

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5855

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 30301 (MCL 324.30301), as amended by 2012 PA
247.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 30301. (1) As used in this part:
- 2 (a) "Department" means the department of environmental
- 3 quality.
- 4 (b) "Director" means the director of the department.
- 5 (c) "Exceptional wetland" means wetland that provides physical
- 6 or biological functions essential to the natural resources of ~~the~~
- 7 **THIS** state and that may be lost or degraded if not preserved
- 8 through an approved site protection and management plan for the
- 9 purposes of providing compensatory wetland mitigation.

1 (d) "Fill material" means soil, rocks, sand, waste of any
2 kind, or any other material that displaces soil or water or reduces
3 water retention potential.

4 (e) "Landscape level wetland assessment" means the use of
5 aerial photographs, maps, and other remotely sensed information to
6 predict and evaluate wetland characteristics and functions in the
7 context of all of the following:

8 (i) The wetland's landscape position and hydrologic
9 characteristics.

10 (ii) The surrounding landscape.

11 (iii) The historic extent and condition of the wetland.

12 (f) "Minor drainage" includes ditching and tiling for the
13 removal of excess soil moisture incidental to the planting,
14 cultivating, protecting, or harvesting of crops or improving the
15 productivity of land in established use for agriculture,
16 horticulture, silviculture, or lumbering.

17 (g) "Nationwide permit" means a nationwide permit issued by
18 the United States ~~army corps of engineers~~ **ARMY CORPS OF ENGINEERS**
19 under ~~72 FR 11091 to 11198 (March 12, 2007),~~ **82 FR 1860 TO 2008**
20 **(JANUARY 6, 2017)**, including all general conditions, regional
21 conditions, and conditions imposed by this state pursuant to a
22 water quality certification under section 401 of title IV of the
23 federal water pollution control act, 33 USC 1341, or a coastal zone
24 management consistency determination under section 307 of the
25 coastal zone management act of 1972, 16 USC 1456.

26 (h) "Ordinary high-water mark" means the ordinary high-water
27 mark as specified in section 32502.

1 (i) "Person" means an individual, sole proprietorship,
2 partnership, corporation, association, municipality, this state, an
3 instrumentality or agency of this state, the federal government, an
4 instrumentality or agency of the federal government, or other legal
5 entity.

6 (j) "Rapid wetland assessment" means a method for generally
7 assessing the functions, values, and condition of individual
8 wetlands based on existing data and field indicators.

9 (k) "Rare and imperiled wetland" means any of the following:

10 (i) Great Lakes marsh.

11 (ii) Southern wet meadow.

12 (iii) Inland salt marsh.

13 (iv) Intermittent wetland or boggy seepage wetland.

14 (v) Coastal plain marsh.

15 (vi) Interdunal wetland.

16 (vii) Lakeplain wet prairie.

17 (viii) Lakeplain wet-mesic prairie.

18 (ix) Northern wet-mesic prairie.

19 (x) Wet-mesic prairie.

20 (xi) Wet prairie.

21 (xii) Prairie fen.

22 (xiii) Northern fen.

23 (xiv) Patterned fen.

24 (xv) Poor fen.

25 (xvi) Muskeg.

26 (xvii) Rich conifer swamp.

27 (xviii) Relict conifer swamp.

1 (xix) Hardwood-conifer swamp.

2 (xx) Northern swamp.

3 (xxi) Southern swamp.

4 (xxii) Southern floodplain forest.

5 (xxiii) Inundated shrub swamp.

6 (l) "Water dependent" means requiring access or proximity to
7 or siting within an aquatic site to fulfill its basic purpose.

8 (m) "Wetland" means land characterized by the presence of
9 water at a frequency and duration sufficient to support, and that
10 under normal circumstances does support, wetland vegetation or
11 aquatic life, and is commonly referred to as a bog, swamp, or
12 marsh, and which is any of the following:

13 (i) Contiguous to the Great Lakes or Lake St. Clair, an inland
14 lake or pond, or a river or stream.

15 (ii) Not contiguous to the Great Lakes, an inland lake or
16 pond, or a river or stream; and more than 5 acres in size.

17 (iii) Not contiguous to the Great Lakes, an inland lake or
18 pond, or a river or stream; and 5 acres or less in size if the
19 department determines that protection of the area is essential to
20 the preservation of the natural resources of ~~the~~ **THIS** state from
21 pollution, impairment, or destruction and the department has so
22 notified the owner.

23 (2) The department and local units of government shall apply
24 the technical wetland delineation standards set forth in the United
25 States ~~army corps of engineers~~ **ARMY CORPS OF ENGINEERS** January 1987
26 ~~wetland delineation manual, technical report~~ **"WETLAND DELINEATION**
27 **MANUAL, TECHNICAL REPORT"** Y-87-1, and appropriate regional United

1 States ~~army corps of engineers~~ **ARMY CORPS OF ENGINEERS** supplements,
2 in identifying wetland boundaries under this part, including, but
3 not limited to, section 30307.

4 (3) AS USED IN SECTION 30312F:

5 (A) "ALTERED OR DEGRADED WETLAND" MEANS WETLAND THAT MEETS ANY
6 OF THE FOLLOWING CRITERIA:

7 (i) HAS BEEN PARTIALLY OR FULLY DRAINED, SUCH AS BY DITCHING,
8 TILING, OR PUMPING.

9 (ii) HAS BEEN PARTIALLY OR FULLY FILLED BY DIRECT PLACEMENT OF
10 MATERIAL IN THE WETLAND OR SIGNIFICANT SEDIMENTATION.

11 (iii) INVASIVE PLANT SPECIES DOMINATE IN A MAJORITY OF THE
12 VEGETATED SURFACE AREA OF THE WETLAND.

13 (iv) HAS UNDERGONE LAND USE CONVERSION OR ALTERATION TO
14 VEGETATION, SOIL, OR HYDROLOGY THAT CURRENTLY AFFECTS THE WETLAND
15 FUNCTIONS AND SERVICES.

16 (B) "FORMER WETLAND" MEANS LAND THAT WAS WETLAND BUT THAT HAS
17 BEEN MODIFIED TO THE POINT THAT IT NO LONGER HAS THE HYDROLOGIC
18 CHARACTERISTICS OF WETLAND.

19 (C) "NET INCREASE IN WETLAND FUNCTIONS AND SERVICES" MEANS AN
20 INCREASE IN 1 OR MORE WETLAND FUNCTIONS AND SERVICES WITH NOT MORE
21 THAN A MINIMAL DECREASE IN OTHER WETLAND FUNCTIONS AND SERVICES.

22 (D) "VOLUNTARY WETLAND RESTORATION PROJECT", SUBJECT TO
23 SUBDIVISION (E), MEANS ANY OF THE FOLLOWING:

24 (i) ACTIVITIES THAT ARE VOLUNTARILY UNDERTAKEN TO RESTORE,
25 REESTABLISH, REHABILITATE, OR ENHANCE ALTERED OR DEGRADED WETLAND
26 OR FORMER WETLAND AND THAT RESULT IN A NET INCREASE IN WETLAND
27 FUNCTIONS AND SERVICES.

(ii) ACTIVITIES TO MAINTAIN OR MANAGE SITES WHERE ACTIVITIES DESCRIBED IN SUBPARAGRAPH (i) HAVE TAKEN PLACE, INCLUDING SITES RESTORED BEFORE OCTOBER 1, 1980, THE EFFECTIVE DATE OF FORMER 1979 PA 203.

(E) VOLUNTARY WETLAND RESTORATION PROJECT DOES NOT INCLUDE AN ACTIVITY UNDERTAKEN TO FULFILL, CURRENTLY OR IN THE FUTURE, A FEDERAL, STATE, OR LOCAL WETLAND PERMIT MITIGATION REQUIREMENT.

(F) "WETLAND FUNCTIONS AND SERVICES" MEANS ANY OF THE FOLLOWING:

(i) WETLAND HYDROLOGY THAT APPROXIMATES THE PREDISTURBANCE CONDITION OR THAT EMULATES THE NATURAL CONDITION OF THE WETLAND.

(ii) FISH AND WILDLIFE HABITAT QUALITY OR QUANTITY.

(iii) PLANT COMMUNITY QUALITY, CHARACTERIZED BY NATIVE VEGETATION TYPES AND DIVERSITY.

(iv) WATER- AND SOIL-RELATED FUNCTIONS OF THE WETLAND, SUCH AS NUTRIENT REMOVAL, SEDIMENT RETENTION, FLOOD CONTROL, OR GROUNDWATER RECHARGE.

(v) RECREATIONAL USE OF THE WETLAND, INCLUDING, BUT NOT LIMITED TO, FISHING, HUNTING, TRAPPING, AND BIRDWATCHING.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

Enacting section 2. This amendatory act does not take effect unless House Bill No. 5854 of the 99th Legislature is enacted into law.