

STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012

Introduced by Senators Casperson, Brandenburg, Pavlov, Kowall, Nofs, Emmons, Kahn, Meekhof,
Jansen, Marleau, Green and Booher

ENROLLED SENATE BILL No. 1052

AN ACT to amend 1994 PA 451, entitled “An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts,” by amending sections 1301, 30301, 30305, 30306, 30312, 32501, 32503, 32512, 32512a, and 32513 (MCL 324.1301, 324.30301, 324.30305, 324.30306, 324.30312, 324.32501, 324.32503, 324.32512, 324.32512a, and 324.32513), section 1301 as amended by 2011 PA 218, sections 30301, 30306, 30312, and 32512a as amended by 2009 PA 120, sections 30305, 32501, and 32512 as amended by 2003 PA 14, section 32503 as amended by 2004 PA 325, and section 32513 as amended by 2011 PA 90, and by adding section 41412; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 1301. As used in this part:

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

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

(c) “Director” means the director of the state department authorized under this act to approve or deny an application for a particular permit or the director’s designee.

(d) “Permit” means a permit or operating license required by any of the following sections or by rules promulgated thereunder; or, in the case of section 9112, by an ordinance adopted thereunder:

- (i) Section 3104, floodplain alteration permit.
- (ii) Section 3503, permit for use of water in mining iron ore.
- (iii) Section 4105, sewerage system construction permit.
- (iv) Section 6516, vehicle testing license.
- (v) Section 6521, motor vehicle fleet testing permit.
- (vi) Section 8310, restricted use pesticide dealer license.
- (vii) Section 8310a, agricultural pesticide dealer license.
- (viii) Section 8504, license to manufacture or distribute fertilizer.

- (ix) Section 9112, local soil erosion and sedimentation control permit.
 - (x) Section 11509, solid waste disposal area construction permit.
 - (xi) Section 11512, solid waste disposal area operating license.
 - (xii) Section 11542, municipal solid waste incinerator ash landfill operating license amendment.
 - (xiii) Section 11702, septage waste servicing license or septage waste vehicle license.
 - (xiv) Section 11709, septage waste site permit.
 - (xv) Section 30104, inland lakes and streams project permit.
 - (xvi) Section 30304, state permit for dredging, filling, or other activity in wetland. Permit includes an authorization for a specific project to proceed under a general permit issued under section 30312.
 - (xvii) Section 31509, dam construction, repair, or removal permit.
 - (xviii) Section 32312, flood risk, high risk, or environmental area permit.
 - (xix) Section 32512, permit for dredging and filling bottomland.
 - (xx) Section 32603, permit for submerged log removal from Great Lakes bottomlands.
 - (xxi) Section 35304, department permit for critical dune area use.
 - (xxii) Section 36505, endangered species permit.
 - (xxiii) Section 41702, game bird hunting preserve license.
 - (xxiv) Section 42101, dog training area permit.
 - (xxv) Section 42501, fur dealer's license.
 - (xxvi) Section 42702, game dealer's license.
 - (xxvii) Section 44513, charter boat operating permit under reciprocal agreement.
 - (xxviii) Section 44517, boat livery operating permit.
 - (xxix) Section 45503, permit to take frogs for scientific use.
 - (xxx) Section 45902, game fish propagation license.
 - (xxxi) Section 45906, game fish import license.
 - (xxxii) Section 61525, oil or gas well drilling permit.
 - (xxxiii) Section 62509, brine, storage, or waste disposal well drilling or conversion permit or test well drilling permit.
 - (xxxiv) Section 63103a, ferrous mineral mining permit.
 - (xxxv) Section 63514 or 63525, surface coal mining and reclamation permit or revision of the permit, respectively.
 - (xxxvi) Section 63704, sand dune mining permit.
 - (xxxvii) Section 72108, use permits for Michigan trailway.
 - (xxxviii) Section 76109, sunken aircraft or watercraft abandoned property recovery permit.
 - (xxxix) Section 76504, Mackinac Island motor vehicle and land use permits.
 - (xxxx) Section 80159, buoy or beacon permit.
- (e) "Processing deadline" means the last day of the processing period.
- (f) "Processing period" means the following time period after the close of the application period, for the following permit, as applicable:
- (i) Twenty days for a permit under section 61525 or 62509.
 - (ii) Thirty days for a permit under section 9112.
 - (iii) Thirty days after the department consults with the underwater salvage and preserve committee created under section 76103, for a permit under section 76109.
 - (iv) Sixty days, for a permit under section 30104 for a minor project as established by rule under section 30105(7) or for a permit under section 32312.
 - (v) Sixty days or, if a hearing is held, 90 days for a permit under section 35304.
 - (vi) Sixty days or, if a hearing is held, 120 days for a permit under section 30104, other than a permit for a minor project as established by rule under section 30105(7), or for a permit under section 31509.
 - (vii) Ninety days for a permit under section 11512, a revision of a surface coal mining and reclamation permit under section 63525, or a permit under section 72108.
 - (viii) Ninety days or, if a hearing is held, 150 days for a permit under section 3104, 30304, or 32503 or an authorization for a specific project to proceed under a general permit issued under section 30312.

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

(x) One hundred twenty days for a permit under section 11509, 11542, 63103a, 63514, or 63704.

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

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

Sec. 30301. (1) As used in this part:

(a) “Department” means the department of environmental quality.

(b) “Director” means the director of the department.

(c) “Exceptional wetland” means wetland that provides physical or biological functions essential to the natural resources of the state and that may be lost or degraded if not preserved through an approved site protection and management plan for the purposes of providing compensatory wetland mitigation.

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

(e) “Landscape level wetland assessment” means the use of aerial photographs, maps, and other remotely sensed information to predict and evaluate wetland characteristics and functions in the context of all of the following:

(i) The wetland’s landscape position and hydrologic characteristics.

(ii) The surrounding landscape.

(iii) The historic extent and condition of the wetland.

(f) “Minor drainage” includes ditching and tiling for the removal of excess soil moisture incidental to the planting, cultivating, protecting, or harvesting of crops or improving the productivity of land in established use for agriculture, horticulture, silviculture, or lumbering.

(g) “Nationwide permit” means a nationwide permit issued by the United States army corps of engineers under 72 FR 11091 to 11198 (March 12, 2007), including all general conditions, regional conditions, and conditions imposed by this state pursuant to a water quality certification under section 401 of title IV of the federal water pollution control act, 33 USC 1341, or a coastal zone management consistency determination under section 307 of the coastal zone management act of 1972, 16 USC 1456.

(h) “Ordinary high-water mark” means the ordinary high-water mark as specified in section 32502.

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

(j) “Rapid wetland assessment” means a method for generally assessing the functions, values, and condition of individual wetlands based on existing data and field indicators.

(k) “Rare and imperiled wetland” means any of the following:

(i) Great Lakes marsh.

(ii) Southern wet meadow.

(iii) Inland salt marsh.

(iv) Intermittent wetland or boggy seepage wetland.

(v) Coastal plain marsh.

(vi) Interdunal wetland.

(vii) Lakeplain wet prairie.

(viii) Lakeplain wet-mesic prairie.

(ix) Northern wet-mesic prairie.

(x) Wet-mesic prairie.

(xi) Wet prairie.

(xii) Prairie fen.

(xiii) Northern fen.

(xiv) Patterned fen.

(xv) Poor fen.

(xvi) Muskeg.

(xvii) Rich conifer swamp.

- (xviii) Relict conifer swamp.
- (xix) Hardwood-conifer swamp.
- (xx) Northern swamp.
- (xxi) Southern swamp.
- (xxii) Southern floodplain forest.
- (xxiii) Inundated shrub swamp.

(l) "Water dependent" means requiring access or proximity to or siting within an aquatic site to fulfill its basic purpose.

(m) "Wetland" means land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp, or marsh, and which is any of the following:

- (i) Contiguous to the Great Lakes or Lake St. Clair, an inland lake or pond, or a river or stream.
- (ii) Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream; and more than 5 acres in size.
- (iii) Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream; and 5 acres or less in size if the department determines that protection of the area is essential to the preservation of the natural resources of the state from pollution, impairment, or destruction and the department has so notified the owner.

(2) The department and local units of government shall apply the technical wetland delineation standards set forth in the United States army corps of engineers January 1987 wetland delineation manual, technical report Y-87-1, and appropriate regional United States army corps of engineers supplements, in identifying wetland boundaries under this part, including, but not limited to, section 30307.

Sec. 30305. (1) Activities that require a permit under part 325 or part 301 or a discharge that is authorized by a discharge permit under section 3112 or 3113 do not require a permit under this part.

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

- (a) Fishing, trapping, or hunting.
- (b) Swimming or boating.
- (c) Hiking.
- (d) Grazing of animals.

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

(f) Maintenance or operation of serviceable structures in existence on October 1, 1980 or constructed pursuant to this part or former 1979 PA 203.

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

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

(i) An existing private agricultural drain.

(ii) That portion of a drain legally established pursuant to the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630, which has been constructed or improved for drainage purposes.

(iii) A drain constructed pursuant to other provisions of this part or former 1979 PA 203.

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

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

(k) Maintenance or improvement of public streets, highways, or roads, within the right-of-way and in such a manner as to assure that any adverse effect on the wetland will be otherwise minimized. Maintenance or improvement does not

include adding extra lanes, increasing the right-of-way, or deviating from the existing location of the street, highway, or road.

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

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

(n) Operation or maintenance, including reconstruction of recently damaged parts, of serviceable dikes and levees in existence on October 1, 1980 or constructed pursuant to this part or former 1979 PA 203.

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

(3) An activity in a wetland that was effectively drained for farming before October 1, 1980 and that on and after October 1, 1980 has continued to be effectively drained as part of an ongoing farming operation is not subject to regulation under this part.

(4) A wetland that is incidentally created as a result of 1 or more of the following activities is not subject to regulation under this part:

(a) Excavation for mineral or sand mining, if the area was not a wetland before excavation. This exemption does not include a wetland on or adjacent to a water body of 1 acre or more in size.

(b) Construction and operation of a water treatment pond or lagoon in compliance with the requirements of state or federal water pollution control regulations.

(c) A diked area associated with a landfill if the landfill complies with the terms of the landfill construction permit and if the diked area was not a wetland before diking.

(5) Except as provided in subsection (6), the following activities are not subject to regulation under this part by the state:

(a) Leveling of sand, removal of vegetation, grooming of soil, or removal of debris, in an area of unconsolidated material predominantly composed of sand, rock, or pebbles, located between the ordinary high-water mark and the water's edge.

(b) Mowing of vegetation between the ordinary high-water mark and the water's edge.

(6) Subsection (5) does not apply to lands included in the survey of the delta of the St. Clair River, otherwise referred to as the St. Clair flats, located within Clay township, St. Clair county, as provided for in 1899 PA 175.

Sec. 30306. (1) Except as provided in section 30307(6), to obtain a permit for a use or development listed in section 30304, a person shall file an application with the department on a form provided by the department. The application shall include all of the following:

(a) The person's name and address.

(b) The location of the wetland.

(c) A description of the wetland on which the use or development is to be made.

(d) A statement and appropriate drawings describing the proposed use or development.

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

(f) An environmental assessment of the proposed use or development if requested by the department. The assessment shall include the effects upon wetland benefits and the effects upon the water quality, flow, and levels, and the wildlife, fish, and vegetation within a contiguous lake, river, or stream.

(2) For the purposes of subsection (1), a proposed use or development of a wetland shall be covered by a single permit application under this part if the scope, extent, and purpose of a use or development are made known at the time of the application for the permit.

(3) Except as provided in subsections (4) and (5), an application for a permit submitted under subsection (1) shall be accompanied by the following fee, as applicable:

(a) For a project in a category of activities for which a general permit is issued under section 30312, a fee of \$100.00.

(b) For a major project, including any of the following, a fee of \$2,000.00:

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

(ii) 10,000 cubic yards or more of wetland fill.

(iii) A new golf course affecting wetland.

(iv) A subdivision affecting wetland.

(v) A condominium affecting wetland.

(c) For all other projects, a fee of \$500.00.

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

- (a) Section 3104.
- (b) Part 301.
- (c) Part 323.
- (d) Part 325.
- (e) Section 117 of the land division act, 1967 PA 288, MCL 560.117.

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

(6) If the department determines that a permit is not required under this part, the department shall promptly refund the fee paid under this section.

Sec. 30312. (1) After providing notice and an opportunity for a public hearing, the department shall establish minor project categories of activities that are similar in nature, have minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment. The department may act upon an application received pursuant to section 30306 for an activity within a minor project category without holding a public hearing or providing notice pursuant to section 30307(1) or (3). A minor project category shall not be valid for more than 5 years, but may be reestablished. All other provisions of this part, except provisions applicable only to general permits, are applicable to a minor project.

(2) The department, after notice and opportunity for a public hearing, shall issue general permits on a statewide basis or within a local unit of government for a category of activities if the department determines that the activities are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment. A general permit shall be based on the requirements of this part and the rules promulgated under this part, and shall set forth the requirements and standards that shall apply to an activity authorized by the general permit. A general permit shall not be valid for more than 5 years, but may be reissued.

(3) Before authorizing a specific project to proceed under a general permit, the department may provide notice pursuant to section 30307(3) but shall not hold a public hearing and shall not typically require a site inspection. The department shall issue an authorization under a general permit if the conditions of the general permit and the requirements of section 30311 are met. However, in determining whether to issue an authorization under a general permit, the department shall not consider off-site alternatives to be feasible and prudent alternatives.

(4) If the department determines that activity in a proposed project, although within a minor project category or a general permit, is likely to cause more than minimal adverse effects on aquatic resources, including high-value aquatic habitats, the department may require that the application be processed under section 30307.

(5) The department shall coordinate general permit and minor project categories under this part and parts 301 and 325 consistent with nationwide permits, as appropriate.

Sec. 32501. As used in this part:

- (a) "Department" means the department of environmental quality.
- (b) "Director" means the director of the department.
- (c) "Marina purposes" means an operation making use of submerged bottomlands or filled-in bottomlands of the Great Lakes for the purpose of service to boat owners or operators, which operation may restrict or prevent the free public use of the affected bottomlands or filled-in lands.

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

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

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

Sec. 32512. (1) Except as provided in subsection (2), unless a permit has been granted by the department pursuant to part 13 or authorization has been granted by the legislature, or except as to boat wells and slips facilitating private, noncommercial, recreational boat use, not exceeding 50 feet in length where the spoil is not disposed of below the ordinary high-water mark of the body of water to which it is connected, a person shall not do any of the following:

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

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

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

(d) Construct a marina.

(2) Except as provided in subsection (3), the following activities are not subject to regulation under this part:

(a) Leveling of sand, removal of vegetation, grooming of soil, or removal of debris, in an area of unconsolidated material predominantly composed of sand, rock, or pebbles, located between the ordinary high-water mark and the water's edge.

(b) Mowing of vegetation between the ordinary high-water mark and the water's edge.

(3) Subsection (2) does not apply to lands included in the survey of the delta of the St. Clair River, otherwise referred to as the St. Clair flats, located within Clay township, St. Clair county, as provided for in 1899 PA 175.

Sec. 32512a. (1) After providing notice and an opportunity for a public hearing, the department shall establish minor project categories of activities that are similar in nature, have minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment. The department may act upon an application received pursuant to section 32513 for an activity within a minor project category without providing notice pursuant to section 32514. A minor project category shall not be valid for more than 5 years, but may be reestablished. All other provisions of this part, except provisions applicable only to general permits, are applicable to a minor project.

(2) The department, after notice and opportunity for a public hearing, shall issue general permits on a statewide basis or within a local unit of government for a category of activities if the department determines that the activities are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment. A general permit shall be based on the requirements of this part and the rules promulgated under this part, and shall set forth the requirements and standards that shall apply to an activity authorized by the general permit. Before authorizing a specific project to proceed under a general permit, the department may provide notice pursuant to section 32514 but shall not hold a public hearing and shall not typically require a site inspection. A general permit shall not be valid for more than 5 years, but may be reissued.

Sec. 32513. (1) To obtain a permit for any work or connection specified in section 32512, a person shall file an application with the department on a form provided by the department. The application shall include all of the following:

(a) The name and address of the applicant.

(b) The legal description of the lands included in the project.

(c) A summary statement of the purpose of the project.

(d) A map or diagram showing the proposal on an adequate scale with contours and cross-section profiles of any waterway to be constructed.

(e) Other information required by the department.

(2) Except as provided in subsections (3) and (4), until October 1, 2015, an application for a permit under this section shall be accompanied by the following fee, as applicable:

(a) For a project in a category of activities for which a general permit is issued under section 32512a, a fee of \$100.00.

(b) For activities included in a minor project category, a fee of \$50.00.

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

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

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

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

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

(v) \$1,500.00 if an existing permitted marina proposes maintenance dredging of 10,000 cubic yards or more or the addition of seawalls, bulkheads, or revetments of 500 feet or more.

(d) For major projects other than a project described in subdivision (c)(v), involving any of the following, a fee of \$2,000.00:

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

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

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

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

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

(vi) New breakwater or channel jetty.

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

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

(e) For all other projects not listed in subdivisions (a) to (d), \$500.00.

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

(a) Part 301.

(b) Part 303.

(c) Part 323.

(d) Section 3104.

(e) Section 117 of the land division act, 1967 PA 288, MCL 560.117.

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

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

Sec. 41412. The council shall review and provide recommendations on Phragmites australis control measures to the department and to the standing committees of the senate and house of representatives with primary jurisdiction relating to natural resources and the environment.

Enacting section 1. Section 32516 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.32516, is repealed.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Jay E. Randall

Clerk of the House of Representatives

Approved

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Governor