

# HOUSE BILL No. 5152

December 15, 2015, Introduced by Reps. Inman, Goike, Rendon, Franz, Outman, Callton, Kelly, Potvin, McBroom, Cole, Pettalia, Glenn, Jenkins, Chatfield and Barrett and referred to the Committee on Agriculture.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 30101a, 30103, 30305, 30311, 30311d, 30312, 30321, and 30328 (MCL 324.30101a, 324.30103, 324.30305, 324.30311, 324.30311d, 324.30312, 324.30321, and 324.30328), sections 30101a and 30328 as added and sections 30305, 30311, 30311d, 30312, and 30321 as amended by 2013 PA 98 and section 30103 as amended by 2014 PA 253.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 30101a. **FOR THE PURPOSES OF THIS PART, "WATERS OF THE**  
2 **UNITED STATES" MEANS NAVIGABLE WATERS OF THE UNITED STATES AS**  
3 **DEFINED IN 33 CFR PART 329.** For the purposes of this part, the  
4 powers, duties, functions, and responsibilities exercised by the  
5 department because of federal approval of Michigan's permit program

1 under section 404(g) and (h) of the federal water pollution control  
2 act, 33 USC 1344, apply only to ~~"navigable waters" and "waters of~~  
3 ~~the United States. "as defined under section 502(7) of the federal~~  
4 ~~water pollution control act, 33 USC 1362, and further refined by~~  
5 ~~federally promulgated rules and court decisions that have the full~~  
6 ~~effect and force of federal law. Determining whether additional~~  
7 ~~regulation is necessary to protect Michigan waters beyond the scope~~  
8 ~~of federal law is the responsibility of the Michigan legislature~~  
9 ~~based on its determination of what is in the best interest of the~~  
10 ~~citizens of this state.~~

11 Sec. 30103. (1) A permit is not required under this part for  
12 any of the following:

13 (a) Any fill or structure existing before April 1, 1966, in  
14 waters covered by former 1965 PA 291, and any fill or structures  
15 existing before January 9, 1973, in waters covered for the first  
16 time by former 1972 PA 346.

17 (b) A seasonal structure placed on bottomland to facilitate  
18 private noncommercial recreational use of the water if it does not  
19 unreasonably interfere with the use of the water by others entitled  
20 to use the water or interfere with water flow.

21 (c) Reasonable sanding of beaches to the existing water's edge  
22 by the riparian owner or a person authorized by the riparian owner.

23 **(D) CONSTRUCTION, MAINTENANCE, OR IMPROVEMENT OF PRIVATE**  
24 **AGRICULTURAL DRAINS, REGARDLESS OF OUTLET, THAT ARE NOT WATERS OF**  
25 **THE UNITED STATES.**

26 **(E) INSTALLATION OR REPLACEMENT OF CULVERTS ON PRIVATE**  
27 **PROPERTY, INCLUDING PRIVATE PROPERTY WITHIN A ROAD RIGHT-OF-WAY,**

1 FOR THE PURPOSE OF CONSTRUCTING A DRIVEWAY OR PRIVATE ROAD.

2 (F) CONSTRUCTION, IMPROVEMENT, OR MAINTENANCE OF A POND OR  
3 LAKE ON PRIVATE PROPERTY IF THE POND OR LAKE DOES NOT HAVE A  
4 SURFACE WATER INLET FROM OR OUTLET TO WATERS OF THE UNITED STATES.

5 (G) ~~(d)~~ Maintenance of ~~an~~ PRIVATE agricultural ~~drain~~, DRAINS,  
6 regardless of outlet, **THAT ARE WATERS OF THE UNITED STATES**, if all  
7 of the following requirements are met:

8 (i) The maintenance includes only activities that maintain the  
9 location, depth, and bottom width of the drain as constructed or  
10 modified at any time before July 1, 2014.

11 (ii) The maintenance is performed by the landowner or pursuant  
12 to the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630.

13 (H) ~~(e)~~ A waste collection or treatment facility that is  
14 ordered to be constructed or is approved for construction under  
15 state or federal water pollution control law, if constructed in  
16 upland.

17 (I) ~~(f)~~ Construction and maintenance of minor drainage  
18 structures and facilities ~~which~~ **THAT** are identified by rule  
19 promulgated by the department pursuant to section 30110 **AND THAT**  
20 **ARE FOR DRAINS THAT ARE NOT WATERS OF THE UNITED STATES**. Before  
21 such a rule is promulgated, the rule shall be approved by the  
22 majority of a committee consisting of the director of the  
23 department, the director of the department of agriculture and rural  
24 development, and the director of the state transportation  
25 department or their designated representatives. The rules shall be  
26 reviewed at least annually.

27 (J) CONSTRUCTION, MAINTENANCE, AND IMPROVEMENT, PURSUANT TO

1 THE DRAIN CODE OF 1956, 1956 PA 40, MCL 280.1 TO 280.630, OF ALL  
2 DRAINS THAT ARE NOT WATERS OF THE UNITED STATES.

3 (K) ~~(g)~~ Maintenance of a ~~drain that either was~~ **DRAINS THAT ARE**  
4 **WATERS OF THE UNITED STATES AND THAT EITHER WERE** legally  
5 established and constructed before January 1, 1973, pursuant to the  
6 drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630, except those  
7 legally established drains constituting mainstream portions of  
8 certain natural watercourses identified in rules promulgated by the  
9 department under section 30110, or ~~was~~ **WERE** constructed or modified  
10 under a permit issued pursuant to this part. As used in this  
11 subdivision, "maintenance of a drain" means the physical  
12 preservation of the location, depth, and bottom width of a drain  
13 and appurtenant structures to restore the function and approximate  
14 capacity of the drain as constructed or modified at any time before  
15 July 1, 2014, and includes, but is not limited to, the following  
16 activities if performed with best management practices:

17 (i) Excavation of accumulated sediments back to original  
18 contours.

19 (ii) Reshaping of the side slopes.

20 (iii) Bank stabilization where reasonably necessary to prevent  
21 erosion. Materials used for stabilization must be compatible with  
22 existing bank or bed materials.

23 (iv) Armoring, lining, or piping if a previously armored,  
24 lined, or piped section is being repaired and all work occurs  
25 within the footprint of the previous work.

26 (v) Replacement of existing control structures, if the  
27 original function of the drain is not changed and the original

1 approximate capacity of the drain is not increased.

2 (vi) Repair of stabilization structures.

3 (vii) Culvert replacement, including culvert extensions of not  
4 more than 24 additional feet per culvert.

5 (viii) Emergency reconstruction of recently damaged parts of  
6 the drain. Emergency reconstruction must occur within a reasonable  
7 period of time after damage occurs in order to qualify for this  
8 exemption.

9 (I) ~~(h)~~—Projects constructed under the watershed protection  
10 and flood prevention act, chapter 656, 68 Stat.—**STAT 666**, 16 USC  
11 1001 to 1008, 1010, and ~~1011-1012~~, **AND NOT LOCATED IN WATERS OF THE**  
12 **UNITED STATES.**

13 (M) ~~(i)~~—Construction and maintenance of privately owned  
14 cooling or storage ponds **THAT ARE NOT WATERS OF THE UNITED STATES**  
15 used in connection with a public utility except at the interface  
16 with public waters.

17 (N) ~~(j)~~—Maintenance of a structure constructed under a permit  
18 issued pursuant to this part and identified by rule promulgated  
19 under section 30110, if the maintenance is in place and in kind  
20 with no design or materials modification **AND THE STRUCTURE IS NOT**  
21 **LOCATED IN WATERS OF THE UNITED STATES.**

22 (O) ~~(k)~~—A water withdrawal.

23 (P) ~~(l)~~—Annual installation of a seasonal dock or docks,  
24 pilings, mooring buoys, or other mooring structures previously  
25 authorized by and in accordance with a permit issued under this  
26 part.

27 (Q) ~~(m)~~—Controlled access of livestock to streams for watering

1 or crossing if constructed in accordance with applicable practice  
2 standards set by the United States ~~department of agriculture,~~  
3 ~~natural resources conservation service.~~**DEPARTMENT OF AGRICULTURE,**  
4 **NATURAL RESOURCES CONSERVATION SERVICE.**

5 (R) ~~(n)~~ Temporary drawdowns of impoundments at hydroelectric  
6 projects licensed by the ~~federal energy regulatory commission~~  
7 **FEDERAL ENERGY REGULATORY COMMISSION** (FERC) and subject to FERC's  
8 authority if both of the following apply:

9 (i) The FERC licensee has consulted this state during the  
10 drawdown plan development and this state's concerns have been  
11 addressed in the drawdown plan as FERC considers appropriate.

12 (ii) Adverse environmental impacts, including **THOSE RELATED TO**  
13 stream flow, aquatic resources, and timing, have been avoided and  
14 minimized to the extent practical.

15 (S) ~~(e)~~ Removal, by the riparian owner or a person authorized  
16 by the riparian owner, of plants that are an aquatic nuisance as  
17 defined in section 3301, if the removal is accomplished by hand-  
18 pulling without using a powered or mechanized tool and all plant  
19 fragments are removed from the water and properly disposed of on  
20 land above the ordinary high-water mark as defined in section  
21 30101.

22 (T) ~~(p)~~ Raking of lake bottomlands by the riparian owner or a  
23 person authorized by the riparian owner. To minimize effects on the  
24 lake bottomlands, the areas raked shall be unvegetated before  
25 raking and predominantly composed of sand or pebbles, and the  
26 raking shall be performed without using a powered or mechanized  
27 tool. For the purposes of this subdivision, the pulling of a

1 nonpowered, nonmechanized tool with a boat is not the use of a  
2 powered or mechanized tool.

3 (2) As used in this section: ~~,"water~~

4 (A) "PRIVATE AGRICULTURAL DRAIN" MEANS A HUMAN-CONSTRUCTED  
5 OPEN DITCH LOCATED ON QUALIFIED AGRICULTURAL PROPERTY AS DEFINED IN  
6 SECTION 7DD OF THE GENERAL PROPERTY TAX ACT, 1893 PA 206, MCL  
7 211.7DD, AND USED FOR THE CONVEYANCE OF WATER.

8 (B) "WATER withdrawal" means the removal of water from its  
9 source for any purpose.

10 ~~—— (3) As used in this part, "agricultural drain" means a human-~~  
11 ~~made conveyance of water that meets all of the following~~  
12 ~~requirements:~~

13 ~~—— (a) Does not have continuous flow.~~

14 ~~—— (b) Flows primarily as a result of precipitation induced~~  
15 ~~surface runoff or groundwater drained through subsurface drainage~~  
16 ~~systems.~~

17 ~~—— (c) Serves agricultural production.~~

18 ~~—— (d) Was constructed before January 1, 1973, or was constructed~~  
19 ~~in compliance with this part or former 1979 PA 203.~~

20 (3) THE DEPARTMENT SHALL NOT CONSIDER A WETLAND OR INLAND LAKE  
21 OR STREAM THAT IS NOT WATERS OF THE UNITED STATES IN DETERMINING  
22 WHETHER AN INLAND LAKE OR STREAM IS CONTIGUOUS TO A WETLAND OR  
23 INLAND LAKE OR STREAM THAT IS WATERS OF THE UNITED STATES.

24 Sec. 30305. (1) Activities that require a permit under part  
25 325 or part 301 or a discharge that is authorized by a discharge  
26 permit under section 3112 or 3113 do not require a permit under  
27 this part.

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

4           (a) Fishing, trapping, or hunting.

5           (b) Swimming or boating.

6           (c) Hiking.

7           (d) Grazing of animals, including fencing and post placement  
8 if the fence is designed to control livestock, does not exceed 11  
9 feet in height, and utilizes an amount of material that does not  
10 exceed that of a woven wire fence utilizing 6-inch vertical spacing  
11 and posts.

12           (e) ~~Farming,~~ **IN WETLANDS THAT ARE NOT WATERS OF THE UNITED**  
13 **STATES, AGRICULTURAL PRODUCTION INCLUDING** horticulture,  
14 silviculture, lumbering, and ranching activities, including  
15 ~~plowing,~~ **TILLING**, irrigation, irrigation ditching, ~~seeding,~~  
16 **PLANTING SEEDS**, cultivating **CROPS**, minor drainage, **PRODUCING AND**  
17 harvesting **PLANTS AND ANIMALS USEFUL TO HUMANS OR** for the  
18 production of food, fiber, and forest products, **EARTH SHAPING**  
19 **NECESSARY FOR THE PRODUCTION OF BLUEBERRIES**, or upland soil and  
20 water conservation practices. ~~All~~ **IN WETLANDS THAT ARE WATERS OF**  
21 **THE UNITED STATES, FARMING, HORTICULTURE, SILVICULTURE, LUMBERING,**  
22 **AND RANCHING ACTIVITIES, INCLUDING PLOWING, IRRIGATION, IRRIGATION**  
23 **DITCHING, SEEDING, CULTIVATING, MINOR DRAINAGE, HARVESTING FOR THE**  
24 **PRODUCTION OF FOOD, FIBER, AND FOREST PRODUCTS, OR UPLAND SOIL AND**  
25 **WATER CONSERVATION PRACTICES, SUBJECT TO ALL** of the following:  
26 ~~apply for the purposes of this subdivision.~~

27           (i) Beginning October 1, 2013, to be allowed in a wetland



1 without a permit, these activities shall be part of an established  
2 ongoing farming, ranching, horticultural, or silvicultural  
3 operation. Farming and silvicultural activities on areas lying  
4 fallow as part of a conventional rotational cycle are part of an  
5 established ongoing operation, unless modifications to the  
6 hydrological regime or mechanized land clearing are necessary to  
7 resume operation. Activities that bring into farming, ranching,  
8 horticultural, or silvicultural use an area not in any of these  
9 uses, or that convert an area from a forested or silvicultural use  
10 to a farming, ranching, or horticultural use, are not part of an  
11 established ongoing operation.

12 (ii) Minor drainage does not include drainage associated with  
13 the immediate or gradual conversion of a wetland to a nonwetland,  
14 or conversion from 1 wetland use to another. Minor drainage does  
15 not include the construction of a canal, ditch, dike, or other  
16 waterway or structure that drains or otherwise significantly  
17 modifies a stream, lake, or wetland.

18 (iii) Wetland altered under this subdivision shall not be used  
19 for a purpose other than a purpose described in this section  
20 without a permit from the department.

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

24 (g) Construction or maintenance of ~~farm or stock ponds~~. **A POND**  
25 **OR LAKE ON PRIVATE PROPERTY IF THE POND OR LAKE DOES NOT HAVE A**  
26 **SURFACE WATER INLET FROM OR OUTLET TO WATERS OF THE UNITED STATES.**

27 (H) **IN WETLANDS THAT ARE NOT WATERS OF THE UNITED STATES,**

1 MAINTENANCE, OPERATION, OR IMPROVEMENT, WHICH INCLUDES  
2 STRAIGHTENING, WIDENING, OR DEEPENING, OF THE FOLLOWING IF  
3 NECESSARY FOR THE PRODUCTION OR HARVESTING OF AGRICULTURAL  
4 PRODUCTS:

5 (i) AN EXISTING PRIVATE AGRICULTURAL DRAIN.

6 (ii) THAT PORTION OF A DRAIN LEGALLY ESTABLISHED PURSUANT TO  
7 THE DRAIN CODE OF 1956, 1956 PA 40, MCL 280.1 TO 280.630, WHICH HAS  
8 BEEN CONSTRUCTED OR IMPROVED FOR DRAINAGE PURPOSES.

9 (iii) A DRAIN CONSTRUCTED PURSUANT TO OTHER PROVISIONS OF THIS  
10 PART.

11 (I) ~~(h) Maintenance of an~~ IN WETLANDS THAT ARE WATERS OF THE  
12 UNITED STATES, MAINTENANCE OF A PRIVATE agricultural drain,  
13 regardless of outlet, if all of the following requirements are met:

14 (i) The maintenance includes only activities that maintain the  
15 location, depth, and bottom width of the drain as constructed or  
16 modified at any time before July 1, 2014.

17 (ii) The maintenance is performed by the landowner or pursuant  
18 to the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630.

19 (iii) The maintenance does not include any modification that  
20 results in additional wetland drainage or conversion of a wetland  
21 to a use to which it was not previously subject.

22 (J) ~~(i) Maintenance of a drain that was legally established~~  
23 and constructed pursuant to the drain code of 1956, 1956 PA 40, MCL  
24 280.1 to 280.630, if the drain was constructed before January 1,  
25 1973 or under a permit issued pursuant to this part. As used in  
26 this subdivision, "maintenance of a drain" means the physical  
27 preservation of the location, depth, and bottom width of a drain

1 and appurtenant structures to restore the function and approximate  
2 capacity of the drain as constructed or modified at any time before  
3 July 1, 2014, including the placement of spoils removed from the  
4 drain in locations along that drain where spoils have been  
5 previously placed. Maintenance of a drain under this subdivision  
6 does not include any modification that results in additional  
7 wetland drainage or conversion of a wetland to a use to which it  
8 was not previously subject.

9 (K) ~~(j) Construction~~ DRAINAGE, OTHER THAN MINOR DRAINAGE,  
10 NECESSARY FOR AGRICULTURAL PRODUCTION. EXCEPT AS OTHERWISE PROVIDED  
11 IN THIS PART, WETLAND IMPROVED UNDER THIS SUBDIVISION AFTER OCTOBER  
12 1, 1980 SHALL NOT BE USED FOR NONFARMING OR NONTIMBER PURPOSES  
13 WITHOUT A PERMIT FROM THE DEPARTMENT.

14 (L) FOR WETLANDS THAT ARE NOT WATERS OF THE UNITED STATES,  
15 CONSTRUCTION, IMPROVEMENT, OR MAINTENANCE OF PRIVATE ROADS OR  
16 DRIVEWAYS AND INSTALLATION OR REPLACEMENT OF CULVERTS ON PRIVATE  
17 PROPERTY FOR THE PURPOSE OF IMPROVING VEHICULAR ACCESS TO AND  
18 WITHIN THE PRIVATE PROPERTY.

19 (M) FOR WETLANDS THAT ARE WATERS OF THE UNITED STATES,  
20 CONSTRUCTION or maintenance of farm roads, forest roads, or  
21 temporary roads for moving mining or forestry equipment, if the  
22 roads are constructed and maintained in a manner to ensure that any  
23 adverse effect on the wetland will be minimized.

24 (N) IN WETLANDS THAT ARE NOT WATERS OF THE UNITED STATES,  
25 MAINTENANCE OR IMPROVEMENT OF PUBLIC STREETS, HIGHWAYS, OR ROADS  
26 WITHIN THE ESTABLISHED RIGHT-OF-WAY IN A MANNER THAT MINIMIZES ANY  
27 ADVERSE EFFECTS ON THE WETLAND.

1           (O) ~~(k) Maintenance~~ **IN WETLANDS THAT ARE WATERS OF THE UNITED**  
2 **STATES, MAINTENANCE** of public streets, highways, or roads that  
3 meets all of the following requirements:

4           (i) Does not include any modification that changes the  
5 original location or footprint.

6           (ii) Is done in a manner that minimizes any adverse effect on  
7 the wetland.

8           (P) ~~(l) Maintenance~~ or repair of utility lines and associated  
9 support structures that meets all of the following requirements:

10          (i) Is done in a manner that minimizes any adverse effect on  
11 the wetland.

12          (ii) Does not include any modification to the character,  
13 scope, or size of the originally constructed design.

14          (iii) Does not convert a wetland area to a use to which it was  
15 not previously subject.

16          For the purposes of this subdivision and subdivision ~~(m)~~, **(Q)**,  
17 "utility line" means any pipe or pipeline used for the  
18 transportation of any gaseous, liquid, liquescent, or slurry  
19 substance, for any purpose, and any cable, line, or wire for the  
20 transmission for any purpose of electrical energy, telephone or  
21 telegraph messages, or radio or television communication.

22          **(Q)** ~~(m)~~ Installation of utility lines having a diameter of 6  
23 inches or less using directional drilling or boring, or knifing-in,  
24 and the placement of poles with minimal (less than 1 cubic yard)  
25 structure support, if the utility lines and poles are installed in  
26 a manner that minimizes any adverse effect on the wetland.

27 Directional drilling or boring under this subdivision shall meet

1 all of the following requirements:

2 (i) The top of the utility line is at least 4 feet below the  
3 soil surface of the wetland. However, if the presence of rock  
4 prevents the placement of the utility line at the depth otherwise  
5 required by this subparagraph, the bottom of the utility line is  
6 not placed higher than the top of the rock.

7 (ii) The entry and exit holes are located a sufficient  
8 distance from the wetland to ensure that disturbance of the wetland  
9 does not occur.

10 (iii) The operation does not result in the eruption or release  
11 of any drilling fluids up through the ground and into the wetland  
12 and there is an adequate plan to respond to any release of drilling  
13 mud or other fill material.

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

18 (S) ~~(e)~~—Placement of biological residuals from activities,  
19 including the cutting of woody vegetation or the in-place grinding  
20 of tree stumps, performed under this section within a wetland, if  
21 all the biological residuals originate within that wetland.

22 (3) An activity in a wetland that was effectively drained for  
23 farming before October 1, 1980 and that on and after October 1,  
24 1980 has continued to be effectively drained as part of an ongoing  
25 farming operation is not subject to regulation under this part.

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

1 this part:

2 (a) Excavation as part of commercial sand, gravel, or mineral  
3 mining, if the area was not a wetland before excavation. This  
4 exemption from regulation applies until the property on which the  
5 wetland is located meets both of the following requirements:

6 (i) Is no longer used for excavation as part of commercial  
7 sand, gravel, or mineral mining.

8 (ii) Is being used for another purpose unrelated to excavation  
9 as part of commercial sand, gravel, or mineral mining.

10 (b) Construction and operation of a water treatment pond,  
11 lagoon, or storm water facility in compliance with the requirements  
12 of state or federal water pollution control laws.

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

16 (d) Construction of drains in upland for the sole purpose of  
17 removing excess soil moisture from upland areas that are primarily  
18 in agricultural use.

19 (e) Construction of roadside ditches in upland for the sole  
20 purpose of removing excess soil moisture from upland.

21 (f) An agricultural soil and water conservation practice  
22 designed, constructed, and maintained for the purpose of enhancing  
23 water quality.

24 (5) An area that becomes contiguous to a water body created as  
25 a result of commercial excavation for sand, gravel, or mineral  
26 mining is not subject to regulation under this part solely because  
27 it is contiguous to the created water body. This exemption from

1 regulation applies until the property on which the wetland is  
2 located meets both of the following requirements:

3 (a) Is no longer used for excavation as part of commercial  
4 sand, gravel, or mineral mining.

5 (b) Is being used for another purpose unrelated to excavation  
6 as part of commercial sand, gravel, or mineral mining.

7 (6) Except as provided in subsection (7), the following  
8 activities are not subject to regulation under this part:

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

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

15 (7) Subsection (6) does not apply to lands included in the  
16 survey of the delta of the St. Clair River, otherwise referred to  
17 as the St. Clair flats, **FLATS**, located within Clay township,  
18 **TOWNSHIP**, St. Clair county, **COUNTY**, as provided for in 1899 PA 175.

19 ~~—— (8) As used in this part, "agricultural drain" means a human-~~  
20 ~~made conveyance of water that meets all of the following~~  
21 ~~requirements:~~

22 ~~—— (a) Does not have continuous flow.~~

23 ~~—— (b) Flows primarily as a result of precipitation induced~~  
24 ~~surface runoff or groundwater drained through subsurface drainage~~  
25 ~~systems.~~

26 ~~—— (c) Serves agricultural production.~~

27 ~~—— (d) Was constructed before January 1, 1973, or was constructed~~

1 ~~in compliance with this part or former 1979 PA 203.~~

2           (8) AS USED IN THIS SECTION, "PRIVATE AGRICULTURAL DRAIN"  
3 MEANS A HUMAN-CONSTRUCTED OPEN DITCH LOCATED ON QUALIFIED  
4 AGRICULTURAL PROPERTY AS DEFINED IN SECTION 7DD OF THE GENERAL  
5 PROPERTY TAX ACT, 1893 PA 206, MCL 211.7DD, AND USED FOR THE  
6 CONVEYANCE OF WATER.

7           Sec. 30311. (1) A permit for an activity listed in section  
8 30304 shall not be approved unless the department determines that  
9 the issuance of a permit is in the public interest, that the permit  
10 is necessary to realize the benefits derived from the activity, and  
11 that the activity is otherwise lawful.

12           (2) In determining whether the activity is in the public  
13 interest, the benefit ~~which~~ **THAT** reasonably may be expected to  
14 accrue from the proposal shall be balanced against the reasonably  
15 foreseeable detriments of the activity. The decision shall reflect  
16 the national and state concern for the protection of natural  
17 resources from pollution, impairment, and destruction. The  
18 following general criteria shall be considered:

19           (a) The relative extent of the public and private need for the  
20 proposed activity.

21           (b) The availability of feasible and prudent alternative  
22 locations and methods to accomplish the expected benefits from the  
23 activity.

24           (c) The extent and permanence of the beneficial or detrimental  
25 effects that the proposed activity may have on the public and  
26 private uses to which the area is suited, including the benefits  
27 the wetland provides.



1 (d) The probable effects of each proposal in relation to the  
2 cumulative effects created by other existing and anticipated  
3 activities in the watershed.

4 (e) The probable effects on recognized historic, cultural,  
5 scenic, ecological, or recreational values and on the public health  
6 or fish or wildlife.

7 (f) The size of the wetland being considered.

8 (g) The amount of remaining wetland in the general area.

9 (h) Proximity to any waterway.

10 (i) Economic value, both public and private, of the proposed  
11 land change to the general area.

12 (3) In considering a permit application, the department shall  
13 give serious consideration to findings of necessity for the  
14 proposed activity which have been made by other state agencies.

15 (4) A permit shall not be issued unless it is shown that an  
16 unacceptable disruption will not result to the aquatic resources.  
17 In determining whether a disruption to the aquatic resources is  
18 unacceptable, the criteria set forth in section 30302 and  
19 subsection (2) shall be considered. A permit shall not be issued  
20 unless the applicant also shows either of the following:

21 (a) The proposed activity is primarily dependent upon being  
22 located in the wetland.

23 (b) A feasible and prudent alternative does not exist.

24 (5) If it is otherwise a feasible and prudent alternative, a  
25 property not presently owned by the applicant which could  
26 reasonably be obtained, utilized, expanded, or managed in order to  
27 fulfill the basic purpose of the proposed activity may be

1 considered. If all of the following requirements are met, there is  
2 a rebuttable presumption that alternatives located on property not  
3 presently owned by the applicant are not feasible and prudent:

4 (a) The activity is described in section 30304(a) or (b).

5 (b) The activity will **NOT** affect ~~not~~ more than 2 acres of  
6 wetland.

7 (c) The activity is undertaken for the construction or  
8 expansion of a single-family home and attendant features, the  
9 construction or expansion of a barn or other farm building, or the  
10 expansion of a small business facility.

11 (d) The activity is not covered by a general permit.

12 (6) Consideration of feasible and prudent alternatives  
13 regarding the size of a proposed structure shall be based on the  
14 footprint of the structure and not the square footage of the  
15 structure.

16 (7) The choice of and extent of the proposed activity within a  
17 proposed structure shall not be considered in determining feasible  
18 and prudent alternatives.

19 (8) An alternative that entails higher costs, as described in  
20 R 281.922a(11) of the Michigan administrative code, is not feasible  
21 and prudent if those higher costs are unreasonable. In determining  
22 whether such costs are unreasonable, the department shall consider  
23 both of the following:

24 (a) The relation of the increased cost to the overall scope  
25 and cost of the project.

26 (b) Whether the projected cost is substantially greater than  
27 the costs normally associated with the particular type of project.

1           Sec. 30311d. (1) The department may impose as a condition on  
2 any permit, other than a general permit, under this part a  
3 requirement for compensatory wetland mitigation. The department may  
4 approve 1 or more of the following methods of compensatory wetland  
5 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  
10 to use approved credits from the wetland mitigation bank to provide  
11 required compensatory wetland mitigation under this subdivision.

12           (b) The restoration of previously existing wetland. The  
13 restoration of previously existing wetland is preferred over the  
14 creation of new wetland where none previously existed.

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

18           (d) The preservation of exceptional wetlands.

19           (2) If compensatory wetland mitigation under subsection  
20 (1)(b), (c), or (d) is required, a permit applicant shall submit a  
21 mitigation plan to the department for approval. In approving a  
22 compensatory mitigation plan, the department shall consider how the  
23 location and type of wetland mitigation supports the sustainability  
24 or improvement of aquatic resources in the watershed where the  
25 activity is permitted. The permit applicant shall provide for  
26 permanent protection of the wetland mitigation site. The department  
27 may accept a conservation easement to protect wetland mitigation

1 and associated upland.

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

7 (4) The department may require financial assurance to ensure  
8 that compensatory wetland mitigation is accomplished as specified.  
9 To ensure that wetland benefits are replaced by compensatory  
10 wetland mitigation, the department may release financial assurance  
11 only after the permit applicant or mitigation bank sponsor has  
12 completed monitoring of the mitigation site and demonstrated  
13 compliance with performance standards in accordance with a schedule  
14 in the permit or mitigation banking agreement.

15 (5) If compensatory wetland mitigation is required, in setting  
16 the mitigation ratio the department shall consider the method of  
17 compensatory mitigation, the likelihood of success, differences  
18 between the functions lost at the impacted site and the functions  
19 expected to be produced by the compensatory mitigation project,  
20 temporary losses of aquatic resource functions, the difficulty of  
21 restoring or establishing the desired aquatic resource type and  
22 functions, and the distance between the affected aquatic resource  
23 and the mitigation site.

24 (6) For agricultural activities **IN WETLANDS THAT ARE WATERS OF**  
25 **THE UNITED STATES**, a permit applicant may provide for protection  
26 and restoration of the impacted site under a conservation easement  
27 with the department as part of mitigation requirements. A permit

1 applicant may make a payment into the stewardship fund, if  
2 established under subsection (7), as part of mitigation  
3 requirements, as an alternative to providing financial assurances  
4 required under subsection (4).

5 (7) The department may establish a stewardship fund in the  
6 state treasury. The state treasurer may receive money or other  
7 assets from any source for deposit into the fund. The state  
8 treasurer shall direct the investment of the fund. The state  
9 treasurer shall credit to the fund interest and earnings from fund  
10 investments. Money in the fund at the close of the fiscal year  
11 shall remain in the fund and shall not lapse to the general fund.  
12 The department shall be the administrator of the fund for auditing  
13 purposes. The department shall expend money from the fund, upon  
14 appropriation, only to develop mitigation for impacted sites or as  
15 an alternative to financial assurance required under subsection  
16 (4).

17 (8) ~~By 1 year after the effective date of the amendatory act~~  
18 ~~that added this subsection, JULY 2, 2014,~~ the department shall  
19 submit to the office of regulatory reform for informal review  
20 revised administrative rules on mitigation that do all of the  
21 following:

22 (a) Reduce the preference for on-site mitigation.

23 (b) Allow flexibility in mitigation ratios for uses of  
24 wetlands.

25 (c) Allow a reduction of mitigation ratios when approved  
26 credits from a wetland mitigation bank are used.

27 (d) Allow consideration of additional ecologically beneficial

1 features.

2 (e) Allow any excess mitigation for any project to be credited  
3 to another project at a later date.

4 (9) The department shall submit revised administrative rules  
5 that encourage the development of wetland mitigation banks to the  
6 office of regulatory reform for informal review ~~within 1 year after~~  
7 ~~the effective date of the amendatory act that added this~~  
8 ~~subsection.~~ **BY JULY 2, 2014.** The rules shall do all of the  
9 following:

10 (a) Enlarge mitigation bank service areas. However, a service  
11 area shall be located within the same watershed or ecoregion as the  
12 permitted project or activity, ensure no net loss of the wetland  
13 resources, and protect the predominant wetland functions of the  
14 service area. The department shall consider enlarging the size of  
15 ecoregions for mitigation bank service areas.

16 (b) Allow earlier release of credits if the benefits of a  
17 mitigation bank have been properly established and the credits are  
18 revocable or covered by a financial assurance.

19 (c) Allow wetland preservation to be used in areas where  
20 wetland restoration opportunities do not exist, if an unacceptable  
21 disruption of the aquatic resources will not result.

22 (10) The department shall establish a wetland mitigation bank  
23 funding program under part 52 that provides grants and loans to  
24 eligible municipalities for the purposes of establishing mitigation  
25 banks.

26 Sec. 30312. (1) After providing notice and an opportunity for  
27 a public hearing, the department shall establish minor project

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

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

23 (3) Before authorizing a specific project to proceed under a  
24 general permit, the department may provide notice pursuant to  
25 section 30307(3) but shall not hold a public hearing and shall not  
26 typically require a site inspection. The department shall issue an  
27 authorization under a general permit if the conditions of the

1 general permit and the requirements of section 30311 are met.  
2 However, in determining whether to issue an authorization under a  
3 general permit, the department shall not consider off-site  
4 alternatives to be feasible and prudent alternatives.

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

11 (5) The department shall coordinate general permit and minor  
12 project categories under this part and parts 301 and 325 and may  
13 develop and maintain new general permit and minor project  
14 categories consistent with nationwide permits, as appropriate. The  
15 department may alter the scope of the activities covered under  
16 general permit and minor project categories corresponding to  
17 nationwide permits if any adverse environmental effects will be  
18 minimal.

19 (6) The department shall develop by October 1, 2013 and  
20 maintain a general permit for alteration of ~~wetland~~ **WETLANDS THAT**  
21 **ARE WATERS OF THE UNITED STATES** for blueberry farming that includes  
22 minimal drainage and earth moving if all of the following  
23 requirements are met:

24 (a) The wetland will be restored when farming activities in  
25 the wetland cease.

26 (b) The farmed wetland is placed under conservation easement  
27 protection until the wetland is restored when farming activities



1 cease.

2 (c) Activities that convert the wetland to a nonwetland are  
3 prohibited.

4 (d) Roads, ditches, reservoirs, pump houses, and secondary  
5 support facilities for shipping, storage, packaging, parking, and  
6 similar purposes are prohibited unless authorized under section  
7 30305.

8 (7) By December 31, 2013, the department shall propose new  
9 general permits or minor project categories for conversion of  
10 ~~wetland~~ **WETLANDS THAT ARE WATERS OF THE UNITED STATES** to blueberry  
11 farming or other agriculture that includes more than minimal  
12 drainage or earth moving.

13 Sec. 30321. (1) The department shall make or cause to be made  
14 a preliminary inventory of all wetland in this state on a county by  
15 county basis and file the inventory with the agricultural extension  
16 office, register of deeds, and county clerk.

17 ~~—— (2) At least 2 hearings shall be held in each state planning  
18 and development region created by Executive Directive No. 1973-1.  
19 The hearing shall be held by the department after publication and  
20 due notice so that interested parties may comment on the inventory.  
21 After the hearings, the department shall issue a final inventory,  
22 which shall be sent to and kept by the agricultural extension  
23 office, register of deeds, and county clerk. Legislators shall  
24 receive an inventory of a county or regional classification for  
25 their districts including both preliminary and final inventories  
26 unless the legislators request not to receive the materials.~~

27 (2) ~~(3)~~—A person who owns or leases a parcel of property may

1 request that the department of environmental quality assess whether  
2 the parcel of property or a portion of the parcel is wetland. The  
3 request shall satisfy all of the following requirements:

4 (a) Be made on a form provided by the department.

5 (b) Be signed by the person who owns or leases the property.

6 (c) Contain a legal description of the parcel and, if only a  
7 portion of the parcel is to be assessed, a description of the  
8 portion to be assessed.

9 (d) Include a map showing the location of the parcel.

10 (e) Grant the department or its agent permission to enter on  
11 the parcel for the purpose of conducting the assessment.

12 (3) ~~(4)~~—The department shall assess the parcel within a  
13 reasonable time after the request is made. The department may enter  
14 upon the parcel to conduct the assessment. Upon completion of the  
15 assessment, the department shall provide the person with a written  
16 assessment report. The assessment report shall do all of the  
17 following:

18 (a) Identify in detail the location of any wetland in the area  
19 assessed.

20 (b) If wetland is present in the area assessed, describe the  
21 types of activities that require a permit under this part.

22 (c) If the assessment report determines that the area assessed  
23 or part of the area assessed is not wetland, state that the  
24 department lacks jurisdiction under this part as to the area that  
25 the report determines is not wetland and that this determination is  
26 binding on the department for 3 years from the date of the  
27 assessment.

1 (d) Contain the date of the assessment.

2 (e) Advise that the person may request the department to  
3 reassess the parcel or any part of the parcel that the person  
4 believes was erroneously determined to be wetland if the request is  
5 accompanied by evidence pertaining to wetland vegetation, soils, or  
6 hydrology that is different from or in addition to the information  
7 relied upon by the department.

8 (f) Advise that the assessment report does not constitute a  
9 determination of wetland that may be regulated under local  
10 ordinance or wetland areas that may be regulated under federal law  
11 and advise how a determination of wetland areas regulated under  
12 federal law may be obtained.

13 (g) List regulatory programs that may limit land use  
14 activities on the parcel, advise that the list is not exhaustive,  
15 and advise that the assessment report does not constitute a  
16 determination of jurisdiction under those programs. The regulatory  
17 programs listed shall be those under the following parts:

18 (i) Part 31, with respect to floodplains and floodways.

19 (ii) Part 91.

20 (iii) Part 301.

21 (iv) Part 323.

22 (v) Part 325.

23 (vi) Part 353.

24 (4) ~~(5)~~—A wetland is not contiguous to the Great Lakes or Lake  
25 St. Clair, an inland lake or pond, or a river or stream if the  
26 department determines that there is no direct physical contact and  
27 no surface water or interflowing groundwater connection to such a

1 body of water. A person may request that, as part of an assessment,  
2 the department make a determination whether a wetland is not  
3 contiguous. The department shall make the determination in writing  
4 within 30 days after an on-site evaluation.

5 (5) ~~(6) The department shall not consider an agricultural~~  
6 ~~drain, as defined in section 30305, in determining whether a~~  
7 ~~wetland is contiguous to the Great Lakes or Lake St. Clair, an~~  
8 ~~inland lake or pond, or a river or stream.~~ **THE DEPARTMENT SHALL NOT**  
9 **CONSIDER A WETLAND OR INLAND LAKE OR STREAM THAT IS NOT WATERS OF**  
10 **THE UNITED STATES IN DETERMINING WHETHER A WETLAND IS CONTIGUOUS TO**  
11 **A WETLAND OR INLAND LAKE OR STREAM THAT IS WATERS OF THE UNITED**  
12 **STATES.**

13 (6) ~~(7)~~ A drainage structure such as a culvert, ditch, or  
14 channel, in and of itself, is not a wetland. A temporary  
15 obstruction of drainage, in and of itself, is not a wetland until  
16 the presence of water is of sufficient frequency and duration to be  
17 identified as wetland pursuant to section 30301(2).

18 (7) ~~(8)~~ A person may request the department to reassess any  
19 area assessed under subsections **(2) AND (3)** and ~~(4)~~ that the person  
20 believes the department erroneously determined to be wetland. The  
21 requirements of subsections **(2) AND (3)** and ~~(4)~~ apply to the  
22 request, assessment, and assessment report. However, the request  
23 shall be accompanied by evidence pertaining to wetland vegetation,  
24 soils, or hydrology that is different from or in addition to the  
25 information relied upon by the department. The assessment report  
26 shall not contain the information required by subsection  
27 ~~(4)(e)~~. **(3) (E)**.

1           (8) ~~(9)~~—If an assessment report determines that the area  
2 assessed or part of the area assessed is not a wetland regulated by  
3 the department under this part, then the area determined by the  
4 assessment report not to be a wetland is not a wetland regulated by  
5 the department under this part for a period of 3 years after the  
6 date of the assessment.

7           (9) ~~(10)~~—The department may charge a fee for an assessment  
8 requested under subsection ~~(3)~~ **(2)** based upon the cost to the  
9 department of conducting an assessment.

10           (10) ~~(11)~~—There shall be no fee for an assessment under the  
11 blueberry production assistance program.

12           (11) ~~(12)~~—The department shall, upon request of the applicant  
13 and without charge, provide to the applicant a copy of any  
14 delineation forms completed by the department associated with a  
15 permit application.

16           Sec. 30328. **(1) FOR THE PURPOSES OF THIS PART, "WATERS OF THE**  
17 **UNITED STATES" MEANS NAVIGABLE WATERS OF THE UNITED STATES AS**  
18 **DEFINED IN 33 CFR PART 329.**

19           (2) For the purposes of this part, the powers, duties,  
20 functions, and responsibilities exercised by the department because  
21 of federal approval of Michigan's permit program under section  
22 404(g) and (h) of the federal water pollution control act, 33 USC  
23 1344, apply only to ~~"navigable waters" and "waters of the United~~  
24 ~~States. " as defined under section 502(7) of the federal water~~  
25 ~~pollution control act, 33 USC 1362, and further refined by~~  
26 ~~federally promulgated rules and court decisions that have the full~~  
27 ~~effect and force of federal law. Determining whether additional~~

1 ~~regulation is necessary to protect Michigan waters beyond the scope~~  
2 ~~of federal law is the responsibility of the Michigan legislature~~  
3 ~~based on its determination of what is in the best interest of the~~  
4 ~~citizens of this state.~~

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