

SENATE BILL No. 187

February 4, 2009, Introduced by Senators KAHN, PAPPAGEORGE and HARDIMAN and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 30104b, 30301, 30302, 30304, 30305, 30307, 30308, 30309, 30310, 30311, 30313, 30317, 30321, and 30323 (MCL 324.30104b, 324.30301, 324.30302, 324.30304, 324.30305, 324.30307, 324.30308, 324.30309, 324.30310, 324.30311, 324.30313, 324.30317, 324.30321, and 324.30323), section 30104b as added by 2006 PA 592, sections 30301 and 30305 as amended by 2003 PA 14, sections 30302, 30308, 30309, 30310, 30311, 30313, and 30323 as added by 1995 PA 59, section 30304 as amended by 2004 PA 325, section 30307 as amended by 2006 PA 430, section 30317 as amended by 1998 PA 228, and section 30321 as amended by 1996 PA 530; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 30104b. (1) ~~Section 30306b applies to a proposed project~~
2 ~~or a permit application under this part.~~ IF A PREAPPLICATION
3 MEETING IS REQUESTED IN WRITING BY THE LANDOWNER OR ANOTHER PERSON
4 WHO IS AUTHORIZED IN WRITING BY THE LANDOWNER, THE DEPARTMENT SHALL
5 MEET WITH THE PERSON OR HIS OR HER REPRESENTATIVES TO REVIEW A
6 PROPOSED PROJECT OR A PROPOSED PERMIT APPLICATION IN ITS ENTIRETY.
7 THE PREAPPLICATION MEETING SHALL TAKE PLACE AT THE DEPARTMENT'S
8 DISTRICT OFFICE FOR THE DISTRICT THAT INCLUDES THE PROJECT SITE OR
9 AT THE PROJECT SITE ITSELF, AS SPECIFIED IN THE REQUEST.

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

21 (3) IF THE PERSON WHO SUBMITTED A REQUEST UNDER SUBSECTION (1)
22 WITHDRAWS THE REQUEST AT LEAST 24 HOURS BEFORE THE PREAPPLICATION
23 MEETING, THE DEPARTMENT MAY AGREE WITH THE PERSON TO RESCHEDULE THE
24 MEETING OR SHALL PROMPTLY REFUND THE FEE AND NEED NOT MEET AS
25 PROVIDED IN THIS SECTION. OTHERWISE, IF, AFTER AGREEING TO THE TIME
26 AND PLACE FOR A PREAPPLICATION MEETING, THE PERSON IS NOT
27 REPRESENTED AT THE MEETING, THE PERSON SHALL FORFEIT THE FEE FOR

1 THE MEETING. IF, AFTER AGREEING TO THE TIME AND PLACE FOR A
 2 PREAPPLICATION MEETING, THE DEPARTMENT IS NOT REPRESENTED AT THE
 3 MEETING, THE DEPARTMENT SHALL REFUND THE FEE AND SEND A
 4 REPRESENTATIVE TO A RESCHEDULED MEETING TO BE HELD WITHIN 10 DAYS
 5 OF THE FIRST SCHEDULED MEETING DATE.

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

10 (5) ~~(2)~~ This section is repealed effective October 1, 2010.
 11 Sec. 30301. As used in this part:

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

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

17 (i) Manual or mechanized leveling of sand.

18 (ii) Mowing of vegetation.

19 (iii) Manual de minimis removal of vegetation.

20 (iv) Grooming of soil.

21 (v) Construction and maintenance of a path.

22 (B) ~~(e)~~ "Debris" means animal or fish carcasses, zebra mussel
 23 shells, dead vegetation, trash, and discarded materials of human-
 24 made origin.

25 (C) ~~(d)~~ "Department" means the department of environmental
 26 quality.

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

1 (D) "ENVIRONMENTAL AREA" MEANS AN ENVIRONMENTAL AREA AS
2 DEFINED IN SECTION 32301.

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

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

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

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

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

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

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

27 (K) ~~(m)~~—"Path" means a temporary access walkway from the

1 upland riparian property directly to the shoreline across swales
 2 with standing water, not exceeding 6 feet in bottom width and
 3 consisting of sand and pebbles obtained from ~~the~~-exposed,
 4 nonvegetated bottomlands or from the upland riparian property.

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

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

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

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

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

26 (iii) ~~Not contiguous to the Great Lakes, an inland lake or pond,~~
 27 ~~or a river or stream; and 5 acres or less in size if the department~~

1 ~~determines that protection of the area is~~ **AN AREA WHOSE PROTECTION**
 2 **IS DETERMINED BY THE DEPARTMENT TO BE** essential to the preservation
 3 of the natural resources of the state from pollution, impairment,
 4 or destruction, ~~and IF~~ the department has so notified the owner. ~~+~~
 5 ~~except this subparagraph may be utilized regardless of wetland size~~
 6 ~~in a county in which subparagraph (ii) is of no effect; except for~~
 7 ~~the purpose of inventorying, at the time.~~

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

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

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

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

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

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

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

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

27 (vi) Sources of nutrients in water food cycles and nursery

1 grounds and sanctuaries for fish.

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

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

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

12 (2) **THE DEPARTMENT SHALL NOT REGULATE ACTIVITIES IN WETLAND**
13 **UNDER THIS PART. THE DEPARTMENT SHALL NOT ADMINISTER A PERMIT**
14 **PROGRAM UNDER SECTION 404 OF TITLE IV OF THE FEDERAL WATER**
15 **POLLUTION CONTROL ACT, 33 USC 1344.**

16 Sec. 30304. ~~Except as otherwise provided in this part or by a~~
17 ~~permit issued by the department under sections 30306 to 30314 and~~
18 ~~pursuant to part 13,~~ **AN ORDINANCE ADOPTED UNDER SECTION 30307 MAY**
19 **PROVIDE THAT** a person shall not do any of the following **WITHOUT A**
20 **PERMIT ISSUED BY THE LOCAL UNIT OF GOVERNMENT WHERE THE WETLAND IS**
21 **LOCATED:**

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

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

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

1 (d) Drain surface water from a wetland.

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

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

8 ~~regulation~~ **A LOCAL ORDINANCE UNDER SECTION 30307 SHALL NOT REQUIRE**

9 **A PERMIT FOR ANY OF THE FOLLOWING USES IN A WETLAND:**

10 (a) Fishing, trapping, or hunting.

11 (b) Swimming or boating.

12 (c) Hiking.

13 (d) Grazing of animals.

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

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

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

25 (h) Maintenance, operation, or improvement, ~~which includes~~
 26 **INCLUDING** straightening, widening, or deepening, of the following
 27 ~~which~~ **THAT** is necessary for the production or harvesting of

1 agricultural products:

2 (i) An existing private agricultural drain.

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

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

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

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

25 (k) Maintenance or improvement of public streets, highways, or
26 roads, within the right-of-way and in such a manner as to ~~assure~~
27 **ENSURE** that any adverse effect on the wetland will be ~~otherwise~~

1 minimized. Maintenance or improvement does not include adding extra
2 lanes, increasing the right-of-way, or deviating from the existing
3 location of the street, highway, or road.

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

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

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

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

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

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

26 (ii) The width of any mowing of vegetation shall not exceed the
27 width of the riparian property or 100 feet, whichever is less.

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

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

6 (Q) ~~(3)~~An activity in a wetland that was effectively drained
7 for farming before October 1, 1980 and that on and after October 1,
8 1980 has continued to be effectively drained as part of an ongoing
9 farming operation. ~~is not subject to regulation under this part.~~

10 (2) ~~(4)~~A wetland that is incidentally created as a result of
11 1 or more of the following activities is not subject to regulation
12 under ~~this part~~ **A LOCAL ORDINANCE ADOPTED UNDER SECTION 30307:**

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

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

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

22 Sec. 30307. ~~(1) Within 60 days after receipt of the completed~~
23 ~~application and fee, the department may hold a hearing. If a~~
24 ~~hearing is held, it shall be held in the county where the wetland~~
25 ~~to which the permit is to apply is located. Notice of the hearing~~
26 ~~shall be made in the same manner as for the promulgation of rules~~
27 ~~under the administrative procedures act of 1969, 1969 PA 306, MCL~~

1 ~~24.201 to 24.328. The department may approve or disapprove a permit~~
2 ~~application without a public hearing unless a person requests a~~
3 ~~hearing in writing within 20 days after the mailing of notification~~
4 ~~of the permit application as required by subsection (3) or unless~~
5 ~~the department determines that the permit application is of~~
6 ~~significant impact so as to warrant a public hearing.~~

7 ~~—— (2) The action taken by the department on a permit application~~
8 ~~under this part and part 13 may be appealed pursuant to the~~
9 ~~administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to~~
10 ~~24.328. A property owner may, after exhaustion of administrative~~
11 ~~remedies, bring appropriate legal action in a court of competent~~
12 ~~jurisdiction.~~

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

25 ~~(1) (4) A local unit of government may regulate wetland within~~
26 ~~its boundaries, by ordinance, only as provided under this part.~~
27 ~~This subsection is supplemental to the existing authority of a~~

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

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

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

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

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

13 (2) ~~(5)~~—Each local unit of government that adopts an ordinance
14 regulating wetlands under subsection ~~(4)~~—(1) shall notify the
15 department.

16 (3) ~~(6)~~—A local unit of government that adopts an ordinance
17 regulating wetlands shall use an application form supplied by the
18 department, and each person applying for a permit shall make
19 application directly to the local unit of government. ~~Upon receipt,~~
20 ~~the local unit of government shall forward a copy of each~~
21 ~~application along with any state fees that may have been submitted~~
22 ~~under section 30306 to the department. The department shall begin~~
23 ~~reviewing the application as provided in this part.~~ The local unit
24 of government shall review the application pursuant to its
25 ordinance and shall modify, approve, or deny the application within
26 90 days after receipt. If a local unit of government does not
27 approve or disapprove the permit application within ~~the time period~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (3) This section does not limit the right of a wetland owner
26 to institute proceedings in any circuit of the circuit court of the
27 state against any person when necessary to protect the wetland

1 owner's rights.

2 Sec. 30311. (1) A permit for an activity listed in section
3 30304 shall not be approved unless the ~~department~~**LOCAL UNIT OF**
4 **GOVERNMENT** determines that the issuance of a permit is in the
5 public interest, that the permit is necessary to realize the
6 benefits derived from the activity, and that the activity is
7 otherwise lawful.

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

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

17 (b) The availability of feasible and prudent alternative
18 locations and methods to accomplish the expected benefits from the
19 activity.

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

24 (d) The probable impact of each proposal in relation to the
25 cumulative effect created by other existing and anticipated
26 activities in the watershed.

27 (e) The probable impact on recognized historic, cultural,

1 scenic, ecological, or recreational values and on the public health
2 or fish or wildlife.

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

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

5 (h) Proximity to any waterway.

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

8 (3) In considering a permit application, the ~~department~~ **LOCAL**
9 **UNIT OF GOVERNMENT** shall give serious consideration to findings of
10 necessity for the proposed activity ~~which~~ **THAT** have been made by
11 ~~other~~ state agencies.

12 (4) A permit shall not be issued unless it is shown that an
13 unacceptable disruption will not result to the aquatic resources.
14 In determining whether a disruption to the aquatic resources is
15 unacceptable, the criteria set forth in section 30302 and
16 subsection (2) shall be considered. A permit shall not be issued
17 unless the applicant also shows either of the following:

18 (a) The proposed activity is primarily dependent upon being
19 located in the wetland.

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

21 Sec. 30313. ~~(1) A general permit may be revoked or modified~~
22 ~~if, after opportunity for a public hearing or a contested case~~
23 ~~hearing under the administrative procedures act of 1969, Act No.~~
24 ~~306 of the Public Acts of 1969, being sections 24.201 to 24.328 of~~
25 ~~the Michigan Compiled Laws, the department determines that the~~
26 ~~activities authorized by the general permit have an adverse impact~~
27 ~~on the environment or the activities would be more appropriately~~

1 ~~authorized by an individual permit.~~

2 ~~——(2) A permit~~ **ISSUED BY A LOCAL UNIT OF GOVERNMENT PURSUANT TO**
3 **AN ORDINANCE ADOPTED UNDER SECTION 30307** may be terminated or
4 modified for cause, including:

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

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

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

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

1 ~~wetland and any appropriate changes to that definition in the first~~
2 ~~report submitted to the legislature under this section and shall~~
3 submit the report to the standing committees of the house of
4 representatives and the senate that primarily address issues
5 pertaining to the protection of natural resources and the
6 environment, and the appropriations committees in the house of
7 representatives and the senate. Other than civil fines and costs,
8 the disposition of which is governed by section 8379 of the revised
9 judicature act of 1961, 1961 PA 236, MCL 600.8379, or criminal
10 fines, ~~funds~~ **MONEY** collected by a local unit of government under an
11 ordinance authorized under section ~~30307(4)~~ **30307** shall be
12 deposited in the general fund of the local unit of government.

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

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

27 ~~— (3) Before an inventory is made of a county, a person who owns~~

~~1 or leases a parcel of property located in that county may request
2 that the department of environmental quality assess whether the
3 parcel of property or a portion of the parcel is wetland. The
4 request shall satisfy all of the following requirements:~~

~~5 — (a) Be made on a form provided by the department.~~

~~6 — (b) Be signed by the person who owns or leases the property.~~

~~7 — (c) Contain a legal description of the parcel and, if only a
8 portion of the parcel is to be assessed, a description of the
9 portion to be assessed.~~

~~10 — (d) Include a map showing the location of the parcel.~~

~~11 — (e) Grant the department or its agent permission to enter on
12 the parcel for the purpose of conducting the assessment.~~

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

~~19 — (a) Identify in detail the location of any wetland in the area
20 assessed.~~

~~21 — (b) If wetland is present in the area assessed, describe the
22 types of activities that require a permit under this part.~~

~~23 — (c) If the assessment report determines that the area assessed
24 or part of the area assessed is not wetland, state that the
25 department lacks jurisdiction under this part as to the area that
26 the report determines is not wetland and that this determination is
27 binding on the department for 3 years from the date of the~~

1 ~~assessment.~~

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

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

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

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

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

20 ~~—— (ii) Part 91.~~

21 ~~—— (iii) Part 301.~~

22 ~~—— (iv) Part 323.~~

23 ~~—— (v) Part 325.~~

24 ~~—— (vi) Part 353.~~

25 ~~—— (5) A person may request the department to reassess any area~~
26 ~~assessed under subsections (3) and (4) that the person believes the~~
27 ~~department erroneously determined to be wetland. The requirements~~

1 ~~of subsections (3) and (4) apply to the request, assessment, and~~
2 ~~assessment report. However, the request shall be accompanied by~~
3 ~~evidence pertaining to wetland vegetation, soils, or hydrology that~~
4 ~~is different from or in addition to the information relied upon by~~
5 ~~the department. The assessment report shall not contain the~~
6 ~~information required by subsection (4) (c).~~

7 ~~—— (6) If an assessment report determines that the area assessed~~
8 ~~or part of the area assessed is not a wetland regulated by the~~
9 ~~department under this part, then the area determined by the~~
10 ~~assessment report not to be a wetland is not a wetland regulated by~~
11 ~~the department under this part for a period of 3 years after the~~
12 ~~date of the assessment.~~

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

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

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

1 court of competent jurisdiction.

2 (3) If the court determines that an action of ~~the department~~
3 ~~or~~ a local unit of government pursuant to ~~this part or~~ an ordinance
4 ~~authorized pursuant to section 30307(4)~~ **ADOPTED UNDER SECTION 30307**
5 constitutes a taking of the property of a person, ~~then~~ the court
6 shall order ~~the department or~~ the local unit of government, at ~~the~~
7 ~~department's or~~ the local unit of government's option, as
8 ~~applicable,~~ to do 1 or more of the following:

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

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

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

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

25 Enacting section 1. Sections 30303, 30306, 30306b, 30312,
26 30313b to 30316, 30318 to 30320, and 30322 of the natural resources
27 and environmental protection act, 1994 PA 451, MCL 324.30303,

- 1 324.30306, 324.30306b, 324.30312, 324.30313b to 324.30316,
- 2 324.30318 to 324.30320, and 324.30322, are repealed.