

HOUSE BILL No. 5435

September 22, 2009, Introduced by Rep. Cushingberry and referred to the Committee on Appropriations.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 63523, 63524, 63545, 72113, 76102, 76103,
76104, 76105, 76107, 76108, 76109, 76110, 76111, 76112, 76113,
76114, and 76118 (MCL 324.63523, 324.63524, 324.63545, 324.72113,
324.76102, 324.76103, 324.76104, 324.76105, 324.76107, 324.76108,
324.76109, 324.76110, 324.76111, 324.76112, 324.76113, 324.76114,
and 324.76118), sections 63523 and 63545 as amended by 2001 PA 78,
sections 63524, 76105, and 76109 as amended by 2004 PA 325, section
72113 as added by 2002 PA 454, sections 76102, 76103, 76104, 76108,
76110, 76111, 76112, 76113, 76114, and 76118 as amended by 2001 PA
75, and section 76107 as amended by 2001 PA 155.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 63523. (1) When an application for a surface coal mining
2 and reclamation permit or renewal of an existing permit is
3 submitted, the applicant's advertisement of ownership, location,
4 and boundaries of the land to be affected shall be placed in a
5 local newspaper of general circulation in the locality of the
6 proposed surface coal mining operation for 4 consecutive weeks. The
7 department shall notify local units of government in the vicinity
8 of the proposed mining and reclamation area of the operator's
9 intention to conduct a surface mining operation indicating the
10 application's number and the county courthouse or township office
11 in which a copy of the proposed surface coal mining and reclamation
12 plan may be inspected. A local unit of government may submit
13 written comments within a period established by the department on
14 the mining applications with respect to the effect of the operation
15 proposed by the applicant on the environment that is within its
16 area of responsibility. The comments shall immediately be
17 transmitted to the applicant by the department and shall be made
18 available to the public at the same location as the mining
19 application.

20 (2) In addition to the notice required in subsection (1), the
21 department shall notify the department of ~~history, arts, and~~
22 ~~libraries~~ **STATE** of the operator's intention to conduct a surface
23 mining operation and shall provide the department of ~~history, arts,~~
24 ~~and libraries~~ **STATE** with a copy of the permit application. Based on
25 the information required pursuant to section 63516(1)(r), the
26 department of ~~history, arts, and libraries~~ **STATE** shall determine

1 whether or not the proposed surface mining operation will adversely
2 affect a historic resource. The department of ~~history, arts, and~~
3 ~~libraries~~ **STATE** may file written objection to the proposed surface
4 mining operation pursuant to subsection (3).

5 (3) A person having an interest that is or may be adversely
6 affected by the operation proposed in the application and any
7 federal or state government agency or local unit of government ~~is~~
8 ~~entitled to~~ **MAY** file written objections to the proposed initial or
9 revised application for a permit for surface coal mining and
10 reclamation operation with the department not later than 30 days
11 after the last publication of the notice required by subsection
12 (1). Those objections shall immediately be transmitted to the
13 applicant by the department and shall be made available to the
14 public.

15 (4) Within 45 days after the last publication of the notice
16 provided in subsection (1), the applicant or any person with an
17 interest that is or may be adversely affected may request a hearing
18 on the application. The hearing shall be held within 30 days after
19 the expiration of the time allowed for submitting the request.

20 (5) An action taken by the department with respect to a permit
21 application shall be conducted pursuant to chapters 4 and 5 of the
22 administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to
23 24.292.

24 Sec. 63524. (1) The applicant for a permit or revision of a
25 permit has the burden of establishing that his or her application
26 is in compliance with all the requirements of this part. Within 3
27 days after the granting of a permit, but before the permit is

1 issued, the department shall notify the county clerk in each county
2 in which the land to be affected is located that a permit has been
3 issued and shall describe the location of the land.

4 (2) An application for a permit or revision of a permit shall
5 not be approved unless the department finds, in writing, that all
6 the following requirements have been met:

7 (a) The application is accurate and complete and complies with
8 all of the requirements of this part.

9 (b) The applicant has demonstrated that reclamation as
10 required by this part can be accomplished under the reclamation
11 plan contained in the application.

12 (c) An assessment of the probable cumulative impact of all
13 anticipated surface coal mining inside and outside the permit area
14 on the hydrologic balance, including quantitative and qualitative
15 analyses, has been made by the department, and the proposed
16 operation has been designed to prevent material damage to the
17 hydrologic balance inside and outside the permit area.

18 (d) The area proposed to be mined is not included within an
19 area designated unsuitable for surface coal mining pursuant to this
20 part and is not within an area under study for this designation in
21 an administrative proceeding commenced pursuant to this part,
22 unless in the area as to which an administrative proceeding has
23 commenced, the applicant demonstrates that, prior to January 1,
24 1977, the applicant has made substantial legal and financial
25 commitments in relation to the operation for which the applicant is
26 applying for a permit.

27 (e) If the ownership of the coal has been severed from the

1 private surface estate, the applicant has submitted to the
2 department either the written consent of the surface owner to the
3 extraction of coal by surface mining methods or a conveyance that
4 expressly grants or reserves the right to extract the coal by
5 surface mining methods. However, if the conveyance does not
6 expressly grant the right to extract coal by surface mining
7 methods, the surface-subsurface legal relationship shall be
8 determined in accordance with state law, except that this part does
9 not authorize the department to adjudicate property rights
10 disputes.

11 (f) If the department of ~~history, arts, and libraries~~ **STATE**
12 determines that the proposed surface mining operation will
13 adversely affect a historic resource, the application is approved
14 jointly by the department, by the federal, state, or local agency
15 with jurisdiction over the historic resource, and by the department
16 of ~~history, arts, and libraries~~ **STATE**.

17 (3) The applicant shall file, with the application, a schedule
18 listing all notices of violations of this part or other law of this
19 state and any law, rule, or regulation of the United States or of
20 any department or agency in the United States pertaining to air or
21 water environmental protection incurred by the applicant in
22 connection with a surface coal mining operation during the 3-year
23 period prior to the date of application. The schedule shall include
24 the final resolution of notice of the violation. If the schedule or
25 other information available to the department indicates that a
26 surface coal mining operation owned or controlled by the applicant
27 is currently in violation of this part or other laws referred to in

1 this subsection, the permit shall not be issued until the applicant
2 submits affidavits that the violation has been corrected or is in
3 the process of being corrected to the satisfaction of the
4 department or the agency that has jurisdiction over the violation
5 or that the notice of violation is being contested by the
6 applicant. A permit shall not be issued to an applicant after a
7 finding by the department, after opportunity for hearing, that the
8 applicant, or the operator specified in the application, controls
9 or has controlled mining operations with a demonstrated pattern of
10 violations of this part of such nature and duration with such
11 resulting pollution, impairment, or destruction to the environment
12 as to indicate an intent not to comply with this part.

13 (4) If the area proposed to be mined contains agricultural
14 land, the department shall consult with the director of the
15 department of agriculture and the secretary of the United States
16 department of agriculture and shall not grant a permit to mine on
17 agricultural land unless the department finds in writing that the
18 operator has the technological capability to restore the mined area
19 and any other areas impacted by the surface coal mining operation
20 within a reasonable time to equivalent or higher levels of yield as
21 nonmined agricultural land in the surrounding area under equivalent
22 levels of management, and also finds that the applicant can meet
23 the soil reconstruction standards of this part.

24 Sec. 63545. (1) The department shall promulgate rules
25 establishing a process for designating areas unsuitable for surface
26 coal mining. The rules shall include all of the following:

27 (a) Surface coal mining land review.

1 (b) Development of a data base and an inventory system that
2 will permit proper evaluation of the capacity of different land
3 areas of the state to support and permit reclamation of surface
4 coal mining operations.

5 (c) Development, by rule, of a method for implementing land
6 use planning decisions concerning surface coal mining operations.

7 (d) Development, by rule, of proper notice provisions and
8 opportunity for public participation, including a public hearing,
9 prior to making any designation or redesignation pursuant to this
10 section.

11 (e) Procedures for determining whether an area proposed for
12 surface coal mining contains historic resources. These rules shall
13 be developed with the concurrence of the department of ~~history,~~
14 ~~arts, and libraries~~ **STATE** and the department of natural resources.

15 (2) On a petition submitted pursuant to subsection (3), the
16 department shall designate an area as unsuitable for all or certain
17 types of surface coal mining operations if the department
18 determines that reclamation pursuant to the requirements of this
19 part is not technologically and economically feasible. A surface
20 area may be designated unsuitable for certain types of surface coal
21 mining operations if those operations do any of the following:

22 (a) Are incompatible with existing state or local land use
23 plans or programs.

24 (b) Affect fragile land or historic resources resulting in
25 significant damage to important historic, cultural, scientific, and
26 aesthetic values and natural systems.

27 (c) Affect renewable resource land, including aquifers and

1 aquifer recharge areas, resulting in a substantial loss or
2 reduction of long-range productivity of water supply or of food or
3 fiber products.

4 (d) Affect natural hazard land, including areas subject to
5 frequent flooding and areas of unstable geology, substantially
6 endangering life and property.

7 (e) Affect agricultural land by diminishing the productivity
8 of the land after reclamation to less than the productivity before
9 the site was mined.

10 (f) Adversely affect an agricultural operation, including
11 planting, harvesting, transportation, processing, or other activity
12 included in the agricultural impact statement required by section
13 63516(1)(s).

14 (3) Determinations of the unsuitability of land for surface
15 coal mining shall be integrated with present and future land use
16 planning and regulation processes at the federal, state, and local
17 levels. The requirements of this section do not apply to land on
18 which surface coal mining operations were being conducted on August
19 3, 1977, or under a permit issued pursuant to former 1982 PA 303,
20 or where substantial legal and financial commitments in the
21 operation or proposed operation were in existence prior to January
22 4, 1977.

23 (4) A person having an interest that is or may be adversely
24 affected has the right to petition the department to have an area
25 designated as unsuitable for surface coal mining operations or to
26 have that designation terminated. The petition shall contain
27 allegations of facts with supporting evidence. Within 30 days after

1 receipt of the petition, the department shall hold a public hearing
2 in the locality of the affected area. After a person having an
3 interest that is or may be adversely affected has filed a petition
4 and before the hearing, any person may intervene by filing
5 allegations of facts with supporting evidence that would tend to
6 establish the allegations. Within 60 days after the hearing, the
7 department shall issue and furnish to the petitioner and any other
8 party to the hearing a written decision with reasons for the
9 decision. In the event that all the parties stipulate agreement
10 prior to the requested hearing and withdraw their request, the
11 hearing need not be held.

12 (5) Before designating land areas as unsuitable for surface
13 coal mining operations, the department shall prepare a detailed
14 statement on the potential coal resources of the area, the demand
15 for coal resources, and the impact of the designation on the
16 environment, the economy, and the supply of coal.

17 (6) After October 12, 1982, and subject to valid existing
18 rights, surface coal mining operations, except those that existed
19 on August 3, 1977, shall not be permitted that do any of the
20 following:

21 (a) Adversely affect a publicly owned park or historic
22 resource unless approved jointly by the department and the federal,
23 state, or local agency with jurisdiction over the park or historic
24 resource and by the department of ~~history, arts, and libraries~~
25 **STATE.**

26 (b) Are within 100 feet of the outside right-of-way line of a
27 public road, except where mine access roads or haulage roads join

1 the right-of-way lines and except that the department may permit
2 these roads to be relocated or the area affected to lie within 100
3 feet of the public road, if, after public notice and opportunity
4 for public hearing in the locality, a written finding is made that
5 the interests of the public and the landowners affected by the
6 relocation will be protected.

7 (c) Are within 300 feet of an occupied dwelling, unless waived
8 by the owner of the dwelling, or within 300 feet of any public
9 building, school, church, community, or institutional building, or
10 public park, or within 300 feet of a cemetery.

11 (7) The department shall designate areas protected by part 351
12 as unsuitable for surface coal mining.

13 (8) In administering this section, the department shall
14 consult with the department of natural resources.

15 Sec. 72113. (1) The Great Lakes center for maritime studies at
16 western Michigan university, in conjunction with the department,
17 the department of ~~history, arts, and libraries~~ **STATE**, and the
18 Michigan 4-H youth conservation council, shall develop a plan for a
19 statewide recognition program to be known as the "Michigan heritage
20 water trail program". This program shall be designed to do all of
21 the following:

22 (a) Establish a method for designating significant water
23 corridors in the state as Michigan heritage water trails.

24 (b) Provide recognition for the historical, cultural,
25 recreational, and natural resource significance of Michigan
26 heritage water trails.

27 (c) Establish methods for local units of government to

1 participate in programs that complement the designation of Michigan
2 heritage water trails.

3 (d) Assure that private property rights along Michigan
4 heritage water trails are not disturbed or disrupted, or restricted
5 by the state or local units of government.

6 (2) ~~Within 1 year after the effective date of the amendatory~~
7 ~~act that added this section~~ **BY JUNE 21, 2003**, the center for
8 maritime studies at western Michigan university, in conjunction
9 with the department, the department of ~~history, arts, and libraries~~
10 **STATE**, and the Michigan 4-H youth conservation council, shall
11 submit a copy of the plan developed under subsection (1) to the
12 standing committees of the legislature with jurisdiction primarily
13 pertaining to natural resources and the environment.

14 Sec. 76102. (1) The state reserves to itself the exclusive
15 right and privilege, except as provided in this part, of exploring,
16 surveying, excavating, and regulating through its authorized
17 officers, agents, and employees, all aboriginal records and other
18 antiquities, including mounds, earthworks, forts, burial and
19 village sites, mines or other relics, and abandoned property of
20 historical or recreational value found upon or within any of the
21 lands owned by or under the control of the state.

22 (2) The state reserves to itself a possessory right or title
23 superior to that of a finder to abandoned property of historical or
24 recreational value found on the state owned bottomlands of the
25 Great Lakes. This property shall belong to this state with
26 administration and protection jointly vested in the department and
27 the department of ~~history, arts, and libraries~~ **STATE**.

1 Sec. 76103. (1) The underwater salvage and preserve committee
2 is created in the department to provide technical and other advice
3 to the department and the department of ~~history, arts, and~~
4 ~~libraries-STATE~~ with respect to their responsibilities under this
5 part.

6 (2) The underwater salvage and preserve committee shall
7 consist of 9 members appointed as follows:

8 (a) Two individuals appointed by the department who have
9 primary responsibility in the department for administering this
10 part.

11 (b) Two individuals appointed by the ~~director of the~~
12 ~~department of history, arts, and libraries-SECRETARY OF STATE~~ who
13 have primary responsibility in the department of ~~history, arts, and~~
14 ~~libraries-STATE~~ for administering this part.

15 (c) Five individuals appointed by the governor with the advice
16 and consent of the senate from the general public. Two of these
17 individuals shall have experience in recreational scuba diving.

18 (3) An individual appointed to the committee shall serve for a
19 term of 3 years. A vacancy on the committee shall be filled in the
20 same manner as an original appointment and the term of a member
21 appointed to fill a vacancy shall be for 3 years. Members of the
22 committee shall serve without compensation, except for their
23 regular state salary where applicable.

24 (4) The chairperson of the committee shall alternate between
25 the representatives from the department and the department of
26 ~~history, arts, and libraries-STATE~~. The chairperson shall be
27 designated by the department or the ~~director of the department of~~

1 ~~history, arts, and libraries~~ **SECRETARY OF STATE**, whichever is
2 applicable from among his or her representatives on the committee.
3 The chairperson's term shall run for 12 months, from October 1
4 through September 30. The department shall appoint the first
5 chairperson of the committee for a term ending September 30, 1989.
6 The chairperson shall call meetings as necessary but not less than
7 4 times per year, set the agenda for meetings, ensure that adequate
8 minutes are taken, and file an annual report of committee
9 proceedings with the head of the department of natural resources
10 and the ~~director of the department of history, arts, and libraries~~
11 **SECRETARY OF STATE**.

12 (5) The committee is an advisory body and may perform all of
13 the following functions:

14 (a) Make recommendations with regard to the creation and
15 boundaries of Great Lakes underwater preserves.

16 (b) Review applications for underwater salvage permits and
17 make recommendations regarding issuance.

18 (c) Consider and make recommendations regarding the charging
19 of permit fees and the appropriate use of revenue generated by
20 those fees.

21 (d) Consider the need for and the content of rules intended to
22 implement this part and make recommendations concerning the
23 promulgation of rules.

24 (e) Consider and make recommendations concerning appropriate
25 legislation.

26 (f) Consider and make recommendations concerning program
27 operation.

1 (6) The committee shall not replace or supersede the
2 responsibility or authority of the department of ~~history, arts, and~~
3 ~~libraries-STATE~~ or the department to carry out their
4 responsibilities under this part.

5 Sec. 76104. A deed, as provided by this part, given by this
6 state, except state tax deeds for the conveyance of any land owned
7 by the state, shall contain a clause reserving to this state a
8 property right in aboriginal antiquities including mounds,
9 earthworks, forts, burial and village sites, mines, or other relics
10 and also reserving the right to explore and excavate for the
11 aboriginal antiquity by and through this state's authorized agent
12 and employee. This section applies only to the sale of tax reverted
13 land. The department, with the approval of the department of
14 ~~history, arts, and libraries-STATE~~, may waive this reservation when
15 conveying platted property and when making conveyances under
16 subpart 3 of part 21.

17 Sec. 76105. (1) A person, either personally or through an
18 agent or employee, shall not explore or excavate an aboriginal
19 remain covered by this part upon lands owned by the state, except
20 as authorized by a permit issued by the department, with written
21 approval of the department of ~~history, arts, and libraries-STATE~~,
22 pursuant to part 13. A permit shall be issued without charge.

23 (2) Subsection (1) does not apply to the Mackinac Island state
24 park commission on lands owned or controlled by the Mackinac Island
25 state park commission.

26 Sec. 76107. (1) Except as provided in section 76108, a person
27 shall not recover, alter, or destroy abandoned property which is

1 in, on, under, or over the bottomlands of the Great Lakes,
2 including those within a Great Lakes bottomlands preserve, unless
3 the person has a permit issued jointly by the department of
4 ~~history, arts, and libraries~~**STATE** and the department under section
5 76109.

6 (2) A person who recovers abandoned property without a permit
7 when a permit is required by this part shall transmit the property
8 to the department of ~~history, arts, and libraries~~**STATE** and the
9 recovered property shall be the property of the department of
10 ~~history, arts, and libraries~~**STATE**.

11 (3) A person shall not remove, convey, mutilate, or deface a
12 human body or the remains of a human body located on the
13 bottomlands of the Great Lakes. This subsection does not apply to a
14 person who removes or conveys a human body or the remains of a
15 human body pursuant to a court order, pursuant to the written
16 consent of the decedent's next of kin if the decedent's death
17 occurred less than 100 years before the removal or conveying, or to
18 a person who removes or conveys the body for law enforcement,
19 medical, archaeological, or scientific purposes. A person who
20 violates this subsection is guilty of a felony punishable by
21 imprisonment for not more than 10 years or a fine of not more than
22 \$5,000.00, or both.

23 (4) A person who violates subsection (1) is guilty of a crime
24 as follows:

25 (a) If the value of the property is less than \$200.00, the
26 person is guilty of a misdemeanor punishable by imprisonment for
27 not more than 93 days or a fine of not more than \$500.00, or 3

1 times the aggregate value of the property involved, whichever is
2 greater, or both imprisonment and a fine.

3 (b) If any of the following apply, the person is guilty of a
4 misdemeanor punishable by imprisonment for not more than 1 year or
5 a fine of not more than \$2,000.00 or 3 times the value of the
6 property involved, whichever is greater, or both imprisonment and a
7 fine:

8 (i) The value of the property involved is \$200.00 or more but
9 less than \$1,000.00.

10 (ii) The person violates subdivision (a) and has 1 or more
11 prior convictions for committing or attempting to commit an offense
12 under this section.

13 (c) If any of the following apply, the person is guilty of a
14 felony punishable by imprisonment for not more than 5 years or a
15 fine of not more than \$10,000.00 or 3 times the value of the
16 property involved, whichever is greater, or both imprisonment and a
17 fine:

18 (i) The value of the property involved is \$1,000.00 or more but
19 less than \$20,000.00.

20 (ii) The person violates subdivision (b) (i) and has 1 or more
21 prior convictions for violating or attempting to violate this
22 section. For purposes of this subparagraph, however, a prior
23 conviction does not include a conviction for a violation or
24 attempted violation of subdivision (a) or (b) (ii).

25 (d) If any of the following apply, the person is guilty of a
26 felony punishable by imprisonment for not more than 10 years or a
27 fine of not more than \$15,000.00 or 3 times the value of the

1 property involved, whichever is greater, or both imprisonment and a
2 fine:

3 (i) The property involved has a value of \$20,000.00 or more.

4 (ii) The person violates subdivision (c) (i) and has 2 or more
5 prior convictions for committing or attempting to commit an offense
6 under this section. For purposes of this subparagraph, however, a
7 prior conviction does not include a conviction for a violation or
8 attempted violation of subdivision (a) or (b) (ii).

9 (5) The values of property recovered or destroyed in separate
10 incidents pursuant to a scheme or course of conduct within any 12-
11 month period may be aggregated to determine the total value of the
12 property recovered or destroyed.

13 (6) If the prosecuting attorney intends to seek an enhanced
14 sentence based upon the defendant having 1 or more prior
15 convictions, the prosecuting attorney shall include on the
16 complaint and information a statement listing the prior conviction
17 or convictions. The existence of the defendant's prior conviction
18 or convictions shall be determined by the court, without a jury, at
19 sentencing or at a separate hearing for that purpose before
20 sentencing. The existence of a prior conviction may be established
21 by any evidence relevant for that purpose, including, but not
22 limited to, 1 or more of the following:

23 (a) A copy of the judgment of conviction.

24 (b) A transcript of a prior trial, plea-taking, or sentencing.

25 (c) Information contained in a presentence report.

26 (d) The defendant's statement.

27 (7) If the sentence for a conviction under this section is

1 enhanced by 1 or more prior convictions, those prior convictions
2 shall not be used to further enhance the sentence for the
3 conviction pursuant to section 10, 11, or 12 of chapter IX of the
4 code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and
5 769.12.

6 Sec. 76108. (1) A person may recover abandoned property
7 outside a Great Lakes bottomlands preserve without a permit if the
8 abandoned property is not attached to, nor located on, in, or
9 located in the immediate vicinity of and associated with a sunken
10 aircraft or watercraft and if the abandoned property is recoverable
11 by hand without mechanical or other assistance.

12 (2) A person who recovers abandoned property valued at more
13 than \$10.00 without a permit pursuant to subsection (1) shall file
14 a written report within 30 days after removal of the property with
15 the department or the department of ~~history, arts, and libraries~~
16 **STATE** if the property has been abandoned for more than 30 years.
17 The written report shall list all recovered property that has been
18 abandoned for more than 30 years and the location of the property
19 at the time of recovery. For a period of 90 days after the report
20 is filed, the person shall make the recovered property available to
21 the department and the department of ~~history, arts, and libraries~~
22 **STATE** for inspection at a location in this state. If the department
23 of ~~history, arts, and libraries~~ **STATE** determines that the recovered
24 property does not have historical value, the department of ~~history,~~
25 ~~arts, and libraries~~ **STATE** shall release the property to the person
26 by means of a written instrument.

27 Sec. 76109. (1) A person shall not recover abandoned property

1 located on, in, or located in the immediate vicinity of and
2 associated with a sunken aircraft or watercraft except as
3 authorized by a permit issued by the department and the department
4 of ~~history, arts, and libraries~~ **STATE** pursuant to part 13.

5 (2) Notwithstanding section 1303(1), a person shall file an
6 application for a permit with the department on a form prescribed
7 by the department and approved by the department of ~~history, arts,~~
8 ~~and libraries~~ **STATE**. The application shall contain all of the
9 following information:

10 (a) The name and address of the applicant.

11 (b) The name, if known, of the watercraft or aircraft on or
12 around which recovery operations are to occur and a current
13 photograph or drawing of the watercraft or aircraft, if available.

14 (c) The location of the abandoned property to be recovered and
15 the depth of water in which it may be found.

16 (d) A description of each item to be recovered.

17 (e) The method to be used in recovery operations.

18 (f) The proposed disposition of the abandoned property
19 recovered, including the location at which it will be available for
20 inspection by the department and the department of ~~history, arts,~~
21 ~~and libraries~~ **STATE**.

22 (g) Other information which the department or the department
23 of ~~history, arts, and libraries~~ **STATE** considers necessary in
24 evaluating the request for a permit.

25 (3) An application for a permit is not complete until all
26 information requested on the application form and any other
27 information requested by the department or the department of

1 ~~history, arts, and libraries~~ **STATE** has been received by the
2 department. After receipt of an otherwise complete application, the
3 department may request additional information or documents as are
4 determined to be necessary to make a decision to grant or deny a
5 permit.

6 (4) The department and the department of ~~history, arts, and~~
7 ~~libraries~~ **STATE** shall approve or deny an application for a permit
8 with the advice of the committee. A condition to the approval of an
9 application shall be in writing on the face of the permit. The
10 department and the department of ~~history, arts, and libraries~~ **STATE**
11 may impose such conditions as are considered reasonable and
12 necessary to protect the public trust and general interests,
13 including conditions that accomplish 1 or more of the following:

14 (a) Protect and preserve the abandoned property to be
15 recovered, and the recreational value of the area in which recovery
16 is being accomplished.

17 (b) Assure reasonable public access to the abandoned property
18 after recovery.

19 (c) Conform with rules applying to activities within a Great
20 Lakes bottomlands preserve.

21 (d) Prohibit injury, harm, and damage to a bottomlands site or
22 abandoned property not authorized for removal during and after
23 salvage operations by the permit holder.

24 (e) Prohibit or limit the amount of discharge of possible
25 pollutants, such as floating timbers, planking, and other debris,
26 which may emanate from the shipwreck, plane wreck, or salvage
27 equipment.

1 (f) Require the permit holder to submit a specific removal
2 plan prior to commencing any salvaging activities. Among other
3 matters considered appropriate by either the department or the
4 department of ~~history, arts, and libraries~~**STATE**, or both, the
5 removal plan may be required to ensure the safety of those removing
6 or assisting in the removal of the abandoned property and to
7 address how the permit holder proposes to prevent, minimize, or
8 mitigate potential adverse effects upon the abandoned property to
9 be removed, that portion of the abandoned property which is not to
10 be removed, and the surrounding geographic features.

11 (5) The department shall approve an application for a permit
12 unless the department determines that the abandoned property to be
13 recovered has substantial recreational value in itself or in
14 conjunction with other abandoned property in its vicinity
15 underwater, or the recovery of abandoned property would not comply
16 with rules applying to a Great Lakes bottomlands preserve.

17 (6) The department of ~~history, arts, and libraries~~**STATE** shall
18 approve the application for a permit unless the department of
19 ~~history, arts, and libraries~~**STATE** determines that the abandoned
20 property to be recovered has substantial historical value in itself
21 or in conjunction with other abandoned property in its vicinity. If
22 the property has substantial historical value, the department of
23 ~~history, arts, and libraries~~**STATE**, pursuant to subsection (4), may
24 impose a condition on the permit requiring the permittee to turn
25 over recovered property to the department of ~~history, arts, and~~
26 ~~libraries~~**STATE** for the purpose of preserving the property or
27 permitting public access to the property. The department of

1 ~~history, arts, and libraries~~ **STATE** may authorize the display of the
2 property in a public or private museum or by a local unit of
3 government. In addition to the conditions authorized by subsection
4 (4), the department of ~~history, arts, and libraries~~ **STATE** may
5 provide for payment of salvage costs in connection with the
6 recovery of the abandoned property.

7 (7) A person shall not recover cargo situated on, in, or
8 associated with an abandoned watercraft that is located outside of
9 a Great Lakes bottomlands preserve except as authorized by a permit
10 issued pursuant to this section and part 13. Subject to subsection
11 (4), the permit shall be issued to the first person applying for
12 the permit. However, only the person who discovered the abandoned
13 watercraft may apply for a permit during the first 90 days after
14 the discovery. When a watercraft containing cargo is simultaneously
15 discovered by more than 1 person, a permit shall be approved with
16 respect to the first person or persons jointly applying for a
17 permit.

18 (8) A person aggrieved by a condition contained on a permit or
19 by the denial of an application for a permit may request an
20 administrative review of the condition or the denial by the
21 ~~commission~~ **DEPARTMENT** or the department of ~~history, arts, and~~
22 ~~libraries~~ **STATE**, whichever disapproves the application or imposes
23 the condition. A person shall file the request for review with the
24 ~~commission~~ **DEPARTMENT** or the department of ~~history, arts, and~~
25 ~~libraries~~ **STATE**, whichever is applicable, within 90 days after the
26 permit application is submitted to the department. An
27 administrative hearing conducted pursuant to this subsection shall

1 be conducted under the procedures set forth in chapter 4 of the
2 administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to
3 24.287. If neither the department nor the department of ~~history,~~
4 ~~arts, and libraries~~ **STATE** approves the application and an
5 administrative review is requested from both the ~~commission~~
6 **DEPARTMENT** and the department of ~~history, arts, and libraries~~
7 **STATE**, the appeals shall be combined upon request of the appellant
8 or either the ~~commission~~ **DEPARTMENT** or the department of ~~history,~~
9 ~~arts, and libraries~~ **STATE** and a single administrative hearing shall
10 be conducted. The ~~commission~~ **DEPARTMENT** and the department of
11 ~~history, arts, and libraries~~ **STATE** shall issue jointly the final
12 decision and order in the case.

13 (9) A permit issued under this section is valid until December
14 31 of the year in which the application for the permit was filed
15 and is not renewable. If an item designated in a permit for
16 recovery is not recovered, a permit holder may, upon request
17 following the expiration of the permit, be issued a new permit to
18 remove the same abandoned property if the permit holder
19 demonstrates that diligence in attempting recovery was exercised
20 under the previously issued permit.

21 (10) A permit issued under this section shall not be
22 transferred or assigned unless the assignment is approved in
23 writing by both the department and the department of ~~history, arts,~~
24 ~~and libraries~~ **STATE**.

25 Sec. 76110. (1) Within 10 days after recovery of abandoned
26 property, a person with a permit issued pursuant to section 76109
27 shall report the recovery in writing to the department. The person

1 recovering the abandoned property shall give authorized
2 representatives of the department and the department of ~~history,~~
3 ~~arts, and libraries~~ **STATE** an opportunity to examine the abandoned
4 property for a period of 90 days after recovery. Recovered
5 abandoned property shall not be removed from this state without
6 written approval of the department and the department of ~~history,~~
7 ~~arts, and libraries~~ **STATE**. If the recovered abandoned property is
8 removed from the state without written approval, the attorney
9 general, upon request from the department or the department of
10 ~~history, arts, and libraries~~ **STATE**, shall bring an action for the
11 recovery of the property.

12 (2) If the department of ~~history, arts, and libraries~~ **STATE**
13 determines that the recovered abandoned property does not have
14 historical value, the department of ~~history, arts, and libraries~~
15 **STATE** shall release the property to the person holding the permit
16 by means of a written instrument.

17 Sec. 76111. (1) Subject to subsection (7), the department of
18 environmental quality shall establish Great Lakes bottomlands
19 preserves by rule. A Great Lakes bottomlands preserve shall be
20 established by emergency rule if it is determined by the department
21 that this action is necessary to immediately protect an object or
22 area of historical or recreational value.

23 (2) A Great Lakes bottomlands preserve may be established
24 whenever a bottomlands area includes a single watercraft of
25 significant historical value, includes 2 or more abandoned
26 watercraft, or contains other features of archaeological,
27 historical, recreational, geological, or environmental

1 significance. Bottomlands areas containing few or no watercraft or
2 other features directly related to the character of a preserve may
3 be excluded from preserves.

4 (3) In establishing a Great Lakes bottomlands preserve, the
5 department of environmental quality shall consider all of the
6 following factors:

7 (a) Whether creating the preserve is necessary to protect
8 either abandoned property possessing historical or recreational
9 value, or significant underwater geological or environmental
10 features.

11 (b) The extent of local public and private support for
12 creation of the preserve.

13 (c) Whether a preserve development plan has been prepared by a
14 state or local agency.

15 (d) The extent to which preserve support facilities such as
16 roads, marinas, charter services, hotels, medical hyperbaric
17 facilities, and rescue agencies have been developed in or are
18 planned for the area.

19 (4) The department of environmental quality and the department
20 of ~~history, arts, and libraries~~ **STATE** shall not grant a permit to
21 recover abandoned artifacts within a Great Lakes bottomlands
22 preserve except for historical or scientific purposes or when the
23 recovery will not adversely affect the historical, cultural, or
24 recreational integrity of the preserve area as a whole.

25 (5) An individual Great Lakes bottomlands preserve shall not
26 exceed 400 square miles in area. Great Lakes bottomlands preserves
27 shall be limited in total area to not more than 10% of the Great

1 Lakes bottomlands within this state. However, the limitations
2 provided in this subsection do not apply to the Thunder Bay Great
3 Lakes bottomland preserve established in subsection (7).

4 (6) Upon the approval of the committee, not more than 1 vessel
5 associated with Great Lakes maritime history may be sunk
6 intentionally within a Great Lakes bottomlands preserve. However,
7 state money shall not be expended to purchase, transport, or sink
8 the vessel.

9 (7) The Thunder Bay Great Lakes state bottomland preserve
10 established under R 299.6001 of the Michigan administrative code
11 shall have boundaries identical with those described in 15 C.F.R.
12 922.190 for the Thunder Bay national marine sanctuary and
13 underwater preserve. As long as the Thunder Bay national marine
14 sanctuary and underwater preserve remains a designated national
15 marine sanctuary, the right and privilege to explore, survey,
16 excavate, and regulate abandoned property of historical or
17 recreational value found upon or within the lands owned by or under
18 control of the state within those boundaries shall be jointly
19 managed and regulated by the department of environmental quality
20 and the national oceanic and atmospheric administration. However,
21 this subsection shall not be construed to convey any ownership
22 right or interest from the state to the federal government of
23 abandoned property of historical or recreational value found upon
24 or within the lands owned by or under control of the state.

25 Sec. 76112. (1) The department and the department of ~~history,~~
26 ~~arts, and libraries~~ **STATE**, jointly or separately, may promulgate
27 rules as are necessary to implement this part.

1 (2) Within each Great Lakes bottomlands preserve, the
2 department and the department of ~~history, arts, and libraries~~**STATE**
3 may jointly promulgate rules that govern access to and use of a
4 Great Lakes bottomlands preserve. These rules may regulate or
5 prohibit the alteration, destruction, or removal of abandoned
6 property, features, or formations within a preserve.

7 Sec. 76113. Sections 76107 to 76110 shall not be considered to
8 impose the following limitations:

9 (a) A limitation on the right of a person to engage in diving
10 for recreational purposes in and upon the Great Lakes or the
11 bottomlands of the Great Lakes.

12 (b) A limitation on the right of the department or the
13 department of ~~history, arts, and libraries~~**STATE** to recover, or to
14 contract for the recovery of, abandoned property in and upon the
15 bottomlands of the Great Lakes.

16 (c) A limitation on the right of a person to own either
17 abandoned property recovered before July 2, 1980 or abandoned
18 property released to a person after inspection.

19 Sec. 76114. (1) If the department or the department of
20 ~~history, arts, and libraries~~**STATE** finds that the holder of a
21 permit issued pursuant to section 76105 or 76109 is not in
22 compliance with this part, a rule promulgated under this part, or a
23 provision of or condition in the permit, or has damaged abandoned
24 property or failed to use diligence in attempting to recover
25 property for which a permit was issued, the department or the
26 department of ~~history, arts, and libraries~~**STATE**, individually or
27 jointly, may summarily suspend or revoke the permit. If the permit

1 holder requests a hearing within 15 days following the effective
2 date of the suspension or revocation, the ~~commission~~**DEPARTMENT** or
3 the department of ~~history, arts, and libraries~~**STATE** shall conduct
4 an administrative hearing pursuant to chapter 4 of the
5 administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to
6 24.287, to consider whether the permit should be reinstated.

7 (2) The attorney general, on behalf of the department or the
8 department of ~~history, arts, and libraries~~**STATE**, individually or
9 jointly, may commence a civil action in circuit court to enforce
10 compliance with this part, to restrain a violation of this part or
11 any action contrary to a decision denying a permit, to enjoin the
12 further removal of artifacts, geological material, or abandoned
13 property, or to order the restoration of an affected area to its
14 prior condition.

15 Sec. 76118. (1) The underwater preserve fund is created as a
16 separate fund in the state treasury, and it may receive revenue as
17 provided in this part, or revenue from any other source.

18 (2) Money in the underwater preserve fund shall be
19 appropriated for only the following purposes:

20 (a) To the department of ~~history, arts, and libraries~~**STATE**
21 for the development of maritime archaeology and for the promotion
22 of Great Lakes bottomlands preserves in this state.

23 (b) To the department for the enforcement of this part.

24 Enacting section 1. This amendatory act does not take effect
25 unless Senate Bill No. ____ or House Bill No. 5423(request no.
26 01945'09) of the 95th Legislature is enacted into law.