

**HOUSE SUBSTITUTE FOR
SENATE BILL NO. 1211**

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 1307, 1511, 30101, 30112, 30301, 30304, 30305, 30306, 30307, 30314, 30316, 30319, 30321, and 32301 (MCL 324.1307, 324.1511, 324.30101, 324.30112, 324.30301, 324.30304, 324.30305, 324.30306, 324.30307, 324.30314, 324.30316, 324.30319, 324.30321, and 324.32301), section 1307 as amended by 2018 PA 268, section 1511 as added by 2011 PA 237, section 30101 as amended by 2014 PA 351, sections 30112, 30314, 30316, 30319, and 32301 as added by 1995 PA 59, section 30301 as amended by 2012 PA 247, section 30304 as amended by 2004 PA 325, sections 30305, 30306, and 30321 as amended by 2013 PA 98, and section 30307 as amended by 2006 PA 430.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1307. (1) By the processing deadline, the department
2 shall approve or deny an application for a permit.

3 (2) If requested by the permit applicant, the department shall
4 extend the processing period for a permit by not more than 120
5 days, as specified by the applicant. If requested by the permit
6 applicant, the department may extend the processing period beyond
7 the additional 120 days. However, a processing period shall not be
8 extended under this subsection to a date later than 1 year after
9 the application period ends.

10 (3) A processing period is tolled from the date that a permit
11 applicant submits a petition under section 1315(1) until the date
12 that a decision of the director is made under section 1315(6). If a
13 permit applicant submits a petition under section 1315(1), the
14 department shall not approve or deny the application for the permit
15 under subsection (1) until after the director issues a decision
16 under section 1315(6).

17 (4) The approval or denial of an application for a permit
18 shall be in writing and shall be based upon evidence that would
19 meet the standards in section 75 of the administrative procedures
20 act of 1969, 1969 PA 306, MCL 24.275.

21 (5) Approval of an application for a permit may be granted
22 with conditions or modifications necessary to achieve compliance
23 with the part or parts of this act under which the permit is
24 issued.

25 (6) A denial of an application for a permit **OR, FOR A PERMIT**
26 **UNDER PART 301 OR 303, AN APPROVAL WITH MODIFICATION OF AN**

1 **APPLICATION FOR A PERMIT** shall document, and any review upholding
2 the ~~decision~~**DENIAL OR MODIFICATION** shall determine, to the extent
3 practical, all of the following:

4 (a) That the decision is based on ~~specific~~**SPECIFICALLY CITED**
5 provisions of this act or rules promulgated under this act.

6 (b) That the decision is based upon sufficient facts or data,
7 which are recorded in the file.

8 (c) To the extent applicable, all of the following:

9 (i) That the decision is the product of reliable scientific
10 principles and methods.

11 (ii) That the decision has applied the principles and methods
12 reliably to the facts.

13 **(D) IN THE CASE OF DENIAL OF AN APPLICATION FOR A PERMIT UNDER**
14 **PART 301 OR 303, SUGGESTIONS ON CHANGES TO ALLOW THE PERMIT TO BE**
15 **APPROVED.**

16 (7) Except for permits described in subsection (8), if the
17 department fails to satisfy the requirements of subsection (1) with
18 respect to an application for a permit, the department shall pay
19 the applicant an amount equal to 15% of the greater of the
20 following, as applicable:

21 (a) The amount of the application fee for that permit.

22 (b) If an assessment or other fee is charged on an annual or
23 other periodic basis by the department to a person holding the
24 permit for which the application was submitted, the amount of the
25 first periodic charge of that assessment or other fee for that
26 permit.

27 (8) If the department fails to satisfy the requirements of

1 subsection (1) with respect to a permit required by section 11509,
2 11512, 30304, or 32603, the application shall be considered to be
3 approved and the department shall be considered to have made any
4 determination required for approval.

5 (9) The failure of the department to satisfy the requirements
6 of subsection (1) or the fact that the department is required to
7 make a payment under subsection (7) or is considered to have
8 approved a permit under subsection (8) shall not be used by the
9 department as the basis for discriminating against the applicant.
10 If the department is required to make a payment under subsection
11 (7), the application shall be processed in sequence with other
12 applications for the same type of permit, based on the date on
13 which the processing period began, unless the director determines
14 on an application-by-application basis that the public interest is
15 best served by processing in a different order.

16 (10) If the department fails to satisfy the requirements of
17 subsection (1) with respect to 10% or more of the applications for
18 a particular type of permit received during a quarter of the state
19 fiscal year, the department shall immediately devote resources from
20 that program to eliminate any backlog and satisfy the requirements
21 of subsection (1) with respect to new applications for that type of
22 permit within the next fiscal quarter.

23 (11) If the department fails to satisfy the requirements of
24 subsection (1), the director shall notify the appropriations
25 committees of the senate and house of representatives of the
26 failure. The notification shall be in writing and shall include
27 both of the following:

1 (a) An explanation of the reason for the failure.

2 (b) A statement of the amount the department was required to
3 pay the applicant under subsection (7) or a statement that the
4 department was required to consider the application to be approved
5 under subsection (8), as applicable.

6 Sec. 1511. (1) Subject to subsection (2) and notwithstanding
7 any other provision of this act, before initiating a civil
8 enforcement action under this act against a person, ~~holding a~~
9 ~~permit,~~ the department shall ~~contact~~ **DO BOTH OF THE FOLLOWING:**

10 **(A) BEGINNING MAY 1, 2019, PROVIDE THE PERSON IN WRITING A**
11 **LIST OF EACH SPECIFIC PROVISION OF STATUTE, RULE, OR PERMIT THAT**
12 **THE PERSON IS ALLEGED TO HAVE VIOLATED AND A STATEMENT OF THE FACTS**
13 **CONSTITUTING THE VIOLATION.**

14 **(B) CONTACT** the ~~permittee~~ **PERSON** and extend an offer for staff
15 of the department to meet with the person to discuss the potential
16 civil enforcement action and potential resolution of the issue. If
17 the ~~permittee~~ **PERSON** agrees to meet with the department, the
18 department shall not initiate a civil enforcement action until
19 after the meeting is held, unless the meeting is not held within a
20 reasonable time ~~as determined by the department.~~ **OF NOT LESS THAN 60**
21 **DAYS.**

22 (2) Subsection (1) does not apply under any of the following
23 circumstances:

24 (a) The civil enforcement action is a civil infraction action.

25 (b) The department determines that the violation that is the
26 subject of the potential civil enforcement action constitutes an
27 imminent and substantial endangerment of the public health, safety,

1 or welfare or of the environment.

2 (3) As used in this section:

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

6 (b) "Permit" means a permit or operating license issued under
7 this act.

8 Sec. 30101. As used in this part:

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

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

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

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

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

23 (f) "Fund" means the land and water management permit fee fund
24 created in section 30113.

25 (g) "Height of the dam" means the difference in elevation
26 measured vertically between the natural bed of an inland lake or
27 stream at the downstream toe of the dam, or, if it is not across a

1 stream channel or watercourse, from the lowest elevation of the
2 downstream toe of the dam, to the design flood elevation or to the
3 lowest point of the top of the dam, whichever is less.

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

6 (i) "Inland lake or stream" means ~~a~~**EITHER OF THE FOLLOWING:**

7 **(i) AN ARTIFICIAL OR NATURAL LAKE, POND, OR IMPOUNDMENT THAT**
8 **IS A WATER OF THE UNITED STATES AS THAT TERM IS USED IN SECTION**
9 **502(7) OF THE FEDERAL WATER POLLUTION CONTROL ACT, 33 USC 1362.**

10 **(ii) A** natural or artificial lake, pond, or impoundment; a
11 river, stream, or creek which may or may not be serving as a drain
12 as defined by the drain code of 1956, 1956 PA 40, MCL 280.1 to
13 280.630; or any other body of water that has definite banks, a bed,
14 and visible evidence of a continued flow or continued occurrence of
15 water, including the St. Marys, St. Clair, and Detroit
16 ~~rivers.~~**RIVERS.**

17 Inland lake or stream does not include the Great Lakes, Lake
18 St. Clair, or a lake or pond that has a surface area of less than 5
19 acres.

20 (j) "Marina" means a facility that is owned or operated by a
21 person, extends into or over an inland lake or stream, and offers
22 service to the public or members of the marina for docking,
23 loading, or other servicing of recreational watercraft.

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

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

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

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

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

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

18 (o) "Property owners' association" means any group of
19 organized property owners publishing a directory of their
20 membership, the majority of which are riparian owners and are
21 located on the inland lake or stream that is affected by the
22 proposed project.

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

25 (i) Change the location of the dock or docks and other mooring
26 structures at the marina to occupy an area of the inland lake or
27 stream that was not previously authorized by a permit issued under

1 this part.

2 (ii) Decrease the distance available for ingress and egress to
3 an outside slip as described in section 30106a.

4 (q) "Riparian interest area" means that portion of an inland
5 lake or stream over which a riparian owner has an ownership
6 interest.

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

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

11 (t) "Seasonal structure" includes any type of dock, boat
12 hoist, ramp, raft, or other recreational structure that is placed
13 into an inland lake or stream and removed at the end of the boating
14 season.

15 (u) "Seawall" means a vertically sloped wall constructed to
16 break the force of waves and retain soil for the purpose of shore
17 protection.

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

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

23 Sec. 30112. (1) The department may commence a civil action in
24 the circuit court of the county in which a violation occurs to
25 enforce compliance with this part, to restrain violation of this
26 part or any action contrary to an order of the department denying a
27 permit, to enjoin the further performance of, or order the removal

1 of, any project that is undertaken contrary to this part or after
2 denial of a permit by the department, or to order the restoration
3 of the affected area to its prior condition.

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

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

11 (4) A person who commits a minor offense is guilty of a
12 misdemeanor, punishable by a fine of not more than \$500.00 for each
13 violation. A law enforcement officer may issue and serve an
14 appearance ticket upon a person for a minor offense pursuant to
15 sections ~~9a-9c~~ to 9g of chapter IV of the code of criminal
16 procedure, Act No. 175 of the Public Acts of 1927, being sections
17 ~~764.9a to 764.9g of the Michigan Compiled Laws.1927 PA 175, MCL~~
18 **764.9C TO 764.9G.**

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

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

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

2 (a) "Department" means the department of environmental
3 quality.

4 (b) "Director" means the director of the department.

5 (c) "Exceptional wetland" means wetland that provides physical
6 or biological functions essential to the natural resources of ~~the~~
7 **THIS** state and that may be lost or degraded if not preserved
8 through an approved site protection and management plan for the
9 purposes of providing compensatory wetland mitigation.

10 (d) "Fill material" means soil, rocks, sand, waste of any
11 kind, or any other material that displaces soil or water or reduces
12 water retention potential.

13 **(E) "HYDRIC SOIL" MEANS A SOIL THAT FORMED UNDER CONDITIONS OF**
14 **SATURATION, FLOODING, OR PONDING LONG ENOUGH DURING THE GROWING**
15 **SEASON TO DEVELOP ANAEROBIC CONDITIONS IN THE UPPER PART.**

16 **(F)** ~~(e)~~—"Landscape level wetland assessment" means the use of
17 aerial photographs, maps, and other remotely sensed information to
18 predict and evaluate wetland characteristics and functions in the
19 context of all of the following:

20 (i) The wetland's landscape position and hydrologic
21 characteristics.

22 (ii) The surrounding landscape.

23 (iii) The historic extent and condition of the wetland.

24 **(G)** ~~(f)~~—"Minor drainage" includes ditching and tiling for the
25 removal of excess soil moisture incidental to the planting,
26 cultivating, protecting, or harvesting of crops or improving the
27 productivity of land in established use for agriculture,

1 horticulture, silviculture, or lumbering.

2 **(H)** ~~(g)~~—"Nationwide permit" means a nationwide permit issued
 3 by the United States ~~army corps of engineers~~ **ARMY CORPS OF**
 4 **ENGINEERS** under 72 FR 11091 to 11198 (March 12, 2007), including
 5 all general conditions, regional conditions, and conditions imposed
 6 by this state pursuant to a water quality certification under
 7 section 401 of title IV of the federal water pollution control act,
 8 33 USC 1341, or a coastal zone management consistency determination
 9 under section 307 of the coastal zone management act of 1972, 16
 10 USC 1456.

11 **(I)** ~~(h)~~—"Ordinary high-water mark" means the ordinary high-
 12 water mark as specified in section 32502.

13 **(J)** ~~(i)~~—"Person" means an individual, sole proprietorship,
 14 partnership, corporation, association, municipality, this state, an
 15 instrumentality or agency of this state, the federal government, an
 16 instrumentality or agency of the federal government, or other legal
 17 entity.

18 **(K)** ~~(j)~~—"Rapid wetland assessment" means a method for
 19 generally assessing the functions, values, and condition of
 20 individual wetlands based on existing data and field indicators.

21 **(L)** ~~(k)~~—"Rare and imperiled wetland" means any of the
 22 following:

23 (i) Great Lakes marsh.

24 (ii) Southern wet meadow.

25 (iii) Inland salt marsh.

26 ~~(iv) Intermittent wetland or boggy seepage wetland.~~

27 **(iv)** ~~(v)~~—Coastal plain marsh.

- 1 (v) ~~(vi)~~—Interdunal wetland.
- 2 (vi) ~~(vii)~~—Lakeplain wet prairie.
- 3 (vii) ~~(viii)~~—Lakeplain wet-mesic prairie.
- 4 (viii) ~~(ix)~~—Northern wet-mesic prairie. **COASTAL FEN.**
- 5 (ix) ~~(x)~~—Wet-mesic prairie.
- 6 (x) ~~(xi)~~—Wet prairie.
- 7 (xi) ~~(xii)~~—Prairie fen.
- 8 (xii) ~~(xiii)~~—Northern fen.
- 9 (xiii) ~~(xiv)~~—Patterned fen.
- 10 (xiv) ~~(xv)~~—Poor fen.
- 11 (xv) ~~(xvi)~~—Muskeg.
- 12 ~~(xvii) Rich conifer swamp.~~
- 13 (xvi) ~~(xviii)~~—Relict conifer swamp.
- 14 ~~(xix) Hardwood conifer swamp.~~
- 15 ~~(xx) Northern swamp.~~
- 16 ~~(xxi) Southern swamp.~~
- 17 (xvii) ~~(xxii)~~—Southern floodplain forest.
- 18 ~~(xxiii) Inundated shrub swamp.~~
- 19 (M) ~~(l)~~—"Water dependent" means requiring access or proximity
20 to or siting within an aquatic site to fulfill its basic purpose.
- 21 (N) ~~(m)~~—"Wetland" means **A** land characterized by the presence
22 of ~~OR WATER FEATURE, COMMONLY REFERRED TO AS A BOG, SWAMP, OR~~
23 **MARSH, INUNDATED OR SATURATED BY** water at a frequency and duration
24 sufficient to support, and that under normal circumstances does
25 support, **HYDRIC SOILS AND A PREDOMINANCE OF** wetland vegetation **OR**
26 **AQUATIC LIFE.** ~~or aquatic life, and is commonly referred to as a~~
27 ~~bog, swamp, or marsh, and which is~~ **A LAND OR WATER FEATURE IS NOT A**

Senate Bill No. 1211 as amended December 21, 2018

1 **WETLAND UNLESS IT MEETS** any of the following:

2 **(i) IS A WATER OF THE UNITED STATES AS THAT TERM IS USED IN**
 3 **SECTION 502(7) OF THE FEDERAL WATER POLLUTION CONTROL ACT, 33 USC**
 4 **1362.**

5 **(ii) ~~(i) Contiguous~~ IS CONTIGUOUS** to the Great Lakes, ~~or Lake~~
 6 ~~St. Clair, an inland lake or pond, or a river or stream.~~ **AS USED IN**
 7 **THIS SUBPARAGRAPH, "POND" DOES NOT INCLUDE A FARM OR STOCK POND**
 8 **CONSTRUCTED CONSISTENT WITH THE EXEMPTION UNDER SECTION**
 9 **30305(2)(G).**

10 **(iii) ~~(ii) Not contiguous to the Great Lakes, an inland lake~~**
 11 ~~or pond, or a river or stream; and more~~ **IS MORE** than 5 acres in
 12 size.

13 ~~—— (iii) Not contiguous to the Great Lakes, an inland lake or~~
 14 ~~pond, or a river or stream; and 5 acres or less in size if the~~
 15 ~~department determines that protection of the area is essential to~~
 16 ~~the preservation of the natural resources of the state from~~
 17 ~~pollution, impairment, or destruction and the department has so~~
 18 ~~notified the owner.~~

19 **(iv) HAS THE DOCUMENTED PRESENCE OF AN ENDANGERED OR**
 20 **THREATENED SPECIES UNDER PART 365 OR THE ENDANGERED SPECIES ACT OF**
 21 **1973, PUBLIC LAW 93-205.**

22 **(v) IS A RARE AND IMPERILED WETLAND.**

23 **(2) IN [2019] AND EVERY 5 YEARS THEREAFTER, THE DEPARTMENT OF**
 24 **NATURAL RESOURCES MAY MAKE RECOMMENDATIONS TO THE LEGISLATURE FOR**
 25 **CHANGES IN THE LIST OF RARE AND IMPERILED WETLANDS TO REFLECT THE**
 26 **STATUS OF EACH TYPE OF WETLAND TO BE INCLUDED ON THE LIST AS RARE**
 27 **AND IMPERILED THROUGHOUT THIS STATE.**

1 (3) AS USED IN SECTION 30312F:

2 (A) "ALTERED OR DEGRADED WETLAND" MEANS WETLAND THAT MEETS ANY
3 OF THE FOLLOWING CRITERIA:

4 (i) HAS BEEN PARTIALLY OR FULLY DRAINED, SUCH AS BY DITCHING,
5 TILING, OR PUMPING.

6 (ii) HAS BEEN PARTIALLY OR FULLY FILLED BY DIRECT PLACEMENT OF
7 MATERIAL IN THE WETLAND OR SIGNIFICANT SEDIMENTATION.

8 (iii) INVASIVE PLANT SPECIES DOMINATE IN A MAJORITY OF THE
9 VEGETATED SURFACE AREA OF THE WETLAND.

10 (iv) HAS UNDERGONE LAND USE CONVERSION OR ALTERATION TO
11 VEGETATION, SOIL, OR HYDROLOGY THAT CURRENTLY AFFECTS THE WETLAND
12 FUNCTIONS AND SERVICES.

13 (B) "FORMER WETLAND" MEANS LAND THAT WAS WETLAND BUT THAT HAS
14 BEEN MODIFIED TO THE POINT THAT IT NO LONGER HAS THE HYDROLOGIC
15 CHARACTERISTICS OF WETLAND.

16 (C) "NET INCREASE IN WETLAND FUNCTIONS AND SERVICES" MEANS AN
17 INCREASE IN 1 OR MORE WETLAND FUNCTIONS AND SERVICES WITH NOT MORE
18 THAN A MINIMAL DECREASE IN OTHER WETLAND FUNCTIONS AND SERVICES.

19 (D) "VOLUNTARY WETLAND RESTORATION PROJECT", SUBJECT TO
20 SUBDIVISION (E), MEANS ANY OF THE FOLLOWING:

21 (i) ACTIVITIES THAT ARE VOLUNTARILY UNDERTAKEN TO RESTORE,
22 REESTABLISH, REHABILITATE, OR ENHANCE ALTERED OR DEGRADED WETLAND
23 OR FORMER WETLAND AND THAT RESULT IN A NET INCREASE IN WETLAND
24 FUNCTIONS AND SERVICES.

25 (ii) ACTIVITIES TO MAINTAIN OR MANAGE SITES WHERE ACTIVITIES
26 DESCRIBED IN SUBPARAGRAPH (i) HAVE TAKEN PLACE, INCLUDING SITES
27 RESTORED BEFORE OCTOBER 1, 1980, THE EFFECTIVE DATE OF FORMER 1979

1 PA 203.

2 (E) VOLUNTARY WETLAND RESTORATION PROJECT DOES NOT INCLUDE AN
3 ACTIVITY UNDERTAKEN TO FULFILL, CURRENTLY OR IN THE FUTURE, A
4 FEDERAL, STATE, OR LOCAL WETLAND PERMIT MITIGATION REQUIREMENT.

5 (F) "WETLAND FUNCTIONS AND SERVICES" MEANS ANY OF THE
6 FOLLOWING:

7 (i) WETLAND HYDROLOGY THAT APPROXIMATES THE PREDISTURBANCE
8 CONDITION OR THAT EMULATES THE NATURAL CONDITION OF THE WETLAND.

9 (ii) FISH AND WILDLIFE HABITAT QUALITY OR QUANTITY.

10 (iii) PLANT COMMUNITY QUALITY, CHARACTERIZED BY NATIVE
11 VEGETATION TYPES AND DIVERSITY.

12 (iv) WATER- AND SOIL-RELATED FUNCTIONS OF THE WETLAND, SUCH AS
13 NUTRIENT REMOVAL, SEDIMENT RETENTION, FLOOD CONTROL, OR GROUNDWATER
14 RECHARGE.

15 (v) RECREATIONAL USE OF THE WETLAND, INCLUDING, BUT NOT
16 LIMITED TO, FISHING, HUNTING, TRAPPING, AND BIRDWATCHING.

17 (4) ~~(2)~~—The department and local units of government shall
18 apply the technical wetland delineation standards set forth in the
19 United States ~~army corps of engineers~~ **ARMY CORPS OF ENGINEERS**
20 January 1987 ~~wetland delineation manual,~~ **WETLAND DELINEATION**
21 **MANUAL**, technical report Y-87-1, and appropriate regional United
22 States ~~army corps of engineers~~ **ARMY CORPS OF ENGINEERS** supplements,
23 in identifying wetland boundaries under this part, including, but
24 not limited to, section 30307.

25 Sec. 30304. Except as otherwise provided in this part or by a
26 permit issued by the department under ~~sections 30306 to 30314~~ **THIS**
27 **PART** and pursuant to part 13, a person shall not do any of the

1 following:

2 (a) Deposit or permit the placing of fill material in a
3 wetland.

4 (b) Dredge, remove, or permit the removal of soil or minerals
5 from a wetland.

6 (c) Construct, operate, or maintain any use or development in
7 a wetland.

8 (d) Drain surface water from a wetland.

9 Sec. 30305. (1) Activities that require a permit under part
10 325 or part 301 or a discharge that is authorized by a discharge
11 permit under section 3112 or 3113 do not require a permit under
12 this part.

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

16 (a) Fishing, trapping, or hunting.

17 (b) Swimming or boating.

18 (c) Hiking.

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

24 (e) Farming, horticulture, silviculture, lumbering, and
25 ranching activities, including plowing, irrigation, irrigation
26 ditching, seeding, cultivating, minor drainage, harvesting for the
27 production of food, fiber, and forest products, or upland soil and

1 water conservation practices. All of the following apply for the
2 purposes of this subdivision:

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

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

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

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

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

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

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

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

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

11 (i) Maintenance of a drain that was legally established and
12 constructed pursuant to the drain code of 1956, 1956 PA 40, MCL
13 280.1 to 280.630, if the drain was constructed before January 1,
14 1973 or under a permit issued pursuant to this part. As used in
15 this subdivision, "maintenance of a drain" means the physical
16 preservation of the location, depth, and bottom width of a drain
17 and appurtenant structures to restore the function and approximate
18 capacity of the drain as constructed or modified at any time before
19 July 1, 2014, including the placement of spoils removed from the
20 drain in locations along that drain where spoils have been
21 previously placed. Maintenance of a drain under this subdivision
22 does not include any modification that results in additional
23 wetland drainage or conversion of a wetland to a use to which it
24 was not previously subject.

25 (j) Construction or maintenance of farm roads, forest roads,
26 or temporary roads for moving mining or forestry equipment, if the
27 roads are constructed and maintained in a manner to ensure that any

1 adverse effect on the wetland will be minimized. **BORROW MATERIAL**
2 **FOR ROAD CONSTRUCTION OR MAINTENANCE SHALL BE TAKEN FROM UPLAND**
3 **SOURCES IF FEASIBLE. IN DETERMINING WHETHER AN ALTERNATIVE WILL**
4 **MINIMIZE ANY ADVERSE EFFECT ON THE WETLAND, THE DEPARTMENT SHALL**
5 **CONSIDER COST, EXISTING TECHNOLOGY, AND LOGISTICS IN LIGHT OF**
6 **OVERALL PROJECT PURPOSES.**

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

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

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

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

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

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

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

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

27 (m) Installation of utility lines having a diameter of 6

1 inches or less using directional drilling or boring, or knifing-in,
2 and the placement of poles with minimal (less than 1 cubic yard)
3 structure support, if the utility lines and poles are installed in
4 a manner that minimizes any adverse effect on the wetland.

5 Directional drilling or boring under this subdivision shall meet
6 all of the following requirements:

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

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

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

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

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

27 (3) An activity in a wetland that was effectively drained for

1 farming before October 1, 1980 and that on and after October 1,
2 1980 has continued to be effectively drained as part of an ongoing
3 farming operation is not subject to regulation under this part.

4 (4) A wetland that is incidentally created as a result of 1 or
5 more of the following activities is not subject to regulation under
6 this part:

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

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

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

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

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

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

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

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

1 water quality.

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

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

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

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

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

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

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

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

27 (a) Does not have continuous flow.

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

4 (c) Serves agricultural production.

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

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

12 (a) The person's name and address.

13 (b) The location of the wetland.

14 (c) A description of the wetland.

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

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

18 (f) An environmental assessment of the proposed use or
19 development if requested by the department. The assessment shall
20 include the effects upon wetland benefits and the effects upon the
21 water quality, flow, and levels, and the wildlife, fish, and
22 vegetation within a ~~ANY~~ contiguous **INLAND** lake, ~~river,~~ or stream.

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

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

4 (a) For a project in a category of activities for which a
5 general permit is issued under section ~~30312~~, **30312 (2)**, a fee of
6 \$50.00.

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

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

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

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

14 (iii) A new golf course affecting wetland.

15 (iv) A subdivision affecting wetland.

16 (v) A condominium affecting wetland.

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

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

21 (a) Section 3104.

22 (b) Part 301.

23 (c) Part 323.

24 (d) Part 325.

25 (e) Section 117 of the land division act, 1967 PA 288, MCL
26 560.117.

27 (5) If work has been done in violation of a permit requirement

1 under this part, ~~and restoration is not ordered by the department,~~
2 the department **SHALL CONSIDER ACCEPTING AND** may accept an
3 application for a permit if the application is accompanied by a fee
4 equal to twice the application fee otherwise required under this
5 section.

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

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

14 Sec. 30307. (1) Within 60 days after receipt of the completed
15 application and fee, the department may hold a hearing. If a
16 hearing is held, it shall be held in the county where the wetland
17 to which the permit is to apply is located. Notice of the hearing
18 shall be ~~made~~**GIVEN** in the same manner as for the promulgation of
19 rules under the administrative procedures act of 1969, 1969 PA 306,
20 MCL 24.201 to 24.328. The department may approve or disapprove a
21 permit application without a public hearing unless a person
22 requests a hearing in writing within 20 days after the mailing of
23 notification of the permit application as required by subsection
24 (3) or unless the department determines that the permit application
25 is of significant impact so as to warrant a public hearing.

26 (2) The action taken by the department on a permit application
27 under this part ~~and~~**OR** part 13 may be appealed pursuant to the

Senate Bill No. 1211 as amended December 21, 2018

1 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
 2 24.328. A property owner may, after exhaustion of administrative
 3 remedies, bring appropriate legal action in a court of competent
 4 jurisdiction.

5 (3) ~~A person who desires notification of pending permit~~
 6 ~~applications may make a written request to the department~~
 7 ~~accompanied by an annual fee of \$25.00, which shall be credited to~~
 8 ~~the general fund of the state. The department shall prepare a~~
 9 ~~biweekly list of the applications made during the previous 2 weeks~~
 10 ~~and shall promptly mail copies of the list for the remainder of the~~
 11 ~~calendar year to the persons who requested notice. The biweekly~~
 12 ~~list shall state the name and address of each applicant, the~~
 13 ~~location of the wetland in the proposed use or development,~~
 14 ~~including the size of both the proposed use or development and of~~
 15 ~~the wetland affected, and a summary statement of the purpose of the~~
 16 ~~use or development.~~ **THE DEPARTMENT SHALL POST ON ITS WEBSITE[, AND SHALL**
HAVE A PROCESS TO PROVIDE ELECTRONIC MAIL NOTIFICATION OF,] ALL OF
 17 **THE FOLLOWING UNDER THIS PART:**

18 (A) A LIST OF PENDING APPLICATIONS.

19 (B) PUBLIC NOTICES.

20 (C) PUBLIC HEARING SCHEDULES.

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

27 (a) The ordinance shall not provide a different definition of

1 wetland than is provided in this part, except that a wetland
2 ordinance may regulate wetland of less than 5 acres in size.

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

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

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

9 (5) ~~Each~~**A** local unit of government that adopts an ordinance
10 regulating wetlands under subsection (4) shall notify the
11 department.

12 (6) A local unit of government that adopts an ordinance
13 regulating wetlands shall use an application form supplied by the
14 department, and each person applying for a permit shall make
15 application directly to the local unit of government. Upon receipt,
16 the local unit of government shall forward a copy of each
17 application along with any state fees that may have been submitted
18 under section 30306 to the department. The department shall begin
19 reviewing the application as provided in this part. The local unit
20 of government shall review the application pursuant to its
21 ordinance and shall modify, approve, or deny the application within
22 90 days after receipt. If a local unit of government does not
23 approve or disapprove the permit application within the time period
24 provided by this subsection, the permit application shall be
25 considered approved, and the local unit of government shall be
26 considered to have made the determinations as listed in section
27 30311. The denial of a permit shall be accompanied by a written

1 statement of all reasons for denial. The failure to supply complete
2 information with a permit application may be reason for denial of a
3 permit. If requested, the department shall inform a person whether
4 or not a local unit of government has an ordinance regulating
5 wetlands. If the department receives an application with respect to
6 a wetland located in a local unit of government that has an
7 ordinance regulating wetlands, the department immediately shall
8 forward the application to the local unit of government, which
9 shall modify, deny, or approve the application under this
10 subsection. The local unit of government shall notify the
11 department of its decision. The department shall proceed as
12 provided in this part.

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

24 (8) In addition to the requirements of subsection (7), the
25 department shall notify the local unit of government that the
26 department has issued a permit under this part **PERTAINING TO**
27 **WETLAND LOCATED** within the jurisdiction of that local unit of

1 government within 15 days of issuance of the permit. The department
2 shall enclose a copy of the permit with the notice.

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

6 ~~(2) Upon reasonable cause or obtaining a search warrant, the~~
7 **THE** department may enter on, upon, or through the premises on which
8 an activity listed in section 30304 is located or on which
9 information required to be maintained under subsection (1) is
10 located **UNDER ANY OF THE FOLLOWING CIRCUMSTANCES, AS APPLICABLE:**

11 **(A) UPON OBTAINING A SEARCH WARRANT, AN ADMINISTRATIVE WARRANT**
12 **ISSUED BY THE DIRECTOR OF THE DEPARTMENT, OR THE CONSENT OF THE**
13 **PERSON WHO OWNS OR CONTROLS THE PREMISES.**

14 **(B) IF THERE IS AN IMMINENT THREAT TO THE PUBLIC HEALTH OR**
15 **ENVIRONMENT.**

16 **(C) UPON REASONABLE CAUSE, IF THE WETLAND IS A WATER OF THE**
17 **UNITED STATES AS THAT TERM IS USED IN SECTION 502(7) OF THE FEDERAL**
18 **WATER POLLUTION CONTROL ACT, 33 USC 1362.**

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

1 violation. A person who violates an order of the court is subject
2 to a civil fine not to exceed \$10,000.00 for each day of violation.

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

5 (3) A person who willfully or recklessly violates a condition
6 or limitation in a permit issued by the department under this part,
7 or a corporate officer who has knowledge of or is responsible for a
8 violation, is guilty of a misdemeanor ~~punishable~~ by a fine of not
9 less than \$2,500.00 ~~nor~~**OR** more than \$25,000.00 per day of
10 violation ~~or~~ by imprisonment for not more than 1 year, or both. A
11 person who ~~violates~~**COMMITS A VIOLATION DESCRIBED IN** this section a
12 second or subsequent time is guilty of a felony ~~punishable~~ by a
13 fine of not more than \$50,000.00 for each day of violation ~~or~~ by
14 imprisonment for not more than 2 years, or both.

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

22 (5) **THE AWARD OF ATTORNEY FEES IN A CIVIL ACTION UNDER THIS**
23 **PART IS SUBJECT TO APPLICABLE PROVISIONS OF CHAPTER 24 OF THE**
24 **REVISED JUDICATURE ACT OF 1961, 1961 PA 235, MCL 600.2401 TO**
25 **600.2461. HOWEVER, REGARDLESS OF WHETHER THIS STATE'S POSITION WAS**
26 **SUBSTANTIALLY JUSTIFIABLE, REASONABLE EXPERT PROFESSIONAL WITNESS**
27 **FEES, AS DETERMINED BY THE COURT, SHALL BE AWARDED TO A LANDOWNER**

1 **THAT PREVAILS AGAINST THIS STATE ON THE ISSUE OF WHETHER THE**
 2 **LANDOWNER'S PROPERTY IS WETLAND.**

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

5 (2) If a person is aggrieved by any action or inaction of the
 6 department, the person may request a formal hearing on the matter
 7 involved. The hearing shall be conducted by the department pursuant
 8 to the administrative procedures act of 1969, ~~Act No. 306 of the~~
 9 ~~Public Acts of 1969, being sections~~ **1969 PA 306, MCL 24.201 to**
 10 ~~24.328. of the Michigan Compiled Laws.~~

11 **(3) THE AWARD OF COSTS IN A CONTESTED CASE UNDER THIS PART AND**
 12 **THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201**
 13 **TO 24.328, IS SUBJECT TO CHAPTER 8 OF THE ADMINISTRATIVE PROCEDURES**
 14 **ACT OF 1969, MCL 24.321 TO 24.328. HOWEVER, REGARDLESS OF WHETHER**
 15 **THE DEPARTMENT'S POSITION WAS SUBSTANTIALLY JUSTIFIABLE, REASONABLE**
 16 **EXPERT PROFESSIONAL WITNESS FEES, AS DETERMINED BY THE PRESIDING**
 17 **OFFICER, SHALL BE AWARDED TO A LANDOWNER THAT PREVAILS ON THE ISSUE**
 18 **OF WHETHER THE LANDOWNER'S PROPERTY IS WETLAND.**

19 **(4) ~~(3)~~**A determination, action, or inaction by the department
 20 following the hearing is subject to judicial review as provided in
 21 ~~Act No. 306 of the Public Acts of 1969.~~ **THE ADMINISTRATIVE**
 22 **PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328.**

23 **(5) ~~(4)~~**This section does not limit the right of a wetland
 24 owner to institute proceedings in any circuit of the circuit court
 25 of the state against any person ~~when~~ **IF** necessary to protect the
 26 wetland owner's rights.

27 Sec. 30321. (1) The department shall make or cause to be made

1 a preliminary inventory of all wetland in this state on a county by
 2 county basis and file the inventory with the agricultural extension
 3 office, register of deeds, and county clerk.

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

14 (2) ~~(3)~~—A person who owns or leases a parcel of property may
 15 request that the department of environmental quality assess whether
 16 the parcel of property or a portion of the parcel is wetland. The
 17 request shall satisfy all of the following requirements:

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

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

20 (c) Contain a legal description of the parcel and, if only a
 21 portion of the parcel is to be assessed, a description of the
 22 portion to be assessed.

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

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

26 (3) ~~(4)~~—The department shall assess the parcel within a
 27 reasonable time after the request is made. The department may enter

1 upon the parcel to conduct the assessment. Upon completion of the
2 assessment, the department shall provide the person with a written
3 assessment report. The assessment report shall do all of the
4 following:

5 (a) Identify in detail the location of any wetland in the area
6 assessed.

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

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

15 (d) Contain the date of the assessment.

16 (e) Advise that the person may request the department to
17 reassess the parcel or any part of the parcel that the person
18 believes was erroneously determined to be wetland if the request is
19 accompanied by evidence pertaining to wetland vegetation, soils, or
20 hydrology that is different from or in addition to the information
21 relied upon by the department.

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

27 (g) List regulatory programs that may limit land use

1 activities on the parcel, advise that the list is not exhaustive,
2 and advise that the assessment report does not constitute a
3 determination of jurisdiction under those programs. The regulatory
4 programs listed shall be those under the following parts:

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

6 (ii) Part 91.

7 (iii) Part 301.

8 (iv) Part 323.

9 (v) Part 325.

10 (vi) Part 353.

11 **(4)** ~~(5)~~—A wetland is not contiguous to the Great Lakes or Lake
12 St. Clair, an inland lake or pond, or a river or stream if the
13 department determines that there is no direct physical contact and
14 no surface water or interflowing groundwater connection to such a
15 body of water.

16 **(5)** A person may request that, as part of an assessment, the
17 department make a determination whether a wetland is ~~not~~ contiguous
18 **TO THE GREAT LAKES, LAKE ST. CLAIR, AN INLAND LAKE OR POND, OR A**
19 **STREAM.** The department shall make the determination in writing
20 within 30 days after an on-site evaluation. **AS USED IN THIS**
21 **SUBSECTION, "POND" DOES NOT INCLUDE A FARM OR STOCK POND**
22 **CONSTRUCTED CONSISTENT WITH THE EXEMPTION UNDER SECTION**
23 **30305(2)(G).**

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

1 (7) A drainage structure such as a culvert, ditch, or channel,
2 in and of itself, is not a wetland. A temporary obstruction of
3 drainage, in and of itself, is not a wetland until the presence of
4 water is of sufficient frequency and duration to be identified as
5 wetland pursuant to section ~~30301(2)~~-**30301(4)** .

6 (8) A person may request the department to reassess any area
7 assessed under subsections **(2) AND** (3) and ~~(4)~~ that the person
8 believes the department erroneously determined to be wetland. The
9 requirements of subsections **(2) AND** (3) and ~~(4)~~ apply to the
10 request, assessment, and assessment report. However, the request
11 shall be accompanied by evidence pertaining to wetland vegetation,
12 soils, or hydrology that is different from or in addition to the
13 information relied upon by the department. The assessment report
14 shall not contain the information required by subsection
15 ~~(4)(e)~~-**(3) (E)** .

16 (9) If an assessment report determines that the area assessed
17 or part of the area assessed is not a wetland regulated by the
18 department under this part, then the area determined by the
19 assessment report not to be a wetland is not a wetland regulated by
20 the department under this part for a period of 3 years after the
21 date of the assessment.

22 (10) The department may charge a fee for an assessment
23 requested under subsection ~~(3)~~-**(2)** based upon the cost to the
24 department of conducting an assessment.

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

27 (12) The department shall, upon request of the applicant and

1 without charge, provide to the applicant a copy of any delineation
2 forms completed by the department associated with a permit
3 application.

4 Sec. 32301. As used in this part:

5 (a) "Connecting waterway" means the St. Marys river, Detroit
6 river, St. Clair river, or Lake St. Clair.

7 (b) "Environmental area" means an area of the shoreland
8 determined by the department on the basis of studies and surveys to
9 be necessary for the preservation and maintenance of fish and
10 wildlife.

11 (c) "High-risk area" means an area of the shoreland that is
12 determined by the department on the basis of studies and surveys to
13 be subject to erosion.

14 (d) "Land to be zoned or regulated" or "land to be zoned"
15 means the land in this state that borders or is adjacent to a Great
16 Lake or a connecting waterway and that, except for flood risk
17 areas, is situated within 1,000 feet landward from the ordinary
18 high-water mark as defined in section 32501, land bordering or
19 adjacent to waters affected by levels of the Great Lakes landward
20 of the ordinary high-water mark as defined by section ~~30101(f)~~,
21 **30101**, and land between the ordinary high-water mark and the
22 water's edge.

23 (e) "Shoreland" means the land, water, and land beneath the
24 water that is in close proximity to the shoreline of a Great Lake
25 or a connecting waterway.

26 (f) "Shoreline" means that area of the shorelands where land
27 and water meet.

1 (g) "Flood risk area" means the area of the shoreland that is
2 determined by the department on the basis of studies and surveys to
3 be subject to flooding from effects of levels of the Great Lakes
4 and is not limited to 1,000 feet.

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