

Act No. 120
Public Acts of 2009
Approved by the Governor
October 15, 2009
Filed with the Secretary of State
October 15, 2009
EFFECTIVE DATE: October 15, 2009

**STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2009**

Introduced by Senator Birkholz

ENROLLED SENATE BILL No. 785

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending sections 1301, 30105, 30301, 30303, 30306, 30306b, 30311, 30312, 30317, 32512a, and 32513 (MCL 324.1301, 324.30105, 324.30301, 324.30303, 324.30306, 324.30306b, 324.30311, 324.30312, 324.30317, 324.32512a, and 324.32513), section 1301 as amended by 2008 PA 18, section 30105 as amended by 2006 PA 531, sections 30301, 30306, and 30312 as amended and section 32512a as added by 2003 PA 14, sections 30303 and 30311 as added by 1995 PA 59, section 30306b as added by 2006 PA 435, section 30317 as amended by 1998 PA 228, and section 32513 as amended by 2008 PA 276, and by adding sections 30303b, 30303d, 30304b, 30305b, 30311a, 30311b, 30311d, 30312b, 30312d, 30325, 30327, and 30329; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 1301. As used in this part:

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

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

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

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

- (i) Section 3104, floodplain alteration permit.
- (ii) Section 3503, permit for use of water in mining iron ore.
- (iii) Section 4105, sewerage system construction permit.
- (iv) Section 6516, vehicle testing license.
- (v) Section 6521, motor vehicle fleet testing permit.

- (vi) Section 8310, restricted use pesticide dealer license.
 - (vii) Section 8310a, agricultural pesticide dealer license.
 - (viii) Section 8504, license to manufacture or distribute fertilizer.
 - (ix) Section 9112, local soil erosion and sedimentation control permit.
 - (x) Section 11509, solid waste disposal area construction permit.
 - (xi) Section 11512, solid waste disposal area operating license.
 - (xii) Section 11542, municipal solid waste incinerator ash landfill operating license amendment.
 - (xiii) Section 11702, septage waste servicing license or septage waste vehicle license.
 - (xiv) Section 11709, septage waste site permit.
 - (xv) Section 30104, inland lakes and streams project permit.
 - (xvi) Section 30304, state permit for dredging, filling, or other activity in wetland. Permit includes an authorization for a specific project to proceed under a general permit issued under section 30312.
 - (xvii) Section 31509, dam construction, repair, removal permit.
 - (xviii) Section 32312, flood risk, high risk, or environmental area permit.
 - (xix) Section 32503, permit for dredging and filling bottomland.
 - (xx) Section 35304, department permit for critical dune area use.
 - (xxi) Section 36505, endangered species permit.
 - (xxii) Section 41702, game bird hunting preserve license.
 - (xxiii) Section 42101, dog training area permit.
 - (xxiv) Section 42501, fur dealer's license.
 - (xxv) Section 42702, game dealer's license.
 - (xxvi) Section 44513, charter boat operating permit under reciprocal agreement.
 - (xxvii) Section 44517, boat livery operating permit.
 - (xxviii) Section 45503, permit to take frogs for scientific use.
 - (xxix) Section 45902, game fish propagation license.
 - (xxx) Section 45906, game fish import license.
 - (xxxi) Section 61525, oil or gas well drilling permit.
 - (xxxii) Section 62509, brine, storage, or waste disposal well drilling or conversion permit or test well drilling permit.
 - (xxxiii) Section 63103a, metallic mineral mining permit.
 - (xxxiv) Section 63514 or 63525, surface coal mining and reclamation permit or revision of the permit during the term of the permit, respectively.
 - (xxxv) Section 63704, sand dune mining permit.
 - (xxxvi) Section 72108, use permits for Michigan trailway.
 - (xxxvii) Section 76109, sunken aircraft or watercraft abandoned property recovery permit.
 - (xxxviii) Section 76504, Mackinac Island motor vehicle and land use permits.
 - (xxxix) Section 80159, buoy or beacon permit.
- (e) "Processing deadline" means the last day of the processing period.
- (f) "Processing period" means the following time period after the close of the application period, for the following permit, as applicable:
- (i) Twenty days for a permit under section 61525 or 62509.
 - (ii) Thirty days for a permit under section 9112.
 - (iii) Thirty days after the department consults with the underwater salvage and preserve committee created under section 76103, for a permit under section 76109.
 - (iv) Sixty days, for a permit under section 30104 for a minor project as established by rule under section 30105(7) or for a permit under section 32312.
 - (v) Sixty days or, if a hearing is held, 90 days for a permit under section 35304.
 - (vi) Sixty days or, if a hearing is held, 120 days for a permit under section 30104, other than a permit for a minor project as established by rule under section 30105(7), or for a permit under section 31509.

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

(viii) Ninety days or, if a hearing is held, 150 days for a permit under section 3104, 30304, or 32503 or an authorization for a specific project to proceed under a general permit issued under section 30312.

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

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

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

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

(a) A list of pending applications.

(b) Public notices.

(c) Public hearing schedules.

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

(3) Except as otherwise provided in this section, upon receiving an application, the department shall submit copies for review to the director of the department of community health or the local health department designated by the director of the department of community health, to the city, village, or township and the county where the project is to be located, to the local conservation district, to the watershed council established under part 311, if any, to the local port commission, if any, and to the persons required to be included in the application pursuant to section 30104(1). Each copy of the application shall be accompanied by a statement that unless a written request is filed with the department within 20 days after the submission for review, the department may grant the application without a public hearing where the project is located. The department may hold a public hearing upon the written request of the applicant or a riparian owner or a person or governmental unit that is entitled to receive a copy of the application pursuant to this subsection.

(4) After completion of a project for which an application is approved, the department may cause a final inspection to be made and certify to the applicant that the applicant has complied with the department's permit requirements.

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

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

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

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

(a) The removal of qualifying small dams.

(b) The maintenance or repair of an existing pipeline, if the pipeline is maintained or repaired in a manner to ensure that any adverse effects on the lake or stream will be minimized.

(9) The department may issue, deny, or impose conditions on project activities authorized under a minor project category or a general permit if the conditions are designed to remove an impairment to the lake or stream, to mitigate the effects of the project, or to otherwise improve water quality. The department may also establish a reasonable time when the proposed project is to be completed or terminated.

(10) If the department determines that activity in a proposed project, although within a minor project category or a general permit, is likely to cause more than minimal adverse environmental effects, the department may require that the application be processed according to subsection (3) and reviewed for compliance with section 30106.

(11) As used in this section, "qualifying small dam" means a dam that meets all of the following conditions:

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

- (b) The impoundment from the dam covers less than 2 acres.
- (c) The dam does not serve as the first dam upstream from the Great Lakes or their connecting waterways.
- (d) The dam is not serving as a sea lamprey barrier.
- (e) There are no threatened or endangered species that have been identified in the area that will be affected by the project.
- (f) There are no known areas of contaminated sediments in the area that will be affected by the project.
- (g) The department has received written permission for the removal of the dam from all riparian property owners adjacent to the dam's impoundment.

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

- (a) "Beach" means the area landward of the shoreline of the Great Lakes as the term shoreline is defined in section 32301.
- (b) "Beach maintenance activities" means any of the following in the area of Great Lakes bottomlands lying below the ordinary high-water mark and above the water's edge:
 - (i) Manual or mechanized leveling of sand.
 - (ii) Mowing of vegetation.
 - (iii) Manual de minimis removal of vegetation.
 - (iv) Grooming of soil.
 - (v) Construction and maintenance of a path.
- (c) "Council" means the wetland advisory council created in section 30329.
- (d) "Debris" means animal or fish carcasses, zebra mussel shells, dead vegetation, trash, and discarded materials of human-made origin.
- (e) "Department" means the department of environmental quality.
- (f) "Director" means the director of the department.
- (g) "Environmental area" means an environmental area as defined in section 32301.
- (h) "Exceptional wetland" means wetland that provides physical or biological functions essential to the natural resources of the state and that may be lost or degraded if not preserved through an approved site protection and management plan for the purposes of providing compensatory wetland mitigation.
- (i) "Fill material" means soil, rocks, sand, waste of any kind, or any other material that displaces soil or water or reduces water retention potential.
- (j) "Grooming of soil" means raking or dragging, pushing, or pulling metal teeth through the top 4 inches of soil without disturbance of or destruction to plant roots, for the purpose of removing debris.
- (k) "Landscape level wetland assessment" means the use of aerial photographs, maps, and other remotely sensed information to predict and evaluate wetland characteristics and functions in the context of all of the following:
 - (i) The wetland's landscape position and hydrologic characteristics.
 - (ii) The surrounding landscape.
 - (iii) The historic extent and condition of the wetland.
- (l) "Leveling of sand" means the relocation of sand within areas being leveled that are predominantly free of vegetation, including the redistribution, grading, and spreading of sand that has been deposited through wind or wave action onto upland riparian property.
- (m) "Minor drainage" includes ditching and tiling for the removal of excess soil moisture incidental to the planting, cultivating, protecting, or harvesting of crops or improving the productivity of land in established use for agriculture, horticulture, silviculture, or lumbering.
- (n) "Mowing of vegetation" means the cutting of vegetation to a height of not less than 2 inches, without disturbance of soil or plant roots.
- (o) "Nationwide permit" means a nationwide permit issued by the United States army corps of engineers under 72 FR 11091 to 11198 (March 12, 2007), including all general conditions, regional conditions, and conditions imposed by this state pursuant to a water quality certification under section 401 of title IV of the federal water pollution control act, 33 USC 1341, or a coastal zone management consistency determination under section 307 of the coastal zone management act of 1972, 16 USC 1456.
- (p) "Ordinary high-water mark" means the ordinary high-water mark as specified in section 32502.

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

(r) "Person" means an individual, sole proprietorship, partnership, corporation, association, municipality, this state, an instrumentality or agency of this state, the federal government, an instrumentality or agency of the federal government, or other legal entity.

(s) "Rapid wetland assessment" means a method for generally assessing the functions, values, and condition of individual wetlands based on existing data and field indicators.

(t) "Rare and imperiled wetland" means any of the following:

(i) Great Lakes marsh.

(ii) Southern wet meadow.

(iii) Inland salt marsh.

(iv) Intermittent wetland or boggy seepage wetland.

(v) Coastal plain marsh.

(vi) Interdunal wetland.

(vii) Lakeplain wet prairie.

(viii) Lakeplain wet-mesic prairie.

(ix) Northern wet-mesic prairie.

(x) Wet-mesic prairie.

(xi) Wet prairie.

(xii) Prairie fen.

(xiii) Northern fen.

(xiv) Patterned fen.

(xv) Poor fen.

(xvi) Muskeg.

(xvii) Rich conifer swamp.

(xviii) Relict conifer swamp.

(xix) Hardwood-conifer swamp.

(xx) Northern swamp.

(xxi) Southern swamp.

(xxii) Southern floodplain forest.

(xxiii) Inundated shrub swamp.

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

(v) "Water dependent" means requiring access or proximity to or siting within an aquatic site to fulfill its basic purpose.

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

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

(ii) Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream; and more than 5 acres in size.

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

(2) The department and local units of government shall apply the technical wetland delineation standards set forth in the United States army corps of engineers January 1987 wetland delineation manual, technical report Y-87-1, and appropriate regional United States army corps of engineers supplements, in identifying wetland boundaries under this part, including, but not limited to, section 30307.

Sec. 30303. (1) The department may enter into an agreement to make contracts with the federal government, other state agencies, local units of government, private agencies, or persons for the purposes of making studies for the

efficient preservation, management, protection, and use of wetland resources. A study shall be available as a public record for distribution at cost as provided in section 4 of the freedom of information act, 1976 PA 442, MCL 15.234.

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

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

Sec. 30303b. (1) The department shall implement a pilot program to facilitate the role of local units of government, conservation districts, nonprofit organizations, and wetland professionals in assisting persons seeking such assistance with completing permit applications, avoiding and minimizing impacts from a proposed project, using best management practices in a proposed project, and otherwise complying with this part. The goals of the pilot program include increasing the efficiency of the permitting process through better utilization of all available resources, including department staff, while protecting the wetland of this state. The pilot program shall not affect the department's authority to make regulatory decisions in any way.

(2) Within 60 days after the effective date of the amendatory act that added this section, the director shall designate at least 3 entities to participate in the pilot program, with the goal of selecting at least 1 local unit of government, 1 conservation district, and 1 nonprofit organization. A proposed designation under this subsection shall be posted on the department's website for public review and comment for at least 21 days before the designation is made.

(3) By April 1, 2012, the department and entities participating in the program under subsection (2) shall report to the council on program results and recommendations for further refining the program.

(4) This section is repealed effective October 1, 2012.

Sec. 30303d. (1) The department shall implement a pilot program for assisting local units of government and partnering individuals or entities in the development of wetland mitigation banks. This assistance shall include, but not be limited to, supplying maps of potential wetland restoration areas for site selection, reviewing potential sites for mitigation banks, and, if the mitigation bank sponsor is a county with a population of 500,000 or more, expediting review of conceptual design plans.

(2) Within 180 days after the effective date of the amendatory act that added this section, the director shall designate 2 counties with a population of 500,000 or more. Those counties, or municipalities and partnering individuals or entities in those counties, are eligible to participate in the pilot program. A proposed designation under this subsection shall be posted on the department's website for at least 21 days before the designation is made, for public review and comment.

(3) By April 1, 2012, the department and entities participating in the program under subsection (2) shall report to the council on program results and recommendations for further refining the program.

(4) This section is repealed effective October 1, 2012.

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

(2) This subsection applies beginning January 1, 2011. This subsection applies to an application for a permit under this part only if the application is for an activity or use in waters over which the corps retains jurisdiction under section 404(g)(1) of title IV of the federal water pollution control act, 33 USC 1344, and if the corps has not issued a state programmatic general permit for the activity or use. In such a case, if requested by the applicant in the application, all of the following apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The person's name and address.

(b) The location of the wetland.

(c) A description of the wetland on which the use or development is to be made.

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

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

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

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

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

(a) For a project in a category of activities for which a general permit is issued under section 30312, a fee of \$100.00.

(b) For a permit for the removal of vegetation in an area that is not more than 100 feet wide or the width of the property, whichever is less, or the mowing of vegetation under a general permit, in the area between the ordinary high-water mark and the water's edge, a fee of \$50.00.

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

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

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

(iii) A new golf course affecting wetland.

(iv) A subdivision affecting wetland.

(v) A condominium affecting wetland.

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

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

- (a) Section 3104.
- (b) Part 301.
- (c) Part 323.
- (d) Part 325.
- (e) Section 117 of the land division act, 1967 PA 288, MCL 560.117.

(5) If work has been done in violation of a permit requirement under this part and restoration is not ordered by the department, the department may accept an application for a permit if the application is accompanied by a fee equal to twice the permit fee otherwise required under this section.

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

Sec. 30306b. (1) If a preapplication meeting is requested in writing by the landowner or another person who is authorized in writing by the landowner, the department shall meet with the person or his or her representatives to review a proposed project or a proposed permit application in its entirety. The preapplication meeting shall take place at the department's district office for the district that includes the project site or at the project site itself, as specified in the request.

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

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

(b) There is no fee for a preapplication meeting for cranberry production activities, whether at the district office or project site. This subdivision does not apply on or after October 1, 2012.

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

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

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

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

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

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

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

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

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

(f) The size of the wetland being considered.

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

(h) Proximity to any waterway.

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

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

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

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

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

(5) If it is otherwise a feasible and prudent alternative, an area not presently owned by the applicant which could reasonably be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed activity may be considered.

(6) An alternative that entails higher costs, as described in R 281.922a(11) of the Michigan administrative code, is not feasible and prudent if those higher costs are unreasonable. In determining whether such costs are unreasonable, the department shall consider both of the following:

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

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

Sec. 30311a. (1) A guideline, bulletin, interpretive statement, or form with instructions under this part shall not be given the force and effect of law. A guideline, bulletin, interpretive statement, or form with instructions under this part is not legally binding on the public or the regulated community and shall not be cited by the department for compliance and enforcement purposes.

(2) Within 1 year after the effective date of the 2009 amendatory act that added this subsection, the department shall adopt a new guidance document for the evaluation of feasible and prudent alternatives. The guidance document shall be consistent with findings and recommendations of the United States environmental protection agency's region 5 review of the program under this part. The department shall develop the guidance document in consultation with interested parties, including the council.

(3) Before the guidance document under subsection (2) takes effect, the department shall not deny an application for a permit required under section 30304 because of the availability of a feasible and prudent alternative based solely on consideration of statewide alternatives, higher cost, or reduced profit unless both of the following apply:

(a) The proposed denial has been reviewed by a department deputy director.

(b) The department has requested information from the Michigan economic development corporation and applicable regional and local economic development authorities relative to the project and considered the information received.

(4) Before the guidance document under subsection (2) takes effect, the processing period specified under section 1301 for a permit required under section 30304 is extended if department staff have proposed denying the permit for reasons set forth in subsection (7). Notwithstanding section 1307(1), the extension shall be for not more than 45 days.

(5) The department shall not file a request for rule-making under section 39 of the administrative procedures act, 1969 PA 306, MCL 24.239, for rules addressing the evaluation of feasible and prudent alternatives before October 1, 2012.

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

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

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

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

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

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

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

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

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

qualifies to use approved credits from the wetland mitigation bank to provide required compensatory wetland mitigation under this subdivision.

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

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

(d) The preservation of exceptional wetlands.

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

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

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

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

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

(3) A general permit under this section may be issued for the mowing of vegetation or the removal of vegetation in the area between the ordinary high-water mark and the water's edge. An application under this subsection may be submitted by a local unit of government on behalf of property owners within its jurisdiction or by 1 or more adjacent property owners for riparian property located within the same county.

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

(5) If the department determines that activity in a proposed project, although within a minor project category or a general permit, is likely to cause more than minimal adverse effects on aquatic resources, including high-value aquatic habitats, the department may require that the application be processed under section 30307.

(6) The department shall coordinate general permit and minor project categories under this part and parts 301 and 325 consistent with nationwide permits, as appropriate.

Sec. 30312b. (1) The department shall propose new or maintain existing general permits under this part equivalent to the following nationwide permits, to the extent applicable to wetland, without further limitations:

(a) Maintenance.

(b) Scientific measuring devices.

(c) Survey activities.

(d) Oil spill cleanup.

- (e) Moist soil management.
- (f) Cleanup of hazardous and toxic waste.
- (g) Storm water management facilities.
- (h) Pipeline safety program designated time sensitive inspections and repairs.

(2) The department shall propose new or maintain existing general permits or minor project categories equivalent to the following nationwide permits, to the extent that the nationwide permits are applicable to wetland, subject to additional limitations based on best management practices and necessary to ensure that adverse environmental effects are minimal or based on other statutes, which limitations may be established by the department after providing notice and an opportunity for public comment:

- (a) Outfall structures and associated intake structures.
- (b) Minor discharges.
- (c) Utility line activities.
- (d) Expansion of existing cranberry production activities.

(3) The department shall propose new or maintain existing general permits or minor project categories for the following:

- (a) Temporary recreational structures.
- (b) Linear transportation projects.

(c) Aquatic habitat restoration, establishment, and enhancement activities, including reversion of temporary wetland restorations.

- (d) Residential developments.
- (e) Completed enforcement actions.
- (f) Temporary construction, access, and dewatering.
- (g) Cranberry production activities.
- (h) Agricultural activities.
- (i) Reshaping existing drainage ditches.
- (j) Recreational facilities.

(4) This section is repealed effective October 1, 2012.

Sec. 30312d. The department shall develop a program to facilitate ecologically responsible voluntary wetland restoration and enhancement projects in coordination with state, federal, tribal, and nongovernmental groups specializing in wetland restoration and conservation. The program shall include, but not be limited to, enhancing coordination, consistency, and operational procedures and improving and streamlining the permitting process, to facilitate a net gain in wetland quantity, quality, or both.

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

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

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

Sec. 30325. The department shall pursue an agreement with the United States environmental protection agency to expand the categories of discharges subject to the waiver from the requirements of section 404(j) of title IV of the federal water pollution control act, 33 USC 1344, pursuant to section 404(k) of title IV of the federal water pollution control act, 33 USC 1344.

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

Sec. 30329. (1) The wetland advisory council is created within the department. The council shall consist of the following:

(a) The director of the department or his or her designee. The director of the department shall invite a representative of the United States army corps of engineers, a representative of the United States environmental protection agency, and a representative of the United States department of agriculture natural resource conservation service to also serve as members of the council.

(b) The director of the department of natural resources or his or her designee.

(c) The director of the department of agriculture or his or her designee.

(d) The following members appointed by the senate majority leader:

(i) One individual representing a statewide association of home builders.

(ii) One individual representing a statewide conservation organization.

(iii) One individual representing a statewide association of local units of government.

(iv) One individual representing a statewide association of manufacturers.

(e) The following members appointed by the speaker of the house of representatives:

(i) One individual representing a statewide environmental protection organization.

(ii) One individual representing the largest general statewide farm organization.

(iii) One individual representing a statewide association of realtors.

(iv) One drain commissioner representing an association of county drain commissioners.

(f) The following members appointed by the governor:

(i) One individual representing a watershed organization.

(ii) One individual representing natural gas or electric utilities.

(iii) One individual representing a conservation district.

(iv) One individual representing a statewide association of businesses.

(v) One individual representing the general public.

(vi) A university professor with expertise in wetland science.

(vii) A wetland professional who regularly submits applications for permits and obtains permits from the department.

(2) The appointments to the council under subsection (1) shall be made not later than 30 days after the effective date of the amendatory act that added this section.

(3) An appointed member of the council shall serve for a term of 3 years. If a vacancy occurs on the council, the vacancy shall be filled for the unexpired term in the same manner as the original appointment. The appointing officer may remove a member of the council for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

(4) The first meeting of the council shall be called by the director of the department. At the first meeting, the council shall elect from among its members a chairperson and any other officers that it considers necessary or appropriate. After the first meeting, the council shall meet at least quarterly, or more frequently at the call of the chairperson or if requested by 2 or more members.

(5) A majority of the members of the council constitute a quorum for the transaction of business at a meeting of the council. A majority of the members present and serving are required for official action of the council.

(6) The business that the council may perform shall be conducted at a public meeting of the council held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. A writing prepared, owned, used, in the possession of, or retained by the council in the performance of an official function is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(7) Members of the council shall serve without compensation. However, a member of the council representing the department of natural resources, the department of agriculture, or the department shall serve without additional compensation.

(8) By October 1, 2010, the council shall submit a report to the governor, the department, and the standing committees and appropriations subcommittees of the legislature with primary responsibility over issues pertaining to natural resources and the environment. The report shall evaluate and make recommendations on all of the following:

(a) Improving the overall efficiency of the program under this part, including all of the following aspects of the permit application, review, and decision-making process:

(i) The quality of applications submitted.

(ii) The effect of mandatory decision-making time frames on meeting the purposes of this part, and, if appropriate, the time frames that should apply to decision-making under this part.

(b) The point in the department's process of decision-making on a permit application at which the possibility of mitigation should be considered.

(c) Actions necessary to adopt and implement measures determined by the United States environmental protection agency to support consistency with the requirements of section 404 of title IV of the federal water pollution control act, 33 USC 1344, as set forth in "Final Report Results of the U.S. Environmental Protection Agency Region 5 Review of Michigan Department of Environmental Quality's Section 404 Program", dated May 2008.

(9) By August 15, 2012, the council shall submit a report to the governor, the department, and the standing committees and appropriations subcommittees of the legislature with primary responsibility over issues pertaining to natural resources and the environment. The report shall evaluate and make recommendations on all of the following:

(a) Improving coordination and reducing duplication of effort with the United States army corps of engineers.

(b) Potential long-term changes in program structure, including all of the following:

(i) Scientific methods to achieve more consistent and accurate determinations of wetland functions and values for reviewing applications for permits, watershed planning, conservation plans, and other purposes. These methods include rapid wetland assessment and landscape level wetland assessment.

(ii) The appropriate role of local units of government and conservation districts in the administration of this part.

(iii) A certification process for wetland professionals. The council shall consider information reported under section 30303b in evaluating and making recommendations under this subparagraph.

(iv) The definition of wetland and wetland delineation methods, including the role of hydric soils as a factor in wetland delineation. In making recommendations under this subparagraph, the council shall evaluate differences in the state and federal wetland programs.

(c) The appropriate means and level of program funding under this part.

(d) Minor project categories and general permits under section 30312b(1) to (3).

(e) The appropriateness of the provisions of section 30304b as a means of reducing regulatory burdens from dual federal and state regulation.

(f) The promotion of the development of wetland mitigation banks.

(g) Ways for the public and interested parties to advise the department on a continuing basis concerning the administration and enforcement of this part.

(h) Appropriate regulation of the siting, construction, and operation of cranberry production activities, in light of the benefit of cranberry production activities to the economy, the regulatory approach of other states, and other factors.

(i) The feasible and prudent alternative standard under section 30311 and consistent application of the standard.

(j) Methods to assist both of the following in successfully obtaining permits under this part in a timely manner:

(i) Individuals proposing a use or activity for their personal homesite.

(ii) Nonprofit organizations.

(10) This section is repealed effective April 1, 2013.

Sec. 32512a. (1) After providing notice and an opportunity for a public hearing, the department shall establish minor project categories of activities that are similar in nature, have minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment. The department may act upon an application received pursuant to section 32513 for an activity within a minor project category without providing notice pursuant to section 32514. A minor project category shall not be valid for more than 5 years, but may be reestablished. All other provisions of this part, except provisions applicable only to general permits, are applicable to a minor project.

(2) The department, after notice and opportunity for a public hearing, shall issue general permits on a statewide basis or within a local unit of government for a category of activities if the department determines that the activities are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment. A general permit shall be based on the requirements of this part and the rules promulgated under this part, and shall set forth the requirements and standards that shall apply to an activity authorized by the general permit. Before authorizing a specific project to proceed under a general permit, the department may provide notice pursuant to section 32514 but shall not hold a public hearing and shall not typically require a site inspection. A general permit shall not be valid for more than 5 years, but may be reissued.

(3) A general permit under this section may be issued for the mowing of vegetation or the removal of vegetation in the area between the ordinary high-water mark and the water's edge. An application under this subsection may be submitted by a local unit of government on behalf of property owners within its jurisdiction or by 1 or more adjacent property owners for riparian property located within the same county.

Sec. 32513. (1) To obtain a permit for any work or connection specified in section 32512, a person shall file an application with the department on a form provided by the department. The application shall include all of the following:

(a) The name and address of the applicant.

(b) The legal description of the lands included in the project.

(c) A summary statement of the purpose of the project.

(d) A map or diagram showing the proposal on an adequate scale with contours and cross-section profiles of the waterway to be constructed.

(e) Other information required by the department.

(2) Except as provided in subsections (3) and (4), until October 1, 2011, an application for a permit under this section shall be accompanied by the following fee, as applicable:

(a) For a project in a category of activities for which a general permit is issued under section 32512a, a fee of \$100.00.

(b) For activities included in the minor project category as described in rules promulgated under this part and for a permit for the removal of vegetation in an area that is not more than 100 feet wide or the width of the property, whichever is less, or the mowing of vegetation under a general permit, in the area between the ordinary high-water mark and the water's edge, a fee of \$50.00.

(c) For construction or expansion of a marina, a fee of:

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

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

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

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

(v) \$1,500.00 if an existing permitted marina proposes maintenance dredging of 10,000 cubic yards or more or the addition of seawalls, bulkheads, or revetments of 500 feet or more.

(d) For major projects other than a project described in subdivision (c)(v), involving any of the following, a fee of \$2,000.00:

(i) Dredging of 10,000 cubic yards or more.

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

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

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

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

(vi) New breakwater or channel jetty.

(vii) Shore protection, such as groins and underwater stabilizers, that extend 150 feet or more on Great Lakes bottomlands.

(viii) New commercial dock or wharf of 300 feet or more in length.

(e) For all other projects not listed in subdivisions (a) to (d), \$500.00.

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

(a) Part 301.

(b) Part 303.

(c) Part 323.

(d) Section 3104.

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

(4) If work has been done in violation of a permit requirement under this part and restoration is not ordered by the department, the department may accept an application for a permit if the application is accompanied by a fee equal to 2 times the permit fee otherwise required under this section.


(5) The department shall forward all fees collected under this section to the state treasurer for deposit into the land and water management permit fee fund created in section 30113.

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

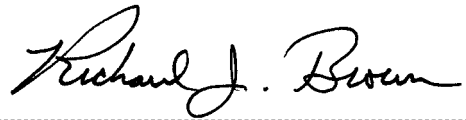
(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund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

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

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

.....
Governor