

HOUSE BILL No. 5332

December 6, 2017, Introduced by Reps. Howell, Glenn, Bellino and VanderWall and referred to the Committee on Natural Resources.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending section 1301 (MCL 324.1301), as amended by 2014 PA 215, and by adding sections 1313 and 1315.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1301. As used in this part:

2 **(A) "APPEAL BOARD" MEANS A COMMITTEE OF THE APPEAL PANEL,**
3 **APPOINTED UNDER SECTION 1315(2) .**

4 **(B) "APPEAL PANEL" OR "PANEL" MEANS THE PERMIT APPEAL PANEL**
5 **ESTABLISHED UNDER SECTION 1313(1) .**

6 **(C) ~~(a)~~**"Application period" means the period beginning when
7 an application for a permit is received by the state and ending
8 when the application is considered to be administratively complete

1 under section 1305 and any applicable fee has been paid.

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

5 (E) ~~(c)~~—"Director" means the director of the state department
6 authorized under this act to approve or deny an application for a
7 particular permit or the director's designee. **HOWEVER, AS USED IN**
8 **SECTIONS 1313 AND 1315, "DIRECTOR" MEANS THE DIRECTOR OF THE**
9 **DEPARTMENT OF ENVIRONMENTAL QUALITY OR THE DIRECTOR'S DESIGNEE.**

10 (F) ~~(d)~~—"Permit", **EXCEPT AS PROVIDED IN SUBDIVISION (G)**, means
11 a permit or operating license required by any of the following
12 sections or by rules promulgated thereunder, or, in the case of
13 section 9112, by an ordinance ~~adopted thereunder~~:**REFERRED TO IN**
14 **THAT SECTION:**

15 (i) Section 3104, floodplain alteration permit.

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

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

18 (iv) Section 6516, vehicle testing license.

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

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

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

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

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

26 (x) Section 11509, solid waste disposal area construction
27 permit.

1 (xi) Section 11512, solid waste disposal area operating
2 license.

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

5 (xiii) Section 11702, septage waste servicing license or
6 septage waste vehicle license.

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

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

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

13 (xvii) Section 31509, dam construction, repair, or removal
14 permit.

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

17 (xix) Section 32512, permit for dredging and filling
18 bottomland.

19 (xx) Section 32603, permit for submerged log removal from
20 Great Lakes bottomlands.

21 (xxi) Section 35304, department permit for critical dune area
22 use.

23 (xxii) Section 36505, endangered species permit.

24 (xxiii) Section 41702, game bird hunting preserve license.

25 (xxiv) Section 42101, dog training area permit.

26 (xxv) Section 42501, fur dealer's license.

27 (xxvi) Section 42702, game dealer's license.

1 (xxvii) Section 44513, charter boat operating permit under
2 reciprocal agreement.

3 (xxviii) Section 44516, boat livery operating permit.

4 (xxix) Section 45503, permit to take frogs for scientific use.

5 (xxx) Section 45902, game fish propagation license.

6 (xxxi) Section 45906, game fish import license.

7 (xxxii) Section 61525, oil or gas well drilling permit.

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

10 (xxxiv) Section 63103a, ferrous mineral mining permit.

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

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

14 (xxxvii) Section 72108, use permits for a Pure Michigan Trail.

15 (xxxviii) Section 76109, sunken aircraft or watercraft
16 abandoned property recovery permit.

17 (xxxix) Section 76504, Mackinac Island motor vehicle and land
18 use permits.

19 (xxxx) Section 80159, buoy or beacon permit.

20 **(G) "PERMIT", AS USED IN SECTIONS 1313 AND 1315, MEANS A**
21 **PERMIT OR OPERATING LICENSE ISSUED BY THE DEPARTMENT OF**
22 **ENVIRONMENTAL QUALITY UNDER THIS ACT.**

23 **(H) ~~(e)~~**-"Processing deadline" means the last day of the
24 processing period.

25 **(I) ~~(f)~~**-"Processing period" means the following time period
26 after the close of the application period, for the following
27 permit, as applicable:

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

2 (ii) Thirty days for a permit under section 9112 or 44516.

3 (iii) Thirty days after the department consults with the
4 underwater salvage and preserve committee created under section
5 76103, for a permit under section 76109.

6 (iv) Sixty days, for a permit under section 30104 for a minor
7 project established under section 30105(7) or 32512a(1), or an
8 authorization for a specific project to proceed under a general
9 permit issued under section 30105(8) or 32512a(2), or for a permit
10 under section 32312.

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

13 (vi) Sixty days or, if a hearing is held, 120 days for a
14 permit under section 30104, other than a permit or authorization
15 described in subparagraph (ii) or (iv), or for a permit under
16 section 31509.

17 (vii) Ninety days for a permit under section 11512, a revision
18 of a surface coal mining and reclamation permit under section
19 63525, or a permit under section 72108.

20 (viii) Ninety days or, if a hearing is held, 150 days for a
21 permit under section 3104 or 30304, or a permit under section 32512
22 other than a permit described in subparagraph (iv).

23 (ix) Ninety days after the close of the review or comment
24 period under section 32604, or if a public hearing is held, 90 days
25 after the date of the public hearing for a permit under section
26 32603.

27 (x) One hundred twenty days for a permit under section 11509,

1 11542, 63103a, 63514, or 63704.

2 (xi) One hundred fifty days for a permit under section 36505.
3 However, if a site inspection or federal approval is required, the
4 150-day period is tolled pending completion of the inspection or
5 receipt of the federal approval.

6 (xii) For any other permit, 150 days or, if a hearing is held,
7 90 days after the hearing, whichever is later.

8 **SEC. 1313. (1) A PERMIT APPEAL PANEL IS ESTABLISHED IN THE**
9 **DEPARTMENT OF ENVIRONMENTAL QUALITY.**

10 **(2) THE APPEAL PANEL SHALL CONSIST OF 15 INDIVIDUALS,**
11 **APPOINTED BY THE GOVERNOR. THE GOVERNOR SHALL APPOINT THE FIRST**
12 **PANEL WITHIN 60 DAYS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT**
13 **THAT ADDED THIS SECTION. EACH MEMBER OF THE PANEL SHALL MEET ALL OF**
14 **THE FOLLOWING REQUIREMENTS:**

15 **(A) MEET 1 OR MORE OF THE FOLLOWING:**

16 **(i) HOLD A CURRENT PROFESSIONAL ENGINEERING, GEOLOGIST,**
17 **HYDROLOGIST, OR HYDROGEOLOGIST LICENSE OR REGISTRATION FROM A**
18 **STATE, TRIBE, OR UNITED STATES TERRITORY, OR THE COMMONWEALTH OF**
19 **PUERTO RICO, AND HAVE THE EQUIVALENT OF 6 YEARS OF FULL-TIME**
20 **RELEVANT EXPERIENCE.**

21 **(ii) HAVE A MASTER'S DEGREE FROM AN ACCREDITED INSTITUTION OF**
22 **HIGHER EDUCATION IN A DISCIPLINE OF ENGINEERING OR SCIENCE RELATED**
23 **TO AIR OR WATER AND THE EQUIVALENT OF 8 YEARS OF FULL-TIME RELEVANT**
24 **EXPERIENCE.**

25 **(B) REMAIN CURRENT IN HIS OR HER FIELD THROUGH PARTICIPATION**
26 **IN CONTINUING EDUCATION OR OTHER ACTIVITIES.**

27 **(3) AN INDIVIDUAL IS NOT ELIGIBLE TO BE A MEMBER OF THE PANEL**

1 IF ANY OF THE FOLLOWING APPLY:

2 (A) THE INDIVIDUAL IS A CURRENT EMPLOYEE OF ANY OFFICE,
3 DEPARTMENT, OR AGENCY OF THIS STATE.

4 (B) THE INDIVIDUAL IS A PARTY TO 1 OR MORE CONTRACTS WITH THE
5 DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE COMPENSATION PAID UNDER
6 THOSE CONTRACTS REPRESENTED MORE THAN 5% OF THE INDIVIDUAL'S ANNUAL
7 GROSS INCOME IN ANY OF THE PRECEDING 3 YEARS.

8 (C) THE INDIVIDUAL IS EMPLOYED BY AN ENTITY THAT IS A PARTY TO
9 1 OR MORE CONTRACTS WITH THE DEPARTMENT OF ENVIRONMENTAL QUALITY
10 AND THE COMPENSATION PAID TO THE INDIVIDUAL'S EMPLOYER UNDER THOSE
11 CONTRACTS REPRESENTED MORE THAN 5% OF THE EMPLOYER'S ANNUAL GROSS
12 REVENUE IN ANY OF THE PRECEDING 3 YEARS.

13 (D) THE INDIVIDUAL WAS EMPLOYED BY THE DEPARTMENT OF
14 ENVIRONMENTAL QUALITY WITHIN THE PRECEDING 3 YEARS.

15 (4) AN INDIVIDUAL APPOINTED TO THE APPEAL PANEL SHALL SERVE
16 FOR A TERM OF 4 YEARS, EXCEPT AS PROVIDED IN THIS SUBSECTION, AND
17 MAY BE REAPPOINTED. HOWEVER, AFTER SERVING 2 CONSECUTIVE TERMS ON
18 THE PANEL, THE INDIVIDUAL IS NOT ELIGIBLE TO SERVE ON THE PANEL FOR
19 2 YEARS. THE TERMS FOR MEMBERS FIRST APPOINTED SHALL BE STAGGERED
20 SO THAT 3 EXPIRE IN 1 YEAR, 4 EXPIRE IN 2 YEARS, AND 4 EXPIRE IN 3
21 YEARS. A VACANCY ON THE PANEL SHALL BE FILLED IN THE SAME MANNER AS
22 THE ORIGINAL APPOINTMENT.

23 (5) THE GOVERNOR MAY REMOVE A MEMBER OF THE APPEAL PANEL FOR
24 INCOMPETENCE, DERELICTION OF DUTY, MALFEASANCE, MISFEASANCE, OR
25 NONFEASANCE IN OFFICE, OR ANY OTHER GOOD CAUSE.

26 (6) INDIVIDUALS APPOINTED TO THE APPEAL PANEL SHALL SERVE
27 WITHOUT COMPENSATION. HOWEVER, MEMBERS OF THE PANEL MAY BE

1 REIMBURSED FOR THEIR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE
2 PERFORMANCE OF THEIR OFFICIAL DUTIES AS MEMBERS OF THE PANEL.

3 (7) THE BUSINESS THAT THE APPEAL PANEL MAY PERFORM SHALL BE
4 CONDUCTED AT A PUBLIC MEETING OF THE PANEL HELD IN COMPLIANCE WITH
5 THE OPEN MEETINGS ACT, 1976 PA 267, MCL 15.261 TO 15.275.

6 SEC. 1315. (1) A PERMIT APPLICANT WHO IS AGGRIEVED BY THE
7 DECISION OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY REGARDING THE
8 APPROVAL OR DENIAL OF A PERMIT APPLICATION OR THE CONTENT OF A
9 PERMIT MAY APPEAL TO AN APPEAL BOARD BY SUBMITTING A PETITION TO
10 THE DIRECTOR. THE PETITION SHALL INCLUDE THE ISSUES IN DISPUTE, THE
11 RELEVANT FACTS, AND ANY DATA, ANALYSIS, OPINION, AND SUPPORTING
12 DOCUMENTATION FOR THE PETITIONER'S POSITION. IF THE DIRECTOR
13 BELIEVES THAT THE DISPUTE MAY BE RESOLVED WITHOUT CONVENING AN
14 APPEAL BOARD, THE DIRECTOR MAY CONTACT THE PETITIONER REGARDING THE
15 ISSUES IN DISPUTE AND MAY NEGOTIATE A RESOLUTION OF THE DISPUTE.

16 (2) UNLESS THE DISPUTE IS RESOLVED PURSUANT TO SUBSECTION (1),
17 THE DIRECTOR SHALL CONVENE A MEETING OF AN APPEAL BOARD. THE
18 MEETING SHALL BE HELD WITHIN 45 DAYS AFTER THE DIRECTOR RECEIVED
19 THE PETITION. THE APPEAL BOARD SHALL CONSIST OF 5 MEMBERS OF THE
20 APPEAL PANEL SELECTED BY THE DIRECTOR ON THE BASIS OF THEIR
21 RELEVANT EXPERTISE. THE DIRECTOR MAY SELECT AN ALTERNATE MEMBER TO
22 REPLACE A MEMBER WHO IS UNABLE TO PARTICIPATE IN THE APPEAL
23 PROCESS. TO SERVE AS AN APPEAL BOARD MEMBER, AN APPEAL PANEL MEMBER
24 MUST SUBMIT TO THE DIRECTOR ON A FORM PROVIDED BY THE DEPARTMENT AN
25 AGREEMENT NOT TO ACCEPT EMPLOYMENT FROM THE APPELLANT BEFORE 1 YEAR
26 AFTER A DECISION IS RENDERED ON THE MATTER IF GROSS INCOME FROM THE
27 EMPLOYMENT WOULD EXCEED 5% OF THE MEMBER'S GROSS INCOME FROM ALL

1 SOURCES IN ANY OF THE PRECEDING 3 YEARS. THE ATTORNEY GENERAL MAY
2 BRING AN ACTION TO ENFORCE THE AGREEMENT.

3 (3) THE MEMBERS OF THE APPEAL BOARD SHALL ELECT A CHAIRPERSON.
4 THREE MEMBERS OF THE APPEAL BOARD CONSTITUTE A QUORUM. A MAJORITY
5 OF THE VOTES CAST ARE REQUIRED FOR OFFICIAL ACTION OF THE APPEAL
6 BOARD. THE BUSINESS THAT THE APPEAL BOARD MAY PERFORM SHALL BE
7 CONDUCTED AT A PUBLIC MEETING OF THE PANEL HELD IN COMPLIANCE WITH
8 THE OPEN MEETINGS ACT, 1976 PA 267, MCL 15.261 TO 15.275.

9 (4) THE DIRECTOR SHALL PROVIDE THE APPEAL BOARD WITH A COPY OF
10 THE PETITION AND ITS SUPPORTING DOCUMENTATION AND A COPY OF ALL
11 SUPPORTING DOCUMENTATION FROM THE DEPARTMENT. AT THE MEETING OF THE
12 APPEAL BOARD, REPRESENTATIVES OF THE APPELLANT AND THE DEPARTMENT
13 SHALL EACH BE GIVEN AN OPPORTUNITY TO PRESENT THEIR POSITIONS.

14 (5) WITHIN 45 DAYS AFTER HEARING THE APPEAL, THE APPEAL BOARD
15 SHALL MAKE A DECISION REGARDING THE PETITION AND PROVIDE WRITTEN
16 NOTICE OF THE DECISION TO THE DIRECTOR OF THE DEPARTMENT AND THE
17 PETITIONER. THE WRITTEN DECISION SHALL INCLUDE THE SPECIFIC
18 SCIENTIFIC OR TECHNICAL RATIONALE FOR THE DECISION. THE APPEAL
19 BOARD MAY ADOPT, MODIFY, OR REVERSE, IN WHOLE OR IN PART, THE
20 DEPARTMENT'S DECISION THAT IS THE SUBJECT OF THE APPEAL.

21 (6) WITHIN 60 DAYS AFTER RECEIVING WRITTEN NOTICE OF THE
22 APPEAL BOARD'S DECISION, THE DIRECTOR SHALL ISSUE A FINAL DECISION,
23 IN WRITING, INCORPORATING AS NECESSARY THE APPEAL BOARD'S DECISION
24 INTO THE TERMS OF THE PERMIT. IF THE DIRECTOR FAILS TO ISSUE A
25 FINAL DECISION WITHIN THE TIME PERIOD PROVIDED FOR IN THIS
26 SUBSECTION, THE DECISION OF THE APPEAL BOARD SHALL BE CONSIDERED
27 THE FINAL DECISION OF THE DIRECTOR. THE FINAL DECISION OF THE

1 DIRECTOR UNDER THIS SUBSECTION IS SUBJECT TO REVIEW IN THE MANNER
2 PROVIDED IN SECTION 631 OF THE REVISED JUDICATURE ACT OF 1961, 1961
3 PA 236, MCL 600.631.

4 (7) A MEMBER OF THE APPEAL PANEL SHALL NOT PARTICIPATE IN AN
5 APPEAL IN WHICH THAT MEMBER HAS A CONFLICT OF INTEREST. THE
6 DIRECTOR SHALL SELECT A MEMBER OF THE APPEAL PANEL TO REPLACE A
7 MEMBER WHO HAS A CONFLICT OF INTEREST. FOR PURPOSES OF THIS
8 SUBSECTION, A MEMBER HAS A CONFLICT OF INTEREST IF THE APPELLANT
9 HAS HIRED THAT MEMBER OR THE MEMBER'S EMPLOYER ON ANY ENVIRONMENTAL
10 MATTER WITHIN THE PRECEDING 3 YEARS.

11 Enacting section 1. This amendatory act takes effect 90 days
12 after the date it is enacted into law.

13 Enacting section 2. This amendatory act does not take effect
14 unless all of the following bills of the 99th Legislature are
15 enacted into law:

16 (a) Senate Bill No. _____ or House Bill No. 5331 (request no.
17 00927'17).

18 (b) Senate Bill No. _____ or House Bill No. 5333 (request no.
19 04659'17).