawal is causing or is likely to cause an adverse resource impact. The order shall notify the person that the person may request a contested case hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The hearing shall be held within 10 business days following the request, unless the permittee requests a later date. As an alternative to requesting a contested case hearing, a person subject to an order under this section may seek judicial review of the order as provided in the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

(6) A registrant or permit holder may submit a petition to the director alleging that adverse resource impacts are occurring or are likely to occur from 1 or more water withdrawals. The director shall either investigate the petition or forward the petition to the director of the department of agriculture if the water withdrawals are from an agricultural well. The petition shall be in writing and shall include all the information requested by the director or the director of the department of agriculture, as appropriate.

(7) A person who submits more than 2 unverified petitions under this section within 1 year may be ordered by the director to pay for the full costs of investigating any third or subsequent unverified petition. As used in this subsection, "unverified petition" means a petition in response to which the director determines that there is not reasonable evidence to suspect adverse resource impacts.

(8) As used in this section, "permit holders" means persons holding a permit under section 32723 and

persons holding a permit under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

**History:** Add. 2006, Act 36, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 184, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32726 Local ordinance.**

Sec. 32726. Except as authorized by the public health code, 1978 PA 368, MCL 333.1101 to 333.25211, a local unit of government shall not enact or enforce an ordinance that regulates a large quantity withdrawal. This section is not intended to diminish or create any existing authority of municipalities to require persons to connect to municipal water supply systems as authorized by law.

**History:** Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32727 Exemptions; compilation and sharing of certain data.**

Sec. 32727. (1) The following withdrawals are exempt from the requirements of this part unless they result in a diversion:

(a) A withdrawal undertaken as part of an activity authorized by the department under part 111, 115, 201, 213, or 615.

(b) A withdrawal undertaken as part of an activity authorized by the United States environmental protection agency under either of the following:

(i) The comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510.

(ii) The resource conservation and recovery act of 1976, Public Law 94-580.

(c) A withdrawal that is undertaken for hydroelectric generation at sites certified, licensed, or permitted by the federal energy regulatory commission.

(d) A hydroelectric facility authorized under section 12 of chapter 264 of the act of March 3, 1909, commonly known as the river and harbor act of 1909, 35 Stat. 821.

(e) A hydroelectric facility authorized under section 1075(c) of the intermodal surface transportation efficiency act of 1991, Public Law 102-240.

(f) A hydroelectric facility authorized under Public Law 85, chapter 1368, 34 Stat. 102.

(g) Removal of water from an artificially created surface water body that has as its primary source of water either of the following:

(i) A withdrawal that is not a new or increased large quantity withdrawal.

(ii) A registered new or increased large quantity withdrawal that has been determined by the assessment tool, a site-specific review, or a permit issued under section 32723 to be a withdrawal that is not likely to cause an adverse resource impact.

(h) A withdrawal from a noncommercial well located on the following residential property:

(i) Single-family residential property unless that well is a lake augmentation well.

(ii) Multifamily residential property not exceeding 4 residential units and not more than 3 acres in size unless that well is a lake augmentation well.

(2) The director of the department shall ensure that data in the possession of the state related to withdrawals that are not regulated under this part are compiled and shared with departmental personnel responsible for implementing this part.

**History:** Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 183, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32728 Construction and scope of act; rules.**

Sec. 32728. (1) This part shall not be construed as affecting, intending to affect, or in any way altering or interfering with common law water rights or property rights or the applicability of other laws providing for the protection of natural resources or the environment or limit, waive, cede, or grant any rights or interest that the state possesses as sovereign for the people of the state in the waters or natural resources of the state.

(2) This part does not limit the right of a person whose interests have been or will be adversely affected to institute proceedings in circuit court against any person to protect such interests.

(3) Except as specifically authorized under this part, this part does not authorize the promulgation of rules.

**History:** Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 185, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32729 Fees not authorized; exception.**

Sec. 32729. Except as specifically authorized under this part, this part does not authorize the assessment of fees.

**History:** Add. 2008, Act 185, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32730 Compact; implementation.**

Sec. 32730. The compact shall be implemented as follows:

(a) Except as specifically provided in this part, water withdrawals originating within this state shall be regulated exclusively under this part.

(b) A proposed use for which a water withdrawal permit is issued under section 32723 shall be considered to satisfy the requirements of section 4.11 of the compact.

(c) The 2008 amendments to this part, the 2008 amendments to part 328, and the 2008 amendments to sections 4 and 17 of the safe drinking water act, 1976 PA 399, MCL 325.1004 and 325.1017, are intended to fully implement the compact in this state. For purposes of section 9.1 of the compact, all acts and parts of acts that were inconsistent with the compact on the effective date of the amendatory act that added this section have been modified, as necessary, to be consistent with the compact, and therefore section 9.1 does not repeal any acts or parts of acts.

(d) If the council proposes a revision to the standard of review and decision under section 3.1 and 3.3 of the compact, the governor shall notify the standing committees of the legislature with jurisdiction primarily related to natural resources and the environment. A regulation adopted pursuant to section 3.1 and 3.3 of the compact that amends the standard of review and decision shall not be deemed duly adopted in accordance with the statutory authorities and applicable procedures of this state unless the regulation is approved by the legislature and enacted into law.

**History:** Add. 2008, Act 190, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

## PART 328 AQUIFER PROTECTION

### **324.32801 Definitions.**

Sec. 32801. As used in this part:

(a) "Annex 2001" means the Great Lakes charter annex signed by the governors and premiers of the Great Lakes region on June 18, 2001.

(b) "Aquifer" means any water bearing bed or stratum of earth or rock capable of yielding groundwater to a water well in sufficient quantities that can be withdrawn.

(c) "Assessment tool" means the water withdrawal assessment tool provided for in part 327.

(d) "Base flow" means groundwater discharge to rivers and streams.

(e) "Conflict areas" means an aquifer or a portion of an aquifer in which the department has determined that there is reasonable, scientifically based evidence of a pattern of groundwater withdrawal conflicts or a single extended groundwater withdrawal conflict.

(f) "Council" means the water use advisory council created under section 32803.

(g) "Department" means the department of environmental quality.

(h) "Director" means the director of the department.

(i) "Groundwater" means water below the land surface in a zone of saturation.

(j) "Groundwater withdrawal conflict" means the failure of an existing water well that was constructed in compliance with part 127 of the public health code, 1978 PA 368, MCL 333.12701 to 333.12771, to furnish its normal supply of groundwater because of a progressive decline of the static water level within the aquifer due to the withdrawal of groundwater from the aquifer by a high-capacity well or sump, as determined based on reasonable, scientifically based evidence.

(k) "Static water level" means the distance between the ground surface and the water level within a well that is not being pumped.

**History:** Add. 2003, Act 148, Imd. Eff. Aug. 8, 2003;—Am. 2008, Act 189, Imd. Eff. July 9, 2008;—Am. 2018, Act 509, Imd. Eff.



Dec. 28, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32802 Groundwater data; collection and compilation into statewide groundwater inventory and map; update; availability to public.**

Sec. 32802. (1) Not later than 2 years after the effective date of the amendatory act that added this section, the department shall collect and compile groundwater data into a statewide groundwater inventory and map. The department shall use existing sources of groundwater data where those data are available, including information reported under part 327, information reported under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, and information collected under the groundwater dispute resolution program created in part 317, but may supplement those data through additional studies if those data are incomplete. Following completion of the initial statewide groundwater inventory and map, the department shall update the statewide groundwater inventory and map as new information becomes available. The department shall include data on all of the following in the statewide groundwater inventory and map:

- (a) Location and water yielding capabilities of aquifers in the state.
- (b) Aquifer recharge rates in the state, if available to the department.
- (c) Static water levels of groundwater in the state.
- (d) Base flow of rivers and streams in the state.
- (e) Conflict areas in the state.
- (f) Surface waters, including designated trout lakes and streams, and groundwater dependent natural resources, that are identified on the natural features inventory.
- (g) The location and pumping capacity of all of the following:
  - (i) Industrial or processing facilities registered under section 32705 that withdraw groundwater.
  - (ii) Irrigation facilities registered under section 32705 that withdraw groundwater.
  - (iii) Public water supply systems that have the capacity to withdraw over 100,000 gallons of groundwater per day average in any consecutive 30-day period.
- (h) Aggregate agricultural water use and consumptive use, by township.

(2) The department shall make the statewide groundwater inventory and map available to the general public.

**History:** Add. 2003, Act 148, Imd. Eff. Aug. 8, 2003.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32803 Water use advisory council; creation; qualifications and appointment of members; appointment of technical advisors; duties of council; report.**

Sec. 32803. (1) The water use advisory council is created within the department. The council shall consist of all of the following members:

- (a) Four individuals appointed by the senate majority leader as follows:
  - (i) One individual representing business and manufacturing interests.
  - (ii) One individual representing public utilities.
  - (iii) One individual representing a statewide angler association.
  - (iv) One individual representing a statewide agricultural organization.
- (b) Four individuals appointed by the speaker of the house of representatives as follows:
  - (i) One individual representing registered well drilling contractors with hydrology and drilling field experience.
  - (ii) One individual representing local units of government.
  - (iii) One individual representing agricultural irrigators.
  - (iv) One individual representing wetlands conservation organizations.
- (c) Five individuals appointed by the governor as follows:
  - (i) One individual representing municipal water suppliers.
  - (ii) One individual representing a statewide conservation organization.
  - (iii) One individual representing a statewide riparian landowners association.
  - (iv) One individual representing professional hydrologists and hydrogeologists, as defined in section 32706c, with hydrogeology field experience.
  - (v) One individual representing Indian tribes.
- (d) Four individuals appointed by the director as follows:
  - (i) One individual representing nonagriculture irrigators.

- (ii) One individual representing the aggregate industry.
- (iii) One individual representing environmental organizations.
- (iv) One individual representing local watershed councils.

(e) Six individuals serving as ex officio, nonvoting members, representing the department, the department of agriculture and rural development, the department of natural resources, the office of the Great Lakes, the Michigan geological survey, and the attorney general.

(2) The appointments to the council under subsection (1) shall be made not later than 60 days after the effective date of the 2018 amendatory act that amended this section. The individual making the appointment under subsection (1) shall give consideration and deference to individuals currently serving on the department's water use advisory council.

(3) An individual appointed to the council shall serve for a term of 4 years, and may be reappointed. Individuals appointed to the council serve without compensation. A vacancy on the council shall be filled in the same manner as the original appointment.

(4) The council may elect co-chairs, form committees, set meeting schedules and work plans to address the council's responsibilities as provided by law, address charges from the department, and establish priorities. Members of the council may participate in any committees created by the council. Members of the council shall strive to make recommendations by consensus vote, and may submit opposition statements that must be included in the council's report under subsection (7).

(5) The council may appoint technical advisors with specific scientific, technical, legal, and similar expertise relevant to the council's responsibilities. Technical advisors may participate in any council meetings, committees, or subgroups created by the council but shall not vote on recommendations made by the council to the department or legislature under subsection (7).

(6) A meeting of the council must be held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(7) The council shall do all of the following:

(a) Make recommendations to the department, the department of agriculture and rural development, the department of natural resources, and the legislature on the implementation of part 327, including all of the following:

(i) Strategies for collection, verification, and use of data, including geology, aquifer characteristics, and groundwater and surface water hydrology.

(ii) Improvement, verification, regionalization, and integration of models used in the water withdrawal assessment tool and site-specific review, including models developed by private and public entities, organizations, or individuals.

(iii) Identification of research, public-private partnerships, training, and changes to the water withdrawal assessment tool needed to improve the department's ability to implement part 327 and to improve the water withdrawal assessment process under part 327.

(b) Study and make recommendations, as needed or as requested by the relevant standing committees of the legislature or the department, regarding the development and refinement of the water withdrawal assessment process under part 327.

(c) Make recommendations on reconciling conflicts in state laws related to the use of the waters of the state.

(d) At least every 2 years after the effective date of the 2018 amendatory act that amended this section, provide a report to the senate majority leader, the speaker of the house of representatives, and the standing committees of the legislature with jurisdiction primarily related to natural resources and the environment that makes recommendations regarding how the water withdrawal assessment process under part 327 could be improved. The report shall contain specific recommendations on the use of the assessment tool, the site-specific review process, the permitting process, the staffing, budgetary, software, and other resources required by the departments to successfully implement part 327, and any other measure that the council determines would improve the water withdrawal assessment process under part 327.

**History:** Add. 2003, Act 148, Imd. Eff. Aug. 8, 2003;—Am. 2006, Act 34, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 189, Imd. Eff. July 9, 2008;—Am. 2018, Act 509, Imd. Eff. Dec. 28, 2018.

**Compiler's note:** For abolishment of the groundwater conservation advisory council and transfer of its powers and duties to the department of environmental quality, see E.R.O. No. 2007-5, compiled at MCL 324.99907.

For transfer of powers and duties of water resources conservation advisory council from department of natural resources to natural resources commission, and abolishment of the advisory council, see E.R.O. No. 2009-31, compiled at MCL 324.99919.

**Popular name:** Act 451

**Popular name:** NREPA

PART 329  
GREAT LAKES PROTECTION

**324.32901 Definitions.**

Sec. 32901. As used in this part:

(a) "Board" means the Michigan Great Lakes protection fund technical advisory board created in section 32908.

(b) "Fund" means the Michigan Great Lakes protection fund created in section 32905.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Compiler's note:** For the type III transfer of the office of the great lakes within the department of natural resources to the new office of the great lakes within the department of environment, great lakes, and energy, see E.R.O. 2019-1, compiled at MCL 324.99923.

**Popular name:** Act 451

**Popular name:** NREPA

**324.32902 Legislative findings.**

Sec. 32902. The legislature finds that:

(a) The Great Lakes are a valuable resource providing an important source of food, fresh water, recreation, beauty, and enjoyment.

(b) The ecosystems of the Great Lakes, which provide sustenance and recreation to the people of this state and other states and nations, have been severely affected and are continually threatened by the introduction of foreign species into the lakes and by pollution of the Great Lakes waters.

(c) Careful management of the Great Lakes will permit the rehabilitation and protection of the lakes, their waters, and their ecosystems, while continuing and expanding their use for industry, food production, transportation, and recreation.

(d) This state, because it is surrounded by the Great Lakes and because the Great Lakes contribute in innumerable ways to the state's economy, recreation, and way of life, must act as a steward for the protection, enhancement, and wise utilization of the Great Lakes.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.32903 Office of the Great Lakes; establishment; purpose; duties.**

Sec. 32903. The office of the Great Lakes is established within the department of natural resources and is designated as the lead agency within state government for the development of policies, programs, and procedures to protect, enhance, and manage the Great Lakes. The office of the Great Lakes shall do all of the following:

(a) Advise the governor, the director, and the directors of other appropriate state departments on appropriate steps needed to coordinate state policy and state actions on the Great Lakes and to implement an ecosystem approach to this state's Great Lakes policies.

(b) Provide representation at the national level for this state's Great Lakes interests.

(c) Represent this state before Great Lakes policy development bodies such as the international joint commission.

(d) Ensure adequate research and staff work to maintain this state's regional leadership in resolving Great Lakes problems.

(e) Promote the wise use of the ports of this state and Great Lakes water transportation.

(f) Promote the Great Lakes tourism industry.

(g) Advocate the interests of this state in actions, policies, and legislation affecting the Great Lakes proposed in other Great Lakes states, Canadian provinces, Great Lakes policy development bodies, and the federal government.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Compiler's note:** For transfer of the Office of the Great Lakes, including but not limited to the authority, powers, duties, functions, and responsibilities, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

For transfer of the office of the Great Lakes from department of environmental quality to department of natural resources and environment, see E.R.O. No. 2009-31, compiled at MCL 324.99919.

For transfer of office of Great Lakes from department of natural resources and environment to department of environmental quality, see E.R.O. No. 2011-1, compiled at MCL 324.99921.

For transfer of office of the Great Lakes from department of environmental quality to department of natural resources, see E.R.O. No. 2017-5, compiled at MCL 324.99922.

For the type III transfer of the office of the Great Lakes within the department of natural resources to the new office of the Great Lakes within the department of environment, Great Lakes, and energy, see E.R.O. 2019-1, compiled at MCL 324.99923.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32904 Reports, analysis, and inventory to be submitted by governor to legislature.**

Sec. 32904. The governor, with the assistance of the office of the Great Lakes, shall prepare and submit to the legislature the following:

(a) An annual report, submitted by December 31 of each year, on the state of the Great Lakes.

(b) A comprehensive analysis, in the governor's annual budget message, of all the funds from state and federal sources that the governor recommends be expended for the protection, enhancement, and management of the Great Lakes.

(c) A comprehensive inventory, submitted by August 2, 1986, of all state, federal, interstate, and international agencies, programs, and projects associated with the protection, enhancement, and management of the Great Lakes.

(d) A report, submitted by February 2, 1987, on the status of the agreement between the United States and Canada known as the Great Lakes water quality agreement of 1978, and recommending steps to be taken to execute the state's obligations in that agreement and to promote the state's role and objectives in the renegotiation of that agreement.

(e) A report, submitted by August 2, 1987, listing the priority research needs with respect to the Great Lakes.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Compiler's note:** For transfer of the Office of the Great Lakes, including but not limited to the authority, powers, duties, functions, and responsibilities, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

For the type III transfer of the office of the Great Lakes within the department of natural resources to the new office of the Great Lakes within the department of environment, Great Lakes, and energy, see E.R.O. 2019-1, compiled at MCL 324.99923.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32905 Michigan Great Lakes protection fund; creation; sources of money; investment of fund; crediting interest and earnings to fund; money not to revert to general fund; annual report.**

Sec. 32905. (1) The Michigan Great Lakes protection fund is created in the state treasury.

(2) The fund shall receive money from the following sources:

(a) Money received by the state from the Great Lakes protection fund authorized in part 331.

(b) Gifts and contributions to the fund.

(c) Other sources provided by law.

(3) The state treasurer shall direct the investment of the fund. Interest and earnings of the fund shall be credited to the fund. Money in the fund at the end of the fiscal year shall remain in the fund and shall not revert to the general fund.

(4) The state treasurer shall annually report to the board and the department on the amount of money in the fund.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32906 State treasurer to credit money to fund.**

Sec. 32906. The state treasurer shall credit all money the state receives from the Great Lakes protection fund as authorized in part 331 to the fund.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.32907 Use of money in fund.**

Sec. 32907. Money in the fund shall be used only for programs or grants to supplement existing Great Lakes research and protection programs consistent with the purposes of part 331 including, but not limited to, the following:

(a) Research on the economic, environmental, and human health effects of contamination in the Great

Lakes.

- (b) The collection and analysis of data on the Great Lakes.
- (c) The development of new or improved environmental cleanup technologies.
- (d) Research to assess the effectiveness of pollution control policies.
- (e) The assessment of the health of Great Lakes fish, waterfowl, and other organisms.
- (f) Other programs consistent with the purposes of part 331.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.32908 Michigan Great Lakes protection fund technical advisory board; creation; appointment, qualifications, and terms of members; removal of member; election of chairperson; meetings; public notice; member not to receive grant.**

Sec. 32908. (1) The Michigan Great Lakes protection fund technical advisory board is created within the department. The board shall consist of the following members:

(a) An individual appointed by the department who has knowledge or expertise in Great Lakes water issues.

(b) An individual appointed by the department who has knowledge or expertise in the effects of air pollution on the Great Lakes.

(c) Six individuals appointed by the department as follows:

(i) One individual from an environmental organization.

(ii) One individual from a business or industry related to the Great Lakes.

(iii) One individual who has performed research related to the water quality of the Great Lakes.

(iv) One individual who has performed research related to public health concerns associated with the Great Lakes.

(v) One individual who has knowledge or expertise in the demographics of the Great Lakes region or the climatology of the Great Lakes region.

(vi) One individual who represents the hazardous substance research center.

(2) A member of the board shall serve for a term of 3 years. However, of the first appointments to the board by the department under subsection (1)(c), 3 shall be appointed to serve 2-year terms and 3 shall be appointed to serve 1-year terms.

(3) A member of the board may be removed for inefficiency, neglect of duty, or malfeasance in office by the body that appointed him or her.

(4) The board shall elect a chairperson from among its members. The board shall meet at the call of the chairperson at least annually. A meeting of the board shall be held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by that act.

(5) A member of the board shall not receive a grant under this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.32909 Duties of board generally.**

Sec. 32909. The board shall do both of the following:

(a) Advise this state's representatives on the board of directors of the Great Lakes protection fund authorized in part 331.

(b) Consult with the technical advisory committee of the Great Lakes protection fund.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.32910 Programs and grants to be funded; advice to department; compilation and submission of list; statement of guidelines; appropriation.**

Sec. 32910. (1) The board shall annually advise the department on the programs or grants that should be funded under this part and shall submit a list of these programs or grants to the department for its approval. This list shall be compiled in order of priority. Upon approval of the list, the department shall submit the list to the legislature in January of each year.

(2) The department and the board shall include with each list submitted under subsection (1) a statement of the guidelines used in listing and assigning the priority of the proposed programs or grants.

(3) The legislature shall annually appropriate money from the Michigan Great Lakes protection fund and from the Great Lakes spill prevention research fund for programs or grants pursuant to this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.32911 Great Lakes spill prevention research fund; creation; appropriations, gifts, and contributions; investments; disposition of interest and earnings; reversions; use of money; definitions.**

Sec. 32911. (1) The Great Lakes spill prevention research fund is created in the state treasury.

(2) The research fund may receive money as appropriated by the legislature, from gifts and contributions to the fund, and as otherwise provided by law. The state treasurer shall direct the investment of the research fund. Interest and earnings of the research fund shall be credited to the research fund. Money in the research fund at the close of the fiscal year shall remain in the research fund and shall not revert to the general fund.

(3) Money in the research fund shall be used only for the following purposes:

(a) Research into the prevention of spills during the transportation of hazardous materials on the Great Lakes and major tributaries of the Great Lakes.

(b) Research on selected pollution incidents to determine causal factors in spills of hazardous materials on the Great Lakes and major tributaries of the Great Lakes.

(c) Research into a total systems approach to address Great Lakes pollution problems that include human factors and socio-technical considerations.

(d) Research into the role of human factors in spills of hazardous materials on the Great Lakes and major tributaries of the Great Lakes, including human factors in pollution alarms, pollution monitoring systems, and instrumentation.

(e) Research into the deployment of existing and new technology related to transportation of hazardous materials on the Great Lakes and major tributaries of the Great Lakes and the appropriate allocation of functions between individuals and machines.

(f) Research to determine the relative contribution of spills of hazardous materials into the Great Lakes and major tributaries of the Great Lakes to the total pollution of the Great Lakes basin.

(g) Research on and modeling of spills to determine their effect on water intakes.

(4) As used in this section:

(a) "Great Lakes" means the Great Lakes and their connecting waterways over which the state has jurisdiction.

(b) "Hazardous material" means a chemical or other material which is or may become injurious to the public health, safety, or welfare, or to the environment.

(c) "Major tributary of the Great Lakes" means a river that flows into the Great Lakes that has a drainage area in excess of 700 square miles or has a drainage area that contains a population of 1,000,000 or more individuals.

(d) "Research fund" means the Great Lakes spill prevention research fund created in subsection (1).

(e) "Spill" means any leaking, pumping, pouring, emptying, emitting, discharging, escaping, leaching, or disposing of a hazardous material in a quantity which is or may become injurious to the public health, safety, or welfare or to the environment.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

PART 331

REGIONAL GREAT LAKES PROTECTION FUND

**324.33101 Definitions.**

Sec. 33101. As used in this part:

(a) "Agreement" means the document entitled "Great Lakes protection fund agreement" signed by the governor on February 26, 1989.

(b) "Great Lakes protection fund" or "fund" means the Great Lakes protection fund approved in the agreement.

(c) "Great Lakes toxic substance control agreement" means the document entitled "Great Lakes toxic

substance control agreement" signed by the governor on May 21, 1986.

(d) "Great Lakes water quality agreement of 1978" means the "Great Lakes water quality agreement of 1978" between the United States and Canada signed November 22, 1978, including the phosphorous load reduction supplement signed October 7, 1983, and as amended by protocol signed November 18, 1987.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Compiler's note:** For transfer of the Office of the Great Lakes, including but not limited to the authority, powers, duties, functions, and responsibilities, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

For the type III transfer of the office of the Great Lakes within the department of natural resources to the new office of the Great Lakes within the department of environment, Great Lakes, and energy, see E.R.O. 2019-1, compiled at MCL 324.99923.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33102 Legislative findings and declaration.**

Sec. 33102. The legislature finds and declares that:

(a) The Great Lakes protection fund has been created to advance the principal goals and objectives of the Great Lakes toxic substances control agreement and the Great Lakes water quality agreement of 1978.

(b) The Great Lakes protection fund has been created to finance and support state and regional projects for the protection, research, and cleanup of the Great Lakes.

(c) There is a need for a stable and predictable funding commitment for the preservation of Great Lakes water quality.

(d) The protection of the Great Lakes is of paramount public concern in the interest of the health, safety, and general welfare of the citizens of the state and the participation of the state in the Great Lakes protection fund will assist in achieving this protection.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Compiler's note:** For transfer of the Office of the Great Lakes, including but not limited to the authority, powers, duties, functions, and responsibilities, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

For the type III transfer of the office of the Great Lakes within the department of natural resources to the new office of the Great Lakes within the department of environment, Great Lakes, and energy, see E.R.O. 2019-1, compiled at MCL 324.99923.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33103 Great Lakes protection fund; formation and operation; agreement; appointment of members to board of directors.**

Sec. 33103. (1) The governor, on behalf of this state, may take all steps necessary to join with other states in the formation and operation of the Great Lakes protection fund provided that the fund does all of the following:

(a) Provides for the fund to receive money from each of the participating states and to expend only the interest and earnings of the fund for the purposes of subdivision (b).

(b) Provides for the funding of activities related to Great Lakes research and protection including but not limited to:

(i) Research on the economic, environmental, and human health effects of contamination in the Great Lakes.

(ii) The collection and analysis of data on the Great Lakes.

(iii) The development of new or improved environmental cleanup technologies.

(iv) Research to assess the effectiveness of pollution control policies.

(v) The assessment of the health of Great Lakes fish, waterfowl, and other organisms.

(2) The governor shall do all things necessary to implement the agreement.

(3) The governor shall appoint members to the board of directors of the Great Lakes protection fund in accordance with the agreement.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Compiler's note:** For transfer of the Office of the Great Lakes, including but not limited to the authority, powers, duties, functions, and responsibilities, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

For the type III transfer of the office of the Great Lakes within the department of natural resources to the new office of the Great Lakes within the department of environment, Great Lakes, and energy, see E.R.O. 2019-1, compiled at MCL 324.99923.

**Popular name:** Act 451

**Popular name:** NREPA

**324.33104 Withdrawal of participation in fund; dissolution of fund and distribution of assets; agreement to extend deadline.**

Sec. 33104. (1) If, by February 28, 1991, fewer than 4 states whose representatives signed the agreement have enacted legislation and provided funding as required by the agreement to participate in the fund, the governor shall take all steps necessary to withdraw the participation of the state in the fund, to dissolve the fund, and to equitably distribute the assets of the fund.

(2) If 2/3 of the states whose representatives signed the agreement agree to extend the deadline provided in subsection (1), the governor shall not withdraw the participation of the state during the extension period.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.33105 Delegation of responsibilities.**

Sec. 33105. The governor may delegate his or her responsibilities under this part to the department.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

PART 333  
COASTAL BEACH EROSION

**324.33301 Coastal beach erosion or protection; expenditures authorized.**

Sec. 33301. Any political subdivision of the state, by resolution of its legislative body adopted by a majority vote of its full membership, is authorized to make expenditures from its general fund, contingent fund, or from any special funds available for the purposes described in this section, to undertake, either independently or in cooperation with any other political subdivision or with any agency of the state or federal government, investigative or study functions related to coastal beach erosion or protection.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

PART 337  
FLOOD, DRAINAGE, AND BEACH EROSION CONTROL

**324.33701 Flood, drainage, or beach erosion control; lands; acquisition; contract with federal government; terms.**

Sec. 33701. The township board of any township, the legislative body of any incorporated city or incorporated village, or the board of county road commissioners of any county when directed by the county board of commissioners of the county, pursuant to a resolution adopted by a 2/3 vote of the members of the county board of commissioners, is authorized to acquire any and all interests in lands necessary to any flood control, drainage, or beach erosion control project and is authorized to contract with the federal government or any agency of the federal government, whereby the federal government or agency will pay the whole or a part of the cost of flood control, drainage control, or beach erosion control projects or will perform the whole or any part of the work connected with the project, or both, which contract may include any specific terms, including, but not limited to, the holding and saving of the United States free from damages due to the construction works, required by act of congress or federal regulation as a condition for participation on the part of the federal government.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

**Popular name:** Act 451

**Popular name:** NREPA

**324.33702 Relief from assessment.**

Sec. 33702. A contract entered into under section 33701 may provide that payments made or work done by the federal government or agency of the federal government relieves it in whole or in part from assessment for



the cost of the project.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33703 Contract; provisions.**

Sec. 33703. A contract entered into under section 33701 may provide for the granting, without cost to the United States, of all lands, easements, and rights-of-way necessary for the construction of the project, except as otherwise provided by act of congress or federal regulation. Such a contract may also provide for the maintenance and operation of the project after completion in accordance with regulations prescribed by the secretary of the army.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33704 Expenditures from municipal or county funds.**

Sec. 33704. The township board of any township, the legislative body of any incorporated city or incorporated village, or the county board of commissioners of any county, pursuant to a resolution adopted by a 2/3 vote of its members, is authorized in connection with any contract entered into under section 33701 to make expenditures from its general fund, contingent fund or from any special funds available.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33705 Assurances to federal government.**

Sec. 33705. The township board of any township, the legislative body of any incorporated city or incorporated village, or the board of county road commissioners of any county when directed by the county board of commissioners of the county, pursuant to a resolution adopted by a 2/3 vote of its members, is authorized to grant to the United States assurances as are required by federal flood control acts, by amendments to those acts, and by such other federal acts existing, or which may be enacted in the future, authorizing expenditure of federal funds for flood control, drainage, or beach erosion control projects.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33706 Joint contracts for implementation of part.**

Sec. 33706. The township board of any township, the legislative body of any incorporated city or incorporated village, or the board of county road commissioners of any county when directed by the county board of commissioners of the county, may provide for joint participation and a joint contract or contracts in implementing this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33707 Contracts; borrowing funds from federal government.**

Sec. 33707. Contracts entered into under this part involving the financial ability of the incorporated city, incorporated village, township, or county to meet all obligations and liabilities imposed by the contracts as to cost of lands, easements, rights-of-way, construction, or the maintenance and operation costs of the project or projects are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. Any incorporated city, incorporated village, or township, or the board of county road commissioners of any county when directed by the county board of commissioners, authorized to contract with the federal government or any agency of the federal government under this part, may borrow funds from the federal government or any agency of the federal government to implement this part, which borrowings shall be subject to existing statutes and charter limitations that are applicable to the borrowing. The revised municipal finance act, 2001

PA 34, MCL 141.2101 to 141.2821, applies to those borrowings.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2002, Act 219, Imd. Eff. Apr. 29, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33708 Interest in lands; easement for flood plain; acquisition; declared public purposes.**

Sec. 33708. For the accomplishment of the purposes of this part, any city, incorporated village, township, or board of county road commissioners may acquire any interest in land necessary to any flood control, drainage, or beach erosion control project, or to preserve flood plains, by purchase, gift, exchange, condemnation, or otherwise. If an easement to preserve a flood plain is acquired, the acquiring agency, in any instrument conveying such right or in any eminent domain proceedings instituted therefor, may acquire the further right to use the land subject to the easement, or any part of the easement, for any other public purpose, but only to the extent that the other uses are specifically enumerated in the conveyance or eminent domain proceedings. The legislative body of any city, incorporated village, or township, or the board of county road commissioners of any county when directed by the county board of commissioners of the county, may institute and prosecute proceedings under the power of eminent domain in accordance with the laws of the state or any local charter relative to condemnation. Two or more adjoining cities, villages, or townships are authorized to maintain proceedings in accordance with the procedure prescribed by Act No. 81 of the Public Acts of 1925, being sections 123.71 to 123.73 of the Michigan Compiled Laws. The purposes contemplated by this part are declared to be public purposes within the meaning of the constitution, state laws, and charters relative to the power of eminent domain.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

## PART 339

### CONTROL OF CERTAIN STATE LANDS

### **324.33901 Unpatented overflowed lands, made lands, and Lake St. Clair bottomlands; authority of department.**

Sec. 33901. All of the unpatented overflowed lands, made lands, and Lake St. Clair bottomlands belonging to this state or held in trust by this state as provided in this part shall be held, leased, disposed of by deed, and controlled by the department in the manner provided in this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33902 Powers of department to convey lands; dedication of unleased lands for recreational uses.**

Sec. 33902. The department shall not deed or convey the lands described in section 33901 except as provided in sections 33903 to 33911. The department may dedicate unleased lands of the character described in section 33901 for public hunting, fishing, and other recreational uses.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33903 Conveyance of certain leased lands by department; rights reserved.**

Sec. 33903. The department, upon application of any person who, on the effective date of the 2006 amendatory act that amended this section, holds a lease of any portion or portions of land from this state pursuant to former 1913 PA 326, or this part, or upon application by that person's heirs or assigns, shall execute and deliver to the applicant or his or her heirs or assigns a deed conveying to him or her all of the right, title, and interest of this state in and to the lands described in this section, subject to the paramount rights of navigation, hunting, and fishing that remain in the general public and in the government as now existing and recognized by law. The deeds shall contain the provisions as to residency and club use and occupancy as now set forth in all leases previously granted under former 1913 PA 326. An application under this section must be filed at least 1 year before the date on which the lease expires.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33904 Deeds; prerequisites to granting.**

Sec. 33904. Before the department grants a deed, there shall be presented evidence that the applicant requesting the deed is the lessee of the land, that the land is part of the lands described in section 33903, and that all taxes on the land are paid. All property deeded under this part is thereafter subject to the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, and the recording laws of this state.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33905 Repealed. 2006, Act 496, Imd. Eff. Dec. 29, 2006.**

**Compiler's note:** The repealed section pertained to sale of leased lands in St. Clair Flats.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33906 St. Clair Flats lands; conflicting claims; determination; appeal.**

Sec. 33906. In all cases where there is a contest or conflict between applicants for a deed to the same piece or parcel of land growing out of errors of description, overlapping descriptions, prior leases, or otherwise, the conflicting claims shall be determined by the department at a meeting scheduled by the department after notice to each of the claimants of the time and place of hearing, and in such cases depositions may be taken by any claimant in the manner provided for in taking depositions in the circuit courts of this state. Any party considering himself or herself aggrieved by any decision of the department refusing to grant him or her a deed under this part, whether in case of conflict, contest, or otherwise, shall have a right of appeal to the circuit court for the county in which the land is situated, and the proceedings to take the appeal and the trial of the appeal in any of the courts shall be in accordance with the statutes providing for appeals from district courts of this state, or to take such other action at law or in equity as provided by the statutes and laws of the state of Michigan.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33907 St. Clair Flats area; rules.**

Sec. 33907. The department may promulgate and enforce rules as it considers necessary for the preservation and use of the paramount right of navigation, hunting, and fishing covering the entire St. Clair Flats area.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33908 Receipts; credit of consideration and fees to land and water management permit fee fund.**

Sec. 33908. The consideration received for the execution and delivery of deeds under this part and all fees collected under this part shall be forwarded to the state treasurer and credited to the land and water management permit fee fund created in section 30113.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33909 Repealed. 2006, Act 496, Imd. Eff. Dec. 29, 2006.**

**Compiler's note:** The repealed section pertained to conveyance and sale of lots in St. Clair Flats.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33910 Water highway lands; lease; conveyance to contiguous lessees.**

Sec. 33910. The department, in its discretion, upon application of a person holding a lease or deed under this part to any lands lying contiguous to a water highway as surveyed under former 1899 PA 175, if it is

determined that the water highway is no longer needed for navigation, ingress, and egress to surveyed lots, or for any public use, whether dredged or not, may execute and deliver to the applicant a deed subject to all the applicable conditions and provisions of sections 33902 to 33908, to all of the right, title, and interest of the state in and to 1/2 of the surveyed width of that portion of the water highway as lies contiguous to land held under lease or deed by the applicant.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33911 Granting deeds to certain property; requirements.**

Sec. 33911. (1) Upon application of a person that holds a lease from this state of any portion or portions of the real property described in this part, the department may execute and deliver to the applicant a deed conveying all of the right, title, and interest of this state in and to that real property, subject to the paramount rights of hunting, fishing, and navigation, which remain in the general public and in the government as recognized by law. The deeds shall contain the same provisions as to use and occupancy now set forth in all the leases previously granted under former 1913 PA 326 or under this part. The department shall not grant a deed under this part unless the lessee of the subject property agrees to cancel the lease and relinquishes all rights under the lease.

(2) The department shall not grant a deed under this part for a lot that contains a structure unless the structure and the lot subject to the deed, including seawalls where present, comply with the applicable township building code and county and state sanitation codes and part 325, and the structure is located on a parcel of land that is adequately protected from erosion.

(3) A deed granted under this part shall not include a portion of the original lease that is submerged or lies below the elevation of 575.3 International Great Lakes Datum (IGLD 1985). The department of environmental quality shall perform a site inspection and set stakes, if necessary, to identify the boundaries of the area of the leased lot to be deeded. The applicant shall provide a boundary survey, completed by a professional surveyor, that delineates the area of the real property to be deeded. The state shall retain proprietary ownership in trust over the portion of the leased lot below the ordinary high-water mark of Lake St. Clair at the time of the conveyance.

(4) A deed shall not be granted under this part at less than the estimated land value of the real property as determined by the township in which the real property is located. Appraisal procedures and practices may include utilizing independent fee appraisal contractors. The appraisal shall not include improvements such as buildings, seawalls, and docks. Credit shall not be granted to the lessee for the years remaining on an unexpired lease when determining the sale value to the state. The applicant shall remit the full consideration within 1 year after being notified in writing of the selling price by the department. If the applicant does not remit the full consideration for the deed within 1 year, the department shall close the file and a new application must be submitted.

(5) If the applicant is not satisfied with the fair market value determined by the department under subsection (4), the applicant, within 30 days after receiving the determination, may submit a petition in writing to the circuit court in the thirty-first judicial circuit, and the court shall appoint an appraiser or appraisers from the department's approved listing to conduct an appraisal of the parcel. The decision of the court is final. The applicant shall pay all costs associated with this additional appraisal.

(6) A request for a deed shall be on a form provided by the department of environmental quality and shall be accompanied by an application fee of \$500.00.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33912 Rental valuation periods; determination; improvements; maximum increase; gross sum.**

Sec. 33912. Whenever any person is entitled under this part to lease for the period of 99 years, the department shall divide the term of 99 years into 2 periods of 50 and 49 years each, to be known as rental valuation periods, and the consideration or rental to be paid by the lessee for the first period of 50 years is to be determined by the department at the time such lessee is adjudged entitled to the lease. At the expiration of the first period of 50 years, the department shall redetermine the rental value or consideration to be paid by the lessee for the next succeeding rental period of 49 years until the expiration of the full term of the lease. However, the department, in determining the rental value to be paid by the lessee, shall consider the value of

the land only and shall not increase the rental value or consideration for any of the rental periods because of the improvements that may have been made on any of the premises by a lessee. In determining the rental value or consideration to be paid by the lessee for the second valuation period of 49 years, the department shall not increase the rental value or consideration to any sum in excess of double the rental value or consideration determined for the first valuation period of 50 years. The consideration so fixed shall, as applied to the claimants coming within the provisions of this section, be a gross sum and not an annual rental.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33913-324.33915 Repealed. 2006, Act 496, Imd. Eff. Dec. 29, 2006.**

**Compiler's note:** The repealed sections pertained to rental valuation periods, applications for leases, and uncontested applications.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33916 Former lease holder as trespasser; recovery of possession by state.**

Sec. 33916. If a lease under this part expires and a deed is not issued under this part to the former lease holder, the former lease holder shall be considered to be a trespasser, and an action may be brought in the circuit court for the county in which that land is located, in the name of the people of this state, by the attorney general of this state, to recover possession of that land.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33917-324.33920 Repealed. 2006, Act 496, Imd. Eff. Dec. 29, 2006.**

**Compiler's note:** The repealed sections pertained to form of lease, fixing rental value, occupants or claimants in possession of lands, and leasing certain lands.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33921 Rights of lessees subject to certain public rights.**

Sec. 33921. The rights of lessees under this part shall be subject to the paramount right of navigation, hunting, and fishing, which rights are to remain in the general public and in the government as now existing and recognized by law.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33922, 324.33923 Repealed. 2006, Act 496, Imd. Eff. Dec. 29, 2006.**

**Compiler's note:** The repealed sections pertained to possessor or occupant of lands, and application or right to lease.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33924 Definitions.**

Sec. 33924. As used in this part:

(a) "Department" means the department of natural resources unless expressly indicated otherwise.

(b) "Possession", "occupancy", and "improvement" include dredging or ditching, the throwing up of embankments, sheetpiling, filling in, the erection of fences, a boathouse, land made by dredging and filling, or building structures.

(c) "Person" means an individual, partnership, corporation, association, or other nongovernmental legal entity.

(d) "Well maintained" means that any structure on the land complies with township building codes and current county and state sanitation codes and part 325 and that the land is adequately protected from erosion.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.33925 Repealed. 2006, Act 496, Imd. Eff. Dec. 29, 2006.**

**Compiler's note:** The repealed section pertained to application to lease.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33926 Surveys governing terms of part.**

Sec. 33926. In describing the lands that may be leased under this part, the department shall be governed by maps, plats, and field notes of surveys made by the United States surveyors or by this state.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33927 Ascertainment of rights by department; hearing; powers of department.**

Sec. 33927. The department shall ascertain and decide upon the rights of persons claiming the benefit of this part, and it may hear and decide in a summary manner all matters respecting such applications or claims, except as otherwise provided in this part, and to that end may compel the attendance of witnesses and receive testimony by deposition or otherwise as may be produced, and determine thereon, according to equity and justice, the validity and just extent of the claim and respective rights of conflicting claimants making application for a lease. It shall cause minutes of the filing of such claims and all its proceedings to be entered in a book kept for that purpose and keep a record of the evidence from which its decisions are made, and it is authorized when it considers it necessary, or upon request of any of the claimants, to employ a stenographer to assist the department. The department may administer oaths, issue subpoenas, and compel the attendance of witnesses and the production of papers upon any hearing before the department under this part. In case of disobedience on the part of any person or persons, or willful failure to appear pursuant to any subpoena issued by the department, or upon refusal of any witnesses to testify regarding any matter pending before the department or to produce books and papers which he or she is required by the department to produce, the circuit court of any county in this state, upon the application of the department, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein, and in addition the department shall have the powers vested in the circuit court to compel witnesses to testify to any matter pending before the department, and each witness who appears before the department by its order or subpoena shall receive for his or her attendance the fees and mileage provided witnesses in civil cases in circuit courts, said fees to be paid by the party calling such witnesses.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33928 Conflicting claims; determination by department; hearing; notice; depositions; appeal.**

Sec. 33928. In all cases where there is a contest or conflict between applicants for a lease to the same piece or parcel of land growing out of a prior occupation or improvements, such conflicting claims shall be determined by the department at a meeting scheduled by the department after notice to each of the claimants of the time and place of hearing, and in such cases depositions may be taken by any claimant in the manner provided for taking depositions in the circuit courts of this state. Any party considering himself or herself aggrieved by any decision of the department refusing to grant him or her a lease under the provisions of this part, whether in case of conflict, contest, or otherwise, has the right of appeal to the circuit court for the county in which the land is situated, and the proceedings to take the appeal and the trial of the appeal in any of those courts shall be in accordance with the statutes providing for appeals from district courts of this state, or the aggrieved party may take such other action at law or in equity as provided by the statutes and laws of this state.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33929 State leased lands; sale or transfer of lease; statement of purpose; approval by department; record of assignment.**

Sec. 33929. (1) Each sale or transfer of a lease shall contain a specific statement of the purpose for which the property leased is to be used by the purchaser or assignee. A sale or transfer of a lease for other than club or residence purposes is not valid unless and until the sale or transfer is approved by the department of

environmental quality.

(2) Before selling or transferring a property that is subject to a lease under this part, the parties involved shall apply to the department of environmental quality for approval of the transfer of the lease to the purchaser. The application shall be made on a form provided by the department of environmental quality and shall be accompanied by a fee of \$250.00. Upon approval by the department of environmental quality, an assignment of lease form shall be recorded with the county register of deeds.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33930-324.33932 Repealed. 2006, Act 496, Imd. Eff. Dec. 29, 2006.**

**Compiler's note:** The repealed sections pertained to state leased lands and disposition of money received from leasing.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33933 State leased lands; taxes; assessment.**

Sec. 33933. The lessee's interest in all leases made under this part shall be assessed as real estate by the assessing officer of the township, city, or village in which the lands leased may be located, and the levy and collection of taxes so assessed on said lessee's interest shall be made and collected in the same manner and subject to the law now in force for the levy and collection of taxes upon real estate, and the assessing officers in determining the value of such leasehold interest for taxation purposes shall take into consideration the value of the land together with the improvements on the land.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33934 State leased lands; tax default; procedure for payment; forfeiture of lease; co-owners; partial payment of taxes; certificate of cancellation.**

Sec. 33934. (1) If default is made in the payment of taxes to the treasurer of the township, city, or village in which the lands leased are located, the same shall be returned to the county treasurer according to and subject to the provisions of law for the return and collection of unpaid taxes assessed upon real estate. The treasurer of the township, city, or village, at the same time that he or she makes returns to the county treasurer, shall make and transmit to the department a list of the lands so delinquent for taxes and the amount of taxes delinquent upon each description in the list. The county treasurer shall, at the same time he or she makes his or her return of delinquent lands to the department of treasury, make a similar return to the department of all such leasehold interests, the taxes upon which have not been collected, with a statement of the amount thereof. The county treasurer shall not receive payment of the amount of any taxes assessed upon such leasehold interests; but such taxes when returned delinquent by the township treasurer shall be payable only to the department. The department shall provide suitable books and enter in those books the description of every leasehold interest so returned and the taxes thereon. The person holding such interest in any parcel of this land may pay to the department at any time within 1 year after the same becomes a lien on the premises, the taxes assessed thereon, with interest at the rate of 1/2 of 1% per month or fraction thereof, with 4% as a collection fee, from the first day of March last preceding. However, if the taxes are not paid within this time period, the leasehold interest is forfeited because of the nonpayment of the taxes, and within its discretion the department may release the premises to any person for any term of years not exceeding 99 years, upon that person paying to the department all unpaid taxes on the land, together with such rental as may be determined upon under this part by the department.

(2) If the leasehold interest is owned by 2 or more persons, and any 1 or more of the persons neglect or refuse to pay his or her or their proportionate share of the taxes assessed against the leasehold at the date when the taxes become due and payable, then any 1 or more of the owners may pay his or her or their proportionate share of the taxes, and the county treasurer, in his or her return of delinquent lands to the department, shall indicate partial payments of taxes credited to the owner or owners making them. Any owner not having made payment of his or her proportionate share of the taxes may, at any time within 1 year after the taxes have become a lien on the premises, pay to the department his or her proportionate share of the taxes with interest at the rate of 1% per month or fraction thereof, from the first day of March last preceding. If the proportionate share of taxes of any such owner is not paid within this time period, the interest of the owner in the leasehold is forfeited because of the nonpayment of the taxes, and thereafter within 30 days, such of the

owners as have paid their proportionate share of the taxes, upon payment to the department of the amount of the taxes remaining due with interest accrued to the date of forfeiture, shall be entitled to conveyances by the department of the interests in the leasehold that have been forfeited. The interest thus conveyed shall be allotted equally among those owners who shall pay the delinquent taxes with interest as provided in this section.

(3) If default is made by any lessee in the payment of taxes, he or she shall be notified in writing by the department at least 3 months before the date of final forfeiture of the amount due and the penalty for nonpayment and the date upon which forfeiture is to occur.

(4) Upon payment to the department of taxes and interest as provided in this section, the payment amount shall be credited to the county in which such leasehold interests were assessed, in the same manner as taxes and interest are now credited to counties on part-paid state lands.

(5) Immediately upon formal determination by the department that a lease has been forfeited under this part, a certificate of cancellation of the lease shall be executed under the seal of the department and shall be forwarded to the register of deeds of the county where the land is situated. Upon receipt of this certificate, the register of deeds shall at once cause it to be recorded in a suitable book to be provided by the register of deeds. If the lease is of record in the register of deeds, the register of deeds shall note on the lease the fact that a certificate of cancellation has been issued and shall also note the citation to the record of such certificate.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2002, Act 356, Imd. Eff. May 23, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33935 State leased lands; nonpayment of taxes; report.**

Sec. 33935. Each county treasurer shall report to the department all descriptions of parcels of property subject to this part that have been returned for nonpayment of taxes, if those taxes have not been paid within 6 months after being returned for nonpayment of taxes. The report shall be made by the treasurer within 30 days after the 6-month period has expired. Land leased or deeded under this part that is returned to state ownership through purchase, gift, devise, lease expiration, or tax reversion shall not be re-leased or sold by the state if that land is not well maintained.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.33936-324.33939 Repealed. 2006, Act 496, Imd. Eff. Dec. 29, 2006.**

**Compiler's note:** The repealed sections pertained to unpatented overflowed lands, supervisor of wells, removal of natural materials from or beneath Great Lakes bottomlands, and violation of MCL 324.33938.

**Popular name:** Act 451

**Popular name:** NREPA

## PART 341 IRRIGATION DISTRICTS

### **324.34101 Irrigation districts; conditions and limitations for withdrawal of waters from Great Lakes; enforcement of section.**

Sec. 34101. (1) This part is applicable in counties with a population of 400,000 or less to the use of water from the Great Lakes only, which for the purposes of this part include those portions of those lakes and streams tributary to the Great Lakes where the natural water levels are controlled by and at essentially the same water level as the Great Lake involved.

(2) Water shall not be withdrawn from the Great Lakes if it is being used within the confines of an irrigation district under this part which cannot reasonably be expected to benefit agricultural crops or other agricultural operations for improvement of the food supply and water shall not be withdrawn from the Great Lakes under this part at any place or at any time or in any amount or amounts for a single irrigation district or for the sum of all irrigation districts and water from the Great Lakes shall not be stored or transmitted by or for any irrigation district, authorized to be created by this part, in any manner or by any means or with the aid of any dam or other device that does 1 or more of the following:

(a) Will materially injure other users of the waters of the Great Lakes and connecting channels.

(b) Will significantly affect the levels of the Great Lakes and prejudice the state in its relations with other states bordering on the Great Lakes.

(c) Will adversely affect the state in its development and maintenance of fish and wildlife resources.



(d) Will be detrimental to the health and welfare of the people of the state.

(3) The department shall enforce and implement the conditions and limitations of this section in performing all duties placed upon it by the terms of this part, and for this purpose the department may call upon any officer, board, department, school, university, or other state institution and the officers or employees of any officer, board, department, school, university, or other state institution for assistance considered necessary to implement this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.34102 Construction of part.**

Sec. 34102. This part shall be liberally construed to promote the public welfare by irrigating lands, improving the existing water supply for the lands or providing new means or methods of water supply, or constructing and completing dams, reservoirs, canals, drains, structures, mechanical devices, levees, dikes, barriers and the use of any pumping equipment, pipelines, or other works or a combination of any or all of the same specified in the petition to be utilized for the preservation or operation of any irrigation system constructed, or proposed to be constructed, for the purpose of irrigation.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.34103 Previously organized districts; validity, rights, privileges, and obligations; applicability of part.**

Sec. 34103. This part does not affect the validity of any district organized under the laws of this state prior to July 10, 1967, or its rights in or to property, or any of its rights or privileges of any kind or nature; but the districts are subject to this part so far as practicable. In addition, this part shall not do any of the following:

(a) Affect, impair, or discharge any contract, obligations, lien, or charge for, or upon which, a district was or might become liable or chargeable if former Act No. 205 of the Public Acts of 1967 had not been passed.

(b) Affect the validity of any bonds which had been issued prior to July 10, 1967.

(c) Affect any action pending on July 10, 1967.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.34104 Irrigation district as body corporate; powers; seal; condemnation.**

Sec. 34104. An established irrigation district is a body corporate with power to contract, to sue and be sued, and to hold, manage, and dispose of real and personal property, in addition to any other powers conferred upon it by law, and shall continue in existence until such time as the district is dissolved by operation of law. In addition, each established irrigation district may adopt and use a corporate seal, acquire the right to use of water for irrigation purposes, under plans approved by the department, acquire sites for reservoirs and rights-of-way for drains, canals, and laterals, and exercise the right of condemnation pursuant to the provisions of Act No. 149 of the Public Acts of 1911, being sections 213.21 to 213.25 of the Michigan Compiled Laws, or under the applicable provisions of sections 75 to 84 of the drain code of 1956, Act No. 40 of the Public Acts of 1956, being sections 280.75 to 280.84 of the Michigan Compiled Laws, and shall be considered to be a state agency as that term is used in that act.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.34105 District contracts with federal government, state, and others; approval by department; state's public trust.**

Sec. 34105. As used in this section, "federal government" means the United States and includes any and all agencies of the United States. The irrigation district may contract with the federal government, whereby the federal government will pay the whole or part of the cost of the project or will perform the whole or any part of the work connected with the project, which contract may include any specific terms required by act of congress or federal regulation as a condition for the participation of the federal government. The irrigation district may also contract with the state or any agency of the state or with any person in respect to any matter connected with the construction, operation, or maintenance of any irrigation works or for providing new

means of water supply or the improvement of the existing water supply for the lands within the irrigation district. All contracts and agreements executed under this section shall be subject to the approval of the department. Such a contract or agreement or anything in consequence of such a contract or agreement shall not in any manner infringe upon or invade the state's public trust in its waters.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.34106 Grant to United States or irrigation district of right to use rights-of-way in county or intercounty drainage districts; approval; rights of private persons.**

Sec. 34106. Subject to the written assignment, consent, and approval of the drain commissioner administering a county drainage district or the written assignment, consent, and approval of the drainage board of an intercounty drainage district, the county drain commissioner and the drainage board of intercounty drainage districts may grant unto the United States or to any irrigation district the right to use all the easements and rights-of-way conveyed to their respective drainage district or to any county lying wholly or in part in such districts for the construction, use, and maintenance of any county or intercounty drain by the United States or any irrigation district in connection with any irrigation project undertaken by the irrigation district, solely or in cooperation with the United States or any other federal department or agency. Private rights of persons acquired by reason of the establishment and construction of the drain or part of the drain shall not be interfered with or in any way impaired by the use of the drain for irrigation purposes within the scope of this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.34107 Dams for irrigation; approval.**

Sec. 34107. A dam for irrigation purposes shall not be constructed unless the dam is approved in a manner provided by law.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.34108 Grants of federal, state, and private aid for irrigation projects.**

Sec. 34108. An irrigation district may apply for and accept grants or any aid which the United States government or any agency of the United States government, the state or any of its political subdivisions, or any person may authorize to be made or given in aid of an irrigation project.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.34109 Irrigation districts; petitions for formulation or improvement; contents; circulation; signatures.**

Sec. 34109. (1) Whenever a majority of freeholders owning lands in a proposed irrigation district who represent 1/3 or more of the area of lands within the district, or whenever freeholders owning lands who represent more than 1/2 the area of lands within the district, desire to provide for the irrigation of the lands; to improve the existing water supply for the lands or provide a new water supply system for the lands; to purchase, extend, operate, or maintain constructed irrigation works; or to cooperate with the United States for the assumption as principal or guarantor of indebtedness to the United States on account of district lands, they may file in the office of the county drain commissioner of the county that embraces the largest acreage of the district a petition, hereinafter referred to as the "petition", which shall include all of the following:

(a) The name of the proposed irrigation district.

(b) The necessity of the proposed work, describing the necessity.

(c) The object and purpose of the system proposed to be constructed, together with a general description of the system.

(d) A general description of the lands proposed to be included in the district, accompanying the petition shall be a preliminary engineering report on the feasibility of the project, including a report on the sufficiency of its water supply; the approximate area of irrigable land within the district, including an estimate of the cost of construction.

- (e) The names of all freeholders owning lands in the proposed district, when known.
- (f) Whether or not the petitioners desire and propose to cooperate with the United States.
- (g) A general plea for the organization of the district.

(2) The petitions for the organization of the same district may be circulated and may be filed in more than 1 counterpart and, when filed, shall together be regarded as a single petition having as many signers as there are separate signers on the several petitions filed. All petitions for the organization of the district filed prior to the hearing on the petition shall be considered by the irrigation board the same as if filed with the first petition placed on file, and the signatures contained on those petitions shall be counted in determining whether sufficient persons have signed the petition.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.34110 Irrigation districts; affidavit of signers of petitions; evidence.**

Sec. 34110. The affidavit of 1 or more of the signers of the petition stating that they have examined it and are acquainted with the locality of the district and that the petition is signed by a sufficient number of persons owning lands in the district may be taken by the irrigation board as sufficient evidence of the facts stated in the petition.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.34111 Irrigation districts; lands included.**

Sec. 34111. The lands proposed to be included in any irrigation district need not be contiguous if the benefit of the proposed work in each part will exceed the costs of the proposed work in each part; and lands within any city, village, or township may be included within the limits of any irrigation district if the creation of the irrigation district will benefit the lands within the city, village, or township in any amount equal to or in excess of the amount of assessment for construction against the lands therein.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.34112 Irrigation board; creation; membership; chairperson; availability of writings to public; minutes; records and files; member as commissioner of irrigation and public officer; presumption; contested report or action; burden of proof; exception.**

Sec. 34112. (1) There is created for each irrigation district petitioned for under this part an irrigation board to consist of the drain commissioner of each county involved in the project in which the lands of the proposed irrigation district are located, the director of the department of agriculture, and the chairperson of the directors of each soil conservation district involved in the project in which the lands of the proposed irrigation district are located. The director of the department of agriculture may designate a representative from the department of agriculture and the chairperson of the directors of each soil conservation district may designate a representative from the directors of the soil conservation district to serve in their place as members of the irrigation board. The county drain commissioner of the county in which the largest amount of irrigation district land is contained shall serve as chairperson of the irrigation board.

(2) A writing prepared, owned, used, in the possession of, or retained by the irrigation board in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws. The chairperson of the irrigation board shall keep minutes of the proceedings of the irrigation board, and records and files of the board shall be kept in his or her office.

(3) A member of the irrigation board shall be known as a commissioner of irrigation. A commissioner of an irrigation district is a public officer. The presumption shall be in favor of the regularity and validity of the official act of a commissioner of irrigation. When a report of the commissioners of an irrigation district or action is contested, the burden of proof shall rest upon the contestant. This subsection shall not apply to an action brought with respect to a failure to comply with Act No. 442 of the Public Acts of 1976, as prescribed in subsection (2), or a failure to comply with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.34113 Commissioners of irrigation; oath of office; annual accounts.**

Sec. 34113. Before entering upon their duties, commissioners shall take and subscribe the constitutional oath of office. The commissioners shall make a true account of their activities to the department at least once annually.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.34114 Control over withdrawals and operations; rules; orders; expenses.**

Sec. 34114. (1) The department shall maintain superintending control over withdrawals and operations of each irrigation district formed under this part and may promulgate rules to implement this authority.

(2) The department may enforce the limitations and conditions of section 34101 by order prohibiting the further withdrawal of water or by taking other action as is authorized by this part or any other act or law. Each irrigation district shall reimburse the department for any reasonable and necessary expense incurred by the department in maintaining superintending control over that district.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.34115 Irrigation board; conducting business at public meeting; notice; calling and notice of meetings; affidavit as proof of mailing; waiver of additional notice; quorum; adjournment; action by board; signing of orders.**

Sec. 34115. (1) The business that the irrigation board may perform shall be conducted at a public meeting of the irrigation board held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(2) A meeting of the irrigation board may be called by the chairperson or by 2 members of the irrigation board. In addition to the notice prescribed in subsection (1), notice setting forth the time and place of the meeting shall be sent by certified mail to each member. That notice shall be mailed not less than 5 days before the meeting. The affidavit of the chairperson as to this mailing shall be conclusive proof of the mailing.

(3) The notice of a meeting prescribed in subsection (2) is not required if all members are present. A member of the board may waive the additional mailed notice of a meeting, either before or after the meeting.

(4) A majority of the members of the board constitutes a quorum for the transaction of business, but a lesser number may adjourn the meeting. Unless otherwise provided in this part, an action shall not be taken by the board except by a majority vote of the board's members. The adjournment of the hearing need not be advertised. Each order issued by the irrigation board shall be signed by the chairperson.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.34116 Proceedings upon petition for establishment of irrigation districts; meetings; filing and examination of petition; report; expenses and compensation.**

Sec. 34116. (1) Upon receipt of a petition for the establishment of an irrigation district, the county drain commissioner shall call the first meeting of the irrigation board. A copy of the petition and duplicates of all maps and other papers filed with the petition shall be filed with the department at least 4 weeks before the date set for the public hearing on the petition. The department shall examine the petition, maps, and other papers and, if it considers it necessary, examine the proposed district, the irrigation works proposed to be constructed, or the location of the irrigation works to be constructed, and prepare a report covering those features of the proposed irrigation project that relate to section 34101 and other matters as the department considers advisable. The department shall submit the report to the irrigation board at the meeting set for the hearing of the petition. All reasonable and necessary expenses incurred by the department in making the report shall be paid for by the persons signing the petition.

(2) Any additional compensation for services rendered on behalf of an irrigation district by members of the irrigation board in addition to official duties of the members shall be provided by the respective governmental agencies from which the original compensation for other various duties and services rendered are received.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34117 Irrigation board; first meeting; considerations; naming project and irrigation district; determination of sufficiency of petition and practicability of proposed project; objections; hearing; notice; report of department; final order of determination; order of department; eliminating or adding land in irrigation district; rehearing; legal establishment of irrigation district.**

Sec. 34117. (1) The irrigation board at its first meeting shall consider the petition for the project, make a tentative determination as to the sufficiency of the petition and the practicability of the proposed irrigation project, and make a tentative determination of the area to be assessed. The irrigation board shall give a name to the project and to the irrigation district.

(2) After the irrigation board has made the determination regarding sufficiency of the petition and practicability of the proposed project, it shall set a time and place to hear objections to the proposed irrigation project and the petition for the project, and to consider the matter of assessing the cost of the irrigation project in the affected lands.

(3) In addition to the public notice prescribed in section 34115(1), additional notice of the hearing shall be published twice in the county in not less than 1 newspaper published in the county and designated by the irrigation board, with the first publication not less than 20 days before the hearing. Notice of the hearing shall also be given to property owners in the assessment district pursuant to Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the Michigan Compiled Laws. The irrigation board may provide a form to be substantially followed in giving this notice.

(4) At the hearing, the department shall submit its report on the petition, and any person is entitled to be heard. After the hearing, the irrigation board shall make a determination as to the sufficiency of the petition, the practicability of the irrigation project, and whether the irrigation project should be constructed. If the department determines that the project should be constructed, it shall issue an appropriate final order of determination.

(5) A final order of determination establishing an irrigation district shall not be issued by the irrigation board until the board has been served with an order by the department stating that the department has determined that the proposed irrigation by the proposed irrigation district, as set forth in the petition, supporting papers, and examinations specified in section 34116, is feasible and within the purpose of this part and that the project can be constructed and operated in a manner that would not violate the conditions and limitations of section 34101. If the department by its order determines that the proposed irrigation district cannot be established without violating a condition or limitation of section 34101, its order shall be final and further action for the formation of the proposed irrigation district shall not be taken by the irrigation board. Land in the irrigation district shall not be eliminated from or added to that land tentatively determined to be assessed without a rehearing after notice, as provided in this section. The irrigation district is legally established after entry of the final order of determination.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34118 Plans, specifications, and costs; estimates of proposed irrigation projects.**

Sec. 34118. The irrigation board shall proceed to secure from a competent engineer plans and specifications and an estimate of the cost of the proposed irrigation project which, when adopted by the board, shall be filed with the chairperson.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34119 Design plans of irrigation works; commissioner's alteration or deviation; approval of department.**

Sec. 34119. The commissioners shall not be confined to the points of location, commencement, routes, or termini of the drains, reservoirs, dams, canals, ditches, pumps, or other work, or the number, extent, or size of the same, as proposed by the petitioners, but shall locate, design, lay out, and plan the same in the manner that they determine is best to promote the public welfare and to benefit the lands of the parties interested with the least damage and greatest benefit to all lands affected thereby. All alterations or deviations in the design plans

of the irrigation works shall have the final approval of the department.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.34120 Acquisition of lands or rights-of-way.**

Sec. 34120. The irrigation board shall proceed to secure the lands or rights-of-way necessary for the irrigation project. If the lands or rights-of-way cannot be secured by negotiation, then the irrigation board may proceed under section 34104.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.34121 Advertisement for bids for construction; acceptance and rejection of bids; readvertisement.**

Sec. 34121. The irrigation board shall advertise for bids for construction of the improvements requested in the petition. The contract shall be let to the lowest bidder in accordance with the statutory provisions applicable to award of public contracts, and the irrigation board has the right to reject any and all bids and readvertise the bids.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.34122 Costs of irrigation district; computation; approval.**

Sec. 34122. Within 10 days after the letting of contracts, or, in case of an appeal, then immediately after the appeal has been decided, the chairperson of the irrigation board shall make a computation of cost of a project under this part, which shall include all preliminary costs, the cost of construction of the improvement, establishment of the special assessment district, the preparation of the tax roll, notices, advertising, printing, financing, legal, professional, engineering, inspection, condemnation expenses, interest on the bonds for the first year if bonds are to be issued and an amount not to exceed 10% of the gross sum to cover contingent expenses, and all other administrative costs incidental to making of the improvement or establishment of the irrigation special assessment district. The chairperson shall submit the computation of cost to the irrigation board for its approval, and, when the computation of cost is approved by the board or amended and approved by the board, it shall become the final computation of cost for the irrigation district.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.34123 Assessment roll; description of lands benefited; apportionment of costs; objections.**

Sec. 34123. The chairperson of the irrigation board, under the direction of the board, shall make out an assessment roll, entering and describing on the assessment roll all the lots, premises, and parcels of land to be assessed, including on the assessment roll all lands benefited by the construction of the irrigation improvement. The assessments shall be based upon benefits to be derived from the proposed irrigation improvement. The irrigation board shall tentatively establish the percentage of the cost of the irrigation improvement which is to be borne by each of the parcels of land assessed on the special assessment roll. After the tentative apportionments and assessment roll is made, the irrigation board shall set a time and place when and where they will meet and hear any objections to the roll.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.34124 Notice of hearing; publication; form.**

Sec. 34124. Notice of hearing shall be given as prescribed in section 34115 and Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the Michigan Compiled Laws, and also by publication at least twice in a newspaper published and of general circulation in the county, the first publication to be at least 20 days before the time of the hearing. The irrigation board shall provide a form to be substantially followed in giving of the notice.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.34125 Hearing on objections; scope of review; equalization.**

Sec. 34125. At the hearing, the irrigation board shall hear the proofs and allegations of all parties interested, shall carefully reconsider and review the description of land comprised within the irrigation improvement special assessment district, the several descriptions, and the apportionment of benefits, and shall define and equalize the district as may seem just and equitable.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.34126 Special assessment rolls; final orders and confirmation; endorsement; memorandum of installments; conclusiveness.**

Sec. 34126. After the hearing, the irrigation board shall enter its final order of apportionment and order of confirmation of the roll and shall make an endorsement upon the roll showing the date of confirmation and when the amount to be raised is to be payable. If the amount is to be payable in more than 1 installment, the irrigation board shall enter on the roll a memorandum of the installments and of the years when the installments shall be spread and shall add a certificate in writing of the determination whether the taxes assessed for benefits shall be paid in 1 or more years. The special assessment rolls shall be dated and signed by the irrigation board and filed on or before the last Wednesday in September of each year in the office of the county clerk of the counties involved. When any improvement special assessment roll is confirmed by the irrigation board, it shall be final and conclusive.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.34127 Irrigation special assessments liens.**

Sec. 34127. From the date of confirmation of the special assessment roll, all irrigation special assessments constitute a lien upon the respective lots or parcels assessed and, when assessed, shall be charged against the person to whom assessed until paid.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.34128 Tax assessment rolls; contents; permanent installment payments.**

Sec. 34128. The chairperson of the irrigation board, at the direction of the irrigation board, shall prepare a tax assessment roll in each year for the collection of taxes for the current year and shall certify it to the county clerk on or before the first day of the annual meeting of the county board of commissioners. In each roll, he or she shall add to the amount to be collected interest on all unpaid installments to the date of tax collection. To the roll for the last year, he or she shall add a further amount, if any, as may be necessary, together with outstanding uncollected taxes, to pay all outstanding bonds and interest on the bonds to maturity. If the roll is made payable in more than 1 installment, a permanent assessment roll may be maintained in the office of the county treasurer, subject to the direction of the board of county auditors, in counties having such a board, and of the county board of commissioners in other counties, showing the total cost, the number of installments, and the amount of each annual assessment, together with interest charges on the assessment, which shall be carried in a separate column. If the roll is made payable in more than 1 installment, and the total amount of any assessment is \$10.00 or less, exclusive of interest, then the assessment shall be payable in 1 installment; but if the assessment exceeds \$10.00 and is made payable in more than 1 installment, then no installment, exclusive of interest, shall be less than \$10.00, excepting the final installment, which shall be payable in the amount of the actual balance.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.34129 Spread of special assessments on local tax rolls; orders by county board of commissioners.**

Sec. 34129. The county board of commissioners of the counties involved shall order the spread of all irrigation special assessments on the local tax rolls by the local tax assessing officials pursuant to sections 36 to 38 of the general property tax act, Act No. 206 of the Public Acts of 1893, being sections 211.36 to 211.38 of the Michigan Compiled Laws.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.34130 Spread of special assessments on local tax rolls; duties of local assessing officers.**

Sec. 34130. The supervisor or the village or city assessor shall spread on his or her roll the total amount of all irrigation special assessment taxes determined by the irrigation board and approved by the county board of commissioners to be assessed upon the county, township, city, or village tax roll for the year in which the same was assessed and extending the tax in the same column with the general county, township, city, or village tax. In villages or cities where the municipal taxes are assessed and collected prior to the October meeting of the county board of commissioners, all taxes ordered to be spread against the municipalities shall be spread during the calendar year following the action by the county board of commissioners. The supervisor, assessor, or tax levying official shall spread upon the roll, separately and immediately following the other descriptions, all tracts or parcels of land specified by the irrigation board to be assessed for benefits, and shall place opposite each description, in a column marked "(giving the name or number)..... irrigation special assessment taxes", the amount of taxes apportioned on that tract or parcel of land, as certified to him or her by the county clerk.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.34131 Special assessment taxes; interest, charges, collections, disbursement; defense of collector; limitation on actions; payments under protest; liens.**

Sec. 34131. All irrigation special assessment taxes assessed under this part shall be subject to the same interest and charges, and shall be collected in the same manner, as state and other general taxes are collected, and collecting officers are vested with the same power and authority in the collection of the taxes as are or may be conferred by law for collecting general taxes. Irrigation special assessment taxes, when collected, shall be returned to the county treasurer to be disbursed by him or her. If a suit is brought against the collector arising out of the collection of an irrigation special assessment tax, the county shall defend the collector in the same manner that he or she has the right to be defended in the collection of general taxes. A suit shall not be instituted to recover any special assessment tax or money paid or property sold therefor, or for damages on account thereof, unless brought within 30 days from the time of payment of the money to, or sale of the property by, the collecting officer. If the tax is paid under protest, the reasons for the protest shall be specified, and the same procedure observed as is required by the general tax law. All taxes levied under this part, with all lawful costs, interest, and charges, shall be and remain a perpetual lien upon the lands upon which they are assessed, and a personal claim against the owner of the lands until they are paid. If the taxes levied by the special assessment irrigation district are not collected by the treasurer of a participating municipality, they shall be returned by him or her, together with the lands upon which they were levied, to the county treasurer in the same return, at the same time, and in the same manner, in every respect, naming in each case the particular irrigation district, as lands are returned for state, county, and township taxes, and the taxes shall follow the lands, the same as all other taxes, and all the general provisions of law for enforcing the payment of township, county, and state taxes shall apply to irrigation special assessment taxes and to the lands returned delinquent for those taxes, in the same manner and with the same effect.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.34132 Additional pro rata assessments; limitations.**

Sec. 34132. If the assessments in any special assessment roll prove insufficient for any reason, including the noncollection of the assessments, to pay for the improvement for which they were made or to pay the principal and interest on the bonds issued in anticipation of the collection of the assessments, then the irrigation board shall make additional pro rata assessments to supply the deficiency, but the total amount



assessed against any parcel of land shall not exceed the value of the benefits received from the improvement.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34133 Invalid assessments; validation procedure; payments applied to reassessments.**

Sec. 34133. If, in the opinion of the irrigation board, a special assessment is invalid by reason of irregularities or informalities in the proceedings, or if any court of competent jurisdiction adjudges an assessment illegal, the irrigation board, whether the improvement has been made or not and whether any part of the assessment has been paid or not, may proceed from the last step at which the proceedings were legal and cause a new assessment to be made for the same purpose for which the former assessment was made. All proceedings on the reassessment and for the collection of the reassessment shall be conducted in the same manner as provided for the original assessment. Whenever an assessment or any part of an assessment levied upon any premises has been set aside in such a manner, if the assessment or part of an assessment has been paid and not refunded, the payment made shall be applied upon the reassessment.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34134 Irrigation orders to pay charges and to pay easements or rights-of-way; installments; drawing orders on first and succeeding years' assessments; limitations; certification by treasurer.**

Sec. 34134. The irrigation board of each special assessment district may issue irrigation orders for the payment of all charges reflected by the computation of costs upon the irrigation fund of each particular district. Irrigation taxes shall not be assessed for benefits received that are to be paid by irrigation orders in excess of 10 annual installments. All irrigation orders for the payment for easements or rights-of-way shall be paid out of the first year's taxes, and the balance of the first year's taxes shall be applied toward payment of the irrigation construction contracts. For the balance due upon such contracts, the irrigation board shall draw irrigation orders payable out of each succeeding year's assessment. An irrigation board shall not draw orders payable in any 1 year for a larger amount than 90% of that year's assessment. Irrigation orders shall be ordered to be paid by the irrigation board only after a certification by the treasurer of the irrigation district that there are sufficient funds in the irrigation district fund to pay the order. The county treasurers of the counties involved in irrigation districts shall keep a record of all receipts and disbursements of all irrigation districts in their respective counties.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34135 Interest on bonds; board of commissioners; resolution pledging full faith and credit of county to pay.**

Sec. 34135. The county board of commissioners of the county involved by a resolution adopted by a 2/3 vote of its members may pledge the full faith and credit of the county for the prompt payment of the interest on the bonds or evidences of indebtedness issued by the respective irrigation districts under this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34136 Operating and maintaining property of irrigation district; fixing and collecting water charges; approval of charges; charges for water services as lien on affected lands; certification of delinquent charges; entering charges on tax roll; enforcement; exaction of other charges; future expenses; assessment; notice of hearing.**

Sec. 34136. (1) The irrigation board shall operate and maintain the property of the irrigation district.

(2) The irrigation board may fix and collect water charges to cover the cost of the operation and maintenance of physical structures and administrative expenses of the district in connection with the transportation, impoundment, and utilization of water for irrigation purposes. The charges shall be approved by the majority vote of the irrigation board and shall be made to each user of water.

(3) Charges for water services furnished to a user or to a landowner shall be a lien on the affected lands

from the date the charges are due. Charges delinquent for 6 months or more shall be certified annually to the proper tax assessing officer or agency, who shall enter the charges upon the next tax roll against the premises to which the services have been rendered, and the charges shall be collected and the lien shall be enforced in the same manner as provided for the collection of taxes assessed upon the tax roll and the enforcement of the lien. The time and manner of certification and other procedures regarding the collection of the charges and the enforcement of the lien shall be prescribed by the irrigation board in cooperation with the governing bodies of the public corporations in which the lands are located. Instead of or in addition to levying water charges for the operation and maintenance of the properties of the irrigation district, the irrigation board, under the same conditions and for the same purpose, may exact connection, readiness to serve, availability, or service charges to be paid by the users or owners of land utilizing irrigation water for irrigation purposes.

(4) Future necessary expenses incurred in the administration and operation of the district and its properties may be assessed not less than once every 3 years on the basis of benefits derived after notice of the hearing on the maintenance assessment roll is given in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws, and Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the Michigan Compiled Laws.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.34137 Attack on orders; proceedings by writ of superintending control; legality of irrigation special assessment district and project; assessments; actions.**

Sec. 34137. (1) Except as prescribed in subsection (2), the final order of determination, the order of apportionment of benefits, or the order confirming the special assessment roll shall not be subject to attack in a court except by proceedings by writ of superintending control brought within 20 days after the filing of the order in the office of the chairperson of the irrigation board issuing the order. If a proceeding is not brought within the time prescribed, the irrigation special assessment district and project shall be considered to have been legally established, and the legality of the irrigation special assessment district and project and the assessments for the district and project shall not be questioned in an action at law or in equity.

(2) This section shall not prohibit the bringing of an action pursuant to the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.34138 Suspension of water delivery; delinquent irrigation taxes; right-of-way for laterals; condemnation; payment.**

Sec. 34138. The irrigation board may, by the adoption of an appropriate order, provide for the suspension of water delivery to any land in the district upon which the irrigation taxes levied and assessed remain due and unpaid for 2 years. The irrigation board shall make all arrangements for right-of-way for laterals from the main drain or canal to each tract of land subject to assessment, and when necessary the board shall condemn to procure right-of-way for laterals and make such rules in regard to the payment for the right-of-way as it considers just and equitable.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.34139 Irrigation boards; powers and duties.**

Sec. 34139. The irrigation board shall manage and conduct the business affairs of the district, make and execute all necessary contracts, employ agents, officers, and employees as may be required and prescribe their duties, establish equitable orders and rules for the distribution and use of water among owners of such lands, and generally perform all acts as are necessary to fully implement this part. The orders and rules with respect to the irrigation district shall be printed in convenient form for distribution to the freeholders in the irrigation district.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.34140 Right of entry upon land to survey; location of drains; acquisition of property;**

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**reservoirs for storage or transfers of Great Lakes water.**

Sec. 34140. The irrigation board and its agents and employees may enter upon any land within the district to make surveys, and may locate the line of any drain or canal and the necessary branches of that location. The irrigation board may acquire, either by purchase or condemnation, all lands and other property necessary for the construction, use, maintenance, repair, and improvement of any canal, drain or drains, and lands for reservoirs or dams, for the storage of water, and for all necessary appurtenances thereto. The board may acquire by purchase or condemnation any irrigation works, dams, drains, canals, pumping equipment, pumps, or reservoirs for the use of the district. The irrigation board may construct the necessary dams, reservoirs, and works for the storage or transfer of Great Lakes water for the district, and may perform any lawful act necessary to furnish water to each landowner in the district for irrigation purposes.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34141 Advancement of money to pay costs; reimbursement by irrigation special assessment district; obligations.**

Sec. 34141. Any person may advance money for the payment of any part of the cost of a project and shall be reimbursed by the irrigation special assessment district, with or without interest as may be agreed, when funds are available for that purpose. The obligation of the irrigation special assessment district to make the reimbursement may be evidenced by a contract or note, which contract or note may pledge the full faith and credit of the irrigation special assessment district and may be made payable out of the assessments made against properties in the irrigation special assessment district, out of the proceeds of bonds issued by the irrigation special assessment district pursuant to this part, or out of any other available funds, but the contract or note is subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2002, Act 220, Imd. Eff. Apr. 29, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34142 District accounts; duties of county treasurer; expenditure from district funds; bond interest; funds transfer.**

Sec. 34142. The county treasurers of the counties in which the irrigation district is located shall carry all accounts and items pertaining thereto as a separate account upon the books of their office. A record shall be kept of the amount of money paid from the irrigation district funds for the use and benefit of any irrigation district and, upon payment to the county treasurer of taxes assessed by the irrigation district, the county treasurer shall pay for the outstanding interest on bonds issued out of the taxes received or shall transfer the excess of funds to the irrigation district fund for the use and benefit of the irrigation district.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34143 Irrigation district funds; deposit; interest; use.**

Sec. 34143. The irrigation district funds shall be deposited by the county treasurer in a bank of the county in accordance with the general laws of this state, and interest so received shall belong to the irrigation district fund. Money collected or appropriated for an individual irrigation special assessment district fund shall be used solely for the use and benefit of the irrigation district for which it was raised or received.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34144 Irrigation district funds; county treasurers as custodians; deputies; bond; orders for payment.**

Sec. 34144. The county treasurer shall be the custodian of the funds of the irrigation district. He or she may designate 1 or more of his or her deputies who may act for him or her in the performance of any of his or her duties under this section. The irrigation board may require the county treasurer and any deputy county treasurer, so designated, to furnish a bond payable to the irrigation district, in addition to any bond payable to the county, conditioned upon the faithful discharge of his or her duties in respect to money belonging to the irrigation district, the premium on the bond to be paid by the irrigation district. Money held by the treasurer

shall be paid out only upon order of the irrigation board, except that an order shall not be required for the payment of principal and interest on bonds.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34145 Revolving fund to pay for preliminary costs; assessment of preliminary costs; repayment of fund.**

Sec. 34145. The county board of commissioners in which an irrigation district is proposed to be formed may provide for an appropriation to create a revolving fund to pay for the preliminary costs of irrigation improvement projects within the county. The preliminary costs shall be assessed to the property owners in the assessment district by the irrigation board after notice of the hearing is given as prescribed in section 34115 and Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the Michigan Compiled Laws. The preliminary costs shall be repaid to the fund if the project is not finally constructed. The preliminary costs shall be repaid to the fund when a project is constructed out of the first bond proceeds, taxes, or assessments received.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.34146 Borrowing money; issuing bonds; anticipating collection of special assessments; amount; applicability of law.**

Sec. 34146. The irrigation board may borrow money and issue the bonds of the special assessment district for that money in anticipation of the collection of special assessments to defray the cost of any improvement made under this part after the special assessment roll has been confirmed. The bonds shall not exceed the amount of the special assessments in anticipation of the collection of which they are issued. The issuance of special assessment bonds shall be governed by the general laws of this state applicable to the issuance of special assessment bonds and in accordance with the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. Bonds may be issued in anticipation of the collection of special assessments levied in respect to 2 or more public improvements, but no special assessment district shall be compelled to pay the obligation of any other special assessment district.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2002, Act 221, Imd. Eff. Apr. 29, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

PART 342

GREAT LAKES—ST. LAWRENCE RIVER BASIN WATER RESOURCES COMPACT

**324.34201 Great Lakes-St. Lawrence River Basin Water Resources Compact.**

Sec. 34201. The Great Lakes-St. Lawrence River Basin Water Resources Compact is hereby ratified, enacted into law, and entered into by this state as a party as follows:

AGREEMENT

Section 1. The states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin and the Commonwealth of Pennsylvania hereby solemnly covenant and agree with each other, upon enactment of concurrent legislation by the respective state legislatures and consent by the Congress of the United States as follows:

GREAT LAKES—ST. LAWRENCE RIVER BASIN WATER RESOURCES COMPACT

ARTICLE 1

SHORT TITLE, DEFINITIONS, PURPOSES AND DURATION

Section 1.1. Short Title. This act shall be known and may be cited as the "Great Lakes—St. Lawrence River Basin Water Resources Compact."

Section 1.2. Definitions. For the purposes of this Compact, and of any supplemental or concurring legislation enacted pursuant thereto, except as may be otherwise required by the context:

Adaptive Management means a Water resources management system that provides a systematic process for evaluation, monitoring and learning from the outcomes of operational programs and adjustment of policies, plans and programs based on experience and the evolution of scientific knowledge concerning Water resources and Water Dependent Natural Resources.

Agreement means the Great Lakes—St. Lawrence River Basin Sustainable Water Resources Agreement.

Applicant means a Person who is required to submit a Proposal that is subject to management and regulation under this Compact. Application has a corresponding meaning.

Basin or Great Lakes—St. Lawrence River Basin means the watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivières, Québec within the jurisdiction of the Parties.

Basin Ecosystem or Great Lakes—St. Lawrence River Basin Ecosystem means the interacting components of air, land, Water and living organisms, including humankind, within the Basin.

Community within a Straddling County means any incorporated city, town or the equivalent thereof, that is located outside the Basin but wholly within a County that lies partly within the Basin and that is not a Straddling Community.

Compact means this Compact.

Consumptive Use means that portion of the Water Withdrawn or withheld from the Basin that is lost or otherwise not returned to the Basin due to evaporation, incorporation into Products, or other processes.

Council means the Great Lakes—St. Lawrence River Basin Water Resources Council, created by this Compact.

Council Review means the collective review by the Council members as described in Article 4 of this Compact.

County means the largest territorial division for local government in a State. The County boundaries shall be defined as those boundaries that exist as of December 13, 2005.

Cumulative Impacts mean the impact on the Basin Ecosystem that results from incremental effects of all aspects of a Withdrawal, Diversion or Consumptive Use in addition to other past, present, and reasonably foreseeable future Withdrawals, Diversions and Consumptive Uses regardless of who undertakes the other Withdrawals, Diversions and Consumptive Uses. Cumulative Impacts can result from individually minor but collectively significant Withdrawals, Diversions and Consumptive Uses taking place over a period of time.

Decision-Making Standard means the decision-making standard established by Section 4.11 for Proposals subject to management and regulation in Section 4.10.

Diversion means a transfer of Water from the Basin into another watershed, or from the watershed of one of the Great Lakes into that of another by any means of transfer, including but not limited to a pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a water course, a tanker ship, tanker truck or rail tanker but does not apply to Water that is used in the Basin or a Great Lake watershed to manufacture or produce a Product that is then transferred out of the Basin or watershed. Divert has a corresponding meaning.

Environmentally Sound and Economically Feasible Water Conservation Measures mean those measures, methods, technologies or practices for efficient water use and for reduction of water loss and waste or for reducing a Withdrawal, Consumptive Use or Diversion that *i*) are environmentally sound, *ii*) reflect best practices applicable to the water use sector, *iii*) are technically feasible and available, *iv*) are economically feasible and cost effective based on an analysis that considers direct and avoided economic and environmental costs and *v*) consider the particular facilities and processes involved, taking into account the environmental impact, age of equipment and facilities involved, the processes employed, energy impacts and other appropriate factors.

Exception means a transfer of Water that is excepted under Section 4.9 from the prohibition against Diversions in Section 4.8.

Exception Standard means the standard for Exceptions established in Section 4.9.4.

Intra-Basin Transfer means the transfer of Water from the watershed of one of the Great Lakes into the watershed of another Great Lake.

Measures means any legislation, law, regulation, directive, requirement, guideline, program, policy, administrative practice or other procedure.

New or Increased Diversion means a new Diversion, an increase in an existing Diversion, or the alteration of an existing Withdrawal so that it becomes a Diversion.

New or Increased Withdrawal or Consumptive Use means a new Withdrawal or Consumptive Use or an increase in an existing Withdrawal or Consumptive Use.

Originating Party means the Party within whose jurisdiction an Application or registration is made or required.

Party means a State party to this Compact.

Person means a human being or a legal person, including a government or a nongovernmental organization, including any scientific, professional, business, non-profit, or public interest organization or association that is neither affiliated with, nor under the direction of a government.

Product means something produced in the Basin by human or mechanical effort or through agricultural processes and used in manufacturing, commercial or other processes or intended for intermediate or end use consumers. *(i)* Water used as part of the packaging of a Product shall be considered to be part of the Product. (

ii) Other than Water used as part of the packaging of a Product, Water that is used primarily to transport materials in or out of the Basin is not a Product or part of a Product. (iii) Except as provided in (i) above, Water which is transferred as part of a public or private supply is not a Product or part of a Product. (iv) Water in its natural state such as in lakes, rivers, reservoirs, aquifers, or water basins is not a Product.

Proposal means a Withdrawal, Diversion or Consumptive Use of Water that is subject to this Compact.

Province means Ontario or Québec.

Public Water Supply Purposes means water distributed to the public through a physically connected system of treatment, storage and distribution facilities serving a group of largely residential customers that may also serve industrial, commercial, and other institutional operators. Water Withdrawn directly from the Basin and not through such a system shall not be considered to be used for Public Water Supply Purposes.

Regional Body means the members of the Council and the Premiers of Ontario and Québec or their designee as established by the Agreement.

Regional Review means the collective review by the Regional Body as described in Article 4 of this Compact.

Source Watershed means the watershed from which a Withdrawal originates. If Water is Withdrawn directly from a Great Lake or from the St. Lawrence River, then the Source Watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively. If Water is Withdrawn from the watershed of a stream that is a direct tributary to a Great Lake or a direct tributary to the St. Lawrence River, then the Source Watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively, with a preference to the direct tributary stream watershed from which it was Withdrawn.

Standard of Review and Decision means the Exception Standard, Decision-Making Standard and reviews as outlined in Article 4 of this Compact.

State means one of the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio or Wisconsin or the Commonwealth of Pennsylvania.

Straddling Community means any incorporated city, town or the equivalent thereof, wholly within any County that lies partly or completely within the Basin, whose corporate boundary existing as of the effective date of this Compact, is partly within the Basin or partly within two Great Lakes watersheds.

Technical Review means a detailed review conducted to determine whether or not a Proposal that requires Regional Review under this Compact meets the Standard of Review and Decision following procedures and guidelines as set out in this Compact.

Water means ground or surface water contained within the Basin.

Water Dependent Natural Resources means the interacting components of land, Water and living organisms affected by the Waters of the Basin.

Waters of the Basin or Basin Water means the Great Lakes and all streams, rivers, lakes, connecting channels and other bodies of water, including tributary groundwater, within the Basin.

Withdrawal means the taking of water from surface water or groundwater. Withdraw has a corresponding meaning.

### Section 1.3. Findings and Purposes.

The legislative bodies of the respective Parties hereby find and declare:

#### 1. Findings:

- a. The Waters of the Basin are precious public natural resources shared and held in trust by the States;
- b. The Waters of the Basin are interconnected and part of a single hydrologic system;
- c. The Waters of the Basin can concurrently serve multiple uses. Such multiple uses include municipal, public, industrial, commercial, agriculture, mining, navigation, energy development and production, recreation, the subsistence, economic and cultural activities of native peoples, Water quality maintenance, and the maintenance of fish and wildlife habitat and a balanced ecosystem. And, other purposes are encouraged, recognizing that such uses are interdependent and must be balanced;
- d. Future Diversions and Consumptive Uses of Basin Water resources have the potential to significantly impact the environment, economy and welfare of the Great Lakes—St. Lawrence River region;
- e. Continued sustainable, accessible and adequate Water supplies for the people and economy of the Basin are of vital importance; and,
- f. The Parties have a shared duty to protect, conserve, restore, improve and manage the renewable but finite Waters of the Basin for the use, benefit and enjoyment of all their citizens, including generations yet to come. The most effective means of protecting, conserving, restoring, improving and managing the Basin Waters is through the joint pursuit of unified and cooperative principles, policies and programs mutually agreed upon, enacted and adhered to by all Parties.

#### 2. Purposes:

- a. To act together to protect, conserve, restore, improve and effectively manage the Waters and Water Dependent Natural Resources of the Basin under appropriate arrangements for intergovernmental cooperation and consultation because current lack of full scientific certainty should not be used as a reason for postponing measures to protect the Basin Ecosystem;
- b. To remove causes of present and future controversies;
- c. To provide for cooperative planning and action by the Parties with respect to such Water resources;
- d. To facilitate consistent approaches to Water management across the Basin while retaining State management authority over Water management decisions within the Basin;
- e. To facilitate the exchange of data, strengthen the scientific information base upon which decisions are made and engage in consultation on the potential effects of proposed Withdrawals and losses on the Waters and Water Dependent Natural Resources of the Basin;
- f. To prevent significant adverse impacts of Withdrawals and losses on the Basin's ecosystems and watersheds;
- g. To promote interstate and State-Provincial comity; and,
- h. To promote an Adaptive Management approach to the conservation and management of Basin Water resources, which recognizes, considers and provides adjustments for the uncertainties in, and evolution of, scientific knowledge concerning the Basin's Waters and Water Dependent Natural Resources.

Section 1.4. Science.

1. The Parties commit to provide leadership for the development of a collaborative strategy with other regional partners to strengthen the scientific basis for sound Water management decision making under this Compact.

2. The strategy shall guide the collection and application of scientific information to support:

- a. An improved understanding of the individual and Cumulative Impacts of Withdrawals from various locations and Water sources on the Basin Ecosystem and to develop a mechanism by which impacts of Withdrawals may be assessed;
- b. The periodic assessment of Cumulative Impacts of Withdrawals, Diversions and Consumptive Uses on a Great Lake and St. Lawrence River watershed basis;
- c. Improved scientific understanding of the Waters of the Basin;
- d. Improved understanding of the role of groundwater in Basin Water resources management; and,
- e. The development, transfer and application of science and research related to Water conservation and Water use efficiency.

## ARTICLE 2 ORGANIZATION

Section 2.1. Council Created.

The Great Lakes—St. Lawrence River Basin Water Resources Council is hereby created as a body politic and corporate, with succession for the duration of this Compact, as an agency and instrumentality of the governments of the respective Parties.

Section 2.2. Council Membership.

The Council shall consist of the Governors of the Parties, ex officio.

Section 2.3. Alternates.

Each member of the Council shall appoint at least one alternate who may act in his or her place and stead, with authority to attend all meetings of the Council and with power to vote in the absence of the member. Unless otherwise provided by law of the Party for which he or she is appointed, each alternate shall serve during the term of the member appointing him or her, subject to removal at the pleasure of the member. In the event of a vacancy in the office of alternate, it shall be filled in the same manner as an original appointment for the unexpired term only.

Section 2.4. Voting.

- 1. Each member is entitled to one vote on all matters that may come before the Council.
- 2. Unless otherwise stated, the rule of decision shall be by a simple majority.
- 3. The Council shall annually adopt a budget for each fiscal year and the amount required to balance the budget shall be apportioned equitably among the Parties by unanimous vote of the Council. The appropriation of such amounts shall be subject to such review and approval as may be required by the budgetary processes of the respective Parties.
- 4. The participation of Council members from a majority of the Parties shall constitute a quorum for the transaction of business at any meeting of the Council.

Section 2.5. Organization and Procedure.

The Council shall provide for its own organization and procedure, and may adopt rules and regulations governing its meetings and transactions, as well as the procedures and timeline for submission, review and

consideration of Proposals that come before the Council for its review and action. The Council shall organize, annually, by the election of a Chair and Vice Chair from among its members. Each member may appoint an advisor, who may attend all meetings of the Council and its committees, but shall not have voting power. The Council may employ or appoint professional and administrative personnel, including an Executive Director, as it may deem advisable, to carry out the purposes of this Compact.

Section 2.6. Use of Existing Offices and Agencies.

It is the policy of the Parties to preserve and utilize the functions, powers and duties of existing offices and agencies of government to the extent consistent with this Compact. Further, the Council shall promote and aid the coordination of the activities and programs of the Parties concerned with Water resources management in the Basin. To this end, but without limitation, the Council may:

1. Advise, consult, contract, assist or otherwise cooperate with any and all such agencies;
2. Employ any other agency or instrumentality of any of the Parties for any purpose; and,
3. Develop and adopt plans consistent with the Water resources plans of the Parties.

Section 2.7. Jurisdiction.

The Council shall have, exercise and discharge its functions, powers and duties within the limits of the Basin. Outside the Basin, it may act in its discretion, but only to the extent such action may be necessary or convenient to effectuate or implement its powers or responsibilities within the Basin and subject to the consent of the jurisdiction wherein it proposes to act.

Section 2.8. Status, Immunities and Privileges.

1. The Council, its members and personnel in their official capacity and when engaged directly in the affairs of the Council, its property and its assets, wherever located and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by the Parties, except to the extent that the Council may expressly waive its immunity for the purposes of any proceedings or by the terms of any contract.

2. The property and assets of the Council, wherever located and by whomsoever held, shall be considered public property and shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

3. The Council, its property and its assets, income and the operations it carries out pursuant to this Compact shall be immune from all taxation by or under the authority of any of the Parties or any political subdivision thereof; provided, however, that in lieu of property taxes the Council may make reasonable payments to local taxing districts in annual amounts which shall approximate the taxes lawfully assessed upon similar property.

Section 2.9. Advisory Committees.

The Council may constitute and empower advisory committees, which may be comprised of representatives of the public and of federal, State, tribal, county and local governments, water resources agencies, water-using industries and sectors, water-interest groups and academic experts in related fields.

## ARTICLE 3

### GENERAL POWERS AND DUTIES

Section 3.1. General.

The Waters and Water Dependent Natural Resources of the Basin are subject to the sovereign right and responsibilities of the Parties, and it is the purpose of this Compact to provide for joint exercise of such powers of sovereignty by the Council in the common interests of the people of the region, in the manner and to the extent provided in this Compact. The Council and the Parties shall use the Standard of Review and Decision and procedures contained in or adopted pursuant to this Compact as the means to exercise their authority under this Compact. The Council may revise the Standard of Review and Decision, after consultation with the Provinces and upon unanimous vote of all Council members, by regulation duly adopted in accordance with Section 3.3 of this Compact and in accordance with each Party's respective statutory authorities and applicable procedures. The Council shall identify priorities and develop plans and policies relating to Basin Water resources. It shall adopt and promote uniform and coordinated policies for Water resources conservation and management in the Basin.

Section 3.2. Council Powers.

The Council may: plan; conduct research and collect, compile, analyze, interpret, report and disseminate data on Water resources and uses; forecast Water levels; conduct investigations; institute court actions; design, acquire, construct, reconstruct, own, operate, maintain, control, sell and convey real and personal property and any interest therein as it may deem necessary, useful or convenient to carry out the purposes of this Compact; make contracts; receive and accept such payments, appropriations, grants, gifts, loans, advances and other funds, properties and services as may be transferred or made available to it by any Party or by any other public or private agency, corporation or individual; and, exercise such other and different



powers as may be delegated to it by this Compact or otherwise pursuant to law, and have and exercise all powers necessary or convenient to carry out its express powers or which may be reasonably implied therefrom.

#### Section 3.3. Rules and Regulations.

1. The Council may promulgate and enforce such rules and regulations as may be necessary for the implementation and enforcement of this Compact. The Council may adopt by regulation, after public notice and public hearing, reasonable Application fees with respect to those Proposals for Exceptions that are subject to Council review under Section 4.9. Any rule or regulation of the Council, other than one which deals solely with the internal management of the Council or its property, shall be adopted only after public notice and hearing.

2. Each Party, in accordance with its respective statutory authorities and applicable procedures, may adopt and enforce rules and regulations to implement and enforce this Compact and the programs adopted by such Party to carry out the management programs contemplated by this Compact.

#### Section 3.4. Program Review and Findings.

1. Each Party shall submit a report to the Council and the Regional Body detailing its Water management and conservation and efficiency programs that implement this Compact. The report shall set out the manner in which Water Withdrawals are managed by sector, Water source, quantity or any other means, and how the provisions of the Standard of Review and Decision and conservation and efficiency programs are implemented. The first report shall be provided by each Party one year from the effective date of this Compact and thereafter every 5 years.

2. The Council, in cooperation with the Provinces, shall review its Water management and conservation and efficiency programs and those of the Parties that are established in this Compact and make findings on whether the Water management program provisions in this Compact are being met, and if not, recommend options to assist the Parties in meeting the provisions of this Compact. Such review shall take place:

- a. 30 days after the first report is submitted by all Parties; and,
- b. Every five years after the effective date of this Compact; and,
- c. At any other time at the request of one of the Parties.

3. As one of its duties and responsibilities, the Council may recommend a range of approaches to the Parties with respect to the development, enhancement and application of Water management and conservation and efficiency programs to implement the Standard of Review and Decision reflecting improved scientific understanding of the Waters of the Basin, including groundwater, and the impacts of Withdrawals on the Basin Ecosystem.

### ARTICLE 4

#### WATER MANAGEMENT AND REGULATION

##### Section 4.1. Water Resources Inventory, Registration and Reporting.

1. Within five years of the effective date of this Compact, each Party shall develop and maintain a Water resources inventory for the collection, interpretation, storage, retrieval exchange, and dissemination of information concerning the Water resources of the Party, including, but not limited to, information on the location, type, quantity, and use of those resources and the location, type, and quantity of Withdrawals, Diversions and Consumptive Uses. To the extent feasible, the Water resources inventory shall be developed in cooperation with local, State, federal, tribal and other private agencies and entities, as well as the Council. Each Party's agencies shall cooperate with that Party in the development and maintenance of the inventory.

2. The Council shall assist each Party to develop a common base of data regarding the management of the Water Resources of the Basin and to establish systematic arrangements for the exchange of those data with other States and Provinces.

3. To develop and maintain a compatible base of Water use information, within five years of the effective date of this Compact any Person who Withdraws Water in an amount of 100,000 gallons per day or greater average in any 30-day period (including Consumptive Uses) from all sources, or Diverts Water of any amount, shall register the Withdrawal or Diversion by a date set by the Council unless the Person has previously registered in accordance with an existing State program. The Person shall register the Withdrawal or Diversion with the Originating Party using a form prescribed by the Originating Party that shall include, at a minimum and without limitation: the name and address of the registrant and date of registration; the locations and sources of the Withdrawal or Diversion; the capacity of the Withdrawal or Diversion per day and the amount Withdrawn or Diverted from each source; the uses made of the Water; places of use and places of discharge; and, such other information as the Originating Party may require. All registrations shall include an estimate of the volume of the Withdrawal or Diversion in terms of gallons per day average in any 30-day period.

4. All registrants shall annually report the monthly volumes of the Withdrawal, Consumptive Use and

Diversion in gallons to the Originating Party and any other information requested by the Originating Party.

5. Each Party shall annually report the information gathered pursuant to this Section to a Great Lakes—St. Lawrence River Water use data base repository and aggregated information shall be made publicly available, consistent with the confidentiality requirements in Section 8.3.

6. Information gathered by the Parties pursuant to this Section shall be used to improve the sources and applications of scientific information regarding the Waters of the Basin and the impacts of the Withdrawals and Diversions from various locations and Water sources on the Basin Ecosystem, and to better understand the role of groundwater in the Basin. The Council and the Parties shall coordinate the collection and application of scientific information to further develop a mechanism by which individual and Cumulative Impacts of Withdrawals, Consumptive Uses and Diversions shall be assessed.

#### Section 4.2. Water Conservation and Efficiency Programs.

1. The Council commits to identify, in cooperation with the Provinces, Basin-wide Water conservation and efficiency objectives to assist the Parties in developing their Water conservation and efficiency program. These objectives are based on the goals of:

- a. Ensuring improvement of the Waters and Water Dependent Natural Resources;
- b. Protecting and restoring the hydrologic and ecosystem integrity of the Basin;
- c. Retaining the quantity of surface water and groundwater in the Basin;
- d. Ensuring sustainable use of Waters of the Basin; and,
- e. Promoting the efficiency of use and reducing losses and waste of Water.

2. Within two years of the effective date of this Compact, each Party shall develop its own Water conservation and efficiency goals and objectives consistent with the Basin-wide goals and objectives, and shall develop and implement a Water conservation and efficiency program, either voluntary or mandatory, within its jurisdiction based on the Party's goals and objectives. Each Party shall annually assess its programs in meeting the Party's goals and objectives, report to the Council and the Regional Body and make this annual assessment available to the public.

3. Beginning five years after the effective date of this Compact, and every five years thereafter, the Council, in cooperation with the Provinces, shall review and modify as appropriate the Basin-wide objectives, and the Parties shall have regard for any such modifications in implementing their programs. This assessment will be based on examining new technologies, new patterns of Water use, new resource demands and threats, and Cumulative Impact assessment under Section 4.15.

4. Within two years of the effective date of this Compact, the Parties commit to promote Environmentally Sound and Economically Feasible Water Conservation Measures such as:

- a. Measures that promote efficient use of Water;
- b. Identification and sharing of best management practices and state of the art conservation and efficiency technologies;
- c. Application of sound planning principles;
- d. Demand-side and supply-side Measures or incentives; and,
- e. Development, transfer and application of science and research.

5. Each Party shall implement in accordance with paragraph 2 above a voluntary or mandatory Water conservation program for all, including existing, Basin Water users. Conservation programs need to adjust to new demands and the potential impacts of cumulative effects and climate.

#### Section 4.3. Party Powers and Duties.

1. Each Party, within its jurisdiction, shall manage and regulate New or Increased Withdrawals, Consumptive Uses and Diversions, including Exceptions, in accordance with this Compact.

2. Each Party shall require an Applicant to submit an Application in such manner and with such accompanying information as the Party shall prescribe.

3. No Party may approve a Proposal if the Party determines that the Proposal is inconsistent with this Compact or the Standard of Review and Decision or any implementing rules or regulations promulgated thereunder. The Party may approve, approve with modifications or disapprove any Proposal depending on the Proposal's consistency with this Compact and the Standard of Review and Decision.

4. Each Party shall monitor the implementation of any approved Proposal to ensure consistency with the approval and may take all necessary enforcement actions.

5. No Party shall approve a Proposal subject to Council or Regional Review, or both, pursuant to this Compact unless it shall have been first submitted to and reviewed by either the Council or Regional Body, or both, and approved by the Council, as applicable. Sufficient opportunity shall be provided for comment on the Proposal's consistency with this Compact and the Standard of Review and Decision. All such comments shall become part of the Party's formal record of decision, and the Party shall take into consideration any such comments received.

Section 4.4. Requirement for Originating Party Approval.

No Proposal subject to management and regulation under this Compact shall hereafter be undertaken by any Person unless it shall have been approved by the Originating Party.

Section 4.5. Regional Review.

1. General.

a. It is the intention of the Parties to participate in Regional Review of Proposals with the Provinces, as described in this Compact and the Agreement.

b. Unless the Applicant or the Originating Party otherwise requests, it shall be the goal of the Regional Body to conclude its review no later than 90 days after notice under Section 4.5.2 of such Proposal is received from the Originating Party.

c. Proposals for Exceptions subject to Regional Review shall be submitted by the Originating Party to the Regional Body for Regional Review, and where applicable, to the Council for concurrent review.

d. The Parties agree that the protection of the integrity of the Great Lakes—St. Lawrence River Basin Ecosystem shall be the overarching principle for reviewing Proposals subject to Regional Review, recognizing uncertainties with respect to demands that may be placed on Basin Water, including groundwater, levels and flows of the Great Lakes and the St. Lawrence River, future changes in environmental conditions, the reliability of existing data and the extent to which Diversions may harm the integrity of the Basin Ecosystem.

e. The Originating Party shall have lead responsibility for coordinating information for resolution of issues related to evaluation of a Proposal, and shall consult with the Applicant throughout the Regional Review Process.

f. A majority of the members of the Regional Body may request Regional Review of a regionally significant or potentially precedent setting Proposal. Such Regional Review must be conducted, to the extent possible, within the time frames set forth in this Section. Any such Regional Review shall be undertaken only after consulting the Applicant.

2. Notice from Originating Party to the Regional Body.

a. The Originating Party shall determine if a Proposal is subject to Regional Review. If so, the Originating Party shall provide timely notice to the Regional Body and the public.

b. Such notice shall not be given unless and until all information, documents and the Originating Party's Technical Review needed to evaluate whether the Proposal meets the Standard of Review and Decision have been provided.

c. An Originating Party may:

*i.* Provide notice to the Regional Body of an Application, even if notification is not required; or,

*ii.* Request Regional Review of an application, even if Regional Review is not required. Any such Regional Review shall be undertaken only after consulting the Applicant.

d. An Originating Party may provide preliminary notice of a potential Proposal.

3. Public Participation.

a. To ensure adequate public participation, the Regional Body shall adopt procedures for the review of Proposals that are subject to Regional Review in accordance with this Article.

b. The Regional Body shall provide notice to the public of a Proposal undergoing Regional Review. Such notice shall indicate that the public has an opportunity to comment in writing to the Regional Body on whether the Proposal meets the Standard of Review and Decision.

c. The Regional Body shall hold a public meeting in the State or Province of the Originating Party in order to receive public comment on the issue of whether the Proposal under consideration meets the Standard of Review and Decision.

d. The Regional Body shall consider the comments received before issuing a Declaration of Finding.

e. The Regional Body shall forward the comments it receives to the Originating Party.

4. Technical Review.

a. The Originating Party shall provide the Regional Body with its Technical Review of the Proposal under consideration.

b. The Originating Party's Technical Review shall thoroughly analyze the Proposal and provide an evaluation of the Proposal sufficient for a determination of whether the Proposal meets the Standard of Review and Decision.

c. Any member of the Regional Body may conduct their own Technical Review of any Proposal subject to Regional Review.

d. At the request of the majority of its members, the Regional Body shall make such arrangements as it considers appropriate for an independent Technical Review of a Proposal.

e. All Parties shall exercise their best efforts to ensure that a Technical Review undertaken under Sections

4.5.4.c and 4.5.4.d does not unnecessarily delay the decision by the Originating Party on the Application. Unless the Applicant or the Originating Party otherwise requests, all Technical Reviews shall be completed no later than 60 days after the date the notice of the Proposal was given to the Regional Body.

5. Declaration of Finding.

a. The Regional Body shall meet to consider a Proposal. The Applicant shall be provided with an opportunity to present the Proposal to the Regional Body at such time.

b. The Regional Body, having considered the notice, the Originating Party's Technical Review, any other independent Technical Review that is made, any comments or objections including the analysis of comments made by the public, First Nations and federally recognized Tribes, and any other information that is provided under this Compact shall issue a Declaration of Finding that the Proposal under consideration:

*i.* Meets the Standard of Review and Decision;

*ii.* Does not meet the Standard of Review and Decision; or,

*iii.* Would meet the Standard of Review and Decision if certain conditions were met.

c. An Originating Party may decline to participate in a Declaration of Finding made by the Regional Body.

d. The Parties recognize and affirm that it is preferable for all members of the Regional Body to agree whether the Proposal meets the Standard of Review and Decision.

e. If the members of the Regional Body who participate in the Declaration of Finding all agree, they shall issue a written Declaration of Finding with consensus.

f. In the event that the members cannot agree, the Regional Body shall make every reasonable effort to achieve consensus within 25 days.

g. Should consensus not be achieved, the Regional Body may issue a Declaration of Finding that presents different points of view and indicates each Party's conclusions.

h. The Regional Body shall release the Declarations of Finding to the public.

i. The Originating Party and the Council shall consider the Declaration of Finding before making a decision on the Proposal.

Section 4.6. Proposals Subject to Prior Notice.

1. Beginning no later than five years of the effective date of this Compact, the Originating Party shall provide all Parties and the Provinces with detailed and timely notice and an opportunity to comment within 90 days on any Proposal for a New or Increased Consumptive Use of 5 million gallons per day or greater average in any 90-day period. Comments shall address whether or not the Proposal is consistent with the Standard of Review and Decision. The Originating Party shall provide a response to any such comment received from another Party.

2. A Party may provide notice, an opportunity to comment and a response to comments even if this is not required under paragraph 1 of this Section. Any provision of such notice and opportunity to comment shall be undertaken only after consulting the Applicant.

Section 4.7. Council Actions.

1. Proposals for Exceptions subject to Council Review shall be submitted by the Originating Party to the Council for Council Review, and where applicable, to the Regional Body for concurrent review.

2. The Council shall review and take action on Proposals in accordance with this Compact and the Standard of Review and Decision. The Council shall not take action on a Proposal subject to Regional Review pursuant to this Compact unless the Proposal shall have been first submitted to and reviewed by the Regional Body. The Council shall consider any findings resulting from such review.

Section 4.8. Prohibition of New or Increased Diversions.

All New or Increased Diversions are prohibited, except as provided for in this Article.

Section 4.9. Exceptions to the Prohibition of Diversions.

1. Straddling Communities. A Proposal to transfer Water to an area within a Straddling Community but outside the Basin or outside the source Great Lake Watershed shall be excepted from the prohibition against Diversions and be managed and regulated by the Originating Party provided that, regardless of the volume of Water transferred, all the Water so transferred shall be used solely for Public Water Supply Purposes within the Straddling Community, and:

a. All Water Withdrawn from the Basin shall be returned, either naturally or after use, to the Source Watershed less an allowance for Consumptive Use. No surface water or groundwater from outside the Basin may be used to satisfy any portion of this criterion except if it:

*i.* Is part of a water supply or wastewater treatment system that combines water from inside and outside of the Basin;

*ii.* Is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the Basin;

*iii.* Maximizes the portion of water returned to the Source Watershed as Basin Water and minimizes the

surface water or groundwater from outside the Basin;

b. If the Proposal results from a New or Increased Withdrawal of 100,000 gallons per day or greater average over any 90-day period, the Proposal shall also meet the Exception Standard; and,

c. If the Proposal results in a New or Increased Consumptive Use of 5 million gallons per day or greater average over any 90-day period, the Proposal shall also undergo Regional Review.

2. Intra-Basin Transfer. A Proposal for an Intra-Basin Transfer that would be considered a Diversion under this Compact, and not already excepted pursuant to paragraph 1 of this Section, shall be excepted from the prohibition against Diversions, provided that:

a. If the Proposal results from a New or Increased Withdrawal less than 100,000 gallons per day average over any 90-day period, the Proposal shall be subject to management and regulation at the discretion of the Originating Party.

b. If the Proposal results from a New or Increased Withdrawal 100,000 gallons per day or greater average over any 90-day period and if the Consumptive Use resulting from the Withdrawal is less than 5 million gallons per day average over any 90-day period:

i. The Proposal shall meet the Exception Standard and be subject to management and regulation by the Originating Party, except that the Water may be returned to another Great Lake watershed rather than the Source Watershed;

ii. The Applicant shall demonstrate that there is no feasible, cost effective, and environmentally sound water supply alternative within the Great Lake watershed to which the Water will be transferred, including conservation of existing water supplies; and,

iii. The Originating Party shall provide notice to the other Parties prior to making any decision with respect to the Proposal.

c. If the Proposal results in a New or Increased Consumptive Use of 5 million gallons per day or greater average over any 90-day period:

i. The Proposal shall be subject to management and regulation by the Originating Party and shall meet the Exception Standard, ensuring that Water Withdrawn shall be returned to the Source Watershed;

ii. The Applicant shall demonstrate that there is no feasible, cost effective, and environmentally sound water supply alternative within the Great Lake watershed to which the Water will be transferred, including conservation of existing water supplies;

iii. The Proposal undergoes Regional Review; and,

iv. The Proposal is approved by the Council. Council approval shall be given unless one or more Council Members vote to disapprove.

3. Straddling Counties. A Proposal to transfer Water to a Community within a Straddling County that would be considered a Diversion under this Compact shall be excepted from the prohibition against Diversions, provided that it satisfies all of the following conditions:

a. The Water shall be used solely for the Public Water Supply Purposes of the Community within a Straddling County that is without adequate supplies of potable water;

b. The Proposal meets the Exception Standard, maximizing the portion of water returned to the Source Watershed as Basin Water and minimizing the surface water or groundwater from outside the Basin;

c. The Proposal shall be subject to management and regulation by the Originating Party, regardless of its size;

d. There is no reasonable water supply alternative within the basin in which the community is located, including conservation of existing water supplies;

e. Caution shall be used in determining whether or not the Proposal meets the conditions for this Exception. This Exception should not be authorized unless it can be shown that it will not endanger the integrity of the Basin Ecosystem;

f. The Proposal undergoes Regional Review; and,

g. The Proposal is approved by the Council. Council approval shall be given unless one or more Council Members vote to disapprove.

A Proposal must satisfy all of the conditions listed above. Further, substantive consideration will also be given to whether or not the Proposal can provide sufficient scientifically based evidence that the existing water supply is derived from groundwater that is hydrologically interconnected to Waters of the Basin.

4. Exception Standard. Proposals subject to management and regulation in this Section shall be declared to meet this Exception Standard and may be approved as appropriate only when the following criteria are met:

a. The need for all or part of the proposed Exception cannot be reasonably avoided through the efficient use and conservation of existing water supplies;

b. The Exception will be limited to quantities that are considered reasonable for the purposes for which it is proposed;

c. All Water Withdrawn shall be returned, either naturally or after use, to the Source Watershed less an allowance for Consumptive Use. No surface water or groundwater from the outside the Basin may be used to satisfy any portion of this criterion except if it:

i. Is part of a water supply or wastewater treatment system that combines water from inside and outside of the Basin;

ii. Is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the Basin;

d. The Exception will be implemented so as to ensure that it will result in no significant individual or cumulative adverse impacts to the quantity or quality of the Waters and Water Dependent Natural Resources of the Basin with consideration given to the potential Cumulative Impacts of any precedent-setting consequences associated with the Proposal;

e. The Exception will be implemented so as to incorporate Environmentally Sound and Economically Feasible Water Conservation Measures to minimize Water Withdrawals or Consumptive Use;

f. The Exception will be implemented so as to ensure that it is in compliance with all applicable municipal, State and federal laws as well as regional interstate and international agreements, including the Boundary Waters Treaty of 1909; and,

g. All other applicable criteria in Section 4.9 have also been met.

Section 4.10. Management and Regulation of New or Increased Withdrawals and Consumptive Uses.

1. Within five years of the effective date of this Compact, each Party shall create a program for the management and regulation of New or Increased Withdrawals and Consumptive Uses by adopting and implementing Measures consistent with the Decision-Making Standard. Each Party, through a considered process, shall set and may modify threshold levels for the regulation of New or Increased Withdrawals in order to assure an effective and efficient Water management program that will ensure that uses overall are reasonable, that Withdrawals overall will not result in significant impacts to the Waters and Water Dependent Natural Resources of the Basin, determined on the basis of significant impacts to the physical, chemical, and biological integrity of Source Watersheds, and that all other objectives of the Compact are achieved. Each Party may determine the scope and thresholds of its program, including which New or Increased Withdrawals and Consumptive Uses will be subject to the program.

2. Any Party that fails to set threshold levels that comply with Section 4.10.1 any time before 10 years after the effective date of this Compact shall apply a threshold level for management and regulation of all New or Increased Withdrawals of 100,000 gallons per day or greater average in any 90 day period.

3. The Parties intend programs for New or Increased Withdrawals and Consumptive Uses to evolve as may be necessary to protect Basin Waters. Pursuant to Section 3.4, the Council, in cooperation with the Provinces, shall periodically assess the Water management programs of the Parties. Such assessments may produce recommendations for the strengthening of the programs, including without limitation, establishing lower thresholds for management and regulation in accordance with the Decision-Making Standard.

Section 4.11. Decision-Making Standard.

Proposals subject to management and regulation in Section 4.10 shall be declared to meet this Decision-Making Standard and may be approved as appropriate only when the following criteria are met:

1. All Water Withdrawn shall be returned, either naturally or after use, to the Source Watershed less an allowance for Consumptive Use;

2. The Withdrawal or Consumptive Use will be implemented so as to ensure that the Proposal will result in no significant individual or cumulative adverse impacts to the quantity or quality of the Waters and Water Dependent Natural Resources and the applicable Source Watershed;

3. The Withdrawal or Consumptive Use will be implemented so as to incorporate Environmentally Sound and Economically Feasible Water Conservation Measures;

4. The Withdrawal or Consumptive Use will be implemented so as to ensure that it is in compliance with all applicable municipal, State and federal laws as well as regional interstate and international agreements, including the Boundary Waters Treaty of 1909;

5. The proposed use is reasonable, based upon a consideration of the following factors:

a. Whether the proposed Withdrawal or Consumptive Use is planned in a fashion that provides for efficient use of the water, and will avoid or minimize the waste of Water;

b. If the Proposal is for an increased Withdrawal or Consumptive use, whether efficient use is made of existing water supplies;

c. The balance between economic development, social development and environmental protection of the proposed Withdrawal and use and other existing or planned withdrawals and water uses sharing the water source;

d. The supply potential of the water source, considering quantity, quality, and reliability and safe yield of

hydrologically interconnected water sources;

e. The probable degree and duration of any adverse impacts caused or expected to be caused by the proposed Withdrawal and use under foreseeable conditions, to other lawful consumptive or non-consumptive uses of water or to the quantity or quality of the Waters and Water Dependent Natural Resources of the Basin, and the proposed plans and arrangements for avoidance or mitigation of such impacts; and,

f. If a Proposal includes restoration of hydrologic conditions and functions of the Source Watershed, the Party may consider that.

#### Section 4.12. Applicability.

1. Minimum Standard. This Standard of Review and Decision shall be used as a minimum standard. Parties may impose a more restrictive decision-making standard for Withdrawals under their authority. It is also acknowledged that although a Proposal meets the Standard of Review and Decision it may not be approved under the laws of the Originating Party that has implemented more restrictive Measures.

#### 2. Baseline.

a. To establish a baseline for determining a New or Increased Diversion, Consumptive Use or Withdrawal, each Party shall develop either or both of the following lists for their jurisdiction:

i. A list of existing Withdrawal approvals as of the effective date of the Compact;

ii. A list of the capacity of existing systems as of the effective date of this Compact. The capacity of the existing systems should be presented in terms of Withdrawal capacity, treatment capacity, distribution capacity, or other capacity limiting factors. The capacity of the existing systems must represent the state of the systems. Existing capacity determinations shall be based upon approval limits or the most restrictive capacity information.

b. For all purposes of this Compact, volumes of Diversions, Consumptive Uses, or Withdrawals of Water set forth in the list(s) prepared by each Party in accordance with this Section, shall constitute the baseline volume.

c. The list(s) shall be furnished to the Regional Body and the Council within one year of the effective date of this Compact.

3. Timing of Additional Applications. Applications for New or Increased Withdrawals, Consumptive Uses or Exceptions shall be considered cumulatively within ten years of any application.

4. Change of Ownership. Unless a new owner proposes a project that shall result in a Proposal for a New or Increased Diversion or Consumptive Use subject to Regional Review or Council approval, the change of ownership in and of itself shall not require Regional Review or Council approval.

5. Groundwater. The Basin surface water divide shall be used for the purpose of managing and regulating New or Increased Diversions, Consumptive Uses or Withdrawals of surface water and groundwater.

6. Withdrawal Systems. The total volume of surface water and groundwater resources that supply a common distribution system shall determine the volume of a Withdrawal, Consumptive Use or Diversion.

7. Connecting Channels. The watershed of each Great Lake shall include its upstream and downstream connecting channels.

8. Transmission in Water Lines. Transmission of Water within a line that extends outside the Basin as it conveys Water from one point to another within the Basin shall not be considered a Diversion if none of the Water is used outside the Basin.

9. Hydrologic Units. The Lake Michigan and Lake Huron watersheds shall be considered to be a single hydrologic unit and watershed.

10. Bulk Water Transfer. A Proposal to Withdraw Water and to remove it from the Basin in any container greater than 5.7 gallons shall be treated under this Compact in the same manner as a Proposal for a Diversion. Each Party shall have the discretion, within its jurisdiction, to determine the treatment of Proposals to Withdraw Water and to remove it from the Basin in any container of 5.7 gallons or less.

#### Section 4.13. Exemptions.

Withdrawals from the Basin for the following purposes are exempt from the requirements of Article 4.

1. To supply vehicles, including vessels and aircraft, whether for the needs of the persons or animals being transported or for ballast or other needs related to the operation of the vehicles.

2. To use in a non-commercial project on a short-term basis for firefighting, humanitarian, or emergency response purposes.

#### Section 4.14. U.S. Supreme Court Decree: Wisconsin et al. v. Illinois et al.

1. Notwithstanding any terms of this Compact to the contrary, with the exception of Paragraph 5 of this Section, current, New or Increased Withdrawals, Consumptive Uses and Diversions of Basin Water by the State of Illinois shall be governed by the terms of the United States Supreme Court decree in Wisconsin et al. v. Illinois et al. and shall not be subject to the terms of this Compact nor any rules or regulations promulgated pursuant to this Compact. This means that, with the exception of Paragraph 5 of this Section, for purposes of

this Compact, current, New or Increased Withdrawals, Consumptive Uses and Diversions of Basin Water within the State of Illinois shall be allowed unless prohibited by the terms of the United States Supreme Court decree in Wisconsin et al. v. Illinois et al.

2. The Parties acknowledge that the United States Supreme Court decree in Wisconsin et al. v. Illinois et al. shall continue in full force and effect, that this Compact shall not modify any terms thereof, and that this Compact shall grant the parties no additional rights, obligations, remedies or defenses thereto. The Parties specifically acknowledge that this Compact shall not prohibit or limit the State of Illinois in any manner from seeking additional Basin Water as allowed under the terms of the United States Supreme Court decree in Wisconsin et al. v. Illinois et al., any other party from objecting to any request by the State of Illinois for additional Basin Water under the terms of said decree, or any party from seeking any other type of modification to said decree. If an application is made by any party to the Supreme Court of the United States to modify said decree, the Parties to this Compact who are also parties to the decree shall seek formal input from the Canadian Provinces of Ontario and Québec, with respect to the proposed modification, use best efforts to facilitate the appropriate participation of said Provinces in the proceedings to modify the decree, and shall not unreasonably impede or restrict such participation.

3. With the exception of Paragraph 5 of this Section, because current, New or Increased Withdrawals, Consumptive Uses and Diversions of Basin Water by the State of Illinois are not subject to the terms of this Compact, the State of Illinois is prohibited from using any term of this Compact, including Section 4.9, to seek New or Increased Withdrawals, Consumptive Uses or Diversions of Basin Water.

4. With the exception of Paragraph 5 of this Section, because Sections 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12 (Paragraphs 1, 2, 3, 4, 6 and 10 only), and 4.13 of this Compact all relate to current, New or Increased Withdrawals, Consumptive Uses and Diversions of Basin Waters, said provisions do not apply to the State of Illinois. All other provisions of this Compact not listed in the preceding sentence shall apply to the State of Illinois, including the Water Conservation Programs provision of Section 4.2.

5. In the event of a Proposal for a Diversion of Basin Water for use outside the territorial boundaries of the Parties to this Compact, decisions by the State of Illinois regarding such a Proposal would be subject to all terms of this Compact, except Paragraphs 1, 3 and 4 of this Section.

6. For purposes of the State of Illinois' participation in this Compact, the entirety of this Section 4.14 is necessary for the continued implementation of this Compact and, if severed, this Compact shall no longer be binding on or enforceable by or against the State of Illinois.

#### Section 4.15. Assessment of Cumulative Impacts.

1. The Parties in cooperation with the Provinces shall collectively conduct within the Basin, on a Lake watershed and St. Lawrence River Basin basis, a periodic assessment of the Cumulative Impacts of Withdrawals, Diversions and Consumptive Uses from the Waters of the Basin, every 5 years or each time the incremental Basin Water losses reach 50 million gallons per day average in any 90-day period in excess of the quantity at the time of the most recent assessment, whichever comes first, or at the request of one or more of the Parties. The assessment shall form the basis for a review of the Standard of Review and Decision, Council and Party regulations and their application. This assessment shall:

a. Utilize the most current and appropriate guidelines for such a review, which may include but not be limited to Council on Environmental Quality and Environment Canada guidelines;

b. Give substantive consideration to climate change or other significant threats to Basin Waters and take into account the current state of scientific knowledge, or uncertainty, and appropriate Measures to exercise caution in cases of uncertainty if serious damage may result;

c. Consider adaptive management principles and approaches, recognizing, considering and providing adjustments for the uncertainties in, and evolution of science concerning the Basin's water resources, watersheds and ecosystems, including potential changes to Basin-wide processes, such as lake level cycles and climate.

2. The Parties have the responsibility of conducting this Cumulative Impact assessment. Applicants are not required to participate in this assessment.

3. Unless required by other statutes, Applicants are not required to conduct a separate cumulative impact assessment in connection with an Application but shall submit information about the potential impacts of a Proposal to the quantity or quality of the Waters and Water Dependent Natural Resources of the applicable Source Watershed. An Applicant may, however, provide an analysis of how their Proposal meets the no significant adverse Cumulative Impact provision of the Standard of Review and Decision.

### ARTICLE 5

#### TRIBAL CONSULTATION

##### Section 5.1. Consultation with Tribes

1. In addition to all other opportunities to comment pursuant to Section 6.2, appropriate consultations shall



occur with federally recognized Tribes in the Originating Party for all Proposals subject to Council or Regional Review pursuant to this Compact. Such consultations shall be organized in the manner suitable to the individual Proposal and the laws and policies of the Originating Party.

2. All federally recognized Tribes within the Basin shall receive reasonable notice indicating that they have an opportunity to comment in writing to the Council or the Regional Body, or both, and other relevant organizations on whether the Proposal meets the requirements of the Standard of Review and Decision when a Proposal is subject to Regional Review or Council approval. Any notice from the Council shall inform the Tribes of any meeting or hearing that is to be held under Section 6.2 and invite them to attend. The Parties and the Council shall consider the comments received under this Section before approving, approving with modifications or disapproving any Proposal subject to Council or Regional Review.

3. In addition to the specific consultation mechanisms described above, the Council shall seek to establish mutually agreed upon mechanisms or processes to facilitate dialogue with, and input from federally recognized Tribes on matters to be dealt with by the Council; and, the Council shall seek to establish mechanisms and processes with federally recognized Tribes designed to facilitate on-going scientific and technical interaction and data exchange regarding matters falling within the scope of this Compact. This may include participation of tribal representatives on advisory committees established under this Compact or such other processes that are mutually-agreed upon with federally recognized Tribes individually or through duly-authorized intertribal agencies or bodies.

## ARTICLE 6 PUBLIC PARTICIPATION

### Section 6.1. Meetings, Public Hearings and Records.

1. The Parties recognize the importance and necessity of public participation in promoting management of the Water Resources of the Basin. Consequently, all meetings of the Council shall be open to the public, except with respect to issues of personnel.

2. The minutes of the Council shall be a public record open to inspection at its offices during regular business hours.

### Section 6.2. Public Participation.

It is the intent of the Council to conduct public participation processes concurrently and jointly with processes undertaken by the Parties and through Regional Review. To ensure adequate public participation, each Party or the Council shall ensure procedures for the review of Proposals subject to the Standard of Review and Decision consistent with the following requirements:

1. Provide public notification of receipt of all Applications and a reasonable opportunity for the public to submit comments before Applications are acted upon.

2. Assure public accessibility to all documents relevant to an Application, including public comment received.

3. Provide guidance on standards for determining whether to conduct a public meeting or hearing for an Application, time and place of such a meeting(s) or hearing(s), and procedures for conducting of the same.

4. Provide the record of decision for public inspection including comments, objections, responses and approvals, approvals with conditions and disapprovals.

## ARTICLE 7 DISPUTE RESOLUTION AND ENFORCEMENT

### Section 7.1. Good Faith Implementation.

Each of the Parties pledges to support implementation of all provisions of this Compact, and covenants that its officers and agencies shall not hinder, impair, or prevent any other Party carrying out any provision of this Compact.

### Section 7.2. Alternative Dispute Resolution.

1. Desiring that this Compact be carried out in full, the Parties agree that disputes between the Parties regarding interpretation, application and implementation of this Compact shall be settled by alternative dispute resolution.

2. The Council, in consultation with the Provinces, shall provide by rule procedures for the resolution of disputes pursuant to this section.

### Section 7.3. Enforcement.

1. Any Person aggrieved by any action taken by the Council pursuant to the authorities contained in this Compact shall be entitled to a hearing before the Council. Any Person aggrieved by a Party action shall be entitled to a hearing pursuant to the relevant Party's administrative procedures and laws. After exhaustion of such administrative remedies, (i) any aggrieved Person shall have the right to judicial review of a Council action in the United States District Courts for the District of Columbia or the District Court in which the Council maintains offices, provided such action is commenced within 90 days; and, (ii) any aggrieved Person

shall have the right to judicial review of a Party's action in the relevant Party's court of competent jurisdiction, provided that an action or proceeding for such review is commenced within the time frames provided for by the Party's law. For the purposes of this paragraph, a State or Province is deemed to be an aggrieved Person with respect to any Party action pursuant to this Compact.

2. a. Any Party or the Council may initiate actions to compel compliance with the provisions of this Compact, and the rules and regulations promulgated hereunder by the Council. Jurisdiction over such actions is granted to the court of the relevant Party, as well as the United States District Courts for the District of Columbia and the District Court in which the Council maintains offices. The remedies available to any such court shall include, but not be limited to, equitable relief and civil penalties.

b. Each Party may issue orders within its respective jurisdiction and may initiate actions to compel compliance with the provisions of its respective statutes and regulations adopted to implement the authorities contemplated by this Compact in accordance with the provisions of the laws adopted in each Party's jurisdiction.

3. Any aggrieved Person, Party or the Council may commence a civil action in the relevant Party's courts and administrative systems to compel any Person to comply with this Compact should any such Person, without approval having been given, undertake a New or Increased Withdrawal, Consumptive Use or Diversion that is prohibited or subject to approval pursuant to this Compact.

a. No action under this subsection may be commenced if:

i. The Originating Party or Council approval for the New or Increased Withdrawal, Consumptive Use or Diversion has been granted; or,

ii. The Originating Party or Council has found that the New or Increased Withdrawal, Consumptive Use or Diversion is not subject to approval pursuant to this Compact.

b. No action under this subsection may be commenced unless:

i. A Person commencing such action has first given 60 days prior notice to the Originating Party, the Council and Person alleged to be in noncompliance; and,

ii. Neither the Originating Party nor the Council has commenced and is diligently prosecuting appropriate enforcement actions to compel compliance with this Compact.

The available remedies shall include equitable relief, and the prevailing or substantially prevailing party may recover the costs of litigation, including reasonable attorney and expert witness fees, whenever the court determines that such an award is appropriate.

4. Each of the Parties may adopt provisions providing additional enforcement mechanisms and remedies including equitable relief and civil penalties applicable within its jurisdiction to assist in the implementation of this Compact.

## ARTICLE 8 ADDITIONAL PROVISIONS

### Section 8.1. Effect on Existing Rights.

1. Nothing in this Compact shall be construed to affect, limit, diminish or impair any rights validly established and existing as of the effective date of this Compact under State or federal law governing the Withdrawal of Waters of the Basin.

2. Nothing contained in this Compact shall be construed as affecting or intending to affect or in any way to interfere with the law of the respective Parties relating to common law Water rights.

3. Nothing in this Compact is intended to abrogate or derogate from treaty rights or rights held by any Tribe recognized by the federal government of the United States based upon its status as a Tribe recognized by the federal government of the United States.

4. An approval by a Party or the Council under this Compact does not give any property rights, nor any exclusive privileges, nor shall it be construed to grant or confer any right, title, easement, or interest in, to or over any land belonging to or held in trust by a Party; neither does it authorize any injury to private property or invasion of private rights, nor infringement of federal, State or local laws or regulations; nor does it obviate the necessity of obtaining federal assent when necessary.

### Section 8.2. Relationship to Agreements Concluded by the United States of America.

1. Nothing in this Compact is intended to provide nor shall be construed to provide, directly or indirectly, to any Person any right, claim or remedy under any treaty or international agreement nor is it intended to derogate any right, claim, or remedy that already exists under any treaty or international agreement.

2. Nothing in this Compact is intended to infringe nor shall be construed to infringe upon the treaty power of the United States of America, nor shall any term hereof be construed to alter or amend any treaty or term thereof that has been or may hereafter be executed by the United States of America.

3. Nothing in this Compact is intended to affect nor shall be construed to affect the application of the Boundary Waters Treaty of 1909 whose requirements continue to apply in addition to the requirements of this

Compact.

Section 8.3. Confidentiality.

1. Nothing in this Compact requires a Party to breach confidentiality obligations or requirements prohibiting disclosure, or to compromise security of commercially sensitive or proprietary information.

2. A Party may take measures, including but not limited to deletion and redaction, deemed necessary to protect any confidential, proprietary or commercially sensitive information when distributing information to other Parties. The Party shall summarize or paraphrase any such information in a manner sufficient for the Council to exercise its authorities contained in this Compact.

Section 8.4. Additional Laws.

Nothing in this Compact shall be construed to repeal, modify or qualify the authority of any Party to enact any legislation or enforce any additional conditions and restrictions regarding the management and regulation of Waters within its jurisdiction.

Section 8.5. Amendments and Supplements.

The provisions of this Compact shall remain in full force and effect until amended by action of the governing bodies of the Parties and consented to and approved by any other necessary authority in the same manner as this Compact is required to be ratified to become effective.

Section 8.6. Severability.

Should a court of competent jurisdiction hold any part of this Compact to be void or unenforceable, it shall be considered severable from those portions of the Compact capable of continued implementation in the absence of the voided provisions. All other provisions capable of continued implementation shall continue in full force and effect.

Section 8.7. Duration of Compact and Termination.

Once effective, the Compact shall continue in force and remain binding upon each and every Party unless terminated.

This Compact may be terminated at any time by a majority vote of the Parties. In the event of such termination, all rights established under it shall continue unimpaired.

ARTICLE 9  
EFFECTUATION

Section 9.1. Repealer.

All acts and parts of acts inconsistent with this act are to the extent of such inconsistency hereby repealed.

Section 9.2. Effectuation by Chief Executive.

The Governor is authorized to take such action as may be necessary and proper in his or her discretion to effectuate the Compact and the initial organization and operation thereunder.

Section 9.3. Entire Agreement.

The Parties consider this Compact to be complete and an integral whole. Each provision of this Compact is considered material to the entire Compact, and failure to implement or adhere to any provision may be considered a material breach. Unless otherwise noted in this Compact, any change or amendment made to the Compact by any Party in its implementing legislation or by the U.S. Congress when giving its consent to this Compact is not considered effective unless concurred in by all Parties.

Section 9.4. Effective Date and Execution.

This Compact shall become binding and effective when ratified through concurring legislation by the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin and the Commonwealth of Pennsylvania and consented to by the Congress of the United States. This Compact shall be signed and sealed in nine identical original copies by the respective chief executives of the signatory Parties. One such copy shall be filed with the Secretary of State of each of the signatory Parties or in accordance with the laws of the state in which the filing is made, and one copy shall be filed and retained in the archives of the Council upon its organization. The signatures shall be affixed and attested under the following form:

In Witness Whereof, and in evidence of the adoption and enactment into law of this Compact by the legislatures of the signatory parties and consent by the Congress of the United States, the respective Governors do hereby, in accordance with the authority conferred by law, sign this Compact in nine duplicate original copies, attested by the respective Secretaries of State, and have caused the seals of the respective states to be hereunto affixed this \_\_\_\_ day of (month), (year).

**History:** Add. 2008, Act 190, Imd. Eff. July 9, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

LAND HABITATS

PART 351  
WILDERNESS AND NATURAL AREAS

**324.35101 Definitions.**

Sec. 35101. As used in this part:

(a) "Natural area" means a tract of state land or water under control of the department and dedicated and regulated by the department pursuant to this part which:

(i) Has retained or reestablished its natural character, or has unusual flora and fauna or biotic, geologic, scenic, or other similar features of educational or scientific value, but it need not be undisturbed.

(ii) Has been identified and verified through research and study by qualified observers.

(iii) May be coextensive with or part of a wilderness area or wild area.

(b) "Wild area" means a tract of undeveloped state land or water under control of the department and dedicated and regulated by the department pursuant to this part which:

(i) Is less than 3,000 acres of state land.

(ii) Has outstanding opportunities for personal exploration, challenge, or contact with natural features of the landscape and its biological community.

(iii) Possesses 1 or more of the characteristics of a wilderness area.

(c) "Wilderness area" means a tract of undeveloped state land or water under control of the department and dedicated and regulated by the department pursuant to this part which:

(i) Has 3,000 or more acres of state land or is an island of any size.

(ii) Generally appears to have been affected primarily by forces of nature with the imprint of the work of humans substantially unnoticeable.

(iii) Has outstanding opportunities for solitude or a primitive and unconfined type of recreation.

(iv) Contains ecological, geological, or other features of scientific, scenic, or natural history value.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 290, Imd. Eff. June 19, 1996.

**Popular name:** Act 451

**Popular name:** NREPA

**324.35102 Wilderness, wild, and natural areas; duty of department to identify, dedicate, and administer.**

Sec. 35102. The department shall identify for dedication, dedicate, and administer wilderness areas, wild areas, and natural areas in accordance with this part. The department shall enlist the voluntary cooperation and support of interested citizens and conservation groups.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.35103 Review of state land; identification of certain tracts; determination of dedication; proposed alteration or withdrawal of previously dedicated areas; filing proposals; procedure for making dedication or denying proposal; exchange of dedicated land; notice requirements.**

Sec. 35103. (1) The department shall annually review all state land under its control and identify those tracts that in its judgment best exhibit the characteristics of a wilderness area, wild area, or natural area. The department shall determine which land in its judgment is most suitable for dedication as wilderness areas, wild areas, or natural areas. The department shall administer the proposed land so as to protect its natural values.

(2) A citizen may propose to the department land that in his or her judgment exhibits the characteristics of a wilderness area, wild area, or natural area and is suitable for dedication by the department as such or may propose the alteration or withdrawal of previously dedicated areas. Land under control of the department that has been dedicated or designated before August 3, 1972 as a natural area, nature study area, preserve, natural reservation, wilderness, or wilderness study area shall be considered by the department and, if eligible, proposed for dedication. The proposals of the department shall be filed with both houses of the legislature.

(3) Within 90 days after land is proposed in accordance with subsections (1) or (2), the department shall make the dedication or issue a written statement of its principal reasons for denying the proposal. The department shall dedicate a wilderness area, wild area, or natural area, or alter or withdraw the dedication, by promulgating a rule. The department shall hold a public hearing relative to the dedication in the county where the land to be dedicated is located before a rule making the dedication may be promulgated. Not more than

10% of state land under the control of the department shall be dedicated pursuant to this subsection. All persons who have notified the department in writing during a calendar year of their interest in dedication of areas under this part shall be furnished by the department with a notice of all areas pending dedication or alteration or withdrawal from dedication during that calendar year.

(4) The department may exchange dedicated land for the purpose of acquiring other land that, in its judgment, is more suitable for the purposes of this part.

(5) Except as provided in subsection (4), prior to recommending the transfer of any land that is dedicated as a wilderness area, a wild area, or a natural area under this part, the department shall notify the citizens committee for Michigan state parks created in section 74102a and shall place a public notice in a newspaper of general circulation in the area in which the dedicated land is located describing the proposed transfer. Except as provided in subsection (4), dedicated land shall not be transferred except as specifically authorized by law.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 290, Imd. Eff. June 19, 1996;—Am. 2006, Act 307, Imd. Eff. July 20, 2006.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35104 Proximity of wild and natural areas to certain urban centers; designation of private land or land controlled by other governmental units.**

Sec. 35104. (1) The department shall attempt to provide, to the extent possible, wild areas and natural areas in relative proximity to urban centers of more than 100,000 population.

(2) Private land or land under the control of other governmental units may be designated by the department in the same way as a wilderness area, wild area, or natural area and administered by the department under a cooperative agreement between the owner and the department.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35105 Prohibited activities; easement.**

Sec. 35105. (1) The following are prohibited on state land in a wilderness area, wild area, or natural area, or on state land proposed by the department for dedication in 1 of these categories during the 90 days a dedication is pending pursuant to section 35103:

(a) Removing, cutting, picking, or otherwise altering vegetation, except as necessary for appropriate public access, the preservation or restoration of a plant or wildlife species, or the documentation of scientific values and with written consent of the department.

(b) Except as provided in subsection (2), granting an easement for any purpose.

(c) Exploration for or extraction of minerals.

(d) A commercial enterprise, utility or permanent road.

(e) A temporary road, landing of aircraft, use of motor vehicles, motorboats, or other form of mechanical transport, or any structure or installation, except as necessary to meet minimum emergency requirements for administration as a wilderness area, wild area, or natural area by the department.

(f) Motorized equipment, except if the department approves its use for management purposes or conservation practices.

(2) If a right-of-way or an easement for ingress and egress was granted on land prior to the land's designation as a wilderness area, wild area, or natural area, upon request, the department may grant an easement along the route of the existing right-of-way or easement for the installation and maintenance of utilities for gas, electric, telephone, and cable services. In granting an easement under this section, the department shall require conditions necessary to protect the wilderness area, wild area, or natural area.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 290, Imd. Eff. June 19, 1996.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35106 Landing aircraft or operating mechanical transport in wilderness, wild, or natural area.**

Sec. 35106. A person who lands an aircraft or operates a motor vehicle, motorboat, or other form of mechanical transport in a wilderness area, wild area, or natural area without the express written consent of the department is guilty of a misdemeanor.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35107 Maintenance or restoration of wilderness, wild, or natural area.**

Sec. 35107. (1) State land in a wilderness area, wild area, or natural area shall be maintained or restored so as to preserve its natural values in a manner compatible with this part.

(2) Grasslands, forested lands, swamps, marshes, bogs, rock outcrops, beaches, and wholly enclosed waters of this state that are an integral part of a wilderness area, wild area, or natural area shall be included within and administered as a part of the area.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35108 Posting signs; contents.**

Sec. 35108. The department shall post signs in appropriate locations along the borders of a wilderness area, wild area, or natural area. The signs shall give notice of the area's dedication and may state those activities that are prohibited under section 35105 and those activities that are punishable as a misdemeanor pursuant to section 35106.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 290, Imd. Eff. June 19, 1996.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35109 Acquisition of land.**

Sec. 35109. The department may acquire land through purchase, gift, or bequest for inclusion in a wilderness area, wild area, or natural area.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35110 Taxation; audit of assessments; appropriation.**

Sec. 35110. The local taxing authority is entitled to collect from the state a tax on a wilderness, wild, or natural area within its jurisdiction at its ad valorem tax rate or \$2.00 per acre, whichever is less. The department shall audit the assessments of wilderness, wild, or natural areas regularly to ensure that the properties are assessed in the same ratio as similar properties in private ownership. The legislature shall appropriate from the general fund for payments under this section.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35111 Saving clause.**

Sec. 35111. (1) Nothing in this part affects or diminishes any right acquired or vested before August 3, 1972.

(2) Nothing in this part alters the status of land dedicated by the commission before August 3, 1972 until dedicated pursuant to section 35103, except that tax reverted lands are subject to section 35110. Purchased land dedicated by the commission before August 3, 1972 is subject to ad valorem taxes if dedicated pursuant to section 35103.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

## PART 353

### SAND DUNES PROTECTION AND MANAGEMENT

#### **324.35301 Definitions.**

Sec. 35301. As used in this part:

(a) "Contour change" includes any grading, filling, digging, or excavating that significantly alters the physical characteristic of a critical dune area, except that which is involved in sand dune mining as defined in

part 637.

(b) "Crest" means the line at which the first lakeward facing slope of a critical dune ridge breaks to a slope of less than 1-foot vertical rise in a 5-1/2-foot horizontal plane for a distance of at least 20 feet, if the areal extent where this break occurs is greater than 1/10 acre in size.

(c) "Critical dune area" means a geographic area designated in the "atlas of critical dune areas" dated February 1989 that was prepared by the department of natural resources.

(d) "Department" means the department of environmental quality.

(e) "Foredune" means 1 or more low linear dune ridges that are parallel and adjacent to the shoreline of a Great Lake and are rarely greater than 20 feet in height. The lakeward face of a foredune is often gently sloping and may be vegetated with dune grasses and low shrub vegetation or may have an exposed sand face.

(f) "Model zoning plan" means the model zoning plan provided for in sections 35304 to 35309 and 35311a to 35324.

(g) "Permit" means a permit for a use within a critical dune area under this part.

(h) "Planning commission" means the body or entity within a local government that is responsible for zoning and land use planning for the local unit of government.

(i) "Restabilization" means restoration of the natural contours of a critical dune to the extent practicable, the restoration of the protective vegetative cover of a critical dune through the establishment of indigenous vegetation, and the placement of snow fencing or other temporary sand trapping measures for the purpose of preventing erosion, drifting, and slumping of sand.

(j) "Special use project" means any of the following:

(i) A proposed use in a critical dune area for an industrial or commercial purpose regardless of the size of the site.

(ii) A multifamily use of more than 3 acres.

(iii) A multifamily use of 3 acres or less if the density of use is greater than 4 individual residences per acre.

(iv) A proposed use in a critical dune area, regardless of size of the use, that the planning commission, or the department if a local unit of government does not have an approved zoning ordinance, determines would damage or destroy features of archaeological or historical significance.

(k) "Use" means a developmental, silvicultural, or recreational activity done or caused to be done by a person that significantly alters the physical characteristic of a critical dune area or a contour change done or caused to be done by a person. Use does not include sand dune mining as defined in part 637.

(l) "Zoning ordinance" means an ordinance of a local unit of government that regulates the development of critical dune areas within the local unit of government pursuant to the requirements of this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1995, Act 262, Imd. Eff. Jan. 8, 1996;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35302 Legislative findings.**

Sec. 35302. The legislature finds that:

(a) The critical dune areas of this state are a unique, irreplaceable, and fragile resource that provide significant recreational, economic, scientific, geological, scenic, botanical, educational, agricultural, and ecological benefits to the people of this state and to people from other states and countries who visit this resource.

(b) The purpose of this part is to balance for present and future generations the benefits of protecting, preserving, restoring, and enhancing the diversity, quality, functions, and values of the state's critical dunes with the benefits of economic development and multiple human uses of the critical dunes and the benefits of public access to and enjoyment of the critical dunes. To accomplish this purpose, this part is intended to do all of the following:

(i) Ensure and enhance the diversity, quality, functions, and values of the critical dunes in a manner that is compatible with private property rights.

(ii) Ensure sound management of all critical dunes by allowing for compatible economic development and multiple human uses of the critical dunes.

(iii) Coordinate and streamline governmental decision-making affecting critical dunes through the use of

the most comprehensive, accurate, and reliable information and scientific data available.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35303 Notice to local units of government and property owners; copy of "atlas of critical dune areas"; contents of notice; supplying addresses of property owners.**

Sec. 35303. (1) As soon as practicable following July 5, 1989, the department shall notify by mail each local unit of government that has within its jurisdiction critical dune areas, and include a copy of the "atlas of critical dune areas" dated February 1989 and a copy of former Act No. 222 of the Public Acts of 1976 with the notice. By October 1, 1989, the department shall mail a copy of the same notice to each property owner of record who owns property within a critical dune area. The notices shall include the following information:

(a) That designated property within the local unit of government is a critical dune area that is subject to regulation under former Act No. 222 of the Public Acts of 1976.

(b) That a local unit of government may adopt a zoning ordinance that is approved by the department, or, if the local unit of government does not have an approved ordinance, the use of the critical dune area will be regulated by the department under the model zoning plan.

(2) Upon the request of the department, a local unit of government shall supply to the department the address of each property owner of record who owns property within a critical dune area within its jurisdiction in a timely manner that enables the department to provide notice to the property owners as required under subsection (1).

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35304 Permit for use in critical dune area; requirements; decision of local unit of government; limitations; ordinance; model zoning plan; special exceptions; assisting local units of government.**

Sec. 35304. (1) A person shall not initiate a use within a critical dune area unless the person obtains a permit from the local unit of government in which the critical dune area is located or the department if the department issues permits as provided under subsection (7). A permit for a use within a critical dune area is subject to all of the following:

(a) A person proposing a use within a critical dune area shall file an application with the local unit of government, or with the department if the department is issuing permits under the model zoning plan. The application form shall include information necessary to conform with the requirements of this part. If a project proposes the use of more than 1 critical dune area location within a local unit of government, 1 application may be filed for the uses.

(b) The local unit of government shall provide notice of an application filed under this section to each person who makes a written request to the local unit of government for notification of pending applications. The local unit of government may charge an annual fee for providing this notice. The local unit of government shall prepare a monthly list of the applications made during the previous month and shall promptly provide copies of the list for the remainder of the calendar year to the persons who have requested notice. In addition, if the department issues permits under this part within a local unit of government, notice of an application shall also be given to the local conservation district office, the county clerk, the county health department, and the local unit of government in which the property is located. The monthly list shall state the name and address of each applicant, the location of the applicant's project, and a summary statement of the purpose of the use. The local unit of government may hold a public hearing on pending applications.

(c) The notice shall state that unless a written request is filed with the local unit of government within 20 days after the notice is sent, the local unit of government may grant the application without a public hearing. Upon the written request of 2 or more persons who own real property within 2 miles of the project, the local unit of government shall hold a public hearing pertaining to a permit application.

(d) At least 10 days' notice of a hearing to be held pursuant to this section shall be given by publication in 1 or more newspapers of general circulation in the county in which the proposed use is to be located, and by providing notice to the persons who have requested notice pursuant to subdivision (b) and to the person



requesting the hearing.

(e) After the filing of an application, the local unit of government shall grant or deny the permit within 60 days, or within 90 days if a public hearing is held. If a permit is denied, the local unit of government 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 local unit of government may issue a conditional permit before the expiration of the 20-day period referred to in subdivision (c).

(f) The local unit of government shall base a decision to grant or deny a permit under this section on the model zoning plan or on any existing ordinance that is in effect in the local unit of government that provides a substantially equivalent level of protection for critical dune areas and that is approved by the department.

(g) Subject to section 35316, a permit shall be approved unless the local unit of government or the department determines that the use will significantly damage the public interest on the privately owned land, or, if the land is publicly owned, the public interest in the publicly owned land, by significant and unreasonable depletion or degradation of any of the following:

- (i) The diversity of the critical dune areas within the local unit of government.
- (ii) The quality of the critical dune areas within the local unit of government.
- (iii) The functions of the critical dune areas within the local unit of government.

(2) The decision of the local unit of government or the department with respect to a permit shall be in writing and shall be based upon evidence that would meet the standards in section 75 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.275. A decision denying a permit shall document, and any review upholding the decision shall determine, all of the following:

- (a) That the local unit of government or the department has met the burden of proof under subsection (1).
- (b) That the decision is based upon sufficient facts or data.
- (c) That the decision is the product of reliable scientific principles and methods.
- (d) That the decision has applied the principles and methods reliably to the facts.
- (e) That the facts or data upon which the decision is based are recorded in the file.

(3) A permit shall not be granted that authorizes construction of a dwelling or other permanent building on the first lakeward facing slope of a critical dune area or foredune except on a lot of record that was recorded prior to July 5, 1989 that does not have sufficient buildable area landward of the crest to construct the dwelling or other permanent building as proposed by the applicant. The proposed construction, to the greatest extent possible, shall be placed landward of the crest. The portion of the development that is lakeward of the crest shall be placed in the location that has the least impact on the critical dune area.

(4) Except as provided in subsection (3), a permit shall provide that a use that is a structure shall be constructed behind the crest of the first landward ridge of a critical dune area that is not a foredune. However, if construction occurs within 100 feet measured landward from the crest of the first landward ridge that is not a foredune, the use shall meet all of the following requirements:

(a) The structure and access to the structure shall be in accordance with a site plan prepared for the site by a registered professional architect or a licensed professional engineer and the site plan shall provide for the disposal of storm waters without serious soil erosion and without sedimentation of any stream or other body of water.

- (b) Access to the structure shall be from the landward side of the dune.
- (c) The dune shall be restabilized with indigenous vegetation.
- (d) The crest of the dune shall not be reduced in elevation.

(5) As soon as possible following adoption of a zoning ordinance enacted pursuant to this part, the local unit of government shall submit to the department a copy of the ordinance that it determines meets the requirements of this part. If the local unit of government has an existing ordinance that it contends is substantially equivalent to the model zoning plan, that ordinance may be submitted to the department at any time. The department shall review zoning ordinances submitted under this section to assure compliance with this part. If the department finds that an ordinance is not in compliance with this part, the department shall work with the local unit of government to bring the ordinance into compliance and inform the local unit of the failure to comply and in what ways the submitted ordinance is deficient. Unless a local unit of government receives notice, within 180 days after submittal of the ordinance to the department under this subsection, that the ordinance is not in compliance with this part, the ordinance shall be considered to be approved by the department.

(6) A local unit of government may adopt, submit to the department, and obtain approval of a zoning ordinance based on the model zoning plan or an equivalent ordinance as provided in this section by June 30, 1990. If a local unit does not have an approved ordinance by June 30, 1990, the department shall implement the model zoning plan for that local unit of government in the same manner and under the same circumstances

as provided in subsection (1). Notwithstanding any other provision of this part, a local unit of government may adopt a zoning ordinance at any time, and upon the approval of the department, that ordinance shall take the place of the model zoning plan implemented by the department.

(7) If a local unit of government in which a proposed use is to be located does not elect to issue permits or does not receive department approval of a zoning ordinance that regulates critical dune areas, the department shall implement the model zoning plan in the place of the local unit of government and issue special exceptions in the same circumstances as provided in this part for the issuance of variances by local units of government, and issue permits pursuant to subsection (1) and part 13.

(8) The department shall assist local units of government in developing ordinances that meet the requirements of this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35305 Hearing; judicial review.**

Sec. 35305. (1) If an applicant for a permit or a special exception or the owner of the property immediately adjacent to the proposed use is aggrieved by a decision of the department in regard to the issuance or denial of a permit or special exception under this part, the applicant or owner may request a formal hearing on the matter involved. The hearing shall be conducted by the department as a contested case hearing in the manner provided for in the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) Following the hearing provided for under subsection (1), a decision of the department in regard to the issuance or denial of a permit or special exception under this part is subject to judicial review as provided for in the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35306 Lawful use of land or structure; exemptions.**

Sec. 35306. (1) The lawful use of land or a structure, as existing and lawful within a critical dune area at the time the department implements the model zoning plan for a local unit of government, may be continued although the use of that land or structure does not conform to the model zoning plan. The continuance, completion, restoration, reconstruction, extension, or substitution of existing nonconforming uses of land or a structure may continue upon reasonable terms that are consistent, to the extent possible, with the applicable zoning provisions of the local unit of government in which the use is located.

(2) The lawful use of land or a structure, as existing and lawful within a local unit of government that has a zoning ordinance approved by the department, may, but is not required by this part to, be continued subject to the law pertaining to existing uses within the act that enables that local unit of government to zone and the applicable zoning provisions of the local unit of government.

(3) A use needed to obtain or maintain a permit or license that is required by law to continue operating an electric utility generating facility that is in existence on July 5, 1989 shall not be precluded under this part.

(4) A use needed to maintain, repair, or replace existing utility lines, pipelines, or other utility facilities within a critical dune area that were in existence on July 5, 1989, or were constructed in accordance with a permit under this part, is exempt for purposes for which the permit was issued from the operation of this part or a local ordinance approved under this part if the maintenance, repair, or replacement is completed in compliance with all of the following:

(a) Vehicles shall not be driven on slopes greater than 1-foot vertical rise in a 3-foot horizontal plane.

(b) All disturbed areas shall be immediately stabilized and revegetated with native vegetation following completion of work to prevent erosion.

(c) Any removal of woody vegetation shall be done in a manner to assure that any adverse effect on the dune will be minimized and will not significantly alter the physical characteristics or stability of the dune.

(d) To accomplish replacement of a utility pole, the new pole shall be placed adjacent to the existing pole, and the existing pole shall be removed by cutting at ground level.

(e) In the case of repair of underground utility wires, the repair shall be limited to the minimal excavation necessary to replace the wires by plowing, small trench excavation, or directional boring. Replacement of wires on slopes steeper than 1-foot vertical rise in a 4-foot horizontal plane shall be limited to installation by plowing or directional boring only.

(f) In the case of repair or replacement of underground pipelines, directional boring shall be utilized, and if

excavation is necessary to access and bore the pipeline, the excavation area shall be located on slopes 1-foot vertical rise in a 4-foot horizontal plane or less.

(5) Uses that have received all necessary permits from the state or the local unit of government in which the proposed use is located by July 5, 1989, are exempt for purposes for which a permit is issued from the operation of this part or local ordinances approved under this part. Such uses shall be regulated pursuant to local ordinances in effect by that date.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35307 Maps.**

Sec. 35307. Upon adoption of an approved zoning ordinance, certified copies of the maps showing critical dune areas, and existing development and uses, shall be sent by the local unit of government to the state tax commission and the assessing office, planning commission, and governing board of the local unit of government, if requested by an entity listed in this section.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35308 Prohibited uses; exception.**

Sec. 35308. (1) Except as provided in subsection (2), the following uses shall be prohibited in a critical dune area:

(a) A surface drilling operation that is utilized for the purpose of exploring for or producing hydrocarbons or natural brine or for the disposal of the waste or by-products of the operation.

(b) Production facilities regulated under parts 615 and 625.

(2) Uses described in subsection (1) that are lawfully in existence at a site on July 5, 1989 may be continued. The continuance, completion, restoration, reconstruction, extension, or substitution of those existing uses shall be permitted upon reasonable terms prescribed by the department.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35309 Use permit and inspection fee; disposition of fees; authorization of separate fee; bond.**

Sec. 35309. (1) A local unit of government, or the department if the local unit of government does not have an approved zoning ordinance, may establish a use permit and inspection fee.

(2) The department shall forward all fees it collects under this section to the state treasurer for deposit in the land and water management permit fee fund created in part 301.

(3) Fees collected by a local unit of government shall be credited to the treasury of the local unit of government to be used to defray the cost of administering uses under a zoning ordinance.

(4) In addition to fees provided for in this section, a soil conservation district may charge a separate fee to cover the actual expense of providing services under this part and for providing technical assistance and advice to individuals who seek assistance in matters pertaining to compliance under this part.

(5) A local unit of government, or the department if the local unit of government does not have an approved zoning ordinance, may require the holder of a permit issued by a local unit of government or the department to file with the local unit of government or the department a bond executed by an approved surety in this state in an amount necessary to assure faithful conformance with the permit.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35310 Suspension or revocation of permit; restraining order, injunction, or other appropriate remedy; instituting action; cumulative rights; performance review; determination of noncompliance; response; implementation of model zoning plan; appeal; civil fine; order to pay cost of restabilization; violation as misdemeanor.**

Sec. 35310. (1) If the department finds that a person is not in compliance with the model zoning plan if the department is implementing the plan, or if the department is involved in the modification or reversal of a

decision regarding a special use project as provided in section 35322, the department may suspend or revoke the permit.

(2) At the request of the department, the attorney general may institute an action for a restraining order or injunction or other appropriate remedy to prevent or preclude a violation of the model zoning plan if the department is implementing the provisions of the plan or if the department is involved in the modification or reversal of a decision regarding a special use project as provided in section 35322. At the request of the governing body of a local unit of government, the county prosecutor may institute an action for a restraining order or injunction or other proper remedy to prevent a violation of a zoning ordinance approved under this part. This shall be in addition to the rights provided in part 17, and as otherwise provided by law. An action under this subsection instituted by the attorney general may be instituted in the circuit court for the county of Ingham or in the county in which the defendant is located, resides, or is doing business.

(3) The department shall periodically review the performance of all local units of government that have ordinances approved under this part. If the department determines that the local unit of government is not administering the ordinance in conformance with this part, the department shall notify the local unit of government in writing of its determination, including specific reasons why the local unit of government is not in compliance. The local unit of government has 60 days to respond to the department. If the department determines that the local unit of government has not made sufficient changes to its ordinance administration or otherwise explained its actions, the department may withdraw the approval of the local ordinance and implement the model zoning plan within that local unit of government. If a local unit disagrees with an action of the department to withdraw approval of the local ordinance, it may appeal that action pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, in the manner provided in that act for contested cases.

(4) In addition to any other relief provided by this section, the court may impose on a person who violates this part, or a permit, a civil fine of not more than \$5,000.00 for each day of violation, or may order a violator to pay the full cost of restabilization of a critical dune area or other natural resource that is damaged or destroyed as a result of a violation, or both.

(5) A person who violates this part, or a person who violates a permit issued under this part, is guilty of a misdemeanor, punishable by a fine of not more than \$5,000.00 per day for each day of violation.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35311 Review of “atlas of critical dune areas”; appointment and duties of review team.**

Sec. 35311. Beginning with the effective date of the 2012 act that amended this section and once every 10 years thereafter, the department may appoint a team of qualified ecologists, who may be employed by the department or may be persons with whom the department enters into contracts, to review "the atlas of critical dune areas" dated February 1989. The review team shall evaluate the accuracy of the designations of critical dune areas within the atlas and shall recommend to the legislature any changes to the atlas or underlying criteria revisions to the atlas that would provide more precise protection to the targeted resource.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35311a Construction, improvement, and maintenance of driveways.**

Sec. 35311a. (1) Notwithstanding section 35316 or any other provision of this part, the construction, improvement, and maintenance of a driveway shall be permitted for any dwelling or other permanent building allowed in a critical dune area, including a dwelling or other permanent building approved under this part or a lawful nonconforming use, subject only to applicable permit requirements under sections 35312 through 35325 and the following:

(a) A driveway shall be permitted either to the principal building or, in the sole discretion of the applicant, to an accessory building, under the provisions of this section. Additional driveways, if any, shall meet the applicable requirements for any other use under this part. The development of a plan for a driveway should include consideration of the use of retaining walls, bridges, or similar measures, if feasible, to minimize the impact of the driveway, parking, and turnaround areas, and the consideration of alternative locations on the same lot of record.

(b) Driveways on slopes steeper than a 1-foot vertical rise in a 4-foot horizontal plane, but not steeper than a 1-foot rise in a 3-foot horizontal plane, shall be in accordance with a site plan submitted with the permit

application and prepared for the site by a registered professional architect or licensed professional engineer. The site plan shall include (i) storm water drainage that provides for disposal of storm water without serious erosion, (ii) methods for controlling erosion from wind and water, and (iii) restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgment of the architect or engineer to meet these requirements.

(c) Driveways on slopes steeper than a 1-foot vertical rise in a 3-foot horizontal plane shall be in accordance with a site plan submitted with the permit application and prepared for the site by a licensed professional engineer. The site plan shall include (i) storm water drainage that provides for disposal of storm water without serious erosion, (ii) methods for controlling erosion from wind and water, and (iii) restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgment of the engineer to meet these requirements. The engineer shall certify under seal that the driveway is not likely to increase erosion or decrease stability.

(2) Temporary construction access for all construction, including new construction, renovation, repairs, rebuilding, or replacement, and repair, improvement, or replacement of septic tanks and systems, shall be allowed for any use allowed in a critical dune area for which a driveway is not already installed by the owner, subject only to the requirements that the temporary access shall not involve a contour change or vegetation removal that increases erosion or decreases stability except as can be restabilized upon completion of the construction. The temporary access shall be maintained in stable condition, and restabilization shall be commenced promptly upon completion of the construction.

(3) As used in this section, "driveway" means a privately owned, constructed, and maintained vehicular access from a road or easement serving the property to the principal building or accessory buildings, that is paved, graveled, or otherwise improved for vehicular access, 16 feet wide or narrower in the sole discretion of the applicant or owner, and may include, in the sole discretion of the applicant or owner, a shared driveway.

**History:** Add. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35311b Construction, improvement, and maintenance of accessibility measures.**

Sec. 35311b. (1) Notwithstanding section 35316 or any other provision of this part, at the request of the applicant, the construction, improvement, and maintenance of accessibility measures shall be permitted for any dwelling or other permanent building allowed in a critical dune area, including a dwelling or other permanent building approved under this part or a lawful nonconforming use, subject only to applicable permit requirements under sections 35312 through 35325 and the following:

(a) Accessibility measures on slopes steeper than a 1-foot vertical rise in a 4-foot horizontal plane, but not steeper than a 1-foot vertical rise in a 3-foot horizontal plane, shall be in accordance with a site plan submitted with the permit application and prepared for the site by a registered professional architect or licensed professional engineer. The site plan shall include (i) storm water drainage that provides for disposal of storm water without serious erosion, (ii) methods for controlling erosion from wind and water, and (iii) restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgment of the architect or engineer to meet these requirements.

(b) Accessibility measures on slopes steeper than a 1-foot vertical rise in a 3-foot horizontal plane shall be in accordance with a site plan submitted with the permit application and prepared for the site by a licensed professional engineer. The site plan shall include (i) storm water drainage that provides for disposal of storm water without serious erosion, (ii) methods for controlling erosion from wind and water, and (iii) restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgment of the engineer to meet these requirements. The engineer shall certify under seal that the accessibility measures are not likely to increase erosion or decrease stability.

(2) As used in this section, "accessibility measures" means a circulation path and at least 1 entrance on a circulation path complying with American national standards institute chapter 4 standards for accessible routes, from a road or easement serving the property, and, at the option of the applicant, from a sidewalk, a driveway, or a garage. As used in this section, accessibility measures do not include driveways.

(3) For the purposes of this section, the choice of components for an accessible route under American national standards institute standard 402.2 shall be at the option of the applicant.

**History:** Add. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35312 Zoning ordinance; provisions; regulation of additional lands.**

Sec. 35312. (1) A local unit of government that has 1 or more critical dune areas within its jurisdiction may formulate a zoning ordinance pursuant to the Michigan zoning enabling act, 2006 PA 110, MCL 125.3101 to 125.3702.

(2) A zoning ordinance shall consist of all of the provisions of the model zoning plan or comparable provisions that provide substantially equivalent protection of critical dune areas as the model zoning plan but shall not be more restrictive than the model zoning plan or the standard of review for permits or variances prescribed in the model zoning plan.

(3) A local unit of government may by an affirmative vote of its governing body following a public hearing regulate additional lands as critical dune areas under this part as considered appropriate by the planning commission if the lands are determined by the local unit of government to be essential to the hydrology, ecology, topography, or integrity of a critical dune area. A local unit of government shall provide within its zoning ordinance for the protection of lands that are within 250 feet of a critical dune area, if those lands are determined by the local unit of government to be essential to the hydrology, ecology, topography, or integrity of a critical dune area.

(4) If a local unit of government does not have an approved zoning ordinance, the department may regulate additional lands described in subsection (3). However, the lands added by the department shall not extend more than 250 feet from the landward boundary of a critical dune area, unless, following a public hearing, an affirmative vote of the governing body of the local unit of government authorizes a further extension. If the director determines that the mapping of a critical dune area designated in the "atlas of critical dune areas" dated February 1989 was inaccurate, the department may regulate additional lands. However, the lands added by the department shall not extend more than 250 feet from the landward boundary of a critical dune area.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35313 Zoning ordinance; requirements for applications for permits for use of critical dune area.**

Sec. 35313. (1) A zoning ordinance shall require that all applications for permits for the use of a critical dune area include in writing all of the following:

(a) That the county enforcing agency designated pursuant to part 91 finds that the project is in compliance with part 91 and any applicable soil erosion and sedimentation control ordinance that is in effect in the local unit of government.

(b) That a proposed sewage treatment or disposal system on the site has been approved by the county health department or the department.

(c) Assurances that the cutting and removing of trees and other vegetation will be performed according to the "forestry management guidelines for Michigan" prepared by the society of American foresters in 1987 as revised in 2010 and may include a program to provide mitigation for the removal of trees or vegetation by providing assurances that the applicant will plant on the site more trees and other vegetation than were removed by the proposed use.

(d) A site plan that contains data required by the planning commission concerning the physical development of the site and extent of disruption of the site by the proposed development.

(2) A local unit of government or the department shall not require an environmental site assessment or environmental impact statement as part of a permit application except for a special use project.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35314 Zoning ordinance; provisions; review of subdivision development.**

Sec. 35314. (1) A zoning ordinance shall provide for all of the following:

(a) Lot size, width, density, and front and side setbacks.

(b) Storm water drainage that provides for disposal of drainage water without serious erosion.

(c) Methods for controlling erosion from wind and water.

(d) Restabilization.

(2) Each zoning ordinance shall provide that a use that proposes a subdivision development shall be reviewed by the local unit of government to assure compliance with all of the model zoning plan.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.35315 Zoning ordinance; prohibited uses in critical dune area.**

Sec. 35315. A zoning ordinance shall not permit either of the following uses in a critical dune area:

- (a) The disposal of sewage on-site unless the standards of applicable sanitary codes are met or exceeded.
- (b) A use that does not comply with the minimum setback requirements required by rules that are promulgated under part 323.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.35316 Zoning ordinances; additional prohibited uses in critical dune area; variance; contour maps; guidelines; restoration.**

Sec. 35316. (1) Unless a variance is granted pursuant to section 35317, a zoning ordinance shall not permit the following uses in a critical dune area:

(a) A structure and access to the structure on a slope within a critical dune area that has a slope that measures from a 1-foot vertical rise in a 4-foot horizontal plane to less than a 1-foot vertical rise in a 3-foot horizontal plane, unless the structure and access to the structure are in accordance with a site plan prepared for the site by a registered professional architect or a licensed professional engineer and the site plan provides for the disposal of storm waters without serious soil erosion and without sedimentation of any stream or other body of water.

(b) A use on a slope within a critical dune area that has a slope steeper than a 1-foot vertical rise in a 3-foot horizontal plane.

(c) A use involving a contour change if the local unit of government or the department determines that it is more likely than not to increase erosion or decrease stability.

(d) Silvicultural practices, as described in the "forest management guidelines for Michigan", prepared by the society of American foresters as revised in 2010, if the local unit of government or the department determines that they are more likely than not to increase erosion or decrease stability.

(e) A use that involves a vegetation removal if the local unit of government or the department determines that it is more likely than not to increase erosion or decrease stability.

(2) If the local unit of government is not certain of the degree of slope on a property for which a use permit is sought, the local unit may require that the applicant supply contour maps of the site with 5-foot intervals at or near any proposed structure or roadway.

(3) The department shall develop guidelines to describe the method by which the department and local units of government measure slopes to implement the requirements of the zoning ordinance or the model zoning plan.

(4) If a person is ordered by the department, or by a local unit of government that is enforcing a zoning ordinance authorized under this part, to restore a critical dune area that has been degraded by that person, the department or local unit of government shall establish a procedure by which the restoration of the critical dune area is monitored to assure that the restoration is completed in a satisfactory manner.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1995, Act 262, Imd. Eff. Jan. 8, 1996;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.35317 Variances; special exceptions; limitations; decision; environmental site assessment or environmental impact statement; annual report; forwarding application to local government; review and comment; waiver of opportunity to review; notice of opposition; determination of practical difficulty.**

Sec. 35317. (1) A local unit of government may issue variances under a zoning ordinance, or the department may issue special exceptions under the model zoning plan if a local unit of government does not have an approved zoning ordinance, if a practical difficulty will occur to the owner of the property if the variance or special exception is not granted. In determining whether a practical difficulty will occur if a variance or special exception is not granted, primary consideration shall be given to assuring that human health and safety are protected by the determination and that the determination complies with applicable local zoning, other state laws, and federal law. If a practical difficulty will occur to the owner of the property if the variance or special exception is not granted, a variance or special exception shall be granted under this section unless the local unit of government or the department determines that the use will significantly damage the

public interest on the privately owned land, or, if the land is publicly owned, the public interest in the publicly owned land, by significant and unreasonable depletion or degradation of any of the following:

- (a) The diversity of the critical dune areas within the local unit of government.
- (b) The quality of the critical dune areas within the local unit of government.
- (c) The functions of the critical dune areas within the local unit of government.

(2) The decision of the local unit of government or the department shall be in writing and shall be based upon evidence that would meet the standards in section 75 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.275. A decision denying a variance or special exception shall document, and any review upholding the decision shall determine, all of the following:

- (a) That the local unit of government or the department has met the burden of proof under subsection (1).
- (b) That the decision is based upon sufficient facts or data.
- (c) That the decision is the product of reliable scientific principles and methods.
- (d) That the decision has applied the principles and methods reliably to the facts.
- (e) That the facts or data upon which the decision is based are recorded in the file.

(3) A local unit of government or the department shall not require an environmental site assessment or environmental impact statement for a variance except for a special use project.

(4) A variance shall not be granted from a setback requirement provided for under the model zoning plan or an equivalent zoning ordinance approved under section 35034 enacted pursuant to this part unless the property for which the variance is requested is 1 of the following:

- (a) A nonconforming lot of record that is recorded prior to July 5, 1989, and that becomes nonconforming due to the operation of this part or a zoning ordinance.
- (b) A lot legally created after July 5, 1989 that later becomes nonconforming due to natural shoreline erosion.

(c) Property on which the base of the first landward critical dune of at least 20 feet in height that is not a foredune is located at least 500 feet inland from the first foredune crest or line of vegetation on the property. However, the setback shall be a minimum of 200 feet measured from the foredune crest or line of vegetation.

(5) Each local unit of government that has issued a variance for a use other than a special use project during the previous 12 months shall file an annual report with the department indicating variances that have been granted by the local unit of government during that period.

(6) Upon receipt of an application for a special exception under the model zoning plan, the department shall forward a copy of the application and all supporting documentation to the local unit of government having jurisdiction over the proposed location. The local unit of government shall have 60 days to review and comment on the proposed special exception. The department shall not make a decision on a special exception under the model zoning plan until either the local unit of government has commented on the proposed special exception or has waived its opportunity to review the special exception. The local unit of government may waive its opportunity to review the application at any time within 60 days after receipt of the application and supporting documentation by notifying the department in writing. The local unit of government also waives its opportunity to review the application if it fails to act as authorized in this subsection within 60 days. If the local unit of government waives its opportunity to review the application, the local unit of government also waives its opportunity to oppose the decision by the department to issue a special exception. If the local unit of government opposes the issuance of the special exception, the local unit of government shall notify the department, in writing, of its opposition within the 60-day notice period. If the local unit of government opposes the issuance of the special exception, the department shall not issue a special exception. The local unit of government may also consider whether a practical difficulty will occur to the owner of the property if the special exception is not granted by the department and may make a recommendation to the department within the 60-day notice period. The department shall base its determination of whether a practical difficulty exists on information provided by the local unit of government and other pertinent information.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1995, Act 262, Imd. Eff. Jan. 8, 1996;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35318 Request for revaluation to determine fair market value.**

Sec. 35318. If a permit for a proposed use within a critical dune area is denied, the landowner may request a revaluation of the affected property for assessment purposes to determine its fair market value under the restriction.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.



**Popular name:** Act 451

**Popular name:** NREPA

### **324.35319 Environmental assessment; contents.**

Sec. 35319. The zoning ordinance shall provide that if an environmental assessment is required under section 35313, that assessment shall include the following information concerning the site of the proposed use:

- (a) The name and address of the applicant.
- (b) A description of the applicant's proprietary interest in the site.
- (c) The name, address, and professional qualifications of the person preparing the environmental assessment and his or her opinion as to whether the proposed development of the site is consistent with protecting features of environmental sensitivity and archaeological or historical significance that may be located on the site.
- (d) The description and purpose of the proposed use.
- (e) The location of existing utilities and drainageways.
- (f) The general location and approximate dimensions of proposed structures.
- (g) Major proposed change of land forms such as new lakes, terracing, or excavating.
- (h) Sketches showing the scale, character, and relationship of structures, streets or driveways, and open space.
- (i) Approximate location and type of proposed drainage, water, and sewage facilities.
- (j) Legal description of property.
- (k) A physical description of the site, including its dominant characteristics, its vegetative character, its present use, and other relevant information.
- (l) A natural hazards review consisting of a list of natural hazards such as periodic flooding, poor soil bearing conditions, and any other hazards peculiar to the site.
- (m) An erosion review showing how erosion control will be achieved and illustrating plans or programs that may be required by any existing soil erosion and sedimentation ordinance.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35320 Environmental impact statement; contents.**

Sec. 35320. If an environmental impact statement is required under section 35313 prior to permitting a proposed use, a zoning ordinance may require that the statement include all of the following:

- (a) The name and address of the applicant.
- (b) A description of the applicant's proprietary interest in the site of the proposed use.
- (c) The name, address, and professional qualifications of the proposed professional design team members, including the designation of the person responsible for the preparation of the environmental impact statement.
- (d) The description and purpose of the proposed use.
- (e) Six copies and 1 reproducible transparency of a schematic use plan of the proposed use showing the general location of the proposed use and major existing physical and natural features on the site, including, but not limited to, watercourses, rock outcropping, wetlands, and wooded areas.
- (f) The location of the existing utilities and drainageways.
- (g) The location and notation of public streets, parks, and railroad and utility rights-of-way within or adjacent to the proposed use.
- (h) The general location and dimensions of proposed streets, driveways, sidewalks, pedestrian ways, trails, off-street parking, and loading areas.
- (i) The general location and approximate dimensions of proposed structures.
- (j) Major proposed change of land forms such as new lakes, terracing, or excavating.
- (k) Approximate existing and proposed contours and drainage patterns, showing at least 5-foot contour intervals.
- (l) Sketches showing the scale, character, and relationship of structures, streets or driveways, and open space.
- (m) Approximate location and type of proposed drainage, water and sewage treatment and disposal facilities.
- (n) A legal description of the property.
- (o) An aerial photo and contour map showing the development site in relation to the surrounding area.
- (p) A description of the physical site, including its dominant characteristics, its vegetative character, its

present use, and other relevant information.

(q) A soil review giving a short descriptive summary of the soil types found on the site and whether the soil permits the use of septic tanks or requires central sewer. The review may be based on the "unified soil classification system" as adopted by the United States government corps of engineers and bureau of reclamation, dated January 1952, or the national cooperative soil survey classification system, and the standards for the development prospects that have been offered for each portion of the site.

(r) A natural hazards review consisting of a list of natural hazards such as periodic flooding, poor soil bearing conditions, and any other hazards peculiar to the site.

(s) A substrata review including a descriptive summary of the various geologic bedrock formations underlying the site, including the identification of known aquifers, the approximate depths of the aquifers, and, if being tapped for use, the principal uses to be made of these waters, including irrigation, domestic water supply, and industrial usage.

(t) An erosion review showing how erosion control will be achieved and illustrating plans or programs that may be required by any existing soil erosion and sedimentation ordinance.

(u) At a minimum, a site plan for compliance with all of the following standards for the construction and postconstruction periods:

(i) Surface drainage designs and structures are erosion-proof through control of the direction, volume, and velocities of drainage patterns. These patterns shall promote natural vegetation growth that are included in the design so that drainage waters may be impeded in their flow and percolation encouraged.

(ii) The design shall include trash collection devices when handling street and parking drainage to contain solid waste and trash.

(iii) Watercourse designs, control volumes, and velocities of water to prevent bottom and bank erosion. In particular, changes of direction shall guard against undercutting of banks.

(iv) If vegetation has been removed or has not been able to establish on surface areas such as infill zones, it is the duty of the developer to stabilize and control the impacted surface areas to prevent wind erosion and the blowing of surface material through the planting of grasses, windbreaks, and other similar barriers.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.35321 Review of site plan; duties of planning commission.**

Sec. 35321. A zoning ordinance shall provide that, in reviewing a site plan required under section 35313(1)(d), the planning commission shall do both of the following:

(a) Determine whether the requirements of the zoning ordinance have been met and whether the plan is consistent with existing laws.

(b) Recommend alterations of a proposed development to minimize adverse effects anticipated if the development is approved and to assure compliance with all applicable state and local requirements.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.35322 Special use project application, plan, and proposed decision; review; action.**

Sec. 35322. Prior to issuing a permit allowing a special use project within a critical dune area, a local unit of government shall submit the special use project application and plan and the proposed decision of the local unit of government to the department. The department shall have 30 days to review the plan and may affirm, modify, or reverse the proposed decision of the local unit of government.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.35323 Destruction of structure or use; exemption; replacement.**

Sec. 35323. A structure or use located in a critical dune area that is destroyed by fire, other than arson for which the owner is found to be responsible, or an act of nature, except for erosion, is exempt from the operation of this part or a zoning ordinance under this part for the purpose of rebuilding or replacing the structure or use, if the structure or use was lawful at the time it was constructed or commenced. A replacement structure and its use may differ from that which was destroyed if it does not exceed in size or scope that which was destroyed.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35324 Management of federally owned and state owned land.**

Sec. 35324. Federally owned land, to the extent allowable by law, and state owned land within critical dune areas shall be managed by the federal or state government, respectively, in a manner that is consistent with the model zoning plan.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35325 Purchase of lands or interests in lands; purpose.**

Sec. 35325. The department or local units of government may purchase lands or interests in lands from a willing seller in critical dune areas for the purpose of maintaining or improving the critical dune areas and the environment of the critical dune areas in conformance with the zoning ordinance, or the model zoning plan if the local unit of government does not have an approved zoning ordinance. Interests that may be purchased may include easements designed to provide for the preservation of critical dune areas and to limit or eliminate development in critical dune areas.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35326 Repealed. 2012, Act 297, Imd. Eff. Aug. 7, 2012**

**Compiler's note:** The repealed section pertained to appropriation to department.

**Popular name:** Act 451

**Popular name:** NREPA

## PART 355

### BIOLOGICAL DIVERSITY CONSERVATION

#### **324.35501 Definitions.**

Sec. 35501. As used in this part:

(a) "Biological diversity" means the full range of variety and variability within and among living organisms and the natural associations in which they occur. Biological diversity includes ecosystem diversity, species diversity, and genetic diversity.

(b) "Committee" means the joint legislative working committee on biological diversity created pursuant to section 35504.

(c) "Conserve", "conserving", and "conservation" mean measures for maintaining natural biological diversity and measures for restoring natural biological diversity through management efforts, in order to protect, restore, and enhance as much of the variety of native species and communities as possible in quantities and distributions that provide for the continued existence and normal functioning of native species and communities, including the viability of populations throughout the natural geographic distributions of native species and communities.

(d) "Ecosystem" means an assemblage of species, together with the species' physical environment, considered as a unit.

(e) "Ecosystem diversity" means the distinctive assemblages of species and ecological processes that occur in different physical settings of the biosphere.

(f) "Genetic diversity" means the differences in genetic composition within and among populations of a given species.

(g) "Habitat" means the area or type of environment in which an organism or biological population normally lives or occurs.

(h) "Reporting department" means a state department or agency that is required by the committee under this part to file 1 or more reports.

(i) "Species diversity" means the richness and variety of native species.

(j) "State strategy" means the recommended state strategy prepared by the committee.

(k) "Sustained yield" means the achievement and maintenance in perpetuity of regular periodic output of the various renewable resources without impairment of the productivity of the land.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35502 Legislative findings.**

Sec. 35502. The legislature finds that:

- (a) The earth's biological diversity is an important natural resource. Decreasing biological diversity is a concern.
- (b) Most losses of biological diversity are unintended consequences of human activity.
- (c) Humans depend on biological resources, including plants, animals, and microorganisms, for food, medicine, shelter, and other important products.
- (d) Biological diversity is valuable as a source of intellectual and scientific knowledge, recreation, and aesthetic pleasure.
- (e) Conserving biological diversity has economic implications.
- (f) Reduced biological diversity may have potentially serious consequences for human welfare as resources for research and agricultural, medicinal, and industrial development are diminished.
- (g) Reduced biological diversity may also potentially impact ecosystems and critical ecosystem processes that moderate climate, govern nutrient cycles and soil conservation and production, control pests and diseases, and degrade wastes and pollutants.
- (h) Reduced biological diversity may diminish the raw materials available for scientific and technical advancement, including the development of improved varieties of cultivated plants and domesticated animals.
- (i) Maintaining biological diversity through habitat protection and management is often less costly and more effective than efforts to save species once they become endangered.
- (j) Because biological resources will be most important for future needs, study by the legislature regarding maintaining the diversity of living organisms in their natural habitats and the costs and benefits of doing so is prudent.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35503 State goal.**

- Sec. 35503. (1) It is the goal of this state to encourage the lasting conservation of biological diversity.  
(2) This part does not require a state department or agency to alter its regulatory functions.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35504 Joint legislative working committee on biological diversity; creation; appointment of members; establishment, organization, and membership of scientific advisory boards; consultation with other qualified individuals; function; reports; meetings; compliance with open meetings act; writings available to public; public hearings; dissolution.**

Sec. 35504. (1) The joint legislative working committee on biological diversity is created in the legislature. The committee shall consist of 4 members of the senate appointed by the senate majority leader, 2 members of the house of representatives appointed by the republican leader of the house of representatives, and 2 members of the house of representatives appointed by the democratic leader of the house of representatives. Members of the committee shall be appointed by the senate majority leader and the republican and democratic leaders of the house of representatives within 30 days of March 23, 1994. At least 1 of the committee members appointed from the senate shall be a member of the minority party of the senate, and at least 1 of the committee members appointed from each house shall be a member of a standing committee that primarily addresses legislation pertaining to environmental protection and natural resources, or wildlife and fisheries management, and agriculture. The committee may establish and organize 1 or more scientific advisory boards to provide the committee with specific expertise as the committee considers necessary or helpful. If 1 or more scientific advisory boards are established, each board shall include individuals with expertise pertaining to the area of resource management at issue. The representatives shall include at least 1 individual employed by a state department or agency; 1 or more individuals employed by a university or college who work in applied research; and 1 or more individuals who work in basic research. The committee may consult with other individuals who are qualified representatives of industry and environmental groups. In fulfilling its duties under this part, the committee may consult with individuals and groups who are knowledgeable about, or

interested in, biological diversity and conservation or are knowledgeable about scientific and technological issues related to biological diversity and its impact on human habitat.

(2) The function of the committee shall be to prepare a recommended state strategy for conservation of biological diversity and to report on the costs, benefits, and other implications of the strategy. Upon the request of the committee, state departments and state agencies shall submit reports containing the information required under section 35505 to the committee to enable the committee to prepare the state strategy and fulfill its functions under this part. The state strategy shall in part be based on information provided to the committee in these reports required under this section.

(3) The committee shall meet as soon as possible upon formation and then shall meet at least quarterly. The committee shall at its initial meeting develop a timeline establishing when specific reports are due from each of the reporting departments from which the committee requests reports. However, all reports required under section 35505(1) shall be submitted to the committee by a reporting department by December 30, 1994. The committee shall provide assistance to the reporting department as the committee considers necessary or helpful in developing the state strategy.

(4) The committee shall hold regularly scheduled meetings, and the business of the committee shall be conducted at public meetings held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(5) A writing prepared, owned, used, in the possession of, or retained by the committee shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(6) The committee shall hold public hearings to solicit input from individuals and entities regarding biological diversity.

(7) The committee shall be dissolved on December 30, 1995.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35505 Reports; contents; additional information.**

Sec. 35505. (1) The committee may require clear and concise reports containing the information listed under subsection (2) and, if applicable, subsection (3) from state departments and state agencies, including, but not limited to, the following:

- (a) Department of natural resources.
- (b) State transportation department.
- (c) Department of commerce.
- (d) Department of agriculture.
- (e) Department of public health.
- (f) Department of military affairs.

(2) Each reporting department shall prepare for the committee a report that contains an overview of all of the following:

(a) A report pertaining to those activities of the reporting departments that alter biological diversity, noting which ecosystems and species are impacted and the existence of and effectiveness of mitigation measures.

(b) Any other information determined by the committee to be necessary or helpful in preparing the state strategy.

(c) The costs and benefits of preserving biological diversity and mitigation measures.

(3) In addition to the information required under subsection (2), the department of natural resources and the department of agriculture shall include in their report, to the extent practical, examples of techniques that are used to improve the protection and maintenance of this state's biological diversity, and the long-term viability of ecosystems and ecosystem processes, including all of the following:

(a) Enhancement of scientific knowledge through improved and more complete biological surveys, and research designed to identify factors limiting population viability or persistence.

(b) Identification of habitats and species of special concern and methods to protect them.

(c) Improvement of management techniques based on scientific knowledge of the conservation of biological diversity.

(d) Effective restoration methods for ecosystems or species of concern.

(e) Broad-based education efforts regarding the importance of biological diversity and the need for conservation.

(f) Use of areas demonstrating management techniques that conserve or restore native biological diversity.

(g) Use of cooperative programs among government agencies, public and private ventures, and the public sector.

(h) Promotion of sustained yield of natural resources for human benefit.

(i) Any other technique to improve the protection and maintenance of this state's biological diversity, and the long-term viability of ecosystems and ecosystem processes whether or not the technique is in current use if supported by scientific knowledge.

(j) The costs and benefits associated with activities described in subdivisions (a) to (i).

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35506 Development of state strategy; factors; progress report to legislature; circulation of draft report; public hearing; report to legislature.**

Sec. 35506. (1) Based on information received from the reporting departments and other sources identified in section 35504(1), the committee shall develop a state strategy that includes, but is not limited to, consideration of all of the following:

(a) Reduction of cumulative adverse impacts of all state departments and agencies on biological diversity.

(b) Responsibility of each reporting department to conserve biological diversity and determine the costs of such actions.

(c) Methods of cooperation among reporting departments, other states, and provinces concerning ecosystems management.

(d) Establishment of cooperative programs among governmental agencies, public and private ventures, universities and colleges, and the private sector.

(e) Identification of habitats and species of special concern and methods to protect them.

(f) Prevention of extinction of species.

(g) Provisions for the long-term viability of ecosystems and ecosystem processes.

(h) Development of areas demonstrating management techniques that conserve or restore native biological diversity.

(i) Development of broad-based educational efforts regarding the importance of biological diversity and the need for conservation.

(j) Development of criteria for evaluating the progress of this state in implementing the strategy.

(k) The effects on human beings or the environment, taking into account the economic, social, and environmental costs and benefits of the conservation of biological diversity.

(l) The effects of conserving biological diversity on agriculture and forestry.

(2) By December 30, 1994, the committee shall submit to the legislature a report detailing progress made toward development of the strategy.

(3) By June 30, 1995, the committee shall circulate a draft of the report described in subsection (4) and conduct a public hearing regarding the content of the draft report.

(4) By December 30, 1995, the committee shall approve and submit to the legislature a report containing all of the following:

(a) The recommended state strategy.

(b) Summaries of all written comments and reporting department reports received by the committee pertaining to the work of the committee.

(c) An evaluation of reports submitted by reporting departments.

(d) An evaluation of the cumulative impacts of the reporting departments on the biological diversity of this state.

(e) Recommendations pertaining to legislative options.

(f) Recommendations regarding whether the definitions in this part should be revised.

(g) Recommendations regarding whether there is a need to establish a biological diversity education center to set research priorities and provide leadership and coordination pertaining to fulfilling the policy of this state to maintain biological diversity.

(h) Recommendations concerning research priorities and personnel training to facilitate the implementation of the state strategy.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

## NATURAL BEAUTY ROADS

### **324.35701 Definitions.**

Sec. 35701. As used in this part:

- (a) "Board" means board of county road commissioners.
- (b) "City street" means city major street or city local street as described in section 9 of Act No. 51 of the Public Acts of 1951, being section 247.659 of the Michigan Compiled Laws.
- (c) "County local road" means county local road as described in section 4 of Act No. 51 of the Public Acts of 1951, being section 247.654 of the Michigan Compiled Laws.
- (d) "Native vegetation" means original or indigenous plants of this state including trees, shrubs, vines, wild flowers, aquatic plants, or ground cover.
- (e) "Natural" means in a state provided by nature, without human-made changes, wild, or uncultivated.
- (f) "Street" means city street or village street.
- (g) "Village street" means village major street or village local street as described in section 9 of Act No. 51 of the Public Acts of 1951.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** Natural Beauty Roads

**Popular name:** NREPA

### **324.35702 Petition for designation; hearing; notice; resolution.**

Sec. 35702. (1) Twenty-five or more freeholders of a township may apply by petition to the board for the county in which that township is located for designation of a county local road or portion of a county local road as a natural beauty road. Twenty-five or more freeholders of a city may petition the legislative body of the city for designation of a city street or a portion of a city street as a natural beauty street. Twenty-five or more freeholders of a village may petition the legislative body of the village for designation of a village street or a portion of a village street as a natural beauty street.

(2) Within 6 months after a petition is received, the board or the legislative body of the city or village shall hold a public hearing to consider designating the road or street described in the petition as a natural beauty road or natural beauty street, respectively. The hearing shall be held at a suitable place within the township in which the proposed natural beauty road is located or the city or village in which the proposed natural beauty street is located. At the hearing, a party or interested person may support or object to the proposed designation. The board, the legislative body of the city, or the legislative body of the village shall give notice of the hearing by publication at least once each week for 2 successive weeks in a newspaper of general circulation in the county, city, or village, respectively, and by posting 5 notices within the limits of the portion of the road or street to be designated, in public and conspicuous places. The posting shall be done and at least 1 publication in the newspaper shall be made not less than 10 days before the hearing.

(3) Within 30 days after the hearing, if the board, the legislative body of the city, or the legislative body of the village considers the designation desirable, it shall file with the county clerk, city clerk, or village clerk, respectively, a true copy of its resolution designating the portion of the county local road as a natural beauty road, the portion of the city street as a natural beauty street, or the portion of the village street as a natural beauty street, respectively.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** Natural Beauty Roads

**Popular name:** NREPA

### **324.35703 Designation; petition requesting withdrawal; revocation of designation; determination; publication of notice; reversion to former status.**

Sec. 35703. (1) Not more than 45 days after a board designates a road as a natural beauty road or the legislative body of a city or village designates a street as a natural beauty street, the property owners of record of 51% or more of the lineal footage along the natural beauty road or natural beauty street may submit a petition to the board or the legislative body of the city or village, respectively, requesting that the designation be withdrawn. If the petition is valid, the designation as a natural beauty road or natural beauty street shall be withdrawn.

(2) A board or the legislative body of a city or village may revoke a designation of a natural beauty road or natural beauty street after holding a public hearing in accordance with the procedure described in section 35702(2). Not more than 30 days after a hearing, if the board, the legislative body of the city, or the

legislative body of the village by majority vote determines that the revocation is necessary, it shall file with the county clerk, city clerk, or village clerk, respectively, a notice of its determination and publish the notice in a newspaper of general circulation in the county, city, or village, respectively, once each week for 2 successive weeks. After publication of the notice, the road or street previously designated shall revert to its former status.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** Natural Beauty Roads

**Popular name:** NREPA

### **324.35704 Guidelines and procedures for native vegetation preservation; rights of public utilities or governmental agencies or municipalities.**

Sec. 35704. (1) The department shall develop uniform guidelines and procedures that may be adopted by a board to preserve native vegetation in a natural beauty road right-of-way from destruction or substantial damage by cutting, spraying, dusting, mowing, or other means. The department shall develop uniform guidelines that may be adopted by the legislative body of a city or village to preserve native vegetation in a natural beauty street right-of-way from destruction or substantial damage by cutting, spraying, dusting, mowing, or other means. Guidelines and procedures developed pursuant to this subsection shall not prohibit the application of accepted principles of sound forest management in a natural beauty road or natural beauty street right-of-way or prevent a local road authority from regulating speed and from taking actions to modify specific road features to correct traffic hazards that pose a direct and ongoing threat to motorists.

(2) The department may advise and consult with a board or a city or village legislative body on the application of the guidelines and procedures.

(3) A board or a city or village legislative body shall provide for a public hearing before an act that would result in substantial damage to native vegetation in the right-of-way of a natural beauty road or natural beauty street, respectively, is permitted.

(4) Subject to subsections (5), (6), and (7), prior to approval of any construction project or tree cutting that would significantly impact native vegetation within the right-of-way of a natural beauty road, the board shall notify the clerk of the city, village, or township within which the road lies of the proposed activity. If the city, village, or township desires to hold a public hearing on the proposed activity, the clerk of the city, village, or township shall notify the board within 7 days of the transmittal of notice by the board. The notice to the board shall include the date, time, and place of the township, city, or village hearing. The hearing shall take place within 14 days of the transmittal of notice to the board. A member of the board or a representative of the board shall attend the hearing. The city, village, or township clerk shall provide the board with a written report of testimony taken at the hearing within 10 days of the hearing. The board shall not approve the construction project or tree cutting until 12 days after notice of the proposed activity has been sent to the city, village, or township clerk, or if notification of a hearing is timely received by the board, until 12 days after the public hearing is held. The board shall consider, in approval or denial of the proposed activity, any report of testimony taken at the public hearing received from the city, village, or township.

(5) The notification and hearing provided for in subsection (4) are not required if the construction or tree cutting is necessitated by emergency conditions.

(6) This part does not affect the right of a public utility to control vegetation in connection with the maintenance, repair, or replacement of public utility facilities constructed in a road or street before its designation as a natural beauty road or natural beauty street, or in connection with the construction, maintenance, repair, or replacement of public utility facilities crossing a natural beauty road or natural beauty street.

(7) This part does not affect or restrict the maintenance activities of a governmental agency or municipality having jurisdiction over a beauty road.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 119, Imd. Eff. Mar. 6, 1996.

**Popular name:** Act 451

**Popular name:** Natural Beauty Roads

**Popular name:** NREPA

### **324.35705 Citizen's advisory committee; establishment; purpose.**

Sec. 35705. The department may establish a citizen's advisory committee to assist in the formulation of proposals for guidelines and procedures.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.



**Compiler's note:** For transfer of citizens advisory committee for natural beauty roads to department of natural resources by type III transfer, see. E.R.O. No. 2009-12, compiled at MCL 324.99916.

**Popular name:** Act 451

**Popular name:** Natural Beauty Roads

**Popular name:** NREPA

### **324.35706 Violation of guideline or procedure; complaint; civil action; default in payment of civil fine or costs.**

Sec. 35706. (1) If there is a violation of a guideline or procedure adopted by a board, the legislative body of a city, or the legislative body of a village pursuant to section 35704, a complaint, signed by 5 or more freeholders of the township, city, or village, respectively, or by freeholders representing 10% or more of the lineal frontage along a natural beauty road or natural beauty street, may be filed with the county prosecutor, city attorney, or village attorney, respectively, or with the attorney general. The county prosecutor, the city attorney, the village attorney, or the attorney general, on behalf of the board, the legislative body of the city, the legislative body of the village, or the department, may commence a civil action seeking either of the following:

(a) A temporary or permanent injunction to enjoin the violation of the guideline or procedure.

(b) A civil fine of not more than \$400.00 for the violation of the guideline or procedure.

(2) A default in the payment of a civil fine or costs ordered under this part or an installment of the fine or costs may be remedied by any means authorized under the revised judiciary act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.101 to 600.9947 of the Michigan Compiled Laws.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** Natural Beauty Roads

**Popular name:** NREPA

## PART 358

### ADOPT-A-SHORELINE PROGRAM

### **324.35801 Adopt-a-shoreline program; "department" defined; administration; purpose; rules; agreements with volunteer groups to implement program.**

Sec. 35801. (1) As used in this part, "department" means the department of natural resources.

(2) The department shall administer an adopt-a-shoreline program to remove litter from shorelines within state parks and state recreation areas. The program shall include public informational activities, but shall be directed primarily toward encouraging and facilitating the involvement of volunteer groups in litter cleanup work and assisting volunteer groups in selecting specific shoreline or shoreline segments for cleanup activities.

(3) The department may promulgate rules as necessary to implement the adopt-a-shoreline program.

(4) The department may enter into agreements with volunteer groups to implement the adopt-a-shoreline program. Agreements with volunteer groups shall include, but are not limited to, all of the following:

(a) Identification of the designated shoreline or shoreline segment. The volunteer group may request a specific segment of the shoreline it wishes to adopt, subject to the approval of the state park or recreation area manager or supervisor. The department shall assist volunteer groups to select sections of a shoreline and to identify any necessary permits and other authorizations, in cooperation with affected federal, state, and local management agencies, nonprofit organizations, and private landowners.

(b) Specification of the duties of the volunteer group, which shall include both of the following:

(i) Removal of litter along the designated shoreline or shoreline segment at least once each year.

(ii) Compliance with any rules related to the program that are adopted by the department.

**History:** Add. 1996, Act 89, Imd. Eff. Feb. 27, 1996;—Am. 2018, Act 79, Eff. June 17, 2018.

**Compiler's note:** In separate opinions, the Michigan Supreme Court held that Section 45(8), (9), (10), and (12) and the second sentence of Section 46(1) ("An agency shall not file a rule ... until at least 10 days after the date of the certificate of approval by the committee or after the legislature adopts a concurrent resolution approving the rule.") of the Administrative Procedures Act of 1969, in providing for the Legislature's reservation of authority to approve or disapprove rules proposed by executive branch agencies, did not comply with the enactment and presentment requirements of Const 1963, Art 4, and violated the separation of powers provision of Const 1963, Art 3, and, therefore, were unconstitutional. These specified portions were declared to be severable with the remaining portions remaining effective. Blank v Department of Corrections, 462 Mich 103 (2000).

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35802 Adopt-a-shoreline program; duties of department.**

Sec. 35802. In implementing this part and the adopt-a-shoreline program, the department shall do all of the following:

(a) Create a recognition program that acknowledges the efforts of volunteer groups and the members of the groups that participate in the adopt-a-shoreline program.

(b) Provide safety information and assistance to the participating volunteer groups.

(c) Provide volunteer groups with natural resource information and educational materials.

**History:** Add. 1996, Act 89, Imd. Eff. Feb. 27, 1996.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35803 Cleanup effort conducted on state land; part or agreement construed.**

Sec. 35803. This part or an agreement under this part shall not be construed to prohibit a cleanup effort from being conducted on any state land.

**History:** Add. 1996, Act 89, Imd. Eff. Feb. 27, 1996;—Am. 2018, Act 79, Eff. June 17, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35804 Repealed. 2018, Act 79, Eff. June 17, 2018.**

**Compiler's note:** The repealed section pertained to report on implementation and progress of adopt-a-shoreline program.

**Popular name:** Act 451

**Popular name:** NREPA

## PART 359

### ADOPT-A-RIVER PROGRAM

### **324.35901 Adopt-a-river program; "department" defined; administration; purpose; rules; agreements with volunteer groups to implement program.**

Sec. 35901. (1) As used in this part, "department" means the department of natural resources.

(2) The department shall administer an adopt-a-river program to remove litter from rivers and riverbanks within state parks and state recreation areas. The program shall include public informational activities, but shall be directed primarily toward encouraging and facilitating the involvement of volunteer groups in litter cleanup work and assisting volunteer groups in selecting specific river or stream segments for cleanup activities.

(3) The department may promulgate rules as necessary to implement the adopt-a-river program.

(4) The department may enter into agreements with volunteer groups to implement the adopt-a-river program. Agreements with volunteer groups shall include, but are not limited to, all of the following:

(a) Identification of the designated river or stream segment. The volunteer group may request a specific segment of the river or stream it wishes to adopt, subject to the approval of the state park or recreation area manager or supervisor. The department shall assist volunteer groups to select sections of a river or stream and to identify any necessary permits or other authorizations, in cooperation with affected federal, state, and local management agencies, nonprofit organizations, and private landowners.

(b) Specification of the duties of the volunteer group, which shall include both of the following:

(i) Removal of litter along the designated river or stream segment at least once each year.

(ii) Compliance with any rules related to the program that are adopted by the department.

**History:** Add. 1996, Act 88, Imd. Eff. Feb. 27, 1996;—Am. 2018, Act 78, Eff. June 17, 2018.

**Compiler's note:** In separate opinions, the Michigan Supreme Court held that Section 45(8), (9), (10), and (12) and the second sentence of Section 46(1) ("An agency shall not file a rule ... until at least 10 days after the date of the certificate of approval by the committee or after the legislature adopts a concurrent resolution approving the rule.") of the Administrative Procedures Act of 1969, in providing for the Legislature's reservation of authority to approve or disapprove rules proposed by executive branch agencies, did not comply with the enactment and presentment requirements of Const 1963, Art 4, and violated the separation of powers provision of Const 1963, Art 3, and, therefore, were unconstitutional. These specified portions were declared to be severable with the remaining portions remaining effective. *Blank v Department of Corrections*, 462 Mich 103 (2000).

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35902 Adopt-a-river program; duties of department.**

Sec. 35902. In implementing this part and the adopt-a-river program, the department shall do all of the

following:

- (a) Create a recognition program that acknowledges the efforts of volunteer groups and the members of the groups that participate in the adopt-a-river program.
- (b) Provide safety information and assistance to the volunteer groups.
- (c) Provide volunteer groups with natural resource information and educational materials.

**History:** Add. 1996, Act 88, Imd. Eff. Feb. 27, 1996.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35903 Cleanup effort conducted on state land; part or agreement construed.**

Sec. 35903. This part or an agreement under this part shall not be construed to prohibit a cleanup effort from being conducted on any state land.

**History:** Add. 1996, Act 88, Imd. Eff. Feb. 27, 1996;—Am. 2018, Act 78, Eff. June 17, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.35904 Repealed. 2018, Act 78, Eff. June 17, 2018.**

**Compiler's note:** The repealed section pertained to report on implementation and progress of adopt-a-river program.

**Popular name:** Act 451

**Popular name:** NREPA

## PART 361

### FARMLAND AND OPEN SPACE PRESERVATION

#### **324.36101 Definitions.**

Sec. 36101. As used in this part:

(a) "Agricultural conservation easement" means a conveyance, by a written instrument, in which, subject to permitted uses, the owner relinquishes to the public in perpetuity his or her development rights and makes a covenant running with the land not to undertake development.

(b) "Agricultural use" means the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, captive cervidae, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; maple syrup production; Christmas trees; and other similar uses and activities. Agricultural use includes use in a federal acreage set-aside program or a federal conservation reserve program. Agricultural use does not include the management and harvesting of a woodlot.

(c) "Conservation district board" means that term as defined in section 9301.

(d) "Development" means an activity that materially alters or affects the existing conditions or use of any land.

(e) "Development rights" means an interest in land that includes the right to construct a building or structure, to improve land for development, to divide a parcel for development, or to extract minerals incidental to a permitted use or as set forth in an instrument recorded under this part.

(f) "Development rights agreement" or "agreement" means a restrictive covenant, evidenced by an instrument in which the owner and this state, for a term of years, agree to jointly hold the right to undertake development of the land, and that contains a covenant running with the land, for a term of years, not to undertake development, subject to permitted uses.

(g) "Development rights easement" or "easement" means a grant, by an instrument, in which the owner relinquishes to the public in perpetuity or for a term of years the right to undertake development of the land, and that contains a covenant running with the land, not to undertake development, subject to permitted uses.

(h) "Farmland" means 1 or more of the following:

(i) A farm of 40 or more acres in 1 ownership, with 51% or more of the land area devoted to an agricultural use.

(ii) A farm of 5 acres or more but less than 40 acres, in 1 ownership, with 51% or more of the land area devoted to an agricultural use, and that has produced a gross annual income from agriculture of \$200.00 per year or more per acre of cleared and tillable land. A farm described in this subparagraph enrolled in a federal acreage set-aside program or a federal conservation reserve program is considered to have produced a gross annual income from agriculture of \$200.00 per year or more per acre of cleared and tillable land.

(iii) A farm designated by the department of agriculture and rural development as a specialty farm in 1

ownership that has produced a gross annual income from an agricultural use of \$2,000.00 or more. Specialty farm includes, but is not limited to, the following:

(A) A greenhouse.

(B) A farm used for equine breeding and grazing; the breeding and grazing of cervidae, pheasants, and other game animals; bees and bee products; mushrooms; aquaculture; or other similar uses and activities.

(iv) Parcels of land in 1 ownership that are not contiguous but that constitute an integral part of a farming operation being conducted on land otherwise qualifying as farmland.

(i) "Fund" means the agricultural preservation fund created in section 36202.

(j) "Local governing body" means 1 of the following:

(i) With respect to farmland or open space land that is located in a city or village, the legislative body of the city or village.

(ii) With respect to farmland or open space land that is not located in a city or village but that is located in a township having a zoning ordinance in effect as provided by law, the township board of the township.

(iii) With respect to farmland or open space land that is not described in subparagraph (i) or (ii), the county board of commissioners.

(k) "Open space land" means 1 of the following:

(i) Land that is 1 or more of the following:

(A) An undeveloped site included in a national registry of historic places or designated as a historic site pursuant to state or federal law.

(B) Riverfront property subject to designation under part 305, to the extent that full legal descriptions may be declared open space under the meaning of this part, if the undeveloped parcel or government lot parcel or portions of the undeveloped parcel or government lot parcel as assessed and owned are affected by part 305 and lie within 1/4 mile of the river.

(C) Undeveloped land designated as an environmental area under part 323, including unregulated portions of that land.

(ii) Any other area that is approved by the local governing body and is 1 of the following:

(A) An area the preservation of which in its present condition would conserve natural or scenic resources, such as soils, wetlands, and beaches; enhance recreation opportunities; or preserve a historic site.

(B) Idle potential farmland of not less than 40 acres that is substantially undeveloped and because of its soil, terrain, and location is capable of being devoted to agricultural uses as identified by the department of agriculture and rural development.

(l) "Owner" means a person having a freehold estate in land coupled with possession and enjoyment. If land is subject to a land contract, owner means the vendee in agreement with the vendor. This subdivision does not apply to section 36104e.

(m) "Permitted use" means any use expressly authorized within a development rights agreement, development rights easement, or agriculture conservation easement that is consistent with the farming operation or that does not alter the open space character of the land, as applicable. The state land use agency shall determine whether a use, other than a use under section 36104c or 36104e, is a permitted use pursuant to section 36104a.

(n) "Person" includes an individual, corporation, limited liability company, business trust, estate, trust, partnership, or association, or 2 or more persons having a joint or common interest in land.

(o) "Planning commission" means a planning commission created under the Michigan planning enabling act, 2008 PA 33, MCL 125.3801 to 125.3885.

(p) "Prohibited use" means a use that is not consistent with an agricultural use for farmland subject to a development rights agreement or is not consistent with the open space character of the land for lands subject to a development rights easement.

(q) "Property taxes" means general ad valorem taxes levied after January 1, 1974, on lands and structures in this state, including collection fees, but not including special assessments, penalties, or interest.

(r) "Regional planning commission" means a regional planning commission created pursuant to 1945 PA 281, MCL 125.11 to 125.25.

(s) "Regional planning district" means a planning and development region as established by Executive Directive No. 1968-1, as amended, whose organizational structure is approved by the regional council.

(t) "State income tax act" means the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.847, and in effect during the particular year of the reference to the act.

(u) "State land use agency" means the department of agriculture and rural development.

(v) "Substantially undeveloped" means any parcel or area of land essentially unimproved except for a dwelling, building, structure, road, or other improvement that is incidental to agricultural and open space uses.

(w) "Unique or critical land area" means agricultural or open space land identified by the land use agency

as an area that should be preserved.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 233, Imd. Eff. June 5, 1996;—Am. 2000, Act 262, Imd. Eff. June 29, 2000;—Am. 2008, Act 336, Imd. Eff. Dec. 23, 2008;—Am. 2016, Act 265, Eff. Sept. 26, 2016;—Am. 2023, Act 230, Eff. Feb. 13, 2024.

**Popular name:** Act 451

**Popular name:** Farmland and Open Space

**Popular name:** NREPA

### **324.36102 Development rights agreement or easement; execution authorized; provisions.**

Sec. 36102. (1) The state land use agency may execute a development rights agreement or easement on behalf of the state.

(2) The provisions of a development rights agreement or easement shall be consistent with the purposes of this part and shall not permit an action which will materially impair the character of the land involved.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** Farmland and Open Space

**Popular name:** NREPA

### **324.36103 Development rights agreement or easement; effect of execution and acceptance; term; limitation; disposition; prior lien, lease, or interest not superseded; lien of state or local governing body; subordination.**

Sec. 36103. (1) The execution and acceptance of a development rights agreement or easement by the state or local governing body and the owner dedicates to the public the development rights in the land for the term specified in the instrument. A development rights agreement or easement shall be for an initial term of not less than 10 years. A development rights agreement or easement entered into after June 5, 1996 shall not be for a term of more than 90 years.

(2) The state or local governing body shall not sell, transfer, convey, relinquish, vacate, or otherwise dispose of a development rights agreement or easement except with the agreement of the owner as provided in sections 36111, 36111a, 36112, and 36113.

(3) An agreement or easement does not supersede any prior lien, lease, or interest that is properly recorded with the county register of deeds.

(4) A lien created under this part in favor of the state or a local governing body is subordinate to a lien of a mortgage that is recorded in the office of the register of deeds before the recording of the lien of the state or local governing body.

(5) The state shall subordinate its interest in a recorded agreement under section 36104 or an easement under section 36105 or 36106 to a subsequently recorded mortgage lien, lease, or interest if both of the following conditions are met:

(a) The parcel meets the requirements set forth under section 36111(2)(a) for parcels containing existing structures.

(b) The landowner requesting the subordination is an individual essential to the operation of the farm as defined in section 36110(5).

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 233, Imd. Eff. June 5, 1996;—Am. 2003, Act 36, Imd. Eff. July 3, 2003.

**Popular name:** Act 451

**Popular name:** Farmland and Open Space

**Popular name:** NREPA

### **324.36104 Application for farmland development rights agreement; form; contents; notice; review, comment, and recommendations; approval or rejection; appeal; preparation, contents, execution, and recordation of agreement; annual listing of current agreements; application effective for current tax year; reapplication; tax exemption.**

Sec. 36104. (1) An owner of land desiring a farmland development rights agreement may apply by filing an application with the local governing body having jurisdiction under this part. The owner shall apply on a form prescribed by the state land use agency. The application shall contain information reasonably necessary to properly classify the land as farmland. This information shall include a land survey or a legal description of the land and a map showing the significant natural features and all structures and physical improvements located on the land.

(2) Upon receipt of the application, the local governing body shall notify the county planning commission or the regional planning commission and the soil conservation district agency. If the county has jurisdiction, it shall also notify the township board of the township in which the land is situated.

(3) An agency or local governing body receiving notice has 30 days to review, comment, and make recommendations to the local governing body with which the application is filed. These reviewing agencies do not have an approval or rejection power over the application.

(4) After considering the comments and recommendations of the reviewing agencies and local governing bodies, the local governing body holding the application shall approve or reject the application within 45 days after the application is received, unless that period is extended by agreement of the parties involved. The local governing body's approval or rejection of the application shall be based upon, and consistent with, rules promulgated under section 36116.

(5) If an application for a farmland development rights agreement is approved by the local governing body having jurisdiction, the local governing body shall forward a copy, along with the comments and recommendations of the reviewing bodies, to the state land use agency. The application shall contain a statement from the assessing officer where the property is located specifying the current fair market value of the land and structures in compliance with the agricultural section of the Michigan state tax commission assessor manual. If action is not taken by the local governing body within the time prescribed or agreed upon, the applicant may proceed as provided in subsection (6) as if the application was rejected.

(6) If the application for a farmland development rights agreement is rejected by the local governing body, the local governing body shall return the application to the applicant with a written statement regarding the reasons for rejection. Within 30 days after receipt of the rejected application, the applicant may appeal the rejection by submitting the application to the state land use agency.

(7) The state land use agency, within 60 days after a farmland development rights agreement application is received under subsection (5) or (6), shall approve or reject the application. The state land use agency may reject an application for a farmland development rights agreement that has been approved by a local governing body only if the proposed agreement would be inconsistent with section 36101(f). If the application is approved by the state land use agency, the state land use agency shall prepare a farmland development rights agreement that includes all of the following provisions:

(a) A structure shall not be built on the land except for use consistent with farm operations, which includes a residence for an individual essential to the operation of the farm under section 36111(2)(b), or lines for utility transmission or distribution purposes or with the approval of the local governing body and the state land use agency.

(b) Land improvements shall not be made except for use consistent with farm operations or with the approval of the local governing body and the state land use agency.

(c) Any interest in the land shall not be sold except a scenic, access, or utility easement that does not substantially hinder farm operations.

(d) Public access is not permitted on the land unless agreed to by the owner.

(e) Any other condition and restriction on the land as agreed to by the parties that is considered necessary to preserve the land or appropriate portions of it as farmland.

(8) Upon approval of an application by the state, the state land use agency shall execute the farmland development rights agreement on behalf of the state and shall forward the agreement to the applicant for execution. After the applicant executes the farmland development rights agreement, the applicant shall have the executed farmland development rights agreement recorded by the register of deeds in the county in which the property is located. The applicant shall provide a copy of the recorded farmland development rights agreement to the state land use agency.

(9) The state land use agency shall annually provide a listing of current farmland development rights agreements to county equalization offices where the land is located and to the approving local governing body.

(10) An application that is approved by the local governing body by November 1 shall take effect for the current tax year.

(11) If an application for a farmland development rights agreement is rejected by the state land use agency, the state land use agency shall notify the affected local governing body, all reviewing agencies concerned, and the applicant with a written statement containing the reasons for rejection. An applicant receiving a rejection from the state land use agency may appeal the rejection pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(12) An applicant may reapply for a farmland development rights agreement following a 1-year waiting period.

(13) The value of the jointly owned development rights as expressed in a farmland development rights

agreement is not exempt from ad valorem taxation and shall be assessed to the owner of the land as part of the value of that land.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 233, Imd. Eff. June 5, 1996;—Am. 2016, Act 265, Eff. Sept. 26, 2016.

**Popular name:** Act 451

**Popular name:** Farmland and Open Space

**Popular name:** NREPA

### **324.36104a Permitted use; criteria; exception.**

Sec. 36104a. (1) In determining whether a use is a permitted use, the state land use agency shall consider the following criteria:

(a) Whether the use adversely affects the productivity of farmland or adversely affects the character of open space land.

(b) Whether the use materially alters or negatively affects the existing conditions or use of the land.

(c) Whether the use substantially alters the agricultural use of farmland subject to a development rights agreement or substantially alters the natural character of open space land subject to an open space easement.

(d) Whether the use results in a material alteration of an existing structure to a nonagricultural use.

(e) Whether the use conforms with all applicable federal, state, and local laws and ordinances.

(2) Subsection (1) does not apply to a use authorized under section 36104c or 36104e.

**History:** Add. 1996, Act 233, Imd. Eff. June 5, 1996;—Am. 2023, Act 230, Eff. Feb. 13, 2024.

**Popular name:** Act 451

**Popular name:** Farmland and Open Space

**Popular name:** NREPA

### **324.36104c Farming operations; permitted uses.**

Sec. 36104c. Storage, retail or wholesale marketing, or processing of agricultural products is a permitted use in a farming operation if more than 50% of the stored, processed, or merchandised products are produced by the farm operator for at least 3 of the immediately preceding 5 years.

**History:** Add. 2023, Act 230, Eff. Feb. 13, 2024.

**Popular name:** Act 451

**Popular name:** Farmland and Open Space

**Popular name:** NREPA

### **324.36104e Solar facility; permitted use; development rights agreement; tax credit; definitions.**

Sec. 36104e. (1) As used in this section:

(a) "Amended development rights agreement" means a development rights agreement that includes the conditions required to allow a solar facility to be installed and operated on all or a portion of the land subject to the agreement.

(b) "Deferment period" means the period of time beginning when construction of the solar facility commences and ending when the solar facility is completely removed.

(c) "Electric provider" means either of the following:

(i) An electric provider as defined in section 5 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1005.

(ii) A merchant plant as defined in section 10g of 1939 PA 3, MCL 460.10g.

(d) "Landowner" means a person that meets both of the following requirements:

(i) Has a freehold estate in land coupled with possession and enjoyment or, if land is subject to a land contract, is the vendee.

(ii) Has signed a development rights agreement with the state land use agency, and, if the land is subject to a land contract, the vendor.

(e) "NRCS" means the United States Department of Agricultural Natural Resource Conservation Service.

(f) "Solar agreement" means an agreement entered into by the landowner and the solar facility owner or operator to authorize the installation and operation of a solar facility on all or a portion of the land and that contains all conditions specifically identified in this section as the responsibility of the solar facility owner or operator.

(g) "Solar facility" means a facility, owned by an electric provider, for the generation of electricity using solar photovoltaic cells.

(h) "Solar facility site" means the land subject to a solar agreement.

(2) A solar facility is a permitted use under a development rights agreement if all of the following conditions are met:

(a) Before the solar facility became a permitted use, the land was subject to a development rights agreement.

(b) The land subject to the development rights agreement was divided under section 36110(4), if only a portion of the land was to be subject to a solar agreement.

(c) After any split required by subdivision (b), the landowner and state land use agency amend the resulting development rights agreement applicable to the solar facility site.

(d) The amended development rights agreement applicable to the proposed solar facility site extends the existing development rights agreement beyond the original termination date for an amount of time equal to the length of the deferment period. However, the deferment period shall not exceed 90 years minus the remaining term of the development rights agreement. A landowner may enter into a subsequent amended development rights agreement to provide for an additional deferment period.

(e) At least 60 days have elapsed since the development rights agreement was recorded.

(f) The solar facility site is designed, planted, and maintained with groundcover that achieves a score of at least 76 on the Michigan Pollinator Habitat Planning Scorecard for Solar Sites developed by the Michigan State University Department of Entomology or is designed, planted, and maintained in compliance with NRCS Cover Standard 327.

(g) A bond or irrevocable letter of credit payable to this state is maintained during the deferment period as financial assurance for the decommissioning of the solar facility and the return of the land to agricultural use. The amount of the financial surety shall be calculated by a licensed professional engineer. Every 3 years, or as the department considers necessary, the amount of the bond or irrevocable letter of credit shall be adjusted as necessary to ensure that the financial assurance is sufficient for the purposes of this subdivision.

(h) The solar facility site is designed, established, and maintained in a manner that ensures the land can be returned to agricultural use at the end of the deferment period.

(i) The land is returned to normal agricultural operations and use by the first growing season following the end of the deferment period.

(3) Under the solar agreement, the electric provider may assume responsibility for compliance with subsection (2)(f), (g), or (h). Under the solar agreement, the electric provider shall assume responsibility for maintenance of any agricultural drain, as defined in section 30103 or 30305, that is privately owned and necessary for exemption from regulation under part 301 or 303, respectively.

(4) When the deferment period ends, the solar facility is no longer a permitted use.

(5) The landowner shall not claim a tax credit under section 36109 during the deferment period. If a landowner relinquishes the development rights agreement under sections 36111 and 36111a at any time during the deferment period, the past 7 years of tax credits are payable. The past 7 years of tax credits are calculated from the time the amended development rights agreement is recorded and shall be held until the land is returned to agricultural production at the end of the deferment period.

**History:** Add. 2023, Act 230, Eff. Feb. 13, 2024.

**Popular name:** Act 451

**Popular name:** Farmland and Open Space

**Popular name:** NREPA

### **324.36105 Open space land; application for open space development rights easement; approval or rejection; provisions; tax exemption.**

Sec. 36105. (1) If an owner of open space land desires an open space development rights easement, and the land is subject to section 36101(j)(i), the procedures for filing an application provided by the state land use agency shall follow as provided in section 36104, except section 36104(7) and (12) do not apply to an open space development rights easement.

(2) The state land use agency, within 60 days after the open space development rights easement application is received, shall approve or reject the application. If the application is approved by the state land use agency, the state land use agency shall prepare an open space development rights easement that includes the following provisions:

(a) A structure shall not be built on the land without the approval of the state land use agency.

(b) Improvement to the land shall not be made without the approval of the state land use agency.

(c) An interest in the land shall not be sold, except for a scenic, access, or utility easement that does not substantially hinder the character of the open space land.



(d) Access to the open space land may be provided if access is agreed to by the owner and if access will not jeopardize the conditions of the land.

(e) Any other condition or restriction on the land as agreed to by the parties that is considered necessary to preserve the land or appropriate portions of it as open space land.

(3) Upon receipt of the application, the state land use agency shall notify the state tax commission. Upon notification, the state tax commission shall within 60 days make an on-site appraisal of the land in compliance with the Michigan state tax commission assessors manual. The application shall contain a statement specifying the current fair market value of the land and the current fair market value of the development rights. The state land use agency shall submit to the legislature each application for an open space development rights easement and an analysis of its cost to the state. The application shall be approved in both houses by a resolution concurred in by a majority of the members elected and serving in each house. The amount of the cost shall be returned to the local governing body if lost revenues are indicated. A copy of the approved application and the open space development rights easement shall be forwarded by the state land use agency to the applicant for execution and to the local assessing office where the land is situated.

(4) If an application for an open space development rights easement is rejected under subsection (2), the applicant may reapply for an open space development rights easement beginning 1 year after the rejection.

(5) The development rights held by the state as expressed in an open space development rights easement under this section are exempt from ad valorem taxation.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 233, Imd. Eff. June 5, 1996;—Am. 2002, Act 75, Imd. Eff. Mar. 15, 2002.

**Compiler's note:** In subsection (1), the reference to “section 36101(j)(i)” evidently should be to “section 36101(k)(i)” as the result of Act 265 of 2016.

**Popular name:** Act 451

**Popular name:** Farmland and Open Space

**Popular name:** NREPA

**324.36106 Open space land; application for open space development rights easement; form; contents; notice; review, comments, and recommendations; approval or rejection; preparation and contents of easement; appraisal; statement of fair market value; execution and recordation of easement; forwarding copies of easement; appeal; legislative approval; costs; reapplication; tax exemption.**

Sec. 36106. (1) An owner of open space land desiring an open space development rights easement whose land is subject to section 36101(j)(ii) may apply by filing an application with the local governing body. The application shall be made on a form prescribed by the state land use agency. The application shall contain information reasonably necessary to properly identify the land as open space. This information shall include a land survey or a legal description of the land and a map showing the significant natural features and all structures and physical improvements located on the land.

(2) Upon receipt of an application, the local governing body shall notify the county planning commission, the regional planning commission, and the soil conservation district agency. If the local governing body is the county board of commissioners, the county board shall also notify the township board of the township in which the land is situated. If the land is within 3 miles of the boundary of a city or within 1 mile of the boundary of a village, the local governing body shall notify the governing body of the city or village.

(3) An entity receiving notice under subsection (2) has 30 days to review, comment, and make recommendations to the local governing body with which the application was filed.

(4) The local governing body shall approve or reject the application after considering the comments and recommendations of the reviewing entities and within 45 days after the application was received by the local governing body, unless that period is extended by agreement of the parties involved. The local governing body's approval or rejection of the application shall be based upon, and consistent with, rules promulgated by the state land use agency under section 36116. If the local governing body does not act within the time prescribed or agreed upon, the applicant may proceed as provided in subsection (9) as if the application was rejected.

(5) If the application is approved by the local governing body, the local governing body shall prepare the easement. If the application is approved by the state land use agency on appeal, the state land use agency shall prepare the easement. An easement prepared under this section shall contain all of the following provisions:

(a) A structure shall not be built on the land without the approval of the local governing body.

(b) An improvement to the land shall not be made without the approval of the local governing body.

(c) An interest in the land shall not be sold, except for a scenic, access, or utility easement that does not

substantially hinder the character of the open space land.

(d) Public access to the open space land may be provided if agreed upon by the owner and if access will not jeopardize the conditions of the land.

(e) Any other condition or restriction on the land as agreed to by both parties that is considered necessary to preserve the land or appropriate portions of it as open space land.

(6) Upon receipt of the application, the local governing body shall direct either the local assessing officer or an independent certified assessor to make an on-site appraisal of the land within 30 days in compliance with the Michigan state tax commission assessors manual. The approved application shall contain a statement specifying the current fair market value of the land and the current fair market value of the development rights, if any. A copy of the approved application and the development rights easement shall be forwarded to the applicant for his or her execution.

(7) If the owner of the land executes the approved easement, it shall be returned to the local governing body for its execution. The local governing body shall record the development rights easement with the register of deeds of the county. A copy of the approved easement shall be forwarded to the local assessing office and to the state land use agency for their information.

(8) The decision of the local governing body may be appealed to the state land use agency, pursuant to subsection (9).

(9) If an application for an open space development rights easement is rejected by the local governing body, the local governing body shall notify the applicant and all reviewing entities with a written statement of the reasons for rejection. Within 30 days after receipt of the rejected application, the applicant may appeal the rejection to the state land use agency. The state land use agency shall have 60 days to approve or reject the application. The state land use agency shall submit to the legislature each approved application for an open space development rights easement and an analysis of its cost. The application shall be approved in both houses by a resolution concurred in by a majority of the members elected and serving in each house. The amount of the cost shall be returned to the local governing body where lost revenues are indicated. A copy of the approved application and an appropriate easement shall be forwarded by the state land use agency to the applicant for execution and to the local governing body where the land is situated.

(10) If an application for an open space development rights easement is rejected under subsection (4), the applicant may reapply for an open space development rights easement beginning 1 year after the final rejection.

(11) The development rights held by the local governing body as expressed in an open space development rights easement are exempt from ad valorem taxation.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 233, Imd. Eff. June 5, 1996;—Am. 2002, Act 75, Imd. Eff. Mar. 15, 2002.

**Compiler's note:** In subsection (1), the reference to "section 36101(j)(ii)" evidently should be to "section 36101(k)(ii)" as the result of Act 265 of 2016.

**Popular name:** Act 451

**Popular name:** Farmland and Open Space

**Popular name:** NREPA

### **324.36107 Notice of owners' intentions regarding extension or expiration of agreement or easement; notice of lien.**

Sec. 36107. (1) All participants owning land contained under a development rights agreement or easement shall notify, on a form provided by the state land use agency for informational purposes only, the state or the local governing body holding the development rights, 6 months before the natural termination date of the development rights agreement or easement, of the owners' intentions regarding whether the agreement or easement should be extended or allowed to expire.

(2) The state land use agency shall notify the landowner via first-class mail at least 7 years before the expiration of a development rights agreement or easement that a lien may be placed at the time of expiration on the enrolled land in accordance with section 36111(8) if the landowner does not extend the agreement or easement and shall indicate to the landowner the option of not claiming credits during all or a portion of the next 7 years.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 233, Imd. Eff. June 5, 1996.

**Popular name:** Act 451

**Popular name:** Farmland and Open Space

**Popular name:** NREPA

### **324.36108 Special assessments.**

Sec. 36108. (1) A city, village, township, county, or other governmental agency shall not impose special assessments for sanitary sewers, water, lights, or nonfarm drainage on land for which a development rights agreement or easement has been recorded, except for years before 1995 as to a dwelling or a nonfarm structure located on the land, unless the assessments were imposed before the recording of the development rights agreement or easement.

(2) Land covered by this exemption shall be denied use of an improvement created by the special assessment until it has paid that portion of the special assessment directly attributable to the actual use of the improvement created by the special assessment.

(3) Upon termination of a development rights agreement or easement that has been exempt from a special assessment under this section, a city, village, township, county, or other governmental agency may impose the previously exempted special assessment. However, the amount of that special assessment shall not exceed the amount the special assessment would have been at the initial time of exemption, and shall not be subject to interest or penalty.

(4) If a dwelling or a nonfarm structure located on land covered by a development rights agreement or easement is required under the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.1101 to 333.25211 of the Michigan Compiled Laws, to connect to an improvement created by a special assessment, the owner of that dwelling or nonfarm structure shall pay only that portion of the special assessment directly attributable to the actual use of the improvement created by the special assessment.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 233, Imd. Eff. June 5, 1996.

**Popular name:** Act 451

**Popular name:** Farmland and Open Space

**Popular name:** NREPA

### **324.36109 Credit against state income tax or former state single business tax act or Michigan business tax act.**

Sec. 36109. (1) An owner of farmland and related buildings subject to 1 or more development rights agreements under section 36104 or agricultural conservation easements or purchases of development rights under section 36111b or 36206 who is required or eligible to file a return as an individual or a claimant under the state income tax act may claim a credit against state income tax liability for the amount by which the property taxes on the land and structures used in the farming operation, including the homestead, restricted by the development rights agreements, agricultural conservation easements, or purchases of development rights exceed 3.5% of the household income as defined in section 508 of the income tax act of 1967, 1967 PA 281, MCL 206.508, excluding a deduction if taken under section 613 of the internal revenue code of 1986, 26 USC 613. For the purposes of this section, all of the following apply:

(a) A partner in a partnership is considered an owner of farmland and related buildings owned by the partnership and covered by a development rights agreement, agricultural conservation easement, or purchase of development rights. A partner is considered to pay a proportion of the property taxes on that property equal to the partner's share of ownership of capital or distributive share of ordinary income as reported by the partnership to the Internal Revenue Service or, if the partnership is not required to report that information to the Internal Revenue Service, as provided in the partnership agreement or, if there is no written partnership agreement, a statement signed by all the partners. A partner claiming a credit under this section based upon the partnership agreement or a statement shall file a copy of the agreement or statement with his or her income tax return. If the agreement or statement is not filed, the department of treasury shall deny the credit. All partners in a partnership claiming the credit allowed under this section shall compute the credit using the same basis for the apportionment of the property taxes.

(b) A shareholder of a corporation that has filed a proper election under subchapter S of chapter 1 of subtitle A of the internal revenue code of 1986, 26 USC 1361 to 1379, is considered an owner of farmland and related buildings covered by a development rights agreement that are owned by the corporation. A shareholder is considered to pay a proportion of the property taxes on that property equal to the shareholder's percentage of stock ownership for the tax year as reported by the corporation to the Internal Revenue Service. Except as provided in subsection (8), this subdivision applies to tax years beginning after 1987.

(c) Except as otherwise provided in this subdivision, an individual in possession of property for life under a life estate with remainder to another person or holding property under a life lease is considered the owner of that property if it is farmland and related buildings covered by a development rights agreement. Beginning January 1, 1986, if an individual in possession of property for life under a life estate with remainder to another person or holding property under a life lease enters into a written agreement with the person holding the

remainder interest in that land and the written agreement apportions the property taxes in the same manner as revenue and expenses, the life lease or life estate holder and the person holding the remainder interest may claim the credit under this act as it is apportioned to them under the written agreement upon filing a copy of the written agreement with the return.

(d) If a trust holds farmland and related buildings covered by a development rights agreement and an individual is treated under subpart E of subchapter J of subchapter A of chapter 1 of the internal revenue code of 1986, 26 USC 671 to 679, as the owner of that portion of the trust that includes the farmland and related buildings, that individual is considered the owner of that property.

(e) An individual who is the sole beneficiary of a trust that is the result of the death of that individual's spouse is considered the owner of farmland and related buildings covered by a development rights agreement and held by the trust if the trust conforms to all of the following:

(i) One hundred percent of the trust income is distributed to the beneficiary in the tax year in which the trust receives the income.

(ii) The trust terms do not provide that any portion of the trust is to be paid, set aside, or otherwise used in a manner that would qualify for the deduction allowed by section 642(c) of the internal revenue code of 1986, 26 USC 642.

(f) A member in a limited liability company is considered an owner of farmland and related buildings covered by a development rights agreement that are owned by the limited liability company. A member is considered to pay a proportion of the property taxes on that property equal to the member's share of ownership or distributive share of ordinary income as reported by the limited liability company to the Internal Revenue Service.

(2) An owner of farmland and related buildings subject to 1 or more development rights agreements under section 36104 or agricultural conservation easements or purchases of development rights under section 36111b or 36206 to whom subsection (1) does not apply may claim a credit under the former single business tax act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, for the amount by which the property taxes on the land and structures used in farming operations restricted by the development rights agreements, agricultural conservation easements, or purchases of development rights exceed 3.5% of the adjusted business income of the owner as defined in section 36 of the former single business tax act, 1975 PA 228, or the business income tax base of the owner as defined in section 201 of the Michigan business tax act, 2007 PA 36, MCL 208.1201, plus compensation to shareholders not included in adjusted business income or the business income tax base, excluding any deductions if taken under section 613 of the internal revenue code of 1986, 26 USC 613. When calculating adjusted business income for tax years beginning before 1987, federal taxable income shall not be less than zero for the purposes of this subsection only. A participant is not eligible to claim a credit and refund against the former single business tax act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, unless the participant demonstrates that the participant's agricultural gross receipts of the farming operation exceed 5 times the property taxes on the land for each of 3 out of the 5 tax years immediately preceding the year in which the credit is claimed. This eligibility requirement does not apply to those participants who executed farmland development rights agreements under this part before January 1, 1978. A participant may compare, during the contract period, the average of the most recent 3 years of agricultural gross receipts to property taxes in the first year that the participant entered the program under the present contract in calculating the gross receipts qualification. Once an election is made by the participant to compute the benefit in this manner, all future calculations shall be made in the same manner.

(3) If the farmland and related buildings covered by a development rights agreement under section 36104 or an agricultural conservation easement or purchase of development rights under section 36111b or 36206 are owned by more than 1 owner, each owner is allowed to claim a credit under this section based upon that owner's share of the property tax payable on the farmland and related buildings. The department of treasury shall consider the property tax equally apportioned among the owners unless a written agreement signed by all the owners is filed with the return, which agreement apportions the property taxes in the same manner as all other items of revenue and expense. If the property taxes are considered equally apportioned, a husband and wife shall be considered 1 owner, and a person with respect to whom a deduction under section 151 of the internal revenue code of 1986, 26 USC 151, is allowable to another owner of the property shall not be considered an owner.

(4) A beneficiary of an estate or trust to which subsection (1) does not apply is entitled to the same percentage of the credit provided in this section as that person's percentage of all other distributions by the estate or trust.

(5) If the allowable amount of the credit claimed exceeds the state income tax or the state business tax otherwise due for the tax year or if there is no state income tax or the state business tax due for the tax year,

the amount of the claim not used as an offset against the state income tax or the state business tax, after examination and review, shall be approved for payment to the claimant pursuant to 1941 PA 122, MCL 205.1 to 205.31. The total credit allowable under this part and chapter 9 of the income tax act of 1967, 1967 PA 281, MCL 206.501 to 206.532, or the former single business tax act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, shall not exceed the total property tax due and payable by the claimant in that year. The amount the credit exceeds the property tax due and payable shall be deducted from the credit claimed under this part.

(6) For purposes of audit, review, determination, appeals, hearings, notices, assessments, and administration relating to the credit program provided by this section, the state income tax act, the former single business tax act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, applies according to which tax the credit is claimed against. If an individual is allowed to claim a credit under subsection (1) based upon property owned or held by a partnership, S corporation, or trust, the department of treasury may require that the individual furnish it with a copy of a tax return, or portion of a tax return, and supporting schedules that the partnership, S corporation, or trust files under the internal revenue code.

(7) The department of treasury shall account separately for payments under this part and not combine them with other credit programs. A payment made to a claimant for a credit claimed under this part shall be issued by 1 or more warrants made out to the county treasurer in each county in which the claimant's property is located and the claimant, unless the claimant specifies on the return that a copy of the receipt showing payment of the property taxes that became a lien in the year for which the credit is claimed, or that became a lien in the year before the year for which the credit is claimed, is attached to the income tax or business tax return filed by the claimant. If the claimant specifies that a copy of the receipt is attached to the return, the payment shall be made directly to the claimant. A warrant made out to a claimant and a county treasurer shall be used first to pay delinquent property taxes, interest, penalties, and fees on property restricted by the development rights agreement. If the warrant exceeds the amount of delinquent taxes, interest, penalties, and fees, the county treasurer shall remit the excess to the claimant. If a claimant falsely specifies that the receipt showing payment of the property taxes is attached to the return and if the property taxes on the land subject to that development rights agreement were not paid before the return was filed, all future payments to that claimant of credits claimed under this act attributable to that development rights agreement may be made payable to the county treasurer of the county in which the property subject to the development rights agreement is located and to that claimant.

(8) For property taxes levied after 1987, a person that was an S corporation and had entered into a development rights agreement before January 1, 1989, and paid property taxes on that property, may claim the credit allowed by this section as an owner eligible under subsection (2). A subchapter S corporation claiming a credit as permitted by this subsection for taxes levied in 1988 through 1990 shall claim the credit by filing an amended return under the former single business tax act, 1975 PA 228. If a subchapter S corporation files an amended return as permitted by this subsection and if a shareholder of the subchapter S corporation claimed a credit under subsection (1)(b) for the same property taxes, the shareholder shall file an amended return under the state income tax act. A subchapter S corporation is not entitled to a credit under this subsection until all of its shareholders file the amended returns required by this subsection. The department of treasury shall first apply a credit due to a subchapter S corporation under this subsection to repay credits claimed under this section by the subchapter S corporation's shareholders for property taxes levied in 1988 through 1990 and shall refund any remaining credit to the S corporation. Interest or penalty is not due or payable on an income tax liability resulting from an amended return required by this subsection. A subchapter S corporation electing to claim a credit as an owner eligible under subsection (2) shall not claim a credit under subsection (1) for property taxes levied after 1987.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 233, Imd. Eff. June 5, 1996;—Am. 2000, Act 421, Eff. Mar. 28, 2001;—Am. 2002, Act 75, Imd. Eff. Mar. 15, 2002;—Am. 2007, Act 174, Imd. Eff. Dec. 21, 2007;—Am. 2016, Act 265, Eff. Sept. 26, 2016.

**Popular name:** Act 451

**Popular name:** Farmland and Open Space

**Popular name:** NREPA

### **324.36110 Sale of land; notice; death or disability of owner; division into smaller parcels of land; "individual essential to the operation of a farm" defined; fee prohibited.**

Sec. 36110. (1) Land subject to a development rights agreement or easement may be sold without penalty under sections 36111, 36112, and 36113, if the use of the land by the successor in title complies with the provisions contained in the development rights agreement or easement. The seller shall notify the

governmental authority having jurisdiction over the development rights of the change in ownership.

(2) If the owner of land subject to a development rights agreement or easement dies or becomes totally and permanently disabled or when an individual essential to the operation of the farm dies or becomes totally and permanently disabled, the land may be relinquished from the program under this part and is subject to a lien pursuant to sections 36111(11), 36112(7), and 36113(7). A request for relinquishment under this section shall be made within 3 years from the date of death or disability. A request for relinquishment under this subsection shall be made only by the owner in case of a disability or, in case of death, the person who becomes the owner through survivorship or inheritance.

(3) If an owner of land subject to a development rights agreement becomes totally and permanently disabled or dies, land containing structures that were present before the recording of the development rights agreement may be relinquished from the agreement, upon request of the disabled agreement holder or upon request of the person who becomes an owner through survivorship or inheritance, and upon approval of the local governing body and the state land use agency. Not more than 2 acres may be relinquished under this subsection unless additional land area is needed to encompass all of the buildings located on the parcel, in which case not more than 5 acres may be relinquished. If the parcel proposed to be relinquished is less in area than the minimum parcel size required by local zoning, the parcel may not be relinquished unless a variance is obtained from the local zoning board of appeals to allow for the smaller parcel size. The portion of the farmland relinquished from the development rights agreement under this subsection is subject to a lien pursuant to section 36111(11).

(4) The land described in a development rights agreement may be divided into smaller parcels of land and continued under the same terms and conditions as the original development rights agreement. The smaller parcels created by the division must meet the minimum requirements for being enrolled under this act or be 40 acres or more in size. Farmland may be divided once under this subsection without fee by the state land use agency. The state land use agency may charge a reasonable fee not greater than the state land use agency's actual cost of dividing the agreement for all subsequent divisions of that farmland. When a division of a development rights agreement is made under this subsection and is executed and recorded, the state land use agency shall notify the applicant, the local governing body and its assessing office, all reviewing agencies, and the department of treasury.

(5) As used in this section, "individual essential to the operation of the farm" means a co-owner, partner, shareholder, farm manager, or family member, who, to a material extent, cultivates, operates, or manages farmland under this part. An individual is considered involved to a material extent if that individual does 1 or more of the following:

(a) Has a financial interest equal to or greater than 1/2 the cost of producing the crops, livestock, or products and inspects and advises and consults with the owner on production activities.

(b) Works 1,040 hours or more annually in activities connected with production of the farming operation.

(6) The state land use agency shall not charge a fee to process a change of ownership under subsection (1) or a division under subsection (4).

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 233, Imd. Eff. June 5, 1996;—Am. 2016, Act 265, Eff. Sept. 26, 2016.

**Popular name:** Act 451

**Popular name:** Farmland and Open Space

**Popular name:** NREPA

### **324.36111 Expiration, renewal, relinquishment, or termination of development rights agreement.**

Sec. 36111. (1) A development rights agreement expires at the expiration of the term of the agreement unless renewed with the consent of the owner of the land. If the owner of the land has complied with the requirements of this part regarding development rights agreements, the owner is entitled to automatic renewal of the agreement upon written request of the owner. A development rights agreement may be renewed for a term of not less than 7 years. If a development rights agreement is renewed, the state land use agency shall send a copy of the renewal contract to the local governing body.

(2) A development rights agreement or a portion of the farmland covered by a development rights agreement may be relinquished as provided in this section and section 36111a. Farmland may be relinquished by this state before a termination date contained in the instrument under either of the following circumstances:

(a) If approved by the local governing body and the state land use agency, land containing structures that were present before the recording of the development rights agreement may be relinquished from the agreement. Not more than 2 acres may be relinquished under this subdivision unless additional land area is needed to encompass all of the buildings located on the parcel, in which case not more than 5 acres may be

relinquished. If the size of the parcel proposed to be relinquished is less than that required by local zoning, the parcel shall not be relinquished unless a variance is obtained from the local zoning board of appeals to allow for the smaller parcel size.

(b) If approved by the local governing body and the state land use agency, land may be relinquished from the agreement for the construction of a residence by an individual essential to the operation of the farm as defined in section 36110(5). Not more than 2 acres may be relinquished under this subdivision. If the size of the parcel proposed to be relinquished is less than that required by local zoning, the parcel shall not be relinquished unless a variance is obtained from the local zoning board of appeals to allow for the smaller parcel size.

(3) Until April 1, 1997, if an owner who entered into or renewed a development rights agreement before April 15, 1994 makes a request, in writing, to the state land use agency, to terminate that development rights agreement with respect to all or a portion of the farmland covered by the agreement, the state land use agency shall approve the request and relinquish that farmland from the development rights agreement. If farmland is relinquished under this subsection, the state land use agency shall notify the local governing body of the local unit of government in which the land is located of the relinquishment.

(4) If the request for relinquishment of the development rights agreement is approved, the state land use agency shall prepare an instrument, subject to subsections (5) to (8), and shall forward the original relinquishment instrument to the applicant. The applicant shall have the relinquishment instrument recorded by the register of deeds in the county in which the property is located. The applicant shall provide a copy of the recorded relinquishment instrument to the department.

(5) If a development rights agreement or a portion of a development rights agreement is to be relinquished pursuant to subsection (2) or section 36111a, the state land use agency shall record a lien against the property formerly subject to the development rights agreement for the total amount of the allocated tax credit of the last 7 years, including the year of termination, received by an owner under section 36109 and attributable to the property formerly subject to the development rights agreement, plus interest at the rate of 6% per annum simple interest from the time the credit was received until the lien is placed on the property.

(6) If the property being relinquished from the development rights agreement is less than all of the property subject to that development rights agreement, the allocated tax credit for the development rights agreement shall be multiplied by the property's share of the taxable value of the agreement. As used in this subsection:

(a) "The allocated tax credit" means the amount obtained by multiplying the owner's total farmland preservation credit claimed in that year on all agreements by the quotient of the ad valorem property tax levied in that year on property subject to the development rights agreement that included the property being relinquished from the agreement divided by the total property taxes levied on property subject to any development rights agreement and used in determining the farmland preservation credit in that year.

(b) "The property's share of the taxable value of the agreement" means the quotient of the taxable value of the property being relinquished from the agreement divided by the total taxable value of property subject to the development rights agreement that included the property being relinquished from the agreement. For years before 1995, taxable value means assessed value.

(7) Thirty days before the recording of a lien under this section, the state land use agency shall notify the owner of the farmland subject to the development rights agreement of the amount of the lien, including interest, if any. If the lien amount is paid before 30 days after the owner is notified, the lien shall not be recorded. The lien may be paid and discharged at any time and is payable to the state by the owner of record when the land or any portion of it is sold by the owner of record, or if the land is converted to a use prohibited by the former development rights agreement. The lien shall be discharged upon renewal or reentry in a development rights agreement, except that a subsequent lien shall not be less than the lien discharged. Notwithstanding any other provision of this section, from July 1, 2011 through September 30, 2011, a lien under this section recorded before January 1, 2011 may be paid at 85% of the face value of the lien. From October 1, 2011 through March 31, 2012, a lien under this section recorded before January 1, 2011 may be paid at 90% of the face value of the lien.

(8) Upon the termination of all or a portion of the development rights agreement under subsection (3) or, subject to subsection (14), the termination of a development rights agreement under subsection (1), the state land use agency shall prepare and record a lien, if any, against the property formerly subject to the development rights agreement for the total amount of the allocated tax credit of the last 7 years, including the year of termination, received by the owner under section 36109, attributable to the property formerly subject to the development rights agreement. The lien shall be without interest or penalty and is payable as provided in subsection (7). However, if the development rights agreement was approved or rejected by the local governing body under section 36104 on or after July 1, 2012 and is terminated under subsection (1), the amount of the lien shall include interest at the current monthly interest rate of 1 percentage point above the

adjusted prime rate per annum from the time the lien is recorded until it is paid. The adjusted prime rate shall be determined as provided in section 23 of 1941 PA 122, MCL 205.23.

(9) The state land use agency shall notify the department of treasury of the termination of a development rights agreement.

(10) The unappropriated proceeds from lien payments made under this part shall be forwarded to the state treasurer for deposit in the agricultural preservation fund created in section 36202.

(11) Upon the relinquishment of all of the farmland under section 36110(2) or a portion of the farmland under section 36110(3), the state land use agency shall prepare and record a lien against the property formerly subject to a development rights agreement in an amount calculated as follows:

(a) Establishing a term of years by multiplying 7 by a fraction, the numerator of which is the number of years the farmland was under the development rights agreement, including any extensions, and the denominator of which is the number representing the term of years of that agreement, including any extensions.

(b) The lien amount equals the total amount of the allocated tax credit claimed attributable to that development rights agreement in the immediately preceding term of years as determined in subdivision (a).

(12) When a lien is paid under this section, the state land use agency shall prepare and record a discharge of lien with the register of deeds in the county in which the land is located. The discharge of lien shall specifically state that the lien has been paid in full, that the lien is discharged, that the development rights agreement and accompanying contract are terminated, and that the state has no further interest in the land under that agreement.

(13) A farmland development rights agreement is automatically relinquished when the farmland becomes subject to an agricultural conservation easement or purchase of development rights under section 36111b or 36206.

(14) If, upon expiration of the term of a farmland development rights agreement, the farmland becomes subject to an agricultural conservation easement or purchase of development rights under section 36111b or 36206 or if a farmland development rights agreement is automatically relinquished under subsection (13), the farmland is not subject to a lien under this section.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1995, Act 173, Imd. Eff. Oct. 9, 1995;—Am. 1996, Act 233, Imd. Eff. June 5, 1996;—Am. 1996, Act 567, Imd. Eff. Jan. 16, 1997;—Am. 2000, Act 262, Imd. Eff. June 29, 2000;—Am. 2002, Act 75, Imd. Eff. Mar. 15, 2002;—Am. 2011, Act 79, Imd. Eff. July 12, 2011;—Am. 2016, Act 265, Eff. Sept. 26, 2016.

**Popular name:** Act 451

**Popular name:** Farmland and Open Space

**Popular name:** NREPA

### **324.36111a Relinquishment of development rights agreement; conditions; “economic viability” defined.**

Sec. 36111a. (1) Upon request from a landowner and a local governing body, the state land use agency shall relinquish farmland from the development rights agreement if 1 or both of the following occur:

(a) The local governing body determines 1 or more of the following:

(i) That, because of the quality of the farmland, agricultural production cannot be made economically viable with generally accepted agricultural and management practices.

(ii) That surrounding conditions impose physical obstacles to the agricultural operation or prohibit essential agricultural practices.

(iii) That significant natural physical changes in the farmland have occurred that are generally irreversible and permanently limit the productivity of the farmland.

(iv) That a court order restricts the use of the farmland so that agricultural production cannot be made economically viable.

(b) The local governing body determines that the relinquishment is in the public interest and that the farmland to be relinquished meets 1 or more of the following conditions:

(i) The farmland is to be owned, operated, and maintained by a public body for a public use.

(ii) The farmland had been zoned for the immediately preceding 3 years for a commercial or industrial use.

(iii) The farmland is zoned for commercial or industrial use and the relinquishment of the farmland will be mitigated by 1 of the following means:

(A) For every 1 acre of farmland to be relinquished, an agricultural conservation easement will be acquired over 2 acres of farmland of comparable or better quality located within the same local unit of government where the farmland to be relinquished is located. The agricultural conservation easement shall be held by the local unit of government where the farmland to be relinquished is located or, if the local governing body



declines to hold the agricultural conservation easement, by the state land use agency.

(B) If an agricultural conservation easement cannot be acquired as provided under sub-subparagraph (A), there will be deposited into the state agricultural preservation fund created in section 36202 an amount equal to twice the value of the development rights to the farmland being relinquished, as determined by a certified appraisal.

(iv) The farmland is to be owned, operated, and maintained by an organization exempt from taxation under section 501(c)(3) of the internal revenue code of 1986, 26 U.S.C. 501, and the relinquishment will be beneficial to the local community.

(2) In determining public interest under subsection (1)(b), the governing body shall consider all of the following:

(a) The long-term effect of the relinquishment upon the preservation and enhancement of agriculture in the surrounding area, including any nonfarm encroachment upon other agricultural operations in the surrounding area.

(b) Any other reasonable and prudent site alternatives to the farmland to be relinquished.

(c) Any infrastructure changes and costs to the local governmental unit that will result from the development of the farmland to be relinquished.

(3) If a landowner's relinquishment application under this section is denied by the local governing body, the landowner may appeal that denial to the state land use agency. In determining whether to grant the appeal and approve the relinquishment, the state land use agency shall follow the criteria established in subsection (1)(a) or follow the criteria in subsection (1)(b) and consider the factors described in subsection (2).

(4) The state land use agency shall review an application approved by the local governing body to verify that the criteria provided in subsection (1)(a) were met or the criteria in subsection (1)(b) were met and the factors in subsection (2) were considered. If the local governing body did not render a determination in accordance with this subsection, the state land use agency shall not relinquish the farmland from the development rights agreement.

(5) A local governing body may elect to waive its right to make a relinquishment determination under subsection (1)(a) or (b) by providing written notice of that election to the state land use agency. The written notice shall grant the state land use agency sole authority to grant or deny the application as provided in this section.

(6) A decision by the state land use agency to grant or deny an application for relinquishment under this section that adversely affects a land owner or a local governing body is subject to a contested case hearing as provided under this act and the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(7) As used in this section, "economic viability" means that the cash flow returning to the farming operation is positive. The local governing body or state land use agency shall evaluate an application for relinquishment, and determine the economic viability of the affected farming operation, by doing all of the following:

(a) Estimating crop, livestock, or product value of the farmland using locally accepted production methods and local United States department of agriculture yield capabilities for the specific soil types and average price for crop, livestock, or product over the past 5 years.

(b) Adding average yearly property tax credits afforded by the development rights agreement over the immediately preceding 5-year period.

(c) Subtracting estimated expenses directly attributed to the production of the crop, livestock, or product, including, but not limited to, seed, fertilizer, insecticide, building and machinery repair, drying, trucking, and property taxes.

(d) Subtracting the estimated cost of the operator's labor and management time at rates established by the United States department of agriculture for "all labor", Great Lakes area, as published in the United States department of agriculture labor reports.

(e) Subtracting typical capital replacement cost per acre of nonland assets using a useful life depreciation rate for comparable farming operations.

**History:** Add. 1996, Act 233, Imd. Eff. June 5, 1996;—Am. 2002, Act 75, Imd. Eff. Mar. 15, 2002.

**Popular name:** Act 451

**Popular name:** Farmland and Open Space

**Popular name:** NREPA

### **324.36111b Development rights or acquisition of agricultural conservation easements; application; selection criteria and scoring system; notification; points; determination of development rights value; approval by director; installment purchase plan; provisions for**

**protection of farmland; termination of easements; value development rights in event of condemnation.**

Sec. 36111b. (1) An application submitted under section 36111(10) for purchase of development rights or acquisition of agricultural conservation easements shall be evaluated and ranked according to selection criteria and a scoring system approved by the commission of agriculture. In developing a point system for selecting the parcels for purchase of development rights or the acquisition of agricultural conservation easements, the department of agriculture shall seek the assistance of the department of natural resources, Michigan state university, the United States department of agriculture-natural resources conservation service, and other appropriate professional and industry organizations. The selection criteria shall give consideration to the quality and physical characteristics of the parcel as well as surrounding land uses and threat of development.

(2) The department of agriculture shall prepare a notification to those individuals whose farmland development rights agreements are expiring in the year of application or expiring 1 year after the year of application. The notice shall be completed not less than 90 days before an application deadline set by the department of agriculture and shall include written information and details regarding the program. Applications for the purchase of development rights or the acquisition of agricultural conservation easements shall be submitted to the department of agriculture by the owner of that land and must include written support by the local governing body.

(3) In developing a scoring system, points shall be given to farmland that meets 1 or more of the following criteria, with subdivision (a) given priority over subdivisions (b) to (e):

(a) Productive capacity of farmland suited for the production of feed, food, and fiber, including, but not limited to, prime or unique farmland or farmland of local importance, as defined by the United States department of agriculture-natural resources conservation service.

(b) Lands that are enrolled under this act.

(c) Prime agricultural lands that are faced with development pressure that will permanently alter the ability for that land to be used for productive agricultural activity.

(d) Parcels that would complement and are part of a documented, long-range effort or plan for land preservation by the local governing body.

(e) Parcels with available matching funds from the local governing body, private organizations, or other sources.

(4) For purposes of subsections (7) and (8), the value of development rights in the purchase of development rights or the acquisition of agricultural conservation easements shall be determined by subtracting the current fair market value of the property without the development rights from the current fair market value of the property with all development rights.

(5) The director of the department of agriculture shall approve individual parcels for the purchase of development rights or the acquisition of agricultural conservation easements based upon the adopted selection criteria and scoring process. The commission of agriculture shall approve a method to establish the price to be paid for the purchase of development rights or the acquisition of agricultural conservation easements, such as via appraisal, bidding, or a formula-based process and shall establish the maximum price to be paid on a per purchase basis from the lien fund. The director of the department of agriculture, after negotiations with the landowner, shall approve the price to be paid for purchase of development rights or the acquisition of the agricultural conservation easements. Proper releases from mortgage holders and lienholders must be obtained and executed to ensure that all development rights are purchased free and clear of all encumbrances.

(6) The department may purchase the agricultural conservation easement through an installment purchase agreement under terms negotiated by the department.

(7) An agricultural conservation easement shall include appropriate provisions for the protection of the farmland and other unique and critical benefits. An agricultural conservation easement may be terminated if the land, as determined by the commission of agriculture, meets 1 or more of the criteria described in section 36111a(1)(a) to (d). An agricultural conservation easement or portion of an agricultural conservation easement shall not be terminated unless approved by the local governing body and the commission of natural resources and the commission of agriculture. If an agricultural conservation easement is terminated, the current fair market value of the development rights, at the time of termination, shall be paid to the state land use agency. Any payment received by the state land use agency under this part shall be used to acquire agricultural conservation easements on additional farmland under section 36111(10).

(8) Whenever a public entity, authority, or political subdivision exercises the power of eminent domain and condemns land enrolled under this act, the value of the land shall include the value of development rights covered by development rights agreements or agricultural conservation easements. If the development rights

have been purchased or agricultural conservation easements have been acquired under section 36111(10), the value of the development rights at the time of condemnation shall be paid to the state land use agency and any payment received by the state land use agency shall be used to acquire agricultural conservation easements on additional land under section 36111(10).

**History:** Add. 1996, Act 233, Imd. Eff. June 5, 1996;—Am. 2000, Act 262, Imd. Eff. June 29, 2000.

**Popular name:** Act 451

**Popular name:** Farmland and Open Space

**Popular name:** NREPA

### **324.36112 Relinquishment of open space development rights easement pursuant to MCL 324.36105.**

Sec. 36112. (1) An open space development rights easement pursuant to section 36105 shall be relinquished by the state at the expiration of the term of the easement unless renewed with the consent of the owner of the land. If the owner of the land has complied with the requirements of this part regarding open space development rights easements, the owner is entitled to automatic renewal of the agreement upon written request of the landowner.

(2) An open space development rights easement may be relinquished by the state prior to a termination date contained in the instrument as follows:

(a) At any time the state determines that the development of the land is in the public interest and in agreement with the owner of the land.

(b) The owner of the land may submit an application to the local governing body where the original application for an open space development rights easement was submitted requesting that the development rights easement be relinquished. The application shall be made on a form prescribed by the state land use agency. The request for relinquishment shall be processed and shall be subject to the provisions as provided in sections 36104 and 36105 for review and approval.

(3) If the request for relinquishment of the development rights easement is approved, the state land use agency shall prepare an instrument providing for the relinquishment of the open space development rights easement, subject to subsections (4), (5), (6), and (7), and shall record it with the register of deeds of the county in which the land is situated.

(4) At the time a development rights easement is to be relinquished pursuant to subsection (2)(b), the state land use agency shall cause to be prepared and recorded a lien against the property formerly subject to the development rights easement for the total amount of the ad valorem taxes not paid on the development rights during the period it was held by the state, if any. The lien shall provide that interest at the rate of 6% per annum compounded shall be added to the ad valorem taxes not paid from the time the exemption was received until it is paid.

(5) The lien shall become payable to the state by the owner of record at the time the land or any portion of it is sold by the owner of record, or if the land is converted to a use prohibited by the former open space development rights easement.

(6) Upon the termination of the open space development rights easement pursuant to subsection (2)(a), the development rights revert back to the owner without penalty or interest.

(7) Upon the natural termination of the open space development rights easement pursuant to subsection (1), the state land use agency shall cause to be prepared and recorded a lien against the property formerly subject to the open space development rights easement. The amount of the lien shall be the total amount of the last 7 years ad valorem taxes not paid on the development rights during the period it was held by the state, if any. The lien shall be without penalty or interest and shall be payable subject to subsection (5).

(8) A copy of the renewal or relinquishment of an open space development rights easement shall be sent to the local governing body's assessing office.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** Farmland and Open Space

**Popular name:** NREPA

### **324.36113 Relinquishment of open space development rights easement pursuant to MCL 324.36106.**

Sec. 36113. (1) An open space development rights easement pursuant to section 36106 shall be relinquished by the local governing body at the expiration of the term of the easement unless renewed with the consent of the owner of the land if the owner of the land has complied with the requirements of this part

regarding open space development rights easements, the owner shall be entitled to automatic renewal of the agreement upon written request of the landowner.

(2) An open space development rights easement may be relinquished by the local governing body prior to a termination date contained in the instrument as follows:

(a) At any time the local governing body determines that the development of the land is in the public interest and in agreement with the owner of the land.

(b) The owner of the land may submit an application to the local governing body having jurisdiction requesting that the development rights easement be relinquished. The application shall be made on a form prescribed by the state land use agency. The request for relinquishment shall be processed and shall be subject to the provisions as provided in section 36106 for review and approval.

(3) If the request for relinquishment of the open space development rights easement is approved, the local governing body shall prepare an instrument providing for the relinquishment of the open space development rights easement, subject to subsections (4), (5), (6), and (7), and shall record it with the register of deeds of the county in which the land is situated.

(4) At the time an open space development rights easement is to be relinquished pursuant to subsection (2)(b), the local governing body shall cause to have prepared and recorded a lien against the property formerly subject to the open space development rights easement. The amount of the lien shall be the total amount of the ad valorem taxes not paid on the development rights during the period it was held by the local governing body, if any. The lien shall provide that interest at the rate of 6% per annum compounded shall be added to the ad valorem taxes exemption from the time granted until the lien is paid.

(5) The lien shall become payable to the local governing body by the owner of record at the time the land or any portion of it is sold by the owner of record, or if the land is converted to a use prohibited by the former open space development rights easement.

(6) Upon the termination of the open space development rights easement pursuant to subsection (2)(a), the development rights revert back to the owner without penalty or interest and the development rights easement upon the land expire.

(7) Upon the natural termination of the open space development rights easement pursuant to subsection (1), the local governing body shall cause to be prepared and recorded a lien against the property formerly subject to the open space development rights easement. The amount of the lien shall be the total amount of the last 7 years ad valorem taxes not paid on the development rights during the period it was held by the local governing body, if any. The lien shall be without penalty or interest and will be payable subject to subsection (5).

(8) A copy of the renewal or relinquishment of an open space development rights easement shall be sent to the local assessing office.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** Farmland and Open Space

**Popular name:** NREPA

### **324.36114 Injunction; penalty.**

Sec. 36114. If the owner or a successor in title of the land upon which a development rights agreement or easement has been recorded pursuant to this part changes the use of the land to a prohibited use or knowingly sells the land for a use other than those permitted in the development rights agreement or easement without first pursuing the provisions in sections 36110(2), 36111, 36112, and 36113, or receiving permission of the state land use agency, he or she may be enjoined by the state acting through the attorney general, or by the local governing body acting through its attorney, and is subject to a civil penalty for actual damages, which in no case shall exceed double the value of the land as established at the time the application for the development rights agreement or easement was approved.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** Farmland and Open Space

**Popular name:** NREPA

### **324.36115 Exchange of information.**

Sec. 36115. All departments and agencies of state government shall cooperate with the state land use agency in the exchange of information concerning projects and activities that might jeopardize the preservation of land contemplated by this part. The state land use agency shall periodically advise the

departments and agencies of state government of the location and description of land upon which there exists development rights agreements or easements and the departments and agencies shall harmonize their planning and projects consistent with the purposes of this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** Farmland and Open Space

**Popular name:** NREPA

### **324.36116 Rules.**

Sec. 36116. The state land use agency may promulgate rules for the administration of this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** Farmland and Open Space

**Popular name:** NREPA

### **324.36117 Repealed. 2016, Act 265, Eff. Sept. 26, 2016.**

**Compiler's note:** The repealed section pertained to report and recommendation for preservation of certain lands.

**Popular name:** Act 451

**Popular name:** Farmland and Open Space

**Popular name:** NREPA

## PART 362

### AGRICULTURAL PRESERVATION FUND

### **324.36201 Definitions.**

Sec. 36201. As used in this part:

(a) "Agricultural conservation easement" means a conveyance, by a written instrument, in which, subject to permitted uses, the owner relinquishes to the public in perpetuity his or her development rights and makes a covenant running with the land not to undertake development.

(b) "Agricultural use" means substantially undeveloped land devoted to the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, captive cervidae, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities. Agricultural use includes use in a federal acreage set-aside program, a federal conservation reserve program, or a wetland reserve program. Agricultural use does not include the management and harvesting of a woodlot.

(c) "Board" means the agricultural preservation fund board created in section 36204.

(d) "Commission" means the commission of agriculture and rural development.

(e) "Department" means the department of agriculture and rural development.

(f) "Development" means an activity that materially alters or affects the existing conditions or use of any land in a manner that is inconsistent with an agricultural use.

(g) "Development rights" means an interest in land that includes the right to construct a building or structure, to improve land for development, or to divide a parcel for development purposes.

(h) "Farmland" means 1 or more of the following:

(i) A farm of 40 or more acres in 1 ownership, with 51% or more of the land area devoted to an agricultural use.

(ii) A farm of 5 acres or more in 1 ownership, but less than 40 acres, with 51% or more of the land area devoted to an agricultural use, that has produced a gross annual income from agriculture of \$200.00 per year or more per acre of cleared and tillable land. A farm described in this subparagraph enrolled in a federal acreage set-aside program or a federal conservation reserve program is considered to have produced a gross annual income from agriculture of \$200.00 per year or more per acre of cleared and tillable land.

(iii) A farm designated by the department as a specialty farm in 1 ownership that has produced a gross annual income of \$2,000.00 or more from an agricultural use. Specialty farms include, but are not limited to, greenhouses; equine breeding and grazing; the breeding and grazing of cervidae, pheasants, and other game animals; bees and bee products; mushrooms; aquaculture; and other similar uses and activities.

(iv) Parcels of land in 1 ownership that are not contiguous but which constitute an integral part of a farming operation being conducted on land otherwise qualifying as farmland may be included in an application under this part.

- (i) "Fund" means the agricultural preservation fund created in section 36202.
- (j) "Grant" means a grant for the purchase of an agriculture conservation easement under this part.
- (k) "Owner" means a person having a freehold estate in land coupled with possession and enjoyment. If land is subject to a land contract, owner means the vendee in agreement with the vendor.
- (l) "Permitted use" means any use expressly authorized within an agriculture conservation easement consistent with the farming operation or that does not adversely affect the productivity of the farmland. Storage, retail or wholesale marketing, or processing of agricultural products is a permitted use in a farming operation if more than 50% of the stored, processed, or merchandised products are produced by the farm operator for at least 3 of the immediately preceding 5 years. Permitted use includes oil and gas exploration and extraction, but does not include other mineral development that is inconsistent with an agricultural use.

**History:** Add. 2000, Act 262, Imd. Eff. June. 29, 2000;—Am. 2013, Act 86, Imd. Eff. June 28, 2013.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.36202 Agricultural preservation fund; creation; disposition; money remaining in fund; administration; expenditures.**

Sec. 36202. (1) The agricultural preservation 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, including federal funds, other state revenues, gifts, bequests, and other donations. The state treasurer shall direct the investment of the fund and shall credit to the fund interest and earnings from fund investments.

(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 be the administrator of the fund for auditing purposes.

(5) Money in the fund may be expended, upon appropriation, as follows:

(a) Not more than \$1,400,000.00 annually for the administrative costs of the department and the board in implementing this part and part 361.

(b) After expenditures for the administrative costs under subdivision (a), money in the fund may be used, upon approval of the board, to provide grants to local units of government pursuant to section 36203.

(c) After expenditures under subdivisions (a) and (b) have been made, if the amount of money remaining in the fund exceeds \$5,000,000.00, money in the fund may be used, upon approval of the board, pursuant to part 361 for the purchase of development rights to farmland or the acquisition of agricultural conservation easements.

(6) Expenditures of money in the fund as provided in this part are consistent with the state's interest in preserving farmland and are for an important public purpose.

**History:** Add. 2000, Act 262, Imd. Eff. June. 29, 2000;—Am. 2004, Act 75, Imd. Eff. Apr. 21, 2004;—Am. 2013, Act 86, Imd. Eff. June 28, 2013;—Am. 2016, Act 265, Eff. Sept. 26, 2016.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.36203 Purchase of agricultural conservation easements; establishment of grant program; application; eligibility; form; contents; forwarding to board.**

Sec. 36203. (1) The department shall establish a grant program to provide grants to eligible local units of government for the purchase of agricultural conservation easements.

(2) A grant application shall be submitted by the local unit of government applying for the grant. A local unit of government is eligible to submit a grant application under this section if both of the following requirements have been met:

(a) The local unit of government has adopted a development rights ordinance providing for a purchase of development rights program pursuant to the county zoning act, 1943 PA 183, MCL 125.201 to 125.240, the township zoning act, 1943 PA 184, MCL 125.271 to 125.310, or the city and village zoning act, 1921 PA 207, MCL 125.581 to 125.600, that contains all of the following:

(i) An application procedure.

(ii) The criteria for a scoring system for parcel selections within the local unit of government.

(iii) A method to establish the price to be paid for development rights, which may include an appraisal, bidding, or formula-based process.

(b) The local unit of government has adopted, within the last 10 years, a comprehensive land use plan that includes a plan for agricultural preservation or the local unit of government is included within a regional plan that was prepared within the last 10 years that includes a plan for agricultural preservation.

(3) An application for a grant shall be submitted on a form prescribed by the department. The grant application shall include at a minimum a list of the parcels proposed for acquisition of agricultural conservation easements, the size and location of each parcel, the amount of local matching funds, and the estimated acquisition value of the agricultural conservation easements.

(4) Upon receipt of grant applications pursuant to subsection (3), the department shall forward those grant applications to the board for consideration under section 36205.

**History:** Add. 2000, Act 262, Imd. Eff. June. 29, 2000.

**Popular name:** Act 451

**Popular name:** NREPA

**324.36204 Agricultural preservation fund board; creation; membership; appointment; terms; quorum; compensation; expenses; election of chairperson and vice-chairperson; removal of member; vacancy.**

Sec. 36204. (1) The agricultural preservation fund board is created within the department.

(2) The board shall consist of the following members:

(a) The director of the department or his or her designee.

(b) The director of the department of natural resources or his or her designee.

(c) Five individuals appointed by the governor as follows:

(i) Two individuals representing agricultural interests.

(ii) One individual representing conservation interests.

(iii) One individual representing development interests.

(iv) One individual representing the general public.

(d) In addition to the members described in subdivisions (a) to (c), the director of the department may appoint 2 individuals with knowledge and expertise in agriculture or land use, or local government, as nonvoting members.

(3) The members first appointed to the board shall be appointed within 60 days after the effective date of this section.

(4) Members of the board appointed under subsection (2)(c) and (d) shall serve for terms of 4 years or until a successor is appointed, whichever is later. However, of the members first appointed under subsection (2)(c), 1 shall be appointed for a term of 2 years, 2 shall be appointed for terms of 3 years, and 2 shall be appointed for terms of 4 years.

(5) A majority of the members of the board constitute a quorum for the transaction of business at a meeting of the board. A majority of the members present and serving are required for official action of the board.

(6) Members of the board shall serve without compensation. However, members of the board may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the board.

(7) The board shall annually elect a chairperson and a vice-chairperson from among its members.

(8) The board may remove a member of the board for incompetency, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

(9) A vacancy on the board shall be filled for the unexpired term in the same manner as the original appointment.

**History:** Add. 2000, Act 262, Imd. Eff. June. 29, 2000.

**Popular name:** Act 451

**Popular name:** NREPA

**324.36205 Application; evaluation criteria; priority; determination of grant awards; amount; notification; report to commission; maximum expenditure; portion of acquisition cost to be provided by applicant or another person.**

Sec. 36205. (1) An application submitted to the board under section 36203 shall be evaluated according to selection criteria established by the board. The criteria shall place a priority on the acquisition of agricultural conservation easements on farmland that meets 1 or more of the following:

(a) Farmland that has a productive capacity suited for the production of feed, food, and fiber.

(b) Farmland that would complement and is part of a documented, long-range effort or plan for land preservation by the local unit of government in which the farmland is located.

(c) Farmland that is located within an area that complements other land protection efforts by creating a block of farmland that is subject to an agricultural conservation easement under this part or part 361, or a development rights agreement under part 361, or in which development rights have been acquired under part

361.

(d) Farmland in which a greater portion of matching funds or a larger percentage of the agricultural conservation easement value is provided by a local unit of government or sources other than the fund.

(e) Other factors considered important by the board.

(2) After reviewing grant applications for the acquisition of agricultural conservation easements and evaluating them according to the criteria established in subsection (1), the board shall determine which grants should be awarded and the amount of the grants. Upon making its determination, the board shall notify the department and shall submit a report containing this information to the commission.

(3) The board may establish a maximum amount per acre that may be expended with money from the fund for the purchase of agricultural conservation easements.

(4) A grant shall require that a portion of the cost of acquiring an agricultural conservation easement shall be provided by the applicant or another person.

**History:** Add. 2000, Act 262, Imd. Eff. June. 29, 2000.

**Popular name:** Act 451

**Popular name:** NREPA

**324.36206 Distribution of grants to local units of government; condition; reviewing permitted uses; contribution of development rights; purchase by local unit of government through installment purchase agreement; joint holding by state and local unit of government; delegation of enforcement authority; transfer to property owner; tax credits under MCL 324.36109.**

Sec. 36206. (1) After the board determines which grants should be awarded, and the amount of the grants, the department shall distribute the grants to the local units of government awarded the grants. The department shall condition the receipt of a grant upon the department's approval of the agricultural conservation easements being acquired.

(2) In reviewing permitted uses contained within an agricultural conservation easement under subsection (1), the department shall consider all of the following:

(a) Whether the permitted uses adversely affect the productivity of farmland.

(b) Whether the permitted uses materially alter or negatively affect the existing conditions or use of the land.

(c) Whether the permitted uses result in a material alteration of an existing structure to a nonagricultural use.

(d) Whether the permitted uses conform with all applicable federal, state, and local laws and ordinances.

(3) The department may accept contributions of all or a portion of the development rights to 1 or more parcels of land, including a conservation easement or a historic preservation easement as defined in section 2140, as part of a transaction for the purchase of an agricultural conservation easement.

(4) A local unit of government that purchases an agricultural conservation easement with money from a grant may purchase the agricultural conservation easement through an installment purchase agreement under terms negotiated by the local unit of government.

(5) An agricultural conservation easement acquired under this part shall be held jointly by the state and the local unit of government in which the land subject to the agricultural conservation easement is located. However, the state may delegate enforcement authority of 1 or more agricultural conservation easements to the local units of government in which the agricultural conservation easements are located.

(6) An agricultural conservation easement acquired under this part may be transferred to the owner of the property subject to the agricultural conservation easement if the state and the local unit of government holding the agricultural conservation easement agree to the transfer and the terms of the transfer.

(7) Section 36109 provides for tax credits for an owner of farmland subject to an agricultural conservation easement under this section.

**History:** Add. 2000, Act 262, Imd. Eff. June. 29, 2000;—Am. 2002, Act 75, Imd. Eff. Mar. 15, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

**324.36207 Rules.**

Sec. 36207. The department may promulgate rules to implement this part.

**History:** Add. 2000, Act 262, Imd. Eff. June. 29, 2000.

**Popular name:** Act 451

**Popular name:** NREPA



ENDANGERED SPECIES  
PART 365  
ENDANGERED SPECIES PROTECTION

**324.36501 Definitions.**

Sec. 36501. As used in this part:

(a) "Endangered species" means any species of fish, plant life, or wildlife that is in danger of extinction throughout all or a significant part of its range, other than a species of insecta determined by the department or the secretary of the United States department of the interior to constitute a pest whose protection under this part would present an overwhelming and overriding risk to humans.

(b) "Fish or wildlife" means any member of the animal kingdom, including any mammal, fish, amphibian, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring, or the dead body or parts thereof. Fish or wildlife includes migratory birds, nonmigratory birds, or endangered birds for which protection is afforded by treaty or other international agreement.

(c) "Import" means to bring into, introduce into, or attempt to bring into or introduce into any place subject to the jurisdiction of this state.

(d) "Plant or plant life" means any member of the plant kingdom, including seeds, roots, and other parts of a member of the plant kingdom.

(e) "Species" includes any subspecies of fish, plant life, or wildlife and any other group of fish, plants, or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed or cross-pollinate when mature.

(f) "Take" means, in reference to fish and wildlife, to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct.

(g) "Take" means, in reference to plants, to collect, pick, cut, dig up, or destroy in any manner.

(h) "Threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.36502 Duties of department.**

Sec. 36502. The department shall perform those acts necessary for the conservation, protection, restoration, and propagation of endangered and threatened species of fish, wildlife, and plants in cooperation with the federal government, pursuant to the endangered species act of 1973, Public Law 93-205, 87 Stat. 884, and with rules promulgated by the secretary of the interior under that act.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**324.36503 Investigations; determinations; rule; review.**

Sec. 36503. (1) The department shall conduct investigations on fish, plants, and wildlife in order to develop information relating to population, distribution, habitat needs, limiting factors, and other biological and ecological data to determine management measures necessary for their continued ability to sustain themselves successfully. On the basis of these determinations and other available scientific and commercial data, which may include consultation with scientists and others who may have specialized knowledge, learning, or experience, the department shall promulgate a rule listing those species of fish, plants, and wildlife that are determined to be endangered or threatened within the state, pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(2) The department shall conduct a review of the state list of endangered and threatened species within not more than 2 years after its effective date and every 2 years thereafter, and may amend the list by appropriate additions or deletions pursuant to Act No. 306 of the Public Acts of 1969.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

**Administrative rules:** R 299.1021 et seq. of the Michigan Administrative Code.

### **324.36504 Programs; cooperative agreements.**

Sec. 36504. (1) The department may establish programs, including acquisition of land or aquatic habitat, as are considered necessary for the management of endangered or threatened species.

(2) In implementing the programs authorized by this section, the department may enter into cooperative agreements with federal and state agencies, political subdivisions of the state, or with private persons for the administration and management of any area or program established under this section or for investigation as outlined in section 36503.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.36505 Prohibitions; exceptions.**

Sec. 36505. (1) Except as otherwise provided in this part, a person shall not take, possess, transport, import, export, process, sell, offer for sale, buy, or offer to buy, and a common or contract carrier shall not transport or receive for shipment, any species of fish, plants, or wildlife appearing on the following lists:

(a) The list of fish, plants, and wildlife indigenous to the state determined to be endangered or threatened within the state pursuant to section 36503 or subsection (3).

(b) The United States list of endangered or threatened native fish and wildlife.

(c) The United States list of endangered or threatened plants.

(d) The United States list of endangered or threatened foreign fish and wildlife.

(2) A species of fish, plant, or wildlife appearing on any of the lists delineated in subsection (1) which enters the state from another state or from a point outside the territorial limits of the United States may enter, be transported, possessed, and sold in accordance with the terms of a federal permit issued pursuant to section 10 of the endangered species act of 1973, 16 USC 1539, or an applicable permit issued under the laws of another state.

(3) The department may, by rule, treat any species as an endangered species or threatened species even though it is not listed pursuant to section 36503, if it finds any of the following:

(a) The species so closely resembles in appearance, at the point in question, a species which is listed pursuant to section 36503 that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species.

(b) The effect of the substantial difficulty in differentiating between a listed and an unlisted species is an additional threat to an endangered or threatened species.

(c) The treatment of an unlisted species will substantially facilitate the enforcement and further the intent of this part.

(4) The department may permit the taking, possession, purchase, sale, transportation, exportation, or shipment of species of fish, plants, or wildlife which appear on the state list of endangered or threatened species compiled pursuant to section 36503 and subsection (3) for scientific, zoological, or educational purposes, for propagation in captivity of such fish, plants, or wildlife to ensure their survival.

(5) Upon good cause shown and where necessary to alleviate damage to property or to protect human health, endangered or threatened species found on the state list compiled pursuant to section 36503 and subsection (3) may be removed, captured, or destroyed, but only as authorized by a permit issued by the department pursuant to part 13. Carnivorous animals found on the state list may be removed, captured, or destroyed by any person in emergency situations involving an immediate threat to human life, but the removal, capture, or destruction shall be reported to the department within 24 hours of the act.

(6) This section does not prohibit any of the following:

(a) The importation of a trophy under a permit issued pursuant to section 10 of the endangered species act of 1973, 16 USC 1539, which is not for resale and which was lawfully taken in a manner permitted by the laws of the state, territory, or country where the trophy was caught, taken, or killed.

(b) The taking of a threatened species when the department has determined that the abundance of the species in the state justifies a controlled harvest not in violation of federal law.

(c) Subject to any permits that may be required by the department, the possession, transfer, transportation, importation, or exportation or the transport or receipt for shipment by a common or contract carrier of a raptor or the captive-bred progeny of a raptor, a raptor egg, or raptor semen acquired in accordance with applicable state and federal laws and regulations which allow raptors, raptor eggs, or raptor semen to be used in falconry or in the captive propagation of raptors for use in falconry.

(d) Subject to any permits that may be required by the department, the selling, offering for sale, buying, or offering to buy a raptor that was captive-bred or semen from a raptor that was captive-bred in accordance with

applicable state and federal laws and regulations which allow raptors or raptor semen to be used in falconry or in captive propagation of raptors for use in falconry.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1998, Act 470, Imd. Eff. Jan. 4, 1999;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.36506 Enforcement of part and rules.**

Sec. 36506. A law enforcement officer, police officer, sheriff's deputy, or conservation officer shall enforce this part and the rules promulgated under this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.36507 Violation; penalty.**

Sec. 36507. A person who violates this part or who fails to procure any permit required under this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days, or a fine of not more than \$1,000.00 or less than \$100.00, or both.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 128, Imd. Eff. Mar. 13, 1996.

**Popular name:** Act 451

**Popular name:** NREPA