

# Legislative Analysis



## VOLUNTARY WETLAND RESTORATION PROGRAM

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**House Bill 5854 as enacted**  
**Public Act 561 of 2018**  
**Sponsor: Rep. Gary Howell**

Analysis available at  
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**House Bill 5855 as enacted**  
**Public Act 562 of 2018**  
**Sponsor: Rep. Joseph N. Bellino, Jr.**

**House Committee: Natural Resources**  
**Senate Committee: Natural Resources**  
**Complete to 7-11-19**

### SUMMARY:

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

Section 30312d(1) of NREPA required the Department of Environmental Quality (now the Department of Environment, Great Lakes, and Energy, known as EGLE) 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 move this provision to a new section 30312f, added by HB 5854. EGLE is still tasked with developing a program to facilitate ***voluntary wetland restoration (VWR) projects*** with state, federal, tribal, and nongovernmental agencies and organizations specializing in wetland restoration and conservation. EGLE is also tasked with convening those agencies and organizations at least four times a year to review the program, suggest and develop improvements, and provide training and guidance in VWR.

House Bill 5855 defines the following terms, used throughout the bills:

***Voluntary wetland restoration project*** or ***VWR project*** means activities that are voluntarily undertaken to restore, reestablish, rehabilitate, or enhance ***altered or degraded wetland*** or ***former wetland*** and that result in a ***net increase in wetland functions and services***. VWR projects also include activities to maintain or manage sites where the previously stated activities have taken place, including sites restored before October 1, 1980 (the effective date of former 1979 PA 203). A VWR project does not include an activity undertaken to fulfill, currently or in the future, a federal, state, or local wetland permit mitigation requirement.

***Altered or degraded wetland*** means wetland that meets any of the following:

- It has been partially or fully drained, as by ditching, tiling, or pumping.
- It has been partially or fully filled by direct placement of material in the wetland or significant sedimentation.
- Invasive plant species dominate in a majority of the vegetated surface area of the wetland.
- It has undergone land use conversion or alteration to vegetation, soil, or hydrology that currently affects the wetland functions and services.

***Former wetland*** means land that was wetland but that has been modified to the point that it no longer has the hydrologic characteristics of wetland.

***Net increase in wetland functions and services*** means an increase in one or more ***wetland functions and services*** with not more than a minimal decrease in other wetland function and services.

***Wetland functions and services*** means any of the following:

- Wetland hydrology that approximates the predisturbance condition or that emulates the natural condition of the wetland.
- Fish and wildlife habitat quality or quantity.
- Plant community quality, characterized by native vegetation types and diversity.
- Water- and soil-related functions of the wetland, such as nutrient removal, sediment retention, flood control, or groundwater recharge.
- Recreational use of the wetland, such as fishing, hunting, trapping, and birdwatching.

### **Voluntary Wetland Restoration Group**

Under HB 5854, EGLE and the Department of Natural Resources (DNR) must develop and lead a VWR group to simplify and streamline the permit process for VWR projects to give greater credence and flexibility to agencies and organizations specializing in wetland restoration and conservation. The group must consist of designated staff from EGLE and the DNR working in collaboration on the review of permit applications. The group must seek input from the agencies and organizations specializing in wetland restoration and conservation before developing VWR permit applications and guidelines for implementing a VWR permit program. The group must also review VWR permit applications, as outlined below.

### **Permit Categories**

EGLE, in cooperation with the DNR and VWR agencies and organizations, must develop new or modified general permit or minor project categories for VWR projects that address the scope and intent of the new section 30312f.

### **Permit Preapplication**

Eligible VWR permit applicants are exempted from a preapplication meeting fee under section 30306b. A preapplication meeting with a VWR group will evaluate overall net increases in wetland functions and services and acreage to make an outcome-based assessment of a VWR project. A preapplication meeting may include any of the following:

- Presentation of project outcomes related to net increases in wetland functions and services and project purposes and justifications.
- Suggestions that will minimize permitting delays, including information needed for permit application review.
- Options for maximizing net increases in wetland functions and services while minimizing other impacts.
- Coordination with the Environmental Protection Agency (EPA), Army Corps of Engineers, and U.S. Fish and Wildlife Service, if applicable.

### **Eligible Applicants**

Any of the following may apply for a VWR project permit:

- A state or federal agency, including the DNR, the U.S. Fish and Wildlife Service, the U.S. Forest Service, and the U.S. Department of Agriculture, Natural Resources Conservation Service.
- A tribal agency.
- A nongovernmental organization whose primary stated mission, purpose, or programs include wetland conservation.
- A person that is in partnership through a written agreement with an entity described above.

### **Permit Application Process**

Within 30 days after receiving a VWR project permit application, the VWR group must review the application and do one of the following:

- Notify the applicant of the status of the application.
- Recommend (to EGLE) issuance of a permit.
- If the application is not administratively complete, request additional information from the applicant to make it administratively complete as provided in Part 13 (Permits).

If EGLE has not made a permit decision within 60 days after an application is considered administratively complete, then, at the request of the applicant, any conflict must be mediated by the Joint Agency Restoration Committee. This committee, which the bill requires EGLE to create, consists of the directors of EGLE, the DNR, and the Office of the Great Lakes (OGL) or their designees. After mediation by the committee, an applicant may request further review under the Administrative Procedures Act.

Part 13 permitting rules apply to a VWR permit application, except for sections 1313 to 1317 (permit review). Applicable time periods under Part 13 and section 30312f run at the same time. EGLE, the VWR group, and the Joint Agency Restoration Committee must expedite permit review for VWR projects to the extent possible.

### **Net Increase in Wetland Functions and Services**

In reviewing a permit application for a VWR project, the VWR group must evaluate the net increase in wetland functions and services from the project. An applicant must provide justification for the asserted net increase in wetland functions and services based on federal or state agency programmatic authority, published research, case studies, ecological reference, demonstration projects, or federal, regional, or statewide wetland or wildlife restoration and management plans.

EGLE must issue a permit for a VWR project that contributes to a net increase in wetland functions and services and meets the requirements of Part 303 and of section 404 of Title IV of the federal Water Pollution Control Act (33 USC 1344). EGLE cannot require compensatory mitigation for VWR project activities that result in a net increase in wetland functions and services.

### **Permit Exemptions**

A permit is not required for VWR activities that meet either of the following:

- The section 30305(2)(f) exemption for maintenance or operation of serviceable structures, which includes management of water levels using serviceable structures.
- The section 30305(2)(n) exemption for operation or maintenance of serviceable dikes and levees.

### **VWR Project Scope**

A VWR project may include any of the following activities in altered or degraded wetland or previously restored wetland if the activity results in a net increase in wetland functions and services:

- Removing accumulated sediments.
- Installing, maintaining, or removing water control structure, dikes, and berms.
- Installing water supply devices.
- Removing drainage structures (such as drain tiles) and reworking drainage ditches to restore wetland hydrology.
- Installing structures or fills to restore or enhance wetland hydrology.
- Construction of open water areas.
- Establishing or reestablishing native vegetation.
- Reestablishing submerged aquatic vegetation.
- Removing nonnative or invasive vegetation.
- Installing nesting structures and islands, reestablishing topography, and other activities related to a specific wetland habitat or species conservation practices.
- Installing and removing temporary coffer dams, soil mats, and other devices used during VWR construction activities.
- Constructing facilities that increase recreational access (such as a parking lot or boat ramp). However, this alone is not an increase in wetland functions and services.

All of the following apply to a VWR project:

- A change in wetland plant communities that occurs when wetland hydrology is more fully restored during VWR activities is not considered a conversion to another aquatic habitat type.

- The placement of fill in an area of altered or degraded wetland is not considered a loss of wetland if that area continues to be wetland as defined in Part 303.
- VWR projects or activities are not considered a major discharge as defined in the memorandum of agreement between the EPA and EGLE under section 404 of Title IV of the federal Water Pollution Control Act (33 USC 1344), upon approval by the EPA of an amendment to that memorandum.

HB 5854 specifically excludes former wetland from being regulated under Part 303, unless the wetland was modified in violation of Part 303 or former 1979 PA 203.

HB 5854 took effect April 27, 2019, and HB 5855 took effect March 28, 2019.

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

### **FISCAL IMPACT:**

It is unclear whether House Bill 5854 would affect costs for the DNR or EGLE. The extent of new costs realized by the DNR and EGLE in the course of VWR program administration is uncertain. The departments may incur additional administrative costs and would be required to consult with each other 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, EGLE, or local units of government.

Legislative Analyst: Emily S. Smith  
Fiscal Analyst: Austin Scott

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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.