Act No. 59
Public Acts of 1995
Approved by the Governor
May 23, 1995
Filed with the Secretary of State
May 24, 1995

STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1995

Introduced by Reps. Hill, Alley, Middaugh and Murphy

ENROLLED HOUSE BILL No. 4350

AN ACT to amend Act No. 451 of the Public Acts of 1994, 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, and assessments; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," being sections 324.101 to 324.90101 of the Michigan Compiled Laws, by adding section 90103 and parts 301, 303, 305, 307, 309, 311, 313, 315, 321, 322, 323, 325, 327, 329, 331, 333, 337, 339, 341, 351, 353, 355, 357, 361, and 365; to amend the headings of certain parts; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Section 1. Act No. 451 of the Public Acts of 1994, being sections 324.101 to 324.90101 of the Michigan Compiled Laws, is amended by adding section 90103 and parts 301, 303, 305, 307, 309, 311, 313, 315, 321, 322, 323, 325, 327, 329, 331, 333, 337, 339, 341, 351, 353, 355, 357, 361, and 365 and by amending the headings of certain parts to read as follows:

ARTICLE III NATURAL RESOURCES MANAGEMENT

CHAPTER 1: HABITAT PROTECTION

INLAND WATERS

PART 301 INLAND LAKES AND STREAMS

Sec. 30101. As used in this part:

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

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

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

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

(e) "Inland lake or stream" means a natural or artificial lake, pond, or impoundment; a river, stream, or creek which may or may not be serving as a drain as defined by the drain code of 1956, Act No. 40 of the Public Acts of 1956, being sections 280.1 to 280.630 of the Michigan Compiled Laws; or any other body of water that has definite banks, a bed, and

visible evidence of a continued flow or continued occurrence of water, including the St. Marys, St. Clair, and Detroit rivers. Inland lake or stream does not include the Great Lakes, Lake St. Clair, or a lake or pond that has a surface area of less than 5 acres.

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

(g) "Minor offense" means either of the following violations of this part if the project involved in the offense is a minor project as listed in R 281.816 of the Michigan administrative code or the department determines that restoration of the affected property is not required:

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

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

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

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

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

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

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

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

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

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

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

(a) Dredge or fill bottomland.

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

(c) Erect, maintain, or operate a marina.

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

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

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

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

Sec. 30103. A permit is not required for any of the following:

(a) Any fill or structure existing before April 1, 1966, in waters covered by former Act No. 291 of the Public Acts of 1965, and any fill or structures existing before January 9, 1973, in waters covered for the first time by former Act No. 346 of the Public Acts of 1972.

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

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

(d) Construction or maintenance of a private agricultural drain regardless of outlet.

(e) A waste collection or treatment facility that is approved for construction by the department of public health or ordered or approved by the department.

(f) Construction and maintenance of minor drainage structures and facilities which are identified by rule promulgated by the department pursuant to section 30110(1). Before such a rule is promulgated, the rule shall be approved by the majority of a committee consisting of the director, the director of the department of agriculture, and the director of the state transportation department or their designated representatives. The initial rules shall be issued before July 8, 1973, and shall be reviewed at least annually after that date.

(g) Maintenance and improvement of all drains legally established or constructed prior to January 1, 1973, pursuant to the drain code of 1956, Act No. 40 of the Public Acts of 1956, being sections 280.1 to 280.630 of the Michigan Compiled Laws, except those legally established drains constituting mainstream portions of certain natural watercourses identified in rules promulgated by the department under section 30110.

(h) Projects constructed under the watershed protection and flood prevention act, chapter 656, 68 Stat. 666, 16 U.S.C. 1001 to 1008 and 1010.

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

(j) Maintenance of a structure constructed under a permit issued pursuant to this part and identified by rule promulgated under section 30110(1), if the maintenance is in place and in kind with no design or materials modification.

Sec. 30104. (1) Before a project that is subject to this part is undertaken, a person shall file an application and receive a permit from the department. The application shall be on a form prescribed by the department and shall include any information that may be required by the department. If a project includes activities at multiple locations, 1 application may be filed for the combined activities.

(2) Except as provided in subsections (3) and (4), an application for a permit shall be accompanied by a fee based on an administrative cost in accordance with the following schedule:

(a) Until October 1, 1995:

(*i*) For a minor project listed in R 281.816 of the Michigan administrative code, a fee of $50.00.

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

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

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

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

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

(E) $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.

(*iii*) For renewal of a marina operating permit, a fee of $50.00.

(*iv*) For major projects other than a project described in subparagraph (*ii*)(E), involving any of the following, a fee of $2,000.00:

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

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

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

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

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

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

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

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

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

(J) New golf courses.

(K) Subdivisions.

(L) Condominiums.

(*v*) For all other projects not listed in subparagraphs (*i*) through (*iv*), a fee of $500.00.

(b) Beginning October 1, 1995, a fee of $25.00 for any project listed in subdivision (a).

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

(a) Part 303.

(b) Part 325.

(c) Part 323.

(d) Section 3104.

(e) Section 117 of the subdivision control act of 1967, Act No. 288 of the Public Acts of 1967, being section 560.117 of the Michigan Compiled Laws.

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

Sec. 30105. (1) Until October 1, 1995, a person who desires notification of pending applications may submit a written request to the department accompanied by an annual fee of $25.00. The department shall forward all annual fees to the state treasurer for deposit into the fund. The department shall prepare a monthly list of the applications made during the previous month and shall promptly mail copies of the list for the remainder of the calendar year to the persons who have so requested notice. The monthly list shall state the name and address of each applicant, the legal description of the lands included in the applicant's project, and a summary statement of the purpose of the project. The department may hold a public hearing on pending applications.

(2) Except as otherwise provided in this section, upon receiving an application, the department shall submit copies for review to the director of public health or the local health department designated by the director of public health, to the city, village, or township and the county where the project is to be located, to the local soil conservation district, to the local watershed council organized 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.

(3) 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.

(4) 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 and by mailing copies of the notice to the persons who have requested the monthly list pursuant to subsection (1), 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 (2).

(5) The department shall grant or deny the permit within 60 days, or within 90 days if a public hearing is held, after the filing of an application pursuant to section 30104. If a permit is denied, the department shall provide to the applicant a concise written statement of its reasons for denial of the permit, and, if it appears that a minor modification of the application would result in the granting of the permit, the nature of the modification shall be stated. In an emergency, the department may issue a conditional permit before the expiration of the 20-day period referred to in subsection (2).

(6) The department, by rule promulgated under section 30110(1), may establish minor project categories of activities and projects that are similar in nature and have minimal adverse environmental impact. The department may act upon an application received pursuant to section 30104 for an activity or project within a minor project category after an on-site inspection of the land and water involved without providing notices or holding a public hearing pursuant to subsection (2). A final inspection or certification of a project completed under a permit granted pursuant to this subsection is not required, but all other provisions of this part are applicable to a minor project.

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

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

Sec. 30108. The department may establish by permit a bulkhead line on its own application or on the application of a local unit of government. The application shall be filed as provided in section 30104(1) with public notice and hearings as provided in section 30105. Upon acceptance of the bulkhead line by the affected units of government, the area

landward of the bulkhead line shall after that acceptance be under the jurisdiction of those units of government as to the placement of structures and fills in the waters unless jurisdiction is returned to the state. In establishing a bulkhead line, the department shall provide for local requirements and ensure the public trust in the adjacent waters against unreasonable interferences.

Sec. 30109. Upon the written request of a riparian owner and upon payment of a service fee, the department may enter into a written agreement with a riparian owner establishing the location of the ordinary high-water mark for his or her property. In the absence of substantially changed conditions, the agreement shall be conclusive proof of the location in all matters between the state and the riparian owner and his or her successors in interest. Until October 1, 1995, the service fee provided for in this section shall be $500.00. Beginning October 1, 1995, the service fee provided for in this section shall be $50.00. The department shall forward all service fees to the state treasurer for deposit into the fund.

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

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

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

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

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

Sec. 30112. (1) The department may commence a civil action in the circuit court of the county in which a violation occurs to enforce compliance with this part, to restrain violation of this part or any action contrary to an order of the department denying a permit, to enjoin the further performance of, or order the removal of, any project that is undertaken contrary to this part or after denial of a permit by the department, or to order the restoration of the affected area to its prior condition.

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

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

(4) A person who commits a minor offense is guilty of a misdemeanor, punishable by a fine of not more than $500.00 for each violation. A law enforcement officer may issue and serve an appearance ticket upon a person for a minor offense pursuant to sections 9a to 9g of chapter IV of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 764.9a to 764.9g of the Michigan Compiled Laws.

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

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

Sec. 30113. (1) The land and water management permit fee fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. The state treasurer shall annually present to the department an accounting of the amount of money in the fund.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department shall expend money from the fund, upon appropriation, only to implement this part and the following:

(a) Sections 3104, 3107, and 3108.

(b) Part 325.

(c) Part 303.

(d) Section 12562 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.12562 of the Michigan Compiled Laws.

(e) Part 323.

(f) Section 117 of the subdivision control act of 1967, Act No. 288 of the Public Acts of 1967, being section 560.117 of the Michigan Compiled Laws.

(g) Part 315.

(h) Part 353.

(5) The department shall process permit applications for the acts and parts of acts cited in subsection (4) within 60 days after receiving a completed permit application.

(6) The department shall annually report to the legislature on both of the following:

(a) How money in the fund was expended during the previous fiscal year.

(b) For permit programs funded with money in the fund, the average length of time for department action on permit applications for each class of permits reviewed.

PART 303 WETLAND PROTECTION

Sec. 30301. As used in this part:

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

(b) "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.

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

(d) "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; except this subparagraph shall not be of effect, except for the purpose of inventorying, in counties of less than 100,000 population until the department certifies to the commission it has substantially completed its inventory of wetlands in that county.

(*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; except this subparagraph may be utilized regardless of wetland size in a county in which subparagraph (*ii*) is of no effect; except for the purpose of inventorying, at the time.

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

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

(b) A loss of a wetland may deprive the people of the state of some or all of the following benefits to be derived from the wetland:

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

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

(*iii*) Protection of subsurface water resources and provision of valuable watersheds and recharging ground water supplies.

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

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

(*vi*) Sources of nutrients in water food cycles and nursery grounds and sanctuaries for fish.

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

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

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

Sec. 30303. 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, Act No. 442 of the Public Acts of 1976, being section 15.234 of the Michigan Compiled Laws.

Sec. 30304. Except as otherwise provided by this part or by a permit obtained from the department under sections 30306 to 30314, a person shall not do any of the following:

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

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

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

(d) Drain surface water from a wetland.

Sec. 30305. (1) Activities which require a permit under part 325 or part 301 do not require a permit under this part.

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

(a) Fishing, trapping, or hunting.

(b) Swimming or boating.

(c) Hiking.

(d) Grazing of animals.

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

(f) Maintenance or operation of serviceable structures in existence on October 1, 1980 or constructed pursuant to this part or former Act No. 203 of the Public Acts of 1979.

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

(h) Maintenance, operation, or improvement which includes straightening, widening, or deepening of the following which is necessary for the production or harvesting of agricultural products:

(*i*) An existing private agricultural drain.

(*ii*) That portion of a drain legally established pursuant to the drain code of 1956, Act No. 40 of the Public Acts of 1956, being sections 280.1 to 280.630 of the Michigan Compiled Laws, which has been constructed or improved for drainage purposes.

(*iii*) A drain constructed pursuant to other provisions of this part or former Act No. 203 of the Public Acts of 1979.

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

(j) Drainage necessary for the production and harvesting of agricultural products if the wetland is owned by a person who is engaged in commercial farming and the land is to be used for the production and harvesting of agricultural products. Except as otherwise provided in this part, wetland improved under this subdivision after October 1, 1980 shall not be used for nonfarming purposes without a permit from the department. This subdivision shall not apply to a wetland which is contiguous to a lake or stream, or to a tributary of a lake or stream, or to a wetland that the department has determined by clear and convincing evidence to be a wetland that is necessary to be preserved for the public interest, in which case a permit is required.

(k) Maintenance or improvement of public streets, highways, or roads, within the right-of-way and in such a manner as to assure that any adverse effect on the wetland will be otherwise minimized. Maintenance or improvement does not include adding extra lanes, increasing the right-of-way, or deviating from the existing location of the street, highway, or road.

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

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

(n) Operation or maintenance, including reconstruction of recently damaged parts, of serviceable dikes and levees in existence on October 1, 1980 or constructed pursuant to this part or former Act No. 203 of the Public Acts of 1979.

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

(3) After October 1, 1980 but immediately prior to the approval of a state program under section 404 of title IV of the federal water pollution control act, chapter 758, 86 Stat. 884, 33 U.S.C. 1344, where a project solely involves the discharge of fill material subject to the individual permit requirements of section 404 of title IV of the federal water pollution control act, an additional permit is not required by this part.

Sec. 30306. (1) Except as provided in section 30307(4), to obtain a permit for a use or development listed in section 30304, the person desiring the permit shall file an application with the department on a form provided by the department accompanied by a fee of $25.00. A person who has a permit for the particular activity under part 301 or part 615 does not need to pay the fee prescribed by this subsection. 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 describing the proposed use or development.

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

(f) An environmental assessment, on a form supplied by the department, of the proposed use or development if requested by the department, which 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.

Sec. 30307. (1) Within 60 days after receipt of the completed application and fee, the department may hold a hearing. If a hearing is held, it shall be held in the county where the wetland on which the permit is to apply is located. Notice of the hearing shall be made in the same manner as for the promulgation of rules under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. The department may approve or disapprove a permit application without a public hearing unless a person requests a hearing in writing within 20 days after the mailing of notification of the permit application as required by subsection (3) or unless the department determines that the permit application is of significant impact to warrant a public hearing.

(2) If a hearing is not held, the department shall approve or disapprove the permit application within 90 days after the completed permit application is filed with the department. If a hearing is held, the department shall approve or disapprove the permit application within 90 days after the conclusion of the hearing. The department may approve a permit application, request modifications in the application, or deny the permit application. If the department approves the permit application, the department shall prepare and send the permit to the applicant. If the department denies, or requests a modification of, the permit application, the department shall send notice of the denial or modification request and the reasons for the denial or the modifications requested to the applicant. Department approval may include the issuance of a permit containing conditions necessary for compliance with this part. If the department does not approve or disapprove the permit application within the time provided by this subsection, the permit application shall be considered approved, and the department shall be considered to have made the determinations required by section 30311. The action taken by the department may be appealed pursuant to Act No. 306 of the Public Acts of 1969. A property owner may, after exhaustion of administrative remedies, bring appropriate legal action in a court of competent jurisdiction.

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

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

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

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

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

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

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

(6) A local unit of government that adopts an ordinance regulating wetlands shall use an application form supplied by the department, and each person applying for a permit shall make application directly with the local unit of government. Upon receipt, the local unit of government shall forward a copy of each application to the department. The department shall begin reviewing the application as provided in this part. The local unit of government shall review the application pursuant to its ordinance and shall modify, approve, or deny the application within 90 days after receipt. The denial of a permit shall be accompanied by a written reason for denial. The failure to supply complete information with a permit application may be reason for denial of a permit. The department shall inform any interested person whether or not a local unit of government has an ordinance regulating wetlands. If the department receives an application with respect to a wetland which is located in a local unit of government which has an ordinance regulating wetlands, the department immediately shall forward the application to the local unit of government, which shall modify, deny, or approve the application under this subsection. The local unit of government shall notify the department of its decision. The department shall proceed as provided in this part.

(7) If a local unit of government does not have an ordinance regulating wetlands, the department shall promptly send a copy of the permit application to the local unit of government where the wetland is located. The local unit of government may review the application; may hold a hearing on the application; and may recommend approval, modification, or denial of the application to the department. The recommendations of the local unit of government shall be made and returned to the department within 45 days after the local unit of government's receipt of the permit application. The department shall approve, modify, or deny the application as provided in this part.

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

Sec. 30308. (1) Prior to the effective date of an ordinance authorized under section 30307(4), a local unit of government that wishes to adopt such an ordinance shall complete and make available to the public at a reasonable cost an inventory of all wetland within the local unit of government, except that a local unit of government located in a county that has a population of less than 100,000 is not required to include public lands on its map. A local unit of government shall make a draft of the inventory map available to the public, shall provide for public notice and comment opportunity prior to finalizing the inventory map, and shall respond in writing to written comments received by the local unit of government regarding the contents of the inventory. A local unit of government that has a wetland ordinance on December 18, 1992 has until June 18, 1994 to complete an inventory map and to otherwise comply with this part, or the local unit of government shall not continue to enforce that ordinance. Upon completion of an inventory map or upon a subsequent amendment of an inventory map, the local unit of government shall notify each record owner of property on the property tax roll of the local unit of government that the inventory maps exist or have been amended, where the maps may be reviewed, that the owner's property may be designated as a wetland on the inventory map, and that the local unit of government has an ordinance regulating wetland. The notice shall also inform the property owner that the inventory map does not necessarily include all of the wetlands within the local unit of government that may be subject to the wetland ordinance. The notice may be given by including the required information with the annual notice of the property owner's property tax assessment. A wetland inventory map does not create any legally enforceable presumptions regarding whether property that is or is not included on the inventory map is or is not a wetland.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 impact of each proposal in relation to the cumulative effect created by other existing and anticipated activities in the watershed.

(e) The probable impact 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.

Sec. 30312. (1) The department, after notice and opportunity for a public hearing, may issue general permits on a state or county basis 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 effect on the environment. A general permit issued under this subsection 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.

(2) The department may impose conditions on a permit for a use or development if the conditions are designed to remove an impairment to the wetland benefits, to mitigate the impact of a discharge of fill material, or to otherwise improve the water quality.

(3) The department may establish a reasonable time when the construction, development, or use is to be completed or terminated. A general permit shall not be valid for more than 5 years.

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

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

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

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

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

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

(2) Upon reasonable cause or obtaining a search warrant, the department may enter on, upon, or through the premises on which an activity listed in section 30304 is located or on which information required to be maintained under subsection (1) is located.

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

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

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

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

(3) A person who willfully or recklessly violates a condition or limitation in a permit issued by the department under this part, or a corporate officer who has knowledge of or is responsible for a violation, is guilty of a misdemeanor, punishable by a fine of not less than $2,500.00 nor more than $25,000.00 per day of violation, or by imprisonment for not more than 1 year, or both. A person who violates this section a second or subsequent time is guilty of a felony, punishable by a fine of not more than $50,000.00 for each day of violation, or by imprisonment for not more than 2 years, or both.

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

Sec. 30317. The fees and civil fines collected under this part shall be deposited in the general fund of the state. Other than 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. 30318. If a permit is denied for a proposed wetland activity, the landowner may request a revaluation of the affected property for assessment purposes to determine its fair market value under the use restriction.

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

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

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

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

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

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

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

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

(3) Before an inventory is made of a county, interested persons may request the department to inspect property, and the department shall make a written wetland determination. The determination shall be made within a reasonable time after the request. Completion of the inventory shall not delay implementation of this part.

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

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

(2) For the purposes of determining if there has been a taking of property without just compensation under state law, an owner of property who has sought and been denied a permit from the state or from a local unit of government that adopts an ordinance pursuant to section 30307(4), who has been made subject to modifications or conditions in the permit under this part, or who has been made subject to the action or inaction of the department pursuant to this part or the action or inaction of a local unit of government that adopts an ordinance pursuant to section 30307(4) may file an action in a court of competent jurisdiction.

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

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

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

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

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

PART 305 NATURAL RIVERS

Sec. 30501. As used in this part:

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 30508. A zoning ordinance adopted by a local unit of government or a zoning rule promulgated by the department shall provide for the protection of the river and its related land resources consistent with the preservation and enhancement of their values and the objectives set forth in section 30502. The ordinance or rule shall protect the interest of the people of the state as a whole. It shall take cognizance of the characteristics of the land and water concerned, surrounding development, and existing uses and provide for conservation of soil, water, stream bed and banks, floodplains, and adjoining uplands.

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

Sec. 30510. A local unit of government, in establishing a zoning ordinance, in addition to the authority and requirements of this part, shall conform to the township rural zoning act, Act No. 184 of the Public Acts of 1943, being sections 125.271 to 125.301 of the Michigan Compiled Laws, or the county rural zoning enabling act, Act No. 183 of the Public Acts of 1943, being sections 125.201 to 125.232 of the Michigan Compiled Laws. Any conflict shall be resolved in favor of the provisions of this part. The powers granted under this part shall be liberally construed in favor of the local unit or the department exercising them, in such manner as to promote the orderly preservation or enhancement of the values of the rivers and related land resources and their use in accordance with a long-range comprehensive general plan to ensure the greatest benefit to the state as a whole.

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

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

(2) The department shall promulgate a zoning rule to implement this part. The rule shall include procedures for receiving and acting upon applications from local units of government or landowners for change of boundaries or change in permitted uses in accordance with sections 71 to 87 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws. An aggrieved party may seek judicial review in accordance with and subject to the provisions of sections 101 to 106 of Act No. 306 of the Public Acts of 1969, being sections 24.301 to 24.306 of the Michigan Compiled Laws.

(3) The lawful use of any building or structure and of any land or premise as existing and lawful at the time of enactment of a zoning ordinance or rule or of an amendment of a zoning ordinance or rule may be continued although the use does not conform with the ordinance, rule, or amendment. The ordinance or rule shall provide for the

completion, restoration, reconstruction, extension, or substitution of nonconforming uses upon reasonable terms as set forth in the zoning ordinance or rule.

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

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

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

PART 307 INLAND LAKE LEVELS

Sec. 30701. As used in this part:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The expediency of the normal level project.

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

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

(e) A method of financing initial costs.

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

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

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

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

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

Sec. 30705. (1) The special assessment district may issue bonds or lake level orders in anticipation of special assessments. All proceedings relating to the making, levying, and collection of special assessments authorized by this part and the issuance of bonds or lake level orders in anticipation of the collection of bonds or orders shall conform as nearly as possible to the proceedings for levying special assessments and issuing special assessment bonds or lake level orders as set forth in the drain code of 1956, Act No. 40 of the Public Acts of 1956, being sections 280.1 to 280.630 of the Michigan Compiled Laws.

(2) The special assessment district may issue notes in anticipation of special assessments made against lands in the special assessment district or public corporation at large. The final maturity of the notes shall be not later than 10 years from their date. The notes shall not be considered to be obligations within the meaning of the municipal finance act, Act No. 202 of the Public Acts of 1943, being sections 131.1 to 139.3 of the Michigan Compiled Laws, unless the principal amount exceeds $500,000.00.

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

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

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

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

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

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

(a) Past lake level records, including the ordinary high-water mark and seasonal fluctuations.

(b) The location of septic tanks, drain fields, sea walls, docks, and other pertinent physical features.

(c) Government surveys and reports.

(d) The hydrology of the watershed.

(e) Downstream flow requirements and impacts on downstream riparians.

(f) Fisheries and wildlife habitat protection and enhancement.

(g) Upstream drainage.

(h) Rights of riparians.

(i) Testimony and evidence offered by all interested persons.

(j) Other pertinent facts and circumstances.

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

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

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

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

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

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

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

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

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

Sec. 30712. (1) Computation of the cost of a normal level project shall include the cost of all of the following:

(a) The preliminary study.

(b) Surveys.

(c) Establishing a special assessment district, including preparation of assessment rolls and levying assessments.

(d) Acquiring land and other property.

(e) Locating, constructing, operating, repairing, and maintaining a dam or works of improvement necessary for maintaining the normal level.

(f) Legal fees, including estimated costs of appeals if assessments are not upheld.

(g) Court costs.

(h) Interest on bonds and other financing costs for the first year, if the project is so financed.

(i) Any other costs necessary for the project which can be specifically itemized.

(2) The delegated authority may add as a cost not more than 15% of the sum calculated under subsection (1) to cover contingent expenses.

Sec. 30713. The delegated authority of a county in which an inland lake is located may contract with a state or federal government agency or a public or private corporation in connection with a project for the establishment and

maintenance of a normal level. The contract may specify that the agency or corporation will pay the whole or a part of the cost of the project or will perform the whole or a part of the work connected with the project. The contract may provide that payment made or work done relieves the agency or corporation in whole or in part from assessment for the cost of establishment and construction of the project.

Sec. 30714. (1) A special assessment roll shall describe the parcels of land to be assessed, the name of the owner of each parcel, if known, and the dollar amount of the assessment against each parcel.

(2) The delegated authority shall set a time and place for a public hearing or hearings on the project cost and the special assessment roll. Notice of a hearing shall be by both of the following:

(a) By publication of notice at least twice prior to the hearing in a newspaper that circulates in the special assessment district, the first publication to be at least 10 days before the hearing.

(b) As provided in Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the Michigan Compiled Laws.

(3) At or after a public hearing, the delegated authority may approve or revise the cost of the project or the special assessment roll. Before construction of a project is begun, the county board shall approve the cost and the special assessment roll by resolution.

(4) The special assessment roll with the assessments listed shall be final and conclusive unless appealed in a court within 15 days after county board approval.

Sec. 30715. (1) The county board may provide that assessments under this part are payable in installments.

(2) Assessment payments shall be sufficient to meet bond and note obligations of the special assessment district.

(3) Special assessments under this part shall be spread upon the county tax rolls, and shall be subject to the same interest and penalty charges and shall be collected in the same manner as county taxes.

(4) From the date of approval of the special assessment roll by the county board, a special assessment under this part shall constitute a lien on the parcel assessed. The lien shall be of the same character and effect as a lien created for county taxes.

(5) A payment for the cost of the preliminary study under section 30703 shall be credited against an assessment for the amount of the payment made by the person assessed.

Sec. 30716. With approval of the county board and, except as provided in section 30717, subject to the municipal finance act, Act No. 202 of the Public Acts of 1943, being sections 131.1 to 139.3 of the Michigan Compiled Laws, the district may issue bonds or notes that shall be payable by special assessments under this part. Bonds or notes shall not be issued exceeding the cost of the lake level project that is being financed.

Sec. 30717. The delegated authority may accept the advance of work, material, or money in connection with a normal level project. The obligation to repay an advance out of special assessments under this part may be evidenced by a note or contract. If the principal amount of all notes or contracts issued under this section for a single normal level project is not more than $500,000.00, a contract or note shall not be considered an obligation within the meaning of the municipal finance act, Act No. 202 of the Public Acts of 1943, being sections 131.1 to 139.3 of the Michigan Compiled Laws.

Sec. 30718. Plans and specifications for a dam constructed or maintained under this part shall be prepared by a licensed professional engineer under the direction of the delegated authority. The plans and specifications shall be approved by the department before construction begins. The department shall review and approve or reject the plans and specifications within 30 days after they are received by the department. If the plans and specifications are rejected, the department shall propose changes in the plans and specifications that would result in their approval by the department. Bids for doing the work may be advertised in the manner the delegated authority directs. The contract shall be let to the lowest responsible bidder giving adequate security for the performance of the contract, but the delegated authority may reserve the right to reject any and all bids. The county may erect and maintain a dam as a work relief project in accordance with the law applicable to a work relief project.

Sec. 30719. (1) The department may require that a new dam that is proposed to be constructed be equipped with an underspill device for the release of cold bottom waters for the protection of downstream fish habitats.

(2) The department may require the installation of a fish ladder or other device to permit the free passage of fish.

Sec. 30720. A person who is not authorized by a delegated authority or the department to operate a dam or other normal level control facility and who changes, or causes to change, the level of an inland lake, the normal level of which has been established under this part or any previous act governing lake levels, and for which the delegated authority or the department has taken steps to maintain the normal level, is guilty of a misdemeanor punishable by a fine of not

more than $1,000.00 or imprisonment for not more than 1 year, or both, and shall be required to pay the actual cost of restoration or replacement of the dam and any other property including any natural resource that is damaged or destroyed as a result of the violation.

Sec. 30721. A normal level shall not be established for an inland lake in either of the following cases:

(a) The inland lake is used as a reservoir for a municipal water supply system, unless a normal level determination is petitioned for by the governing body of the municipality.

(b) The state has title, flowage rights, or easements to all riparian land surrounding the inland lake, unless a normal level determination is petitioned for by the department.

Sec. 30722. (1) The delegated authority of a county shall cause an inspection to be made of each dam on an inland lake within the county which has a normal level established under this part or under any previous act governing lake levels. The inspection shall be conducted by a licensed professional engineer. The inspection shall take place every third year from the date of completion of a new dam or every third year from the determination of a normal level for an existing dam. An inspection report shall be submitted promptly to the department in the form and manner the department prescribes.

(2) If a report discloses a need for repairs or a change in condition of the dam that relates to the dam's safety or danger to natural resources, the department shall conduct an inspection to confirm the report. If the report is confirmed and the public safety or natural resources are endangered by the risk of failure of the dam, the department may require the county either to repair or to replace the dam. Plans and specifications for the repairs or replacement shall be prepared by a licensed professional engineer under the direction of the delegated authority. The plans and specifications shall be approved by the department before construction begins. The department shall review and approve or reject the plans and specifications within 30 days after they are received by the department. If the plans and specifications are rejected, the department shall propose changes in the plans and specifications that would result in their approval by the department. If the dam is in imminent danger of failure, the department may order an immediate lowering of the lake level until necessary repair or replacement is complete.

(3) A person failing to comply with this section, or falsely representing dam conditions, is guilty of misconduct in office.

(4) If an inspection discloses the necessity for maintenance or repair, the delegated authority, without approval of the county board, may spend not more than $10,000.00 annually for maintenance and repair of each lake level project. An expenditure of more than $10,000.00 annually shall be approved by resolution of the county board.

Sec. 30723. This part does not abrogate the requirements of other state statutes.

PART 309 INLAND LAKE IMPROVEMENTS

Sec. 30901. As used in this part:

(a) "Benefit" or "benefits" means advantages resulting from a project to public corporations, the inhabitants of public corporations, the inhabitants of this state, and property within public corporations. Benefit includes benefits that result from elimination of pollution and elimination of flood damage, elimination of water conditions that jeopardize the public health or safety; increase of the value or use of lands and property arising from improving a lake or lakes as a result of the lake project and the improvement or development of a lake for conservation of fish and wildlife and the use, improvement, or development of a lake for fishing, wildlife, boating, swimming, or any other recreational, agricultural, or conservation uses.

(b) "Inland lake" means a public inland lake or a private inland lake.

(c) "Interested person" means a person who has a record interest in the title to, right of ingress to, or reversionary right to a piece or parcel of land that would be affected by a permanent change in the bottomland of a natural or artificial, public or private inland lake, or adjacent wetland. In all cases, whether having such an interest or not, the department is an interested person.

(d) "Local governing body" means the legislative body of a local unit of government.

(e) "Preliminary costs" includes costs of the engineering feasibility report, economic study, estimate of total cost, and cost of setting up the assessment district.

(f) "Private inland lake" means an inland lake other than a public inland lake.

(g) "Public inland lake" means a lake that is accessible to the public by publicly owned lands or highways contiguous to publicly owned lands or by the bed of a stream, except the Great Lakes and connecting waters.

Sec. 30902. (1) The local governing body of any local unit of government in which the whole or any part of the waters of any public inland lake is situated, upon its own motion or by petition of 2/3 of the freeholders owning lands abutting

the lake, for the protection of the public health, welfare, and safety and the conservation of the natural resources of this state, or to preserve property values around a lake, may provide for the improvement of a lake, or adjacent wetland, and may take steps necessary to remove and properly dispose of undesirable accumulated materials from the bottom of the lake or wetland by dredging, ditching, digging, or other related work.

(2) Upon receipt of the petition or upon its own motion, the local governing body within 60 days shall set up a lake board as provided in section 30903 that shall proceed with the necessary steps for improving the lake or to void the proposed project.

Sec. 30903. (1) The lake board shall consist of all of the following:

(a) A member of the county board of commissioners appointed by the chairperson of the county board of commissioners of each county affected by the lake improvement project; a representative of each local unit of government appointed by the legislative body of each local unit of government, other than a county, affected by the project; the county drain commissioner, or a member of the county road commission in counties not having a drain commissioner; and a representative of the department.

(b) A member elected by the members of the lake board serving pursuant to subdivision (a) at the first meeting of the board or at any time a vacancy exists under this subdivision. Only a person who has an interest in a land contract or a record interest in the title to a piece or parcel of land that abuts the lake to be improved is eligible to be elected and to serve under this subdivision. An organization composed of and representing the majority of lakefront property owners on the affected lake may submit up to 3 names to the board, from which the board shall make its selection. The terms served by this member shall be 4 years in length.

(2) The lake board shall elect a chairperson and a secretary. A majority of the members of the lake board constitutes a quorum. The concurrence of a majority in any matter within the duties of the board shall be required for the determination of a matter.

(3) The department, upon request of the lake board, shall provide whatever technical data it has available and make recommendations in the interests of conservation.

Sec. 30904. Action may be initiated under section 30902 relating to any private inland lake only upon petition of 2/3 of the freeholders owning lands abutting the lake.

Sec. 30905. The county board of commissioners may provide for a revolving fund to pay for the preliminary costs of improvement projects within the county. The preliminary costs shall be assessed to the property owners in the assessment district by the lake board after notice of the hearing is given pursuant to Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the Michigan Compiled Laws, and shall be repaid to the fund where the project is not finally constructed.

Sec. 30906. (1) Whenever a local governing body, in accordance with section 30902, considers it expedient to have a lake improved, it, by resolution, shall direct the lake board to institute proceedings as prescribed in this part.

(2) When the waters of any inland lake are situated in 2 or more local units of government, the improvement of the lake may be determined jointly in the same manner as provided in this part, if the local governing bodies of all local units of government involved determine it to be expedient in accordance with section 30902 and, by resolution, direct the lake board to institute proceedings as prescribed in this part. Where local ordinances and charters conflict, this part shall govern.

Sec. 30907. If the department considers it expedient, in accordance with section 30902, to have a lake dredged or improved, the department may petition the local governing body or governing bodies in which the lake is located for an improvement of the lake. The department may also join with the local governing body of any local unit of government in instituting proceedings for improvements as set forth in this part.

Sec. 30908. The lake board, when instructed by resolution of the local governing body, shall determine the scope of the project and shall establish a special assessment district, including within the special assessment district all parcels of land and local units which will be benefited by the improvement of the lake. The local governing body may delegate to the lake board other ministerial duties including preparation, assembling, and computation of statistical data for use by the board and the superintending, construction, and maintenance of any project under this part, as the local governing body considers necessary.

Sec. 30909. (1) The lake board shall retain a licensed professional engineer to prepare an engineering feasibility report, an economic study report, and an estimate of cost. The report shall include, when applicable, recommendations for normal lake levels and the methods for maintaining those levels.

(2) The engineering feasibility report shall include the methods proposed to implement the recommended improvements, such as dredging, removal, disposal, and disposal areas for undesirable materials from the lake. The report shall include an investigation of the groundwater conditions and possible effects on lake levels from removal of bottom materials. A study of existing nutrients and an estimate of possible future conditions shall be included. Estimate of costs of right-of-way shall be included.

(3) The estimate of cost prepared under subsection (1) shall show probable assessments for the project. The economic report shall analyze the existing local tax structure and the effects of the proposed assessments on the local units of government involved. A copy of the report shall be furnished to each member of the lake board.

Sec. 30910. Within 60 days after his or her receipt of the reports, the chairperson shall hold a meeting of the lake board to review the reports required under section 30909 and to determine the practicability of the project. The hearing shall be public, and notice of the hearing shall be published twice in a newspaper of general circulation in each local unit of government to be affected. The first publication shall be not less than 20 days prior to the time of the hearing. The board shall determine the practicability of the project within 10 days after the hearing unless it is determined at the hearing that more information is needed before the determination can be made. Immediately upon receipt of the additional information, the board shall make its determination.

Sec. 30911. The county board of commissioners may provide up to 25% of the cost of a lake improvement project on any public inland lake.

Sec. 30912. If the lake board passes a resolution in which it determines the project to be practicable, the lake board shall determine to proceed with the project, shall approve the plans and estimate of costs as originally presented or as revised, corrected, amended, or changed, and shall determine the sufficiency of the petition for the improvement. The resolution shall be published once in a newspaper of general circulation in each local unit of government to be affected. After the resolution has been published, the sufficiency of the petition shall not be subject to attack except in an action brought in a court of competent jurisdiction within 30 days after publication. The lake board, after finally accepting the special assessment district, shall prepare an assessment roll based upon the benefits to be derived from the proposed lake improvement, and the lake board shall direct the assessing official of each local unit of government to be affected to join in making an assessment roll in which shall be entered and described all the parcels of land to be assessed, with the names of the respective owners of the parcels of land, if known, and the total amount to be assessed against each parcel of land and against each local unit of government to be affected, which amount shall be such relative portion of the whole sum to be levied against all parcels of land and local units of government in the special assessment district as the benefit to such parcel of land and local unit of government bears to the total benefit to all parcels of land and local units of government in the special assessment district. When the assessment roll has been completed, each assessing official shall affix to the assessment roll his or her certificate stating that it was made pursuant to a resolution of the lake board adopted on a specified date, and that in making the assessment roll he or she has, according to his or her best judgment, conformed in all respects to the directions contained in the resolution and the statutes of the state.

Sec. 30913. The assessment roll shall be reported to the lake board by the assessing official of the local unit or units of government initiating the proceeding and filed in the office of the clerk of each local unit of government to be affected. Before confirming the assessment roll, the lake board shall appoint a time and place when it will meet and review the assessment roll and hear any objections to the assessment roll, and shall publish notice of the hearing and the filing of the assessment roll twice prior to the hearing in a newspaper of general circulation in each local unit of government to be affected, the first publication to be at least 10 days before the hearing. Notice of the hearing shall also be given in accordance with Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the Michigan Compiled Laws. The hearing may be adjourned from time to time without further notice. Any person or local unit of government objecting to the assessment roll shall file his or her objection in writing with the chairperson before the close of the hearing or within such further time period as the lake board may grant. After the hearing, the lake board may confirm the special assessment roll as reported to it or as amended or corrected by it, may refer it back to the assessing officials for revision, or may annul it and direct a new roll to be made. When a special assessment roll has been confirmed, the clerk of each local unit of government shall endorse on the assessment roll the date of the confirmation. After confirmation, the special assessment roll and all assessments on the assessment roll shall be final and conclusive unless attacked in a court of competent jurisdiction within 30 days after notice of confirmation has been published in the same manner as the notice of hearing.

Sec. 30914. Upon the confirmation of the assessment roll, the lake board may provide that the assessments be payable in 1 or more approximately equal annual installments, not exceeding 30. The amount of each installment, if more than 1, need not be extended upon the special assessment roll until after confirmation. The first installment of a special assessment shall be due on or before such time after confirmation as the board shall establish, and the several subsequent installments shall be due at intervals of 12 months from the due date of the first installment or from such other date as the board shall establish. All unpaid installments, prior to their transfer to the tax roll of each local unit

of government involved, shall bear interest, payable annually on each installment due date, at a rate to be set by the board, not exceeding 6% per annum, from such date as established by the board. Future due installments of an assessment against a parcel of land may be paid to the treasurer of each local unit of government at any time in full, with interest accrued to the due date of the next installment. If any installment of a special assessment is not paid when due, then it shall be considered to be delinquent and there shall be collected on the installment, in addition to interest as above provided, a penalty at the rate of 1/2 of 1% for each month or fraction of a month that it remains unpaid before being reported to the township board for reassessment upon the tax roll.

Sec. 30915. All special assessments contained in any special assessment roll, including any part of the special assessment payment that is deferred, constitute a lien, from the date of confirmation of the roll, upon the respective parcels of land assessed. The lien shall be of the same character and effect as the lien created for taxes in each local unit of government and shall include accrued interest and penalties. A judgment, decree, or any act of the board vacating a special assessment does not destroy or impair the lien upon the premises assessed for the amount of the assessment as may be equitably charged against the premises, or as by a regular mode of proceeding might be lawfully assessed on the premises.

Sec. 30916. When any special assessment roll is confirmed, the lake board shall direct the assessments made in the roll to be collected. The clerk of each local unit of government involved shall then deliver to the treasurer of each local unit of government the special assessment roll, to which he or she shall attach his or her warrant commanding the treasurer to collect the assessments in the roll in accordance with the directions of the lake board. The warrant shall further require the treasurer, on September 1 following the date when any assessments or any part of an assessment have become due, to submit to the lake board a sworn statement setting forth the names of delinquent persons, if known, a description of the parcels of land upon which there are delinquent assessments, and the amount of the delinquency, including accrued interest and penalties computed to September 1 of the year. Upon receiving the special assessment roll and warrant, the treasurer shall collect the amounts assessed as they become due.

Sec. 30917. If the treasurer reports as delinquent any assessment or part of an assessment, the lake board shall certify the delinquency to the assessing official of each local unit of government, who shall reassess, on the annual tax roll of the local unit of government of that year, in a column headed "special assessments", the delinquent sum, with interest and penalties to September 1 of that year, and an additional penalty of 6% of the total amount. Thereafter, the statutes relating to taxes shall be applicable to the reassessments in each local unit of government.

Sec. 30918. If any parcel of land is divided after a special assessment on the land has been confirmed and before the collection of the assessment, the lake board may require the assessment official to apportion the uncollected amounts between the divisions of the parcel of land, and the report of the apportionment when confirmed by the lake board shall be conclusive upon all parties. If the interested parties do not agree in writing to the apportionment, then, before confirmation, notice of hearing shall be given to all the interested parties, either by personal service or by publication as provided in the case of an original assessment roll.

Sec. 30919. If the assessments in any special assessment roll prove insufficient for any reason, including the noncollection of the assessment, to pay for the improvement for which they were made or to pay the principal and interest on the bonds issued in anticipation of the collection of the assessment, then the lake board shall make additional pro rata assessments to supply the deficiency, but the total amount assessed against any parcel of land shall not exceed the value of the benefits received from the improvement.

Sec. 30920. Whenever, in the opinion of the lake board, any special assessment is invalid by reason of irregularities or informalities in the proceedings, or if any court of competent jurisdiction adjudges such assessment illegal, the lake board, whether the improvement has been made or not and whether any part of the assessment has been paid or not, may proceed from the last step at which the proceedings were legal and cause a new assessment to be made for the same purpose for which the former assessment was made. All proceedings on that reassessment and for the collection of the assessment shall be conducted in the same manner as provided for the original assessment. Whenever an assessment or any part of an assessment levied upon any premises has been set aside, if the assessment or part of an assessment has been paid and not refunded, the payment shall be applied upon the reassessment.

Sec. 30921. The governing body of any department of the state or any of its political subdivisions, municipalities, school districts, townships, or counties, whose lands are exempt by law, may by resolution agree to pay the special assessments against the lands, in which case the assessment, including all the installments of the assessment, shall be a valid claim against the local unit of government.

Sec. 30922. The lake board may borrow money and issue lake level orders or the bonds of the special assessment district therefor in anticipation of the collection of special assessments to defray the cost of any improvement made

under this part after the special assessment roll has been confirmed. The bonds or lake level orders shall not exceed the amount of the special assessments in anticipation of the collection of which they are issued and shall bear interest at a rate not exceeding 5% per annum. Collections on special assessments to the extent pledged for the payment of bonds or lake level orders shall be set aside in a special fund for the payment of the bonds or lake level orders. The issuance of special assessments bonds or lake level orders shall be governed by the general laws of the state applicable to the issuance of special assessments bonds or lake level orders and in accordance with the municipal finance act, Act No. 202 of the Public Acts of 1943, being sections 131.1 to 139.3 of the Michigan Compiled Laws. Bonds or lake level orders may be issued in anticipation of the collection of special assessments levied in respect to 2 or more public improvements, but no special assessment district shall be compelled to pay the obligation of any other special assessment district. The local governing body may pledge the full faith and credit of a local unit of government for the prompt payment of the principal of and interest on the bonds or lake level orders as they become due. The pledge of full faith and credit of the local unit of government shall be included within the total limitation prescribed by section 5 of chapter 5 of Act No. 202 of the Public Acts of 1943, being section 135.5 of the Michigan Compiled Laws. Bonds and lake level orders issued under this part shall be executed by the chairperson and secretary of the lake board, and the interest coupons to be attached to the bonds and orders shall be executed by the officials causing their facsimile signatures to be affixed thereto.

Sec. 30923. Whenever the lake board determines by proper resolution that it is necessary to condemn private property for the purpose of this part, the condemnation proceedings shall be commenced and conducted in accordance with Act No. 149 of the Public Acts of 1911, being sections 213.21 to 213.25 of the Michigan Compiled Laws.

Sec. 30924. (1) The lake board may receive and accept gifts or grants-in-aid for the purpose of implementing this part.

(2) The lake board may contract or make agreement with the federal government or any agency of the federal government whereby the federal government will pay the whole or any part of the costs of a project or will perform all or any part of the work connected with the project. The contract or agreement may include any specific terms required by act of congress or federal regulation as a condition for the participation of the federal government.

Sec. 30925. The department in carrying out the purposes of this part may receive and accept, on behalf of the state, gifts and grants-in-aid.

Sec. 30926. (1) Except as provided in subsection (2), the chairperson of the lake board shall advertise for bids. A contract shall be let to the lowest bidder giving adequate security for the performance of the contract, but the lake board shall reserve the right to reject any and all bids.

(2) The lake board may let a contract with a local, incorporated, nonprofit homeowner association, the membership of which is open on a nondiscriminatory basis to all residents within the geographic area to be assessed or serviced, without advertising for public bids. The homeowner association shall give adequate security for the performance of the contract.

(3) The local governing body may improve a lake as a work relief project pursuant to applicable provisions of law.

Sec. 30927. (1) Within 10 days after the letting of contracts or, in case of an appeal, then immediately after the appeal has been decided, the lake board shall make a computation of the entire cost of a project under this part that includes all preliminary costs and engineering and inspection costs incurred and all of the following:

(a) The fees and expenses of special commissioners.

(b) The compensation to be paid the board.

(c) The contracts for dredging or other work to be done on the project.

(d) The estimated cost of an appeal if the apportionment made by the lake board is not sustained.

(e) The estimated cost of inspection.

(f) The cost of publishing all notices required.

(g) All costs of the circuit court.

(h) Attorney fees for legal services in connection with the project.

(i) Interest on bonds for the first year, if bonds are to be issued.

(2) In addition to the amounts computed under subsection (1), the lake board may add not less than 10% or more than 15% of the gross sum to cover contingent expenses, including additional necessary hydrological studies by the department, and the entire sum so ascertained shall be considered to be the cost of the lake improvement project.

Sec. 30928. Whenever a public inland lake is to be improved, the department may intervene for the protection and conservation of the natural resources of the state.

PART 311 LOCAL RIVER MANAGEMENT

Sec. 31101. As used in this part:

(a) "Board" means a river management board created as the governing body of a river management district in accordance with this part.

(b) "Council" means a watershed council created under this part.

(c) "District" means a river management district established under this part.

(d) "Level of stream flow" means a measure of water quantity including the amount of water passing a designated point over a designated period and the levels of lakes that are an integral part of the surface drainage system of the watershed.

(e) "Local agencies" means local units of government, special districts, or other legally constituted agencies of local units of government exercising powers that may affect water resources.

(f) "River management" means the control of river flow by the operation of dams, reservoirs, conduits, and other human-made devices in order to improve and expand the uses of the river for those who depend upon it for a variety of private and public benefits.

(g) "Watershed" means the drainage area of a stream.

Sec. 31102. (1) To promote cooperation among local units of government in river management, a watershed council shall be established by the department upon a petition from 3 or more local units of government lying wholly or partially in the watershed as defined in the petition. The petition shall provide a statement of necessity, a description of general purposes and functions to be performed, a description of the area, including a map, and a list of all local units of government lying wholly or partly within the watershed, which shall be eligible for membership on the watershed council.

(2) Upon finding that the petition is in conformance with this part, the department shall establish the council, schedule an organizational meeting, and notify all local units of government eligible for membership by registered mail. The date for the meeting shall be not less than 60 or more than 90 days after the date of mailing the notice.

Sec. 31103. (1) The watershed council shall be composed of representatives of local units of government within the watershed who are appointed to and maintain membership in the council in the following manner:

(a) Each local unit of government using the river for water supply or waste disposal shall appoint 1 representative for each 20,000 population or fraction thereof. The governing body of each local unit of government shall determine the method by which its representatives are selected.

(b) Each county having 15% or more of its area in the watershed shall appoint 1 representative, and 1 additional representative for each 20,000 population or fraction thereof, which aggregate total shall be computed from the population of eligible townships not otherwise represented. These townships shall be eligible under this section if they have 15% or more of their respective areas in the basin. The methods by which the county representatives are selected shall be determined by the county board of commissioners.

(c) Any local agency wholly or partly within the basin may appoint a representative to the council upon a finding by the council that the agency is so affected by or concerned with the use and development of water resources in the basin as to warrant representation. If any township is represented under this subdivision, its population shall not be counted in determining the eligible total representatives of its county.

(2) Representatives on the watershed council shall be appointed for 2 years, but are subject to replacement at the pleasure of the appointing authority. A representative is not eligible to vote on the council unless the local government he or she represents has met its financial obligations to the council.

(3) Representatives to the watershed council may also represent their local units of government, if so designated by their local units of government, on river management boards established in accordance with this part.

Sec. 31104. In carrying out its authorized functions, the council shall do all of the following:

(a) Adopt bylaws that govern its operations.

(b) Prepare an annual operating budget, including apportionment of costs to member governments.

(c) Hold an annual meeting at which time it shall elect a chairperson, vice-chairperson, and secretary-treasurer, submit an annual report to the member governments, and adopt an annual budget that constitutes the council's authorization of activities for the year.

Sec. 31105. A watershed council may do 1 or more of the following:

(a) Conduct, or cause to be conducted, studies of the water resources of the watershed, including investigations of water uses, water quality, and the reliability of the water resource.

(b) Prepare periodic reports concerning, among other things, trends in water use and availability, emerging water problems, and recommendations for appropriate public policies and programs necessary to maintain adequate water resources for the watershed area.

(c) Request the department to survey the watershed for the purpose of determining minimum levels of stream flow necessary for health, welfare, and safety as provided in sections 31112 through 31117.

(d) Recommend the creation of a river management district or districts under the provisions of sections 31106 through 31111 when the need for river management seems to warrant such an action.

(e) Advise agencies of federal, state, and local units of government as to the council's view of the watershed's problems and needs.

(f) Cooperate with federal, state, and local agencies in providing stream gauges, water quality sampling stations, or other water resource data-gathering facilities or programs that aid the council in its responsibility for studying and reporting on water conditions.

(g) Employ an executive secretary and such other professional, administrative, or clerical staff, including consultants, as may be provided for in an approved budget.

(h) Establish such subcommittees or advisory committees as are considered helpful in the discharge of its functions.

(i) Establish special project funds as needed to finance special studies outside its annual budget capacity. For this purpose, the council may accept gifts and grants from any person.

Sec. 31106. (1) The governing bodies of 2 or more local units of government may petition the department to establish a river management district in order to provide an agency for the acquisition, construction, operation, and financing of water storage and other river control facilities necessary for river management. The petition shall be accompanied by a statement of necessity, a description of the district purposes, functions, and operating procedures, which shall include methods of financing capital improvements and of apportioning benefit charges, and a general plan of development. Not later than 60 days following receipt of such a petition, the department shall establish the time and place for a public hearing on the petition and shall publish notice of the hearing. The notice shall be published twice in each county involved in at least 1 newspaper of general circulation in the county. At the hearing, the applicant and any other interested party may appear, present witnesses, and submit evidence. Following the hearing, the department may establish the district and publish notice of the establishment in the manner provided for publication of notice of hearing, upon finding the following conditions:

(a) That the proposal is consistent with the public interest in the conservation, development, and use of water resources, and the proposed district is geographically suitable to effectuation of the district purposes.

(b) That the establishment and operation of the district will not unreasonably impair the interests of the public or of riparians in lands or waters or the beneficial public use of lands or waters, and will not endanger public health or safety.

(2) A management district shall not be created that affects any city now or hereafter having a population of more than 1,500,000, except with the concurrence of the governing body of that city.

(3) Prior to approving the establishment of a district consisting of a portion of a river basin, the department shall determine the feasibility of establishing the district to include the entire river basin or as large a portion of the basin as possible. Approval of districts consisting of a portion of a river basin shall be on the basis that when in the judgment of the department it becomes feasible to form a district including the entire river basin, the river management boards shall initiate proceedings to combine the smaller districts into larger districts or into an entire watershed-wide district.

(4) Any plans for a river management district shall be coordinated with plans of adjacent river basins, organizations, or agencies and with any comprehensive regional master programs for river management.

Sec. 31107. (1) Within 60 days after establishing a district, the department shall schedule an organizational meeting of the district board and shall provide notice of the meeting by registered mail to the governing bodies of all local units of government comprising the district. The date for the meeting shall be not less than 60 or more than 90 days after the date of mailing the notice. At the meeting, the department shall serve as temporary chairperson. The board shall elect a chairperson, vice-chairperson, secretary, and treasurer and adopt bylaws.

(2) A district shall be governed by a river management board composed of representatives of local units of government within the district. The representation of each local unit of government on the board may be provided as part of the operating procedures submitted to the department in the petition of local units of government made in accordance with section 31106. If the composition of the board is not so designated, representation shall be established under section 31103.

(3) Representatives on the river management board shall be appointed for 2 years but are subject to replacement at the pleasure of the appointing authority. A representative is not eligible to vote on the board unless the local government he or she represents has met its financial obligations to the district.

(4) Representatives to the river management board may also serve as representatives of their local units of government, if so designated by their local units of government, on the watershed council.

Sec. 31108. A river management board may do any of the following:

(a) Conduct a continuing study of river use requirements and needs for river management within its area of jurisdiction; analyze alternative methods of meeting needs; and develop and adopt a river management program, including plans for constructing, operating, and financing water storage and river control structures and negotiating coordinated policies and programs relating to river use among local units of government within the district.

(b) Impound and control the waters of the river system within the district, subject to minimum levels of stream flow established pursuant to sections 31112 and 31113, through acquisition, construction, maintenance, and/or operation of water storage reservoirs, dams, or other river control structures as necessary to assure adequate quantity, quality, and stability of river flow to protect the public health, welfare, and safety. A river management district shall not release water in such an amount as to produce or increase flooding or otherwise damage downstream interests.

(c) Contract with or enter into agreement with the federal government or any agency or department of the federal government or with other governmental agencies or with private individuals or corporations that may maintain and operate reservoirs and control structures or that may construct, maintain, and operate new reservoirs and control structures as necessary to carry out the purposes of this part.

(d) Perform, with respect to the area within the district, the functions assigned to a watershed council by sections 31102 through 31105 whenever a relevant watershed council has not been formed, or if the appropriate watershed council's failure to act impairs the functions and programs of a district.

Sec. 31109. A district formed under this part is a body corporate with powers to contract; to sue and be sued; to exercise the right of eminent domain; to apportion administrative costs and benefit charges for river management and related facilities among the local units of government members, which costs shall be payable from general funds or taxes raised by the local units of government; to collect revenues for services rendered by the exercise of its functions; to issue bonds; to apply for and receive grants, gifts, and other devises from any governmental agency or from the federal government; and to exercise other powers as necessary to implement this part. The river management district shall not have direct taxing power.

Sec. 31110. A river management board shall do all of the following:

(a) Adopt bylaws to govern its operations.

(b) Prepare an annual operating budget and levy an annual assessment of local unit of government members to cover costs of organizing, developing plans, and maintaining general overhead administration.

(c) Adopt and maintain a schedule of benefit assessments upon local units of government in the district levied to help defray the costs of capital improvements, which schedule constitutes a legal obligation upon those assessed.

(d) Hold an annual meeting at which it shall report to its members and to the watershed council, elect officers, and adopt an annual budget.

(e) Maintain a public record of its transactions.

(f) Do all other things necessary for the operation of the district.

Sec. 31111. The executive secretary of a watershed council may serve as executive secretary to the river management board. If a relevant watershed council does not exist, or if the executive secretary of a watershed council is otherwise unavailable, the board may employ an executive secretary. In addition, the board may employ additional staff as it determines appropriate within its approved budget.

Sec. 31112. Upon request of a council or a board, the department shall determine, within the watershed subject to the council, the minimum level of stream flow necessary to safeguard the public health, welfare, and safety, but a determination or order shall not prevent any industry along the stream from using water from the stream for industrial use sufficient for the industry's requirement if all the water used is returned to the stream within 72 hours of the taking.

Sec. 31113. In carrying out its authority to determine minimum levels of stream flow, the department, after public hearing, shall issue an order of determination setting forth minimum levels at locations as necessary to carry out the purposes of this part. Notice of the order of determination shall be published and the order may be reviewed in the circuit court in accordance with the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, upon petition filed by any person within 15 days following the last date of the publication.

Sec. 31114. A river management board may request a watershed council to seek a determination of minimum levels of stream flow in accordance with sections 31112 and 31113, or the board may request the department to make the determinations if a watershed council has not been formed for the larger watershed of which the district is a part, or when an appropriately established council fails to act within 90 days upon the district's request.

Sec. 31115. The department may maintain gauges and sampling devices to measure stream flow, lake levels, and water quality as necessary to implement this part, and may enter at all reasonable times in or upon any public property for the purpose of inspecting and investigating conditions relating to implementing this part.

Sec. 31116. The department may cooperate and negotiate with any person in establishing and maintaining gauges and sampling devices to measure stream flow, lake levels, or water quality or in implementing any other provision of this part. When requested by a council or board, the department shall provide technical advice and assistance in the preparation of a river management plan of the district. A river management plan shall not be placed into effect until it has been approved by the department as conforming to the stated objectives of the petition. The department shall maintain supervision over the functioning of the district to the extent it considers necessary for the purpose of ensuring conformance with the plan in the public interest.

Sec. 31117. The department shall promulgate rules to implement this part.

Sec. 31118. This part does not abridge the authority vested in the department by part 31. Permits granted by the department in accordance with part 35 are not affected by this part. The granting of future permits under part 35 shall proceed without regard to anything contained in this part.

Sec. 31119. The functions, powers, and duties of the director of public health as provided for by Act No. 98 of the Public Acts of 1913, being sections 325.201 to 325.214 of the Michigan Compiled Laws, shall remain unaffected by this part.

PART 313 SURPLUS WATERS

Sec. 31301. As used in this part:

(a) "Board" means the county board of commissioners.

(b) "Dams" means dams, embankments, dikes, pumps, weirs, locks, gates, tubes, ditches, or any other devices or construction to impound or release water.

(c) "Local unit" means any city, village, township, or soil conservation district acting through its governing body.

(d) "Optimum flow" means that rate and quantity of flow in any stream as determined in accordance with this part.

(e) "Plan" means a plan adopted by the board or boards and approved by an order of the department for the best development, utilization, and conservation of the surplus water of the state.

(f) "Surplus water" means water that may be impounded without decreasing the flow of a river or stream below its optimum flow.

Sec. 31302. Any board or group of boards or local unit or units acting singly or in concert may request the department to undertake a survey of the water in a river basin or watershed located or partially located in the county or counties or in the local unit or units of government to determine whether there is surplus water that may be available and, if so, how it may be best impounded, utilized, and conserved. All studies, surveys, and reports made by public and other competent authorities may be utilized by the department in making this determination.

Sec. 31303. If it appears to the department, after a review of the request, that a feasible plan for the impoundment, utilization, and conservation of surplus water will involve the water in counties or local units other than those making the request, the department shall so inform the requestors. If the request was originally made by a local unit only, the board of the county in which the local unit is situated shall be informed of the decision of the department; and unless the board joins in the request and becomes an originator of the request, the department shall discontinue any further work on the survey. The requesting board may then request the other boards to join in the request so that a complete survey of the surplus water located in all affected counties may be made. Refusal on the part of any of the other boards to join in the request shall be reported to the department, and if the department believes that the plan can be effectuated without the cooperation of the refusing boards, the department shall enter a decision to that effect and the boards requesting the survey may proceed in accordance with this part.

Sec. 31304. (1) Upon receipt of a request, the department shall determine the optimum flow for the rivers and streams that may be substantially affected by the impounding and releasing of surplus water and upon its completion shall require the boards to prepare and submit to the department a plan for the impoundment, best utilization, and

conservation of the surplus water in accordance with this part. The department shall cooperate and collaborate with the boards in the preparation of the plan. The plan shall specify the persons who may make use of the water and the terms, conditions, and restrictions under which the water may be used.

(2) In making the determination of optimum flow and in preparing the plan, the department and boards shall consider the following factors:

(a) The range of stream flow variation.

(b) The uses that are being made of the water from the stream or that may be made in the foreseeable future by any riparian owner.

(c) The stream's waste assimilation capacity and its practical utility for domestic use, fish and wildlife habitat, recreation, municipal and industrial water supply, commercial and recreational navigation, including portages, public and private utilities, and water storage purposes.

(d) Other factors that appear to the department to be necessary to adequately protect and preserve the rights of riparians on the streams involved.

(3) A plan shall not permit the impounding of water if the flow is below the optimum flow. This part does not authorize the diversion of water from 1 watershed to another.

Sec. 31305. (1) Before making a determination of optimum flow, the department shall hold a public hearing on the issue. The department shall set the time and place for the public hearing and shall publish notice of the hearing. The hearing shall be held not less than 180 days after the date of the first publication. The notice shall be published once during each of 2 separate weeks in at least 1 newspaper of general circulation in each county that requested the survey or later joined in the survey. Notice shall be given by first-class mail to each owner or party in interest of upper and lower riparian property that will be affected by the determination and whose name appears upon the most recent local tax assessment records. The notice shall be mailed at least 60 days prior to the date of the hearing to the address shown on the tax records. At the hearing, any interested person may appear, present witnesses, and submit evidence.

(2) Upon the completion of the public hearing pursuant to subsection (1), the department, if it believes it to further the public interest, shall enter an order making a determination of optimum flow. The order shall become final 30 days after the mailing of a copy of it by certified mail to those interested persons who appeared and testified or filed a written statement at the hearing. The order is subject to review as to questions of law only by a writ of superintending control in an action in the nature of certiorari brought before the order becomes final. Only an owner or party in interest of upper or lower riparian property affected by the order who appeared, testified, or filed a written statement at the hearing, who considers himself or herself aggrieved by the order, has the right to file a petition for a writ of superintending control in the nature of certiorari in the circuit court for the county of Ingham or in the circuit court for any county that requested the survey or joined in the survey.

(3) After the order of determination becomes final, the department shall hold a public hearing on the proposed plan as submitted by the board. The department shall set the time and place for the public hearing and shall publish notice in the manner provided in subsection (1). The hearing shall be held not less than 30 days after the date of the first publication. Notice shall be given by first-class mail to the persons and in the manner provided in subsection (1) and shall be mailed at least 30 days prior to the date of the hearing. At the hearing, any interested person may appear, present witnesses, and submit evidence. If the department finds that the proposed plan is in the public interest and in compliance with this part, it shall enter an order approving the plan. The order shall become final 30 days after the mailing of a copy of it by certified mail to those interested persons who appeared and testified or filed a written statement at the hearing. The order is subject to review as is provided in subsection (2).

Sec. 31306. (1) When the order has become final, the department shall transmit the plan to all of the boards involved, and, if the plan is adopted by the boards involved, the boards may construct, operate, and maintain, either singly or jointly, the dams necessary to impound the surplus waters and to make use or disposition of the surplus water in accordance with the plan. The department shall maintain supervision over the execution of the plan to the extent it considers necessary to protect the public interest of the state.

(2) For the implementation and effectuation of the plan, the boards, either singly or jointly, may establish a governmental agency or commission as may be necessary, may hire employees or assistants as may be required, and may enter into contracts with each other and any person as may be necessary to implement this part. The boards constructing, maintaining, or operating the dams shall be responsible for the proper construction, maintenance, and operation of the dams, and they shall be in full and complete charge of the dams and of the impoundments created by the dams.

Sec. 31307. For the purpose of implementing this part, the boards may receive and accept in the name of the county gifts and grants of land and other property and grants-in-aid from any person, and may buy, sell, exchange, or condemn land and other property or property interests, including the rights of riparian owners to surplus waters, in any county where the land and property are located. The department, if direct acceptance by the boards is not possible, may accept

the gifts or grants on their behalf. The boards shall not use any money of the county to implement the terms and provisions of this part, but shall finance the construction, operation, and maintenance of the dams wholly and solely from gifts or grants-in-aid that may be received and from fees and charges as may be made for the use of the surplus water.

Sec. 31308. The department, in carrying out the purposes of this part, may receive and accept on behalf of the state gifts and grants-in-aid from any person.

Sec. 31309. All increased flowage resulting from operation of a plan shall be available for nonconsumptive use to all riparians. A person shall not utilize for waste assimilation, or divert from the stream, any surplus water created by release from dams operated under this part, except in accordance with the plan. The amount of surplus water released from any impoundment shall be determined by the department by the use of well-recognized engineering computations. The boards may charge users of the surplus water for waste assimilation or consumptive use, except those making an incidental, noncommercial, or recreational use, a reasonable fee or rate for the quantity of water or for the benefits they receive. Those users who contribute to the construction, maintenance, or operation of the dams may be charged a reduced fee or no fee, but the fees and rates charged by the boards shall be sufficient at all times to defray all costs, expenses, and other financial burdens assumed by the boards in the construction, maintenance, and operation of the dams.

Sec. 31310. This part does not abridge the authority of the department as it presently exists. Permits granted by the department in accordance with part 35 are not affected by this part. The granting of future permits under part 35 shall proceed without regard to anything contained in this part.

Sec. 31311. The department shall promulgate rules to implement this part.

Sec. 31312. After a determination or plan has been in effect for 5 years, any riparian owner may petition the department for a redetermination of the optimum flow or modification of the plan, and upon a showing of substantial changes in conditions, the department shall hold hearings as provided in section 31305 and may redetermine the optimum flow or modify the plan.

Sec. 31313. Any person knowingly violating this part, or any rule promulgated under this part, or any written order of the department in pursuance of this part, is guilty of a misdemeanor.

Sec. 31314. This part does not apply within the boundaries of any river management district created under part 311.

PART 315 DAM SAFETY

Sec. 31501. For purposes of this part, the words and phrases defined in sections 31502 to 31505 have the meanings ascribed to them in those sections.

Sec. 31502. (1) "Abandonment" means an affirmative act on the part of an owner to discontinue maintenance or operation of a dam.

(2) "Administrative procedures act of 1969" means Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(3) "Alteration" means a change in the design of an existing dam that directly affects or may directly affect the structural integrity of a dam.

(4) "Appurtenant works" means the structure or machinery incident to or annexed to a dam that is built to operate and maintain a dam, including spillways, either in a dam or separate from the dam; low level outlet works; and water conduits such as tunnels, pipelines, or penstocks, located either through the dam or through the abutments of the dam.

(5) "Auxiliary spillway" means a secondary spillway which is operational at all times and does not require stoplog removal or gate manipulation.

(6) "Dam" means an artificial barrier, including dikes, embankments, and appurtenant works, that impounds, diverts, or is designed to impound or divert water or a combination of water and any other liquid or material in the water; that is or will be when complete 6 feet or more in height; and that has or will have an impounding capacity at design flood elevation of 5 surface acres or more. Dam does not include a storage or processing tank or standpipe constructed of steel or concrete, a roadway embankment not designed to impound water, or a dug pond where there is no impoundment of water or waste materials containing water at levels above adjacent natural grade levels.

(7) "Days" means calendar days, including Sundays and holidays.

(8) "Design flood" means the design flow rate for spillway capacity and dam height design.

(9) "Design flood elevation" means the maximum flood elevation that is considered in the design of the spillway capacity and freeboard for a dam.

(10) "Downstream toe elevation" means the elevation of the lowest point of intersection between the downstream slope of an earthen embankment and the natural ground.

Sec. 31503. (1) "Emergency action plan" means a plan developed by the owner that establishes procedures for notification of the department, public off-site authorities, and other agencies of the emergency actions to be taken prior to and following an impending or actual failure of a dam.

(2) "Enlargement" means any change in or addition to an existing dam which raises or may raise the design flood elevation of the water impounded by the dam.

(3) "Failed dam" means a dam not capable of impounding water at its intended level due to a structural deficiency.

(4) "Failure" means an incident resulting in an unplanned or uncontrolled release of water from a dam.

(5) "Flood of record" means the greatest flow rate determined by the department to have occurred at a particular location.

(6) "Freeboard" means the vertical distance between the design flood elevation and the lowest point of the top of the dam.

(7) "Half probable maximum flood" means the largest flood that may reasonably occur over a watershed, and is derived from the combination of hydrologic runoff parameters and the half probable maximum storm that produces the maximum runoff.

(8) "Half probable maximum storm" means the spatial and temporal distribution of the probable maximum precipitation, divided by 2, that produces the maximum volume of precipitation over a watershed.

(9) "Hazard potential classification" means a reference to the potential for loss of life, property damage, and environmental damage in the area downstream of a dam in the event of failure of the dam or appurtenant works.

(10) "Height" means the difference in elevation measured vertically between the natural bed of a stream or watercourse at the downstream toe of the dam, or, if it is not across a stream channel or watercourse, from the lowest elevation of the downstream toe of the dam, to the design flood elevation or to the lowest point of the top of the dam, whichever is less.

(11) "High hazard potential dam" means a dam located in an area where a failure may cause serious damage to inhabited homes, agricultural buildings, campgrounds, recreational facilities, industrial or commercial buildings, public utilities, main highways, or class I carrier railroads, or where environmental degradation would be significant, or where danger to individuals exists with the potential for loss of life.

Sec. 31504. (1) "Impoundment" means the water held back by a dam.

(2) "Low hazard potential dam" means a dam located in an area where failure may cause damage limited to agriculture, uninhabited buildings, structures, or township or county roads, where environmental degradation would be minimal, and where danger to individuals is slight or nonexistent.

(3) "Maintenance" means the upkeep of a dam and its appurtenant works but does not include alterations or repairs.

(4) "One-hundred year flood" means a flood that has a 1% chance of being equaled or exceeded in any given year.

(5) "Owner" means a person who owns, leases, controls, operates, maintains, manages, or proposes to construct a dam.

(6) "Probable maximum precipitation" means the theoretically greatest depth of precipitation for a given duration that is physically possible over a given size storm area at a particular geographic location at a certain time of year.

Sec. 31505. (1) "Removal" means the physical elimination of a dam or impoundment.

(2) "Repair" means to substantially restore a dam to its original condition and includes only such restoration as may directly affect the structural integrity of the dam.

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

(4) "Riparian rights" means rights which accrue by operation of law to a landowner on the banks of an inland lake or stream.

(5) "Significant hazard potential dam" means a dam located in an area where its failure may cause damage limited to isolated inhabited homes, agricultural buildings, structures, secondary highways, short line railroads, or public utilities, where environmental degradation may be significant, or where danger to individuals exists.

(6) "Spillway" means a waterway in or about a dam designed for the discharge of water.

(7) "Spillway capacity" means the maximum rate of discharge that will pass through a spillway at design flood elevation.

(8) "Two-hundred year flood" means a flood that has a 0.5% chance of being equaled or exceeded in any given year.

Sec. 31506. (1) Except as otherwise provided in subsections (2) and (3), dams and impoundments in the state are under the jurisdiction of the department.

(2) The following are exempt from this part:

(a) Projects licensed, projects that have preliminary permits, or projects for which an application for licensure has been filed under the federal power act, chapter 285, 41 Stat. 1063, 16 U.S.C. 791a to 793, 796 to 797, 798 to 818, 820 to 824a, and 824b to 825r, if federal dam safety inspection provisions apply during the license period and the inspection reports are provided to the department.

(b) Projects located on boundary waters under the jurisdiction and supervision of the United States army corps of engineers.

(c) Impoundments licensed pursuant to part 115 that contain or are designed to contain type III wastes as defined in rules promulgated under that part.

Sec. 31507. (1) A person shall not construct, enlarge, repair, reconstruct, alter, remove, or abandon any dam except in a manner provided for in this part.

(2) This section does not apply to maintenance performed on a dam that does not affect the structural integrity of the dam.

Sec. 31508. (1) Except as otherwise provided in subsection (2), a licensed professional engineer shall prepare all plans and specifications, except for minor projects undertaken pursuant to section 31513.

(2) A person who is not a licensed professional engineer may prepare plans and specifications only for repairs or alterations to a dam where the application is made by a nonprofit organization under the following circumstances:

(a) The nonprofit organization has assets of less than $30,000.00, is exempt from taxation under section 501(c)(3) of the internal revenue code of 1986, 26 U.S.C. 501, and is not composed primarily of the owners of property adjacent to or contiguous to an impoundment.

(b) The proposed repairs or alterations have a projected total cost of less than $25,000.00.

(c) The impoundment is open to the public and a notice of public access is posted.

Sec. 31509. (1) Except as otherwise provided in this part, a person shall not begin any of the following activities unless that person has a valid permit issued by the department under this part:

(a) Construction of a new dam.

(b) Enlargement of a dam or an impoundment.

(c) Repair of a dam.

(d) Alteration of a dam.

(e) Removal of a dam.

(f) Abandonment of a dam.

(g) Reconstruction of a failed dam.

(2) A person desiring to perform any of the activities listed in subsection (1) shall apply to the department on a form prescribed by the department and shall provide information that the department determines is necessary for the administration of this part. If a project includes activities at multiple locations, 1 application may be filed for the combined activities.

(3) An application for a permit for construction of a new dam, reconstruction of a failed dam, or enlargement of a dam shall be accompanied by the following fees:

(a) For a dam with a height of 6 feet or more but less than 10 feet, $500.00.

(b) For a dam with a height of 10 feet or more but less than 20 feet, $1,000.00.

(c) For a dam with a height of 20 feet or more, $3,000.00.

(4) An application for a permit for the repair, alteration, removal, or abandonment of a dam shall be accompanied by a fee of $200.00, and an application for a permit for a minor project pursuant to section 31513(1) shall be accompanied by a fee of $100.00.

(5) The department shall waive the fees under this section for applications from state agencies, department sponsored projects located on public lands, and organizations of the type described in section 31508(2)(a) through (c).

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

Sec. 31510. (1) A person who wants to be notified of pending applications for permits issued under this part may make a written request to the department, accompanied by an annual fee of $25.00. The fee shall be deposited in the state treasury and credited to the general fund.

(2) The department shall prepare a biweekly list of the applications made during the previous biweekly period and shall promptly mail copies of the list for the remainder of the calendar year to the persons who have requested notice and paid the fee under this section.

(3) The biweekly list shall state the name and address of each applicant, the legal description of the lands included in the applicant's project, and a summary statement of the purpose of the project.

Sec. 31511. (1) Upon receipt of an application for a permit under this part, the department shall submit copies of the application accompanied by a statement indicating that the department may act upon the application without a public hearing unless a written request is filed with the department within 20 days after the submission for review. The department shall submit copies of the application to all of the following:

(a) The local unit of government where the project is to be located.

(b) The adjacent riparian owners.

(c) Any person considered appropriate by the department.

(d) Any person who requests copies.

(e) A watershed council, organized pursuant to part 311, of the watershed within which the project is located or is to be located.

(2) The department may hold a public hearing upon the written request of any of the following:

(a) An applicant.

(b) A riparian owner.

(c) A person or local unit of government that is entitled to receive a copy of the application pursuant to subsection (1).

(3) A public hearing held pursuant to this section shall be held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the hearing shall be given in the manner provided by that act. Additionally, the department shall mail copies of the public notice to the persons who have requested the biweekly list pursuant to section 31510, the person requesting the hearing, and the persons and local units of government that are entitled to receive a copy of the application pursuant to subsection (1).

Sec. 31512. (1) The department shall grant or deny a permit within 60 days after the submission of a complete application, or within 120 days after the submission of a complete application if a public hearing is held. If a permit is denied, the department shall provide to the applicant a concise written statement of the reasons for the denial of the permit. If it appears that a minor modification of the application would result in the granting of the permit, the nature of the modification shall be included in the written statement.

(2) When immediate action is necessary to protect the structural integrity of a dam, the department may issue a permit before the expiration of the 20-day period referred to in section 31511(1). This subsection does not prohibit an owner from taking action necessary to mitigate emergency conditions if imminent danger of failure exists.

(3) A person applying for a permit to reconstruct a failed dam shall file a complete application not less than 1 year after the date of the failure. If such an application is filed more than 1 year after the date of the failure, the department shall consider the application to be an application to construct a new dam.

Sec. 31513. (1) The department shall promulgate rules to establish minor project categories for alterations and repairs that have minimal effect on the structural integrity of a dam. The department may act upon an application and grant a permit for an activity or project within a minor project category, after an on-site inspection of the dam, without providing public notice.

(2) All other provisions of this part shall be applicable to minor projects, except that a final inspection by the department or certification of the project by a licensed professional engineer shall not be required for a project completed under a permit granted pursuant to subsection (1).

Sec. 31514. The department shall not issue a permit to construct a new dam, reconstruct a failed dam for which a complete application to reconstruct has been submitted more than 1 year after the date of the failure, or enlarge the surface area of an impoundment by more than 10% unless it determines, after a review of the application submitted, that the proposed activity for which a permit is requested will not have a significant adverse effect on public health, safety, welfare, property, or natural resources or the public trust in those natural resources.

Sec. 31515. (1) Except as otherwise provided in this section, a permit issued by the department under this part shall require that plans and specifications be approved by the department before construction begins. The department shall approve or reject complete plans and specifications within 60 days after their receipt. The permitted activity shall be completed within a specified time not to exceed 2 years after the date of issuance of the permit. Upon the written application of the permittee, and for good cause shown, the department may extend the time for completing construction. The permittee shall notify the department at least 10 days before beginning construction and shall otherwise notify the department as the department may require.

(2) A change in approved plans and specifications shall not be implemented unless the department gives its prior approval. The department shall approve or reject changes in plans and specifications within 30 days after the request for the changes.

(3) A permit is effective for the length of time specified in the permit unless it is revoked pursuant to this part. The department may renew a permit.

(4) A permit to alter, repair, or construct a new dam, reconstruct a failed dam, or enlarge the surface area of an impoundment by more than 10% may specify the terms and conditions including, but not limited to, requirements for minimum flows, cold water release, impoundment fluctuations, portage, contingency plans, and conditions under which the work is to be performed. The terms and conditions of a permit shall be effective for the life of the project. The department may consider, in issuing a permit, any mitigating measures in conjunction with the permitted activities and may make recommendations as to fish passage that may be required by part 483.

(5) A permit to construct a new dam or reconstruct a failed dam may require a performance bond to assure completion of the project or to provide for complete or partial restoration of the project site, as determined by the department in rules promulgated by the department.

(6) A permit may be suspended, revoked, annulled, withdrawn, recalled, canceled, or amended after a hearing for a violation of any of its provisions, a violation of this part, a violation of a rule promulgated under this part, or any misrepresentation contained in the application. Hearings shall be conducted by the department in accordance with the provisions for contested cases in the administrative procedures act of 1969.

Sec. 31516. (1) Spillway capacity shall meet the following minimum criteria:

(a) Low hazard potential dams shall be capable of passing the 100-year flood, or the flood of record, whichever is greater.

(b) Significant hazard potential dams shall be capable of passing the 200-year flood, or the flood of record, whichever is greater.

(c) High hazard potential dams, less than 40 feet in height, as measured from the 200-year design flood elevation to the lowest downstream toe elevation, shall be capable of passing the 200-year flood, or the flood of record, whichever is greater.

(d) High hazard potential dams, 40 feet or greater in height, as measured from the 200-year design flood elevation to the lowest downstream toe elevation, shall be capable of passing the half probable maximum flood. The half probable maximum flood criterion may be reduced to not less than the 200-year flood, with proper documentation evidencing a failure of a dam under half probable maximum flood conditions will not cause additional flood damage or loss of life.

(e) Spillway design capacity shall not be less than the flood of record.

(2) Freeboard shall be considered when determining spillway capacity.

(3) If a dam cannot pass the design flood, an auxiliary spillway must be provided. The owner must document, to the satisfaction of the department, that the dam has sufficient spillway capacity, and that proper means are available to operate the spillway or spillways during the design flood.

Sec. 31517. (1) Except for minor projects authorized pursuant to section 31513, the owner shall do both of the following:

(a) Within 10 days after the completion of a new, reconstructed, enlarged, repaired, or altered dam, notify the department of its completion.

(b) Within 20 days after submitting the notice of completion, file with the department as-built plans and a statement signed by a licensed professional engineer certifying that the project was constructed in conformance with plans and specifications approved by the department.

(2) The department shall inspect the project and shall provide the owner with written notice of final approval if the project is determined to have been completed in accordance with approved plans, specifications, and permit conditions.

(3) If the project is determined not to be completed in accordance with plans and specifications approved by the department and permit conditions, the department shall provide notice to the permittee as to the specific reasons the department determines the project not to be completed in accordance with those plans, specifications, or conditions. The department may then take enforcement action as provided in this part.

Sec. 31518. (1) An owner shall submit to the department inspection reports prepared by a licensed professional engineer that evaluate the condition of the dam. The inspection report shall be submitted as follows:

(a) Not less than once every 3 years for high hazard potential dams.

(b) Not less than once every 4 years for significant hazard potential dams.

(c) Not less than once every 5 years for low hazard potential dams.

(2) The department shall determine the hazard potential classification of all dams and shall establish an inspection schedule. The inspection schedule shall require annual submission of inspection reports for approximately 1/3 of all high hazard potential dams, 1/4 of all significant hazard potential dams, and 1/5 of all low hazard potential dams. The department shall notify owners in writing when inspection reports are due. The department may order additional inspection reports following an event or change in condition that could threaten a dam.

(3) An inspection report required by this section shall include, at a minimum, all of the following:

(a) An evaluation of the dam's condition, spillway capacity, operational adequacy, and structural integrity.

(b) A determination of whether deficiencies exist that could lead to the failure of the dam.

(c) Recommendations for maintenance, repair, and alterations of a dam as are necessary to eliminate any deficiencies.

(4) Instead of engaging a licensed professional engineer to prepare an inspection report, local units of government or an organization of the type described in section 31508(2)(a) through (c) may request the department to conduct a visual inspection of a dam owned by that local unit of government and prepare a report on the condition of the dam in accordance with subsection (3). The department shall notify a requesting local unit of government as to when the inspection is to occur.

(5) If an inspection report discloses the need for a more detailed investigation or evaluation of certain dam features for the purpose of determining the condition of the dam, the department may order the completion and submission of that detailed investigation or evaluation at the expense of the owner. An investigation or evaluation required under this subsection shall be conducted under the supervision of a licensed professional engineer.

(6) If an owner does not submit an inspection report as required by subsection (1) or conduct additional investigations if required by subsection (5), the department or any person who would have life or property threatened by a breach of the dam may have a report prepared and recover the costs of preparing the report in a civil action commenced in a court of competent jurisdiction. This subsection does not limit the right of any person to bring a cause of action in a court of proper jurisdiction to compel an owner to comply with the requirements of this part.

(7) If, based on the findings and recommendations of the inspection report and an inspection by the department, the department finds that a condition exists which endangers a dam, it shall order the owner to take actions that the department considers necessary to alleviate the danger.

Sec. 31519. (1) Where significant damage to the public health, safety, welfare, property, and natural resources or the public trust in those natural resources or damage to persons or property occurs or is anticipated to occur due to the operation of a dam, the department may order the owner to limit dam operations. These orders may include, but are not limited to, cold water release, minimum flow releases from dams, impoundment fluctuation restrictions, or requirements for run-of-the-river operation. In issuing these orders, the department shall take into account social, economic, and public trust values.

(2) Where significant damage to persons, property, or natural resources or the public trust in those natural resources occurs as a result of the condition or existence of a dam, the department may order the removal of the dam following a determination by the department that, due to the continued condition or existence of the dam, the dam is likely to continue to cause significant damage. In issuing a removal order, the department shall take into account social and economic values, the natural resources, and the public trust in those natural resources and shall not issue a removal order when those factors exceed adverse impacts on natural resources or present danger to persons or property. The department shall not issue a removal order involving a dam subject to the regulatory authority of the Michigan public service commission or the federal energy regulatory commission unless that commission has concurred in writing with the order.

(3) Prior to finalizing an order under this section, the department shall provide an owner an opportunity for a hearing pursuant to the administrative procedures act of 1969.

Sec. 31520. (1) The owner or his or her agent shall advise the department and the affected off-site public authorities and safety agencies of any sudden or unprecedented flood or unusual or alarming circumstance or occurrence existing or anticipated that may affect the safety of the dam within 24 hours of the flood, circumstance, or occurrence.

(2) The owner shall notify the department as soon as possible of any necessary emergency drawdowns, repairs, breaching, or other action being taken in response to an emergency condition.

Sec. 31521. (1) The department may issue emergency orders as provided in this section. The department may, by written notice, order an owner to immediately repair, draw down, breach, or cease operation of a dam where a dam is in imminent danger of failure and is causing or threatening to cause harm to public health, safety, welfare, property, or the natural resources or the public trust in those natural resources. If an owner fails to comply with an order, or is unavailable or unable to be contacted, then the department may undertake immediate repair, drawdown, breaching, or cessation of operation, as may be necessary to alleviate the danger, and may recover from the owner the costs incurred in a civil action commenced in a court of competent jurisdiction. The department may terminate an emergency order upon a determination in writing that all necessary emergency actions have been complied with by the owner and that an emergency no longer exists.

(2) When ordering emergency actions under subsection (1), the department may specify maximum drawdown level and discharge rates and require sediment surveys, water quality sampling, monitoring, or any other action determined necessary by the department to ensure adequate protection of the public health, safety, welfare, property, or natural resources or the public trust in those natural resources. The department may modify the requirements of an emergency order if, during the conduct of ordered actions, it determines that the modification is necessary to protect the public health, safety, welfare, property, or natural resources or the public trust in those natural resources.

(3) Upon the issuance of an emergency order, the department shall provide the owner with an opportunity for a hearing pursuant to the administrative procedures act of 1969 within 15 days of the date of its issuance. At the hearing, the department shall determine, based on information and fact, if the emergency order shall be continued, modified, or suspended as necessary to protect public health, safety, welfare, property, or natural resources or the public trust in those natural resources.

Sec. 31522. The department may make, or cause to be made, hydrologic or other investigations and studies as may be required to facilitate its decisions regarding the structural integrity and operation of a dam.

Sec. 31523. (1) An owner shall prepare, and keep current, emergency action plans for all high and significant hazard potential dams owned by that person.

(2) Emergency action plans shall be submitted to the department.

(3) The applicable county or local emergency management coordinators shall review for consistency emergency action plans with the county or local emergency operations plan prior to submission of those plans to the department.

(4) An emergency action plan shall be consistent with the applicable provisions of the affected county or local emergency operations plans and the Michigan emergency preparedness plan as developed pursuant to the emergency preparedness act, Act No. 390 of the Public Acts of 1976, being sections 30.401 to 30.420 of the Michigan Compiled Laws.

(5) Emergency action plans shall include, but not be limited to, the name, address, and telephone number of the person, and of an alternate person, responsible for operation of the dam; the name and telephone number of local emergency management coordinators; and a listing of occupied facilities, buildings, and residences that may be threatened with flooding due to a failure of the dam.

Sec. 31524. (1) If the department determines that a person is in violation of this part, a rule promulgated under this part, or a condition set forth in a permit issued under this part, the department may issue an order requiring the person to comply with the conditions or to restore the site affected by the violation as nearly as practicable to its original condition. Restoration may include, but is not limited to, removing fill material deposited or replacing soil, sand, or minerals.

(2) An order shall state the nature of the violation and the required remedial action, and shall specify a time for compliance that the department determines is reasonable, taking into account the seriousness of the violation and the nature of any threat to public health, safety, welfare, property, or natural resources, or the public trust in those natural resources, that may be involved.

(3) If the department determines that a person is in violation of this part, a rule promulgated under this part, an order issued by the department, or a permit, the department, after notice and opportunity for hearing pursuant to the administrative procedures act of 1969, may suspend, modify, or revoke a permit. The remedies under this section and section 31525 are cumulative and do not prevent the department from imposing other penalties available under this part, a rule promulgated under this part, or an order of the department.

(4) If the department determines that a person is in violation of this part, a rule promulgated under this part, an order issued by the department pursuant to this part, or a permit issued pursuant to this part, the department may bring a civil action in the circuit court.

Sec. 31525. (1) The attorney general may commence a civil action for appropriate relief, including injunctive relief, upon request of the department under section 31524.

(2) Any civil action under this section may be brought in the circuit court for the county of Ingham or for the county in which the dam is located.

(3) In addition to any other relief granted under this section, the court may impose a civil fine of not more than $10,000.00 for each day of violation of this part, a rule promulgated under this part, or a permit issued under this part.

(4) A person found guilty of contempt of court for the violation of an order of the court shall be subject to a civil fine not to exceed $10,000.00 for each day of violation.

(5) A person who willfully or recklessly violates this part, a rule promulgated under this part, an order issued by the department, or a condition in a permit issued under this part, which violation places or may place a person in imminent danger of death or serious bodily injury or may cause serious property damage or serious damage to natural resources, or a person who has knowledge of or is responsible for such a violation, is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or a fine of not less than $2,500.00 or more than $25,000.00 for each day of violation, or both. A person who violates this section a second or subsequent time is guilty of a felony, punishable by imprisonment for not more than 2 years or a fine of not less than $10,000.00 for each day of violation, or both.

(6) A person required to obtain a permit for activity regulated under this part who does not obtain that permit shall be fined not less than twice the fee charged for the appropriate permit application.

(7) In addition to the orders of compliance and penalties provided under this part, the court may order a person who violates this part, a rule promulgated under this part, or a permit issued under this part to restore the site affected by the violation as nearly as practicable to its original condition. Restoration may include, but is not limited to, removing fill material deposited or replacing soil, sand, or minerals.

(8) The department may establish, by rule, a schedule of administrative monetary penalties for minor violations of this part, a rule promulgated under this part, a permit issued pursuant to this part, or an order issued by the department pursuant to this part.

Sec. 31526. (1) A person aggrieved by any action or inaction of the department under this part or rules promulgated under this part may request a hearing on the matter involved. The hearing shall be conducted by the department in accordance with the provisions for contested cases in the administrative procedures act of 1969.

(2) A determination of action or inaction by the department following the hearing may be subject to judicial review as provided in the administrative procedures act of 1969.

Sec. 31527. The department may enter in or upon any private or public property anytime where the public safety may be in danger and at all reasonable times, after attempting to contact the owner before entering the site and having shown proper identification, for the purpose of inspecting or investigating conditions relating to the construction, operation, or safety of a dam and for the purpose of determining compliance with the terms, conditions, and requirements of permits, orders, or notices of approval issued under this part and rules promulgated under this part.

Sec. 31528. The department shall promulgate rules as necessary to implement and enforce this part.

Sec. 31529. (1) This part does not abrogate requirements of parts 31, 91, 301, 303, 305, 307, and 483 or other applicable law.

(2) This part does not relieve an owner of any legal duty, obligation, or liability incident to the ownership or operation of a dam or impoundment.

(3) This part does not deprive an owner of any legal remedy to which he or she may be entitled under the laws of this state.

THE GREAT LAKES

PART 321 GREAT LAKES COMPACT AUTHORIZATION

Sec. 32101. So that the state of Michigan can consult and cooperate with the other states bordering on the Great Lakes and the province of Ontario in regard to all matters and things affecting the rights and interests of this state and such other states and province, in the management, control and supervision of the waters of the Great Lakes including the marine life therein, the governor of the state of Michigan is hereby authorized and empowered for and in the name of the state of Michigan to execute an agreement or agreements with any or all the other states bordering on the Great Lakes and the province of Ontario, in conformity with the terms, conditions and provisions contained in this part.

Sec. 32102. Such compact shall become operative whenever, in addition to Michigan, any 3 of the states of Wisconsin, Illinois, Indiana, Ohio, Pennsylvania, New York and Minnesota shall have ratified it and congress has given its consent, if needed. The province of Ontario may become a party to this compact by taking such action as its laws and the laws of the Dominion of Canada may prescribe for ratification.

Sec. 32103. In addition to other pertinent and necessary provisions which are in consonance with the expressed purposes of the compact as herein provided, such a compact shall contain the following terms, conditions and provisions: Said compact shall authorize the compacting parties to do all things reasonably necessary for carrying out the purposes of this part but such a compact shall be entered into solely for the purpose of empowering the duly appointed representatives of said states and the province of Ontario to meet, consult with and make recommendations to their respective governors, legislative bodies or governmental agencies and to the international joint commission established under the treaty of 1909 between the United States and Great Britain with respect to the management, control and supervision of the waters of the Great Lakes including the marine life therein. However, it is distinctly provided that any such recommendation and any decision or agreement arrived at among the compacting parties shall at no time have any force of law or be binding on any compacting party.

Sec. 32104. Each compacting party shall have the right to designate 5 representatives to such interstate compact commission to be known as the Great Lakes compact commission. The representatives from this state shall be as provided in section 32202.

Sec. 32105. The compact herein provided shall become effective upon the adoption of laws by the states referred to in section 2 in conformity with the provisions of this part. When, in addition to Michigan, any 3 of the states of Wisconsin, Illinois, Indiana, Ohio, Pennsylvania, New York, and Minnesota have adopted such laws and the congress of the United States has given its consent, if needed, the designated representatives of the Great Lakes compact commission shall meet upon the call of any governor of any of the ratifying states or the legally designated governmental official of the province of Ontario. At such meeting or at any subsequent meeting the duly designated representatives shall adopt a compact agreement not inconsistent in any way with this part and containing the necessary provisions for enabling the commission to carry out the purposes of this part. At such meeting or at subsequent meetings, the representatives composing such commission shall select a chairman and a secretary from among their numbers and such other officers as to them may seem expedient and shall prescribe the duties of such officers. A 2/3 majority of all representatives designated shall be sufficient to form a quorum for the transaction of business. Said commission shall meet from time to time or at such places or locations as it shall seem necessary and proper or shall meet upon the call of the chairman and such call shall designate the time and place of meeting and the purpose thereof.

Sec. 32106. Said commission shall keep a written record of its meetings and proceedings and shall annually make a report thereof to be submitted to the duly designated official of each compacting party.

Sec. 32107. Each compacting party shall pay for the expenses of its representatives on said commission and each compacting party shall pay to the secretary of the commission a pro rata share of the expenses of said commission. No expenditures shall be authorized under the provisions of this part unless and until moneys shall be appropriated therefor by the legislature.

PART 322 GREAT LAKES BASIN COMPACT

Sec. 32201. The great lakes basin compact is hereby ratified, enacted into law, and entered into by this state as a party thereto with any other state or province which, pursuant to article II of said compact, has legally joined therein in the form substantially as follows:

GREAT LAKES BASIN COMPACT

The party states solemnly agree:

Article I. Purpose

The purposes of this compact are, through means of joint or cooperative action:

1. To promote the orderly, integrated, and comprehensive development, use, and conservation of the water resources of the Great Lakes Basin (hereinafter called the Basin).

2. To plan for the welfare and development of the water resources of the Basin as a whole as well as for those portions of the Basin which may have problems of special concern.

3. To make it possible for the states of the Basin and their people to derive the maximum benefit from utilization of public works, in the form of navigational aids or otherwise, which may exist or which may be constructed from time to time.

4. To advise in securing and maintaining a proper balance among industrial, commercial, agricultural, water supply, residential, recreational, and other legitimate uses of the water resources of the Basin.

5. To establish and maintain an intergovernmental agency to the end that the purposes of this compact may be accomplished more effectively.

Article II. Enactment and Effective Date

A. This compact shall enter into force and become effective and binding when it has been enacted by the legislatures of any 4 of the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin and thereafter shall enter into force and become effective and binding as to any other of said states when enacted by the legislature thereof.

B. The Province of Ontario and the Province of Quebec, or either of them, may become states party to this compact by taking such action as their laws and the laws of the government of Canada may prescribe for adherence thereto. For the purpose of this compact the word "state" shall be construed to include a Province of Canada.

Article III. The Basin

The Great Lakes Commission created by Article IV of this compact shall exercise its powers and perform its functions in respect to the Basin which, for the purposes of this compact, shall consist of so much of the following as may be within the party states:

1. Lakes Erie, Huron, Michigan, Ontario, St. Clair, Superior, and the St. Lawrence River, together with any and all natural or man-made water interconnections between or among them.

2. All rivers, ponds, lakes, streams, and other watercourses which, in their natural state or in their prevailing condition, are tributary to Lakes Erie, Huron, Michigan, Ontario, St. Clair, and Superior or any of them or which comprise part of any watershed draining into any of said lakes.

Article IV. The Commission

A. There is hereby created an agency of the party states to be known as The Great Lakes Commission (hereinafter called the Commission). In that name the Commission may sue and be sued, acquire, hold and convey real and personal property and any interest therein. The Commission shall have a seal with the words "The Great Lakes Commission" and such other design as it may prescribe engraved thereon by which it shall authenticate its proceedings. Transactions involving real or personal property shall conform to the laws of the state in which the property is located, and the Commission may by bylaws provide for the execution and acknowledgment of all instruments in its behalf.

B. The Commission shall be composed of not less than 3 commissioners nor more than 5 commissioners from each party state designated or appointed in accordance with the law of the state which they represent and serving and subject to removal in accordance with such law.

C. Each state delegation shall be entitled to 3 votes in the Commission. The presence of commissioners from a majority of the party states shall constitute a quorum for the transaction of business at any meeting of the Commission. Actions of the Commission shall be by a majority of the votes cast except that any recommendations made pursuant to Article VI of this compact shall require an affirmative vote of not less than a majority of the votes cast from each of a majority of the states present and voting.

D. The commissioners of any 2 or more party states may meet separately to consider problems of particular interest to their states but no action taken at any such meeting shall be deemed an action of the Commission unless and until the Commission shall specifically approve the same.

E. In the absence of any commissioner, his or her vote may be cast by another representative or commissioner of his or her state provided that said commissioner or other representative casting said vote shall have a written proxy in proper form as may be required by the Commission.

F. The Commission shall elect annually from among its members a chairman and vice-chairman. The Commission shall appoint an Executive Director who shall also act as secretary-treasurer, and who shall be bonded in such amount as the Commission may require. The Executive Director shall serve at the pleasure of the Commission and at such compensation and under such terms and conditions as may be fixed by it. The Executive Director shall be custodian of the records of the Commission with authority to affix the Commission's official seal and to attest to and certify such records or copies thereof.

G. The Executive Director, subject to the approval of the Commission in such cases as its bylaws may provide, shall appoint and remove or discharge such personnel as may be necessary for the performance of the Commission's functions. Subject to the aforesaid approval, the Executive Director may fix their compensation, define their duties, and require bonds of such of them as the Commission may designate.

H. The Executive Director, on behalf of, as trustee for, and with the approval of the Commission, may borrow, accept, or contract for the services of personnel from any state or government or any subdivision or agency thereof,

from any intergovernmental agency, or from any institution, person, firm or corporation; and may accept for any of the Commission's purposes and functions under this compact any and all donations, gifts, and grants of money, equipment, supplies, materials, and services from any state or government or any subdivision or agency thereof or intergovernmental agency or from any institution, person, firm or corporation and may receive and utilize the same.

I. The Commission may establish and maintain 1 or more offices for the transacting of its business and for such purposes the Executive Director, on behalf of, as trustee for, and with the approval of the Commission, may acquire, hold and dispose of real and personal property necessary to the performance of its functions.

J. No tax levied or imposed by any party state or any political subdivision thereof shall be deemed to apply to property, transactions, or income of the Commission.

K. The Commission may adopt, amend and rescind bylaws, rules and regulations for the conduct of its business.

L. The organization meeting of the Commission shall be held within 6 months from the effective date of this compact.

M. The Commission and its Executive Director shall make available to the party states any information within its possession and shall always provide free access to its records by duly authorized representatives of such party states.

N. The Commission shall keep a written record of its meetings and proceedings and shall annually make a report thereof to be submitted to the duly designated official of each party state.

O. The Commission shall make and transmit annually to the legislature and governor of each party state a report covering the activities of the Commission for the preceding year and embodying such recommendations as may have been adopted by the Commission. The Commission may issue such additional reports as it may deem desirable.

Article V. Finance

A. The members of the Commission shall serve without compensation, but the expenses of each commissioner shall be met by the state which he or she represents in accordance with the law of that state. All other expenses incurred by the Commission in the course of exercising the powers conferred upon it by this compact unless met in some other manner specifically provided by this compact, shall be paid by the Commission out of its own funds.

B. The Commission shall submit to the executive head or designated officer of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

C. Each of the Commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. Detailed commission budgets shall be recommended by a majority of the votes cast, and the costs shall be allocated equitably among the party states in accordance with their respective interests.

D. The Commission shall not pledge the credit of any party state. The Commission may meet any of its obligations in whole or in part with funds available to it under Article IV (H) of this compact, provided that the Commission takes specific action setting aside such funds prior to the incurring of any obligations to be met in whole or in part in this manner. Except where the Commission makes use of funds available to it under Article IV (H) hereof, the Commission shall not incur any obligations prior to the allotment of funds by the party states adequate to meet the same.

E. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under the bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become a part of the annual report of the Commission.

F. The accounts of the Commission shall be open at any reasonable time for inspection by such agency, representative or representatives of the party states as may be duly constituted for that purpose and by others who may be authorized by the Commission.

Article VI. Powers of Commission

The Commission shall have power to:

A. Collect, correlate, interpret, and report on data relating to the water resources and the use thereof in the Basin or any portion thereof.

B. Recommend methods for the orderly, efficient, and balanced development, use, and conservation of the water resources of the Basin or any portion thereof to the party states and to any other governments or agencies having interests in or jurisdiction over the Basin or any portion thereof.

C. Consider the need for and desirability of public works and improvements relating to the water resources in the Basin or any portion thereof.

D. Consider means of improving navigation and port facilities in the Basin or any portion thereof.

E. Consider means of improving and maintaining the fisheries of the Basin or any portion thereof.

F. Recommend policies relating to water resources including the institution and alteration of flood plain and other zoning laws, ordinances and regulations.

G. Recommend uniform or other laws, ordinances, or regulations relating to the development, use and conservation of the Basin's water resources to the party states or any of them and to other governments, political subdivisions, agencies, or intergovernmental bodies having interests in or jurisdiction sufficient to affect conditions in the Basin or any portion thereof.

H. Consider and recommend amendments or agreements supplementary to this compact to the party states or any of them, and assist in the formulation and drafting of such amendments or supplementary agreements.

I. Prepare and publish reports, bulletins, and publications appropriate to this work and fix reasonable sale prices therefor.

J. With respect to the water resources of the Basin or any portion thereof, recommend agreements between the governments of the United States and Canada.

K. Recommend mutual arrangements expressed by concurrent or reciprocal legislation on the part of Congress and the Parliament of Canada including but not limited to such agreements and mutual arrangements as are provided for by Article XIII of the Treaty of 1909 Relating to Boundary Waters and Questions Arising Between the United States and Canada. (Treaty Series, No. 548).

L. Cooperate with the governments of the United States and of Canada, the party states and any public or private agencies or bodies having interests in or jurisdiction sufficient to affect the Basin or any portion thereof.

M. At the request of the United States, or in the event that a Province shall be a party state, at the request of the government of Canada, assist in the negotiation and formulation of any treaty or other mutual arrangement or agreement between the United States and Canada with reference to the Basin or any portion thereof.

N. Make any recommendation and do all things necessary and proper to carry out the powers conferred upon the Commission by this compact; provided that no action of the Commission shall have the force of law in, or be binding upon, any party state.

Article VII. State Action

Each party state agrees to consider the action the Commission recommends in respect to:

A. Stabilization of lake levels.

B. Measures for combating pollution, beach erosion, floods, and shore inundation.

C. Uniformity in navigation regulations within the constitutional powers of the states.

D. Proposed navigation aids and improvements.

E. Uniformity or effective coordinating action in fishing laws and regulations and cooperative action to eradicate destructive and parasitical forces endangering the fisheries, wild life and other water resources.

F. Suitable hydroelectric power developments.

G. Cooperative programs for control of soil and bank erosion for the general improvement of the Basin.

H. Diversion of waters from and into the Basin.

I. Other measures the Commission may recommend to the states pursuant to Article VI of this compact.

Article VIII. Renunciation

This compact shall continue in force and remain binding upon each party state until renounced by act of the legislature of such state, in such form and manner as it may choose and as may be valid and effective to repeal a statute of said state; provided that such renunciation shall not become effective until 6 months after notice of such action shall have been officially communicated in writing to the executive head of the other party states.

Article IX. Construction and Severability

It is intended that the provisions of this compact shall be reasonably and liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States, or in the case of a Province, to the British North America Act of 1867 as amended, or the applicability thereof to any state, agency, person or circumstance is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to any state, agency, person or circumstance shall not be affected thereby, provided further that if this compact shall be held contrary to the constitution of the United States, or in the case of a Province, to the British North America Act of 1867 as amended, or of any party state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Sec. 32202. (1) For purposes of this section through section 32206, "commission" means the Great Lakes commission established in the compact entered into by this part.

(2) In pursuance of article IV of the compact, there shall be 5 commissioners on the Great Lakes commission from this state. Each commissioner shall have all of the powers conferred on a commissioner by the compact or which shall be necessary or incidental to the performance of his or her functions as a commissioner. For this state, the governor, or the governor's designee, the attorney general, or the attorney general's designee, an appointee of the majority leader of the senate, and an appointee of the speaker of the house of representatives shall be members of the Michigan representation. In addition, the governor shall appoint, with the advice and consent of the senate, the remaining 1 member who shall come from groups or organizations interested in or affected by the Great Lakes, which member shall serve at the governor's pleasure. The appointees of the governor, the majority leader of the senate, and of the speaker of the house of representatives, before entering upon the performance of their office, shall take and subscribe to the constitutional oath of office. Each commissioner shall receive necessary expenses incurred in the performance of his or her duties. Each commissioner shall have the right to cast 3/5 of a vote whenever a vote is required by the terms of the compact.

Sec. 32203. All officers of this state are hereby authorized and directed to do all things falling within their respective jurisdictions necessary to or incidental to the carrying out of said compact in every particular, it being hereby declared to be the policy of this state to perform and carry out the said compact and to accomplish the purposes thereof. All officers, bureaus, departments, and persons of and in the state government or administration of this state are hereby authorized and directed at reasonable times and upon request of said commission to furnish the said commission with information and data possessed by them or any of them and to aid said commission by loan of personnel or other means lying within their legal powers respectively.

Sec. 32204. The budget of the estimated expenditures of the commission shall be submitted to the director and to the director of the department of commerce for such period and in form as shall be required by them. Neither the compact nor this part shall be construed to commit, or authorize the expenditure of, any funds of the state except in pursuance of appropriations made by the legislature.

Sec. 32205. The governor is hereby authorized and directed to transmit a duly authenticated copy of this part and the compact contained herein to each jurisdiction now party to the compact and to each jurisdiction which is or subsequently shall become party to the compact.

Sec. 32206. The commissioners who represent this state shall request the commission to consider and recommend amendments or agreements supplementary to the Great Lakes basin compact that would give the party states the authority to limit diversions of the waters of the Great Lakes.

PART 323 SHORELANDS PROTECTION AND MANAGEMENT

Sec. 32301. As used in this part:

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

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

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

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

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

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

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

Sec. 32302. By April 1, 1972, the department shall make or cause to be made an engineering study of the shoreland to determine all of the following:

(a) The high-risk areas.

(b) The areas of the shorelands that are platted or have buildings or structures and that require protection from erosion.

(c) The type of protection that is best suited for an area determined in subdivision (b).

(d) A cost estimate of the construction and maintenance for each type of protection determined in subdivision (c).

Sec. 32303. Before January 1, 1975, the department shall make or cause to be made an engineering study of the shoreland to determine:

(a) Flood risk areas.

(b) The frequency with which a flood risk area can be expected to be flooded.

(c) Appropriate rules necessary to prevent damage or destruction to property.

Sec. 32304. By April 1, 1972, the department shall make or cause to be made an environmental study of the shoreland to determine all of the following:

(a) The environmental areas.

(b) The areas of marshes along and adjacent to the shorelands.

(c) The marshes and fish and wildlife habitat areas that should be protected by shoreland zoning or regulation.

Sec. 32305. The department pursuant to section 32302 shall determine if the use of a high-risk area shall be regulated to prevent property loss or if suitable methods of protection shall be installed to prevent property loss. The department shall notify a local unit of government, the department of labor, the department of treasury, and the department of commerce or other affected state agencies of its determinations and recommendations relative to a high-risk area that is in a local unit of government.

Sec. 32306. The department pursuant to section 32303 shall determine if the use of a flood risk area shall be regulated to prevent property loss or if suitable methods of protection shall be installed to prevent property loss. The department shall notify a local unit of government, the department of labor, the department of treasury, and the department of commerce or other affected state agencies of its determinations and recommendations relative to a flood risk area that is in a local unit of government.

Sec. 32307. The department in accordance with section 32304 shall notify a local unit of government of the existence of any environmental area that is in a local unit of government and shall formulate appropriate use regulations necessary to protect an environmental area.

Sec. 32308. Until July 1, 1975, a county, pursuant to rules promulgated under section 32313 and the county rural zoning enabling act, Act No. 183 of the Public Acts of 1943, being sections 125.201 to 125.232 of the Michigan Compiled Laws, may zone any shoreland and land to be zoned that is in the county.

Sec. 32309. Until July 1, 1975, a city or village, pursuant to rules promulgated under section 32313 and Act No. 207 of the Public Acts of 1921, being sections 125.581 to 125.592 of the Michigan Compiled Laws, may zone any shoreland and land to be zoned that is in the city or village.

Sec. 32310. Until July 1, 1975, a township, pursuant to rules promulgated under section 32313 and the township rural zoning act, Act No. 184 of the Public Acts of 1943, being sections 125.271 to 125.301 of the Michigan Compiled Laws, may zone any shoreland and land to be zoned that is in the township.

Sec. 32311. An existing zoning ordinance or a zoning ordinance or a modification or amendment to a zoning ordinance that regulates a high-risk area, a flood risk area, or an environmental area shall be submitted to the department for approval or disapproval. The department shall determine if the ordinance, modification, or amendment adequately prevents property damage or prevents damage to an environmental area, a high-risk area, or a flood risk area. If an ordinance, modification, or amendment is disapproved by the department, it shall not have force or effect until modified by the local unit of government and approved by the department.

Sec. 32312. (1) The department, in order to regulate the uses and development of high-risk areas, flood risk areas, and environmental areas and to implement the purposes of this part, shall promulgate rules. Until October 1, 1995, if permits are required pursuant to rules promulgated under this part, a fee of $500.00 shall be submitted to the department with each application for a commercial or multi-family residential project, a fee of $100.00 shall be submitted with each application for a single-family home construction, and a fee of $50.00 shall be submitted with each application for an addition to an existing single-family home or for a project that has a minor impact on fish and wildlife resources in environmental areas as determined by the department.

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

(a) Part 303.

(b) Part 325.

(c) Part 301.

(d) Section 3104.

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

(4) A circuit court, upon petition and a showing by the department that a violation of a rule promulgated under subsection (1) exists, shall issue any necessary order to the defendant to correct the violation or to restrain the defendant from further violation of the rule.

Sec. 32313. (1) By October 1, 1972, the department shall, in compliance with the purposes of this part, prepare a plan for the use and management of shoreland. The plan shall include but not be limited to all of the following:

(a) An inventory and identification of the use and development characteristics of the shoreland; the general physical and man-influenced shoreline features; the existing and proposed municipal and industrial water intakes and sewage and industrial waste outfalls; and high-risk areas and environmental areas.

(b) An inventory of existing federal, state, regional, and local plans for the management of the shorelands.

(c) An identification of problems associated with shoreland use, development, conservation, and protection.

(d) A provision for a continuing inventory of shoreland and estuarine resources.

(e) Provisions for further studies and research pertaining to shoreland management.

(f) Identification of the high-risk and environmental areas that need protection.

(g) Recommendations that do all of the following:

(*i*) Provide procedures for the resolution of conflicts arising from multiple use.

(*ii*) Foster the widest variety of beneficial uses.

(*iii*) Provide for the necessary enforcement powers to assure compliance with plans and to resolve conflicts in uses.

(*iv*) Provide criteria for the protection of shorelands from erosion or inundation, for aquatic recreation, for shore growth and cover, for low-lying lands, and for fish and game management.

(*v*) Provide criteria for shoreland layout for residential, industrial, and commercial development, and shoreline alteration control.

(*vi*) Provide for building setbacks from the water.

(*vii*) Provide for the prevention of shoreland littering, blight harbor development, and pollution.

(*viii*) Provide for the regulation of mineral exploration and production.

(*ix*) Provide the basis for necessary future legislation pertaining to efficient shoreland management.

(2) Upon completion of the plan, the department shall hold regional public hearings on the recommendations of the plan. Copies of the plan shall be submitted with the hearing records to the governor and the legislature.

Sec. 32314. The department may enter into an agreement or make contracts with the federal government, other state agencies, local units of government, or private agencies for the purposes of making studies and plans for the efficient use, development, preservation, or management of the state's shoreland resources. Any study, plan, or recommendation shall be available to a local unit of government in this state that has shoreland. The recommendations and policies set forth in the studies or plans shall serve as a basis and guideline for establishing zoning ordinances and developing shoreland plans by local units of government and the department.

Sec. 32315. For the purposes of this part, the department may receive, obtain, or accept money, grants, or grants-in-aid for the purpose of research, planning, or management of shoreland.

PART 325 GREAT LAKES SUBMERGED LANDS

Sec. 32501. As used in this part, "marina purposes" means an operation making use of submerged bottomlands or filled-in bottomlands of the Great Lakes for the purpose of service to boat owners or operators, which operation may restrict or prevent the free public use of the affected bottomlands or filled-in lands.

Sec. 32502. The lands covered and affected by this part are all of the unpatented lake bottomlands and unpatented made lands in the Great Lakes, including the bays and harbors of the Great Lakes, belonging to the state or held in

trust by it, including those lands that have been artificially filled in. The waters covered and affected by this part are all of the waters of the Great Lakes within the boundaries of the state. This part shall be construed so as to preserve and protect the interests of the general public in the lands and waters described in this section, to provide for the sale, lease, exchange, or other disposition of unpatented lands and the private or public use of waters over patented and unpatented lands, and to permit the filling in of patented submerged lands whenever it is determined by the department that the private or public use of those lands and waters will not substantially affect the public use of those lands and waters for hunting, fishing, swimming, pleasure boating, or navigation or that the public trust in the state will not be impaired by those agreements for use, sales, lease, or other disposition. The word "land" or "lands" as used in this part refers to the aforesaid described unpatented lake bottomlands and unpatented made lands and patented lands in the Great Lakes and the bays and harbors of the Great Lakes lying below and lakeward of the natural ordinary high-water mark, but this part does not affect property rights secured by virtue of a swamp land grant or rights acquired by accretions occurring through natural means or reliction. For purposes of this part, the ordinary high-water mark shall be at the following elevations above sea level, international Great Lakes datum of 1955: Lake Superior, 601.5 feet; Lakes Michigan and Huron, 579.8 feet; Lake St. Clair, 574.7 feet; and Lake Erie, 571.6 feet.

Sec. 32503. (1) Except as otherwise provided in this section, the department, after finding that the public trust in the waters will not be impaired or substantially affected, may enter into agreements pertaining to waters over and the filling in of submerged patented lands, or to lease or deed unpatented lands, after approval of the state administrative board. Quitclaim deeds, leases, or agreements covering unpatented lands may be issued or entered into by the department with any person, and shall contain such terms, conditions, and requirements as the department determines to be just and equitable and in conformance with the public trust. The department shall reserve to the state all mineral rights, including, but not limited to, coal, oil, gas, sand, gravel, stone, and other materials or products located or found in those lands, except where lands are occupied or to be occupied for residential purposes at the time of conveyance.

(2) A riparian owner shall obtain a permit from the department before dredging or placing spoil or other materials on bottomland.

(3) The department shall not enter into a lease or deed of unpatented lands that permits drilling operations for the taking of oil or gas, unless all drilling operations originate from locations above and inland of the ordinary high-water mark. The department shall not enter into a lease or deed of unpatented lands that permits drilling for exploration purposes unless the drilling operations originate from locations above and inland of the ordinary high-water mark.

(4) An agreement, lease, or deed entered into under this part by the department with the United States shall be entered into and executed pursuant to the property rights acquisition act, Act No. 201 of the Public Acts of 1986, being section 3.251 to 3.262 of the Michigan Compiled Laws.

Sec. 32504. (1) Application for a deed or lease to unpatented lands or agreement for use of water areas over patented lands shall be on forms provided by the department. An application shall include a surveyed description of the lands or water area applied for, together with a surveyed description of the riparian or littoral property lying adjacent and contiguous to the lands or water area, certified to by a registered land surveyor. The description shall show the location of the water's edge at the time it was prepared and other information that is required by the department. The applicant shall be a riparian or littoral owner or owners of property touching or situated opposite the unpatented land or water area over patented lands applied for or an occupant of that land. The application shall include the names and mailing addresses of all persons in possession or occupancy or having an interest in the adjacent or contiguous riparian or littoral property or having riparian or littoral rights or interests in the lands or water areas applied for, and the application shall be accompanied by the written consent of all persons having an interest in the lands or water areas applied for in the application.

(2) Before an application is acted upon by the department, the applicant shall secure approval of or permission for his or her proposed use of such lands or water area from any federal agency as provided by law, the department with the advice of the Michigan waterways commission, and the legislative body of the local unit or units of government within which such land or water area is or will be included, or to which it is contiguous or adjacent. A deed, lease, or agreement shall not be issued or entered into by the department without such approvals or permission. The department may also require the applicant to furnish an abstract of title and ownership, and a 20-year tax history on the riparian or littoral property that is contiguous or adjacent to the lands or water area applied for, as well as on the lands applied for, if available.

(3) The department shall require the applicant to deposit a fee of not less than $50.00 for each application filed. The fee shall be deposited with the state treasurer to the credit of the state's general fund. If a deed, lease, or other agreement is approved by the department, the applicant is entitled to credit for the fee against the consideration that is paid for the deed, lease, or other agreement.

Sec. 32505. (1) If the department determines that it is in the public interest to grant an applicant a deed or lease to such lands or enter into an agreement to permit use and improvements in the waters or to enter into any other

agreement in regard thereto, the department shall determine the amount of consideration to be paid to the state by the applicant for the conveyance or lease of unpatented lands.

(2) The department may permit, by lease or agreement, the filling in of patented and unpatented submerged lands and permit permanent improvements and structures after finding that the public trust will not be impaired or substantially injured.

(3) The department may issue deeds or may enter into leases if the unpatented lands applied for have been artificially filled in or are proposed to be changed from the condition that exists on October 14, 1955 by filling, sheet piling, shoring, or by any other means, and such lands are used or to be used or occupied in whole or in part for uses other than existing, lawful riparian or littoral purposes. The consideration to be paid to the state for the conveyance or lease of unpatented lands by the applicant shall be not less than the fair, cash market value of the lands determined as of the date of the filing of the application, minus any improvements placed on the lands, but the sale price shall not be less than 30% of the value of the land. In determining the fair, cash market value of the lands applied for, the department may give due consideration to the fact that the lands are connected with the riparian or littoral property belonging to the applicant, and to the uses, including residential and commercial, being made or which can be made of the lands.

(4) Agreements for the lands or water area described in section 32502 may be granted to or entered into with local units of government for public purposes and containing those terms and conditions that may be considered just and equitable in view of the public trust involved and may include the granting of permission to make such fills as may be necessary.

(5) If the unpatented lands applied for have not been filled in or in any way substantially changed from their natural character at the time the application is filed with the department, and the application is filed for the purpose of flood control, shore erosion control, drainage and sanitation control, or to straighten irregular shore lines, then the consideration to be paid to the state by the applicant shall be the fair, cash value of such land, giving due consideration to its being adjacent to and connected with the riparian or littoral property owned by the applicant.

(6) Leases or agreements covering unpatented lands may be granted or entered into with riparian or littoral proprietors for commercial marina purposes or for marinas operated by persons for consideration and containing terms and conditions that are considered by the department to be just and equitable. The leases may include either filled or unfilled lake bottomlands, or both. Rental shall commence as of the date of use of the unpatented lands for the marina operations. Dockage and other uses by marinas in waters over patented lands on October 14, 1955 shall be considered to be lawful riparian use.

(7) If the department after investigation determines that an applicant has willfully and knowingly filled in or in any way substantially changed the lands applied for with an intent to defraud, or if the applicant has acquired such lands with knowledge of such a fraudulent intent and is not an innocent purchaser, the sale price shall be the fair, cash market value of the land. An applicant may request a hearing of a determination made under this subsection. The department shall grant a hearing if requested.

Sec. 32506. The fair, cash market value of lands approved for sale under this part shall be determined by the department. Consideration paid to the state shall not be less than $50.00. If the applicant is not satisfied with the value determined by the department, within 30 days after the receipt of the determination he or she may submit a petition in writing to the circuit court of the county in which the lands are located, and the court shall appoint an appraiser or appraisers as the court shall determine for an appraisal of the lands. The decision of the court is final.

Sec. 32507. (1) All money received by the department from the sale, lease, or other disposition of land and water areas under this part shall be forwarded to the state treasurer and be credited to the land and water management permit fee fund created in section 30113.

(2) The department shall comply with the accounting laws of this state and the requirements with respect to submission of budgets. The department may hire employees, assistants, and services that may be necessary within the appropriation made by the legislature and may delegate this authority as may be necessary to implement this part.

Sec. 32508. All lands conveyed or leased under this part are subject to taxation and the general property tax laws and other laws as other real estate used and taxed by the governmental unit or units within which the land is or may be included.

Sec. 32509. The department may promulgate rules, in accordance with the requirements of law, consistent with this part, that may be necessary to implement this part.

Sec. 32510. (1) Except as provided in subsection (2), a person who excavates or fills or in any manner alters or modifies any of the land or waters subject to this part without the approval of the department is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both. Land

altered or modified in violation of this part shall not be sold to any person convicted under this section at less than fair, cash market value.

(2) A person who commits a minor offense is guilty of a misdemeanor, punishable by a fine of not more than $500.00 for each violation. A law enforcement officer may issue and serve an appearance ticket upon a person for a minor offense pursuant to sections 9a to 9g of chapter IV of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 764.9a to 764.9g of the Michigan Compiled Laws.

(3) As used in this section, "minor offense" means either of the following violations of this part if the department determines that restoration of the affected property is not required:

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

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

Sec. 32511. A riparian owner may apply to the department for a certificate suitable for recording indicating the location of his or her lakeward boundary or indicating that the land involved has accreted to his or her property as a result of natural accretions or placement of a lawful, permanent structure. The application shall be accompanied by a fee of $200.00 and proof of upland ownership.

Sec. 32512. Unless a permit has been granted by the department or authorization has been granted by the legislature, or except as to boat wells and slips facilitating private, noncommercial, recreational boat use, not exceeding 50 feet in length where the spoil is not disposed of below the ordinary high-water mark of the body of water to which it is connected, a person shall not do any of the following:

(a) Construct, dredge, commence, or do any work with respect to an artificial canal, channel, ditch, lagoon, pond, lake, or similar waterway where the purpose is ultimate connection of the waterway with any of the Great Lakes, including Lake St. Clair.

(b) Connect any natural or artificially constructed waterway, canal, channel, ditch, lagoon, pond, lake, or similar waterway with any of the Great Lakes, including Lake St. Clair, for navigation or any other purpose.

(c) Dredge or place spoil or other material on bottomland.

(d) Construct a marina.

Sec. 32513. (1) Before any work or connection specified in section 32512 is undertaken, a person shall file an application with the department setting forth 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), an application for a permit under this section shall be accompanied by a fee according to the following schedule:

(a) Until October 1, 1995:

(*i*) For activities included in the minor project category as described in rules promulgated under this part, $50.00.

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

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

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

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

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

(E) $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.

(*iii*) For major projects other than a project described in subparagraph (*ii*)(E), involving any of the following, a fee of $2,000.00:

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

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

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

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

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

(F) New breakwater or channel jetty.

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

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

(*iv*) For all other projects not listed in subparagraphs (*i*) through (*iii*), $500.00.

(b) Beginning October 1, 1995, a fee of $50.00 for any project listed in subdivision (a).

(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 subdivision control act of 1967, Act No. 288 of the Public Acts of 1967, being section 560.117 of the Michigan Compiled Laws.

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

(5) 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.

Sec. 32514. Upon receipt of the application, the department shall mail copies to the department of public health, the clerks of the county, city, village, and township, and the drain commissioner of the county or, if none, the road commissioner of the county, in which the project or body of water affected is located, and to the adjacent riparian owners, accompanied by a statement that unless a written objection is filed with the department within 20 days after the mailing of the copies, the department may take action to grant the application. The department may set the application for public hearing. At least 10 days' notice of the hearing shall be given by publication in a newspaper circulated in the county and by mailing copies of the notice to the persons named in this section.

Sec. 32515. If the department finds that the project will not injure the public trust or interest including fish and game habitat, that the project conforms to the requirements of law for sanitation, and that no material injury to the rights of any riparian owners on any body of water affected will result, the department shall issue a permit authorizing enlargement of the waterway affected. The permit shall provide that the artificial waterway shall be a public waterway, except intake or discharge canals or channels on property owned, controlled, and used by a public utility. The department may impose further conditions in the permit that it finds reasonably necessary to protect the public health, safety, welfare, trust, and interest, and private rights and property. The existing and future owners of land fronting on the artificial waterway are liable for maintenance of the waterway in accordance with the conditions of the permit.

PART 327 GREAT LAKES PRESERVATION

Sec. 32701. As used in this part:

(a) "Agricultural purpose" means the agricultural production of forestry, livestock, food, feed, or fiber.

(b) "Consumptive use" means that portion of water withdrawn or withheld from the Great Lakes basin and assumed to be lost or otherwise not returned to the Great Lakes basin due to evaporation, incorporation into products, or other processes.

(c) "Great Lakes basin" means the watershed of the Great Lakes and the St. Lawrence river.

(d) "Great Lakes charter" means the document establishing the principles for the cooperative management of the Great Lakes water resources, signed by the governors and premiers of the Great Lakes region on February 11, 1985.

(e) "Great Lakes region" means the geographic region composed of the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, and Wisconsin, the commonwealth of Pennsylvania, and the provinces of Ontario and Quebec, Canada.

(f) "Industrial or processing facility" means an operating plant or other entity, including a thermoelectric power generation plant, carrying on a common manufacturing activity, trade, or business on a common site, including similar plants or entities under common ownership or control located on contiguous properties. Plants or entities under common ownership or control located on separate sites shall be considered separate facilities. Industrial or processing facility does not include an irrigation facility.

(g) "Irrigation facility" means all wells, pumps, intakes, gates, tanks, pipes, or other equipment under common ownership or control and located either on the same site or on separate sites, which are used to withdraw, convey, or distribute water for the purposes of irrigating golf courses, parks, recreational areas, or other grounds, but not including irrigation for an agricultural purpose.

(h) "Public water supply system" means a water system that provides water for human consumption or other purposes to persons other than the supplier of water.

(i) "Registrant" means any industrial or processing facility or irrigation facility registered under this part.

(j) "Water of the Great Lakes basin" means the Great Lakes and all streams, rivers, lakes, connecting channels, and other bodies of water, including groundwater, within the Great Lakes basin.

(k) "Withdrawal" means the removal of water from its source for any purpose, other than for hydroelectric generation at sites certified, licensed, or permitted by the federal energy regulatory commission.

Sec. 32702. The legislature finds and declares that:

(a) A diversion of water out of the basin of the Great Lakes may impair or destroy the Great Lakes. The legislature further finds that a limitation on such diversions is authorized by and is consistent with the mandate of section 52 of article IV of the state constitution of 1963 that the legislature provide for the protection of the air, water, and other natural resources of the state from pollution, impairment, and destruction.

(b) Water use registration and reporting are essential to implementing the principles of the Great Lakes charter and necessary to support the state's opposition to diversion of waters of the Great Lakes basin and to provide a source of information on water use to protect Michigan's rights when proposed water losses affect the level, flow, use, or quality of waters of the Great Lakes basin.

(c) The waters of the state are valuable public natural resources held in trust by the state, and the state has a duty as trustee to manage its waters effectively for the use and enjoyment of present and future residents and for the protection of the environment.

(d) The waters of the Great Lakes basin are a valuable public natural resource, and the states and provinces of the Great Lakes region and Michigan share a common interest in the preservation of that resource.

(e) Any new diversion of waters of the Great Lakes basin for use outside of the Great Lakes basin will have significant economic and environmental impact adversely affecting the use of this resource by the Great Lakes states and Canadian provinces.

(f) The continued availability of water for domestic, municipal, industrial, and agricultural water supplies, navigation, hydroelectric power and energy production, recreation, and the maintenance of fish and wildlife habitat and a balanced ecosystem are vital to the future economic health of the states and provinces of the Great Lakes region.

(g) Future interbasin diversions and consumptive uses of waters of the Great Lakes basin may have significant adverse impacts upon the environment, economy, and welfare of the Great Lakes region and of this state.

(h) The states and provinces of the Great Lakes region have a duty to protect, conserve, and manage their shared water resources for the use and enjoyment of present and future residents.

Sec. 32703. Subject to section 32704, the waters of the Great Lakes within the boundaries of this state shall not be diverted out of the drainage basin of the Great Lakes.

Sec. 32704. Section 32703 does not apply to a diversion of the waters of the Great Lakes out of the drainage basin of the Great Lakes existing on September 30, 1985.

Sec. 32705. (1) A person shall register with the department by December 31, 1991 on a form provided by the department if, during the year 1990 or 1991, the person does either of the following:

(a) Owns an industrial or processing facility that has the capacity to withdraw over 100,000 gallons of water per day average in any consecutive 30-day period from the waters of the Great Lakes basin.

(b) Owns an irrigation facility that has the capacity to withdraw over 100,000 gallons of water per day average in any consecutive 30-day period from the waters of the Great Lakes basin.

(2) Beginning January 1, 1992, a person who meets the requirements of subsection (1)(a) or (b) shall register with the department during the calendar year in which the withdrawal occurred.

(3) In calculating the total amount of an existing or proposed withdrawal for the purpose of this section, a person shall combine all separate withdrawals that the person makes or proposes to make, whether or not these withdrawals are for a single purpose or are for related but separate purposes.

Sec. 32706. (1) Each registration under this part shall consist of a statement and supporting documentation that includes all of the following:

(a) The place and source of the proposed or existing withdrawal.

(b) The location of any discharge or return flow.

(c) The location and nature of the proposed or existing water user.

(d) The actual or estimated average annual and monthly volumes and rate of withdrawal.

(e) The actual or estimated average annual and monthly volumes and rates of consumptive use from the withdrawal.

(2) Each registration under this part concerning a withdrawal that will result in a consumptive use averaging in excess of 2,000,000 gallons per day in any consecutive 30-day period shall also provide a statement and supporting documentation that includes all of the following:

(a) The operating capacity of the withdrawal system identified in the registration.

(b) If the registration includes a proposed withdrawal increase, the total new or increased operating capacity of the withdrawal system.

(c) The estimated average annual and monthly rates of discharge or return flow.

(d) A list of all federal, state, and local approvals, permits, licenses, and other authorizations required for the existing or proposed withdrawal.

Sec. 32707. (1) Except as provided in subsection (2), a person who owns an industrial or processing facility or an irrigation facility registered under this section shall file a report annually with the department on a form provided by the department. The first report shall be submitted to the department by March 31, 1992. Subsequent reports shall be submitted within 3 months after the end of each calendar year. Reports shall include the following information:

(a) Amount and rate of water withdrawn on an annual and monthly basis.

(b) Source or sources of water supply.

(c) Use or uses of water.

(d) Amount of consumptive water use.

(e) Other information specified by rule of the department.

(2) If a person reports the information required by this section to the department in conjunction with a permit or for any other purpose, that reporting, upon approval of the department, shall satisfy the reporting requirements of this section.

(3) The department shall, upon request from a person required to report under this section, accept a formula or model that provides to the department's satisfaction the information required in subsection (1).

(4) The department shall develop forms for reporting under this section that minimize paperwork and allow for a notification to the department instead of a report if the annual amount of water withdrawn by a person required to report under this section is within 4% of the amount last reported and the other information required in subsection (1) has not changed since the last year in which a report was filed.

Sec. 32708. The department and the department of agriculture in consultation with the cooperative extension service and the soil conservation districts shall develop a formula or model to determine the amount of water withdrawn for agricultural purposes consistent with the objectives of section 32707. For a period of not more than 5 years after December 21, 1990, a person using water for an agricultural purpose who withdraws over 100,000 gallons of water per day average in any consecutive 30-day period for irrigation shall provide the location of the irrigation water source or sources and other information as needed by the department in the calculations of the formula or model as provided in this section.

Sec. 32709. The department may contract for the preparation and distribution of informational materials to persons who withdraw water for irrigation or industrial purposes regarding the purposes, benefits, and requirements of this part, and may also provide information on complying with the registration program and on any general or applicable methods for calculating or estimating water withdrawals or consumptive uses.

Sec. 32710. The department shall do all of the following:

(a) Cooperate with the states and provinces in the Great Lakes region to develop and maintain a common base of information on the use and management of the water of the Great Lakes basin and to establish systematic arrangements for the exchange of this information.

(b) Collect and maintain information regarding the locations, types, and quantities of water use, including water withdrawals and consumptive uses, in a form that the department determines is comparable to the form used by other states and provinces in the Great Lakes region.

(c) Collect, maintain, and exchange information on current and projected future water needs with the other states and provinces in the Great Lakes region.

(d) Cooperate with other states and provinces in the Great Lakes region in developing a long-range plan for developing, conserving, and managing the water of the Great Lakes basin.

(e) Participate in the development of a regional consultation procedure for use in exchanging information on the effects of proposed water withdrawals and consumptive uses from the Great Lakes basin.

(f) Develop procedures for notifying water users and potential water users of the requirements of this part.

Sec. 32711. A public water supply system that is required to report water withdrawals under the safe drinking water act, Act No. 399 of the Public Acts of 1976, being sections 325.1001 to 325.1023 of the Michigan Compiled Laws, is exempt from the requirements of this part.

Sec. 32712. This part does not authorize the department to impose or collect fees, to mandate any permit, or to regulate the withdrawal of water covered under this part.

Sec. 32713. The department may request the attorney general to commence a civil action for appropriate relief, including a permanent or temporary injunction, for a violation of this part or a rule promulgated under this part. An action under this section shall be brought in the circuit court for the county of Ingham or for the county in which the defendant is located, resides, or is doing business. The court has jurisdiction to restrain the violation and to require compliance. In addition to any other relief granted, the court may impose a civil fine of not more than $1,000.00. In addition to a fine, the attorney general may file a suit in a court of competent jurisdiction to recover the full value of the costs of surveillance and enforcement by the state resulting from the violation.

PART 329 GREAT LAKES PROTECTION

Sec. 32901. As used in this part:

(a) "Board" means the Michigan Great Lakes protection fund technical advisory board created in section 32908.

(b) "Fund" means the Michigan Great Lakes protection fund created in section 32905.

Sec. 32902. The legislature finds that:

(a) The Great Lakes are a valuable resource providing an important source of food, fresh water, recreation, beauty, and enjoyment.

(b) The ecosystems of the Great Lakes, which provide sustenance and recreation to the people of this state and other states and nations, have been severely affected and are continually threatened by the introduction of foreign species into the lakes and by pollution of the Great Lakes waters.

(c) Careful management of the Great Lakes will permit the rehabilitation and protection of the lakes, their waters, and their ecosystems, while continuing and expanding their use for industry, food production, transportation, and recreation.

(d) This state, because it is surrounded by the Great Lakes and because the Great Lakes contribute in innumerable ways to the state's economy, recreation, and way of life, must act as a steward for the protection, enhancement, and wise utilization of the Great Lakes.

Sec. 32903. The office of the Great Lakes is established within the department of natural resources and is designated as the lead agency within state government for the development of policies, programs, and procedures to protect, enhance, and manage the Great Lakes. The office of the Great Lakes shall do all of the following:

(a) Advise the governor, the director, and the directors of other appropriate state departments on appropriate steps needed to coordinate state policy and state actions on the Great Lakes and to implement an ecosystem approach to this state's Great Lakes policies.

(b) Provide representation at the national level for this state's Great Lakes interests.

(c) Represent this state before Great Lakes policy development bodies such as the international joint commission.

(d) Ensure adequate research and staff work to maintain this state's regional leadership in resolving Great Lakes problems.

(e) Promote the wise use of the ports of this state and Great Lakes water transportation.

(f) Promote the Great Lakes tourism industry.

(g) Advocate the interests of this state in actions, policies, and legislation affecting the Great Lakes proposed in other Great Lakes states, Canadian provinces, Great Lakes policy development bodies, and the federal government.

Sec. 32904. The governor, with the assistance of the office of the Great Lakes, shall prepare and submit to the legislature the following:

(a) An annual report, submitted by December 31 of each year, on the state of the Great Lakes.

(b) A comprehensive analysis, in the governor's annual budget message, of all the funds from state and federal sources that the governor recommends be expended for the protection, enhancement, and management of the Great Lakes.

(c) A comprehensive inventory, submitted by August 2, 1986, of all state, federal, interstate, and international agencies, programs, and projects associated with the protection, enhancement, and management of the Great Lakes.

(d) A report, submitted by February 2, 1987, on the status of the agreement between the United States and Canada known as the Great Lakes water quality agreement of 1978, and recommending steps to be taken to execute the state's obligations in that agreement and to promote the state's role and objectives in the renegotiation of that agreement.

(e) A report, submitted by August 2, 1987, listing the priority research needs with respect to the Great Lakes.

Sec. 32905. (1) The Michigan Great Lakes protection fund is created in the state treasury.

(2) The fund shall receive money from the following sources:

(a) Money received by the state from the Great Lakes protection fund authorized in part 331.

(b) Gifts and contributions to the fund.

(c) Other sources provided by law.

(3) The state treasurer shall direct the investment of the fund. Interest and earnings of the fund shall be credited to the fund. Money in the fund at the end of the fiscal year shall remain in the fund and shall not revert to the general fund.

(4) The state treasurer shall annually report to the board and the department on the amount of money in the fund.

Sec. 32906. The state treasurer shall credit all money the state receives from the Great Lakes protection fund as authorized in part 331 to the fund.

Sec. 32907. Money in the fund shall be used only for programs or grants to supplement existing Great Lakes research and protection programs consistent with the purposes of part 331 including, but not limited to, the following:

(a) Research on the economic, environmental, and human health effects of contamination in the Great Lakes.

(b) The collection and analysis of data on the Great Lakes.

(c) The development of new or improved environmental cleanup technologies.

(d) Research to assess the effectiveness of pollution control policies.

(e) The assessment of the health of Great Lakes fish, waterfowl, and other organisms.

(f) Other programs consistent with the purposes of part 331.

Sec. 32908. (1) The Michigan Great Lakes protection fund technical advisory board is created within the department. The board shall consist of the following members:

(a) An individual appointed by the department who has knowledge or expertise in Great Lakes water issues.

(b) An individual appointed by the department who has knowledge or expertise in the effects of air pollution on the Great Lakes.

(c) Six individuals appointed by the department as follows:

(*i*) One individual from an environmental organization.

(*ii*) One individual from a business or industry related to the Great Lakes.

(*iii*) One individual who has performed research related to the water quality of the Great Lakes.

(*iv*) One individual who has performed research related to public health concerns associated with the Great Lakes.

(*v*) One individual who has knowledge or expertise in the demographics of the Great Lakes region or the climatology of the Great Lakes region.

(*vi*) One individual who represents the hazardous substance research center.

(2) A member of the board shall serve for a term of 3 years. However, of the first appointments to the board by the department under subsection (1)(c), 3 shall be appointed to serve 2-year terms and 3 shall be appointed to serve 1-year terms.

(3) A member of the board may be removed for inefficiency, neglect of duty, or malfeasance in office by the body that appointed him or her.

(4) The board shall elect a chairperson from among its members. The board shall meet at the call of the chairperson at least annually. A meeting of the board shall be held in compliance with the open meetings act, Act No. 267 of the

Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by that act.

(5) A member of the board shall not receive a grant under this part.

Sec. 32909. The board shall do both of the following:

(a) Advise this state's representatives on the board of directors of the Great Lakes protection fund authorized in part 331.

(b) Consult with the technical advisory committee of the Great Lakes protection fund.

Sec. 32910. (1) The board shall annually advise the department on the programs or grants that should be funded under this part and shall submit a list of these programs or grants to the department for its approval. This list shall be compiled in order of priority. Upon approval of the list, the department shall submit the list to the legislature in January of each year.

(2) The department and the board shall include with each list submitted under subsection (1) a statement of the guidelines used in listing and assigning the priority of the proposed programs or grants.

(3) The legislature shall annually appropriate money from the Michigan Great Lakes protection fund and from the Great Lakes spill prevention research fund for programs or grants pursuant to this part.

Sec. 32911. (1) The Great Lakes spill prevention research fund is created in the state treasury.

(2) The research fund may receive money as appropriated by the legislature, from gifts and contributions to the fund, and as otherwise provided by law. The state treasurer shall direct the investment of the research fund. Interest and earnings of the research fund shall be credited to the research fund. Money in the research fund at the close of the fiscal year shall remain in the research fund and shall not revert to the general fund.

(3) Money in the research fund shall be used only for the following purposes:

(a) Research into the prevention of spills during the transportation of hazardous materials on the Great Lakes and major tributaries of the Great Lakes.

(b) Research on selected pollution incidents to determine causal factors in spills of hazardous materials on the Great Lakes and major tributaries of the Great Lakes.

(c) Research into a total systems approach to address Great Lakes pollution problems that include human factors and socio-technical considerations.

(d) Research into the role of human factors in spills of hazardous materials on the Great Lakes and major tributaries of the Great Lakes, including human factors in pollution alarms, pollution monitoring systems, and instrumentation.

(e) Research into the deployment of existing and new technology related to transportation of hazardous materials on the Great Lakes and major tributaries of the Great Lakes and the appropriate allocation of functions between individuals and machines.

(f) Research to determine the relative contribution of spills of hazardous materials into the Great Lakes and major tributaries of the Great Lakes to the total pollution of the Great Lakes basin.

(g) Research on and modeling of spills to determine their effect on water intakes.

(4) As used in this section:

(a) "Great Lakes" means the Great Lakes and their connecting waterways over which the state has jurisdiction.

(b) "Hazardous material" means a chemical or other material which is or may become injurious to the public health, safety, or welfare, or to the environment.

(c) "Major tributary of the Great Lakes" means a river that flows into the Great Lakes that has a drainage area in excess of 700 square miles or has a drainage area that contains a population of 1,000,000 or more individuals.

(d) "Research fund" means the Great Lakes spill prevention research fund created in subsection (1).

(e) "Spill" means any leaking, pumping, pouring, emptying, emitting, discharging, escaping, leaching, or disposing of a hazardous material in a quantity which is or may become injurious to the public health, safety, or welfare or to the environment.

PART 331 REGIONAL GREAT LAKES PROTECTION FUND

Sec. 33101. As used in this part:

(a) "Agreement" means the document entitled "Great Lakes protection fund agreement" signed by the governor on February 26, 1989.

(b) "Great Lakes protection fund" or "fund" means the Great Lakes protection fund approved in the agreement.

(c) "Great Lakes toxic substance control agreement" means the document entitled "Great Lakes toxic substance control agreement" signed by the governor on May 21, 1986.

(d) "Great Lakes water quality agreement of 1978" means the "Great Lakes water quality agreement of 1978" between the United States and Canada signed November 22, 1978, including the phosphorous load reduction supplement signed October 7, 1983, and as amended by protocol signed November 18, 1987.

Sec. 33102. The legislature finds and declares that:

(a) The Great Lakes protection fund has been created to advance the principal goals and objectives of the Great Lakes toxic substances control agreement and the Great Lakes water quality agreement of 1978.

(b) The Great Lakes protection fund has been created to finance and support state and regional projects for the protection, research, and cleanup of the Great Lakes.

(c) There is a need for a stable and predictable funding commitment for the preservation of Great Lakes water quality.

(d) The protection of the Great Lakes is of paramount public concern in the interest of the health, safety, and general welfare of the citizens of the state and the participation of the state in the Great Lakes protection fund will assist in achieving this protection.

Sec. 33103. (1) The governor, on behalf of this state, may take all steps necessary to join with other states in the formation and operation of the Great Lakes protection fund provided that the fund does all of the following:

(a) Provides for the fund to receive money from each of the participating states and to expend only the interest and earnings of the fund for the purposes of subdivision (b).

(b) Provides for the funding of activities related to Great Lakes research and protection including but not limited to:

(*i*) Research on the economic, environmental, and human health effects of contamination in the Great Lakes.

(*ii*) The collection and analysis of data on the Great Lakes.

(*iii*) The development of new or improved environmental cleanup technologies.

(*iv*) Research to assess the effectiveness of pollution control policies.

(*v*) The assessment of the health of Great Lakes fish, waterfowl, and other organisms.

(2) The governor shall do all things necessary to implement the agreement.

(3) The governor shall appoint members to the board of directors of the Great Lakes protection fund in accordance with the agreement.

Sec. 33104. (1) If, by February 28, 1991, fewer than 4 states whose representatives signed the agreement have enacted legislation and provided funding as required by the agreement to participate in the fund, the governor shall take all steps necessary to withdraw the participation of the state in the fund, to dissolve the fund, and to equitably distribute the assets of the fund.

(2) If 2/3 of the states whose representatives signed the agreement agree to extend the deadline provided in subsection (1), the governor shall not withdraw the participation of the state during the extension period.

Sec. 33105. The governor may delegate his or her responsibilities under this part to the department.

PART 333 COASTAL BEACH EROSION

Sec. 33301. Any political subdivision of the state, by resolution of its legislative body adopted by a majority vote of its full membership, is authorized to make expenditures from its general fund, contingent fund, or from any special funds available for the purposes described in this section, to undertake, either independently or in cooperation with any other political subdivision or with any agency of the state or federal government, investigative or study functions related to coastal beach erosion or protection.

PART 337 FLOOD, DRAINAGE, AND BEACH EROSION CONTROL

Sec. 33701. The township board of any township, the legislative body of any incorporated city or incorporated village, or the board of county road commissioners of any county when directed by the county board of commissioners of the county, pursuant to a resolution adopted by a 2/3 vote of the members of the county board of commissioners, is authorized to acquire any and all interests in lands necessary to any flood control, drainage, or beach erosion control project and is authorized to contract with the federal government or any agency of the federal government, whereby the federal government or agency will pay the whole or a part of the cost of flood control, drainage control, or beach erosion control projects or will perform the whole or any part of the work connected with the project, or both, which

contract may include any specific terms, including, but not limited to, the holding and saving of the United States free from damages due to the construction works, required by act of congress or federal regulation as a condition for participation on the part of the federal government.

Sec. 33702. A contract entered into under section 33701 may provide that payments made or work done by the federal government or agency of the federal government relieves it in whole or in part from assessment for the cost of the project.

Sec. 33703. A contract entered into under section 33701 may provide for the granting, without cost to the United States, of all lands, easements, and rights-of-way necessary for the construction of the project, except as otherwise provided by act of congress or federal regulation. Such a contract may also provide for the maintenance and operation of the project after completion in accordance with regulations prescribed by the secretary of the army.

Sec. 33704. The township board of any township, the legislative body of any incorporated city or incorporated village, or the county board of commissioners of any county, pursuant to a resolution adopted by a 2/3 vote of its members, is authorized in connection with any contract entered into under section 33701 to make expenditures from its general fund, contingent fund or from any special funds available.

Sec. 33705. The township board of any township, the legislative body of any incorporated city or incorporated village, or the board of county road commissioners of any county when directed by the county board of commissioners of the county, pursuant to a resolution adopted by a 2/3 vote of its members, is authorized to grant to the United States assurances as are required by federal flood control acts, by amendments to those acts, and by such other federal acts existing, or which may be enacted in the future, authorizing expenditure of federal funds for flood control, drainage, or beach erosion control projects.

Sec. 33706. The township board of any township, the legislative body of any incorporated city or incorporated village, or the board of county road commissioners of any county when directed by the county board of commissioners of the county, may provide for joint participation and a joint contract or contracts in implementing this part.

Sec. 33707. (1) Unless an exception from prior approval is available pursuant to subsection (2), contracts entered into under this part shall have prior approval of the municipal finance commission or its successor agency as to the financial ability of the incorporated city, incorporated village, township, or county to meet all obligations and liabilities imposed by the contracts as to cost of lands, easements, rights-of-way, construction, or the maintenance and operation costs of such project or projects. Any incorporated city, incorporated village, or township, or the board of county road commissioners of any county when directed by the county board of commissioners, authorized to contract with the federal government or any agency of the federal government under this part, may borrow funds from the federal government or any agency of the federal government to implement this part, which borrowings shall be subject to existing statutes and charter limitations that are applicable to the borrowing. However, section 2 of chapter III of the municipal finance act, Act No. 202 of the Public Acts of 1943, being section 133.2 of the Michigan Compiled Laws, shall not apply to those borrowings.

(2) The requirement of subsection (1) for obtaining the prior approval of the municipal finance commission or its successor agency before entering into contracts under this part is subject to sections 10 and 11 of chapter III of Act No. 202 of the Public Acts of 1943, being sections 133.10 and 133.11 of the Michigan Compiled Laws, and the department of treasury has the same authority as provided by section 11 of chapter III of Act No. 202 of the Public Acts of 1943 to issue an order providing or denying an exception from the prior approval required by subsection (1) for contracts authorized by this part.

Sec. 33708. For the accomplishment of the purposes of this part, any city, incorporated village, township, or board of county road commissioners may acquire any interest in land necessary to any flood control, drainage, or beach erosion control project, or to preserve flood plains, by purchase, gift, exchange, condemnation, or otherwise. If an easement to preserve a flood plain is acquired, the acquiring agency, in any instrument conveying such right or in any eminent domain proceedings instituted therefor, may acquire the further right to use the land subject to the easement, or any part of the easement, for any other public purpose, but only to the extent that the other uses are specifically enumerated in the conveyance or eminent domain proceedings. The legislative body of any city, incorporated village, or township, or the board of county road commissioners of any county when directed by the county board of commissioners of the county, may institute and prosecute proceedings under the power of eminent domain in accordance with the laws of the state or any local charter relative to condemnation. Two or more adjoining cities, villages, or townships are authorized to maintain proceedings in accordance with the procedure prescribed by Act No. 81 of the Public Acts of 1925, being sections 123.71 to 123.73 of the Michigan Compiled Laws. The purposes contemplated by this part are declared to be public purposes within the meaning of the constitution, state laws, and charters relative to the power of eminent domain.

PART 339 CONTROL OF CERTAIN STATE LANDS

Sec. 33901. All of the unpatented overflowed lands, made lands, and lake bottomlands belonging to this state or held in trust by it as provided in this part shall be held, leased, and controlled by the department in the manner provided in this part.

Sec. 33902. The department shall not deed or convey the lands described in section 33901 except as provided in sections 33903 to 33911, but may lease lands of the character described in section 33901 to a person for the purposes and in the manner provided in this part. The department may dedicate unleased lands of the character described in section 33901 for public hunting, fishing, and other recreational uses.

Sec. 33903. The department, upon application of any person holding a lease of any portion or portions of land from this state pursuant to former Act No. 326 of the Public Acts of 1913, or this part, shall execute and deliver to the applicant a deed conveying to him or her all of the right, title, and interest of this state in and to the lands described in this section, subject to the paramount rights of navigation, hunting, and fishing that remain in the general public and in the government as now existing and recognized by law. The deeds shall contain the same provisions as to use and occupancy as now set forth in all leases previously granted under former Act No. 326 of the Public Acts of 1913. The lands covered by this section are that portion of the St. Clair Flats, township of Clay, St. Clair county, Michigan, as surveyed under former Act No. 175 of the Public Acts of 1899, which front upon or are a part of the south, middle, and Sni Bora channel sections as follows:

South channel section, lots 2-601 inclusive, excepting therefrom portions described in Act No. 5 of the Public Acts of 1938 and already conveyed to the federal government pursuant to that act.

Also any interior lands so-called, lying between lots 452-601 inclusive, south channel section, and the highway known as M-154; and in addition thereto the lands leased under section 11 of former Act No. 326 of the Public Acts of 1913, and particularly described therein.

Also middle channel section, lots 29-34 inclusive, lots 39-53 inclusive, lots 82 and 83 lying north of middle channel drive, lots 84-107 inclusive, lots 109 and 111, and lots 163-215 inclusive, also Sni Bora channel section, lots 147-162 inclusive and lots 167-202 inclusive.

Sec. 33904. Before the department grants a deed, there shall be presented evidence that the applicant requesting the deed is the lessee of the land, that the land is part of the lands described in section 33903, and that all taxes on the land are paid. Upon presentation of evidence of these facts satisfactory to the department, together with a sum of money to be determined by the department, the applicant shall be given a deed. All property so deeded is thereafter subject to the general property tax and recording laws.

Sec. 33905. Any of the lands described in section 33903 that are not now or subsequently under lease may, in the discretion of the department, be sold and deeded in the same manner, in consideration of the payment of a sum to be determined by the department by using the method as provided by section 33918. However, if the applicant seeks to use the lands for other than residential purposes, pending the enactment of zoning ordinance by the township of Clay of the county of St. Clair, such other use shall not be permitted unless the applicant complies with the usual requirements of the department in such regard.

Sec. 33906. In all cases where there is a contest or conflict between applicants for a deed to the same piece or parcel of land growing out of errors of description, overlapping descriptions, prior leases, or otherwise, the conflicting claims shall be determined by the department at a meeting scheduled by the department after notice to each of the claimants of the time and place of hearing, and in such cases depositions may be taken by any claimant in the manner provided for in taking depositions in the circuit courts of this state. Any party considering himself or herself aggrieved by any decision of the department refusing to grant him or her a deed under this part, whether in case of conflict, contest, or otherwise, shall have a right of appeal to the circuit court for the county in which the land is situated, and the proceedings to take the appeal and the trial of the appeal in any of the courts shall be in accordance with the statutes providing for appeals from district courts of this state, or to take such other action at law or in equity as provided by the statutes and laws of the state of Michigan.

Sec. 33907. The department may promulgate and enforce rules as it considers necessary for the preservation and use of the paramount right of navigation, hunting, and fishing covering the entire St. Clair Flats area.

Sec. 33908. The consideration as received for the execution and delivery of any of the deeds provided for in this part shall be credited to the general fund of this state.

Sec. 33909. The department, upon application of any person holding a lease of any of the lands described in this part, shall execute and deliver to the applicant a deed conveying to him or her all of the right, title, and interest of this state, subject to all the applicable conditions and provisions of sections 33902 to 33908, in and to lots 74, 75, 76, 77, 78, 83, 84, 87, 88, 92, 93, 96, 97, 100 and 101 to 120, inclusive, lots 256 to 265 inclusive, and lots 342 to 344 inclusive, of the St. Clair Flats survey, North Channel, Clay township, St. Clair county, Michigan. Notwithstanding any provision of the law to the contrary, a sale shall not be made at less than the present appraised value of the land as determined by the department including no increase in the sale value because the land may have been improved by dredging, leveling off, sheet piling, erecting docks, building structures of any kind, reduced by the value of the burden of leases outstanding, if any.

Sec. 33910. The department, in its discretion, upon application of any person holding a lease or deed under this part to any lands lying contiguous to any water highway as surveyed under former Act No. 175 of the Public Acts of 1899 and where it is determined that such highway is no longer needed for navigation, ingress, and egress to surveyed lots, or for any public use, whether dredged or not, may execute and deliver to the applicant a lease under section 33912, or a deed subject to all the applicable conditions and provisions of sections 33902 to 33909, to all of the right, title, and interest of the state in and to 1/2 of the surveyed width of that portion of the water highway as lies contiguous to land held under lease or deed by the applicant. Where a lease is issued, its term may be made to run concurrent with that of the lease held by the applicant for the contiguous land.

Sec. 33911. (1) Upon application of a person that holds a lease from this state of any portion or portions of the real property described in subsection (2), the department may execute and deliver to the applicant a deed conveying all of the right, title, and interest of this state in and to that real property, subject to the paramount rights of hunting, fishing, and navigation, which remain in the general public and in the government as recognized by law. The deeds shall contain the same provisions as to use and occupancy now set forth in all the leases previously granted under former Act No. 326 of the Public Acts of 1913 or under this part.

(2) The real property to which this section applies are that portion of the St. Clair Flats, Township of Clay, St. Clair County, Michigan, as surveyed under former Act No. 175 of the Public Acts of 1899, that front upon or are a part of the North and Sni Bora channel section and middle channel section described as:

(a) Sni Bora Channel, the northeast one-half of lot 386.

(b) North Channel, lots 79 and 80.

(c) Sni Bora channel, lot 366.

(d) Lot 470, middle channel section.

(e) Lot 471, middle channel section.

(3) Notwithstanding subsections (1) and (2), the department shall not grant a deed under this section unless the structure and the lot subject to the deed, including seawalls where present, comply with the applicable township building code and county and state sanitation codes and the structure is located on a parcel of land that is adequately protected from erosion.

(4) A deed granted under this section shall not include a portion of the original lease that is submerged or lies below the ordinary high-water mark of Lake St. Clair, which is 574.5 International Great Lakes Datum (IGLD 1955). The department shall perform a site inspection and set stakes, if necessary, to identify the boundaries of the area of the parcel to be deeded. The applicant may be required to provide a boundary survey that delineates the area of the real property to be deeded.

(5) A deed shall not be granted under this section at less than the fair market value of the real property in accordance with the current department appraisal procedures for the eligible parcels. The appraisal shall not include improvements such as buildings, seawalls, and docks.

Sec. 33912. Whenever any person is entitled under this part to lease for the period of 99 years, the department shall divide the term of 99 years into 2 periods of 50 and 49 years each, to be known as rental valuation periods, and the consideration or rental to be paid by the lessee for the first period of 50 years is to be determined by the department at the time such lessee is adjudged entitled to the lease. At the expiration of the first period of 50 years, the department shall redetermine the rental value or consideration to be paid by the lessee for the next succeeding rental period of 49 years until the expiration of the full term of the lease. However, the department, in determining the rental value to be paid by the lessee, shall consider the value of the land only and shall not increase the rental value or consideration for any of the rental periods because of the improvements that may have been made on any of the premises by a lessee. In determining the rental value or consideration to be paid by the lessee for the second valuation period of 49 years, the department shall not increase the rental value or consideration to any sum in excess of double the rental value or consideration determined for the first valuation period of 50 years. The consideration so fixed shall, as applied to the claimants coming within the provisions of this section, be a gross sum and not an annual rental.

Sec. 33913. In all cases where any person applies for a lease of any of the lands of the character described in section 33901 and there has not been expended on the lands $100.00 or more for improvements, the term of the lease may be in the discretion of the department for any period not exceeding 99 years. However, in all such cases the term shall be divided into rental valuation periods of 10 years, such rental valuation or consideration to be determined in the first instance at the time the claimant is adjudged entitled to a lease, and at the expiration of each 10 years thereafter during the entire period of the lease the department shall determine the rental value or consideration to be paid by the lessee for the next succeeding 10 years.

Sec. 33914. The department shall schedule regular meetings at which it shall hear and determine the validity of all the applications then on file made by applicants for leases, and it shall keep a record of written evidence, if any, which may be filed with each application, in a suitable record book to be provided by the department. Each claimant adjudged entitled to a lease shall receive from the department, within 10 days after that action has been taken by the department, a notification in writing of the action by the department and a certificate for the land, or as much of the land as has been adjudged to the claimant or his or her heirs or assigns, in which shall be certified the name of the claimant, a description of the land adjudged to be leased to him or her, and the rental or consideration therefor. The notification shall include a statement of the time when rental shall be due and the penalties for failure to comply with this part, both as regards payment of rental and taxes, which rental consideration shall be paid to the state treasurer in full at the time the lease is executed by both parties to the lease. The certificate shall further state that the claimant or his or her heirs or assigns shall, upon payment of the amount named in the lease, be entitled to a lease of the lands as provided in this part to be executed by the department upon presentation and surrender of the certificate to the department, together with the receipt of the state treasurer showing the payment of the rental or consideration. However, if the lessee or applicant neglects for a period of 90 days after the date of the certificate to perfect the lease to the lands as described in the certificate and to remit the rent as provided in this part, the department has the authority to cancel the determination and certificate of the determination, and all rights thereunder shall be considered to be forfeited by the lessee or applicant. If any person who has by August 10, 1917 obtained a lease to any of the lands described in section 33901 under this part or former Act No. 326 of the Public Acts of 1913 fails or neglects to make the second and final payment of the rental consideration for the lands so leased and the interest on those unpaid amounts for a period of 3 months from and after the date on which the payments become due, then that person shall be notified by the department in writing of his or her failure to pay, and at the same time the department shall also notify the delinquent leaseholder that a further failure or neglect upon his or her part to make that payment within 90 days after the date of that notification will be held as a forfeiture of his or her leasehold rights in the land and that the department will thereupon cancel the lease held by him or her and his or her rights under the lease shall be held as naught, and the department shall hold such forfeited lands subject to lease by any party applying for the same under the terms of this part. Immediately upon formal determination by the department that a lease has been forfeited, a certificate of cancellation of the lease shall be executed under the seal of the department and shall be forwarded to the register of deeds of the county in which the land is located. Upon receipt of such certificate, the register of deeds shall at once cause the same to be recorded in a suitable book provided for that purpose by said register. If the lease is of record in the office, the register shall note thereon the fact that a certificate of cancellation has been issued and shall also note the citation to the record of the certificate.

Sec. 33915. Applications filed under this part, which satisfy the requirements of this part and upon which there exists no conflict of claims, shall of themselves be sufficient, without additional written or verbal testimony, to entitle the claimant to the certificate and lease provided for in this part, which certificate and lease shall thereupon be executed in manner and form as provided for in this part.

Sec. 33916. All persons who, having been in occupation or possession of lands of the character named in section 33901 for 1 or more years prior to January 1, 1913, fail to make application for a lease for the occupation and possession of the lands as provided for in this part, within 9 months after August 14, 1913, and all persons who fail after the notification provided for in section 33915 to make payment of the consideration fixed by the department within the time and in the manner specified in this part, shall be considered trespassers, and an action may be brought in the circuit court for the county in which those lands are located, in the name of the people of this state, by the attorney general of this state, to recover possession of the lands.

Sec. 33917. The attorney general shall prepare a blank form of lease, which shall be used by the department in all cases where the department has determined the rental value and the term of the lease. Every lease shall be executed on behalf of the state by the department, and shall be duly acknowledged and recorded in the office of the register of deeds for the county in which the lands are located, and the register of deeds shall be entitled to no fees for making the record.

Sec. 33918. In fixing rental values, the department shall determine present land values only and shall not increase the rental value because the lands may have been improved by dredging, leveling off, sheetpiling, erecting docks, buildings, or structures of any kind.

Sec. 33919. The department shall lease or rent the lands of the character named in this part to occupants and claimants in possession to the exclusion of other persons, provided such occupants or claimants have made or shall make an application to lease the lands so occupied, claimed, or improved within 9 months after August 14, 1913, in accordance with this part.

Sec. 33920. The department shall not lease to any person lands of the character described in section 33901 that are now included by law of this state within a public park. However, the department may lease to the occupants thereof any land on the so-called St. Clair flats lying between the lands surveyed along the middle channel of the said St. Clair river under former Act No. 175 of the Public Acts of 1899, and between the private claims on Harsens island and the Muscamoot bay, for which application is made prior to the first day of September, 1924, whenever it shall be made to appear to the satisfaction of the department that the person applying for a lease of any such lands shall have been in occupation of the lands either in person or by his or her or their grantors since the first day of January, 1913, and has made valuable improvements on the lands. In leasing the lands, the department may make a survey of the lands and, upon the completion of such survey, cause a duly prepared plat with the field notes of that survey to be filed in the office of the department. A certified copy of the plat shall be filed with the register of deeds of the county of St. Clair. In leasing the lands, the department shall be governed by the preceding sections of this part. The department may lease to the leaseholder of the abutting property the made lands and lake bottomlands in the St. Clair flats, so-called, included in the following description: All that part of the Saint Clair flats, described as, commencing at the north west corner of lot 11, south channel section of the Saint Clair flats survey, thence south 40° 12' west 964.42 feet along the westerly line of lot 11 to the south west corner of lot 11, thence north 26° 51' west 428.29 feet along the Ives highway extended, thence north 66° 31' east 889.60 feet to the point of beginning, also commencing at the north west corner of lot 10, thence south 40° 12' west 234.57 feet to the south west corner of lot 10, thence south 2° 26' east 328.59 feet to the north west corner of lot 6, thence south 30° 55' 30" west 709.09 feet to the south west corner of lot 2, thence north 58° 29' west 450.00 feet along the northerly line of the Sampson highway extended, thence north 28° 01' 10" east 1452.20 feet, thence south 26° 51' east 450.00 feet, along the Ives highway extended, to the point of beginning and also the department may lease to the leaseholders of the abutting properties the made lands and lake bottom lands in the St. Clair flats, so-called, lying between lots 27, 29, 30 and 31, south channel section, St. Clair flats as surveyed, and right of way of state highway trunk line M 154 (WPSO-280-A state project 77-52), as surveyed, excepting therefrom however, all land covered by the extensions to the above mentioned highway M 154 of Rushmere, Ruhl, Grummond and Bielman highways, St. Clair flats, as surveyed under former Act No. 175 of the Public Acts of 1899. The lease shall be on terms and conditions as the department may prescribe that are not in conflict with the provisions of this part.

Sec. 33921. The rights of lessees under this part shall be subject to the paramount right of navigation, hunting, and fishing, which rights are to remain in the general public and in the government as now existing and recognized by law.

Sec. 33922. Any person in possession or occupation of any land of the character described in section 33901 who desires to lease the land from the state shall file with the department within 9 months after August 14, 1913, a written application for the lease, which shall state the applicant's full name, post office address, and all the facts relied upon to establish possession, occupancy, and improvement, and every claim so filed shall show the amount claimed to have been expended by the claimant upon the land, the length of time he or she has been in possession of the land, and the character of the improvements made and shall be signed and verified by the claimant, and the application shall not be considered invalid because of any technical inaccuracy or misdescription, but inaccuracies or misdescriptions may be permitted to be corrected at any time in the discretion of the department. All persons that have prior to August 14, 1913 made application in accordance with former Act No. 175 of the Public Acts of 1899, or former Act No. 215 of the Public Acts of 1909, shall not be required to make any further or additional application, but the application so made shall have the same force as though made under the provisions of this part.

Sec. 33923. Any person claiming under this part and having been in occupancy of any of the land described in section 33901 and having improved the land under the definition set forth in this part prior to January 1, 1913, shall be entitled to a lease with valuation periods as provided in this part, for 99 years, of the land so claimed and improved, upon payment to the officer authorized to receive the same of such consideration as may be fixed by the department. The department, and the other officers specified in this part, shall issue all orders and certificates necessary and lease to the person for a term of 99 years the land so applied for by him or her. However, the person shall file or cause to be filed proper applications therefor, as required by this part. The department may lease to any of the persons any of the lands applied for under this part for a term of years equal to or less than the full rental period if requested by the lessor.

Sec. 33924. (1) The words "possession", "occupancy", and "improvement" as used in this part include dredging or ditching, the throwing up of embankments, sheetpiling, filling in, the erection of fences, a boathouse, land made by dredging and filling, or building structures.

(2) As used in this part, "person" means an individual, partnership, corporation, association, or other nongovernmental legal entity.

Sec. 33925. The department shall not be compelled to give priority to any application for a lease of any lands where the improvements do not exceed in value $100.00. However, the department may give such an application priority over other applicants when in its judgment the facts warrant such a determination.

Sec. 33926. In describing the lands that may be leased under this part, the department shall be governed by maps, plats, and field notes of surveys made by the United States surveyors or by this state.

Sec. 33927. The department shall ascertain and decide upon the rights of persons claiming the benefit of this part, and it may hear and decide in a summary manner all matters respecting such applications or claims, except as otherwise provided in this part, and to that end may compel the attendance of witnesses and receive testimony by deposition or otherwise as may be produced, and determine thereon, according to equity and justice, the validity and just extent of the claim and respective rights of conflicting claimants making application for a lease. It shall cause minutes of the filing of such claims and all its proceedings to be entered in a book kept for that purpose and keep a record of the evidence from which its decisions are made, and it is authorized when it considers it necessary, or upon request of any of the claimants, to employ a stenographer to assist the department. The department may administer oaths, issue subpoenas, and compel the attendance of witnesses and the production of papers upon any hearing before the department under this part. In case of disobedience on the part of any person or persons, or willful failure to appear pursuant to any subpoena issued by the department, or upon refusal of any witnesses to testify regarding any matter pending before the department or to produce books and papers which he or she is required by the department to produce, the circuit court of any county in this state, upon the application of the department, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein, and in addition the department shall have the powers vested in the circuit court to compel witnesses to testify to any matter pending before the department, and each witness who appears before the department by its order or subpoena shall receive for his or her attendance the fees and mileage provided witnesses in civil cases in circuit courts, said fees to be paid by the party calling such witnesses.

Sec. 33928. In all cases where there is a contest or conflict between applicants for a lease to the same piece or parcel of land growing out of a prior occupation or improvements, such conflicting claims shall be determined by the department at a meeting scheduled by the department after notice to each of the claimants of the time and place of hearing, and in such cases depositions may be taken by any claimant in the manner provided for taking depositions in the circuit courts of this state. Any party considering himself or herself aggrieved by any decision of the department refusing to grant him or her a lease under the provisions of this part, whether in case of conflict, contest, or otherwise, has the right of appeal to the circuit court for the county in which the land is situated, and the proceedings to take the appeal and the trial of the appeal in any of those courts shall be in accordance with the statutes providing for appeals from district courts of this state, or the aggrieved party may take such other action at law or in equity as provided by the statutes and laws of this state.

Sec. 33929. All sales or transfers of leases shall contain a specific statement of the purpose for which the property leased is to be used by the purchaser or assignee, and no sale or transfer of any lease for other than club or residence purposes shall be valid, unless and until the sale or transfer is approved by the department. The department shall keep a book of record for the purpose of recording all sales or transfers of leases, and no sale or transfer of any lease by any lessee shall be valid unless and until the same is filed for record with the department.

Sec. 33930. Any lessee under this part may sell and assign the improvements on the premises so leased and his or her leasehold interest therein, if the rental is not in arrears and all taxes assessed and any lien thereon are fully paid. Any sale or assignment contrary to this part shall be void. If the lessee of any lot surveyed under former Act No. 175 of the Public Acts of 1899 partitions or divides the lot into 5 or more lots, tracts, or parcels, he or she shall plat the lot pursuant to the subdivision control act of 1967, Act No. 288 of the Public Acts of 1967, being sections 560.101 to 560.293 of the Michigan Compiled Laws. The department may join in the platting of leased lands.

Sec. 33931. When any lease expires by limitation, the last lessee or his or her assignee, heirs, or personal representative or any mortgagee or person having a mortgage interest therein shall have the first right for 60 days immediately following the expiration of limitation to re-lease the premises.

Sec. 33932. All money received from the leasing of land described in section 33901 shall be paid to the state treasurer and credited by the state treasurer as provided by law. The department may hire employees as in its judgment are necessary to implement this part.

Sec. 33933. The lessee's interest in all leases made under this part shall be assessed as real estate by the assessing officer of the township, city, or village in which the lands leased may be located, and the levy and collection of taxes so assessed on said lessee's interest shall be made and collected in the same manner and subject to the law now in force for the levy and collection of taxes upon real estate, and the assessing officers in determining the value of such leasehold interest for taxation purposes shall take into consideration the value of the land together with the improvements on the land.

Sec. 33934. In all cases where default is made in the payment of taxes to the treasurer of the township, city, or village in which the lands leased are located, the same shall be returned to the county treasurer according to and subject to the provisions of law for the return and collection of unpaid taxes assessed upon real estate. The treasurer of the township, city, or village, at the same time that he or she makes returns to the county treasurer, shall make and transmit to the department a list of the lands so delinquent for taxes and the amount of taxes delinquent upon each description in the list. The county treasurer shall, at the same time he or she makes his or her return of delinquent lands to the auditor general, make a similar return to the department of all such leasehold interests, the taxes upon which have not been collected, with a statement of the amount thereof. The county treasurer shall not receive payment of the amount of any taxes assessed upon such leasehold interests; but such taxes when returned delinquent by the township treasurer shall be payable only to the department. The department shall provide suitable books and enter in those books the description of every leasehold interest so returned and the taxes thereon. The person holding such interest in any parcel of said lands may pay to the department at any time within 1 year after the same becomes a lien on the premises, the taxes assessed thereon, with interest at the rate of 1/2 of 1% per month or fraction thereof, with 4% as a collection fee, from the first day of March last preceding. However, if the taxes are not paid within the time herein specified, said leasehold interest shall stand forfeited because of the nonpayment of such taxes, and within its discretion the department may release said premises to any person for any term of years not exceeding 99 years, upon such person paying to the department all unpaid taxes thereon, together with such rental as may be determined upon under this part by the department. In the event any such leasehold interest is owned by 2 or more persons, and any 1 or more of the persons neglect or refuse to pay his or her or their proportionate share of the taxes assessed against the leasehold at the date when the taxes become due and payable, then any 1 or more of the owners may pay his or her or their proportionate share of the taxes, and the county treasurer, in his or her return of delinquent lands to the department, shall indicate said partial payments of taxes credited to the owner or owners making them. Any owner not having made payment of his or her proportionate share of the taxes may, at any time within 1 year after the taxes have become a lien on the premises, pay to the department his or her proportionate share of the taxes with interest at the rate of 1% per month or fraction thereof, from the first day of March last preceding. If the proportionate share of taxes of any such owner is not paid within the time herein specified, the interest of the owner in the leasehold shall stand forfeited because of the nonpayment of such taxes, and thereafter within 30 days, such of the owners as have paid their proportionate share of the taxes, upon payment to the department of the amount of the taxes remaining due with interest accrued to the date of forfeiture, shall be entitled to conveyances by the department of such interests in the leasehold as have been forfeited. The interest thus conveyed shall be allotted equally among those owners who shall pay the delinquent taxes with interest as provided in this section. If default is made by any lessee in the payment of taxes, he or she shall be notified in writing by the department at least 3 months before the date of final forfeiture of the amount due and the penalty for nonpayment and the date upon which forfeiture is to occur. Upon payment to the department of taxes and interest as provided in this section, such amount shall be credited to the county in which such leasehold interests were assessed, in the same manner as taxes and interest are now credited to counties on part-paid state lands. Immediately upon formal determination by the department that a lease has been forfeited under this part, a certificate of cancellation of the same shall be executed under the seal of the department and shall be forwarded to the register of deeds of the county wherein such land is situated. Upon receipt of such certificate, the register of deeds shall at once cause the same to be recorded in a suitable book to be provided by said register. If the lease is of record in said office, the register shall note thereon the fact that a certificate of cancellation has been issued and shall also note the citation to the record of such certificate.

Sec. 33935. The several county treasurers shall report to the department all descriptions of the lands where the same have been returned for nonpayment of taxes and such taxes have not been paid within 6 months after such return, the report to be made by such treasurer within 30 days after the said 6 months shall have expired.

Sec. 33936. All of the unpatented overflowed lands, made lands, and lake bottomlands belonging to this state or held in trust by it shall be subject to lease for the removal of metallic minerals, marl, stone, rock, sand, gravel, earth, oil, and gas from or under the beds thereof, and the department may enter into lease with persons granting the right of drilling, mining, taking, and removing metallic minerals, marl, stone, rock, sand, gravel, earth, oil, and gas from or under these

lands upon such conditions and for such consideration as may be considered fair and reasonable by the department. However, all outstanding and existing oil and gas leases as herein provided, entered into by the department prior to September 28, 1951, are confirmed and validated. The owners, or lessees from the state, of lands fronting upon the Great Lakes and bays and harbors connected with the lakes shall have the exclusive right to enter into lease with the department for the taking and removing of marl, stone, rock, sand, gravel, and earth from the lake bed adjoining and lying immediately in front of their respective lands, from the water's edge outward 1,000 feet on Lakes Michigan, Huron, and Superior, 500 feet on Lakes Erie and St. Clair, and 100 feet on the channels of the St. Clair Flats upon such conditions and for such consideration as may be considered fair and reasonable by the department, except where such exclusive right has been waived by reason of written consent given by the owners and lessees from the state to any other person, to take and remove said marl, stone, rock, sand, gravel, and earth from the lake bed adjoining and lying immediately in front of their respective lands. Nothing in this part shall be construed as granting to surface or mineral owners, or lessees from the state, of lands fronting upon the Great Lakes and bays and harbors connected with said lakes any preferential right to enter into leases with the department for the drilling, mining, taking, and removing of metallic minerals or oil and gas from the subsurface area of the lands herein mentioned. Nothing herein contained prevents the removal of obstructions and deposits at the mouths of the several rivers and harbors of the state for the purpose of maintaining and improving navigation if that removal is otherwise in compliance with all other applicable regulatory criteria and requirements. The rights of the owners and lessees under this section shall be subject to the paramount rights of navigation, hunting, and fishing, which rights are to remain in the general public and the government, as now existing and recognized by law.

Sec. 33937. All exploration for or development, production, handling, or use of oil or gas under any lease authorized by former Act No. 326 of the Public Acts of 1913 or this part is subject to the regulatory jurisdiction and control of the supervisor of wells of this state in accordance with any statutes of this state applicable to the regulation of the exploration for, development, production, handling or use, of oil or gas, and rules adopted pursuant thereto, including, but not limited to, rules for the prevention of pollution of water, and for the protection of navigation, hunting, fishing, and other public uses. At the time of the filing of the application for a permit to drill, nothing in this part allows the location of any well within less than 500 feet outward from the water's edge of lands fronting on the Great Lakes and bays and harbors connected with the lakes without the written consent of the littoral owner or owners of property situated opposite and within 500 feet of the proposed well location subject to compliance with section 33938 and any other applicable regulatory criteria and requirements.

Sec. 33938. (1) A person shall not remove metallic minerals, marl, stone, rock, sand, gravel, or earth from or under the beds of the Great Lakes or the bays and harbors connected with the Great Lakes without first obtaining a written lease from the department granting the right to take the material.

(2) A person shall not conduct drilling operations for the removal of oil or gas from under the beds of the Great Lakes or connecting or connected bays, harbors, or waterways, unless all drilling operations originate from locations above and inland of the ordinary high-water mark and are conducted pursuant to the terms of a written lease obtained from the department. A person shall not conduct drilling operations for the purpose of exploring for oil and gas under the beds of the Great Lakes or connecting or connected bays, harbors, or waterways, unless all drilling operations originate from locations above and inland of the high-water mark.

(3) A person who violates subsection (1) or (2) is liable to this state for an amount equal to 3 times the value of the materials taken plus an amount equal to the cost of restoring the waters, beds, bottomlands, adjacent uplands, or any natural resource of the Great Lakes or connecting or connected bays, harbors, or waterways that is damaged as a result of the violation.

Sec. 33939. (1) In addition to the civil liability provided in section 33938, a person violating section 33938 for commercial purposes is guilty of a felony punishable by a fine not exceeding $5,000.00 or imprisonment for not more than 2 years, or both.

(2) A person violating section 33938 may be prosecuted in the judicial circuit for the county in which the shores are located where the offense was committed.

(3) The director and any special assistant or conservation officer appointed by the director shall have the same power to serve criminal process as sheriffs, and shall have the same right as sheriffs to require aid in executing criminal process. The director and any special assistant or conservation officer appointed by the director may arrest, without warrant, any person caught by the director, special assistant, or conservation officer in the act of violating section 33938.

PART 341 IRRIGATION DISTRICTS

Sec. 34101. (1) This part is applicable in counties with a population of 400,000 or less to the use of water from the Great Lakes only, which for the purposes of this part include those portions of those lakes and streams tributary to the

Great Lakes where the natural water levels are controlled by and at essentially the same water level as the Great Lake involved.

(2) Water shall not be withdrawn from the Great Lakes if it is being used within the confines of an irrigation district under this part which cannot reasonably be expected to benefit agricultural crops or other agricultural operations for improvement of the food supply and water shall not be withdrawn from the Great Lakes under this part at any place or at any time or in any amount or amounts for a single irrigation district or for the sum of all irrigation districts and water from the Great Lakes shall not be stored or transmitted by or for any irrigation district, authorized to be created by this part, in any manner or by any means or with the aid of any dam or other device that does 1 or more of the following:

(a) Will materially injure other users of the waters of the Great Lakes and connecting channels.

(b) Will significantly affect the levels of the Great Lakes and prejudice the state in its relations with other states bordering on the Great Lakes.

(c) Will adversely affect the state in its development and maintenance of fish and wildlife resources.

(d) Will be detrimental to the health and welfare of the people of the state.

(3) The department shall enforce and implement the conditions and limitations of this section in performing all duties placed upon it by the terms of this part, and for this purpose the department may call upon any officer, board, department, school, university, or other state institution and the officers or employees of any officer, board, department, school, university, or other state institution for assistance considered necessary to implement this part.

Sec. 34102. This part shall be liberally construed to promote the public welfare by irrigating lands, improving the existing water supply for the lands or providing new means or methods of water supply, or constructing and completing dams, reservoirs, canals, drains, structures, mechanical devices, levees, dikes, barriers and the use of any pumping equipment, pipelines, or other works or a combination of any or all of the same specified in the petition to be utilized for the preservation or operation of any irrigation system constructed, or proposed to be constructed, for the purpose of irrigation.

Sec. 34103. This part does not affect the validity of any district organized under the laws of this state prior to July 10, 1967, or its rights in or to property, or any of its rights or privileges of any kind or nature; but the districts are subject to this part so far as practicable. In addition, this part shall not do any of the following:

(a) Affect, impair, or discharge any contract, obligations, lien, or charge for, or upon which, a district was or might become liable or chargeable if former Act No. 205 of the Public Acts of 1967 had not been passed.

(b) Affect the validity of any bonds which had been issued prior to July 10, 1967.

(c) Affect any action pending on July 10, 1967.

Sec. 34104. An established irrigation district is a body corporate with power to contract, to sue and be sued, and to hold, manage, and dispose of real and personal property, in addition to any other powers conferred upon it by law, and shall continue in existence until such time as the district is dissolved by operation of law. In addition, each established irrigation district may adopt and use a corporate seal, acquire the right to use of water for irrigation purposes, under plans approved by the department, acquire sites for reservoirs and rights-of-way for drains, canals, and laterals, and exercise the right of condemnation pursuant to the provisions of Act No. 149 of the Public Acts of 1911, being sections 213.21 to 213.25 of the Michigan Compiled Laws, or under the applicable provisions of sections 75 to 84 of the drain code of 1956, Act No. 40 of the Public Acts of 1956, being sections 280.75 to 280.84 of the Michigan Compiled Laws, and shall be considered to be a state agency as that term is used in that act.

Sec. 34105. As used in this section, "federal government" means the United States and includes any and all agencies of the United States. The irrigation district may contract with the federal government, whereby the federal government will pay the whole or part of the cost of the project or will perform the whole or any part of the work connected with the project, which contract may include any specific terms required by act of congress or federal regulation as a condition for the participation of the federal government. The irrigation district may also contract with the state or any agency of the state or with any person in respect to any matter connected with the construction, operation, or maintenance of any irrigation works or for providing new means of water supply or the improvement of the existing water supply for the lands within the irrigation district. All contracts and agreements executed under this section shall be subject to the approval of the department. Such a contract or agreement or anything in consequence of such a contract or agreement shall not in any manner infringe upon or invade the state's public trust in its waters.

Sec. 34106. Subject to the written assignment, consent, and approval of the drain commissioner administering a county drainage district or the written assignment, consent, and approval of the drainage board of an intercounty drainage district, the county drain commissioner and the drainage board of intercounty drainage districts may grant unto the United States or to any irrigation district the right to use all the easements and rights-of-way conveyed to

their respective drainage district or to any county lying wholly or in part in such districts for the construction, use, and maintenance of any county or intercounty drain by the United States or any irrigation district in connection with any irrigation project undertaken by the irrigation district, solely or in cooperation with the United States or any other federal department or agency. Private rights of persons acquired by reason of the establishment and construction of the drain or part of the drain shall not be interfered with or in any way impaired by the use of the drain for irrigation purposes within the scope of this part.

Sec. 34107. A dam for irrigation purposes shall not be constructed unless the dam is approved in a manner provided by law.

Sec. 34108. An irrigation district may apply for and accept grants or any aid which the United States government or any agency of the United States government, the state or any of its political subdivisions, or any person may authorize to be made or given in aid of an irrigation project.

Sec. 34109. (1) Whenever a majority of freeholders owning lands in a proposed irrigation district who represent 1/3 or more of the area of lands within the district, or whenever freeholders owning lands who represent more than 1/2 the area of lands within the district, desire to provide for the irrigation of the lands; to improve the existing water supply for the lands or provide a new water supply system for the lands; to purchase, extend, operate, or maintain constructed irrigation works; or to cooperate with the United States for the assumption as principal or guarantor of indebtedness to the United States on account of district lands, they may file in the office of the county drain commissioner of the county that embraces the largest acreage of the district a petition, hereinafter referred to as the "petition", which shall include all of the following:

(a) The name of the proposed irrigation district.

(b) The necessity of the proposed work, describing the necessity.

(c) The object and purpose of the system proposed to be constructed, together with a general description of the system.

(d) A general description of the lands proposed to be included in the district, accompanying the petition shall be a preliminary engineering report on the feasibility of the project, including a report on the sufficiency of its water supply; the approximate area of irrigable land within the district, including an estimate of the cost of construction.

(e) The names of all freeholders owning lands in the proposed district, when known.

(f) Whether or not the petitioners desire and propose to cooperate with the United States.

(g) A general plea for the organization of the district.

(2) The petitions for the organization of the same district may be circulated and may be filed in more than 1 counterpart and, when filed, shall together be regarded as a single petition having as many signers as there are separate signers on the several petitions filed. All petitions for the organization of the district filed prior to the hearing on the petition shall be considered by the irrigation board the same as if filed with the first petition placed on file, and the signatures contained on those petitions shall be counted in determining whether sufficient persons have signed the petition.

Sec. 34110. The affidavit of 1 or more of the signers of the petition stating that they have examined it and are acquainted with the locality of the district and that the petition is signed by a sufficient number of persons owning lands in the district may be taken by the irrigation board as sufficient evidence of the facts stated in the petition.

Sec. 34111. The lands proposed to be included in any irrigation district need not be contiguous if the benefit of the proposed work in each part will exceed the costs of the proposed work in each part; and lands within any city, village, or township may be included within the limits of any irrigation district if the creation of the irrigation district will benefit the lands within the city, village, or township in any amount equal to or in excess of the amount of assessment for construction against the lands therein.

Sec. 34112. (1) There is created for each irrigation district petitioned for under this part an irrigation board to consist of the drain commissioner of each county involved in the project in which the lands of the proposed irrigation district are located, the director of the department of agriculture, and the chairperson of the directors of each soil conservation district involved in the project in which the lands of the proposed irrigation district are located. The director of the department of agriculture may designate a representative from the department of agriculture and the chairperson of the directors of each soil conservation district may designate a representative from the directors of the soil conservation district to serve in their place as members of the irrigation board. The county drain commissioner of the county in which the largest amount of irrigation district land is contained shall serve as chairperson of the irrigation board.

(2) A writing prepared, owned, used, in the possession of, or retained by the irrigation board in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442

of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws. The chairperson of the irrigation board shall keep minutes of the proceedings of the irrigation board, and records and files of the board shall be kept in his or her office.

(3) A member of the irrigation board shall be known as a commissioner of irrigation. A commissioner of an irrigation district is a public officer. The presumption shall be in favor of the regularity and validity of the official act of a commissioner of irrigation. When a report of the commissioners of an irrigation district or action is contested, the burden of proof shall rest upon the contestant. This subsection shall not apply to an action brought with respect to a failure to comply with Act No. 442 of the Public Acts of 1976, as prescribed in subsection (2), or a failure to comply with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

Sec. 34113. Before entering upon their duties, commissioners shall take and subscribe the constitutional oath of office. The commissioners shall make a true account of their activities to the department at least once annually.

Sec. 34114. (1) The department shall maintain superintending control over withdrawals and operations of each irrigation district formed under this part and may promulgate rules to implement this authority.

(2) The department may enforce the limitations and conditions of section 34101 by order prohibiting the further withdrawal of water or by taking other action as is authorized by this part or any other act or law. Each irrigation district shall reimburse the department for any reasonable and necessary expense incurred by the department in maintaining superintending control over that district.

Sec. 34115. (1) The business that the irrigation board may perform shall be conducted at a public meeting of the irrigation board held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(2) A meeting of the irrigation board may be called by the chairperson or by 2 members of the irrigation board. In addition to the notice prescribed in subsection (1), notice setting forth the time and place of the meeting shall be sent by certified mail to each member. That notice shall be mailed not less than 5 days before the meeting. The affidavit of the chairperson as to this mailing shall be conclusive proof of the mailing.

(3) The notice of a meeting prescribed in subsection (2) is not required if all members are present. A member of the board may waive the additional mailed notice of a meeting, either before or after the meeting.

(4) A majority of the members of the board constitutes a quorum for the transaction of business, but a lesser number may adjourn the meeting. Unless otherwise provided in this part, an action shall not be taken by the board except by a majority vote of the board's members. The adjournment of the hearing need not be advertised. Each order issued by the irrigation board shall be signed by the chairperson.

Sec. 34116. (1) Upon receipt of a petition for the establishment of an irrigation district, the county drain commissioner shall call the first meeting of the irrigation board. A copy of the petition and duplicates of all maps and other papers filed with the petition shall be filed with the department at least 4 weeks before the date set for the public hearing on the petition. The department shall examine the petition, maps, and other papers and, if it considers it necessary, examine the proposed district, the irrigation works proposed to be constructed, or the location of the irrigation works to be constructed, and prepare a report covering those features of the proposed irrigation project that relate to section 34101 and other matters as the department considers advisable. The department shall submit the report to the irrigation board at the meeting set for the hearing of the petition. All reasonable and necessary expenses incurred by the department in making the report shall be paid for by the persons signing the petition.

(2) Any additional compensation for services rendered on behalf of an irrigation district by members of the irrigation board in addition to official duties of the members shall be provided by the respective governmental agencies from which the original compensation for other various duties and services rendered are received.

Sec. 34117. (1) The irrigation board at its first meeting shall consider the petition for the project, make a tentative determination as to the sufficiency of the petition and the practicability of the proposed irrigation project, and make a tentative determination of the area to be assessed. The irrigation board shall give a name to the project and to the irrigation district.

(2) After the irrigation board has made the determination regarding sufficiency of the petition and practicability of the proposed project, it shall set a time and place to hear objections to the proposed irrigation project and the petition for the project, and to consider the matter of assessing the cost of the irrigation project in the affected lands.

(3) In addition to the public notice prescribed in section 34115(1), additional notice of the hearing shall be published twice in the county in not less than 1 newspaper published in the county and designated by the irrigation board, with the first publication not less than 20 days before the hearing. Notice of the hearing shall also be given to property

owners in the assessment district pursuant to Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the Michigan Compiled Laws. The irrigation board may provide a form to be substantially followed in giving this notice.

(4) At the hearing, the department shall submit its report on the petition, and any person is entitled to be heard. After the hearing, the irrigation board shall make a determination as to the sufficiency of the petition, the practicability of the irrigation project, and whether the irrigation project should be constructed. If the department determines that the project should be constructed, it shall issue an appropriate final order of determination.

(5) A final order of determination establishing an irrigation district shall not be issued by the irrigation board until the board has been served with an order by the department stating that the department has determined that the proposed irrigation by the proposed irrigation district, as set forth in the petition, supporting papers, and examinations specified in section 34116, is feasible and within the purpose of this part and that the project can be constructed and operated in a manner that would not violate the conditions and limitations of section 34101. If the department by its order determines that the proposed irrigation district cannot be established without violating a condition or limitation of section 34101, its order shall be final and further action for the formation of the proposed irrigation district shall not be taken by the irrigation board. Land in the irrigation district shall not be eliminated from or added to that land tentatively determined to be assessed without a rehearing after notice, as provided in this section. The irrigation district is legally established after entry of the final order of determination.

Sec. 34118. The irrigation board shall proceed to secure from a competent engineer plans and specifications and an estimate of the cost of the proposed irrigation project which, when adopted by the board, shall be filed with the chairperson.

Sec. 34119. The commissioners shall not be confined to the points of location, commencement, routes, or termini of the drains, reservoirs, dams, canals, ditches, pumps, or other work, or the number, extent, or size of the same, as proposed by the petitioners, but shall locate, design, lay out, and plan the same in the manner that they determine is best to promote the public welfare and to benefit the lands of the parties interested with the least damage and greatest benefit to all lands affected thereby. All alterations or deviations in the design plans of the irrigation works shall have the final approval of the department.

Sec. 34120. The irrigation board shall proceed to secure the lands or rights-of-way necessary for the irrigation project. If the lands or rights-of-way cannot be secured by negotiation, then the irrigation board may proceed under section 34104.

Sec. 34121. The irrigation board shall advertise for bids for construction of the improvements requested in the petition. The contract shall be let to the lowest bidder in accordance with the statutory provisions applicable to award of public contracts, and the irrigation board has the right to reject any and all bids and readvertise the bids.

Sec. 34122. Within 10 days after the letting of contracts, or, in case of an appeal, then immediately after the appeal has been decided, the chairperson of the irrigation board shall make a computation of cost of a project under this part, which shall include all preliminary costs, the cost of construction of the improvement, establishment of the special assessment district, the preparation of the tax roll, notices, advertising, printing, financing, legal, professional, engineering, inspection, condemnation expenses, interest on the bonds for the first year if bonds are to be issued and an amount not to exceed 10% of the gross sum to cover contingent expenses, and all other administrative costs incidental to making of the improvement or establishment of the irrigation special assessment district. The chairperson shall submit the computation of cost to the irrigation board for its approval, and, when the computation of cost is approved by the board or amended and approved by the board, it shall become the final computation of cost for the irrigation district.

Sec. 34123. The chairperson of the irrigation board, under the direction of the board, shall make out an assessment roll, entering and describing on the assessment roll all the lots, premises, and parcels of land to be assessed, including on the assessment roll all lands benefited by the construction of the irrigation improvement. The assessments shall be based upon benefits to be derived from the proposed irrigation improvement. The irrigation board shall tentatively establish the percentage of the cost of the irrigation improvement which is to be borne by each of the parcels of land assessed on the special assessment roll. After the tentative apportionments and assessment roll is made, the irrigation board shall set a time and place when and where they will meet and hear any objections to the roll.

Sec. 34124. Notice of hearing shall be given as prescribed in section 34115 and Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the Michigan Compiled Laws, and also by publication at least twice in a newspaper published and of general circulation in the county, the first publication to be at least 20 days before the time of the hearing. The irrigation board shall provide a form to be substantially followed in giving of the notice.

Sec. 34125. At the hearing, the irrigation board shall hear the proofs and allegations of all parties interested, shall carefully reconsider and review the description of land comprised within the irrigation improvement special assessment district, the several descriptions, and the apportionment of benefits, and shall define and equalize the district as may seem just and equitable.

Sec. 34126. After the hearing, the irrigation board shall enter its final order of apportionment and order of confirmation of the roll and shall make an endorsement upon the roll showing the date of confirmation and when the amount to be raised is to be payable. If the amount is to be payable in more than 1 installment, the irrigation board shall enter on the roll a memorandum of the installments and of the years when the installments shall be spread and shall add a certificate in writing of the determination whether the taxes assessed for benefits shall be paid in 1 or more years. The special assessment rolls shall be dated and signed by the irrigation board and filed on or before the last Wednesday in September of each year in the office of the county clerk of the counties involved. When any improvement special assessment roll is confirmed by the irrigation board, it shall be final and conclusive.

Sec. 34127. From the date of confirmation of the special assessment roll, all irrigation special assessments constitute a lien upon the respective lots or parcels assessed and, when assessed, shall be charged against the person to whom assessed until paid.

Sec. 34128. The chairperson of the irrigation board, at the direction of the irrigation board, shall prepare a tax assessment roll in each year for the collection of taxes for the current year and shall certify it to the county clerk on or before the first day of the annual meeting of the county board of commissioners. In each roll, he or she shall add to the amount to be collected interest on all unpaid installments to the date of tax collection. To the roll for the last year, he or she shall add a further amount, if any, as may be necessary, together with outstanding uncollected taxes, to pay all outstanding bonds and interest on the bonds to maturity. If the roll is made payable in more than 1 installment, a permanent assessment roll may be maintained in the office of the county treasurer, subject to the direction of the board of county auditors, in counties having such a board, and of the county board of commissioners in other counties, showing the total cost, the number of installments, and the amount of each annual assessment, together with interest charges on the assessment, which shall be carried in a separate column. If the roll is made payable in more than 1 installment, and the total amount of any assessment is $10.00 or less, exclusive of interest, then the assessment shall be payable in 1 installment; but if the assessment exceeds $10.00 and is made payable in more than 1 installment, then no installment, exclusive of interest, shall be less than $10.00, excepting the final installment, which shall be payable in the amount of the actual balance.

Sec. 34129. The county board of commissioners of the counties involved shall order the spread of all irrigation special assessments on the local tax rolls by the local tax assessing officials pursuant to sections 36 to 38 of the general property tax act, Act No. 206 of the Public Acts of 1893, being sections 211.36 to 211.38 of the Michigan Compiled Laws.

Sec. 34130. The supervisor or the village or city assessor shall spread on his or her roll the total amount of all irrigation special assessment taxes determined by the irrigation board and approved by the county board of commissioners to be assessed upon the county, township, city, or village tax roll for the year in which the same was assessed and extending the tax in the same column with the general county, township, city, or village tax. In villages or cities where the municipal taxes are assessed and collected prior to the October meeting of the county board of commissioners, all taxes ordered to be spread against the municipalities shall be spread during the calendar year following the action by the county board of commissioners. The supervisor, assessor, or tax levying official shall spread upon the roll, separately and immediately following the other descriptions, all tracts or parcels of land specified by the irrigation board to be assessed for benefits, and shall place opposite each description, in a column marked "(giving the name or number)..... irrigation special assessment taxes", the amount of taxes apportioned on that tract or parcel of land, as certified to him or her by the county clerk.

Sec. 34131. All irrigation special assessment taxes assessed under this part shall be subject to the same interest and charges, and shall be collected in the same manner, as state and other general taxes are collected, and collecting officers are vested with the same power and authority in the collection of the taxes as are or may be conferred by law for collecting general taxes. Irrigation special assessment taxes, when collected, shall be returned to the county treasurer to be disbursed by him or her. If a suit is brought against the collector arising out of the collection of an irrigation special assessment tax, the county shall defend the collector in the same manner that he or she has the right to be defended in the collection of general taxes. A suit shall not be instituted to recover any special assessment tax or money paid or property sold therefor, or for damages on account thereof, unless brought within 30 days from the time of payment of the money to, or sale of the property by, the collecting officer. If the tax is paid under protest, the reasons for the protest shall be specified, and the same procedure observed as is required by the general tax law. All taxes levied under this part, with all lawful costs, interest, and charges, shall be and remain a perpetual lien upon the lands upon which they are assessed, and a personal claim against the owner of the lands until they are paid. If the taxes levied by the

special assessment irrigation district are not collected by the treasurer of a participating municipality, they shall be returned by him or her, together with the lands upon which they were levied, to the county treasurer in the same return, at the same time, and in the same manner, in every respect, naming in each case the particular irrigation district, as lands are returned for state, county, and township taxes, and the taxes shall follow the lands, the same as all other taxes, and all the general provisions of law for enforcing the payment of township, county, and state taxes shall apply to irrigation special assessment taxes and to the lands returned delinquent for those taxes, in the same manner and with the same effect.

Sec. 34132. If the assessments in any special assessment roll prove insufficient for any reason, including the noncollection of the assessments, to pay for the improvement for which they were made or to pay the principal and interest on the bonds issued in anticipation of the collection of the assessments, then the irrigation board shall make additional pro rata assessments to supply the deficiency, but the total amount assessed against any parcel of land shall not exceed the value of the benefits received from the improvement.

Sec. 34133. If, in the opinion of the irrigation board, a special assessment is invalid by reason of irregularities or informalities in the proceedings, or if any court of competent jurisdiction adjudges an assessment illegal, the irrigation board, whether the improvement has been made or not and whether any part of the assessment has been paid or not, may proceed from the last step at which the proceedings were legal and cause a new assessment to be made for the same purpose for which the former assessment was made. All proceedings on the reassessment and for the collection of the reassessment shall be conducted in the same manner as provided for the original assessment. Whenever an assessment or any part of an assessment levied upon any premises has been set aside in such a manner, if the assessment or part of an assessment has been paid and not refunded, the payment made shall be applied upon the reassessment.

Sec. 34134. The irrigation board of each special assessment district may issue irrigation orders for the payment of all charges reflected by the computation of costs upon the irrigation fund of each particular district. Irrigation taxes shall not be assessed for benefits received that are to be paid by irrigation orders in excess of 10 annual installments. All irrigation orders for the payment for easements or rights-of-way shall be paid out of the first year's taxes, and the balance of the first year's taxes shall be applied toward payment of the irrigation construction contracts. For the balance due upon such contracts, the irrigation board shall draw irrigation orders payable out of each succeeding year's assessment. An irrigation board shall not draw orders payable in any 1 year for a larger amount than 90% of that year's assessment. Irrigation orders shall be ordered to be paid by the irrigation board only after a certification by the treasurer of the irrigation district that there are sufficient funds in the irrigation district fund to pay the order. The county treasurers of the counties involved in irrigation districts shall keep a record of all receipts and disbursements of all irrigation districts in their respective counties.

Sec. 34135. The county board of commissioners of the county involved by a resolution adopted by a 2/3 vote of its members may pledge the full faith and credit of the county for the prompt payment of the interest on the bonds or evidences of indebtedness issued by the respective irrigation districts under this part.

Sec. 34136. (1) The irrigation board shall operate and maintain the property of the irrigation district.

(2) The irrigation board may fix and collect water charges to cover the cost of the operation and maintenance of physical structures and administrative expenses of the district in connection with the transportation, impoundment, and utilization of water for irrigation purposes. The charges shall be approved by the majority vote of the irrigation board and shall be made to each user of water.

(3) Charges for water services furnished to a user or to a landowner shall be a lien on the affected lands from the date the charges are due. Charges delinquent for 6 months or more shall be certified annually to the proper tax assessing officer or agency, who shall enter the charges upon the next tax roll against the premises to which the services have been rendered, and the charges shall be collected and the lien shall be enforced in the same manner as provided for the collection of taxes assessed upon the tax roll and the enforcement of the lien. The time and manner of certification and other procedures regarding the collection of the charges and the enforcement of the lien shall be prescribed by the irrigation board in cooperation with the governing bodies of the public corporations in which the lands are located. Instead of or in addition to levying water charges for the operation and maintenance of the properties of the irrigation district, the irrigation board, under the same conditions and for the same purpose, may exact connection, readiness to serve, availability, or service charges to be paid by the users or owners of land utilizing irrigation water for irrigation purposes.

(4) Future necessary expenses incurred in the administration and operation of the district and its properties may be assessed not less than once every 3 years on the basis of benefits derived after notice of the hearing on the maintenance assessment roll is given in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections

15.261 to 15.275 of the Michigan Compiled Laws, and Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the Michigan Compiled Laws.

Sec. 34137. (1) Except as prescribed in subsection (2), the final order of determination, the order of apportionment of benefits, or the order confirming the special assessment roll shall not be subject to attack in a court except by proceedings by writ of superintending control brought within 20 days after the filing of the order in the office of the chairperson of the irrigation board issuing the order. If a proceeding is not brought within the time prescribed, the irrigation special assessment district and project shall be considered to have been legally established, and the legality of the irrigation special assessment district and project and the assessments for the district and project shall not be questioned in an action at law or in equity.

(2) This section shall not prohibit the bringing of an action pursuant to the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

Sec. 34138. The irrigation board may, by the adoption of an appropriate order, provide for the suspension of water delivery to any land in the district upon which the irrigation taxes levied and assessed remain due and unpaid for 2 years. The irrigation board shall make all arrangements for right-of-way for laterals from the main drain or canal to each tract of land subject to assessment, and when necessary the board shall condemn to procure right-of-way for laterals and make such rules in regard to the payment for the right-of-way as it considers just and equitable.

Sec. 34139. The irrigation board shall manage and conduct the business affairs of the district, make and execute all necessary contracts, employ agents, officers, and employees as may be required and prescribe their duties, establish equitable orders and rules for the distribution and use of water among owners of such lands, and generally perform all acts as are necessary to fully implement this part. The orders and rules with respect to the irrigation district shall be printed in convenient form for distribution to the freeholders in the irrigation district.

Sec. 34140. The irrigation board and its agents and employees may enter upon any land within the district to make surveys, and may locate the line of any drain or canal and the necessary branches of that location. The irrigation board may acquire, either by purchase or condemnation, all lands and other property necessary for the construction, use, maintenance, repair, and improvement of any canal, drain or drains, and lands for reservoirs or dams, for the storage of water, and for all necessary appurtenances thereto. The board may acquire by purchase or condemnation any irrigation works, dams, drains, canals, pumping equipment, pumps, or reservoirs for the use of the district. The irrigation board may construct the necessary dams, reservoirs, and works for the storage or transfer of Great Lakes water for the district, and may perform any lawful act necessary to furnish water to each landowner in the district for irrigation purposes.

Sec. 34141. Any person may advance money for the payment of any part of the cost of a project and shall be reimbursed by the irrigation special assessment district, with or without interest as may be agreed, when funds are available for that purpose. The obligation of the irrigation special assessment district to make the reimbursement may be evidenced by a contract or note, which contract or note may pledge the full faith and credit of the irrigation special assessment district and may be made payable out of the assessments made against properties in the irrigation special assessment district, out of the proceeds of bonds issued by the irrigation special assessment district pursuant to this part, or out of any other available funds, but the contract or note shall be considered to be an obligation within the meaning of the provisions of the municipal finance act, Act No. 202 of the Public Acts of 1943, being sections 131.1 to 139.3 of the Michigan Compiled Laws.

Sec. 34142. The county treasurers of the counties in which the irrigation district is located shall carry all accounts and items pertaining thereto as a separate account upon the books of their office. A record shall be kept of the amount of money paid from the irrigation district funds for the use and benefit of any irrigation district and, upon payment to the county treasurer of taxes assessed by the irrigation district, the county treasurer shall pay for the outstanding interest on bonds issued out of the taxes received or shall transfer the excess of funds to the irrigation district fund for the use and benefit of the irrigation district.

Sec. 34143. The irrigation district funds shall be deposited by the county treasurer in a bank of the county in accordance with the general laws of this state, and interest so received shall belong to the irrigation district fund. Money collected or appropriated for an individual irrigation special assessment district fund shall be used solely for the use and benefit of the irrigation district for which it was raised or received.

Sec. 34144. The county treasurer shall be the custodian of the funds of the irrigation district. He or she may designate 1 or more of his or her deputies who may act for him or her in the performance of any of his or her duties under this section. The irrigation board may require the county treasurer and any deputy county treasurer, so designated, to furnish a bond payable to the irrigation district, in addition to any bond payable to the county,

conditioned upon the faithful discharge of his or her duties in respect to money belonging to the irrigation district, the premium on the bond to be paid by the irrigation district. Money held by the treasurer shall be paid out only upon order of the irrigation board, except that an order shall not be required for the payment of principal and interest on bonds.

Sec. 34145. The county board of commissioners in which an irrigation district is proposed to be formed may provide for an appropriation to create a revolving fund to pay for the preliminary costs of irrigation improvement projects within the county. The preliminary costs shall be assessed to the property owners in the assessment district by the irrigation board after notice of the hearing is given as prescribed in section 34115 and Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the Michigan Compiled Laws. The preliminary costs shall be repaid to the fund if the project is not finally constructed. The preliminary costs shall be repaid to the fund when a project is constructed out of the first bond proceeds, taxes, or assessments received.

Sec. 34146. The irrigation board may borrow money and issue the bonds of the special assessment district for that money in anticipation of the collection of special assessments to defray the cost of any improvement made under this part after the special assessment roll has been confirmed. The bonds shall not exceed the amount of the special assessments in anticipation of the collection of which they are issued and shall bear interest at a rate not exceeding 6% per annum. Collections on special assessments to the extent pledged for the payment of bonds shall be set aside in a special fund for the payment of the bonds. The issuance of special assessment bonds shall be governed by the general laws of the state applicable to the issuance of special assessment bonds and in accordance with the municipal finance act, Act No. 202 of the Public Acts of 1943, being sections 131.1 to 139.3 of the Michigan Compiled Laws. Bonds may be issued in anticipation of the collection of special assessments levied in respect to 2 or more public improvements, but no special assessment district shall be compelled to pay the obligation of any other special assessment district.

LAND HABITATS

PART 351 WILDERNESS AND NATURAL AREAS

Sec. 35101. As used in this part:

(a) "Natural area" means a tract of state land or water under control of the department and dedicated and regulated by the department pursuant to this part which:

(*i*) Has retained or reestablished its natural character, or has unusual flora and fauna or biotic, geologic, scenic, or other similar features of educational or scientific value, but it need not be undisturbed.

(*ii*) Has been identified and verified through research and study by qualified observers.

(*iii*) May be coextensive with or part of a wilderness area or wild area.

(b) "Wild area" means a tract of undeveloped state land or water under control of the department and dedicated and regulated by the department pursuant to this part which:

(*i*) Is less than 3,000 acres of state land.

(*ii*) Has outstanding opportunities for personal exploration, challenge, or contact with natural features of the landscape and its biological community.

(*iii*) Possesses 1 or more of the characteristics of a wilderness area.

(c) "Wilderness area" means a tract of undeveloped state land or water under control of the department and dedicated and regulated by the department pursuant to this part which:

(*i*) Has 3,000 or more acres of state land or is an island of any size.

(*ii*) Generally appears to have been affected primarily by forces of nature with the imprint of the work of humans substantially unnoticeable.

(*iii*) Has outstanding opportunities for solitude or a primitive and unconfined type of recreation.

(*iv*) Contains ecological, geological, or other features of scientific, scenic, or historical value.

Sec. 35102. The department shall identify for dedication, dedicate, and administer wilderness areas, wild areas, and natural areas in accordance with this part. The department shall enlist the voluntary cooperation and support of interested citizens and conservation groups.

Sec. 35103. (1) By February 3, 1972, and each year thereafter, the department shall review all state land under its control and identify those tracts that in its judgment best exhibit the characteristics of a wilderness area, wild area, or natural area. The department shall determine which land in its judgment is most suitable for dedication as wilderness areas, wild areas, or natural areas. The department shall administer the proposed land so as to protect its natural values.

(2) A citizen may propose to the department land that in his or her judgment exhibits the characteristics of a wilderness area, wild area, or natural area and is suitable for dedication by the department as such or may propose the alteration or withdrawal of previously dedicated areas. Land under control of the department that has been dedicated or designated before August 3, 1972 as a natural area, nature study area, preserve, natural reservation, wilderness, or wilderness study area shall be considered by the department and, if eligible, proposed for dedication. The proposals of the department shall be filed with both houses of the legislature.

(3) Within 90 days after land is proposed in accordance with subsections (1) or (2), the department shall make the dedication or issue a written statement of its principal reasons for denying the proposal. The department shall dedicate a wilderness area, wild area, or natural area, or alter or withdraw the dedication, by promulgating a rule. The department shall hold a public hearing relative to the dedication in the county where the land to be dedicated is located before a rule making the dedication may be promulgated. Not more than 10% of state land under the control of the department shall be dedicated pursuant to this part. All persons who have notified the department in writing during a calendar year of their interest in dedication of areas under this part shall be furnished by the department with a notice of all areas pending dedication or alteration or withdrawal from dedication during that calendar year.

(4) The department may exchange dedicated land for the purpose of acquiring other land that, in its judgment, is more suitable for the purposes of this part.

Sec. 35104. (1) The department shall attempt to provide, to the extent possible, wild areas and natural areas in relative proximity to urban centers of more than 100,000 population.

(2) Private land or land under the control of other governmental units may be designated by the department in the same way as a wilderness area, wild area, or natural area and administered by the department under a cooperative agreement between the owner and the department.

Sec. 35105. The following are prohibited on state land in a wilderness area, wild area, or natural area or on state land proposed by the department for dedication in 1 of these categories during the 90 days a dedication is pending pursuant to section 35103:

(a) Removing, cutting, picking, or otherwise altering vegetation, except as necessary for appropriate public access, the preservation or restoration of a plant or wildlife species, or the documentation of scientific values and with written consent of the department.

(b) Granting an easement for any purpose.

(c) Exploration for or extraction of minerals.

(d) A commercial enterprise, utility or permanent road.

(e) A temporary road, landing of aircraft, use of motor vehicles, motorboats, or other form of mechanical transport, or any structure or installation, except as necessary to meet minimum emergency requirements for administration as a wilderness area, wild area, or natural area by the department.

(f) Trapping and hunting when recommended by the department.

Sec. 35106. A person who lands an aircraft or operates a motor vehicle, motorboat, or other form of mechanical transport in a wilderness area, wild area, or natural area without the express written consent of the department is guilty of a misdemeanor.

Sec. 35107. (1) State land in a wilderness area, wild area, or natural area shall be maintained or restored so as to preserve its natural values in a manner compatible with this part.

(2) Grasslands, forested lands, swamps, marshes, bogs, rock outcrops, beaches, and wholly enclosed waters of this state that are an integral part of a wilderness area, wild area, or natural area shall be included within and administered as a part of the area.

Sec. 35108. The department shall post signs in conspicuous locations along the borders of a wilderness area, wild area, or natural area. The signs shall give notice of the area's dedication and shall state those activities which are prohibited pursuant to section 35105 and those activities which are punishable as a misdemeanor pursuant to section 35106.

Sec. 35109. The department may acquire land through purchase, gift, or bequest for inclusion in a wilderness area, wild area, or natural area.

Sec. 35110. The local taxing authority is entitled to collect from the state a tax on a wilderness, wild, or natural area within its jurisdiction at its ad valorem tax rate or $2.00 per acre, whichever is less. The department shall audit the assessments of wilderness, wild, or natural areas regularly to ensure that the properties are assessed in the same ratio

as similar properties in private ownership. The legislature shall appropriate from the general fund for payments under this section.

Sec. 35111. (1) Nothing in this part affects or diminishes any right acquired or vested before August 3, 1972.

(2) Nothing in this part alters the status of land dedicated by the commission before August 3, 1972 until dedicated pursuant to section 35103, except that tax reverted lands are subject to section 35110. Purchased land dedicated by the commission before August 3, 1972 is subject to ad valorem taxes if dedicated pursuant to section 35103.

PART 353 SAND DUNE PROTECTION AND MANAGEMENT

Sec. 35301. As used in this part:

(a) "Contour change" includes any grading, filling, digging, or excavating that significantly alters the physical characteristic of a critical dune area, except that which is involved in sand dune mining as defined in part 637.

(b) "Crest" means the line at which the first lakeward facing slope of a critical dune ridge breaks to a slope of less than 18% for a distance of at least 20 feet, if the areal extent where this break occurs is greater than 1/10 acre in size.

(c) "Critical dune area" means a geographic area designated in the "atlas of critical dune areas" dated February 1989 that was prepared by the department.

(d) "Foredune" means 1 or more low linear dune ridges that are parallel and adjacent to the shoreline of a Great Lake and are rarely greater than 20 feet in height. The lakeward face of a foredune is often gently sloping and may be vegetated with dune grasses and low shrub vegetation or may have an exposed sand face.

(e) "Model zoning plan" means the model zoning plan provided for in sections 35326 to 35338.

(f) "Planning commission" means the body or entity within a local government that is responsible for zoning and land use planning for the local unit of government.

(g) "Restabilization" means restoration of the natural contours of a critical dune to the extent practicable, and the restoration of the protective vegetative cover of a critical dune through the establishment of indigenous vegetation, and the placement of snow fencing or other temporary sand trapping measures for the purpose of preventing erosion, drifting, and slumping of sand.

(h) "Special use project" means any of the following:

(*i*) A proposed use in a critical dune area for an industrial or commercial purpose regardless of the size of the site.

(*ii*) A multifamily use of more than 3 acres.

(*iii*) A multifamily use of 3 acres or less if the density of use is greater than 4 individual residences per acre.

(*iv*) A proposed use in a critical dune area, regardless of size of the use, that the planning commission, or the department if a local unit of government does not have an approved zoning ordinance, determines would damage or destroy features of archaeological or historical significance.

(i) "Use" means a developmental, silvicultural, or recreational activity done or caused to be done by a person that significantly alters the physical characteristic of a critical dune area or a contour change done or caused to be done by a person. Use does not include sand dune mining as defined in part 637.

(j) "Zoning ordinance" means an ordinance of a local unit of government that regulates the development of critical dune areas within the local unit of government pursuant to the requirements of this part.

Sec. 35302. The legislature finds that:

(a) The critical dune areas of this state are a unique, irreplaceable, and fragile resource that provide significant recreational, economic, scientific, geological, scenic, botanical, educational, agricultural, and ecological benefits to the people of this state and to people from other states and countries who visit this resource.

(b) Local units of government should have the opportunity to exercise the primary role in protecting and managing critical dune areas in accordance with this part.

(c) The benefits derived from alteration, industrial, residential, commercial, agricultural, silvicultural, and the recreational use of critical dune areas shall occur only when the protection of the environment and the ecology of the critical dune areas for the benefit of the present and future generations is assured.

Sec. 35303. (1) As soon as practicable following July 5, 1989, the department shall notify by mail each local unit of government that has within its jurisdiction critical dune areas, and include a copy of the "atlas of critical dune areas" dated February 1989 and a copy of former Act No. 222 of the Public Acts of 1976 with the notice. By October 1, 1989, the department shall mail a copy of the same notice to each property owner of record who owns property within a critical dune area. The notices shall include the following information:

(a) That designated property within the local unit of government is a critical dune area that is subject to regulation under former Act No. 222 of the Public Acts of 1976.

(b) That a local unit of government may adopt a zoning ordinance that is approved by the department, or, if the local unit of government does not have an approved ordinance, the use of the critical dune area will be regulated by the department under the model zoning plan.

(2) Upon the request of the department, a local unit of government shall supply to the department the address of each property owner of record who owns property within a critical dune area within its jurisdiction in a timely manner that enables the department to provide notice to the property owners as required under subsection (1).

Sec. 35304. (1) Beginning on July 5, 1989 and until the local unit of government either adopts a zoning ordinance that is approved by the department or the department issues permits as provided in subsection (3) or (8), whichever occurs first, the local unit of government may require the submittal of applications for permits for uses in critical dune areas. The local unit of government shall evaluate applications for uses and may issue permits for uses in critical dune areas that are in conformance with and are at least as environmentally protective as the model zoning plan.

(2) A local unit of government that elects to issue permits during the interim period described in subsection (1) shall notify the department of its decision and shall reflect this decision by passage of a resolution of its governing body or by providing documentation to the department that an existing ordinance meets or exceeds the requirements of the model zoning plan. Following the passage of the resolution, a local unit of government may issue permits during the interim period in accord with the procedures and criteria established in subsection (4).

(3) If by August 1, 1989 a local unit of government has not passed a resolution indicating its intent to issue permits during the interim period or submitted an existing ordinance that meets the requirements of this part, the department shall issue permits in the same manner provided for local units of government in subsection (4) for uses within that local unit of government under the model zoning plan until the local unit of government submits a zoning ordinance to the department and obtains approval of the ordinance.

(4) A local unit of government that issues permits during the interim time period provided for in subsection (1), or the department if it issues permits as provided under subsection (3) or (8), shall issue permits in accordance with all of the following:

(a) A person proposing a use within a critical dune area shall file an application with the local unit of government, or with the department if the department is issuing permits under the model zoning plan. The application form shall include information that may be necessary to conform with the requirements of this part. If a project proposes the use of more than 1 critical dune area location within a local unit of government, 1 application may be filed for the uses.

(b) Notice of an application filed under this section shall be sent to a person who makes a written request to the local unit of government for notification of pending applications accompanied by an annual fee established by the local unit of government. The local unit of government shall prepare a monthly list of the applications made during the previous month and shall promptly mail copies of the list for the remainder of the calendar year to the persons who have requested notice. In addition, if the department issues permits under this part within a local unit of government, notice of an application shall be given to the local soil conservation district office, the county clerk, the county health department, and the local unit of government in which the property is located. The monthly list shall state the name and address of each applicant, the location of the applicant's project, and a summary statement of the purpose of the use. The local unit of government may hold a public hearing on pending applications.

(c) The notice shall state that unless a written request is filed with the local unit of government within 20 days after the notice is mailed, the local unit of government may grant the application without a public hearing. Upon the written request of 2 or more persons that own real property within the local unit of government or an adjacent local unit of government, or that reside within the local unit of government or an adjacent local unit of government, the local unit of government shall hold a public hearing pertaining to a permit application.

(d) At least 10 days' notice of a hearing to be held pursuant to this section shall be given by publication in 1 or more newspapers of general circulation in the county in which the proposed use is to be located, and in other publications, if appropriate, to give notice to persons likely to be affected by the proposed use, and by mailing copies of the notice to the persons who have requested notice pursuant to subsection (1) and to the person requesting the hearing.

(e) After the filing of an application, the local unit of government shall grant or deny the permit within 60 days, or within 90 days if a public hearing is held. When a permit is denied, the local unit of government shall provide to the applicant a concise written statement of its reasons for denial of the permit, and if it appears that a minor modification of the application would result in the granting of the permit, the nature of the modification shall be stated. In an emergency, the local unit of government may issue a conditional permit before the expiration of the 20-day period referred to in subdivision (c).

(f) The local unit of government shall base a decision to grant or deny a permit required by this section on the model zoning plan or on any existing ordinance that is in effect in the local unit of government that provides the same or a greater level of protection for critical dune areas and that is approved by the department.

(5) A local unit of government zoning ordinance regulating critical dune areas may be more restrictive of development and more protective of critical dune areas than the model zoning plan.

(6) As soon as possible following adoption of a zoning ordinance enacted pursuant to this part, the local unit of government shall submit to the department a copy of the ordinance that it determines meets the requirements of this part. If the local unit of government has an existing ordinance that it contends is at least as restrictive as the model zoning plan, that ordinance may be submitted to the department at any time. The department shall review zoning ordinances submitted under this section to assure compliance with this part. If the department finds that an ordinance is not in compliance with this part, the department shall work with the local unit of government to bring the ordinance into compliance and inform the local unit of the failure to comply and in what ways the submitted ordinance is deficient. Unless a local unit of government receives notice within 90 days of submittal that the ordinance they submit to the department under this subsection is not in compliance with this part, the local unit of government shall be considered to be approved by the department.

(7) A local unit of government may adopt, submit to the department, and obtain approval of a zoning ordinance based on the model zoning plan or an equivalent ordinance as provided in this section by June 30, 1990. If a local unit does not have an approved ordinance by June 30, 1990, the department shall implement the model zoning plan for that local unit of government in the same manner and under the same circumstances as provided in subsection (4). Notwithstanding any other provision of this part, a local unit of government may adopt a zoning ordinance at any time, and upon the approval of the department, that ordinance shall take the place of the model zoning plan implemented by the department.

(8) If a local unit of government in which a proposed use is to be located does not elect to issue permits or does not receive approval of a zoning ordinance that regulates critical dune areas, the department shall implement the model zoning plan in the place of the local unit of government and issue special exceptions in the same circumstances as provided in this part for the issuance of variances by local units of government.

(9) The department shall develop permit application forms to implement this section.

(10) The department shall assist local units of government in developing ordinances that meet the requirements of this part.

Sec. 35305. (1) If a person is aggrieved by a decision of the department in regard to the issuance or denial of a permit or special exception under this part, the person may request a formal hearing on the matter involved. The hearing shall be conducted by the department as a contested case hearing in the manner provided for in the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(2) Following the hearing provided for under subsection (1), a decision of the department in regard to the issuance or denial of a permit or special exception under this part is subject to judicial review as provided for in Act No. 306 of the Public Acts of 1969.

Sec. 35306. (1) The lawful use of land or a structure, as existing and lawful within a critical dune area at the time the department implements the model zoning plan for a local unit of government, may be continued although the use of that land or structure does not conform to the model zoning plan. The continuance, completion, restoration, reconstruction, extension, or substitution of existing nonconforming uses of land or a structure may continue upon reasonable terms that are consistent, to the extent possible, with the applicable zoning provisions of the local unit of government in which the use is located.

(2) The lawful use of land or a structure, as existing and lawful within a local unit of government that has a zoning ordinance approved by the department, may, but is not required by this part to, be continued subject to the law pertaining to existing uses within the act that enables that local unit of government to zone and the applicable zoning provisions of the local unit of government.

(3) A use needed to obtain or maintain a permit or license that is required by law to continue operating an electric utility generating facility that is in existence on July 5, 1989 shall not be precluded under this part.

(4) Uses that have received all necessary permits from the state or the local unit of government in which the proposed use is located by July 5, 1989, are exempt for purposes for which a permit is issued from the operation of this part or local ordinances approved under this part. Such uses shall be regulated pursuant to local ordinances in effect by that date.

Sec. 35307. Upon adoption of an approved zoning ordinance, certified copies of the maps showing critical dune areas, and existing development and uses, shall be sent by the local unit of government to the state tax commission and the assessing office, planning commission, and governing board of the local unit of government, if requested by an entity listed in this section.

Sec. 35308. (1) Except as provided in subsection (2), the following uses shall be prohibited in a critical dune area:

(a) A surface drilling operation that is utilized for the purpose of exploring for or producing hydrocarbons or natural brine or for the disposal of the waste or by-products of the operation.

(b) Production facilities regulated under parts 615 and 625.

(2) Uses described in subsection (1) that are lawfully in existence at a site on July 5, 1989 may be continued. The continuance, completion, restoration, reconstruction, extension, or substitution of those existing uses shall be permitted upon reasonable terms prescribed by the department.

Sec. 35309. (1) A local unit of government, or the department if the local unit of government does not have an approved zoning ordinance, may establish a use permit and inspection fee.

(2) The department shall forward all fees it collects under this section to the state treasurer for deposit in the land and water management permit fee fund created in part 301.

(3) Fees collected by a local unit of government shall be credited to the treasury of the local unit of government to be used to defray the cost of administering uses under a zoning ordinance.

(4) In addition to fees provided for in this section, a soil conservation district may charge a separate fee to cover the actual expense of providing services under this part and for providing technical assistance and advice to individuals who seek assistance in matters pertaining to compliance under this part.

(5) A local unit of government, or the department if the local unit of government does not have an approved zoning ordinance, may require the holder of a permit issued by a local unit of government or the department to file with the local unit of government or the department a bond executed by an approved surety in this state in an amount necessary to assure faithful conformance with the permit.

Sec. 35310. (1) If the department finds that a person is not in compliance with the model zoning plan if the department is implementing the plan, or if the department is involved in the modification or reversal of a decision regarding a special use project as provided in section 35322, the department may suspend or revoke the permit.

(2) At the request of the department or a person, the attorney general may institute an action for a restraining order or injunction or other appropriate remedy to prevent or preclude a violation of the model zoning plan if the department is implementing the provisions of the plan or if the department is involved in the modification or reversal of a decision regarding a special use project as provided in section 35322. At the request of a member of the governing body of a local unit of government or a person, the county prosecutor may institute an action for a restraining order or injunction or other proper remedy to prevent a violation of a zoning ordinance approved under this part. This shall be in addition to the rights provided in part 17, and as otherwise provided by law. An action under this subsection instituted by the attorney general may be instituted in the circuit court for the county of Ingham or in the county in which the defendant is located, resides, or is doing business.

(3) The department shall periodically review the performance of all local units of government that have ordinances approved under this part. If the department determines that the local unit of government is not administering the ordinance in conformance with this part, the department shall notify the local unit of government in writing of its determination, including specific reasons why the local unit of government is not in compliance. The local unit of government has 30 days to respond to the department. If the department determines that the local unit of government has not made sufficient changes to its ordinance administration or otherwise explained its actions, the department may withdraw the approval of the local ordinance and implement the model zoning plan within that local unit of government. If a local unit disagrees with an action of the department to withdraw approval of the local ordinance, it may appeal that action pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, in the manner provided in that act for contested cases.

(4) In addition to any other relief provided by this section, the court may impose on a person who violates this part, or a permit, a civil fine of not more than $5,000.00 for each day of violation, or may order a violator to pay the full cost of restabilization of a critical dune area or other natural resource that is damaged or destroyed as a result of a violation, or both.

(5) A person who violates this part, or a person who violates a permit issued under this part, is guilty of a misdemeanor, punishable by a fine of not more than $5,000.00 per day for each day of violation.

Sec. 35311. By May 23, 1995, the department shall appoint a team of qualified ecologists who may be employed by the department or may be persons with whom the department enters into contracts who shall review "the atlas of critical dune areas" dated February 1989. The review team shall evaluate the accuracy of the designations of critical dune areas within the atlas and shall recommend to the legislature any changes to the atlas or underlying criteria revisions to the atlas that would provide more precise protection to the targeted resource. In addition, the review team shall recommend whether the slope criteria in section 35330(1)(a) and (b) are appropriate and supported by the best available technical data and whether stairways and driveways in critical dune areas should be subject to the same criteria as other constructed uses.

Sec. 35312. (1) After consulting with the local soil conservation district, a local unit of government that has 1 or more critical dune areas within its jurisdiction may formulate a zoning ordinance pursuant to the following:

(a) A county may zone as provided in the county rural zoning enabling act, Act No. 183 of the Public Acts of 1943, being sections 125.201 to 125.232 of the Michigan Compiled Laws.

(b) A city or village may zone as provided in Act No. 207 of the Public Acts of 1921, being sections 125.581 to 125.592 of the Michigan Compiled Laws.

(c) A township may zone as provided in the township rural zoning act, Act No. 184 of the Public Acts of 1943, being sections 125.271 to 125.301 of the Michigan Compiled Laws.

(2) A zoning ordinance shall consist of all of the provisions of the model zoning plan or comparable provisions that are at least as protective of critical dune areas as the model zoning plan.

(3) A local unit of government may regulate additional lands as critical dune areas under this part as considered appropriate by the planning commission if the lands are determined by the local unit of government to be essential to the hydrology, ecology, topography, or integrity of a critical dune area. A local unit of government shall provide within its zoning ordinance for the protection of lands that are within 250 feet of a critical dune area, if those lands are determined by the local unit of government to be essential to the hydrology, ecology, topography, or integrity of a critical dune area.

(4) If a local unit of government does not have an approved zoning ordinance, the department may regulate additional lands described in subsection (3). However, the lands added by the department shall not extend more than 250 feet from the landward boundary of a critical dune area, unless the governing body of the local unit of government authorizes such an extension.

Sec. 35313. A zoning ordinance shall require that all applications for permits for the use of a critical dune area include in writing:

(a) That the county enforcing agency designated pursuant to part 91 finds that the project is in compliance with part 91 and any applicable soil erosion and sedimentation control ordinance that is in effect in the local unit of government.

(b) That a proposed sewage treatment or disposal system on the site has been approved by the county health department or the department.

(c) Assurances that the cutting and removing of trees and other vegetation will be performed according to the instructions or plans of the local soil conservation district. These instructions or plans may include all applicable silvicultural practices as described in the "voluntary forestry management guidelines for Michigan" prepared by the society of American foresters in 1987. The instructions or plans may include a program to provide mitigation for the removal of trees or vegetation by providing assurances that the applicant will plant on the site more trees and other vegetation than were removed by the proposed use.

(d) Except as otherwise provided in subdivision (e), a site plan that contains data required by the planning commission concerning the physical development of the site and extent of disruption of the site by the proposed development. The planning commission may consult with the soil conservation district in determining the required data.

(e) An environmental assessment that comports with section 35319 for a special use project. An environmental impact statement pursuant to section 35320 may be required if the additional information is considered necessary or helpful in reaching a decision on a permit application for a special use project.

Sec. 35314. (1) A zoning ordinance shall provide for all of the following:

(a) Lot size, width, density, and front and side setbacks.

(b) Storm water drainage that provides for disposal of drainage water without serious erosion.

(c) Methods for controlling erosion from wind and water.

(d) Restabilization.

(2) Each zoning ordinance shall provide that a use that proposes a subdivision development shall be reviewed by the local unit of government to assure compliance with all of the model zoning plan.

Sec. 35315. A zoning ordinance shall not permit either of the following uses in a critical dune area:

(a) The disposal of sewage on-site unless the standards of applicable sanitary codes are met or exceeded.

(b) A use that does not comply with the minimum setback requirements required by rules that are promulgated under part 323.

Sec. 35316. (1) Unless a variance is granted pursuant to section 35317, a zoning ordinance shall not permit the following uses in a critical dune area:

(a) A structure on a slope within a critical dune area that is 18% to 25% unless the structure is in accordance with plans prepared for the site by a registered professional architect or a licensed professional engineer and the plans provide for the disposal of storm waters without serious soil erosion and without sedimentation of any stream or other body of water. Prior to approval of the plan, the planning commission shall consult with the local soil conservation district.

(b) A use on a slope within a critical dune area that is greater than 25%.

(c) A use that is a structure that is not in compliance with subsection (2).

(d) A use involving a contour change that is likely to increase erosion, decrease stability, or is more extensive than required to implement a use for which a permit is requested.

(e) Silvicultural practices, as described in the "voluntary forest management guidelines for Michigan", prepared by the society of American foresters in 1987, that are likely to increase erosion, decrease stability, or are more extensive than required to implement a use for which a permit is requested.

(f) A use that involves a vegetation removal that is likely to increase erosion, decrease stability, or is more extensive than required to implement a use for which a permit is requested.

(g) A use that is not in the public interest. In determining whether a proposed use is in the public interest, the local unit of government shall consider both of the following:

(*i*) The availability of feasible and prudent alternative locations or methods, or both, to accomplish the benefits expected from the use. If a proposed use is 1 single family dwelling on a lot of record owned by the applicant, consideration of feasible and prudent alternative locations shall be limited to the lot of record on which the use is proposed. A lot of record shall not be created strictly for the purpose of avoiding consideration of alternative locations under this subparagraph.

(*ii*) The impact that is expected to occur to the critical dune area, and the extent to which the impact may be minimized.

(2) A use that is a structure shall be constructed behind the crest of the first landward ridge of a critical dune area that is not a foredune. However, if construction occurs within 100 feet measured landward from the crest of the first landward ridge that is not a foredune, the applicant shall demonstrate that the proposed use meets all of the following requirements:

(a) The use will not destabilize the critical dune area.

(b) Contour changes and vegetative removal are limited to that essential to siting the structure.

(c) Access to the structure is from the landward side of the dune.

(d) The dune is restabilized with indigenous vegetation.

(e) Construction techniques and methods are employed that mitigate the impact on the dune.

(f) The crest of the dune is not reduced in elevation.

(g) If the department is implementing the model zoning plan, the use meets all other applicable requirements of the zoning ordinance or the model zoning plan.

(3) If the local unit of government is not certain of the degree of slope on a property for which a use permit is sought, the local unit may require that the applicant supply contour maps of the site with 5-foot intervals at or near any proposed structure or roadway or consult with the local soil conservation district regarding the degree of slope.

Sec. 35317. (1) A local unit of government may issue variances under a zoning ordinance, or the department may issue special exceptions under the model zoning plan if a local unit of government does not have an approved zoning ordinance, if an unreasonable hardship will occur to the owner of the property if the variance or special exception is not granted. In determining whether an unreasonable hardship will occur if a variance or special exception is not granted, primary consideration shall be given to assuring that human health and safety are protected by the determination and that the determination complies with applicable local zoning, other state laws, and federal law. A variance or a special exception is also subject to the following limitations:

(a) A variance shall not be granted from a setback requirement provided for under the model zoning plan or an equivalent zoning ordinance enacted pursuant to this part unless the property for which the variance is requested is 1 of the following:

(*i*) A nonconforming lot of record that is recorded prior to July 5, 1989, and that becomes nonconforming due to the operation of this part or a zoning ordinance.

(*ii*) A lot legally created after July 5, 1989 that later becomes nonconforming due to natural shoreline erosion.

(*iii*) Property on which the base of the first landward critical dune of at least 20 feet in height that is not a foredune is located at least 500 feet inland from the first foredune crest or line of vegetation on the property. However, the setback shall be a minimum of 200 feet measured from the foredune crest or line of vegetation.

(b) A variance or special exception shall not be granted that authorizes construction of a dwelling or other permanent building on the first lakeward facing slope of a critical dune area or a foredune. However, a variance or special exception may be granted if the proposed construction is near the base of the lakeward facing slope of the critical dune on a slope of less than 12% on a nonconforming lot of record that is recorded prior to July 5, 1989 that has borders that lie entirely on the first lakeward facing slope of the critical dune area that is not a foredune.

(2) Each local unit of government that has issued a variance for a use other than a special use project during the previous 12 months shall file an annual report with the department indicating variances that have been granted by the local unit of government during that period.

(3) Upon receipt of an application for a special exception under the model zoning plan, the department shall forward a copy of the application and all supporting documentation to the local unit of government having jurisdiction over the proposed location. The local unit of government shall have 60 days to review the proposed special exception. The department shall not make a decision on a special exception under the model zoning plan until either the local unit of government has commented on the proposed special exception or has waived its opportunity to review the special exception. The local unit of government may waive its opportunity to consider the application at any time within 60 days after receipt of the application and supporting documentation by notifying the department in writing. If the local unit of government waives its opportunity to review the application, or fails to act as authorized in this section within 60 days, the local unit of government also waives its opportunity to oppose the decision by the department to issue a special exception. If the local unit of government opposes the issuance of the special exception, the local unit of government shall notify the department, in writing, of its opposition within the 60-day notice period. If the local unit of government opposes the issuance of the special exception, the department shall not issue a special exception. The local unit of government may also consider whether an unreasonable hardship will occur to the owner of the property if the special exception is not granted by the department and may make a recommendation to the department within the 60-day notice period. The department shall base its determination of an unreasonable hardship on information provided by the local unit of government and other pertinent information.

(4) For the purpose of this part, unreasonable hardship shall be treated as unnecessary hardship.

Sec. 35318. If a permit for a proposed use within a critical dune area is denied, the landowner may request a revaluation of the affected property for assessment purposes to determine its fair market value under the restriction.

Sec. 35319. The zoning ordinance shall provide that if an environmental assessment is required under section 35313(e), that assessment shall include the following information concerning the site of the proposed use:

(a) The name and address of the applicant.

(b) A description of the applicant's proprietary interest in the site.

(c) The name, address, and professional qualifications of the person preparing the environmental assessment and his or her opinion as to whether the proposed development of the site is consistent with protecting features of environmental sensitivity and archaeological or historical significance that may be located on the site.

(d) The description and purpose of the proposed use.

(e) The location of existing utilities and drainageways.

(f) The general location and approximate dimensions of proposed structures.

(g) Major proposed change of land forms such as new lakes, terracing, or excavating.

(h) Sketches showing the scale, character, and relationship of structures, streets or driveways, and open space.

(i) Approximate location and type of proposed drainage, water, and sewage facilities.

(j) Legal description of property.

(k) A physical description of the site, including its dominant characteristics, its vegetative character, its present use, and other relevant information.

(*l*) A natural hazards review consisting of a list of natural hazards such as periodic flooding, poor soil bearing conditions, and any other hazards peculiar to the site.

(m) An erosion review showing how erosion control will be achieved and illustrating plans or programs that may be required by any existing soil erosion and sedimentation ordinance.

Sec. 35320. If an environmental impact statement is required under section 35313(e) prior to permitting a proposed use, a zoning ordinance may require that the statement include all of the following:

(a) The name and address of the applicant.

(b) A description of the applicant's proprietary interest in the site of the proposed use.

(c) The name, address, and professional qualifications of the proposed professional design team members, including the designation of the person responsible for the preparation of the environmental impact statement.

(d) The description and purpose of the proposed use.

(e) Six copies and 1 reproducible transparency of a schematic use plan of the proposed use showing the general location of the proposed use and major existing physical and natural features on the site, including, but not limited to, watercourses, rock outcropping, wetlands, and wooded areas.

(f) The location of the existing utilities and drainageways.

(g) The location and notation of public streets, parks, and railroad and utility rights-of-way within or adjacent to the proposed use.

(h) The general location and dimensions of proposed streets, driveways, sidewalks, pedestrian ways, trails, off-street parking, and loading areas.

(i) The general location and approximate dimensions of proposed structures.

(j) Major proposed change of land forms such as new lakes, terracing, or excavating.

(k) Approximate existing and proposed contours and drainage patterns, showing at least 5-foot contour intervals.

(*l*) Sketches showing the scale, character, and relationship of structures, streets or driveways, and open space.

(m) Approximate location and type of proposed drainage, water and sewage treatment and disposal facilities.

(n) A legal description of the property.

(o) An aerial photo and contour map showing the development site in relation to the surrounding area.

(p) A description of the physical site, including its dominant characteristics, its vegetative character, its present use, and other relevant information.

(q) A soil review giving a short descriptive summary of the soil types found on the site and whether the soil permits the use of septic tanks or requires central sewer. The review may be based on the "unified soil classification system" as adopted by the United States government corps of engineers and bureau of reclamation, dated January 1952, or the national cooperative soil survey classification system, and the standards for the development prospects that have been offered for each portion of the site.

(r) A natural hazards review consisting of a list of natural hazards such as periodic flooding, poor soil bearing conditions, and any other hazards peculiar to the site.

(s) A substrata review including a descriptive summary of the various geologic bedrock formations underlying the site, including the identification of known aquifers, the approximate depths of the aquifers, and, if being tapped for use, the principal uses to be made of these waters, including irrigation, domestic water supply, and industrial usage.

(t) An erosion review showing how erosion control will be achieved and illustrating plans or programs that may be required by any existing soil erosion and sedimentation ordinance.

(u) At a minimum, plans for compliance with all of the following standards shall be required for construction and postconstruction periods:

(*i*) Surface drainage designs and structures are erosion-proof through control of the direction, volume, and velocities of drainage patterns. These patterns shall promote natural vegetation growth that are included in the design so that drainage waters may be impeded in their flow and percolation encouraged.

(*ii*) The design shall include trash collection devices when handling street and parking drainage to contain solid waste and trash.

(*iii*) Watercourse designs, control volumes, and velocities of water to prevent bottom and bank erosion. In particular, changes of direction shall guard against undercutting of banks.

(*iv*) If vegetation has been removed or has not been able to occur on surface areas such as infill zones, it is the duty of the developer to stabilize and control the impacted surface areas to prevent wind erosion and the blowing of surface material through the planting of grasses, windbreaks, and other similar barriers.

Sec. 35321. A zoning ordinance shall provide that, in reviewing a site plan required under section 35313(d), the planning commission shall do all of the following:

(a) Determine whether the requirements of the zoning ordinance have been met and whether the plan is consistent with existing laws.

(b) Determine whether the advice or assistance of the soil conservation district will be helpful in reviewing a site plan.

(c) Recommend alterations of a proposed development to minimize adverse effects anticipated if the development is approved and to assure compliance with all applicable state and local requirements.

Sec. 35322. Prior to issuing a permit allowing a special use project within a critical dune area, a local unit of government shall submit the special use project application and plan and the proposed decision of the local unit of

government to the department. The department shall have 60 days to review the plan and may affirm, modify, or reverse the proposed decision of the local unit of government.

Sec. 35323. A structure or use located in a critical dune area that is destroyed by fire, other than arson for which the owner is found to be responsible, or an act of nature, except for erosion, is exempt from the operation of this part or a zoning ordinance under this part for the purpose of rebuilding or replacing the structure or use, if the structure or use was lawful at the time it was constructed or commenced and the structure does not exceed in size or scope that which was destroyed and does not vary from its prior use.

Sec. 35324. Federally owned land, to the extent allowable by law, and state owned land within critical dune areas shall be managed by the federal or state government, respectively, in a manner that is consistent with the model zoning plan.

Sec. 35325. The department or local units of government may purchase lands or interests in lands from a willing seller in critical dune areas for the purpose of maintaining or improving the critical dune areas and the environment of the critical dune areas in conformance with the zoning ordinance, or the model zoning plan if the local unit of government does not have an approved zoning ordinance. Interests that may be purchased may include easements designed to provide for the preservation of critical dune areas and to limit or eliminate development in critical dune areas.

Sec. 35326. (1) The legislature shall appropriate to the departments of agriculture, natural resources, and the attorney general sufficient funds to assure the full implementation and enforcement of this part.

(2) Appropriations to the department of agriculture shall be sufficient to assure adequate funding for the soil conservation districts to fulfill their responsibilities under this part.

PART 355 BIOLOGICAL DIVERSITY CONSERVATION

Sec. 35501. As used in this part:

(a) "Biological diversity" means the full range of variety and variability within and among living organisms and the natural associations in which they occur. Biological diversity includes ecosystem diversity, species diversity, and genetic diversity.

(b) "Committee" means the joint legislative working committee on biological diversity created pursuant to section 35504.

(c) "Conserve", "conserving", and "conservation" mean measures for maintaining natural biological diversity and measures for restoring natural biological diversity through management efforts, in order to protect, restore, and enhance as much of the variety of native species and communities as possible in quantities and distributions that provide for the continued existence and normal functioning of native species and communities, including the viability of populations throughout the natural geographic distributions of native species and communities.

(d) "Ecosystem" means an assemblage of species, together with the species' physical environment, considered as a unit.

(e) "Ecosystem diversity" means the distinctive assemblages of species and ecological processes that occur in different physical settings of the biosphere.

(f) "Genetic diversity" means the differences in genetic composition within and among populations of a given species.

(g) "Habitat" means the area or type of environment in which an organism or biological population normally lives or occurs.

(h) "Reporting department" means a state department or agency that is required by the committee under this part to file 1 or more reports.

(i) "Species diversity" means the richness and variety of native species.

(j) "State strategy" means the recommended state strategy prepared by the committee.

(k) "Sustained yield" means the achievement and maintenance in perpetuity of regular periodic output of the various renewable resources without impairment of the productivity of the land.

Sec. 35502. The legislature finds that:

(a) The earth's biological diversity is an important natural resource. Decreasing biological diversity is a concern.

(b) Most losses of biological diversity are unintended consequences of human activity.

(c) Humans depend on biological resources, including plants, animals, and microorganisms, for food, medicine, shelter, and other important products.

(d) Biological diversity is valuable as a source of intellectual and scientific knowledge, recreation, and aesthetic pleasure.

(e) Conserving biological diversity has economic implications.

(f) Reduced biological diversity may have potentially serious consequences for human welfare as resources for research and agricultural, medicinal, and industrial development are diminished.

(g) Reduced biological diversity may also potentially impact ecosystems and critical ecosystem processes that moderate climate, govern nutrient cycles and soil conservation and production, control pests and diseases, and degrade wastes and pollutants.

(h) Reduced biological diversity may diminish the raw materials available for scientific and technical advancement, including the development of improved varieties of cultivated plants and domesticated animals.

(i) Maintaining biological diversity through habitat protection and management is often less costly and more effective than efforts to save species once they become endangered.

(j) Because biological resources will be most important for future needs, study by the legislature regarding maintaining the diversity of living organisms in their natural habitats and the costs and benefits of doing so is prudent.

Sec. 35503. (1) It is the goal of this state to encourage the lasting conservation of biological diversity.

(2) This part does not require a state department or agency to alter its regulatory functions.

Sec. 35504. (1) The joint legislative working committee on biological diversity is created in the legislature. The committee shall consist of 4 members of the senate appointed by the senate majority leader, 2 members of the house of representatives appointed by the republican leader of the house of representatives, and 2 members of the house of representatives appointed by the democratic leader of the house of representatives. Members of the committee shall be appointed by the senate majority leader and the republican and democratic leaders of the house of representatives within 30 days of March 23, 1994. At least 1 of the committee members appointed from the senate shall be a member of the minority party of the senate, and at least 1 of the committee members appointed from each house shall be a member of a standing committee that primarily addresses legislation pertaining to environmental protection and natural resources, or wildlife and fisheries management, and agriculture. The committee may establish and organize 1 or more scientific advisory boards to provide the committee with specific expertise as the committee considers necessary or helpful. If 1 or more scientific advisory boards are established, each board shall include individuals with expertise pertaining to the area of resource management at issue. The representatives shall include at least 1 individual employed by a state department or agency; 1 or more individuals employed by a university or college who work in applied research; and 1 or more individuals who work in basic research. The committee may consult with other individuals who are qualified representatives of industry and environmental groups. In fulfilling its duties under this part, the committee may consult with individuals and groups who are knowledgeable about, or interested in, biological diversity and conservation or are knowledgeable about scientific and technological issues related to biological diversity and its impact on human habitat.

(2) The function of the committee shall be to prepare a recommended state strategy for conservation of biological diversity and to report on the costs, benefits, and other implications of the strategy. Upon the request of the committee, state departments and state agencies shall submit reports containing the information required under section 35505 to the committee to enable the committee to prepare the state strategy and fulfill its functions under this part. The state strategy shall in part be based on information provided to the committee in these reports required under this section.

(3) The committee shall meet as soon as possible upon formation and then shall meet at least quarterly. The committee shall at its initial meeting develop a timeline establishing when specific reports are due from each of the reporting departments from which the committee requests reports. However, all reports required under section 35505(1) shall be submitted to the committee by a reporting department by December 30, 1994. The committee shall provide assistance to the reporting department as the committee considers necessary or helpful in developing the state strategy.

(4) The committee shall hold regularly scheduled meetings, and the business of the committee shall be conducted at public meetings held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(5) A writing prepared, owned, used, in the possession of, or retained by the committee shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(6) The committee shall hold public hearings to solicit input from individuals and entities regarding biological diversity.

(7) The committee shall be dissolved on December 30, 1995.

Sec. 35505. (1) The committee may require clear and concise reports containing the information listed under subsection (2) and, if applicable, subsection (3) from state departments and state agencies, including, but not limited to, the following:

(a) Department of natural resources.

(b) State transportation department.

(c) Department of commerce.

(d) Department of agriculture.

(e) Department of public health.

(f) Department of military affairs.

(2) Each reporting department shall prepare for the committee a report that contains an overview of all of the following:

(a) A report pertaining to those activities of the reporting departments that alter biological diversity, noting which ecosystems and species are impacted and the existence of and effectiveness of mitigation measures.

(b) Any other information determined by the committee to be necessary or helpful in preparing the state strategy.

(c) The costs and benefits of preserving biological diversity and mitigation measures.

(3) In addition to the information required under subsection (2), the department of natural resources and the department of agriculture shall include in their report, to the extent practical, examples of techniques that are used to improve the protection and maintenance of this state's biological diversity, and the long-term viability of ecosystems and ecosystem processes, including all of the following:

(a) Enhancement of scientific knowledge through improved and more complete biological surveys, and research designed to identify factors limiting population viability or persistence.

(b) Identification of habitats and species of special concern and methods to protect them.

(c) Improvement of management techniques based on scientific knowledge of the conservation of biological diversity.

(d) Effective restoration methods for ecosystems or species of concern.

(e) Broad-based education efforts regarding the importance of biological diversity and the need for conservation.

(f) Use of areas demonstrating management techniques that conserve or restore native biological diversity.

(g) Use of cooperative programs among government agencies, public and private ventures, and the public sector.

(h) Promotion of sustained yield of natural resources for human benefit.

(i) Any other technique to improve the protection and maintenance of this state's biological diversity, and the long-term viability of ecosystems and ecosystem processes whether or not the technique is in current use if supported by scientific knowledge.

(j) The costs and benefits associated with activities described in subdivisions (a) to (i).

Sec. 35506. (1) Based on information received from the reporting departments and other sources identified in section 35504(1), the committee shall develop a state strategy that includes, but is not limited to, consideration of all of the following:

(a) Reduction of cumulative adverse impacts of all state departments and agencies on biological diversity.

(b) Responsibility of each reporting department to conserve biological diversity and determine the costs of such actions.

(c) Methods of cooperation among reporting departments, other states, and provinces concerning ecosystems management.

(d) Establishment of cooperative programs among governmental agencies, public and private ventures, universities and colleges, and the private sector.

(e) Identification of habitats and species of special concern and methods to protect them.

(f) Prevention of extinction of species.

(g) Provisions for the long-term viability of ecosystems and ecosystem processes.

(h) Development of areas demonstrating management techniques that conserve or restore native biological diversity.

(i) Development of broad-based educational efforts regarding the importance of biological diversity and the need for conservation.

(j) Development of criteria for evaluating the progress of this state in implementing the strategy.

(k) The effects on human beings or the environment, taking into account the economic, social, and environmental costs and benefits of the conservation of biological diversity.

(*l*) The effects of conserving biological diversity on agriculture and forestry.

(2) By December 30, 1994, the committee shall submit to the legislature a report detailing progress made toward development of the strategy.

(3) By June 30, 1995, the committee shall circulate a draft of the report described in subsection (4) and conduct a public hearing regarding the content of the draft report.

(4) By December 30, 1995, the committee shall approve and submit to the legislature a report containing all of the following:

(a) The recommended state strategy.

(b) Summaries of all written comments and reporting department reports received by the committee pertaining to the work of the committee.

(c) An evaluation of reports submitted by reporting departments.

(d) An evaluation of the cumulative impacts of the reporting departments on the biological diversity of this state.

(e) Recommendations pertaining to legislative options.

(f) Recommendations regarding whether the definitions in this part should be revised.

(g) Recommendations regarding whether there is a need to establish a biological diversity education center to set research priorities and provide leadership and coordination pertaining to fulfilling the policy of this state to maintain biological diversity.

(h) Recommendations concerning research priorities and personnel training to facilitate the implementation of the state strategy.

PART 357 NATURAL BEAUTY ROADS

Sec. 35701. As used in this part:

(a) "Board" means board of county road commissioners.

(b) "City street" means city major street or city local street as described in section 9 of Act No. 51 of the Public Acts of 1951, being section 247.659 of the Michigan Compiled Laws.

(c) "County local road" means county local road as described in section 4 of Act No. 51 of the Public Acts of 1951, being section 247.654 of the Michigan Compiled Laws.

(d) "Native vegetation" means original or indigenous plants of this state including trees, shrubs, vines, wild flowers, aquatic plants, or ground cover.

(e) "Natural" means in a state provided by nature, without human-made changes, wild, or uncultivated.

(f) "Street" means city street or village street.

(g) "Village street" means village major street or village local street as described in section 9 of Act No. 51 of the Public Acts of 1951.

Sec. 35702. (1) Twenty-five or more freeholders of a township may apply by petition to the board for the county in which that township is located for designation of a county local road or portion of a county local road as a natural beauty road. Twenty-five or more freeholders of a city may petition the legislative body of the city for designation of a city street or a portion of a city street as a natural beauty street. Twenty-five or more freeholders of a village may petition the legislative body of the village for designation of a village street or a portion of a village street as a natural beauty street.

(2) Within 6 months after a petition is received, the board or the legislative body of the city or village shall hold a public hearing to consider designating the road or street described in the petition as a natural beauty road or natural beauty street, respectively. The hearing shall be held at a suitable place within the township in which the proposed natural beauty road is located or the city or village in which the proposed natural beauty street is located. At the hearing, a party or interested person may support or object to the proposed designation. The board, the legislative body of the city, or the legislative body of the village shall give notice of the hearing by publication at least once each week for 2 successive weeks in a newspaper of general circulation in the county, city, or village, respectively, and by posting 5 notices within the limits of the portion of the road or street to be designated, in public and conspicuous places. The posting shall be done and at least 1 publication in the newspaper shall be made not less than 10 days before the hearing.

(3) Within 30 days after the hearing, if the board, the legislative body of the city, or the legislative body of the village considers the designation desirable, it shall file with the county clerk, city clerk, or village clerk, respectively, a true

copy of its resolution designating the portion of the county local road as a natural beauty road, the portion of the city street as a natural beauty street, or the portion of the village street as a natural beauty street, respectively.

Sec. 35703. (1) Not more than 45 days after a board designates a road as a natural beauty road or the legislative body of a city or village designates a street as a natural beauty street, the property owners of record of 51% or more of the lineal footage along the natural beauty road or natural beauty street may submit a petition to the board or the legislative body of the city or village, respectively, requesting that the designation be withdrawn. If the petition is valid, the designation as a natural beauty road or natural beauty street shall be withdrawn.

(2) A board or the legislative body of a city or village may revoke a designation of a natural beauty road or natural beauty street after holding a public hearing in accordance with the procedure described in section 35702(2). Not more than 30 days after a hearing, if the board, the legislative body of the city, or the legislative body of the village by majority vote determines that the revocation is necessary, it shall file with the county clerk, city clerk, or village clerk, respectively, a notice of its determination and publish the notice in a newspaper of general circulation in the county, city, or village, respectively, once each week for 2 successive weeks. After publication of the notice, the road or street previously designated shall revert to its former status.

Sec. 35704. (1) The department shall develop uniform guidelines and procedures that may be adopted by a board to preserve native vegetation in a natural beauty road right-of-way from destruction or substantial damage by cutting, spraying, dusting, mowing, or other means. The department shall develop uniform guidelines that may be adopted by the legislative body of a city or village to preserve native vegetation in a natural beauty street right-of-way from destruction or substantial damage by cutting, spraying, dusting, mowing, or other means. Guidelines and procedures developed pursuant to this subsection shall not prohibit the application of accepted principles of sound forest management in a natural beauty road or natural beauty street right-of-way or prevent a local road authority from taking actions to modify specific road features to correct traffic hazards which pose a direct and ongoing threat to motorists.

(2) The department may advise and consult with a board or a city or village legislative body on the application of the guidelines and procedures.

(3) A board or a city or village legislative body shall provide for a public hearing before an act that would result in substantial damage to native vegetation in the right-of-way of a natural beauty road or natural beauty street, respectively, is permitted.

(4) This part does not affect the right of a public utility to control vegetation in connection with the maintenance, repair, or replacement of public utility facilities constructed in a road or street before its designation as a natural beauty road or natural beauty street, or in connection with the construction, maintenance, repair, or replacement of public utility facilities crossing a natural beauty road or natural beauty street.

Sec. 35705. The department may establish a citizen's advisory committee to assist in the formulation of proposals for guidelines and procedures.

Sec. 35706. (1) If there is a violation of a guideline or procedure adopted by a board, the legislative body of a city, or the legislative body of a village pursuant to section 35704, a complaint, signed by 5 or more freeholders of the township, city, or village, respectively, or by freeholders representing 10% or more of the lineal frontage along a natural beauty road or natural beauty street, may be filed with the county prosecutor, city attorney, or village attorney, respectively, or with the attorney general. The county prosecutor, the city attorney, the village attorney, or the attorney general, on behalf of the board, the legislative body of the city, the legislative body of the village, or the department, may commence a civil action seeking either of the following:

(a) A temporary or permanent injunction to enjoin the violation of the guideline or procedure.

(b) A civil fine of not more than $400.00 for the violation of the guideline or procedure.

(2) A default in the payment of a civil fine or costs ordered under this part or an installment of the fine or costs may be remedied by any means authorized under the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.101 to 600.9947 of the Michigan Compiled Laws.

PART 361 FARMLAND AND OPEN SPACE PRESERVATION

Sec. 36101. As used in this part:

(a) "Agricultural use" means substantially undeveloped land devoted to the production of plants and animals useful to humans, including forages and sod crops; grains and feed crops; dairy and dairy products; livestock, including breeding and grazing; fruits; vegetables; Christmas trees; and other similar uses and activities.

(b) "Development" means an activity which materially alters or affects the existing conditions or use of any land.

(c) "Development rights" means the right to construct a building or structure, to improve land, or the extraction of minerals incidental to a permitted use or as shall be set forth in an instrument recorded under this part.

(d) "Development rights agreement" means a restrictive covenant, evidenced by an instrument in which the owner and the state, for a term of years, agree to jointly hold the right to develop the land as may be expressly reserved in the instrument, and that contains a covenant running with the land, for a term of years, not to develop, except as this right is expressly reserved in the instrument.

(e) "Development rights easement" means a grant, by an instrument, in which the owner relinquishes to the public in perpetuity or for a term of years, the right to develop the land as may be expressly reserved in the instrument, and that contains a covenant running with the land, not to develop, except as this right is expressly reserved in the instrument.

(f) "Farmland" means any of the following:

(*i*) A farm of 40 or more acres in 1 ownership, which has been devoted primarily to an agricultural use.

(*ii*) A farm of 5 acres or more in 1 ownership, but less than 40 acres, devoted primarily to an agricultural use, which has produced a gross annual income from agriculture of $200.00 per year or more per acre of cleared and tillable land.

(*iii*) A farm designated by the department of agriculture as a specialty farm in 1 ownership which has produced a gross annual income from an agricultural use of $2,000.00 or more.

(*iv*) Parcels of land in 1 ownership that are not contiguous but which constitute an integral part of a farming operation being conducted on land otherwise qualifying as farmland may be included in an application under this part.

(g) "Local governing body" means any of the following:

(*i*) The legislative body of a city or village.

(*ii*) The township board of a township having a zoning ordinance in effect as provided by law.

(*iii*) The county board of commissioners in all other areas.

(h) "Open space land" means any of the following:

(*i*) Lands defined as:

(A) Any undeveloped site included in a national registry of historic places or designated as a historic site pursuant to state or federal law.

(B) Riverfront ownership subject to designation under part 305, to the extent that full legal descriptions may be declared open space under the meaning of this part, if the undeveloped parcel or government lot parcel or portions of the undeveloped parcel or government lot parcel as assessed and owned is affected by that part and lies within 1/4 mile of the river.

(C) Undeveloped lands designated as environmental areas under part 323, including unregulated portions of those lands.

(*ii*) Any other area approved by the local governing body, the preservation of which area in its present condition would conserve natural or scenic resources, including the promotion of the conservation of soils, wetlands, and beaches; the enhancement of recreation opportunities; the preservation of historic sites; and idle potential farmland of not less than 40 acres which is substantially undeveloped and which because of its soil, terrain, and location is capable of being devoted to agricultural uses as identified by the department of agriculture.

(i) "Owner" means a person having a freehold estate in land coupled with possession and enjoyment. However, if land is subject to a land contract, owner means the vendor in agreement with the vendee.

(j) "Permitted use" means any use contained within a development rights agreement or a development rights easement essential to the farming operation or that does not alter the open space character of the land.

(k) "Person" includes an individual, corporation, business trust, estate, trust, partnership, or association, or 2 or more persons having a joint or common interest in the land.

(*l*) "Property taxes" means general ad valorem taxes levied after January 1, 1974, on lands and structures in this state, including collection fees, but not including special assessments, penalties, or interest.

(m) "Regional planning commission" means a regional planning commission created pursuant to Act No. 281 of the Public Acts of 1945, being sections 125.11 to 125.25 of the Michigan Compiled Laws.

(n) "Regional planning district" means the planning and development regions as established by executive directive 1968-1, as amended, whose organizational structure is approved by the regional council.

(o) "Soil conservation district" means a district created pursuant to part 93.

(p) "State income tax act" means the income tax act of 1967, Act No. 281 of the Public Acts of 1967, being sections 206.1 to 206.532 of the Michigan Compiled Laws, and in effect during the particular year of the reference to the act.

(q) "State land use agency" means the land use agency within the department of natural resources.

(r) "Substantially undeveloped" means any parcel or area of land essentially unimproved except for a dwelling, building, structure, road, or other improvement that is incidental to agricultural and open space uses.

(s) "Unique or critical land area" means agricultural or open space lands identified by the land use agency as an area that should be preserved in its natural condition.

Sec. 36102. (1) The state land use agency may execute a development rights agreement or easement on behalf of the state.

(2) The provisions of a development rights agreement or easement shall be consistent with the purposes of this part and shall not permit an action which will materially impair the character of the land involved.

Sec. 36103. (1) The execution and acceptance of a development rights agreement or easement by the state or local governing body and the owner constitute a dedication to the public of the development rights in the land for the term specified in the instrument. A development rights agreement or easement shall be for a term of not less than 10 years.

(2) The state or local governing body shall not sell, transfer, convey, relinquish, vacate, or otherwise dispose of a development rights agreement or easement except with the mutual agreement of the owner as provided in sections 36111, 36112, and 36113.

(3) An agreement or easement shall not supersede any prior lien, lease, or interest which is properly recorded with the county register of deeds.

(4) A lien created under this part in favor of the state or a local governing body shall be subordinate to a lien of a mortgage that is recorded in the office of the register of deeds before the recording of the lien of the state or local governing body.

Sec. 36104. (1) An owner of land desiring a farmland development rights agreement may apply by filing an application with the local governing body having jurisdiction under this part. The application shall be made on a form prescribed by the state land use agency. The application shall contain information reasonably necessary to properly classify the land as farmland. This information shall include a land survey or a legal description of the land and a map showing the significant natural features and all structures and physical improvements located on the land. The application shall include the soil classification of the land, if known.

(2) Upon receipt of the application, the local governing body shall notify the county planning commission or the regional planning commission and the soil conservation district agency. If the county has jurisdiction, it shall also notify the township board of the township in which the land is situated. If the land is within 3 miles of the boundary of a city or within 1 mile of the boundary of a village, the county or township governing body having jurisdiction shall notify the governing body of the city or village.

(3) An agency or local governing body receiving notice has 30 days to review, comment, and make recommendations to the local governing body with which the application is filed. These reviewing agencies do not have an approval or rejection power over the application.

(4) After considering the comments and recommendations of the reviewing agencies and local governing bodies, the local governing body holding the application shall approve or reject the application within 45 days after the application is received, unless time is extended by mutual agreement of the parties involved. The local governing body's approval or rejection of the application shall be based upon, and consistent with, rules promulgated by the state land use agency under section 36116.

(5) If an application for a farmland development rights agreement is approved by the local governing body having jurisdiction, a copy, along with the comments and recommendations of the reviewing bodies, shall be forwarded to the state land use agency. The application shall contain a statement from the assessing officer where the property is located specifying the current fair market value of the land and structures in compliance with the agricultural section of the Michigan state tax commission assessor manual. If action is not taken by the local governing body within the time prescribed or agreed upon, the applicant may proceed as provided in subsection (6) as if the application was rejected.

(6) If the application for a farmland development rights agreement is rejected by the local governing body, the local governing body shall return the application to the applicant with a written statement regarding the reasons for rejection. Within 30 days after receipt of the rejected application, the applicant may appeal the rejection to the state land use agency. The state land use agency shall have 60 days to approve or reject the application pursuant to subsection (7).

(7) The state land use agency, within 60 days after the farmland development rights agreement application has been received, shall approve or reject the application. The state land use agency shall forward a copy of the information received from the local assessing officer and a copy of the application to the state tax commission for its review. The state tax commission shall make its review, including property description and value verification, and submit its comments to the state land use agency within 60 days after receipt of the application. A rejection of an application for a farmland development rights agreement that has been approved by a local governing body by the state land use

agency shall be for nonconformance with section 36101(f) only. If approved by the state land use agency, the state land use agency shall prepare a farmland development rights agreement which shall include the following provisions:

(a) A structure shall not be built on the land except for use consistent with farm operations or lines for utility transmission or distribution purposes or with the approval of the local governing body and the state land use agency.

(b) Land improvements shall not be made except for use consistent with farm operations or with the approval of the local governing body and the state land use agency.

(c) Any interest in the land shall not be sold except a scenic, access, or utility easement that does not substantially hinder farm operations.

(d) Public access shall not be permitted on the land unless agreed to by the owner.

(e) Any other condition and restriction on the land as agreed to by the parties that is considered necessary to preserve the land or appropriate portions of it as farmland.

(8) A copy of the approved application and the farmland development rights agreement shall be forwarded to the applicant for execution. An application that is approved by the local governing body by November 1 shall take effect for the current tax year.

(9) If the owner executes the farmland development rights agreement, the owner shall return it to the state land use agency for execution on behalf of the state. The state land use agency shall record the executed development rights agreement with the register of deeds of the county in which the land is situated and shall notify the applicant, the local governing body and its assessing office, all reviewing agencies, and the department of treasury.

(10) If an application for a farmland development rights agreement is rejected by the state land use agency, the state land use agency shall notify the affected local governing body, all reviewing agencies concerned, and the applicant with a written statement containing the reasons for rejection. An applicant receiving a rejection from the state land use agency may appeal the rejection pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(11) An applicant may reapply for a farmland development rights agreement following a 1-year waiting period.

(12) The value of the jointly owned development rights as expressed in a farmland development rights agreement shall not be exempt from ad valorem taxation and shall be assessed to the owner of the land as part of the value of that land.

Sec. 36105. (1) If an owner of open space land desires an open space development rights easement, and the land is subject to section 36101(h)(*i*), the procedures for filing an application provided by the state land use agency shall follow as provided in section 36104, except subsections (7) and (12) of section 36104.

(2) The state land use agency, within 60 days after the open space development rights easement application has been received, shall approve or reject the application. If approved by the state land use agency, the state land use agency shall prepare an open space development rights easement, which shall include the following provisions:

(a) A structure shall not be built on the land without the approval of the state land use agency.

(b) Improvement to the land shall not be made without the approval of the state land use agency.

(c) Any interest in the land shall be sold only for a scenic, access, or utility easement that does not substantially hinder the character of the open space land.

(d) Access to the open space land may be provided if agreed upon by the owner and if access will not jeopardize the conditions of the land.

(e) Any other condition or restriction on the land as agreed to by the parties that is considered necessary to preserve the land or appropriate portions of it as open space land. Upon receipt of the application, the state land use agency shall notify the state tax commission. Upon notification, the state tax commission shall within 60 days make an on-site appraisal of the land in compliance with the Michigan state tax commission assessors manual. The application shall contain a statement specifying the current fair market value of the land and the current fair market value of the development rights. The state land use agency shall submit to the legislature each application for an open space development rights easement and an analysis of its cost to the state. The application shall be approved in both houses by a resolution concurred in by a majority of the members elected and serving in each house. The amount of the cost shall be returned to the local governing body where lost revenues are indicated. A copy of the approved application and the open space development rights easement shall be forwarded by the state land use agency to the applicant for execution and to the local assessing office where the land is situated.

(3) The development rights held by the state as expressed in an open space development rights easement under this section shall be exempt from ad valorem taxation.

Sec. 36106. (1) An owner of open space land desiring an open space development rights easement whose land is subject to section 36101(h)(*ii*), may apply by filing an application with the local governing body having jurisdiction under this part. The application shall be made on a form prescribed by the state land use agency. The application shall contain

information reasonably necessary to properly identify the land as open space. This information shall include a land survey or a legal description of the land and a map showing the significant natural features and all structures and physical improvements located on the land. The map shall include the soil classification of the land, if known.

(2) Upon receipt of an application, the local governing body shall notify the county planning commission, the regional planning commission, and the soil conservation district agency. If the county has jurisdiction, the county shall also notify the township board of the township in which the land is situated. If the land is within 3 miles of the boundary of a city or within 1 mile of the boundary of a village, the county shall notify the governing body of the city or village.

(3) An agency or local governing body receiving notice shall have 30 days to review, comment, and make recommendations to the local governing body with which the application was filed.

(4) After considering the comments and recommendations of the reviewing agencies, the local governing body shall approve or reject the application within 45 days after the application has been received by the local governing body, unless time is extended by mutual agreement of the parties involved. The local governing body's approval or rejection of the application shall be based upon, and consistent with, rules promulgated by the state land use agency under section 36116. If the local governing body does not act within the time prescribed or agreed upon, the applicant may proceed as provided in subsection (9) as if the application was rejected.

(5) If the application is approved by the local governing body or the state land use agency on appeal, the local governing body shall prepare an appropriate easement which shall include the following provisions:

(a) A structure shall not be built on the land without the approval of the local governing body.

(b) An improvement to the land shall not be made without the approval of the local governing body.

(c) Any interest in the land shall not be sold except for scenic, access, or utility easements that do not substantially hinder the character of the open space land.

(d) Public access to the open space land may be provided if agreed upon by the owner and if access will not jeopardize the conditions of the land.

(e) Any other condition or restriction on the land as agreed to by both parties that is considered necessary to preserve the land or appropriate portions of it as open space land.

(6) Upon receipt of the application, the local governing body shall direct either the local assessing officer or an independent certified assessor to make an on-site appraisal within 30 days of the land in compliance with the Michigan state tax commission assessors manual. The approved application shall contain a statement specifying the current fair market value of the land and the current fair market value of the development rights, if any. A copy of the approved application and the development rights easement shall be forwarded to the applicant for his or her execution.

(7) If the owner of the land executes the approved easement, it shall be returned to the local governing body for its execution. The local governing body shall record the open space development rights easement with the register of deeds of the county. A copy of the approved easement shall be forwarded to the local assessing office and to the state land use agency for their information. The state land use agency shall submit to the legislature and the department of management and budget a listing of all easements in effect by October 31 of each year.

(8) The decision of the local governing body having jurisdiction under this part may be appealed to the state land use agency, pursuant to subsection (9).

(9) If an application for an open space development rights easement is rejected by the local governing body, the local governing body shall notify the applicant and all reviewing agencies concerned with a written statement regarding the reasons for rejection. Within 30 days after receipt of the rejected application, the applicant may appeal the rejection to the state land use agency. The state land use agency shall have 60 days to approve or reject the application. The state land use agency shall submit to the legislature each approved application for an open space development rights easement and an analysis of its cost. The application shall be approved in both houses by a resolution concurred in by a majority of the members elected and serving in each house. The amount of the cost shall be returned to the local governing body where lost revenues are indicated. A copy of the approved application and an appropriate easement shall be forwarded by the state land use agency to the applicant for execution and to the local governing body where the land is situated.

(10) An applicant may reapply for an open space development rights easement following a 1-year waiting period.

(11) The development rights held by the local governing body as expressed in an open space development rights easement shall be exempt from ad valorem taxation.

Sec. 36107. All participants owning land contained under a development rights agreement or easement shall notify, on a form provided by the state land use agency for informational purposes only, the state or the local governing body holding the development rights, 6 months before the natural termination date of the development rights agreement or easement, of the owners' intentions regarding future plans with respect to the land.

Sec. 36108. A city, village, township, county, or other governmental agency may not impose special assessments for sanitary sewers, water, lights, or nonfarm drainage on land for which a development rights agreement or easement has been recorded except as to a dwelling or a nonfarm structure located on the land unless the assessments were imposed prior to the recording of the development rights agreement or easement. Land covered by this exemption shall be denied use of an improvement created by the special assessment until it has paid an amount not more than the amount that would have been paid had the land not been excluded. The land exempted from the assessment shall be denied use of the improvement as long as the owner of the land has a recorded development rights agreement or easement.

Sec. 36109. (1) An owner of farmland and related buildings covered by 1 or more development rights agreements meeting the requirements of this part who is required or eligible to file a return as an individual or a claimant under the state income tax act may claim a credit against the state income tax liability for the amount by which the property taxes on the land and structures used in the farming operation, including the homestead, restricted by the development rights agreements exceed 7% of the household income as defined in chapter 9 of the state income tax act, being sections 206.501 to 206.532 of the Michigan Compiled Laws, excluding a deduction if taken under section 613 of the internal revenue code of 1986, 26 U.S.C. 613. For the purposes of this section, all of the following apply:

(a) A partner in a partnership is considered an owner of farmland and related buildings covered by a development rights agreement that are owned by the partnership. A partner is considered to pay a proportion of the property taxes on that property equal to the partner's share of ownership of capital or distributive share of ordinary income as reported by the partnership to the internal revenue service or, if the partnership is not required to report that information to the internal revenue service, as provided in the partnership agreement or, if there is no written partnership agreement, a statement signed by all the partners. A partner claiming a credit under this section based upon the partnership agreement or a statement shall file a copy of the agreement or statement with his or her income tax return. If the agreement or statement is not filed, the department of treasury shall deny the credit. All partners in a partnership claiming the credit allowed under this section shall compute the credit using the same basis for the apportionment of the property taxes.

(b) A shareholder of a corporation that has filed a proper election under subchapter S of chapter 1 of the internal revenue code of 1986, 26 U.S.C. 1361 to 1379, is considered an owner of farmland and related buildings covered by a development rights agreement that are owned by the corporation. A shareholder is considered to pay a proportion of the property taxes on that property equal to the shareholder's percentage of stock ownership for the tax year as reported by the corporation to the internal revenue service. Except as provided in subsection (8), this subdivision applies to tax years beginning after 1987.

(c) An individual in possession of property for life under a life estate with remainder to another person or holding property under a life lease is considered the owner of that property if it is farmland and related buildings covered by a development rights agreement.

(d) If a trust holds farmland and related buildings covered by a development rights agreement and an individual is treated under subpart E of subchapter J of chapter 1 of the internal revenue code of 1986, 26 U.S.C. 671 to 679, as the owner of that portion of the trust that includes the farmland and related buildings, that individual is considered the owner of that property.

(e) An individual who is the sole beneficiary of a trust that is the result of the death of that individual's spouse is considered the owner of farmland and related buildings covered by a development rights agreement and held by the trust if the trust conforms to all of the following:

(*i*) One hundred percent of the trust income is distributed to the beneficiary in the tax year in which the trust receives the income.

(*ii*) The trust terms do not provide that any portion of the trust is to be paid, set aside, or otherwise used in a manner that would qualify for the deduction allowed by section 642(c) of the internal revenue code of 1986, 26 U.S.C. 642.

(2) An owner of farmland and related buildings covered by 1 or more development rights agreements meeting the requirements of this part to whom subsection (1) does not apply may claim a credit under the single business tax act, Act No. 228 of the Public Acts of 1975, being sections 208.1 to 208.145 of the Michigan Compiled Laws, for the amount by which the property taxes on the land and structures used in farming operations restricted by the development rights agreements exceed 7% of the adjusted business income of the owner as defined in section 36 of Act No. 228 of the Public Acts of 1975, being section 208.36 of the Michigan Compiled Laws, plus compensation to shareholders not included in adjusted business income, excluding any deductions if taken under section 613 of the internal revenue code of 1986, 26 U.S.C. 613. When calculating adjusted business income for tax years beginning before 1987, federal taxable income shall not be less than zero for the purposes of this subsection only. A participant is not eligible to claim a credit and refund against the state single business tax unless the participant demonstrates that the participant's agricultural gross receipts of the farming operation exceed 5 times the property taxes on the land for each of 3 out of the 5 tax years immediately preceding the year in which the credit is claimed. This eligibility requirement does not apply to those participants who executed farmland development rights agreements under this part before January 1, 1978. A

participant may compare, during the contract period, the average of the most recent 3 years of agricultural gross receipts to property taxes in the first year that the participant entered the program under the present contract in calculating the gross receipts qualification. Once an election is made by the participant to compute the benefit in this manner, all future calculations shall be made in the same manner.

(3) If the farmland and related buildings covered by a development rights agreement are owned by more than 1 owner, each owner is allowed to claim a credit under this section based upon that owner's share of the property tax payable on the farmland and related buildings. The department of treasury shall consider the property tax equally apportioned among the owners unless a written agreement signed by all the owners is filed with the return, which agreement apportions the property taxes in the same manner as all other items of revenue and expense. If the property taxes are considered equally apportioned, a husband and wife shall be considered 1 owner, and a person with respect to whom a deduction under section 151 of the internal revenue code of 1986, 26 U.S.C. 151, is allowable to another owner of the property shall not be considered an owner.

(4) A beneficiary of an estate or trust to which subsection (1) does not apply is entitled to the same percentage of the credit provided in this section as that person's percentage of all other distributions by the estate or trust.

(5) If the allowable amount of the credit claimed exceeds the state income tax or the state single business tax otherwise due for the tax year or if there is no state income tax or the state single business tax due for the tax year, the amount of the claim not used as an offset against the state income tax or the state single business tax, after examination and review, shall be approved for payment to the claimant in accordance with Act No. 122 of the Public Acts of 1941, being sections 205.1 to 205.31 of the Michigan Compiled Laws. The total credit allowable under this part and chapter 9 of the state income tax act or the single business tax act, Act No. 228 of the Public Acts of 1975, shall not exceed the total property tax due and payable by the claimant in that year. The amount the credit exceeds the property tax due and payable shall be deducted from the credit claimed under this part.

(6) For purposes of audit, review, determination, appeals, hearings, notices, assessments, and administration relating to the credit program provided by this section, the state income tax act or single business tax act, Act No. 228 of the Public Acts of 1975, applies according to which tax the credit is claimed against. If an individual is allowed to claim a credit under subsection (1) based upon property owned or held by a partnership, S corporation, or trust, the department of treasury may require that the individual furnish to the department a copy of a tax return, or portion of a tax return, and supporting schedules that the partnership, S corporation, or trust files under the internal revenue code.

(7) The department of treasury shall account separately for payments under this part and not combine them with other credit programs. A payment made to a claimant for a credit claimed under this part shall be issued by 1 or more warrants made out to the county treasurer in each county in which the claimant's property is located and the claimant, unless a copy of the receipt showing payment of the property taxes that became a lien in the year for which the credit is claimed, or that became a lien in the year before the year for which the credit is claimed, is attached to the income tax or single business tax return filed by the claimant. If a copy of the receipt is attached to the return, the payment shall be made directly to the claimant. A warrant made out to a claimant and a county treasurer shall be used first to pay delinquent property taxes, interest, penalties, and fees on property restricted by the development rights agreement. If the warrant exceeds the amount of delinquent taxes, interest, penalties, and fees, the county treasurer shall remit the excess to the claimant.

(8) For property taxes levied after 1987, a person that was an S corporation and had entered into a development rights agreement before January 1, 1989, and paid property taxes on that property, may claim the credit allowed by this section as an owner eligible under subsection (2). A subchapter S corporation claiming a credit as permitted by this subsection for taxes levied in 1988 through 1990 shall claim the credit by filing an amended return under the single business tax act, Act No. 228 of the Public Acts of 1975. If a subchapter S corporation files an amended return as permitted by this subsection and if a shareholder of the subchapter S corporation claimed a credit under subsection (1)(b) for the same property taxes, the shareholder shall file an amended return under the state income tax act. A subchapter S corporation is not entitled to a credit under this subsection until all of its shareholders file the amended returns required by this subsection. The department of treasury shall first apply a credit due to a subchapter S corporation under this subsection to repay credits claimed under this section by the subchapter S corporation's shareholders for property taxes levied in 1988 through 1990 and shall refund any remaining credit to the S corporation. Interest or penalty is not due or payable on an income tax liability resulting from an amended return required by this subsection. A subchapter S corporation electing to claim a credit as an owner eligible under subsection (2) shall not claim a credit under subsection (1) for property taxes levied after 1987.

Sec. 36110. (1) Land subject to a development rights agreement or easement may be sold without penalty under sections 36111, 36112, and 36113, if the use of the land by the successor in title complies with the provisions contained in the development rights agreement or easement. The seller shall notify the governmental authority having jurisdiction over the development rights of the change in ownership.

(2) When the owner of land subject to a development rights agreement or easement dies or is totally and permanently disabled, the land may be released from the program under this part and shall be subject to a proration pursuant to sections 36111(7), 36112(7), and 36113(7).

Sec. 36111. (1) A development rights agreement shall be relinquished by the state at the expiration of the term of the agreement unless renewed with the consent of the owner of the land. If the owner of the land has complied with the requirements of this part regarding development rights agreements, the owner is entitled to automatic renewal of the agreement upon written request of the landowner.

(2) A development rights agreement may be relinquished by the state before a termination date contained in the instrument as follows:

(a) At any time the state determines that the development of the land is in the public interest and in agreement with the owner of the land.

(b) The owner of the land may submit an application to the local governing body having jurisdiction under this part requesting that the development rights agreement be relinquished. The application shall be made on a form prescribed by the state land use agency. The request for relinquishment shall be processed and is subject to the same provisions as provided for in section 36104 for review and approval.

(3) If the request for relinquishment of the development rights agreement is approved, the state land use agency shall prepare an instrument, subject to subsections (4), (5), (6), and (7), and record it with the register of deeds of the county in which the land is situated.

(4) At the time a development rights agreement is to be relinquished pursuant to subsection (2)(b), the state land use agency shall prepare and record a lien against the property formerly subject to the development rights agreement for the total amount of the credit received by the owner for that property under section 36109, plus interest at the rate of 6% per annum compounded annually from the time the credit was received until it is paid. Beginning January 1, 1989, the credit for each year the property was subject to the agreement is the allocated tax credit for the agreement that included the property being withdrawn from the agreement. However, if the property being withdrawn from the agreement is less than all of the property subject to that agreement, the allocated tax credit for the agreement shall be multiplied by the property's share of the assessed valuation of the agreement. As used in this subsection:

(a) "The allocated tax credit for the agreement" means the amount obtained by multiplying the owner's total farmland preservation credit claimed in that year on all agreements by the quotient of the ad valorem property tax levied in that year on property subject to the development rights agreement that included the property being withdrawn from the agreement divided by the total property taxes levied on property subject to any development rights agreement and used in determining the farmland preservation credit in that year.

(b) "The property's share of the assessed value of the agreement" means the quotient of the assessed value of the property being released from the agreement divided by the total assessed value of property subject to the development rights agreement that included the property being released from the agreement.

(5) The lien may be paid and discharged at any time and is payable to the state by the owner of record at the time the land or any portion of it is sold by the owner of record, or if the land is converted to a use prohibited by the former development rights agreement. The lien shall be discharged upon renewal or reentry in a development rights agreement, except that a subsequent lien shall not be less than the lien discharged.

(6) Upon termination of the development rights agreement pursuant to subsection (2)(a), the development rights revert back to the owner without penalty or interest.

(7) Upon the natural termination of the development rights agreement pursuant to subsection (1), the state land use agency shall prepare and record a lien against the property formerly subject to the development rights agreement for the total amount of the credit of the last 7 years received by the owner under section 36109, including the year of natural termination, attributable to that development rights agreement. Beginning January 1, 1989, the credit for each year shall be determined by multiplying the owner's total farmland preservation credit on all agreements claimed in that year by the quotient of the ad valorem property tax levied on property subject to the expired development rights agreement that was used in determining the farmland preservation credit in that year divided by the total property taxes levied on property subject to any development rights agreement and used in determining the farmland preservation credit in that year. The lien shall be without interest or penalty and is payable subject to subsection (5).

(8) Upon termination, the state land use agency shall notify the department of treasury for their records.

(9) The proceeds from lien payments made under this part shall be used to administer this part by the state land use agency for fiscal years 1991-92 through 1994-95 and to purchase development rights on land that is considered by the state land use agency to be a unique or critical land area that should be preserved in its natural character, but which does not necessitate direct purchase of the fee interest in the land. It is the intent of the legislature that if the accumulated proceeds from lien payments received under this part fall below $2,000,000.00, then the funds used to administer this part shall be appropriated from the general fund until the proceeds from the lien payments received

under this part exceed $2,000,000.00. However, the amount of lien payments used to administer this part shall not exceed $600,000.00 in any fiscal year.

Sec. 36112. (1) An open space development rights easement pursuant to section 36105 shall be relinquished by the state at the expiration of the term of the easement unless renewed with the consent of the owner of the land. If the owner of the land has complied with the requirements of this part regarding open space development rights easements, the owner is entitled to automatic renewal of the agreement upon written request of the landowner.

(2) An open space development rights easement may be relinquished by the state prior to a termination date contained in the instrument as follows:

(a) At any time the state determines that the development of the land is in the public interest and in agreement with the owner of the land.

(b) The owner of the land may submit an application to the local governing body where the original application for an open space development rights easement was submitted requesting that the development rights easement be relinquished. The application shall be made on a form prescribed by the state land use agency. The request for relinquishment shall be processed and shall be subject to the provisions as provided in sections 36104 and 36105 for review and approval.

(3) If the request for relinquishment of the development rights easement is approved, the state land use agency shall prepare an instrument providing for the relinquishment of the open space development rights easement, subject to subsections (4), (5), (6), and (7), and shall record it with the register of deeds of the county in which the land is situated.

(4) At the time a development rights easement is to be relinquished pursuant to subsection (2)(b), the state land use agency shall cause to be prepared and recorded a lien against the property formerly subject to the development rights easement for the total amount of the ad valorem taxes not paid on the development rights during the period it was held by the state, if any. The lien shall provide that interest at the rate of 6% per annum compounded shall be added to the ad valorem taxes not paid from the time the exemption was received until it is paid.

(5) The lien shall become payable to the state by the owner of record at the time the land or any portion of it is sold by the owner of record, or if the land is converted to a use prohibited by the former open space development rights easement.

(6) Upon the termination of the open space development rights easement pursuant to subsection (2)(a), the development rights revert back to the owner without penalty or interest.

(7) Upon the natural termination of the open space development rights easement pursuant to subsection (1), the state land use agency shall cause to be prepared and recorded a lien against the property formerly subject to the open space development rights easement. The amount of the lien shall be the total amount of the last 7 years ad valorem taxes not paid on the development rights during the period it was held by the state, if any. The lien shall be without penalty or interest and shall be payable subject to subsection (5).

(8) A copy of the renewal or relinquishment of an open space development rights easement shall be sent to the local governing body's assessing office.

Sec. 36113. (1) An open space development rights easement pursuant to section 36106 shall be relinquished by the local governing body at the expiration of the term of the easement unless renewed with the consent of the owner of the land if the owner of the land has complied with the requirements of this part regarding open space development rights easements, the owner shall be entitled to automatic renewal of the agreement upon written request of the landowner.

(2) An open space development rights easement may be relinquished by the local governing body prior to a termination date contained in the instrument as follows:

(a) At any time the local governing body determines that the development of the land is in the public interest and in agreement with the owner of the land.

(b) The owner of the land may submit an application to the local governing body having jurisdiction requesting that the development rights easement be relinquished. The application shall be made on a form prescribed by the state land use agency. The request for relinquishment shall be processed and shall be subject to the provisions as provided in section 36106 for review and approval.

(3) If the request for relinquishment of the open space development rights easement is approved, the local governing body shall prepare an instrument providing for the relinquishment of the open space development rights easement, subject to subsections (4), (5), (6), and (7), and shall record it with the register of deeds of the county in which the land is situated.

(4) At the time an open space development rights easement is to be relinquished pursuant to subsection (2)(b), the local governing body shall cause to have prepared and recorded a lien against the property formerly subject to the open space development rights easement. The amount of the lien shall be the total amount of the ad valorem taxes not paid on the development rights during the period it was held by the local governing body, if any. The lien shall provide that

interest at the rate of 6% per annum compounded shall be added to the ad valorem taxes exemption from the time granted until the lien is paid.

(5) The lien shall become payable to the local governing body by the owner of record at the time the land or any portion of it is sold by the owner of record, or if the land is converted to a use prohibited by the former open space development rights easement.

(6) Upon the termination of the open space development rights easement pursuant to subsection (2)(a), the development rights revert back to the owner without penalty or interest and the development rights easement upon the land expire.

(7) Upon the natural termination of the open space development rights easement pursuant to subsection (1), the local governing body shall cause to be prepared and recorded a lien against the property formerly subject to the open space development rights easement. The amount of the lien shall be the total amount of the last 7 years ad valorem taxes not paid on the development rights during the period it was held by the local governing body, if any. The lien shall be without penalty or interest and will be payable subject to subsection (5).

(8) A copy of the renewal or relinquishment of an open space development rights easement shall be sent to the local assessing office.

Sec. 36114. If the owner or a successor in title of the land upon which a development rights agreement or easement has been recorded pursuant to this part changes the use of the land to a prohibited use or knowingly sells the land for a use other than those permitted in the development rights agreement or easement without first pursuing the provisions in sections 36110(2), 36111, 36112, and 36113, or receiving permission of the state land use agency, he or she may be enjoined by the state acting through the attorney general, or by the local governing body acting through its attorney, and is subject to a civil penalty for actual damages, which in no case shall exceed double the value of the land as established at the time the application for the development rights agreement or easement was approved.

Sec. 36115. All departments and agencies of state government shall cooperate with the state land use agency in the exchange of information concerning projects and activities that might jeopardize the preservation of land contemplated by this part. The state land use agency shall periodically advise the departments and agencies of state government of the location and description of land upon which there exists development rights agreements or easements and the departments and agencies shall harmonize their planning and projects consistent with the purposes of this part.

Sec. 36116. The state land use agency may promulgate rules for the administration of this part.

Sec. 36117. The state land use agency shall prepare a report and make recommendations to the legislature not later than January 30, 1976, for a state plan for preserving open space lands, agricultural and horticultural lands, unique or critical land areas, recreational lands, and historic lands.

ENDANGERED SPECIES

PART 365 ENDANGERED SPECIES PROTECTION

Sec. 36501. As used in this part:

(a) "Endangered species" means any species of fish, plant life, or wildlife that is in danger of extinction throughout all or a significant part of its range, other than a species of insecta determined by the department or the secretary of the United States department of the interior to constitute a pest whose protection under this part would present an overwhelming and overriding risk to humans.

(b) "Fish or wildlife" means any member of the animal kingdom, including any mammal, fish, amphibian, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring, or the dead body or parts thereof. Fish or wildlife includes migratory birds, nonmigratory birds, or endangered birds for which protection is afforded by treaty or other international agreement.

(c) "Import" means to bring into, introduce into, or attempt to bring into or introduce into any place subject to the jurisdiction of this state.

(d) "Plant or plant life" means any member of the plant kingdom, including seeds, roots, and other parts of a member of the plant kingdom.

(e) "Species" includes any subspecies of fish, plant life, or wildlife and any other group of fish, plants, or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed or cross-pollinate when mature.

(f) "Take" means, in reference to fish and wildlife, to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct.

(g) "Take" means, in reference to plants, to collect, pick, cut, dig up, or destroy in any manner.

(h) "Threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

Sec. 36502. The department shall perform those acts necessary for the conservation, protection, restoration, and propagation of endangered and threatened species of fish, wildlife, and plants in cooperation with the federal government, pursuant to the endangered species act of 1973, Public Law 93-205, 87 Stat. 884, and with rules promulgated by the secretary of the interior under that act.

Sec. 36503. (1) The department shall conduct investigations on fish, plants, and wildlife in order to develop information relating to population, distribution, habitat needs, limiting factors, and other biological and ecological data to determine management measures necessary for their continued ability to sustain themselves successfully. On the basis of these determinations and other available scientific and commercial data, which may include consultation with scientists and others who may have specialized knowledge, learning, or experience, the department shall promulgate a rule listing those species of fish, plants, and wildlife that are determined to be endangered or threatened within the state, pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(2) The department shall conduct a review of the state list of endangered and threatened species within not more than 2 years after its effective date and every 2 years thereafter, and may amend the list by appropriate additions or deletions pursuant to Act No. 306 of the Public Acts of 1969.

Sec. 36504. (1) The department may establish programs, including acquisition of land or aquatic habitat, as are considered necessary for the management of endangered or threatened species.

(2) In implementing the programs authorized by this section, the department may enter into cooperative agreements with federal and state agencies, political subdivisions of the state, or with private persons for the administration and management of any area or program established under this section or for investigation as outlined in section 36503.

Sec. 36505. (1) Except as otherwise provided in this part, a person shall not take, possess, transport, import, export, process, sell, offer for sale, buy, or offer to buy, and a common or contract carrier shall not transport or receive for shipment, any species of fish, plants, or wildlife appearing on the following lists:

(a) The list of fish, plants, and wildlife indigenous to the state determined to be endangered or threatened within the state pursuant to section 36503 or subsection (3).

(b) The United States list of endangered or threatened native fish and wildlife.

(c) The United States list of endangered or threatened plants.

(d) The United States list of endangered or threatened foreign fish and wildlife.

(2) A species of fish, plant, or wildlife appearing on any of the lists delineated in subsection (1) which enters the state from another state or from a point outside the territorial limits of the United States may enter, be transported, possessed, and sold in accordance with the terms of a federal permit issued pursuant to section 10 of the endangered species act of 1973, Public Law 93-205, 16 U.S.C. 1539, or an applicable permit issued under the laws of another state.

(3) The department may, by rule, treat any species as an endangered species or threatened species even though it is not listed pursuant to section 36503, if it finds any of the following:

(a) The species so closely resembles in appearance, at the point in question, a species which is listed pursuant to section 36503 that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species.

(b) The effect of the substantial difficulty in differentiating between a listed and an unlisted species is an additional threat to an endangered or threatened species.

(c) The treatment of an unlisted species will substantially facilitate the enforcement and further the intent of this part.

(4) The department may permit the taking, possession, purchase, sale, transportation, exportation, or shipment of species of fish, plants, or wildlife which appear on the state list of endangered or threatened species compiled pursuant to section 36503 and subsection (3) for scientific, zoological, or educational purposes, for propagation in captivity of such fish, plants, or wildlife to ensure their survival.

(5) Upon good cause shown and where necessary to alleviate damage to property or to protect human health, endangered or threatened species found on the state list compiled pursuant to section 36503 and subsection (3) may be removed, captured, or destroyed, but only pursuant to a permit issued by the department. Carnivorous animals found on the state list may be removed, captured, or destroyed by any person in emergency situations involving an immediate threat to human life, but the removal, capture, or destruction shall be reported to the department within 24 hours of the act.

(6) This section does not prohibit any of the following:

(a) The importation of a trophy under a permit issued pursuant to section 10 of the endangered species act of 1973, Public Law 93-205, 16 U.S.C. 1539, which is not for resale and which was lawfully taken in a manner permitted by the laws of the state, territory, or country where the trophy was caught, taken, or killed.

(b) The taking of a threatened species when the department has determined that the abundance of the species in the state justifies a controlled harvest not in violation of federal law.

Sec. 36506. A law enforcement officer, police officer, sheriff's deputy, or conservation officer shall enforce this part and the rules promulgated under this part.

Sec. 36507. A person who violates any provision of this part and a person who fails to procure any permit issued under this part is guilty of a misdemeanor and shall be fined not more than $1,000.00 nor less than $100.00, or imprisoned for more than 90 days, or both.

Sec. 90103. (1) The following acts that are codified in article III, chapter 1, entitled habitat protection, are repealed:

PUBLIC ACT NUMBER	YEAR OF ACT	MICHIGAN COMPILED LAWS SECTIONS
346	1972	281.951 to 281.966
203	1979	281.701 to 281.722
231	1970	281.761 to 281.776
146	1961	281.61 to 281.86
345	1966	281.901 to 281.930
253	1964	323.301 to 323.320
20	1964	281.301 to 281.315
300	1989	281.1301 to 281.1365
89	1954	3.601 to 3.607
28	1955	3.651 to 3.656
245	1970	281.631 to 281.644
247	1955	322.701 to 322.715
130	1985	323.71 to 323.85
128	1985	323.31 to 323.41
155	1989	3.671 to 3.677
44	1952	281.601
278	1952	281.621 to 281.628
326	1913	322.401 to 322.429
205	1967	279.201 to 279.246
241	1972	322.751 to 322.763
222	1976	281.651 to 281.694
93	1992	299.231 to 299.237
150	1970	247.381 to 247.386
116	1974	554.701 to 554.719
203	1974	299.221 to 299.230

(2) The following act is not codified in this act but is repealed:

PUBLIC ACT NUMBER	YEAR OF ACT	MICHIGAN COMPILED LAWS SECTIONS
133	1985	323.51 to 323.58

Section 2. This amendatory act shall not take effect unless all of the following bills of the 88th Legislature are enacted into law:

(a) House Bill No. 4351.

(b) House Bill No. 4348.

(c) House Bill No. 4349.

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved ---

Governor.