

# **Wetland Advisory Council**

*(Created under 2009 PA 120)*

**Final Report**

**August 15, 2012**

## *Introduction*

The Wetland Advisory Council (Council) was formed under 2009 PA 120. It was charged with an examination of the existing wetlands regulation. The Council has met regularly since it was formed in January 2010. The Council has been diligent and thorough in its effort to complete the evaluation and make recommendations outlined in the statute. This report completes the work of the Council, and builds upon the initial report submitted to the Legislature on October 1, 2010.

The Council was unanimous in its belief that Michigan should retain its designation as an approved Section 404 Program, making the assumption that necessary legislative changes can be positively concluded. It has concurred with the many programmatic improvements made by the Michigan Department of Environmental Quality (MDEQ) over the last two-and-one-half years and believes these changes will have a significant positive impact on the regulated community in the future. The Council is supportive of the current direction and approach taken by the MDEQ to administer the program going forward.

The work of the Council has been consensus based. Although not every member was in complete agreement with all recommendations incorporated, the recommendations are by consensus. The report contains notes of concern by individual members where relevant. Additionally, the Council was aware of other wetland issues concurrently being discussed or debated in the Legislature. The Council declined to take positions on issues that it was not charged with under 2009 PA 120.

A major factor in the creation of the Council involved a state response to a United States Environmental Protection Agency (USEPA) review of the state's administration of the approved Clean Water Act 404 Program. The review identified several deficiencies and proposed corrective actions to bring the Michigan Program in compliance. Of the 22 issues identified, 19 were addressed by the MDEQ internally or through the Council. The remaining three issues relate to exemptions for utilities, drains, and agriculture practices from regulation under the Michigan program. These issues require statutory changes. The USEPA has made it clear these amendments are necessary for the state to retain its approved Section 404 Program status. The Council debated these issues but, for a variety of reasons, including the legislative process beginning before the completion of its work, did not come to consensus. Therefore, no recommendations on statutory language are contained in this report.

Members of the Council remained dedicated throughout the process and diligently addressed the issues delegated under 2009 PA 120. The Council would like to recognize and commend the personal involvement of MDEQ Director Dan Wyant and the cooperative and attentive staff of the MDEQ, Water Resources Division.

## *Statutory Charges*

Section 30329(9) of 2009 PA 120 states:

(9) By August 15, 2012, the council shall submit a report to the governor, the department, and the standing committees and appropriations subcommittees of the legislature with primary responsibility over issues pertaining to natural resources and the environment. The report shall evaluate and make recommendations on all of the following:

(a) Improving coordination and reducing duplication of effort with the United States army corps of engineers.

(b) Potential long-term changes in program structure, including all of the following:

(i) Scientific methods to achieve more consistent and accurate determinations of wetland functions and values for reviewing applications for permits, watershed planning, conservation plans, and other purposes. These methods include rapid wetland assessment and landscape level wetland assessment.

(ii) The appropriate role of local units of government and conservation districts in the administration of this part.

(iii) A certification process for wetland professionals. The council shall consider information reported under section 30303b in evaluating and making recommendations under this subparagraph.

(iv) The definition of wetland and wetland delineation methods, including the role of hydric soils as a factor in wetland delineation. In making recommendations under this subparagraph, the council shall evaluate differences in the state and federal wetland programs.

(c) The appropriate means and level of program funding under this part.

(d) Minor project categories and general permits under section 30312b(1) to (3).

(e) The appropriateness of the provisions of section 30304b as a means of reducing regulatory burdens from dual federal and state regulation.

(f) The promotion of the development of wetland mitigation banks.

(g) Ways for the public and interested parties to advise the department on a continuing basis concerning the administration and enforcement of this part.

(h) Appropriate regulation of the siting, construction, and operation of cranberry production activities, in light of the benefit of cranberry production activities to the economy, the regulatory approach of other states, and other factors.

(i) The feasible and prudent alternative standard under section 30311 and consistent application of the standard.

(j) Methods to assist both of the following in successfully obtaining permits under this part in a timely manner:

(i) Individuals proposing a use or activity for their personal homesite.

(ii) Nonprofit organizations.

***Wetland Advisory Council Membership  
(As of August 15, 2012)***

Joseph Rivet, Chair	Representing the association of County Drain Commissioners
Dan Wyant	Representing the Michigan Department of Environmental Quality
Dan Coffey	Representing the statewide association of realtors
Gary Dawson	Representing natural gas or electric utilities
Sue Elston	Representing the United States Environmental Protection Agency
Andy Such	Representing the statewide association of manufacturers
Susan Harley	Representing statewide environmental protection organizations
Deena Bosworth	Representing the statewide association of local units of government
Jeff King	Representing a wetland professional.
Erin McDonough	Representing statewide conservation organizations
John Niemela	Representing the general public
Chris Reidy	Representing USDA's Natural Resources Conservation Service
Lee Schwartz	Representing the statewide association of home builders
Stephen Shine	Representing the Michigan Department of Agriculture and Rural Development
Russ Mason	Representing the Michigan Department of Natural Resources
Grenetta Thomassey	Representing watershed organizations
Donald Uzarski	Representing university professors with wetland science expertise
Scott Piggott	Representing the largest statewide farm organization
Todd Wyett	Representing businesses
John Konik	Liaison from the United States Army Corps of Engineers

## *Methods/Activities*

The Council utilized a consensus model for operating and the development of recommendations. All recommendations were unanimous unless concerns were noted. The Council never reached the point of requiring a vote on any single recommendation put forth.

The Council began meeting regularly in January of 2010. No meetings were held for several months during the change in Gubernatorial Administrations at the end of 2010, early 2011. All meetings were noticed and open to the public.

Council activity was as follows:

- The initial phase of the work involved in-depth presentations from MDEQ staff regarding current methodology and program administration. Additional presentations were made to provide baseline knowledge for all members.
- The Council analyzed the requirements and responsibilities it was charged with under 2009 PA 120 and gathered all necessary information.
- The Council created three committees to complete the work on items due in the October 1, 2010, report. They were as follows:
  - Permit Processing and Efficiency
  - USEPA Program Review Response
  - Program Efficiency and Mitigation Sequencing
- The Council held two public meetings to take input on the program; meetings were held in Bay City on August 11, 2010, and in Holland on August 18, 2010.
- The committees met and forwarded recommendations to the Council.
- Initial Council recommendations were developed and sent to the Legislature
- In early 2011, committees were adjusted to address the final report as follows:
  - Permit Processing and Efficiency
  - Program Efficiency
  - USEPA Program Requirements and Federal Coordination
- On June 9, 2011, a meeting was held in the House Office Building to specifically reach Legislators on the process. Further, Legislative staff from all Caucuses was invited to every meeting.
- On October 31, 2011, the MDEQ implemented Minor and General Permit categories.
- On December 12, 2011, the MDEQ put forth a proposal reform which became the basis for several Council recommendations.
- In April 2012 Representative Jim Stamas agreed to become sponsor of required legislation to become compliant with USEPA requirements for the Section 404 Program.
- On June 14, 2012, Governor Rick Snyder signed 2012 PA 164 implementing the Council recommendation extending permit application review time limits.

Copies of all Council meeting agendas, minutes, and presentations are available on the MDEQ Web site: <http://www.Michigan.gov/deq>. All other additional material and correspondence is on file and available for public inspection.

## *Recommendations*

### *1. Improving coordination and reducing duplication of effort with the United States Army Corps of Engineers.*

The Council has reviewed the MDEQ/United States Army Corps of Engineers (USACE) joint permit application form, as well as the 2011 Memorandum of Understanding between the MDEQ and the USEPA concerning the administration of the Clean Water Act Section 404. The Council believes there is coordination between the entities and this coordination has reduced the burden on applicants. The Council has made a recommendation in its October 1, 2010, report to have the application and its processing independently reviewed.

### *2. Potential long-term changes in program structure, including all of the following:*

- (i) Scientific methods to achieve more consistent and accurate determinations of wetland functions and values for reviewing applications for permits, watershed planning, conservation plans, and other purposes. These methods include rapid wetland assessment and landscape level wetland assessment.*

The Council recommends that: 1) the MDEQ use Michigan Rapid Assessment Method (MIRAM), and other scientific methods for wetland monitoring, for evaluating potential preservation sites, and as one tool when there is a dispute regarding the benefits derived from a wetland (e.g., functions and values or quality of a wetland); 2) the MDEQ continues to develop MIRAM as a tool to be used by staff and consultants, and work with the MIRAM Development Committee to further calibrate the method and provide future training; 3) MIRAM is used when a permit applicant requests its use as a potential tool to resolve a disagreement between MDEQ staff and a permit applicant or consultant; and 4) that the MDEQ establishes a database which documents the use of MIRAM on individual permit applications by staff and/or consultants and that such a database be shared with stakeholders as part of a program review before additional implementation.

- (ii) The appropriate role of local units of government and conservation districts in the administration of this part.*

The Council believes the pilot program under Section 324.30303b(1) should be considered a success and that the MDEQ continues the program. The MDEQ recognizes the value of local programs operated pursuant to Section 324.30303b(1) by local units of government, conservation districts, not-for-profits, and wetland professionals to assist landowners and others seeking assistance to pursue the activities in 324.30303b(1). The preliminary indications are that the pilot programs with qualified and properly trained personnel have had a positive effect on the quality of permit applications and have improved the efficiency of program delivery.

The Council recommends that the program continues, but qualify to provide the services described in Section 30303b(1), each participant must:

- a. Possess qualified (proper educational or experience background) staff to carry out the services to be provided;
- b. Have the qualified staff trained by the MDEQ in the services they will deliver;
- c. Clearly spell out what services the participants will provide and not provide pursuant to this section and only provide services for which their personnel are qualified and trained;
- d. Submit annual reports to the MDEQ and participate in a quarterly conference call with the MDEQ indicating what services the participants have provided in the preceding year;
- e. Enter into a Memorandum of Understanding with the MDEQ that will extend five years, but be subject to unilateral revocation by the MDEQ annually;
- f. Operate in a way that is revenue neutral for the MDEQ except for the MDEQ's review of annual reports and issuing of Memoranda of Understanding between the participants and the MDEQ.

## ***Recommendations (continued)***

*(iii) A certification process for wetland professionals. The council shall consider information reported under section 30303b in evaluating and making recommendations under this subparagraph.*

The Council recommends a certification process not be pursued. Although a well-intentioned idea, in practice, it is not feasible due to economic and technical constraints. Establishing a certification program would require significant financial investment to establish a certification protocol and a long-term annual investment to provide a unit within the MDEQ to ensure proper compliance with the certification. Without a strong compliance program, there is no way to ensure that wetland professionals would work within the limits of any certification or licensing program. Wetland professionals can have tremendous pressure placed on them by clients that often want to minimize the extent of jurisdictional waters on their property. Without proper oversight, there is a significant likelihood of potential abuse of any certification or licensing.

*(iv) The definition of wetland and wetland delineation methods, including the role of hydric soils as a factor in wetland delineation. In making recommendations under this subparagraph, the council shall evaluate differences in the state and federal wetland programs.*

The Council recommends that draft legislation be prepared that would reinstitute the 2-parameter (Michigan Department of Natural Resources [MDNR]/MDEQ-administered in 1980-2009) approach to wetland delineations, as compared to the existing, relatively new (2010-2011) 3-parameter approach. The Council also recommends that language be proposed as part of any draft legislation that would provide an option for an applicant to use a 3-parameter approach during a formal MDEQ Wetland Assessment or contested case (not permitting) process if they choose.

Regarding this recommendation, input was received from several wetland consultants. While there was clearly differences in detailed opinion, consultants all agreed that the 2- or 3-parameter approach would result in the same wetland boundary line 99 percent of the time, with less time (and therefore cost) involved using the 2-parameter approach. The consultants also agreed that the federal 3-parameter approach is more scientific and that the currently-required use of the 3-parameter approach over the past two years has resulted in MDEQ staff being more careful/detailed in their review of consultants' wetland boundaries.

Further, using the 2-parameter approach, there could be slightly more area determined to be wetland in certain circumstances than if using the 3-parameter approach, due to federal application of hydrological indicators (not necessarily hydric soils). The consultants interviewed all agreed that wetland areas that might be "lost" (deemed to be upland) under application of either approach are typically of low ecological value.

In summary, staff, consultants, environmental groups, and the regulated community recognize that in the vast majority of cases the use of hydric soils for delineation is an unnecessary expense. Although, all agree including hydric soils is the more scientific approach. Although the size of the parcel impacted may be small, the economic or practical impact to the property owner can be significant. The property owner must retain the right to utilize the three part analysis including consideration of relic hydric soils. Protection of private property rights remains an essential part of our government system and must remain a critical factor in the wetland regulation process.

It should be noted that although this is a consensus recommendation, some Council members have expressed concern about deviating from the federal standard. Ultimately, the cost savings to applicants with virtually no change in outcomes led to the recommendation.

### *3. The appropriate means and level of program funding under this part.*

The Council recommends a funding strategy outlined in the Public Sector Consultants Report Michigan Wetland Program – Options for Long-Term Funding. In summary, this includes General Fund or unclaimed bottle deposit funding on a permanent basis along with making the fee structure current with existing policy and practice. Rationale for the recommendations is contained in the report. It is included as *Attachment 1*.

## *Recommendations (continued)*

The report indicates that the existing fee structure for the Wetland Permit Program covers only about 15 percent of the program costs. This percentage is far below other programs within the MDEQ. Increasing fees would reduce the burden on the general or other funding source required to administer the program. Significantly increasing the level of fees would have the added impact of discouraging applications to disturb wetlands. Although substantially increased fees are not the recommendation of the Council, there were members of the Council that advocated that position.

The Council would like to thank the Erb Family Foundation for providing the funding to complete the Public Sector Consultants Report, as well the Michigan United Conservation Clubs for acting as fiduciary.

*4. Minor project categories and general permits under section 30312b(1) to (3).*

The Council recommends the ongoing implementation of the General and Minor Permit categories issued by the MDEQ on October 31, 2011. It further recommends the Minor and General Permit categories be reviewed every five years or as pertinent issues arise as part of an ongoing stakeholder program review. Finally, it recommends the Legislature put in place an appropriate fee structure for the permitting process. The Minor and General Permit categories are *Attachment 2*.

*5. The appropriateness of the provisions of section 30304b as a means of reducing regulatory burdens from dual federal and state regulation.*

The Council has examined the value of USACE nationwide permits as well as discussed State Programmatic General Permits. The Council believes there exists opportunity to reduce regulatory burdens by the development and implementation of Supplemental Permit/General Permits (GP). Due to the issuance of General and Minor Permit categories and the recent enactment of 2012 PA 247 concerning shoreline wetland regulation, the statewide permits have not been fully explored.

The Council recommends the MDEQ continue to explore obtaining State Programmatic General Permits available under Section 404 to reduce instances of dual federal and state regulatory jurisdiction.

*6. The promotion of the development of wetland mitigation banks.*

The Council recommends the MDEQ proceeds with an expansion of the current mitigation program. This should include:

- (i) Increased bank service areas so long as they are located within the same watershed or similar ecoregion that will ensure no net loss of the wetlands resources and protection of the predominant wetland functions of the area.
- (ii) Developing a State-backed low interest loan program for municipalities utilizing the State Water Pollution Control Revolving Fund.
- (iii) Increased flexibility in releasing credits for both private and publicly owned banks if the benefits of the mitigation bank have been properly established and the credits are revocable.
- (iv) Allowance for preservation in areas where mitigation is feasible and no unacceptable disruption to aquatic resources will take place.
- (v) Devotion of a staff person to wetland banking activities.
- (vi) Make low-interest loans available to non-profit entities developing wetland mitigation banks if an appropriate funding source can be identified

## *Recommendations (continued)*

7. *Ways for the public and interested parties to advise the department on a continuing basis concerning the administration and enforcement of this part.*

The Council recommends:

- (i) The MDEQ regularly reaches out to the public specifically through municipal building and planning departments as well as contractors, developers, farmers, natural resource professionals, and real estate professionals with information and training on permitting requirements, especially minor project and general permit, or other new permitting requirements.
  - (ii) Recommends the MDEQ convenes stakeholders every other year to review and make suggestions for improvements and to take comments on the program.
8. *Appropriate regulation of the siting, construction, and operation of cranberry production activities, in light of the benefit of cranberry production activities to the economy, the regulatory approach of other states, and other factors.*

Since the enactment of 2009 PA 120, the MDEQ has not received any permit applications for cranberry production activities. Therefore, the Council has had limited information related to the specific needs of potential cranberry growers. Further, some members believe that a specific category for cranberry activities is unnecessary. Discussions have taken place related to the need to have specific regulations for this activity based on the lack of permits. In addition, the Council has been presented information that production of other crops should receive the same status currently under the law as cranberries and the fee waiver for pre-application meetings be extended. Similar to the exemption discussion, the Council believes any change to the statute specific to this area is a legislative function.

Based on the discussion above, the Council makes no recommendation on the siting, construction, and operation of cranberry production activities.

9. *The feasible and prudent alternative standard under section 30311 and consistent application of the standard.*

The Council reviewed and is satisfied with new Feasible and Prudent Alternative Standards presented by the MDEQ on September 22, 2011, which are consistent with USEPA's review of the Section 404 Program (WRD-003, August 2011, Attachment 3). The Council recommends continued implementation and utilization of those standards.

10. *Methods to assist both of the following in successfully obtaining permits under this part in a timely manner:*
  - (i) *Individuals proposing a use or activity for their personal homesite.*
  - (ii) *Nonprofit organizations.*

As noted in recommendations numbers 2(ii) and 4, the Council makes recommendations to continue and improve the General and Minor Permit categories. This new permitting option addresses nearly all personal homesite activities requiring a permit. This also services most non-profit group circumstances.

The Council was made aware of concerns related to permitting of wetland restoration projects by various non-profit groups. The Council also considered the concept of allowing the MDNR permitting authority for all wetland restoration and enhancement projects. The Council found several difficulties with this alternative, including the limited number of projects and complexity of dual agency permitting.

Included in the general permitting is a category for Wetland Habitat Restoration and Enhancement. The general permit is expected to address many concerns and facilitate more efficient permitting for these projects.

## ***Recommendations (continued)***

Under recommendation 4, the Council recognizes the value conservation districts and local units of government can have in the development of complete permit applications that are appropriate for a desired activity. Local resources available to property owners will assist them in obtaining permits in a timely manner.

## **ATTACHMENTS**

**Michigan Wetland Program:**  
*Options for Long-Term Funding*

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April 2012

***Prepared for***  
Michigan United Conservation Clubs  
for the Michigan Wetland Advisory Council

***Prepared by***  
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## **BACKGROUND**

In 2009, Michigan established a Wetland Advisory Council (Council) for the purpose of evaluating Michigan's wetland program and providing recommendations for improvement to the governor, the legislature, and the Michigan Department of Environmental Quality (MDEQ). The Council has been working since that time to develop program and legislative recommendations that address program deficiencies and improvements as identified by the U.S. Environmental Protection Agency (U.S. EPA) in its 2008 audit of the Michigan program. The Council provided its first report to the governor and legislature in October 2010, and will have a final report completed by August 15, 2012.

Part of the Council's charge is to evaluate options for funding the program implementation recommendations it identifies in its final report to the state legislature. The Michigan United Conservation Clubs, through support from the Erb Foundation, hired Public Sector Consultants Inc. (PSC) to assist the Council in evaluating funding options for Michigan's wetland program. In conducting its analysis, PSC:

- Met with the Wetland Advisory Council and the MDEQ for background consultation and data
- Evaluated historical and potential future options for General Fund and/or Restricted Funds support
- Reviewed best practices and innovative programs used by other states to fund wetland and other natural resources programs
- Evaluated opportunities for seeking increased federal cost-share support
- Reviewed current wetland permit fee structure and the role of potential fee increases
- Met with several foundations to discuss their potential role in providing implementation funding for the wetland program

This report is a summary of PSC's findings and recommendations regarding options for wetland program implementation funding.

## **MICHIGAN WETLAND PROGRAM OVERVIEW**

The federal Clean Water Act (CWA) Section 404 program regulates the discharge of dredge or fill materials to waters of the United States. Under Section 401 of the Clean Water Act, states also have the authority to review and approve, condition, or deny any federal permits or licenses that might impact state water quality standards. This authority may be used by states to protect valuable wetland resources. States also have the authority to enact their own permit programs for wetlands and can adopt more stringent limitations than those established under the federal program.

### ***Program Structure***

In 1979, the Michigan Legislature passed the Wetlands Protection Act with the intention of assuming administration of the federal Clean Water Act Section 404 permit program. Michigan became the first state to receive U.S. EPA approval to administer the Clean Water Act Section 404 permit program in 1984. Since then, only one other state, New Jersey, has met all of the federal requirements and successfully assumed the federal program, although close to 30 other states have their own regulatory programs for wetlands (ELI 2008).

The legal basis for Michigan's program stems from a combination of several statutory authorizations designed to protect the state's inland lakes, streams, wetlands, Great Lakes, and

shorelines, now codified under the Natural Resources and Environmental Protection Act (NREPA) of 1994 as amended by the State of Michigan.

The MDEQ, in conjunction with the U.S. Army Corps of Engineers (USACE), regulates proposed work at the land-water interface through a single MDEQ/USACE joint permit application. The application covers activities regulated by the USACE within the waters of the United States under Section 10, Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404, Clean Water Act of 1977 (33 U.S.C. 1344), as well as activities regulated by the following parts of the NREPA (MDNRE 2010):

- Part 31, Water Resources Protection (Floodplain Regulatory Authority)
- Part 301, Inland Lakes and Streams
- Part 325, Great Lakes Submerged Lands
- Part 303, Wetlands Protection
- Floodplain Regulatory Authority found in Part 31, Water Resources Protection
- Part 315, Dam Safety
- Part 323, Shorelands Protection and Management (High Risk Erosion Areas)
- Part 353, Sand Dunes Protection and Management (Critical Dune Areas)

This “one-stop shop” consolidated permit process covers all of these state and/or federal permitting requirements through a single permit review process, decreasing process time, costs, and number of interactions with different agencies for permit applicants.

Every year, the MDEQ processes between 4,000 and 6,000 permit applications through its consolidated NREPA permit program described above; 1,500 of these applications relate directly to wetlands. Over the past three years, the MDEQ has employed about 22 full-time equivalent staff (FTEs) in the wetland program (Fish and Masterson, 2011, 2012). This equates to an average of about 66 permits processed per staff member each year. Prior to the recession, which has significantly reduced the number of permit applications received by the department, the MDEQ estimates that wetland program staffing was as high as 78 FTEs in some years. The average consolidated permit review time is 60 days (versus 120+ days for the Corps of Engineers in states that have not assumed the CWA Section 404 program) (Sefton 2009).

The MDEQ estimates that approximately 75 percent of staff time within the wetland program is used for permit and permit-related activities (Michigan Wetland Advisory Council 2011). In addition, staff administers other wetland protection and restoration-related activities as part of the program, such as program grants to local governments, mitigation program design, wetland identification, and monitoring.

### ***Wetland Program Budget***

The state’s budget for the entire integrated land-water interface program over the last decade has ranged from a high of about \$14 million in 2007 – 2009, to approximately \$12.4 million beginning in Fiscal Year (FY) 2010. Before the current recession, staffing levels for the program were generally about 135 people for the entire integrated program, but have dropped to below 99 in the last two years (Fish and Masterson, 2011, 2012).

Until 2010, the state did not delineate costs by individual parts of the land-water interface program. As part of the changes made at the time the Council was formed, the MDEQ began tracking costs specific to the wetland program. The annual budget for operation of the wetland

program between 2010 and 2012 (projected) falls into the range of \$2.5 to \$3 million/year as shown in Exhibit 1.

### EXHIBIT 1. FY 2010–FY2012 Michigan Section 404 Wetland Program Budget

Funding Source	2010	2011	2012 (projected)
Michigan Department of Transportation (MDOT)	\$71,943	\$47,262	\$90,000
Federal funds	\$338,718	\$400,332	\$400,000
Fees	\$50,294	\$163,927	\$420,400
Environmental Protection Fund/General Fund	\$1,952,782	\$1,990,794	\$2,000,000
<b>Total</b>	<b>\$2,413,737</b>	<b>\$2,602,315</b>	<b>\$2,910,400</b>

SOURCE: MDEQ, personal communication with Cindy Masterson, February 2012.

Projected program budget requirements for the next 3–5 years (economic recovery period) are approximately \$2.6–\$3.5 million based on staffing projections to process and enforce approximately 1,500 wetland-related permits each year. The amount depends somewhat on the source of funds that make up the budget. When the wetland program gets appropriations from both the General Fund and the Environmental Protection Fund (EPF), it is exempted from paying cost allocations, which are general payments to support the department’s Executive operations, general departmental support, and the Michigan Department of Technology, Management, and Budget. Without cost allocations, the current cost per FTE is about \$118,000. If future funding comes from a different source, the wetland program would have to pay cost allocations, making the cost of that same FTE about \$140,000 (Fish and Masterson, 2011, 2012). Exhibit 2 shows projected budget needs under both scenarios.

### EXHIBIT 2. Projected Budget Needs for Michigan Wetland Program

	FY13	FY14	FY15	FY16	FY17	FY18++
<b>Budget Projections Under "No Cost Allocation" Funds Scenario</b>						
Cost of individual FTE	\$118,000	\$119,770	\$121,567	\$123,390	\$125,241	\$127,120
Number of FTEs	22.6	22.6	22.6	22.6	23.1	23.5
Budget need	\$2,666,800	\$2,706,802	\$2,747,404	\$2,788,615	\$2,887,053	\$2,988,966
<b>Budget Projections Under "Required Cost Allocation" Funds Scenario</b>						
Cost of individual FTE	\$140,000	\$142,100	\$144,232	\$146,395	\$148,591	\$150,820
Number of FTEs	22.6	22.6	22.6	22.6	23.1	23.5
Budget need	\$3,164,000	\$3,211,460	\$3,259,632	\$3,308,526	\$3,425,317	\$3,546,231

SOURCE: PSC, based on estimates of cost per FTE provided by the MDEQ in February 2012. Includes an annual cost-of-living increase of 1.5 percent thereafter. Number of FTEs assumes a 2 percent increase in staff level beginning in FY 2017 to address increased permit activity with economic recovery.

### Wetland Program Funding Sources

In 2009, \$2 million in General Fund revenues for the wetland program was eliminated. To address the funding gap in the short term, the state legislature, through Public Act 120 of 2009,

allowed the use of funds from the Michigan Beverage Containers Initiated Law of 1976 (commonly known as the Bottle Bill) escheat (unclaimed deposits). The Bottle Bill escheat revenues are deposited into the unclaimed Bottle Deposit Fund. The Act allowed for \$8 million from the Bottle Deposit Fund to be transferred to the EPF, and the state wetland program was then appropriated \$2 million/year from the EPF through 2012. In 2013, the governor’s proposed budget includes \$1.5 million in General Funds for the program until longer-term, sustainable funding solutions can be identified.

The program also gets funds from the Michigan Department of Transportation (MDOT) for review of wetland permits related to state transportation projects, and federal funds from both the U.S. EPA and the National Oceanic and Atmospheric Administration (NOAA). These agencies provide federal funds through the Wetland Program Development Grants (WPDG) and Coastal Zone Management Act (CZMA), both of which place restrictions on how the dollars can be used. The WPDGs cannot be used for operational expenses of a state or local wetland program, and must be targeted toward program development and planning (U.S. EPA 2012). The CZMA funds are limited to work on wetlands in Michigan’s coastal zone (U.S. Department of Commerce NOAA, 2012). For both of these sources, a significant majority of the funds are passed through the state to local governments as grants for local projects.

The final source of program funding is permit application fees. Prior to 2012, the MDEQ had taken in as much as \$163,000 in annual fees for the wetlands permit program (2011), which was about 6 percent of the program costs. In 2012, that amount is projected to increase to about \$420,000 (see Exhibit 1 above) based on changes to the permit and fee structure for the wetland program, which covers approximately 14 percent of the program costs (Fish and Masterson, 2011, 2012).

Using the 2012 projected budget for the wetland program, and the MDEQ’s estimate that 75 percent of program costs are related to wetland permitting or compliance, the approximate average cost for the state to process, monitor, and enforce wetland permits is approximately \$1,455 per permit (see Exhibit 3). This is a rough estimate, but provides a ballpark figure for the cost to the agency of processing wetland permits.

### EXHIBIT 3. Average Cost per Wetland Permit for the MDEQ

Total permit-related program costs(75% of total budget), FY 2012	\$2,182,500
Average number of annual wetland permits processed	1,500
Average cost/permit	\$1,455
Average amount fee revenue collected/permit (2012 estimate)	\$280

SOURCE: PSC, based on data provided by the MDEQ.

As more state regulatory programs have had their General Fund appropriations cut over the last decade, increased user fees have been supplanting General Fund support. Overall, the MDEQ’s \$56 million budget proposal for water resources (FY 2013) includes only about \$11.9 million in General Fund support—less than 22 percent of the total water resources budget. The remaining funds are comprised of federal appropriations, fees, and other related sources (Michigan State Budget Office 2011). This is also true for other environmental protection programs the agency administers. A sampling of these programs and their fees is included in Exhibit 4.

**EXHIBIT 4. Michigan Department of Environmental Quality  
Environmental Permitting Fee Comparison**

Environmental Protection Program	Permit Fee		% of Program Budget Covered by Permit Fees (FY 2012)
	Minimum	Maximum	
Wetland Permit Program (as of 8/11)	\$100 (general permit)	\$2,000 (major projects)	15%
National Pollutant Discharge Elimination System Permit Program (non-storm water commercial & industrial)	\$75 (general permit)	\$750 (major facility)	36%
Solid Waste Management Facility Construction Permit	\$250 (type III facility)	(\$1,500 (type II facility)	90%
Aquatic Nuisance Control Permits	\$75 (less than 1/2 acre of water treated)	\$1,500 (more than 100 acres of water treated)	100%
Water Withdrawal Permits	n/a	\$2,000	99%

SOURCE: Department of Environmental Quality, [www.michigan.gov/deq](http://www.michigan.gov/deq) (accessed 3/16/12).

Most of these programs have instituted user fees, which shift a greater share of the cost for processing and issuing permits to the applicant and away from the state. In short, many programs have attempted to calculate the cost of reviewing, approving, and enforcing permits, and then matched their fee structure to that cost as much as possible.

Other non-regulatory and natural resource programs have been moving in the same direction in response to declining General Fund support. For example, Michigan instituted a Recreation Passport program that allows residents to purchase a \$10 recreation passport when they renew their vehicle registration, the passport grants access to all state parks without paying a per-visit fee. Like the wetland program, the Passport Program was developed to address loss of General Fund revenue and create a dedicated source of funding for managing and investing in the state's parks and outdoor recreation areas. Since its inception in 2010, the program has exceeded enrollment expectations and has generated over \$17 million in annual revenue, which is used to fund some of the day-to-day operations of running and maintaining the state's parks and outdoor recreation areas.

## **HOW DOES MICHIGAN'S WETLAND PROGRAM COMPARE TO OTHER STATES?**

### ***Overview of state funding and staffing for wetland programs***

While only Michigan and New Jersey have formally assumed the federal Clean Water Act Section 404 permit program, 21 other states have the authority to issue permits for dredge and fill activities in wetlands and other waters. Six additional states have established programs to regulate activities in "geographically isolated" wetlands,<sup>1</sup> which are no longer covered under federal law (ELI 2008).

<sup>1</sup> The U.S. Supreme Court, in *Northern Cook County (SWANCC) v. United States Army Corps of Engineers (Corps)*, 531 U.S. 159 (January 9, 2001), found that the Corps could not regulate isolated wetlands under Section 404 of the CWA.

States also use Clean Water Act Section 401 authority, which allows them to review and approve, condition, or deny any federal permits or licenses that might impact state water quality standards. This authority may be used by states to protect valuable wetland resources, either as the sole mechanism for protecting wetland resources or in conjunction with specific state wetland regulatory programs. While most states rely primarily on Section 401 authority to protect wetlands, some use a combination of approaches in an effort to provide more comprehensive protection of their aquatic resources. For example, in addition to Clean Water Act Section 401 requirements, North Carolina has adopted rules pertaining to wetlands that fall outside federal jurisdiction, requiring water quality permits for so-called “isolated” wetlands; the state has also enacted a separate regulatory program for coastal wetland resources (ELI 2008).

As in Michigan, many states’ wetland activities are integrated into larger state goals and programs, and it is difficult to estimate the specific amount of staff or funding devoted to wetland-related activities. Based on a nationwide state wetland program evaluation in 2008, the Environmental Law Institute found that of “150 state agency divisions involved in wetland regulation, management, and/or protection nationwide, more than one-third, 56 total, were unable to estimate the number of full time equivalent (FTE) staff dedicated to wetlands.” Some states employ as few as 1.5 staff people (Colorado) and others as many as 520 staff (Florida) (ELI 2008).

Levels of funding across states vary widely as well. In its study, the ELI found that a significant majority of states (more than two-thirds) were unable to estimate the amount of funding dedicated specifically to wetlands. Of those that were able to provide estimates, the level of support varied from state to state, agency to agency, and program to program. For example, estimated annual budgets ranged from \$75,000 for the Arizona Department of Environmental Quality’s §401 program to more than \$100 million for North Carolina’s multiple wetland-related programs, which include its §401/water quality, coastal wetlands permitting and management, and the state compensatory mitigation program (ELI 2008). Various types of funding mechanisms are used in different states to support wetland programs, but the most common are General Fund/General Appropriation support and federal grants, as shown in Exhibit 5.

### EXHIBIT 5. Sources of State Wetland Program Funding

Funding Source	Number of States Utilizing Funding Source	Michigan
General Fund/General Appropriation	39	Yes (until 2009, to be reinstated in 2013)
Dedicated appropriation	15	Yes (2009–2012)
Fees	26	Yes
Enforcement penalties	3	No
Specialty license plates	2	No
Federal grants	44	Yes
Other	18	Yes

SOURCE: Environmental Law Institute. 2008. State Wetland Protection: Status, Trends & Model Approaches.

#### ***Comparison of neighboring or similar states***

In addition to reviewing national wetland program trends, PSC did a more extensive review of some neighboring Great Lakes states and New Jersey in order to compare their programs and

funding structures to Michigan and identify best practices or models that might be applicable for Michigan's program. Exhibit 6 summarizes permit and staffing information for these states.

### EXHIBIT 6: Comparison of Similar State Wetland Programs

	Michigan	Ohio	Wisconsin	New York	New Jersey
Permit fee rates	\$100–\$2000	\$500/acre – \$5,000 max	\$500–\$800*	\$50–\$200	\$600, plus \$240 each add'l site
# of permits or CWA 401 certifications issued/year	1,500	128	400	3,115	1,000 – 1,500
# of staff working on wetlands regulatory activities	22	13	42	~30	70
# of permits/certifications per staff	68	10	9.5	104	14–21

SOURCE: PSC compiled from: Fish and Masterson 2012; New Jersey Office of Management and Budget 2012; Ohio Environmental Protection Agency; Personal communication with Kent Sanders, New York Department of Environmental Conservation, Division of Environmental Permits; ELI 2008; and Wisconsin Legislature 2012.

\* Permit fee rates for Wisconsin are amounts approved under 2011 Wisconsin Act 118, which is scheduled to go into effect on July 1, 2012.

#### Ohio

The Ohio EPA's Division of Surface Water (DSW) oversees a variety of activities related to wetlands, including permitting and Section 401 certification, enforcement, monitoring and assessment, outreach and technical support, restoration, and research. While there are district offices in place, most regulatory activities are conducted from the Columbus-based headquarters. Thirteen FTEs work directly on wetlands permits, research, and program development. In FY 2010, the Ohio EPA's wetland-related program budget was approximately \$2.2 million. During that period, the Ohio EPA processed 128 Section 401 certification and isolated wetlands permit applications (Ohio EPA N.d.).

#### New York

In New York, the wetland program, which is administered by the Department of Environmental Conservation (DEC), relies on General Fund appropriations, permit fees, and the state's Conservation Fund, which includes dedicated funding from the sale of sporting licenses and dedicated state appropriations to the DEC. Permits are issued by the DEC's Division of Environmental Permits, with technical review and input by the Division of Fish, Wildlife and Marine Resources. Approximately 25 Fish, Wildlife and Marine Resources staff across the DEC's nine regions work on wetlands permit issues. The Conservation Fund also supports staff that conduct habitat protection work and management programs that benefit wetlands and wetland-related fish and wildlife. Permit fees for freshwater wetland permits range from \$50 to \$200/application (New York Department of Environmental Conservation 2012). In FY2011, New York issued over 3,000 state wetland permits and CWA Section 401 certifications<sup>2</sup>.

<sup>2</sup> Personal communication with Kent Sanders, DEC Division of Environmental Permits. 4/3/12.

### *Wisconsin*

Prior to 2012, Wisconsin regulated and managed wetlands primarily through Section 401 review and certification. On February 29, 2012, the Governor approved the 2011 Wisconsin Act 118. The Act eliminates water quality certification for wetlands and replaces this procedure with wetland general permits and wetland individual permits. It lays out the system and fees for applicants seeking approvals for activities in or near navigable waters and for other determinations by the Wisconsin Department of Natural Resources (WDNR), and identifies requirements for wetland mitigation, wetland mapping and delineation, penalties associated with violations of wetlands laws, and fees for permits related to wetlands. The new law becomes effective on July 1, 2012 (Wisconsin Legislature 2012).

Wisconsin approves about 400 individual wetland water quality certifications each year. In 2006, the state employed approximately 42 staff for wetland-related programmatic work, and had a budget of close to \$1.3 million for the Water Division, which includes the wetland program. Current funding for program activities comes from multiple sources, including state General Purpose revenues, water quality certification application fees, and federal grants. Approximately half of the annual budget is funded by the General Purpose revenue and about one-third is funded by the fees. The remainder comes from federal grants (e.g., U.S. EPA, U.S. Army Corps of Engineers) for various types of research (ELI 2008).

Under the new law, application fees for wetland general permits are \$500 and for individual permits is \$800. The Act also allows the WDNR to increase these fees if necessary to meet its costs in performing the activities for which the fee is charged. The Act also authorizes the DNR to charge a fee to cover the costs to the WDNR for reviewing mitigation that is conducted by mitigation banks. The Act also allows WDNR to charge for general and individual permit applications for activities related to navigable waters (federally-regulated). These fees are \$300 for general permits and \$600 for individual permits (Wisconsin Legislature 2012).

### *New Jersey*

In New Jersey, which is the only other state that has assumed the CWA Section 404 permit program, the New Jersey Department of Environmental Protection (NJDEP) regulates both freshwater and tidal wetlands. The NJDEP employs about 70 staff that work directly on wetland protection and permitting. The state makes approximately 1,000 to 1,500 wetland permit decisions each year. New Jersey gets a substantial amount of program funding from its wetland permit fees and enforcement fines. In FY 2012, fee revenue is projected to be over \$3 million (New Jersey Office of Management and Budget 2012)

The state also has separate wetland protection-related regulations for the Pinelands, Meadowlands, and Highlands regions of the state. The New Jersey Pinelands Commission, New Jersey Meadowlands Commission, and the Highlands Council all conduct regulatory and non-regulatory wetlands activities within their respective jurisdictions. In the Pinelands region, the Pinelands Commission conducts wetland permitting (through a memorandum of agreement with the NJDEP), assessment, and planning work. The NJDEP reviews all individual permits issued by the Commission in this region. In the Meadowlands District, Section 404 permitting authority remains at the federal level, with the state providing wetland water quality certification under CWA Section 401. In the Highlands region, the Council develops and oversees a master plan for the region that includes, among many goals, protection and restoration of wetlands (NJDEP 2012).

## OPTIONS FOR FUTURE FUNDING OF THE MICHIGAN WETLAND PROGRAM

As discussed above, the state currently utilizes a mix of funding sources to support its wetlands program—both regulatory and non-regulatory aspects of the program—but the bulk of the funding has come from General Fund dollars and more recently from the EPF (transferred from the Bottle Deposit Fund).

In future years, the Council has been tasked with identifying longer term, sustainable funding for the wetlands program. Funding could potentially come from existing revenue sources or new, targeted funding sources—or a combination of both. PSC’s review of historic wetland funding in Michigan, existing Michigan budget funds, best practices in other state wetlands or environmental protection programs, and interviews with state budget experts and philanthropic leaders has identified 11 categories of potential funding to evaluate for application to the wetlands protection program:

- Continued use of unclaimed Bottle Deposit Funds
- Increased wetland permit fees
- General Fund
- Use of existing or new bond funds
- Severance taxes
- Special use sales tax
- Special or transaction fee programs
- Related permit/license fees
- Real estate transfer taxes and/or deed recording fees
- Increased federal funding
- Program funding from foundations

After completing this extensive review, PSC believes that the most sustainable and feasible approach for funding the wetland program in the future is to continue providing the bulk of the funding from the unclaimed Bottle Deposit Fund, and layering that with a moderate fee increase and continued use of some MDOT and federal dollars. Utilizing the unclaimed Bottle Deposit Funds would require a legislative change, and there are certainly other challenges related to impacts on other program funding. Nevertheless, this is a feasible option that has worked successfully for the last three years and would provide the most steady, sustainable source of funding over the long term. This approach, as well as the other options identified above, are described and evaluated below.

### ***Recommended Approach***

As stated earlier, the bulk of the wetland program funding has come from General Fund or the escheat monies from the Bottle Bill. PSC recommends that the state utilize Bottle Bill funds for the long-term wetland program funding as it did between 2009 and 2012. If that option is not utilized, our alternative recommendation is to continue the use of the state’s General Fund.

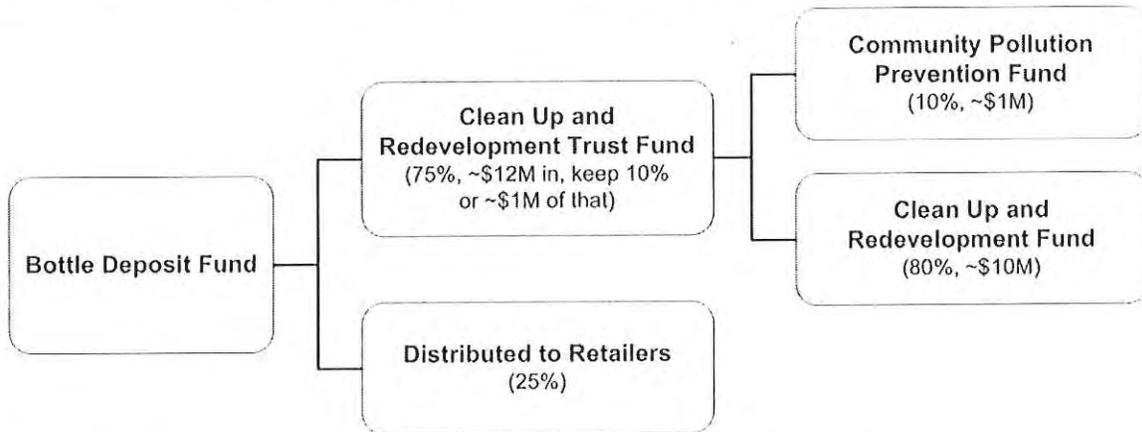
The Bottle Bill law requires that number of containers sold and redeemed by bottlers and distributors be reported to the state. At 10 cents per bottle, Michigan has the highest deposit in the country and correspondingly has one of the highest bottle recycling rates nationwide. All funds collected from unclaimed bottle deposits are put into the state’s Bottle Deposit Fund. On an annual basis, 25 percent of this fund is distributed by the Department of Treasury to retailers and

75 percent is transferred into the Clean Up and Redevelopment Trust Fund (Trust Fund), (Michigan Initiated Law 1, 1976, Sections 445.573c and e). The Trust Fund then makes the following disbursements:

- Eighty percent is deposited to the Cleanup and Redevelopment Fund (CRF), which supports staff and MDEQ activities related to environmental remediation under part 201 of NREPA (Michigan Initiated Law 1, 1976, Section 445.573e).
- Ten percent is deposited into the Community Pollution Prevention Fund (CPPF), which uses interest and earnings to fund pollution prevention grants, with an emphasis on the prevention of groundwater contamination and resulting risks to the public health, ecological risks, and public and private cleanup costs (Michigan Initiated Law 1, 1976, Section 445.573f).
- Ten percent remains in the Clean Up and Redevelopment Trust Fund until the amount accrues to a maximum of \$200 million.

Exhibit 7 illustrates the process for collecting and dispersing unclaimed bottle deposit monies as prescribed in the Bottle Bill law.

### EXHIBIT 7. Collection and Distribution of Unclaimed Bottle Deposits



SOURCE: PSC, based on description in Michigan Initiated Law 1, 1976, Sections 445.573c and e

As Exhibit 8 demonstrates, unclaimed deposits collected and transferred to the Bottle Deposit Fund over the last decade have ranged from approximately \$9 million to \$18 million a year. Correspondingly, deposits to the Trust Fund have ranged from about \$6.5 million to \$13 million a year for distribution as described above. Since 2005, legislative and administrative changes have twice allowed for the transfer of Trust Fund monies to the EPF to support MDEQ program needs as General Fund revenues declined, including the 2009 transfer of \$6 million to support wetland program.

The Trust Fund balance is now less than \$1 million, so use of unclaimed bottle deposit funds for wetland program support would have to come from annual collection of these funds instead of the use of the surplus balance in the Trust Fund<sup>3</sup>. This would require a legislative change that would allow for this use and modify the distribution formula from the Trust Fund to the CRF and CPPF. For the use of these funds between 2010 and 2012, the legislature passed Public Act 120 which

<sup>3</sup> Personal communication with Anastasia Lundy, MDEQ, March 29, 2012.

amended NREPA Section 303 to allow for the authorization. The expenditure was then included in the MDEQ's funding bill.

**EXHIBIT 8. Unclaimed Bottle Deposit Funds 2001–2010 (\$ Millions)**

Year	Total to Unclaimed Deposit Fund	Amount Distributed to Retailers (25% of total)	Transferred to Clean up and Redevelopment Trust Fund (75% of total)	Transferred to CRF (80% of Trust Fund)	Transferred to CPPF (10% of Trust Fund)	Amount Retained in Clean Up and Redevelopment Trust Fund (10%)
2001	\$17.5	\$4.5	\$13.0	\$10.4	\$1.3	\$1.3
2002	18.1	5.4	12.7	10.2	1.3	1.3
2003	11.7	3.0	8.6	6.9	0.9	0.9
2004	11.1	2.8	8.3	6.6	0.8	0.8
2005	12.8	3.2	9.6	7.7	1.0	1.0
2006	16.3	4.1	12.3	9.8	1.2	1.2
2007	8.9	2.2	6.7	5.4	0.7	0.7
2008	12.5	3.1	9.4	7.5	0.9	0.9
2009	17.5	4.4	13.0	10.4	1.3	1.3
2010	16.6	4.1	12.4	9.9	1.2	1.2
<b>Totals</b>	<b>\$143.0</b>	<b>\$36.8</b>	<b>\$106.2</b>	<b>\$84.9</b>	<b>\$10.6</b>	<b>\$10.6</b>

SOURCE: Return Processing Division, Michigan Department of Treasury, 2011.

The appropriation of \$1.5–\$2.5 million of unclaimed Bottle Deposit Funds should continue to be layered with fees, MDOT funds, and federal funds. As part of its work, the Wetlands Advisory Council evaluated several scenarios for increasing fees to a level that would fully cover lost General Fund revenues for the program (i.e., generating at least \$2.5 million in fees). In order to reach that magnitude of revenue, individual permit fees would have to increase by over 1400 percent from FY 2011 and prior levels. This would have put the permit fees far above those of comparable states (see Exhibit 6 above) and was deemed by the Council to be too excessive a burden on the regulated community. When the Council considered the fee structure in New Jersey' (the other state that has assumed a Section 404 program), council members felt that the fees were excessive and reflected a program where much of the state is already developed (that is, with fewer new impacts to wetlands) and that preservation and restoration were more essential for wetlands in that state (Michigan Wetlands Advisory Council, General Permitting, Program Funding, and Public Outreach Subcommittee, 2011).

However, Michigan could implement a moderate increase in the current wetland permit fee structure to help balance program costs and shift a greater share of permit processing costs to applicants. This would be in line with the overall trend for funding Michigan regulatory programs.

This recommended approach for wetland program funding balances the responsibility of the state to provide the essential public services of wetland protection with the need for permit applicants (who directly benefit from the program) to bear a greater share of the wetland permitting cost. It does so, however, without putting an undue financial burden on the regulated community. The unclaimed Bottle Deposit Fund was used successfully for three years, and would provide a steady, sustainable source of funding for the program. Using a small amount of this fund would

enable the full funding and operation of the wetland program, thus stabilizing an important environmental protection program for the long term in Michigan. If those same funds were left in the Bottle Deposit Fund, they would only address a very small portion of the extensive amount of long-term cleanup and redevelopment work in Michigan.

### ***Other Options Evaluated***

#### *General Fund*

As described above, the most common model for funding wetland programs is the use of General Fund revenues. More than three-quarters of states utilize General Fund monies to support at least some portion of their wetlands protection program. Until 2009, this was the primary source of revenue for the Michigan wetland program, and \$1.5 million in General Fund revenues is proposed in Governor Snyder's FY 2013 budget.

The State Budget Office describes the General Fund in the following way:

Covering all state appropriation, expenditure and receipt transactions, except those for which special constitutional or statutory requirements demand separate fund accounting. Most of the traditional state services are included in the General Fund (Michigan State Budget Office N.d.).

In short, in Michigan as in most states, the General Fund is used to provide the resources necessary to sustain day-to-day activities and thus pay for all administrative and operating expenses. The state's wetland regulatory program is inherently a government function. It provides services—primarily permitting, monitoring, and enforcement—that are critical to supporting the state's policies for protecting wetland resources. These functions are generally considered outside the purview of private or nonprofit sector organizations.

Michigan has suffered a declining economy for over a decade, and intervening recessions have caused significant budget deficits. Between 2000 and 2011, the General Fund declined from about \$10 billion to approximately \$7 billion. As a result, the state has had to cut General Fund support for many government functions and programs; the wetland program is only one of a long list of programmatic cuts. This has resulted in the state moving to a greater reliance on permit and user fees to support programs. FY 2011 is the first year Michigan has had a modest surplus in over a decade (Michigan State Budget Office 2011).

There are many pros and cons for using General Fund revenues to support the wetlands program. Some of the reasons the General Fund is a logical choice for wetland program support include the following:

- The wetland regulatory program provides basic governmental services and is critical to supporting Michigan's legislated policies for wetland protection. This is the type of activity that should be considered eligible for General Fund support.
- Support from the General Fund reduces the need to significantly increase applicant permit fees.
- Reinstating General Fund support for the wetland program in an amount between \$2 and \$3 million would represent only 0.04 percent of total state General Fund revenues (of about \$7 billion for FY 2013).

But there are also significant drawbacks to relying on the General Fund for the program, for example:

- The state will continue to face substantial fiscal challenges and competition for scarce General Fund support over time.
- The approach lacks long-term stability because General Fund appropriations are subject to economic and political pressures on an annual or biennial basis.
- The state bears a much larger share of the cost of individual wetland permit processing by using state General Fund revenues (versus permit fees for example).

### *Bond Funds*

The state of Michigan has passed numerous bonds for the protection and restoration of natural resources, including the Environmental Protection Bond Fund and Clean Michigan Initiative (CMI). These bond programs have supported substantial efforts to protect and enhance the natural resources of our state and address historic pollution and contamination. They have been used for some moderate levels of program operational support, but generally in areas that are tied more directly to on-the-ground projects (for example, contaminated sediment cleanups, post-remediation monitoring). Over the last several years there have been discussions about seeking a new (or augmented CMI) bond proposal to address various aspects of Great Lakes environmental restoration, cleanup and protection.

Public opinion survey research shows strong public support for measures to protect Michigan's land and water resources and a willingness to pay for these protection measures. In 2004, the Nature Conservancy and the Trust for Public Lands conducted a public survey regarding funding for land and water conservation. The survey found that 65 percent of Midwestern voters said they were willing to support small increases (\$50 a year) in taxes to pay for programs to protect water quality, wildlife habitat, and neighborhood parks. Protection of water quality was a major reason survey respondents said they were willing to spend more (Public Opinion Strategies, et. al 2004).

Many other states have also passed bonds that are used for natural resource and environmental protection. Like Michigan's bond issues, these programs have generally been more geared toward specific protection, monitoring, restoration projects, infrastructure, and grants to locals. California, for example, passed the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84). It authorizes \$5.38 billion in general obligation bonds to fund safe drinking water, water quality and supply, flood control, waterway and natural resource protection, water pollution and contamination control, state and local park improvements, public access to natural resources, and water conservation efforts. While most of the funding is used for infrastructure and grants to local governments, some funding is allowed for the implementation of the Water Conservation Act (CRA 2012).

There are several benefits of pursuing bond funding to support the wetland regulatory program. If passed, the bond funds can be used over many years for a steady level of support. Bond funds could also be used to support related non-regulatory elements of the wetlands program such as monitoring, mapping high-priority wetlands, and establishment and oversight of mitigation banks.

While bond funds do provide a revenue option, and are currently used for the restoration, enhancement, and protection of Michigan's wetlands, they are a questionable source of revenue for operation of a regulatory program. When this option has been raised in the past, stakeholders have expressed concerns about using bond funds (debt) to pay for an ongoing regulatory service instead of the creation or restoration of an asset (such as land purchase, restoration of an existing site, etc.).<sup>4</sup> In addition, there are many environmental protection and restoration needs that would be competing for bond funds, and most are more focused on implementation of specific projects

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<sup>4</sup> Personal communication with Rich Bowman, The Nature Conservancy, March 1, 2012.

rather than the less glamorous task of program administration. Finally, bond measures can be very costly to put on the ballot, and have an uncertain outcome.

### *Severance Tax Revenues*

Michigan currently collects severance tax revenues from oil and gas leasing operations on private lands in the state. In 2010, the state collected \$57 million in severance tax revenue. These funds are currently deposited into the General Fund.

There is discussion under way about expanding the severance tax system to include private mining, and potentially increasing the severance tax rate for oil and gas operations. An expansion of the severance tax system such as this could be used to fund the MDEQ's wetland protection and permitting efforts, possibly through the creation of a special Wetland Protection Fund. Several states use their severance tax revenue to fund special programs or trust funds related to natural resources protection. Louisiana, for example, deposits more than half of its severance tax revenue into its Coastal Protection and Restoration Fund (which includes programs for the conservation and restoration of coastal vegetated wetlands), and the Atchafalaya Basin Conservation Fund (Louisiana Department of Revenue N.d.). Similarly, Montana deposits a small portion (approximately 2 percent) of its oil severance tax funds into a natural resources projects state special revenue account and a natural resources operations state special revenue account; the latter funds salaries and expenses for personnel and equipment, office space, and other expenses incurred in the administration of natural resources program operations (Montana Legislative Fiscal Division 2010).

Potential benefits of using a severance tax system include the following:

- There is already some active conversation in the state legislature about expanding the severance tax, and the timing might be ripe to include a discussion of wetlands as one of the categories of expenditures.
- There is a connection between oil, gas, mining and timber operations, and wetlands protection, so the case for using severance taxes to support wetland protection is logical. In addition to the need for wetland permits associated with some mining operations, wetlands can also more indirectly be impacted by mining and extraction operations through mine drainage, runoff of contaminants, and increased sedimentation.
- Michigan already has a severance tax, and would only need to expand and modify it to allow for wetlands program funding.

There are also challenges to implementing a severance tax system:

- While there is conversation about expanding the severance tax, there is a lot of competition for programs and resources to target the additional revenue toward. In short, the wetland program would have to "get in line" with many others.
- There is not a big appetite for increased or new taxes in Michigan now, so it may be difficult to convince legislators that a severance tax expansion is a good program funding option.

### *Special Purpose Sales Tax Increase*

Some states have begun using special purpose sales tax increases to help fund gaps in support for environmental programs. Generally these programs include a small increase in sales tax (usually less than 1 percent), and use the funds collected for a specific trust fund or account to address the purpose of the tax. Interest is used to fund projects, research, or operational expenses. They have most commonly been used for health care programs, research, and natural resource protection activities and programs.

Minnesota, for example, approved a 2008 Clean Water, Land and Legacy Amendment to the state constitution to: “*protect drinking water sources; to protect, enhance, and restore wetlands, prairies, forests, and fish, game, and wildlife habitat; to preserve arts and cultural heritage; to support parks and trails; and to protect, enhance, and restore lakes, rivers, streams, and groundwater*” (Minnesota Department of Natural Resources 2012). The Amendment increases the sales and use tax rate by three-eighths of one percent on taxable sales, starting July 1, 2009, and continuing through 2034. Of those funds, approximately 33 percent will be dedicated to a Clean Water Fund to protect, enhance, and restore water quality in lakes, rivers, streams, and groundwater, with at least 5 percent of the fund targeted to protect drinking water sources. Total funding for the FY2010–2011 biennium is approximately \$150.8 million (Minnesota Office of the Revisor of Statutes 2012).

Michigan, too, has previously considered placing an additional sales tax on outdoor recreation equipment, and dedicating that revenue to Michigan Department of Natural Resources and/or MDEQ. This type of program could include targeting some of the funds to support the wetlands program. Other states have successfully used programs such as this to raise revenue for conservation and natural resources protection. For example, in Missouri and Arkansas, citizens support conservation and natural resources with a small portion (one-eighth of one percent) of the state sales tax. Wildlife agencies in Virginia and Texas receive tax revenues from outdoor gear purchased in those states, and agencies in Colorado, Arizona, and Maine receive a small portion of their state’s lottery revenues for natural resource protection<sup>5</sup>

Some of the benefits of utilizing special purpose sales tax increases include the following:

- Michigan already has a sales tax system in place. It would need to be modified to allow for an increased rate and direct the disposition of the additional funds
- This could be significant and steady source of funding for the wetlands program.
- Use of sales tax funds spreads the costs for the program across residents and visitors, all of whom benefit directly and indirectly from healthy wetlands in Michigan.

There are also challenges to utilizing a special purpose sales tax to fund the wetlands program, the most significant of which is lack of appetite for increased or new taxes in Michigan now. It may be difficult to convince legislators that a sales tax increase is a good program funding option.

#### *Special or Transaction Fee Programs*

Special or transaction fee programs are created to add a fixed cost per transaction that cumulatively builds to a significant source of program funding. The most common are called a “penny plan” or something similar. They add a penny onto the final cost of a transaction or on a specified amount of a good or service (for example, a penny-per-ounce excise tax on sweetened/soda beverages).

Like special purpose sales and specific tax increase efforts, these programs generally use funds collected for a specific trust fund or account to address the purpose of the fee. Interest is used to fund projects, research, or operational expenses.

Stakeholders in Michigan have pursued the development of a penny plan which would apply a 1-cent fee to all retail (not business-to-business) transactions over \$2 (fuel, utilities, vended products, prescriptions, services, and retailers; under 24,000 transactions per year are exempt). Estimates are that the program could raise \$40 million annually, but that the funds would be targeted toward increasing comprehensive recycling statewide.

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<sup>5</sup> Based on search of state websites.

Iowa passed a similar ballot measure in November 2010 that allows for 3/8ths of one cent to be used in support of the Natural Resources and Outdoor Recreation Trust Fund. This would establish permanent revenue for natural resources and outdoor recreational programs in the state. It was reported that this would generate about \$150 million a year (BallotPedia 2011).

Another type of special fee option is a check-off program, in which a taxpayer “checks off” a contribution to state programs on the state personal income tax form. These have become popular over the last few decades as a means of providing revenue for both government and not-for-profit sponsored activities. The most common check-off programs provide funding to preserve nongame wildlife, with 35 states including this program on their individual income tax forms. Only seven jurisdictions with check-off programs—Arkansas, Hawaii, Maryland, Michigan, Missouri, West Virginia, and the District of Columbia—do not have nongame wildlife check-offs (Federation of Tax Administrators 2003).

Some of the advantages of using special purpose or transaction fee systems to fund the wetland program include the following:

- This could be a significant and steady source of funding for the wetlands program.
- Transaction fee programs spread the costs for the program across residents and visitors, all of whom benefit directly and indirectly from healthy wetlands in Michigan.

Some of the drawbacks of this approach are:

- There is not a big appetite for increased or new fees and taxes in Michigan right now.
- Generally, programs like a check-off program have been used more like bond programs for on-the-ground, asset-based projects such as land purchases and restoration. There may not be public enthusiasm for utilizing the funds to support wetland regulatory operating expenses.
- Program design and administration for retailer-based programs could be complicated to administer.

#### *Related permit/license fees*

The state could also consider increasing fees on related permits that affect (or are affected by) healthy wetlands. For example, Michigan could impose a modest increase in fishing license fees that could be directed toward the wetland protection program. Given the significant connection between the role of wetlands and protection of a healthy, robust fish population in our state, this type of fee increase is logical.

Currently, our recreational fishing license fees average \$17.33 for residents and \$18.04 for out-of-state visitors, and are among the lowest in the nation. Increasing fishing license fees by even \$0.50/license could generate over \$600,000 a year (based on numbers of in- and out-of-state permits issued in 2010) (Alexander 2011).

Other states including Oregon, California, Alaska, and Washington have also used commercial and sport-fishing landing taxes to fund natural resource and fisheries related programs in their states. Although none appear to use funds for wetlands protection or regulation, they have directed revenue from these programs to specific funds (for example, California’s Fish and Game Preservation Fund). This type of tax may not be as applicable in Michigan which does not have as big a commercial fishing sector as the other coastal states.

Another related permit/license fee option used by many states is the use of specialty license plates to fund natural resource protection. Michigan currently offers 27 specialty

license plates, including fundraising plates for agricultural heritage, Boy Scouts of America, Children's Trust Fund, lighthouse preservation, veterans memorial, water quality, wildlife habitat, the Northern Michigan University Olympic Education Center, and disaster relief through the American Red Cross and Salvation Army. Funds from the water quality plates are administered by the MDEQ and provide grants to local units of government to protect Michigan's waterways. The wildlife habitat plate revenues are deposited into the Michigan Nongame Fish and Wildlife Trust Fund to restore populations of endangered and threatened species through management and protection, and to promote appreciation and awareness of Michigan's nongame wildlife and endangered species through education and first-hand opportunities to experience wildlife. Almost all states utilize some types of specialty license plates to generate revenue for various organizations or issues, including more than two dozen states that have natural resource and/or wildlife conservation-related plates.<sup>6</sup>

Some of the benefits of using related permit or license fees to more substantially support the wetland program include the following:

- Commercial and recreational fishing sectors benefit directly from having healthy, abundant wetlands in our state. Tying increased fishing license fees or commercial fishing landing taxes to these benefits helps share the cost of the program with people who particularly benefit from the resource.
- Specialty license plate fees are already an established system for raising related funds, and could be implemented fairly easily.

However, there are also significant challenges to utilizing these types of funding sources, for example:

- The state has considered raising fishing license fees in the past to fund fisheries programs, and was met with substantial opposition. It might be very politically challenging to get an increase in fishing license fees.
- If a fee increase could be achieved, there would likely be significant pressure to use the funds more directly for fishery improvements (such as stocking, population monitoring).
- Michigan does not have a substantial commercial fishery like some of the west coast and gulf coast states that employ a commercial landing tax, so this is unlikely to be a significant and steady source of revenue for the wetlands program.
- There have been increasing concerns regarding the expansion of specialty plates due to potential safety and law enforcement issues caused by having numerous types of license plates within a state.

#### *Real Estate Transfer Tax or Deed Recording Fees*

Another potential funding option PSC evaluated is the use of real estate transfer taxes or deed recording fees to support natural resource protection, land conservation, or wildlife preservation programs. Over the last few decades a handful of states, including Illinois, Maryland, New York, North Carolina, Pennsylvania, Tennessee, South Carolina, and Vermont have successfully used a portion of their real estate transfer taxes or deed recording fees to support these types of conservation programs (State Environmental Resource Center 2012 and CRA 1998). For example, Tennessee's Forever Green Tennessee is a real estate transfer tax program that began in 1986 to protect wetlands. It has been expanded since then and the 2011–2012 state budget includes four real estate transfer funds that will collect \$16.5 million for clean water, land

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<sup>6</sup> AZ, CA, CO, CT, FL, GA, IL, IN, MA, ME, MI, MN, MO, MS, NC, NH, NY, OH, OK, PA, SC, TX, VA, VT, WV—based on search of state websites.

conservation, recreation, and wildlife efforts, including over \$6 million for the wetland program (Tennessee Parks and Greenways Foundation 2012).

This could potentially be a steady and sustainable source of funding. However, like other options discussed above, it requires a tax increase and there is currently little appetite at the state level for using tax increases to generate revenue.

#### *Increased Federal Funding*

The state currently (FY 2012) receives about \$400,000 in federal funds for the wetland program. These come from the U.S. EPA through its WPDGs and CZMA funds that, as discussed earlier, are limited to program development activities or wetland program activities in the coastal zone.

The state could pursue expansion of federal dollars to help offset the regulatory program costs. There are two potential options here:

- Seeking additional federal funds
- Changes to existing federal funding to allow for greater flexibility

The state could seek additional funds from the U.S. Army Corps of Engineers and/or the U.S. EPA in amount equal to (or as a portion of) the costs that the federal government would incur if it was to reassume the CWA Section 404 program. An informal analysis provided to MDEQ by the Corps estimated that they would need between \$2.3 - \$3.9 million in additional funds to support 25-35 additional staff and 3-4 additional offices if they were to take back the 404 program in Michigan (Fish and Masterson 2012).

There is precedent for this type of federal support for state-assumed programs. For example, states implement the federal National Pollutant Discharge Elimination System (NPDES) on behalf of the federal government, issuing NPDES permits to applicants in their state. In addition to collection of permit fees for the management of this program, states receive a direct allocation of federal dollars to help support implementation of the NPDES regulatory program. The U.S. EPA has authorized 46 states to issue permits directly to the discharging facilities. The CWA also allows tribes to issue permits, but no tribes have been authorized by the EPA. Michigan is projected to receive over \$6 million in federal funds to implement the NPDES permit program in FY 2013—equaling almost half of that program’s budget<sup>7</sup>).

Another option is for Michigan to seek a greater portion of U.S. EPA Wetland Program Development Grants and seek a legislative fix that would allow for use of these funds for program operations. Allowing the grants to be used for operational purposes has been a topic of discussion and need for more than a decade by many states, the EPA, and other wetland protection stakeholders. Proponents argue that the states have already done significant programmatic planning with their funds over the last 30 years, and that the real need now is for utilizing those funds for on-the-ground protection and restoration efforts.

As with all of the sources of funding discussed in this report, there are pros and cons to seeking greater amounts of or more flexible federal funds to support Michigan’s wetlands program. Among the advantages:

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<sup>7</sup> Personal communication with Josh Sefton, Michigan Senate Fiscal Agency. Mr. Sefton provided a spreadsheet of MDEQ FY 2013 Executive Budget recommendations via e-mail on 3/20/12.

- Michigan is one of only two states that have assumed the CWA Section 404 program, and augmented federal support is in line with the increased program implementation responsibilities the state has by issuing permits for the federal wetland program.
- Use of augmented federal funds would broaden the base of funding sources for the program.
- This approach is in line with the model used for other federal program implementation undertaken by the states.
- Modifying the WPDG program would help give the state greater flexibility in how to use its resources—supplementing regulatory staffing and enabling the state to seek other funds for the non-regulatory portions of the program.

The challenges of this approach include the following:

- Federal budgets are under as much pressure as the states', and there is significant competition for very limited resources.
- Because of federal budget declines, this may not provide a steady source of funding over time.
- Even if the WPD grants were modified to allow for operational use, this is not a significant source of funding. In FY 2011, the budget for the WPD grants was \$15 million for all states.

#### *Foundation Support*

Finally, as part of its analysis PSC also interviewed several foundations to explore options for providing nonprofit support for the wetland program. The following people were interviewed as part of this assessment:

- Sam Passmore, Mott Foundation
- Jody Raines, Erb Foundation
- Molly Flanagan, Joyce Foundation
- Todd Hogrefe, National Fish and Wildlife Foundation
- Karen Aldridge-Eason, Michigan Office of Foundation Liaison

Each of the foundations indicated that their organization has an interest in wetlands protection, but that they don't fund operational costs of local or state governments. All the organizations said their natural resource funding portfolio is focused more on policy assessments, program planning, and governance models, as well as some on-the-ground restoration or land purchase projects.

In discussing creative funding options for the states, several groups said that work they fund could be used for efforts that underpin or support the regulatory program. For example, they might provide funding to local communities or watersheds for wetland monitoring or mapping/identification. If that data could be better utilized by the state to make the permitting decisions more efficient and effective, that funding would indirectly support the wetland program. PSC also asked foundations about whether and how they might help support other (non-regulatory) elements of the program. Again, several said that they currently do or could support activities that indirectly support the wetland program such as developing models for local resource protection partnerships or supporting collaborative programs for related activities such as restoration and land purchase. The Erb Foundation, Office of Foundation Liaison, and National Fish and Wildlife Foundation all mentioned the possibility of working with the Great Lakes Funders network to see how projects funded through that collaborative might better support underlying needs of the state's regulatory program, and agreed to participate in discussions with that group as a follow-up.

In short, foundations are unlikely to provide direct funding or support to the state for its wetland program, for either regulatory or non regulatory activities. However, all seemed interested in exploring whether their work could better support the state by helping to create local capacity to manage and protect wetlands. This might offer options for the state to have access to high-quality data and information for use in permitting, and could potentially help in identification of enforcement needs.

## **SUMMARY**

The state and the Wetland Advisory Council asked PSC to evaluate funding options and try to identify any innovative, sustainable, and long-term sources of funding for the wetland program. Not surprisingly, PSC did not find any magic “silver bullet” for funding the program in its review. The state has taken a layered approach to funding the program for many years, and will probably need to continue that path for the immediate and longer-term future due to state and federal funding constraints and political realities. It is the approach used by most other states for their wetland and other water resources programs.

While all of the approaches described above offer some potential opportunities, they each have some significant sustainability and political feasibility challenges. In evaluating the potential options for future funding, the state will have to weigh some of the trade-offs identified above with the benefits of each particular source of funding.

Exhibit 9 below summarizes the recommended options as well as other approaches evaluated in terms of their long-term, sustainable capacity and political feasibility in order to highlight some of these trade-offs. The recommended approach of using unclaimed Bottle Deposit Funds with a moderate fee increase and continued MDOT and federal funding balances the need for longer-term, sustainable funding with current political feasibility.

Ultimately, these trade-offs will have to be balanced and the state will need to be both flexible and proactive in its approach to advocating for additional funds for the wetland program. The program has made significant efficiency strides in the last several years, and additional streamlining and efficiencies will be gained by some of the initial recommendations of the Council. Whichever funding methods are recommended by the Council, these benefits will have to be strongly articulated so that all the beneficiaries (regulated community and general public) understand why the relatively modest amount of funding that the wetland program requires is so essential for resource protection and efficient economic development in Michigan.