

Legislative Analysis



CREATION OF VOLUNTARY WETLAND RESTORATION PROGRAM

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House Bill 5854 (reported from committee w/o amendment)
Sponsor: Rep. Gary Howell

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House Bill 5855 (reported from committee w/o amendment)
Sponsor: Rep. Joseph N. Bellino, Jr.

Committee: Natural Resources
Complete to 6-7-18

BRIEF SUMMARY:

House Bills 5854 and 5855 would amend Part 303 (Wetlands Protection) of the Natural Resources and Environmental Protection Act (NREPA) to create a voluntary wetland restoration permit program and to revise definitions.

Both bills are tie-barred to one another, which means that neither can take effect unless both are enacted.

Each bill would take effect 90 days after its enactment.

DETAILED SUMMARY:

Currently, Section 30312d(1) of NREPA requires the Department of Environmental Quality (DEQ) to develop a program to facilitate voluntary wetland restoration and enhancement projects with state, federal, tribal, and nongovernmental groups specializing in wetland restoration and conservation.

The bills would move this provision to a new Section 30312f, proposed by HB 5854, and would revise it to require the Department of Natural Resources (DNR) to develop a program to facilitate ***voluntary wetland restoration (VWR) projects*** with state, federal, tribal, and nongovernmental groups specializing in wetland restoration and conservation.

Voluntary wetland restoration project or ***VWR project*** would refer to activities that are undertaken on a voluntary basis to restore, rehabilitate, enhance, maintain, or manage wetlands, including, but not limited to, various types of wetlands listed under the bill to increase wetland acreage, quality, function, or value as determined by published research, case studies, or demonstration projects. VWR project would not include an activity undertaken to fulfill a federal, state, or local wetland permit mitigation requirement.

Permits

Under HB 5854, VWR projects would be permitted by the DNR through a nationwide permit issued by the Army Corps of Engineers, authorization to proceed under a general permit, a permit for a minor project category, or an individual permit. Any of the following could apply for a permit:

- A state or federal agency or nongovernmental organization whose primary stated mission, purpose, or programs include wetland conservation. For example: the DNR, the Department of Agriculture and Rural Development, the United States Fish and Wildlife Service, the United States Forest Service, the United States Department of Agriculture Natural Resources Conservation Service, or Ducks Unlimited.
- A person that is in partnership with an entity described above.

A floodplain permit under Part 31 (Water Resources Protection), a permit under Part 301 (Inland Lakes and Streams), or an environmental area permit under Part 323 (Shorelands Protection and Management) would not be required for VWR project activities undertaken to restore an area that was historically a wetland.

VWR project scope

A VWR project could include numerous activities listed under HB 5854, such as the removal of accumulated sediments, modification of stream beds or banks, placement of in-stream habitat structures, construction of small nesting islands, soil manipulation, and the reestablishment of vegetation, including submerged aquatic vegetation. However, the bill would prohibit a VWR project from including the planting of nonnative plant species.

The VWR project permit regulation would not apply to the following activities if conducted by a person or organization who is able to apply for a VWR project permit:

- Management of wetland water levels for any of the following purposes under a site area management plan:
 - To manage fish or wildlife habitat.
 - To prevent or control invasive species.
 - To benefit threatened and endangered species.
- Maintenance or repair activities to sustain wetland values or functions, fish or wildlife habitat, or related outdoor recreation access.

However, the above exemption would not apply to rare and imperiled wetland unless the wetland was under active management pursuant to a plan adopted by a state or federal agency.

DNR duties

For a VWR project authorized under the new section, the DNR would be required to issue the following:

- A water quality certification under Section 401, Title IV of the federal Water Pollution Control Act (33 USC 1341), within 30 days after receipt of an application for certification.

- A notification of concurrence with a coastal zone management constituency determination provided to the DNR by an applicant for a federal license or permit under Section 307 of the federal Coastal Zone Management Act (16 USC 1456), within 30 days after the receipt of the consistency determination.

The DNR would also be required to consult with the DEQ in the administration and enforcement of the proposed Section 30312f.

Other provisions

Compensatory mitigation would not be required for a project activity that results in a net increase in wetland acres, functions, or values.

A project in an ***altered wetland*** or ***degraded wetland*** may change wetland vegetation or type as a result of reestablishing hydrology, emulating a preexisting hydrology, meeting habitat requirements or species, or restoring, developing, rehabilitating, enhancing, maintaining, or managing habitats of special concern. HB 5855 would add definitions to Part 303 for these kinds of wetlands:

Altered wetland would mean a wetland in which vegetation, soil, hydrology, or any combination thereof have been sufficiently altered by human activities or natural events as to adversely affect the functions and values of the wetland.

Degraded wetland would mean either a wetland in which there is excessive drainage or impaired surface water flow or groundwater hydrology or a wetland that has been partially filled or excavated, contaminated with hazardous substances, or infested with invasive species or the ecological value of which has been substantially reduced.

Rules promulgated under Part 303 by the DEQ before the effective date of HB 5854 would pertain to VWR projects except to the extent that they conflict with the proposed Section 30312f or are superseded by rules promulgated by the DNR for the purposes of that section.

House Bill 5855 would further amend the following definitions:

- ***Fill material*** would include a specific exemption stating that uncontaminated water is not fill material.
- ***Former wetland*** would mean land that has been modified to the point that it no longer has the hydrologic characteristics of a wetland.

HB 5855 also would revise many other definitions used in Part 303.

MCL 324.30312d and proposed MCL 342.30312f (HB 5854)
MCL 324.30301 (HB 5855)

FISCAL IMPACT:

It is unclear whether House Bill 5854 would affect revenues for the Department of Natural Resources or the Department of Environmental Quality. The bill would require the DNR to issue a federal water quality certification, a notice of concurrence with the federal Coastal Zone Management Act, and an exemption from a floodplain permit/environmental area permit issued by the state for authorized voluntary wetland restoration (VWR) projects. It is unclear how many VWR projects would be authorized under the bill and therefore be required to receive the aforementioned issuances. Consequently, the level of lost permit or fee revenue is uncertain at this time.

Similarly, the extent of new costs realized by the DNR in the course of VWR program administration is uncertain. The department may incur additional administrative costs and is required to consult with the DEQ on program administration and enforcement. The bill is unlikely to have a fiscal impact on local units of government.

House Bill 5855 would have no fiscal impact on the DNR or local units of government.

POSITIONS:

Representatives of the following entities testified in support of the bills:

- Ducks Unlimited (5-9-18 and 5-16-18)
- Michigan United Conservation Clubs (5-9-18 and 5-16-18)
- Clay Township, Michigan (5-9-18)

The following entities indicated support for the bills:

- St. Clair River Public Advisory Council (5-9-18)
- National Wildlife Federation, Great Lakes Region (5-9-18)
- Upper Peninsula Sportsmen's Alliance (5-9-18)
- Michigan Steelhead and Salmon Fishermen's Association (5-9-18)
- National Wild Turkey Federation (5-9-18)
- Upper Black River Council (5-9-18)
- Straits Area Sportsmen's Club (5-9-18)
- Six Rivers Land Conservancy (5-16-18)

Representatives of the following entities testified in opposition to the bills:

- Department of Environmental Quality (5-16-18)
- Department of Natural Resources (5-16-18)
- Michigan Environmental Council (5-16-18)

The Michigan League of Conservation Voters indicated opposition to the bills. (5-16-18)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.