

SENATE BILL No. 1211

November 27, 2018, Introduced by Senator CASPERSON and referred to the Committee on Natural Resources.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 1511, 30101, 30104b, 30112, 30301, 30304, 30305, 30306, 30307, 30311, 30314, 30316, 30319, 30321, and 32301 (MCL 324.1511, 324.30101, 324.30104b, 324.30112, 324.30301, 324.30304, 324.30305, 324.30306, 324.30307, 324.30311, 324.30314, 324.30316, 324.30319, 324.30321, and 324.32301), section 1511 as added by 2011 PA 237, section 30101 as amended by 2014 PA 351, section 30104b as amended by 2015 PA 76, 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, 30311, 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. 1511. (1) Subject to subsection (2) and notwithstanding
2 any other provision of this act, before initiating a civil
3 enforcement action under this act against a person, ~~holding a~~
4 ~~permit,~~ the department shall ~~contact~~ **DO BOTH OF THE FOLLOWING:**

5 **(A) PROVIDE THE PERSON IN WRITING A LIST OF EACH SPECIFIC**
6 **PROVISION OF STATUTE, RULE, OR PERMIT THAT THE PERSON IS ALLEGED TO**
7 **HAVE VIOLATED AND A STATEMENT OF THE FACTS CONSTITUTING THE**
8 **VIOLATION.**

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

17 (2) Subsection (1) does not apply under any of the following
18 circumstances:

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

20 (b) The department determines that the violation that is the
21 subject of the potential civil enforcement action constitutes an
22 imminent and substantial endangerment of the public health, safety,
23 or welfare or of the environment.

24 (3) As used in this section:

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

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

3 Sec. 30101. As used in this part:

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

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

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

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

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

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

20 (g) "Height of the dam" means the difference in elevation
21 measured vertically between the natural bed of an inland lake or
22 stream at the downstream toe of the dam, or, if it is not across a
23 stream channel or watercourse, from the lowest elevation of the
24 downstream toe of the dam, to the design flood elevation or to the
25 lowest point of the top of the dam, whichever is less.

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

1 ~~(i) "Inland lake or stream" means a natural or artificial~~
 2 ~~lake, pond, or impoundment; a river, stream, or creek which may or~~
 3 ~~may not be serving as a drain as defined by the drain code of 1956,~~
 4 ~~1956 PA 40, MCL 280.1 to 280.630; or any other body of water that~~
 5 ~~has definite banks, a bed, and visible evidence of a continued flow~~
 6 ~~or continued occurrence of water, including the St. Marys, St.~~
 7 ~~Clair, and Detroit rivers. Inland lake or stream does not include~~
 8 ~~the Great Lakes, Lake St. Clair, or a lake or pond that has a~~
 9 ~~surface area of less than 5 acres.~~

10 (I) "INLAND LAKE", SUBJECT TO SUBDIVISION (J), MEANS A NATURAL
 11 OR PERMANENT ARTIFICIAL INLAND LAKE, POND, OR IMPOUNDMENT THAT
 12 MEETS BOTH OF THE FOLLOWING REQUIREMENTS:

13 (i) HAS DEFINITE BANKS, A BED, AND VISIBLE EVIDENCE OF A
 14 CONTINUED OCCURRENCE OF WATER.

15 (ii) IS EITHER MORE THAN 10 ACRES IN SIZE OR WATERS OF THE
 16 UNITED STATES AS THAT TERM IS USED IN SECTION 502(7) OF THE FEDERAL
 17 WATER POLLUTION CONTROL ACT, 33 USC 1362.

18 (J) "INLAND LAKE" DOES NOT INCLUDE ANY OF THE FOLLOWING:

19 (i) THE GREAT LAKES OR LAKE ST. CLAIR.

20 (ii) A FEATURE USED FOR TREATING WASTEWATER OR STORM WATER.

21 (iii) ARTIFICIAL FEATURES CREATED IN LAND UNREGULATED BY THIS
 22 PART AND USED FOR COOLING OR STORING WATER, FARM OR LIVESTOCK
 23 IRRIGATION OR WATERING, LOG CLEANING, SWIMMING, MINING OR
 24 CONSTRUCTION ACTIVITIES, OR RAISING FISH AND OTHER AQUATIC SPECIES.

25 (iv) AN ARTIFICIALLY IRRIGATED OR FLOODED AREA THAT WILL
 26 REVERT TO DRY LAND IF THE APPLICATION OF WATER TO THAT AREA CEASES.

27 (K) ~~(j)~~—"Marina" means a facility that is owned or operated by

1 a person, extends into or over an inland lake or stream, and offers
2 service to the public or members of the marina for docking,
3 loading, or other servicing of recreational watercraft.

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

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

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

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

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

23 (O) ~~(n)~~—"Project" means an activity that requires a permit
24 pursuant to section 30102.

25 (P) ~~(o)~~—"Property owners' association" means any group of
26 organized property owners publishing a directory of their
27 membership, the majority of which are riparian owners and are

1 located on the inland lake or stream that is affected by the
2 proposed project.

3 (Q) ~~(p)~~—"Reconfigure" means to, without expanding the marina,
4 do either of the following:

5 (i) Change the location of the dock or docks and other mooring
6 structures at the marina to occupy an area of the inland lake or
7 stream that was not previously authorized by a permit issued under
8 this part.

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

11 (R) ~~(q)~~—"Riparian interest area" means that portion of an
12 inland lake or stream over which a riparian owner has an ownership
13 interest.

14 (S) ~~(r)~~—"Riparian owner" means a person who has riparian
15 rights.

16 (T) ~~(s)~~—"Riparian rights" means those rights which are
17 associated with the ownership of the bank or shore of an inland
18 lake or stream.

19 (U) ~~(t)~~—"Seasonal structure" includes any type of dock, boat
20 hoist, ramp, raft, or other recreational structure that is placed
21 into an inland lake or stream and removed at the end of the boating
22 season.

23 (V) ~~(u)~~—"Seawall" means a vertically sloped wall constructed
24 to break the force of waves and retain soil for the purpose of
25 shore protection.

26 (W) **"STREAM", SUBJECT TO SUBDIVISION (X), MEANS A NATURAL OR A**
27 **PERMANENT ARTIFICIAL RIVER, STREAM, OR CREEK THAT MEETS BOTH OF THE**

1 FOLLOWING REQUIREMENTS:

2 (i) HAS DEFINITE BANKS, A BED, AND VISIBLE EVIDENCE OF A
3 CONTINUED FLOW OF WATER.

4 (ii) IS WATERS OF THE UNITED STATES AS THAT TERM IS USED IN
5 SECTION 502(7) OF THE FEDERAL WATER POLLUTION CONTROL ACT, 33 USC
6 1362.

7 (X) "STREAM" DOES NOT INCLUDE ANY OF THE FOLLOWING:

8 (i) A DITCH WITH EPHEMERAL FLOW THAT DOES NOT FLOW DIRECTLY
9 FROM OR THROUGH A FEATURE REGULATED UNDER THIS PART.

10 (ii) AN ARTIFICIALLY IRRIGATED OR FLOODED AREA THAT WILL
11 REVERT TO DRY LAND IF THE APPLICATION OF WATER TO THAT AREA CEASES.

12 (iii) AN EROSIONAL FEATURE INCLUDING GULLIES, RILLS, AND OTHER
13 EPHEMERAL FEATURES NOT REGULATED UNDER THIS PART.

14 (iv) A STORM WATER OR WASTEWATER CONTROL FEATURE CONSTRUCTED
15 TO CONVEY, TREAT, OR STORE STORM WATER OR WASTEWATER THAT IS
16 CREATED ON LAND UNREGULATED BY THIS PART.

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

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

22 Sec. 30104b. **SECTION 30306(6) APPLIES TO A PERMIT APPLICATION**
23 **UNDER THIS PART.** Section 30306b applies to a proposed project or a
24 proposed permit application under this part.

25 Sec. 30112. (1) The department may commence a civil action in
26 the circuit court of the county in which a violation occurs to
27 enforce compliance with this part, to restrain violation of this

1 part or any action contrary to an order of the department denying a
2 permit, to enjoin the further performance of, or order the removal
3 of, any project that is undertaken contrary to this part or after
4 denial of a permit by the department, or to order the restoration
5 of the affected area to its prior condition.

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

9 (3) Except as provided in subsection (4), a person who
10 **NEGLIGENTLY** violates this part or a permit issued under this part
11 is guilty of a misdemeanor, punishable by a fine of not more than
12 \$10,000.00 per day for each day of violation.

13 (4) A person who **NEGLIGENTLY** commits a minor offense is guilty
14 of a misdemeanor, punishable by a fine of not more than \$500.00 for
15 each violation. A law enforcement officer may issue and serve an
16 appearance ticket upon a person for a minor offense pursuant to
17 sections ~~9a-9C~~ to 9g of chapter IV of the code of criminal
18 procedure, ~~Act No. 175 of the Public Acts of 1927, being sections~~
19 ~~764.9a to 764.9g of the Michigan Compiled Laws.1927 PA 175, MCL~~
20 **764.9C TO 764.9G.**

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

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

3 (7) **A CIVIL OR CRIMINAL FINE AUTHORIZED TO BE IMPOSED UNDER**
4 **THIS SECTION FOR EACH DAY OF VIOLATION SHALL NOT BE IMPOSED FOR A**
5 **DAY OF VIOLATION OCCURRING AFTER COMMENCEMENT OF BOTH THE**
6 **ENFORCEMENT ACTION AND NEGOTIATIONS BETWEEN THE DEPARTMENT OR THE**
7 **ATTORNEY GENERAL OR OTHER PROSECUTING ATTORNEY AND THE VIOLATOR**
8 **OVER THE ENFORCEMENT ACTION.**

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

10 (A) "CONTIGUOUS TO" MEANS HAVING A CONTINUOUS SURFACE WATER
11 CONNECTION OR OTHER DIRECT PHYSICAL CONTACT WITH THE GREAT LAKES,
12 LAKE ST. CLAIR, OR AN INLAND LAKE OR STREAM. A WETLAND IS PER SE
13 CONTIGUOUS TO AN INLAND LAKE OR STREAM IF IT IS LOCATED WITHIN 500
14 FEET OF THE ORDINARY HIGH-WATER MARK OF AN INLAND LAKE OR STREAM,
15 UNLESS THERE IS NO SURFACE WATER OR GROUNDWATER CONNECTION. A
16 WETLAND IS PER SE CONTIGUOUS TO THE GREAT LAKES OR LAKE ST. CLAIR
17 IF IT IS LOCATED WITHIN 1,000 FEET OF THE ORDINARY HIGH-WATER MARK
18 OF A GREAT LAKE OR LAKE ST. CLAIR, UNLESS THERE IS NO SURFACE OR
19 GROUNDWATER CONNECTION.

20 (B) ~~(a)~~"Department" means the department of environmental
21 quality.

22 (C) ~~(b)~~"Director" means the director of the department.

23 (D) ~~(c)~~"Exceptional wetland" means wetland that provides
24 physical or biological functions essential to the natural resources
25 of the state and that may be lost or degraded if not preserved
26 through an approved site protection and management plan for the
27 purposes of providing compensatory wetland mitigation.

1 (E) ~~(d)~~—"Fill material" means soil, rocks, sand, waste of any
2 kind, or any other material that displaces soil or water or reduces
3 water retention potential.

4 (F) **"HYDRIC SOIL" MEANS A SOIL THAT FORMED UNDER CONDITIONS OF**
5 **SATURATION, FLOODING, OR PONDING LONG ENOUGH DURING THE GROWING**
6 **SEASON TO DEVELOP ANAEROBIC CONDITIONS IN THE UPPER PART.**

7 (G) ~~(e)~~—"Landscape level wetland assessment" means the use of
8 aerial photographs, maps, and other remotely sensed information to
9 predict and evaluate wetland characteristics and functions in the
10 context of all of the following:

11 (i) The wetland's landscape position and hydrologic
12 characteristics.

13 (ii) The surrounding landscape.

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

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

20 (I) ~~(g)~~—"Nationwide permit" means a nationwide permit issued
21 by the United States ~~army corps of engineers~~ **ARMY CORPS OF**
22 **ENGINEERS** under 72 FR 11091 to 11198 (March 12, 2007), including
23 all general conditions, regional conditions, and conditions imposed
24 by this state pursuant to a water quality certification under
25 section 401 of title IV of the federal water pollution control act,
26 33 USC 1341, or a coastal zone management consistency determination
27 under section 307 of the coastal zone management act of 1972, 16

1 USC 1456.

2 (J) ~~(h)~~—"Ordinary high-water mark" means the ordinary high-
3 water mark as specified in section 32502.

4 (K) ~~(i)~~—"Person" means an individual, sole proprietorship,
5 partnership, corporation, association, municipality, this state, an
6 instrumentality or agency of this state, the federal government, an
7 instrumentality or agency of the federal government, or other legal
8 entity.

9 (L) ~~(j)~~—"Rapid wetland assessment" means a method for
10 generally assessing the functions, values, and condition of
11 individual wetlands based on existing data and field indicators.

12 (M) ~~(k)~~—"Rare and imperiled wetland" means any of the
13 following:

14 (i) Great Lakes marsh.

15 (ii) Southern wet meadow.

16 (iii) Inland salt marsh.

17 (iv) Intermittent wetland or boggy seepage wetland.

18 (v) Coastal plain marsh.

19 (vi) Interdunal wetland.

20 (vii) Lakeplain wet prairie.

21 (viii) Lakeplain wet-mesic prairie.

22 (ix) Northern wet-mesic prairie.

23 (x) Wet-mesic prairie.

24 (xi) Wet prairie.

25 (xii) Prairie fen.

26 (xiii) Northern fen.

27 (xiv) Patterned fen.

- 1 (xv) Poor fen.
 2 (xvi) Muskeg.
 3 (xvii) Rich conifer swamp.
 4 (xviii) Relict conifer swamp.
 5 (xix) Hardwood-conifer swamp.
 6 (xx) Northern swamp.
 7 (xxi) Southern swamp.
 8 (xxii) Southern floodplain forest.
 9 (xxiii) Inundated shrub swamp.

10 (N) ~~(I)~~—"Water dependent" means requiring access or proximity
 11 to or siting within an aquatic site to fulfill its basic purpose.

12 (O) ~~(m)~~—"Wetland", **SUBJECT TO SUBDIVISION (P)**, means **A** land
 13 ~~characterized by the presence of~~ **OR WATER FEATURE, COMMONLY**
 14 **REFERRED TO AS A BOG, SWAMP, OR MARSH, INUNDATED OR SATURATED BY**
 15 water at a frequency and duration sufficient to support, and that
 16 under normal circumstances does support, **HYDRIC SOILS, AQUATIC**
 17 **LIFE, AND A PREDOMINANCE OF** wetland vegetation. ~~or aquatic life,~~
 18 ~~and is commonly referred to as a bog, swamp, or marsh, and which~~ **A**
 19 **LAND OR WATER FEATURE IS NOT A WETLAND UNLESS IT** is any of the
 20 following:

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

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

25 ~~—— (iii) Not contiguous to the Great Lakes, an inland lake or~~
 26 ~~pond, or a river or stream; and 5 acres or less in size if the~~
 27 ~~department determines that protection of the area is essential to~~

1 ~~the preservation of the natural resources of the state from~~
2 ~~pollution, impairment, or destruction and the department has so~~
3 ~~notified the owner.~~

4 (iii) A WATER OF THE UNITED STATES AS THAT TERM IS USED IN
5 SECTION 502(7) OF THE FEDERAL WATER POLLUTION CONTROL ACT, 33 USC
6 1362.

7 (P) "WETLAND" DOES NOT INCLUDE AN ARTIFICIALLY IRRIGATED OR
8 FLOODED AREA THAT WILL REVERT TO DRY LAND IF THE APPLICATION OF
9 WATER TO THAT AREA CEASES.

10 (2) The department and local units of government shall apply
11 the technical wetland delineation standards set forth in the United
12 States ~~army corps of engineers~~ **ARMY CORPS OF ENGINEERS** January 1987
13 wetland delineation manual, technical report Y-87-1, and
14 appropriate regional United States ~~army corps of engineers~~ **ARMY**
15 **CORPS OF ENGINEERS** supplements, in identifying wetland boundaries
16 under this part, including, but not limited to, section 30307.

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

21 (a) Deposit or permit the placing of fill material in a
22 wetland.

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

25 (c) Construct, operate, or maintain any ~~use or~~ development in
26 a wetland.

27 (d) Drain surface water from a wetland.

1 Sec. 30305. (1) Activities that require a permit under part
2 325 or part 301 or a discharge that is authorized by a discharge
3 permit under section 3112 or 3113 do not require a permit under
4 this part.

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

8 (a) Fishing, trapping, or hunting.

9 (b) Swimming or boating.

10 (c) Hiking.

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

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

22 (i) Beginning October 1, 2013, to be allowed in a wetland
23 without a permit, these activities shall be part of an established
24 ongoing farming, ranching, horticultural, or silvicultural
25 operation. Farming and silvicultural activities on areas lying
26 fallow as part of a conventional rotational cycle are part of an
27 established ongoing operation, unless modifications to the

1 hydrological regime or mechanized land clearing are necessary to
2 resume operation. Activities that bring into farming, ranching,
3 horticultural, or silvicultural use an area not in any of these
4 uses, or that convert an area from a forested or silvicultural use
5 to a farming, ranching, or horticultural use, are not part of an
6 established ongoing operation.

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

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

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

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

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

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

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

27 (iii) The maintenance does not include any modification that

1 results in additional wetland drainage or conversion of a wetland
2 to a use to which it was not previously subject.

3 (i) Maintenance of a drain that was legally established and
4 constructed pursuant to the drain code of 1956, 1956 PA 40, MCL
5 280.1 to 280.630, if the drain was constructed before January 1,
6 1973 or under a permit issued pursuant to this part. As used in
7 this subdivision, "maintenance of a drain" means the physical
8 preservation of the location, depth, and bottom width of a drain
9 and appurtenant structures to restore the function and approximate
10 capacity of the drain as constructed or modified at any time before
11 July 1, 2014, including the placement of spoils removed from the
12 drain in locations along that drain where spoils have been
13 previously placed. Maintenance of a drain under this subdivision
14 does not include any modification that results in additional
15 wetland drainage or conversion of a wetland to a use to which it
16 was not previously subject.

17 (j) Construction or maintenance of farm roads, forest roads,
18 or temporary roads for moving mining or forestry equipment, if the
19 roads are constructed and maintained in a manner to ensure that any
20 adverse effect on the wetland will be minimized. **IN DETERMINING**
21 **WHETHER AN ALTERNATIVE WILL MINIMIZE ANY ADVERSE EFFECT ON THE**
22 **WETLAND, THE DEPARTMENT SHALL CONSIDER COST, EXISTING TECHNOLOGY,**
23 **AND LOGISTICS IN LIGHT OF OVERALL PROJECT PURPOSES.**

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

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

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

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

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

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

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

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

17 (m) Installation of utility lines having a diameter of 6
18 inches or less using directional drilling or boring, or knifing-in,
19 and the placement of poles with minimal (less than 1 cubic yard)
20 structure support, if the utility lines and poles are installed in
21 a manner that minimizes any adverse effect on the wetland.

22 Directional drilling or boring under this subdivision shall meet
23 all of the following requirements:

24 (i) The top of the utility line is at least 4 feet below the
25 soil surface of the wetland. However, if the presence of rock
26 prevents the placement of the utility line at the depth otherwise
27 required by this subparagraph, the bottom of the utility line is

1 not placed higher than the top of the rock.

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

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

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

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

17 (3) An activity in a wetland that was effectively drained for
18 farming before October 1, 1980 and that on and after October 1,
19 1980 has continued to be effectively drained as part of an ongoing
20 farming operation is not subject to regulation under this part.

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

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

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

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

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

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

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

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

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

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

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

27 (b) Is being used for another purpose unrelated to excavation

1 as part of commercial sand, gravel, or mineral mining.

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

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

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

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

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

17 (a) Does not have continuous flow.

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

21 (c) Serves agricultural production.

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

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

1 the following:

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

3 (b) The location of the wetland.

4 (c) A description of the wetland.

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

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

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

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

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

21 (a) For a project in a category of activities for which a
22 general permit is issued under section ~~30312,~~ **30312(2)**, a fee of
23 \$50.00.

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

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

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

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

4 (iii) A new golf course affecting wetland.

5 (iv) A subdivision affecting wetland.

6 (v) A condominium affecting wetland.

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

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

11 (a) Section 3104.

12 (b) Part 301.

13 (c) Part 323.

14 (d) Part 325.

15 (e) Section 117 of the land division act, 1967 PA 288, MCL
16 560.117.

17 (5) If work has been done in violation of a permit requirement
18 under this part, ~~and restoration is not ordered by the department,~~
19 the department **SHALL CONSIDER ACCEPTING AND** may accept an
20 application for a permit if the application is accompanied by a fee
21 equal to twice the application fee otherwise required under this
22 section.

23 (6) **IF THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL**
24 **PROTECTION AGENCY OBJECTS UNDER 33 USC 1344(J) TO THE ISSUANCE OF A**
25 **PERMIT UNDER THIS PART OR PART 301, THE DIRECTOR SHALL CONVENE A**
26 **MEETING OF AN ENVIRONMENTAL PERMIT PANEL UNDER SECTION 1315(2) TO**
27 **DETERMINE WHETHER THE ADMINISTRATOR'S OBJECTION IS WITHOUT MERIT.**

1 THE DECISION OF THE ADMINISTRATOR SHALL BE CONSIDERED A PETITION
2 FOR THE PURPOSES OF SECTION 1315(2) AND THE PANEL SHALL PROCEED AS
3 PROVIDED IN SECTION 1315(2) TO (5). AFTER THE DIRECTOR RECEIVES
4 WRITTEN NOTICE OF THE PANEL'S RECOMMENDATION, THE DIRECTOR SHALL
5 DETERMINE WHETHER THE ADMINISTRATOR'S OBJECTION IS WITHOUT MERIT.
6 IF THE DIRECTOR DETERMINES THAT THE OBJECTION IS WITHOUT MERIT, THE
7 DIRECTOR SHALL NOTIFY THE ADMINISTRATOR OF THE REASONS WHY THE
8 ADMINISTRATOR'S OBJECTION IS WITHOUT MERIT AND REQUEST THE
9 ADMINISTRATOR TO WITHDRAW THE OBJECTION. THE NOTICE AND REQUEST
10 SHALL BE IN WRITING AND SUBMITTED TO THE ADMINISTRATOR WITHIN 30
11 DAYS AFTER THE DIRECTOR RECEIVES NOTICE OF THE PANEL'S
12 RECOMMENDATION. FOR THE PURPOSES OF THIS SUBSECTION, AN OBJECTION
13 IS WITHOUT MERIT IF THE OBJECTION IS ANY OF THE FOLLOWING:

14 (A) NOT SUPPORTED BY COMPETENT, MATERIAL, AND SUBSTANTIAL
15 EVIDENCE ON THE WHOLE RECORD.

16 (B) ARBITRARY, CAPRICIOUS, OR CLEARLY AN ABUSE OR UNWARRANTED
17 EXERCISE OF DISCRETION.

18 (C) AFFECTED BY OTHER SUBSTANTIAL AND MATERIAL ERROR OF LAW.

19 (7) ~~(6)~~—If the department determines that a permit is not
20 required under this part or denies an application for a permit
21 under this part, the department shall promptly refund the
22 application fee paid under this section.

23 (8) ~~(7)~~—The department may issue a conditional permit before
24 the expiration of the 20-day period referred to in section 30307 if
25 emergency conditions warrant a project to protect property or the
26 public health, safety, or welfare.

27 Sec. 30307. (1) Within 60 days after receipt of the completed

1 application and fee, the department may hold a hearing. If a
2 hearing is held, it shall be held in the county where the wetland
3 to which the permit is to apply is located. Notice of the hearing
4 shall be ~~made~~**GIVEN** in the same manner as for the promulgation of
5 rules under the administrative procedures act of 1969, 1969 PA 306,
6 MCL 24.201 to 24.328. The department may approve or disapprove a
7 permit application without a public hearing unless a person
8 requests a hearing in writing within 20 days after the mailing of
9 notification of the permit application as required by subsection
10 (3) or unless the department determines that the permit application
11 is of significant impact so as to warrant a public hearing.

12 (2) The action taken by the department on a permit application
13 under this part ~~and~~**OR** part 13 may be appealed pursuant to the
14 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
15 24.328. A property owner may, after exhaustion of administrative
16 remedies, bring appropriate legal action in a court of competent
17 jurisdiction.

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

1 the wetland affected, and a summary statement of the purpose of the
2 ~~use or~~ development.

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

9 (a) The ordinance shall not provide a different definition of
10 wetland than is provided in this part, except that a wetland
11 ordinance may regulate wetland of less than ~~5-10~~ acres in size.

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

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

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

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

21 (6) A local unit of government that adopts an ordinance
22 regulating wetlands shall use an application form supplied by the
23 department, and each person applying for a permit shall make
24 application directly to the local unit of government. Upon receipt,
25 the local unit of government shall forward a copy of each
26 application along with any state fees that may have been submitted
27 under section 30306 to the department. The department shall begin

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

22 (7) If a local unit of government does not have an ordinance
23 regulating wetlands, the department shall promptly send a copy of
24 the permit application to the local unit of government where the
25 wetland is located. The local unit of government may review the
26 application; may hold a hearing on the application; may recommend
27 approval, modification, or denial of the application to the

1 department or may notify the department that the local unit of
2 government declines to make a recommendation. The recommendation of
3 the local unit of government, if any, shall be made and returned to
4 the department ~~at any time~~ within 45 days after the local unit of
5 government's receipt of the permit application.

6 (8) In addition to the requirements of subsection (7), the
7 department shall notify the local unit of government that the
8 department has issued a permit under this part **PERTAINING TO**
9 **WETLAND LOCATED** within the jurisdiction of that local unit of
10 government within 15 days of issuance of the permit. The department
11 shall enclose a copy of the permit with the notice.

12 Sec. 30311. (1) A permit for an activity listed in section
13 30304 shall not be approved unless the department determines that
14 the issuance of a permit is in the public interest, that the permit
15 is necessary to realize the benefits ~~derived~~ from the activity, and
16 that the activity is otherwise lawful.

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

24 (a) The relative extent of the public and private need for the
25 proposed activity.

26 (b) The availability of feasible and prudent alternative
27 locations and methods to ~~accomplish the expected~~ **REALIZE THE**

1 benefits from the activity.

2 (c) The extent and permanence of the beneficial or detrimental
3 effects that the proposed activity may have on the public and
4 private uses to which the area is suited, including the benefits
5 the wetland provides.

6 (d) The probable effects of each proposal in relation to the
7 cumulative effects created by other existing and anticipated
8 activities in the watershed.

9 (e) The probable effects on recognized historic, cultural,
10 scenic, ecological, or recreational values and on the public health
11 or fish or wildlife.

12 (f) The size of the wetland being considered.

13 (g) The amount of remaining wetland in the general area.

14 (h) Proximity to any waterway.

15 (i) Economic value, both public and private, of the proposed
16 land change to the general area.

17 (3) In considering a permit application, the department shall
18 give serious consideration to findings of necessity for the
19 proposed activity ~~which~~ **THAT** have been made by other state
20 agencies.

21 (4) A permit shall not be issued unless it is shown that an
22 unacceptable disruption will not result to the aquatic resources.
23 In determining whether a disruption to the aquatic resources is
24 unacceptable, the criteria set forth in section 30302 and
25 subsection (2) shall be considered. A permit shall not be issued
26 unless the applicant also shows either of the following:

27 (a) The proposed activity is primarily dependent upon being

1 located in the wetland.

2 (b) A feasible and prudent alternative does not exist.

3 (5) If it is otherwise a feasible and prudent alternative, a
4 property not presently owned by the applicant which could
5 reasonably be obtained, utilized, expanded, or managed in order to
6 fulfill the basic purpose of the proposed activity may be
7 considered. If all of the following requirements are met, there is
8 a rebuttable presumption that alternatives located on property not
9 presently owned by the applicant are not feasible and prudent:

10 (a) The activity is described in section 30304(a) or (b).

11 (b) The activity will **NOT** affect ~~not~~ more than 2 acres of
12 wetland.

13 (c) The activity is undertaken for the construction or
14 expansion of a single-family home and attendant features, the
15 construction or expansion of a barn or other farm building, or the
16 expansion of a small business facility.

17 (d) The activity is not covered by a general permit.

18 (6) Consideration of feasible and prudent alternatives
19 regarding the size of a proposed structure shall be based on the
20 footprint of the structure and not the square footage of the
21 structure.

22 (7) The choice of and extent of the proposed activity within a
23 proposed structure shall not be considered in determining feasible
24 and prudent alternatives.

25 (8) An alternative that entails higher costs, as described in
26 R 281.922a(11) of the Michigan ~~administrative code~~, **ADMINISTRATIVE**
27 **CODE**, is not feasible and prudent if those higher costs are

1 unreasonable. In determining whether such costs are unreasonable,
2 the department shall consider both of the following:

3 (a) The relation of the increased cost to the overall scope
4 and cost of the project.

5 (b) Whether the projected cost is substantially greater than
6 the costs normally associated with the particular type of project.

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

10 (2) Upon ~~reasonable cause or~~ obtaining a search warrant, **AN**
11 **ADMINISTRATIVE WARRANT, ISSUED BY THE DIRECTOR OF THE DEPARTMENT,**
12 **OR THE CONSENT OF THE PERSON WHO OWNS OR CONTROLS THE PREMISES,** the
13 department may enter on, upon, or through the premises on which an
14 activity listed in section 30304 is located or on which information
15 required to be maintained under subsection (1) is located.

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

27 (2) A person who **NEGLIGENTLY** violates this part is guilty of a

1 misdemeanor ~~—~~punishable by a fine of not more than \$2,500.00.

2 (3) A person who willfully or recklessly violates a condition
3 or limitation in a permit issued by the department under this part,
4 or a corporate officer who has knowledge of or is responsible for a
5 violation, is guilty of a misdemeanor ~~—~~punishable by a fine of not
6 less than \$2,500.00 ~~per~~~~—OR~~ more than \$25,000.00 per day of
7 violation ~~—~~or by imprisonment for not more than 1 year, or both. A
8 person who ~~violates~~**COMMITS A VIOLATION DESCRIBED IN** this section a
9 second or subsequent time is guilty of a felony ~~—~~punishable by a
10 fine of not more than \$50,000.00 for each day of violation ~~—~~or by
11 imprisonment for not more than 2 years, or both.

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

19 (5) **A CIVIL OR CRIMINAL FINE AUTHORIZED TO BE IMPOSED UNDER**
20 **THIS SECTION FOR EACH DAY OF VIOLATION SHALL NOT BE IMPOSED FOR A**
21 **DAY OF VIOLATION OCCURRING AFTER COMMENCEMENT OF BOTH THE**
22 **ENFORCEMENT ACTION AND NEGOTIATIONS BETWEEN THE DEPARTMENT OR THE**
23 **ATTORNEY GENERAL OR OTHER PROSECUTING ATTORNEY AND THE VIOLATOR**
24 **OVER THE ENFORCEMENT ACTION.**

25 (6) **UNDER SECTION 2421C OF THE REVISED JUDICATURE ACT, 1961 PA**
26 **236, MCL 600.2421C, ON STIPULATION OF THE PARTIES OR MOTION, A**
27 **COURT THAT CONDUCTS A CIVIL ACTION UNDER THIS PART BROUGHT BY OR**

1 AGAINST THIS STATE AS A PARTY SHALL AWARD TO A PREVAILING PARTY,
2 OTHER THAN THIS STATE, THE COSTS AND FEES INCURRED BY THAT PARTY IN
3 CONNECTION WITH THE CIVIL ACTION, UNLESS THIS STATE DEMONSTRATES BY
4 CLEAR AND CONVINCING EVIDENCE THAT THIS STATE'S POSITION WAS
5 SUBSTANTIALLY JUSTIFIABLE. HOWEVER, REGARDLESS OF WHETHER THE
6 STATE'S POSITION WAS SUBSTANTIALLY JUSTIFIABLE, EXPERT PROFESSIONAL
7 WITNESS FEES SHALL BE AWARDED TO A LANDOWNER THAT PREVAILS ON THE
8 ISSUE OF WHETHER THE LANDOWNER'S PROPERTY IS WETLAND.

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

11 (2) If a person is aggrieved by any action or inaction of the
12 department, the person may request a formal hearing on the matter
13 involved. The hearing shall be conducted by the department pursuant
14 to the administrative procedures act of 1969, ~~Act No. 306 of the~~
15 ~~Public Acts of 1969, being sections 1969 PA 306, MCL 24.201 to~~
16 ~~24.328. of the Michigan Compiled Laws.~~

17 (3) UNDER SECTION 123 OF THE ADMINISTRATIVE PROCEDURES ACT OF
18 1969, 1969 PA 306, MCL 24.323, ON STIPULATION OF THE PARTIES OR
19 MOTION, THE PRESIDING OFFICER WHO CONDUCTS A CONTESTED CASE UNDER
20 THIS PART SHALL AWARD TO A PREVAILING PARTY, OTHER THAN THE
21 DEPARTMENT, THE COSTS AND FEES INCURRED BY THE PARTY IN CONNECTION
22 WITH THE CONTESTED CASE, UNLESS THE DEPARTMENT DEMONSTRATES BY
23 CLEAR AND CONVINCING EVIDENCE THAT THE DEPARTMENT'S POSITION WAS
24 SUBSTANTIALLY JUSTIFIABLE. HOWEVER, REGARDLESS OF WHETHER THE
25 DEPARTMENT'S POSITION WAS SUBSTANTIALLY JUSTIFIABLE, EXPERT
26 PROFESSIONAL WITNESS FEES SHALL BE AWARDED TO A LANDOWNER THAT
27 PREVAILS ON THE ISSUE OF WHETHER THE LANDOWNER'S PROPERTY IS

1 **WETLAND.**

2 (4) ~~(3)~~—A determination, action, or inaction by the department
 3 following the hearing is subject to judicial review as provided in
 4 ~~Act No. 306 of the Public Acts of 1969.~~**THE ADMINISTRATIVE**
 5 **PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328.**

6 (5) ~~(4)~~—This section does not limit the right of a wetland
 7 owner to institute proceedings in any circuit of the circuit court
 8 of the state against any person ~~when~~ **IF** necessary to protect the
 9 wetland owner's rights.

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

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

24 (2) ~~(3)~~—A person who owns or leases a parcel of property may
 25 request that the department of environmental quality assess whether
 26 the parcel of property or a portion of the parcel is wetland. The
 27 request shall satisfy all of the following requirements:

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

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

3 (c) Contain a legal description of the parcel and, if only a
4 portion of the parcel is to be assessed, a description of the
5 portion to be assessed.

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

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

9 (3) ~~(4)~~—The department shall assess the parcel within a
10 reasonable time after the request is made. The department may enter
11 upon the parcel to conduct the assessment. Upon completion of the
12 assessment, the department shall provide the person with a written
13 assessment report. The assessment report shall do all of the
14 following:

15 (a) Identify in detail the location of any wetland in the area
16 assessed.

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

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

25 (d) Contain the date of the assessment.

26 (e) Advise that the person may request the department to
27 reassess the parcel or any part of the parcel that the person

1 believes was erroneously determined to be wetland if the request is
2 accompanied by evidence pertaining to wetland vegetation, soils, or
3 hydrology that is different from or in addition to the information
4 relied upon by the department.

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

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

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

16 (ii) Part 91.

17 (iii) Part 301.

18 (iv) Part 323.

19 (v) Part 325.

20 (vi) Part 353.

21 (4) ~~(5)~~—A wetland is not contiguous to the Great Lakes or Lake
22 St. Clair, an inland lake or pond, or a river or stream if the
23 department determines that there is no direct physical contact and
24 no surface water or interflowing groundwater connection to such a
25 body of water. A person may request that, as part of an assessment,
26 the department make a determination whether a wetland is not
27 contiguous. The department shall make the determination in writing

1 within 30 days after an on-site evaluation.

2 (5) ~~(6)~~—The department shall not consider an agricultural
3 drain, as defined in section 30305, in determining whether a
4 wetland is contiguous to the Great Lakes or Lake St. Clair, an
5 inland lake or pond, or a river or stream.

6 (6) ~~(7)~~—A drainage structure such as a culvert, ditch, or
7 channel, in and of itself, is not a wetland. A temporary
8 obstruction of drainage, in and of itself, is not a wetland until
9 the presence of water is of sufficient frequency and duration to be
10 identified as wetland pursuant to section 30301(2).

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

21 (8) ~~(9)~~—If an assessment report determines that the area
22 assessed or part of the area assessed is not a wetland regulated by
23 the department under this part, then the area determined by the
24 assessment report not to be a wetland is not a wetland regulated by
25 the department under this part for a period of 3 years after the
26 date of the assessment.

27 (9) ~~(10)~~—The department may charge a fee for an assessment

1 requested under subsection ~~(3)~~ **(2)** based upon the cost to the
2 department of conducting an assessment.

3 **(10)** ~~(11)~~—There shall be no fee for an assessment under the
4 blueberry production assistance program.

5 **(11)** ~~(12)~~—The department shall, upon request of the applicant
6 and without charge, provide to the applicant a copy of any
7 delineation forms completed by the department associated with a
8 permit application.

9 Sec. 32301. As used in this part:

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

12 (b) "Environmental area" means an area of the shoreland
13 determined by the department on the basis of studies and surveys to
14 be necessary for the preservation and maintenance of fish and
15 wildlife.

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

19 (d) "Land to be zoned or regulated" or "land to be zoned"
20 means the land in this state that borders or is adjacent to a Great
21 Lake or a connecting waterway and that, except for flood risk
22 areas, is situated within 1,000 feet landward from the ordinary
23 high-water mark as defined in section 32501, land bordering or
24 adjacent to waters affected by levels of the Great Lakes landward
25 of the ordinary high-water mark as defined by section ~~30101(f)~~,
26 **30101**, and land between the ordinary high-water mark and the
27 water's edge.

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

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

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

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