

HOUSE BILL No. 4882

August 24, 2011, Introduced by Reps. MacMaster, Potvin and Rogers and referred to the Committee on Natural Resources, Tourism, and Outdoor Recreation.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 1301, 32501, 32503, 32512, 76101, 76102,
76103, 76104, 76105, 76107, 76108, 76109, 76110, 76111, 76112,
76113, 76114, 76115, and 76118 (MCL 324.1301, 324.32501, 324.32503,
324.32512, 324.76101, 324.76102, 324.76103, 324.76104, 324.76105,
324.76107, 324.76108, 324.76109, 324.76110, 324.76111, 324.76112,
324.76113, 324.76114, 324.76115, and 324.76118), section 1301 as
amended by 2009 PA 120, sections 32501 and 32512 as amended by 2003
PA 14, sections 32503, 76105, and 76109 as amended by 2004 PA 325,
sections 76101 and 76115 as added by 1995 PA 58, 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, and by adding sections 32512b and 76112a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1301. As used in this part:

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

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

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

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

16 (i) Section 3104, floodplain alteration permit.

17 (ii) Section 3503, permit for use of water in mining iron ore.

18 (iii) Section 4105, sewerage system construction permit.

19 (iv) Section 6516, vehicle testing license.

20 (v) Section 6521, motor vehicle fleet testing permit.

21 (vi) Section 8310, restricted use pesticide dealer license.

22 (vii) Section 8310a, agricultural pesticide dealer license.

23 (viii) Section 8504, license to manufacture or distribute
24 fertilizer.

25 (ix) Section 9112, local soil erosion and sedimentation control
26 permit.

1 (x) Section 11509, solid waste disposal area construction
2 permit.

3 (xi) Section 11512, solid waste disposal area operating
4 license.

5 (xii) Section 11542, municipal solid waste incinerator ash
6 landfill operating license amendment.

7 (xiii) Section 11702, septage waste servicing license or septage
8 waste vehicle license.

9 (xiv) Section 11709, septage waste site permit.

10 (xv) Section 30104, inland lakes and streams project permit.

11 (xvi) Section 30304, state permit for dredging, filling, or
12 other activity in wetland. Permit includes an authorization for a
13 specific project to proceed under a general permit issued under
14 section 30312.

15 (xvii) Section 31509, dam construction, repair, removal permit.

16 (xviii) Section 32312, flood risk, high risk, or environmental
17 area permit.

18 (xix) Section ~~32503~~, **32512**, permit for dredging and filling
19 bottomland.

20 (xx) Section 35304, department permit for critical dune area
21 use.

22 (xxi) Section 36505, endangered species permit.

23 (xxii) Section 41702, game bird hunting preserve license.

24 (xxiii) Section 42101, dog training area permit.

25 (xxiv) Section 42501, fur dealer's license.

26 (xxv) Section 42702, game dealer's license.

27 (xxvi) Section 44513, charter boat operating permit under

1 reciprocal agreement.

2 (xxvii) Section 44517, boat livery operating permit.

3 (xxviii) Section 45503, permit to take frogs for scientific use.

4 (xxix) Section 45902, game fish propagation license.

5 (xxx) Section 45906, game fish import license.

6 (xxxi) Section 61525, oil or gas well drilling permit.

7 (xxxii) Section 62509, brine, storage, or waste disposal well
8 drilling or conversion permit or test well drilling permit.

9 (xxxiii) Section 63103a, metallic mineral mining permit.

10 (xxxiv) Section 63514 or 63525, surface coal mining and
11 reclamation permit or revision of the permit during the term of the
12 permit, respectively.

13 (xxxv) Section 63704, sand dune mining permit.

14 (xxxvi) Section 72108, use permits for Michigan trailway.

15 (xxxvii) **SECTION 76105, PERMIT FOR EXPLORATION OR EXCAVATION OF**
16 **ABORIGINAL REMAINS.**

17 (~~xxxviii~~) (~~xxxvii~~) Section 76109, sunken aircraft or watercraft
18 abandoned property recovery permit.

19 (~~xxxix~~) (~~xxxviii~~) Section 76504, Mackinac Island motor vehicle and
20 land use permits.

21 (~~xxxx~~) (~~xxxix~~) Section 80159, buoy or beacon permit.

22 (e) "Processing deadline" means the last day of the processing
23 period.

24 (f) "Processing period" means the following time period after
25 the close of the application period, for the following permit, as
26 applicable:

27 (i) Twenty days for a permit under section 61525 or 62509.

1 (ii) Thirty days for a permit under section 9112.

2 (iii) Thirty days after the department consults with the
3 underwater salvage and preserve committee created under section
4 76103, for a permit under section 76109.

5 (iv) Sixty days, for a permit under section 30104 for a minor
6 project as established by rule under section 30105(7) or for a
7 permit under section 32312.

8 (v) Sixty days or, if a hearing is held, 90 days for a permit
9 under section 35304.

10 (vi) Sixty days or, if a hearing is held, 120 days for a permit
11 under section 30104, other than a permit for a minor project as
12 established by rule under section 30105(7), or for a permit under
13 section 31509.

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

17 (viii) Ninety days or, if a hearing is held, 150 days for a
18 permit under section 3104, 30304, or ~~32503~~**32512** or an
19 authorization for a specific project to proceed under a general
20 permit issued under section 30312.

21 (ix) One hundred and twenty days for a permit under section
22 11509, 11542, 63103a, 63514, or 63704.

23 (x) One hundred fifty days for a permit under section 36505.
24 However, if a site inspection or federal approval is required, the
25 150-day period is tolled pending completion of the inspection or
26 receipt of the federal approval.

27 (xi) For any other permit, 150 days or, if a hearing is held,

90 days after the hearing, whichever is later.

Sec. 32501. As used in this part:

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

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

~~(i) Manual or mechanized leveling of sand.~~

~~(ii) Mowing of vegetation.~~

~~(iii) Manual de minimis removal of vegetation.~~

~~(iv) Grooming of soil.~~

~~(v) Construction and maintenance of a path.~~

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

(A) ~~(d)~~ "Department" means the department of environmental quality.

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

(C) ~~(f)~~ "Environmental area" means an environmental area as defined in section 32301.

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

~~(h) "Leveling of sand" means the relocation of sand within areas being leveled that are predominantly free of vegetation, including the redistribution, grading, and spreading of sand that~~

1 ~~has been deposited through wind or wave action onto upland riparian~~
2 ~~property.~~

3 (D) ~~(i)~~—"Marina purposes" means an operation making use of
4 submerged bottomlands or filled-in bottomlands of the Great Lakes
5 for the purpose of service to boat owners or operators, which
6 operation may restrict or prevent the free public use of the
7 affected bottomlands or filled-in lands.

8 (E) ~~(j)~~—"Mowing of vegetation" means the cutting of vegetation
9 to a height of not less than 2 inches, without disturbance of soil
10 or plant roots.

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

16 (F) "RECREATIONAL DIVING STRUCTURE" MEANS ANY OF THE
17 FOLLOWING:

18 (i) A VESSEL.

19 (ii) AN AIRCRAFT.

20 (iii) AN ARTIFACT OF MARITIME HISTORY OTHER THAN A VESSEL OR
21 AIRCRAFT.

22 (iv) AN ARTIFACT OR OTHER STRUCTURE THAT MAY BE USED FOR
23 RECREATIONAL SCUBA DIVING THAT WILL ENHANCE HABITAT FOR SPORT FISH
24 SPECIES AND PROMOTE UNDERWATER RECREATION.

25 (G) ~~(l)~~—"Removal of vegetation" means the manual or mechanized
26 removal of vegetation other than the de minimis removal of
27 vegetation.

1 (H) ~~(m)~~—"Wetland" means that term as it is defined in section
2 30301.

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

18 ~~—— (2) A riparian owner shall not dredge or place spoil or other~~
19 ~~materials on bottomland except as authorized by a permit issued by~~
20 ~~the department pursuant to part 13.~~

21 (2) ~~(3)~~—The department shall not enter into a lease or deed
22 that allows drilling operations beneath unpatented lands for the
23 exploration or production of oil or gas.

24 (3) ~~(4)~~—An agreement, lease, or deed entered into under this
25 part by the department with the United States shall be entered into
26 and executed pursuant to the property rights acquisition act, 1986
27 PA 201, MCL 3.251 to 3.262.

1 Sec. 32512. ~~(1)~~ Unless a permit has been ~~granted~~ **ISSUED** by the
2 department **PURSUANT TO PART 13** or authorization has been granted by
3 the legislature, or except as to boat wells and slips facilitating
4 private, noncommercial, recreational boat use, not exceeding 50
5 feet in length where the spoil is not disposed of below the
6 ordinary high-water mark of the body of water to which it is
7 connected, a person shall not do any of the following:

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

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

16 (c) Dredge or place spoil or other material, **INCLUDING A**
17 **RECREATIONAL DIVING STRUCTURE**, on bottomland.

18 (d) Construct a marina.

19 ~~—— (2) Notwithstanding subsection (1), and with respect to lands~~
20 ~~covered and affected by this part, a permit or other approval is~~
21 ~~not required under this part for either of the following:~~

22 ~~—— (a) Until November 1, 2007, beach maintenance activities that~~
23 ~~meet all of the following conditions:~~

24 ~~—— (i) The activities shall not occur in environmental areas and~~
25 ~~shall not violate part 365 or rules promulgated under that part, or~~
26 ~~the endangered species act of 1973, Public Law 93-205, 87 Stat.~~
27 ~~884, or rules promulgated under that act.~~

~~1 (ii) The width of any mowing of vegetation shall not exceed the~~
~~2 width of the riparian property or 100 feet, whichever is less.~~

~~3 (iii) All collected debris shall be disposed of properly outside~~
~~4 of any wetland.~~

~~5 (b) Until 3 years after the effective date of the amendatory~~
~~6 act that added this subdivision, removal of vegetation as~~
~~7 authorized in section 32516.~~

8 SEC. 32512B. (1) A PERSON WHO WISHES TO PLACE A RECREATIONAL
9 DIVING STRUCTURE ON BOTTOMLANDS MAY SUBMIT AN APPLICATION TO THE
10 DEPARTMENT.

11 (2) THE DEPARTMENT SHALL GRANT A PERMIT UNDER SECTION 32512 TO
12 PLACE A RECREATIONAL DIVING STRUCTURE ON BOTTOMLAND IF THE
13 DEPARTMENT DETERMINES ALL OF THE FOLLOWING:

14 (A) THE RECREATIONAL DIVING STRUCTURE HAS BEEN DECOMMISSIONED,
15 AS APPLICABLE, IN COMPLIANCE WITH BEST PRACTICES DESCRIBED IN THE
16 DOCUMENT ENTITLED "NATIONAL GUIDANCE: BEST MANAGEMENT PRACTICES FOR
17 PREPARING VESSELS INTENDED TO CREATE ARTIFICIAL REEFS" PUBLISHED BY
18 THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED
19 STATES MARITIME ADMINISTRATION, DATED MAY 2006, OR OTHER PRACTICES
20 AS DETERMINED BY THE DEPARTMENT.

21 (B) THE RECREATIONAL DIVING STRUCTURE IS SUITABLE OR WILL BE
22 MADE SUITABLE FOR RECREATIONAL SCUBA DIVING.

23 (C) THE PUBLIC TRUST WILL NOT BE IMPAIRED OR SUBSTANTIALLY
24 INJURED BY THE PLACEMENT OF THE RECREATIONAL DIVING STRUCTURE ON
25 BOTTOMLANDS.

26 (D) THE LOCATION OF THE PROPOSED PLACEMENT OF THE RECREATIONAL
27 DIVING STRUCTURE WILL PROVIDE OPPORTUNITIES FOR RECREATIONAL SCUBA

1 DIVING OR GLASS BOTTOM BOAT TOURS, OR BOTH.

2 (E) IF THE RECREATIONAL DIVING STRUCTURE IS PROPOSED TO BE
3 PLACED WITHIN A GREAT LAKES BOTTOMLANDS PRESERVE ESTABLISHED UNDER
4 PART 761, THE UNDERWATER SALVAGE AND PRESERVE COMMITTEE ESTABLISHED
5 IN SECTION 76103 HAS DETERMINED THAT THE PLACEMENT OF THE
6 RECREATIONAL DIVING STRUCTURE IS CONSISTENT WITH THE PRESERVATION
7 AND USE OF THE GREAT LAKES BOTTOMLAND PRESERVE.

8 (F) THE PLACEMENT OF THE RECREATIONAL DIVING STRUCTURE WILL
9 NOT CAUSE NEGATIVE IMPACTS TO AQUATIC SPECIES.

10 (G) THE APPLICANT AGREES TO REASONABLE CONDITIONS OF THE
11 DEPARTMENT RELATED TO THE TRANSPORT AND SINKING OF THE RECREATIONAL
12 DIVING STRUCTURE.

13 (H) THE APPLICANT WILL TRANSFER OWNERSHIP AND RELINQUISH ALL
14 RIGHTS ASSOCIATED WITH THE RECREATIONAL DIVING STRUCTURE TO THE
15 STATE UPON PLACEMENT OF THE RECREATIONAL DIVING STRUCTURE ON
16 BOTTOMLANDS.

17 Sec. 76101. As used in this part:

18 (a) "Abandoned property" means an aircraft; a watercraft,
19 including a ship, boat, canoe, skiff, raft, or barge; the rigging,
20 gear, fittings, trappings, and equipment of an aircraft or
21 watercraft; the personal property of the officers, crew, and
22 passengers of an aircraft or watercraft; and the cargo of an
23 aircraft or watercraft, which have been deserted, relinquished,
24 cast away, or left behind and for which attempts at reclamation
25 have been abandoned by owners and insurers. Abandoned property also
26 means materials resulting from activities of historic and
27 prehistoric Native Americans.

1 (b) "Bottomlands" means the unpatented lake bottomlands of the
2 Great Lakes.

3 (c) "Committee" means the underwater salvage and preserve
4 committee created in section 76103.

5 (d) "Great Lakes" means lakes Erie, Huron, Michigan, St.
6 Clair, and Superior.

7 (e) "Great Lakes bottomlands preserve" means an area located
8 on the bottomlands of the Great Lakes and extending upward to and
9 including the surface of the water, which is delineated and set
10 aside by rule for special protection of abandoned property of
11 historical value, or ecological, educational, geological, or scenic
12 features or formations having recreational, educational, or
13 scientific value. A preserve may encompass a single object,
14 feature, or formation, or a collection of several objects,
15 features, or formations.

16 (f) "Historical value" means value relating to, or
17 illustrative of, Michigan history, including the statehood,
18 territorial, colonial, and historic, and prehistoric native
19 American periods.

20 (g) "Mechanical or other assistance" means all humanmade
21 devices, including pry bars, wrenches and other hand or power
22 tools, cutting torches, explosives, winches, flotation bags, lines
23 to surface, extra divers buoyancy devices, and other buoyance
24 devices, used to raise or remove artifacts.

25 **(H) "RECREATIONAL DIVING STRUCTURE" MEANS THAT TERM AS IT IS**
26 **DEFINED IN SECTION 32501.**

27 **(I) ~~(h)~~**—"Recreational value" means value relating to an

1 activity that the public engages in, or may engage in, for
2 recreation or sport, including scuba diving and fishing.

3 Sec. 76102. (1) The state reserves to itself the exclusive
4 right and privilege, except as provided in this part, of exploring,
5 surveying, excavating, and regulating through its authorized
6 officers, agents, and employees, all aboriginal records and other
7 antiquities, including mounds, earthworks, forts, burial and
8 village sites, mines or other relics, and abandoned property of
9 historical or recreational value found upon or within any of the
10 lands owned by or under the control of the state.

11 (2) The state reserves to itself a possessory right or title
12 superior to that of a finder to abandoned property of historical or
13 recreational value found on the state owned bottomlands of the
14 Great Lakes. This property shall belong to this state with
15 administration and protection ~~jointly-vested in the department. and~~
16 ~~the department of history, arts, and libraries.~~

17 Sec. 76103. (1) The underwater salvage and preserve committee
18 is created in the department to provide technical and other advice
19 to the department ~~and the department of history, arts, and~~
20 ~~libraries~~ with respect to ~~their~~ **ITS** responsibilities under this
21 part.

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

24 (a) Two individuals appointed by the department who have
25 primary responsibility in the department for administering this
26 part.

27 ~~— (b) Two individuals appointed by the director of the~~

1 ~~department of history, arts, and libraries who have primary~~
2 ~~responsibility in the department of history, arts, and libraries~~
3 ~~for administering this part.~~

4 (B) ONE INDIVIDUAL APPOINTED BY TRAVEL MICHIGAN.

5 (C) ONE INDIVIDUAL APPOINTED BY THE DIRECTOR OF THE DEPARTMENT
6 OF ENVIRONMENTAL QUALITY.

7 (D) ~~(e)~~ Five individuals appointed by the governor with the
8 advice and consent of the senate from the general public. Two of
9 these individuals shall have experience in recreational scuba
10 diving.

11 (3) An individual appointed to the committee shall serve for a
12 term of 3 years. A vacancy on the committee shall be filled in the
13 same manner as an original appointment and the term of a member
14 appointed to fill a vacancy shall be for 3 years. Members of the
15 committee shall serve without compensation, except for their
16 regular state salary where applicable.

17 (4) The chairperson of the committee ~~shall alternate between~~
18 ~~the representatives from the department and the department of~~
19 ~~history, arts, and libraries. The chairperson shall be designated~~
20 ~~by the department or the director of the department of history,~~
21 ~~arts, and libraries, whichever is applicable from among his or her~~
22 ITS representatives on the committee. The chairperson's term shall
23 run for 12 months, from October 1 through September 30. ~~The~~
24 ~~department shall appoint the first chairperson of the committee for~~
25 ~~a term ending September 30, 1989.~~ The chairperson shall call
26 meetings as necessary but not less than 4 times per year, set the
27 agenda for meetings, ensure that adequate minutes are taken, and

1 file an annual report of committee proceedings with the ~~head of the~~
2 ~~department of natural resources and the director. of the department~~
3 ~~of history, arts, and libraries.~~

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

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

8 (b) Review applications for underwater salvage permits and
9 make recommendations regarding issuance.

10 (c) Consider and make recommendations regarding the charging
11 of permit fees and the appropriate use of revenue generated by
12 those fees.

13 (d) Consider the need for and the content of rules intended to
14 implement this part and make recommendations concerning the
15 promulgation of rules.

16 (e) Consider and make recommendations concerning appropriate
17 legislation.

18 (f) Consider and make recommendations concerning program
19 operation.

20 (6) The committee shall not replace or supersede the
21 responsibility or authority of the department ~~of history, arts, and~~
22 ~~libraries or the department~~ to carry out ~~their~~ **ITS** responsibilities
23 under this part.

24 Sec. 76104. A deed, as provided by this part, given by this
25 state, except state tax deeds for the conveyance of any land owned
26 by the state, shall contain a clause reserving to this state a
27 property right in aboriginal antiquities including mounds,

1 earthworks, forts, burial and village sites, mines, or other relics
2 and also reserving the right to explore and excavate for the
3 aboriginal antiquity by and through this state's authorized agent
4 and employee. This section applies only to the sale of tax reverted
5 land. The department ~~, with the approval of the department of~~
6 ~~history, arts, and libraries,~~ may waive this reservation when
7 conveying platted property and when making conveyances under
8 subpart 3 of part 21.

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

15 (2) Subsection (1) does not apply to the Mackinac Island state
16 park commission on lands owned or controlled by the Mackinac Island
17 state park commission.

18 Sec. 76107. (1) Except as provided in section 76108, a person
19 shall not recover, alter, or destroy abandoned property which is
20 in, on, under, or over the bottomlands of the Great Lakes,
21 including those within a Great Lakes bottomlands preserve, unless
22 the person has a permit issued ~~jointly~~ by the department ~~of~~
23 ~~history, arts, and libraries and the department~~ under section
24 76109.

25 (2) A person who recovers abandoned property without a permit
26 when a permit is required by this part shall transmit the property
27 to the department, ~~of history, arts, and libraries and the~~

1 recovered property shall be the property of the department. ~~of~~
2 ~~history, arts, and libraries.~~

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

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

17 (a) If the value of the property is less than \$200.00, the
18 person is guilty of a misdemeanor punishable by imprisonment for
19 not more than 93 days or a fine of not more than \$500.00, or 3
20 times the aggregate value of the property involved, whichever is
21 greater, or both imprisonment and a fine.

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

27 (i) The value of the property involved is \$200.00 or more but

1 less than \$1,000.00.

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

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

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

12 (ii) The person violates subdivision (b) (i) and has 1 or more
13 prior convictions for violating or attempting to violate this
14 section. For purposes of this subparagraph, however, a prior
15 conviction does not include a conviction for a violation or
16 attempted violation of subdivision (a) or (b) (ii).

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

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

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

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

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

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

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

17 (c) Information contained in a presentence report.

18 (d) The defendant's statement.

19 (7) If the sentence for a conviction under this section is
20 enhanced by 1 or more prior convictions, those prior convictions
21 shall not be used to further enhance the sentence for the
22 conviction pursuant to section 10, 11, or 12 of chapter IX of the
23 code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and
24 769.12.

25 Sec. 76108. (1) A person may recover abandoned property
26 outside a Great Lakes bottomlands preserve without a permit if the
27 abandoned property is not attached to, nor located on, in, or

1 located in the immediate vicinity of and associated with a sunken
2 aircraft or watercraft **OR OTHER RECREATIONAL DIVING STRUCTURE** and
3 if the abandoned property is recoverable by hand without mechanical
4 or other assistance.

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

20 Sec. 76109. (1) A person shall not recover abandoned property
21 located on, in, or located in the immediate vicinity of and
22 associated with a sunken aircraft or watercraft **OR OTHER**
23 **RECREATIONAL DIVING STRUCTURE** except as authorized by a permit
24 issued by the department ~~and the department of history, arts, and~~
25 ~~libraries~~ pursuant to part 13.

26 (2) Notwithstanding section 1303(1), a person shall file an
27 application for a permit with the department on a form prescribed

1 by the department. ~~and approved by the department of history, arts,~~
2 ~~and libraries.~~ The application shall contain all of the following
3 information:

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

5 (b) The name, if known, of the watercraft or aircraft **OR OTHER**
6 **RECREATIONAL DIVING STRUCTURE** on or around which recovery
7 operations are to occur and a current photograph or drawing of the
8 watercraft or aircraft **OR OTHER RECREATIONAL DIVING STRUCTURE**, if
9 available.

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

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

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

14 (f) The proposed disposition of the abandoned property
15 recovered, including the location at which it will be available for
16 inspection by the department. ~~and the department of history, arts,~~
17 ~~and libraries.~~

18 (g) Other information ~~which~~ **THAT** the department ~~or the~~
19 ~~department of history, arts, and libraries~~ considers necessary in
20 evaluating the request for a permit.

21 (3) An application for a permit is not complete until all
22 information requested on the application form and any other
23 information requested by the department ~~or the department of~~
24 ~~history, arts, and libraries~~ has been received by the department.
25 After receipt of an otherwise complete application, the department
26 may request additional information or documents as are determined
27 to be necessary to make a decision to grant or deny a permit.

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

9 (a) Protect and preserve the abandoned property to be
10 recovered ~~—~~and the recreational value of the area in which
11 recovery is being accomplished.

12 (b) Assure reasonable public access to the abandoned property
13 after recovery.

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

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

19 (e) Prohibit or limit the amount of discharge of possible
20 pollutants, such as floating timbers, planking, and other debris,
21 which may emanate from the shipwreck, plane wreck, or salvage
22 equipment.

23 (f) Require the permit holder to submit a specific removal
24 plan prior to commencing any salvaging activities. Among other
25 matters considered appropriate by ~~either the department, or the~~
26 ~~department of history, arts, and libraries, or both,~~ the removal
27 plan may be required to ensure the safety of those removing or

1 assisting in the removal of the abandoned property and to address
2 how the permit holder proposes to prevent, minimize, or mitigate
3 potential adverse effects upon the abandoned property to be
4 removed, that portion of the abandoned property which is not to be
5 removed, and the surrounding geographic features.

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

12 ~~(6) The department of history, arts, and libraries shall~~
13 ~~approve the application for a permit unless the department of~~
14 ~~history, arts, and libraries determines that the abandoned property~~
15 ~~to be recovered has substantial historical value in itself or in~~
16 ~~conjunction with other abandoned property in its vicinity. If the~~
17 **ABANDONED** property has substantial historical value, the
18 department, ~~of history, arts, and libraries,~~ pursuant to subsection
19 (4), may impose a condition on the permit requiring the permittee
20 to turn over recovered property to the department ~~of history, arts,~~
21 ~~and libraries~~ for the purpose of preserving the property or
22 permitting public access to the property. The department ~~of~~
23 ~~history, arts, and libraries~~ may authorize the display of the
24 property in a public or private museum or by a local unit of
25 government. In addition to the conditions authorized by subsection
26 (4), the department ~~of history, arts, and libraries~~ may provide for
27 payment of salvage costs in connection with the recovery of the

1 abandoned property.

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

13 (8) A person aggrieved by a condition contained on a permit or
14 by the denial of an application for a permit may request an
15 administrative review of the condition or the denial by the
16 ~~commission or the department. of history, arts, and libraries,~~
17 ~~whichever disapproves the application or imposes the condition.~~ A
18 person shall file the request for review with the ~~commission or the~~
19 ~~department of history, arts, and libraries, whichever is~~
20 ~~applicable,~~ within 90 days after the permit application is
21 submitted to the department. An administrative hearing conducted
22 pursuant to this subsection shall be conducted under the procedures
23 set forth in chapter 4 of the administrative procedures act of
24 1969, 1969 PA 306, MCL 24.271 to 24.287. ~~If neither the department~~
25 ~~nor the department of history, arts, and libraries approves the~~
26 ~~application and an administrative review is requested from both the~~
27 ~~commission and the department of history, arts, and libraries, the~~

1 ~~appeals shall be combined upon request of the appellant or either~~
2 ~~the commission or the department of history, arts, and libraries~~
3 ~~and a single administrative hearing shall be conducted. The~~
4 ~~commission and~~ **FOLLOWING THE ADMINISTRATIVE HEARING**, the department
5 ~~of history, arts, and libraries shall issue jointly the final~~
6 decision and order in the case.

7 (9) A permit issued under this section is valid until December
8 31 of the year in which the application for the permit was filed
9 and is not renewable. If an item designated in a permit for
10 recovery is not recovered, a permit holder may, upon request
11 following the expiration of the permit, be issued a new permit to
12 remove the same abandoned property if the permit holder
13 demonstrates that diligence in attempting recovery was exercised
14 under the previously issued permit.

15 (10) A permit issued under this section shall not be
16 transferred or assigned unless the assignment is approved in
17 writing by ~~both the department. and the department of history,~~
18 ~~arts, and libraries.~~

19 Sec. 76110. (1) Within 10 days after recovery of abandoned
20 property, a person with a permit issued pursuant to section 76109
21 shall report the recovery in writing to the department. The person
22 recovering the abandoned property shall give authorized
23 representatives of the department ~~and the department of history,~~
24 ~~arts, and libraries~~ an opportunity to examine the abandoned
25 property for a period of 90 days after recovery. Recovered
26 abandoned property shall not be removed from this state without
27 written approval of the department. ~~and the department of history,~~

1 ~~arts, and libraries.~~ If the recovered abandoned property is removed
2 from the state without written approval, the attorney general, upon
3 request from the department, ~~or the department of history, arts,~~
4 ~~and libraries,~~ shall bring an action for the recovery of the
5 property.

6 (2) If the department ~~of history, arts, and libraries~~
7 determines that the recovered abandoned property does not have
8 historical value, the department ~~of history, arts, and libraries~~
9 shall release the property to the person holding the permit by
10 means of a written instrument.

11 Sec. 76111. (1) Subject to subsection (7), the department ~~of~~
12 ~~environmental quality~~ shall establish Great Lakes bottomlands
13 preserves by rule. A Great Lakes bottomlands preserve shall be
14 established by emergency rule if it is determined by the department
15 that this action is necessary to immediately protect an object or
16 area of historical or recreational value.

17 (2) A Great Lakes bottomlands preserve may be established
18 whenever a bottomlands area includes a single watercraft of
19 significant historical value, includes 2 or more abandoned
20 watercraft, or contains other features of archaeological,
21 historical, recreational, geological, or environmental
22 significance. Bottomlands areas containing few or no watercraft or
23 other features directly related to the character of a preserve may
24 be excluded from preserves.

25 (3) In establishing a Great Lakes bottomlands preserve, the
26 department ~~of environmental quality~~ shall consider all of the
27 following factors:

1 (a) Whether creating the preserve is necessary to protect
2 either abandoned property possessing historical or recreational
3 value, or significant underwater geological or environmental
4 features.

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

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

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

13 (4) ~~The department of environmental quality and the department~~
14 ~~of history, arts, and libraries~~ shall not grant a permit to recover
15 abandoned artifacts within a Great Lakes bottomlands preserve
16 except for historical or scientific purposes or when the recovery
17 will not adversely affect the historical, cultural, or recreational
18 integrity of the preserve area as a whole.

19 (5) An individual Great Lakes bottomlands preserve shall not
20 exceed 400 square miles in area. Great Lakes bottomlands preserves
21 shall be limited in total area to not more than 10% of the Great
22 Lakes bottomlands within this state. However, the limitations
23 provided in this subsection do not apply to the Thunder Bay Great
24 Lakes bottomland preserve established in subsection (7).

25 (6) Upon the approval of the committee, ~~not more than 1 vessel~~
26 ~~associated with Great Lakes maritime history~~ **RECREATIONAL DIVING**
27 **STRUCTURES** may be sunk intentionally within a Great Lakes

1 bottomlands preserve **IF A PERMIT IS OBTAINED UNDER SECTION 32512B.**
 2 However, state money shall not be expended to purchase, transport,
 3 or sink the vessel.

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

20 Sec. 76112. (1) The department ~~and the department of history,~~
 21 ~~arts, and libraries, jointly or separately,~~ may promulgate rules as
 22 are necessary to implement this part.

23 (2) ~~Within each Great Lakes bottomlands preserve, the~~ **THE**
 24 ~~department and the department of history, arts, and libraries may~~
 25 ~~jointly~~ promulgate rules that govern access to and use of a Great
 26 Lakes bottomlands preserve. These rules may regulate or prohibit
 27 the alteration, destruction, or removal of abandoned property,

1 features, or formations within a preserve.

2 SEC. 76112A. THE DEPARTMENT, IN CONJUNCTION WITH TRAVEL
3 MICHIGAN, SHALL DO ALL OF THE FOLLOWING:

4 (A) PUBLICIZE AND PROMOTE THE USE OF GREAT LAKES BOTTOMLANDS
5 PRESERVES.

6 (B) PUBLICIZE AND PROMOTE RECREATIONAL SCUBA DIVING IN THE
7 GREAT LAKES.

8 (C) UPON THE SINKING OF RECREATIONAL DIVING STRUCTURES IN THE
9 GREAT LAKES, PUBLICIZE AND PROMOTE RECREATIONAL SCUBA DIVING
10 OPPORTUNITIES ASSOCIATED WITH RECREATIONAL DIVING STRUCTURES.

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

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

16 (b) A limitation on the right of the department ~~or the~~
17 ~~department of history, arts, and libraries~~ to recover, or to
18 contract for the recovery of, abandoned property in and upon the
19 bottomlands of the Great Lakes.

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

23 Sec. 76114. (1) If the department ~~or the department of~~
24 ~~history, arts, and libraries~~ finds that the holder of a permit
25 issued pursuant to section 76105 or 76109 is not in compliance with
26 this part, a rule promulgated under this part, or a provision of or
27 condition in the permit, or has damaged abandoned property or

1 failed to use diligence in attempting to recover property for which
 2 a permit was issued, the department ~~or the department of history,~~
 3 ~~arts, and libraries, individually or jointly,~~ may summarily suspend
 4 or revoke the permit. If the permit holder requests a hearing
 5 within 15 days following the effective date of the suspension or
 6 revocation, the ~~commission or the department of history, arts, and~~
 7 ~~libraries~~ shall conduct an administrative hearing pursuant to
 8 chapter 4 of the administrative procedures act of 1969, 1969 PA
 9 306, MCL 24.271 to 24.287, to consider whether the permit should be
 10 reinstated.

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

19 Sec. 76115. Each person who participates in the sport of scuba
 20 diving on the Great Lakes bottomlands accepts the dangers that
 21 ~~adhere~~ **INHERE** in that sport insofar as the dangers are obvious and
 22 necessary. Those dangers include, but are not limited to, injuries
 23 which can result from entanglements in sunken watercraft or
 24 aircraft **OR OTHER RECREATIONAL DIVING STRUCTURES**; the condition of
 25 sunken watercraft or aircraft **OR OTHER RECREATIONAL DIVING**
 26 **STRUCTURES**; the location of sunken watercraft or aircraft **OR OTHER**
 27 **RECREATIONAL DIVING STRUCTURES**; the failure of the state to fund

1 staff or programs at bottomlands preserves; and the depth of the
2 objects and bottomlands within preserves.

3 Sec. 76118. (1) The underwater preserve fund is created as a
4 separate fund in the state treasury, and it may receive revenue as
5 provided in this part ~~7~~ or revenue from any other source.

6 (2) Money in the underwater preserve fund shall be
7 appropriated **TO THE DEPARTMENT** for only the following purposes:

8 (a) ~~To the department of history, arts, and libraries for the~~
9 **THE** development of maritime archaeology **IN THE GREAT LAKES.**

10 (B) ~~THE and for the~~ promotion of Great Lakes bottomlands
11 preserves in this state.

12 (C) **THE PROMOTION OF RECREATIONAL SCUBA DIVING IN THE GREAT**
13 **LAKES.**

14 (D) ~~(b) To the department for the~~ **THE** enforcement of this
15 part.