

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

***** 324.30311d THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) *****

324.30311d Compensatory wetland mitigation; methods; submission of mitigation plan; financial assurance.

Sec. 30311d.

(1) The department may impose as a condition on any permit, other than a general permit, under this part a requirement for compensatory wetland mitigation. The department may approve 1 or more of the following methods of compensatory wetland mitigation:

(a) The acquisition of approved credits from a wetland mitigation bank. The department shall not require a permit applicant to provide compensatory wetland mitigation under subdivision (b), (c), or (d) if the applicant prefers and qualifies to use approved credits from the wetland mitigation bank to provide required compensatory wetland mitigation under this subdivision.

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

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

(d) The preservation of exceptional wetlands.

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

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

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

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

(6) For agricultural activities, a permit applicant may provide for protection and restoration of the impacted site under a conservation easement with the department as part of mitigation requirements. A permit applicant may make a payment into the stewardship fund, if established under subsection (7), as part of mitigation requirements, as an alternative to providing financial assurances required under subsection (4).

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

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

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

- (b) Allow flexibility in mitigation ratios for uses of wetlands.
- (c) Allow a reduction of mitigation ratios when approved credits from a wetland mitigation bank are used.
- (d) Allow consideration of additional ecologically beneficial features.
- (e) Allow any excess mitigation for any project to be credited to another project at a later date.
- (9) The department shall submit revised administrative rules that encourage the development of wetland mitigation banks to the office of regulatory reform for informal review within 1 year after the effective date of the amendatory act that added this subsection. The rules shall do all of the following:
 - (a) Enlarge mitigation bank service areas. However, a service area shall be located within the same watershed or ecoregion as the permitted project or activity, ensure no net loss of the wetland resources, and protect the predominant wetland functions of the service area. The department shall consider enlarging the size of ecoregions for mitigation bank service areas.
 - (b) Allow earlier release of credits if the benefits of a mitigation bank have been properly established and the credits are revocable or covered by a financial assurance.
 - (c) Allow wetland preservation to be used in areas where wetland restoration opportunities do not exist, if an unacceptable disruption of the aquatic resources will not result.
- (10) The department shall establish a wetland mitigation bank funding program under part 52 that provides grants and loans to eligible municipalities for the purposes of establishing mitigation banks.

History: Add. 2009, Act 120, Eff. Nov. 6, 2009 ;-- Am. 2013, Act 98, Imd. Eff. July 2, 2013

Compiler's Notes: Enacting section 1 of Act 120 of 2009 provides: "Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met: "(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a."(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular Name: Act 451

Popular Name: NREPA

Popular Name: Wetland Protection Act