

HOUSE BILL No. 4339

February 27, 2013, Introduced by Reps. McBroom, Goike, Rendon, Daley, Foster, Lyons, Outman, Johnson, Poleski, Dianda and Kivela and referred to the Committee on Transportation and Infrastructure.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending section 30311d (MCL 324.30311d), as added by 2009 PA 120.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 30311d. (1) ~~The~~ **EXCEPT AS PROVIDED IN SUBSECTIONS (5) AND**
2 **(6), THE** department may impose as a condition on any permit ~~other~~
3 ~~than a general permit,~~ under this part a requirement for
4 compensatory wetland mitigation. The department may approve 1 or
5 more of the following methods of compensatory wetland mitigation:
6 (a) The acquisition of approved credits from a wetland
7 mitigation bank. The department shall not require a permit
8 applicant to provide compensatory wetland mitigation under
9 subdivision (b), (c), or (d) if the applicant prefers and qualifies

1 to use approved credits from the wetland mitigation bank to provide
2 required compensatory wetland mitigation under this subdivision.

3 (b) The restoration of previously existing wetland. The
4 restoration of previously existing wetland is preferred over the
5 creation of new wetland where none previously existed.

6 (c) The creation of new wetlands, if the permit applicant
7 demonstrates that ecological conditions necessary for establishment
8 of a self-sustaining wetland ecosystem exist or will be created.

9 (d) The preservation of exceptional wetlands.

10 (2) If compensatory wetland mitigation under subsection
11 (1)(b), (c), or (d) is required, a permit applicant shall submit a
12 mitigation plan to the department for approval. In approving a
13 compensatory mitigation plan, the department shall consider how the
14 location and type of wetland mitigation supports the sustainability
15 or improvement of aquatic resources in the watershed where the
16 activity is permitted. The permit applicant shall provide for
17 permanent protection of the wetland mitigation site. The department
18 may accept a conservation easement to protect wetland mitigation
19 and associated upland.

20 (3) If a permittee carries out compensatory wetland mitigation
21 under subsection (1)(b), (c), or (d) in cooperation with public
22 agencies, private organizations, or other parties, the permittee
23 remains responsible for the compensatory wetland mitigation to the
24 extent otherwise provided by law.

25 (4) The department may require financial assurance to ensure
26 that compensatory wetland mitigation is accomplished as specified.
27 To ensure that wetland benefits are replaced by compensatory

1 wetland mitigation, the department may release financial assurance
2 only after the permit applicant or mitigation bank sponsor has
3 completed monitoring of the mitigation site and demonstrated
4 compliance with performance standards in accordance with a schedule
5 in the permit or mitigation banking agreement.

6 (5) THE DEPARTMENT SHALL NOT IMPOSE COMPENSATORY WETLAND
7 MITIGATION AS A CONDITION ON A GENERAL PERMIT.

8 (6) FOR ROAD WORK THAT IS NOT EXEMPT UNDER SECTION 30305(2)(K)
9 FROM THE REQUIREMENT TO OBTAIN A PERMIT, IF BOTH OF THE FOLLOWING
10 REQUIREMENTS ARE MET, THE DEPARTMENT SHALL NOT IMPOSE COMPENSATORY
11 WETLAND MITIGATION AS A CONDITION ON A PERMIT FOR THE ROAD WORK
12 WITHOUT THE CONSENT OF THE ENTITY WITH LEGAL JURISDICTION OVER THE
13 ROAD:

14 (A) THE ROAD WAS IN EXISTENCE ON THE EFFECTIVE DATE OF THE
15 AMENDATORY ACT THAT ADDED THIS SUBSECTION.

16 (B) THE ACTIVITY TAKES PLACE WITHIN THE ROAD RIGHT-OF-WAY.

17 (7) AS USED IN THIS SECTION:

18 (A) "ROAD" MEANS A CITY OR VILLAGE STREET, COUNTY ROAD, OR
19 STATE TRUNK LINE HIGHWAY.

20 (B) "ROAD WORK" MEANS THE MAINTENANCE, REPAIR, IMPROVEMENT, OR
21 RECONSTRUCTION OF A ROAD. ROAD WORK DOES NOT INCLUDE THE
22 CONSTRUCTION OF A ROAD.