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BILL ANALYSIS



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House Bill 5854 and 5855 (as passed by the House)
Sponsor: Representative Gary Howell (H.B. 5854)
Representative Joseph N. Bellino, Jr. (H.B. 5855)
House Committee: Natural Resources
Senate Committee: Natural Resources

Date Completed: 11-8-18

CONTENT

House Bill 5854 would amend Part 303 (Wetlands Protection) of the Natural Resources and Environmental Protection Act to do the following:

- **Require the Department of Natural Resources (DNR), instead of the Department of Environmental Quality (DEQ), to develop a program to facilitate voluntary wetland restoration (VWR) projects.**
- **Allow a State or Federal agency, certain nongovernmental organizations, or a person in partnership with such an entity to apply for a VWR project permit.**
- **Specify that a VWR project could include certain activities, such as the removal of accumulated sediments, the installation of current deflectors, and the construction of small nesting islands or open water areas.**
- **Require the DNR to issue certain documents or notifications for a VWR project authorized under the bill.**
- **Require the DNR to consult with the DEQ in the administration and enforcement of the bill.**

House Bill 5855 would amend Part 303 of the Natural Resources and Environmental Protection Act to revise definitions related to wetlands and wetlands restoration.

House Bills 5854 and 5855 are tie-barred. Each bill would take effect 90 days its enactment.

House Bill 5854

Voluntary Wetland Restoration Projects

Part 303 requires the DEQ to develop a program to facilitate ecologically responsible voluntary wetland restoration and enhancement projects in coordination with State, Federal, tribal, and nongovernmental groups specializing in wetland restoration and conservation. The program must include enhancing coordination, consistency, and operational procedures and improving and streamlining the permitting process, to facilitate a net gain in wetland quantity, quality, or both.

Under the bill, the DNR would have to develop a program to facilitate VWR projects in coordination with State, Federal, tribal, and nongovernmental groups specializing in wetland restoration and conservation. The program would have to include enhancing coordination,

consistency, and operational procedures and improving and streamlining the permitting process, to facilitate a net gain in wetland quantity or quality, or both.

Permits

The DNR would have to permit VWR projects through one or more of the following:

- A nationwide permit.
- Authorization to proceed under a general permit.
- A permit for a minor project category.
- An individual permit.

Any of the following could apply for a permit under Part 303, including authorization to proceed under a general permit, for a VWR project:

- A State or Federal agency or nongovernmental organization whose primary stated mission, purpose, or programs included wetland conservation, such as 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 who was in partnership with one of these entities.

Project Scope

A VWR project could include any of the following activities:

- The removal of accumulated sediments.
- The installation, removal, and maintenance of water control structures, dikes, and berms, as well as discharges of dredged or fill material to restore appropriate channel configurations after small water control structures, dikes, and berms were removed.
- The installation of current deflectors.
- The enhancement, rehabilitation, or reestablishment of riffle and pool stream structures.
- The placement of in-stream habitat structures.
- Modifications of stream beds or banks to enhance, rehabilitate, or reestablish stream meanders.
- The removal of stream barriers, such as undersized culverts, fords, or grade control structures.
- The backfilling of artificial channels.
- The removal of drain tiles or other drainage structures and the filling, blocking, or reshaping of drainage ditches to restore wetland hydrology.
- The installation of structures or fills necessary to restore or enhance wetland or stream hydrology.
- The construction of small nesting islands.
- The construction of open water areas.
- Activities needed to reestablish vegetation, including plowing or disking for seed bed preparation and the planting of appropriate wetland species.
- Reestablishment of submerged aquatic vegetation.
- Mechanized land clearing to remove nonnative invasive, exotic, or nuisance vegetation.
- Installation of nesting structures and islands, micro and macro topography reestablishment, dredging, soil manipulation, contouring, disking, and other activities related to a specific wetland habitat or species conservation practice.

A VWR project could not include the planting of nonnative plant species.

If conducted by an entity authorized to proceed under a VWR project permit, the maintenance or repair activities to sustain wetland values or functions, fish or wildlife habitat, or related outdoor recreation access would not be subject to permit regulation under Part 303. Also, if conducted by an entity to proceed under a VWR project permit, the management of wetland water levels for any of the following purposes would not be subject to permit regulation under Part 303:

- To manage fish or wildlife habitat under a site area management plan.
- To prevent or control invasive species under a site area management plan.
- To benefit threatened and endangered species under a site area management plan.

These exceptions 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.

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

A VWR project in altered wetland or degraded wetland could change wetland vegetation or wetland type as a result of reestablishing hydrology, emulating a preexisting hydrology, meeting habitat requirements of species, or restoring, developing, rehabilitating, enhancing, maintaining, or managing habitats of special concern.

DNR Responsibilities

For a VWR project authorized under the bill, the DNR would have to issue the following:

- A water quality certification under the Federal Water Pollution Control Act, within 30 days after the DNR received an application for certification.
- A notification of concurrence with a coastal zone management consistency determination provided to the DNR by an applicant for a Federal license or permit under the Coastal Zone Management Act, within 30 days after the DNR received the consistency determination.

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 wetland.

Enforcement

Rules promulgated under Part 303 by the DEQ before the bill's effective date would pertain to VWR projects except to the extent that they would be in conflict with the bill or superseded by rules promulgated by the DNR for the purposes of the bill.

The DNR would have to consult with the DEQ in the administration and enforcement of the bill.

House Bill 5855

"Altered wetland" would mean 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 of the following:

- Wetland in which there is excessive drainage or impaired surface water flow or groundwater hydrology.
- 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.

Under Part 303, "fill material" means soil, rocks, sand, waste of any kind, or any other material that displaces soil or water or reduces water retention potential. The bill specifies that uncontaminated water would not be fill material.

"Former wetland" would mean land that had been modified to the point that it no longer had the hydrologic characteristics of a wetland.

"Voluntary wetland restoration project" or "VWR project" would mean activities that are undertaken on a voluntary basis to restore, rehabilitate, enhance, maintain, or manage wetlands, including altered wetland, degraded wetland, or former wetland, to increase wetland acreage, quality, function, or value as determined by published research, case studies, or demonstration projects. The term would not include an activity undertaken to fulfill, currently or in the future, a Federal, State, or local wetland permit mitigation requirement.

Under Part 303, "wetland" means land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp, or marsh, and which is any of the following:

- Contiguous to the Great Lakes or Lake St. Clair, an inland lake or pond, or a river or stream.
- Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream; and more than five acres in size.
- Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream; and five acres or less in size if the DNR determines that protection of the area is essential to the preservation of the natural resources of the State from pollution, impairment, or destruction and the Department has so notified the owner.

Under the bill, "wetland" would mean land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp, or marsh, and to which any of the following apply:

- It is contiguous to the Great Lakes or Lake St. Clair, an inland lake or pond, or a river or stream.
- It is more than five acres in size.
- The protection of the area is determined by the DNR to be essential to the preservation of the natural resources of the State from pollution, impairment, or destruction and the Department has so notified the owner.

MCL 324.30312d et al. (H.B. 5854)
324.30301 (H.B. 5855)

Legislative Analyst: Nathan Leaman

FISCAL IMPACT

The bills likely would have a negative fiscal impact on the Department of Natural Resources (DNR), and no fiscal impact on local units of government. The DNR would incur new,

indeterminate costs from the administration of voluntary wetland restoration (VWR) project permits and any necessary enforcement actions. These costs are indeterminate, as the number of VWR project permits that would be sought is unknown.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.