

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)

Act 451 of 1994

Subchapter 5

PEAT EXTRACTION FROM STATE OWNED LANDS

Part 641

PEAT EXTRACTION FROM STATE OWNED LANDS

324.64101 “Peat” defined.

Sec. 64101.

As used in this part, "peat" means a deposit of unconsolidated, naturally occurring soil material consisting of decomposed and partially decomposed mosses, sedges, trees, and other wetland plants, having 12% or greater organic carbon content on a dry weight basis.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995

Popular Name: Act 451

Popular Name: NREPA

324.64102 Contracts for taking of peat from state-owned lands.

Sec. 64102.

Subject to the requirements of this part, the department may make contracts with persons for the taking of peat from state owned lands upon terms consistent with this part, if not less than 10% of the surface area of all eligible and potentially leasable parcels of state owned land containing peat is set aside and preserved in its original natural state as a unique, irreplaceable natural resource of significant historical value.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995

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324.64103 Inventory and preliminary evaluation; classification of peat lands; public notice; public comments; public hearings; reclassification of lands.

Sec. 64103.

(1) Beginning immediately after July 9, 1984, the department shall conduct an inventory of state owned land to determine the surface areas of peat present on those lands and to make a preliminary evaluation of the nature of the peat lands and the relationship of the peat resource to the surrounding wetlands and watershed. The preliminary evaluation shall consist of an analysis of the following data obtained from aerial photographs, a field check of surface features, and any information currently available:

(a) The importance of the peat land for flood and storm control by the hydrologic absorption and storage capacity of the peat land.

(b) The importance of the peat land for wildlife habitat including migratory waterfowl and rare, threatened, or endangered species.

(c) The presence of rare, threatened, or endangered plant species.

(d) The importance of the peat land for its natural pollution treatment capacity.

(e) The importance of the peat land for erosion control as a sedimentation area filtering basin.

(f) The potential impact on water quality for adjacent fish habitat and nursery grounds.

(g) The presence of historical or archeological features in or adjacent to the peat lands.

(h) The importance of the peat land for recreational, environmental, ecological, and educational purposes and any other purpose not covered in subdivisions (a) through (g).

(2) Based upon the inventory and preliminary evaluation described in subsection (1), the department shall classify

the peat lands as either potentially leasable or not leasable according to the following:

(a) If the preliminary evaluation shows that a significant adverse impact is not likely to occur if the peat land is leased and the peat is taken, the peat land shall be classified as potentially leasable. A significant adverse impact may include an impact limited to the peat land.

(b) A peat land not classified as potentially leasable under subdivision (a) shall be classified as not leasable.

(3) The department shall provide a public notice of the completion of the inventory and classification required by subsections (1) and (2) including, but not limited to, publication in the agenda of the commission. The department shall accept public comment on the inventory and classifications for not less than 60 days from the date of notice. The department shall consider all pertinent public comments before finalizing the inventory and classifications. Public hearings may be held on the inventory and classification at the department's discretion. The department may reclassify lands upon receipt of further information if the public notice and the opportunity for public comment described in this subsection are provided.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995

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324.64104 Nomination of parcel; fee; direct lease contract.

Sec. 64104.

(1) Except as provided in subsection (4), contracting for the taking of peat from state owned lands shall be initiated by the nomination of a parcel of land as provided in this section.

(2) Upon completion of the inventory and classification described in section 64103, a private party or the department may nominate a parcel classified as leasable for the taking of peat.

(3) A nomination by a private party shall be accompanied by a fee established by the department. The fee established shall be a nominal sum to assist in defraying the cost to the state of holding public auctions as described in section 64105. The fee shall be deposited in the fund created in section 64108.

(4) The department may enter into a direct lease contract for the taking of peat from state owned land classified as leasable under section 64103 upon obtaining from the direct lease applicant the same information described in section 64105(4) and upon consideration of the direct lease contract in the same manner as required by this part for a contract for the taking of peat from a nominated parcel. The department may enter into a direct lease contract for the taking of peat from state owned land classified as leasable only under either of the following circumstances:

(a) For the completion of an extraction operation area.

(b) For the consolidation of fractional interests owned or controlled by the applicant for the direct lease contract.

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324.64105 Public auction; exclusive opportunity to pursue contract; information required from highest bidder.

Sec. 64105.

(1) On the basis of the inventory and the classification described in section 64103, the department shall determine whether to offer at a public auction the exclusive opportunity to pursue a contract for the taking of peat from a nominated parcel.

(2) The exclusive opportunity to pursue a contract for the taking of peat from a specified parcel of state owned land shall be awarded to the highest bidder at a public auction by sealed or oral bid.

(3) An exclusive opportunity to pursue a contract awarded under this section guarantees that, if the department decides to enter into a contract for the taking of peat from the nominated parcel as provided in section 64106, a contract shall be entered into with the highest bidder.

(4) Within 2 years after being awarded an exclusive opportunity to pursue a contract, the highest bidder shall

provide to the department the following information:

- (a) The quantity and quality of the peat that the bidder proposes to take from the nominated parcel.
- (b) The capacity of the production facility that the bidder proposes to operate on the parcel.
- (c) The date on which the bidder projects that the taking of peat will commence and the projected duration of the activity.
- (d) An environmental assessment of the impact of the taking of the peat, including an analysis of the factors described in section 64106(2).
- (e) Any other information the department determines to be reasonably necessary for the department to make the determination described in section 64106(2).

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324.64106 Public hearing; determination; criteria; statement of reasons.

Sec. 64106.

(1) After the submission of the information required by section 64105(4), and after review and evaluation of that information by the department, the department shall hold a public hearing to hear comments from the public on whether the department should enter into a contract for the taking of peat from a nominated parcel. This hearing may be consolidated with other legally required hearings related to the taking of peat from the nominated parcel.

(2) After completion of the public hearing required by subsection (1), the department shall decide whether to enter into a contract with the highest bidder based upon a determination that the taking of the peat from the parcel of nominated land would be in the public interest and would not unacceptably disrupt or destroy the aquatic or other resources of the peat land or the surrounding area. In making this determination, the department shall balance the benefit that reasonably may be expected to accrue from the taking of the peat against the reasonably foreseeable detriment of the taking, and, to that end, shall consider the following criteria:

- (a) The relative extent of the public and private need for the taking of the peat.
- (b) The availability of feasible and prudent alternative locations and methods for attaining the expected benefits of the taking of the peat.
- (c) The extent and permanence of the beneficial or detrimental effects which the taking of the peat may have on the public and private uses to which the area is suited.
- (d) The probable impact of the taking of peat in relation to the cumulative effect created by other existing and anticipated activities in the watershed where the peat is located.
- (e) The probable impact of the taking of the peat on recognized historic, cultural, scenic, ecological, educational, or recreational values, and on the public health, or fish or wildlife.
- (f) The size of the peat surface area in relation to the size of the parcel of state owned land.
- (g) The impact of the taking of the peat on subsurface water resources, recharging groundwater supplies and adjacent watersheds, and surface water bodies.
- (h) The economic value, both public and private, of the taking of peat to the general area.

(3) The department shall state its reasons for deciding to enter or not to enter into a contract with the highest bidder for the taking of peat.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995

Popular Name: Act 451

Popular Name: NREPA

324.64107 Terms of contract.

Sec. 64107.

A contract entered into under this part for the taking of peat from state owned lands shall contain the following terms:

- (a) A requirement that the lessee obtain worker's compensation insurance, liability insurance, and any other insurance reasonably required by the department.
- (b) A requirement that the lessee hold the department harmless against all claims, demands, or judgments for loss, damage, death, or injury arising out of the lessee's activities or operations.
- (c) A requirement that the lessee obtain and maintain public liability insurance in amounts reasonably required by the department.
- (d) A prohibition against assignment of the contract or rights under the contract without the written approval of the department.
- (e) A requirement that the lessee pay all taxes and assessments.
- (f) A requirement that the lessee maintain the premises in a manner that safeguards the public health and safety.
- (g) A provision that the term of the lease not exceed 10 years, with extension of that period in the discretion of the department.
- (h) A requirement that the lessee pay rentals and minimum royalties established on a per acre basis or production royalties established by the department.
- (i) A requirement that the lessee file a performance bond, an escrow account, or both, conditioned on the faithful performance of the agreements in the lease, including any agreements relating to the reclamation.
- (j) A provision setting forth the department's rights as lessor.
- (k) A provision setting forth the lessee's rights.
- (l) A provision regarding the department's rights in the event of the default of the lessee.
- (m) A requirement that the lessee's rights under the lease are conditioned on operation in accordance with the extraction and reclamation plan as approved by the department.
- (n) A requirement that the lessee have an extraction and reclamation plan, subject to the approval of the department, that ensures, to the extent practicable, the extraction operations do not have significant adverse impacts on water quality, air quality, wildlife, or fishing resources of the state; that waste areas and product storage and conditioning areas are located, designed, and utilized to minimize aesthetic unattractiveness and fire hazards and to promote reclamation; that extraction is conducted in a manner that will prevent or mitigate hazardous conditions that will result from acidic drainage and blowing dust; and that the parcel is reclaimed in an acceptable manner given the following factors: the original state, condition, and appearance of the land including suitability for original flora and fauna, the uses of adjacent land, the necessary disruption caused by extraction operations, reclamation techniques, the public trust in the natural resources, and applicable statutes and ordinances.
- (o) A requirement that the lessee have a plan for monitoring groundwater changes and surface water quality and flow rates.
- (p) Any other term reasonably required by the department to protect the state's interest in the land, to protect the surrounding environment, or to assure the optimum economic return to the state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995

Popular Name: Act 451

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324.64108 Peat resource conservation and development fund; creation; deposits.

Sec. 64108.

- (1) The peat resource conservation and development fund is created in the state treasury.
- (2) Subject to subsections (3) and (4), the following shall be deposited in the peat resource conservation and development fund:
 - (a) Money received by the state under contracts for the taking of peat.
 - (b) The fees imposed under this part.
 - (3) Money received by the state under contracts for taking of peat from state owned lands acquired with game and fish protection funds shall be deposited in the game and fish protection account of the Michigan conservation and recreation legacy fund provided for in section 2010.
 - (4) If the money in the fund exceeds \$250,000.00 at the end of a state fiscal year, the excess shall be deposited in the Michigan natural resources trust fund created in section 35 of article IX of the state constitution of 1963 and provided for in section 1902 or as otherwise provided by law.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995 ;-- Am. 2004, Act 587, Eff. Dec. 23, 2006

Compiler's Notes: Enacting section 2 of Act 587 of 2004 provides: "Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the

state constitution of 1963."

Popular Name: Act 451

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324.64109 Expenditures; purposes.

Sec. 64109.

The department shall expend the money in the fund and the interest and earnings on the money in the fund for the following purposes:

(a) To administer a peat resource conservation, development, and regulatory program consistent with this part.

(b) To perform the inventory of state lands described in section 64103, to fund further study of the state owned lands classified as not leasable under section 64103, and to provide for the reclassification of parcels consistent with the provisions of section 64103 based on the development of information unavailable during the classification required by section 64103(2).

(c) To fund research necessary for the further development of appropriate techniques for environmental monitoring of peat extraction sites, for development and protection of the state's peat resources, and for reclamation of lands following the extraction of peat.

(d) To pay for the costs to the state of personnel services, printing, postage, advertising, contractual services, and the rental of facilities associated with the offering of state owned lands for the purpose of taking peat.

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324.64110 Applicability of MCL 324.64103 to 324.64106; responsibility of meeting legal requirements.

Sec. 64110.

The requirements of sections 64103 through 64106 do not apply to proposals for the taking of peat from state owned lands that have been the subject of department action prior to July 9, 1984. This provision does not relieve the department or any of the entities listed in section 64102 from the responsibility of meeting legal requirements applicable to the leasing of state lands for peat development that might otherwise be imposed by law.

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324.64111 Rules.

Sec. 64111.

The department may promulgate rules for the implementation of this part.

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