

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5854

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 30312d (MCL 324.30312d), as amended by 2013 PA
98, and by adding section 30312f.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 30312d. ~~(1) The department shall develop a program to~~
2 ~~facilitate ecologically responsible voluntary wetland restoration~~
3 ~~and enhancement projects in coordination with state, federal,~~
4 ~~tribal, and nongovernmental groups specializing in wetland~~
5 ~~restoration and conservation. The program shall include, but not be~~
6 ~~limited to, enhancing coordination, consistency, and operational~~
7 ~~procedures and improving and streamlining the permitting process,~~

1 ~~to facilitate a net gain in wetland quantity, quality, or both.~~
2 ~~——(2) The department shall develop a blueberry production~~
3 ~~assistance program to provide wetland delineation and~~
4 ~~preapplication services and assistance with avoidance and~~
5 ~~minimization. The department shall coordinate this program with the~~
6 ~~department of agriculture and rural development. The department~~
7 ~~shall also provide education and outreach on wetland regulations~~
8 ~~and agricultural activities and assist interested parties with the~~
9 ~~development of wetland mitigation banks for the purpose of~~
10 ~~providing required compensatory mitigation for agricultural~~
11 ~~impacts.~~

12 **SEC. 30312F. (1) THE LEGISLATURE FINDS THAT VOLUNTARY**
13 **RESTORATION OF ALTERED OR DEGRADED WETLAND OR FORMER WETLAND BY**
14 **QUALIFIED AGENCIES AND ORGANIZATIONS HELPS TO RESTORE LOST WETLAND**
15 **FUNCTIONS AND SERVICES, AND IS THEREFORE VALUABLE TO THE PEOPLE OF**
16 **THIS STATE. ACCORDINGLY, THE DEPARTMENT SHALL DEVELOP A PROGRAM TO**
17 **FACILITATE VOLUNTARY WETLAND RESTORATION PROJECTS IN COORDINATION**
18 **WITH STATE, FEDERAL, TRIBAL, AND NONGOVERNMENTAL AGENCIES AND**
19 **ORGANIZATIONS SPECIALIZING IN WETLAND RESTORATION AND CONSERVATION.**
20 **THE PROGRAM SHALL INCLUDE, BUT NOT BE LIMITED TO, ENHANCING**
21 **COORDINATION, CONSISTENCY, AND OPERATIONAL PROCEDURES AND IMPROVING**
22 **AND STREAMLINING THE PERMITTING PROCESS, TO FACILITATE A NET**
23 **INCREASE IN WETLAND FUNCTIONS AND SERVICES. THE DEPARTMENT SHALL**
24 **CONVENE THESE AGENCIES AND ORGANIZATIONS AT LEAST QUARTERLY TO**
25 **REVIEW THE PROGRAM, SUGGEST AND DEVELOP IMPROVEMENTS, AND PROVIDE**
26 **TRAINING AND GUIDANCE IN VOLUNTARY WETLAND RESTORATION.**

27 **(2) THE DEPARTMENT AND THE DEPARTMENT OF NATURAL RESOURCES**

1 SHALL DEVELOP AND LEAD A VOLUNTARY WETLAND RESTORATION GROUP TO
2 SIMPLIFY AND STREAMLINE THE PERMIT PROCESS FOR VOLUNTARY WETLAND
3 RESTORATION PROJECTS WITH THE INTENT OF GIVING GREATER CREDENCE AND
4 FLEXIBILITY TO AGENCIES AND ORGANIZATIONS SPECIALIZING IN WETLAND
5 RESTORATION AND CONSERVATION. THE VOLUNTARY WETLAND RESTORATION
6 GROUP SHALL CONSIST OF DESIGNATED STAFF FROM THE DEPARTMENT AND THE
7 DEPARTMENT OF NATURAL RESOURCES, WORKING IN COLLABORATION ON THE
8 REVIEW OF PERMIT APPLICATIONS. THE GROUP SHALL, AFTER SEEKING INPUT
9 FROM AGENCIES AND ORGANIZATIONS SPECIALIZING IN WETLAND RESTORATION
10 AND CONSERVATION, DEVELOP VOLUNTARY WETLAND RESTORATION PERMIT
11 APPLICATIONS AND GUIDELINES TO IMPLEMENT A VOLUNTARY WETLAND
12 RESTORATION PERMIT PROGRAM CONSISTENT WITH THIS SECTION.

13 (3) A PERMIT IS NOT REQUIRED FOR VOLUNTARY WETLAND RESTORATION
14 ACTIVITIES THAT MEET ANY OF THE FOLLOWING:

15 (A) THE SECTION 30305(2)(F) EXEMPTION FOR MAINTENANCE OR
16 OPERATION OF SERVICEABLE STRUCTURES. OPERATION OF SERVICEABLE
17 STRUCTURES AS USED IN SECTION 30305(2)(F) INCLUDES MANAGEMENT OF
18 WATER LEVELS USING SERVICEABLE STRUCTURES.

19 (B) THE SECTION 30305(2)(N) EXEMPTION FOR OPERATION OR
20 MAINTENANCE OF SERVICEABLE DIKES AND LEVEES.

21 (4) THERE IS NO FEE FOR A PREAPPLICATION MEETING UNDER SECTION
22 30306B WITH THE VOLUNTARY WETLAND RESTORATION GROUP FOR A VOLUNTARY
23 WETLAND RESTORATION PROJECT CONDUCTED WITH A PERSON DESCRIBED IN
24 SUBSECTION (5). THE PURPOSE OF SUCH A PREAPPLICATION MEETING IS AN
25 OUTCOME-BASED ASSESSMENT OF A PROJECT MADE BY EVALUATING OVERALL
26 NET INCREASES IN WETLAND FUNCTIONS AND SERVICES AND ACREAGE. SUCH A
27 PREAPPLICATION MEETING MAY INCLUDE, BUT IS NOT LIMITED TO, ANY OF

1 THE FOLLOWING:

2 (A) PRESENTATION OF PROJECT OUTCOMES RELATED TO NET INCREASES
3 IN WETLAND FUNCTIONS AND SERVICES AND PROJECT PURPOSES AND
4 JUSTIFICATIONS.

5 (B) SUGGESTIONS THAT WILL MINIMIZE PERMITTING DELAYS,
6 INCLUDING INFORMATION NEEDED FOR PERMIT APPLICATION REVIEW.

7 (C) OPTIONS FOR MAXIMIZING NET INCREASES IN WETLAND FUNCTIONS
8 AND SERVICES WHILE MINIMIZING OTHER IMPACTS.

9 (D) COORDINATION WITH THE UNITED STATES ENVIRONMENTAL
10 PROTECTION AGENCY, UNITED STATES ARMY CORPS OF ENGINEERS, AND
11 UNITED STATES FISH AND WILDLIFE SERVICE, IF APPLICABLE.

12 (5) ANY OF THE FOLLOWING PERSONS MAY APPLY FOR A PERMIT UNDER
13 THIS PART, INCLUDING AUTHORIZATION TO PROCEED UNDER A GENERAL
14 PERMIT, FOR A VOLUNTARY WETLAND RESTORATION PROJECT:

15 (A) A STATE OR FEDERAL AGENCY, INCLUDING THE DEPARTMENT OF
16 NATURAL RESOURCES, THE UNITED STATES FISH AND WILDLIFE SERVICE, THE
17 UNITED STATES FOREST SERVICE, OR THE UNITED STATES DEPARTMENT OF
18 AGRICULTURE, NATURAL RESOURCES CONSERVATION SERVICE.

19 (B) A TRIBAL AGENCY.

20 (C) A NONGOVERNMENTAL ORGANIZATION WHOSE STATED PRIMARY
21 MISSION, PURPOSE, OR PROGRAMS INCLUDE WETLAND CONSERVATION.

22 (D) A PERSON THAT IS IN PARTNERSHIP THROUGH A WRITTEN
23 AGREEMENT WITH AN ENTITY DESCRIBED IN SUBDIVISION (A), (B), OR (C).

24 (6) VOLUNTARY WETLAND RESTORATION APPLICATIONS SHALL BE
25 PROCESSED SUBJECT TO ALL OF THE FOLLOWING:

26 (A) NOT MORE THAN 30 DAYS AFTER SUBMISSION OF AN APPLICATION
27 FOR A PERMIT FOR A VOLUNTARY WETLAND RESTORATION PROJECT, THE

1 VOLUNTARY WETLAND RESTORATION GROUP SHALL REVIEW THE APPLICATION
2 AND DO 1 OF THE FOLLOWING:

3 (i) NOTIFY THE APPLICANT OF THE STATUS OF THE APPLICATION.

4 (ii) RECOMMEND ISSUANCE OF A PERMIT TO THE DEPARTMENT.

5 (iii) IF THE APPLICATION IS NOT ADMINISTRATIVELY COMPLETE,
6 REQUEST ADDITIONAL INFORMATION FROM THE APPLICANT TO MAKE THE
7 APPLICATION ADMINISTRATIVELY COMPLETE AS PROVIDED IN PART 13.

8 (B) IF THE DEPARTMENT HAS NOT MADE A PERMIT DECISION WITHIN 60
9 DAYS AFTER AN APPLICATION FOR A PERMIT IS CONSIDERED
10 ADMINISTRATIVELY COMPLETE, AT THE REQUEST OF THE APPLICANT, ANY
11 CONFLICT SHALL BE MEDIATED BY THE JOINT AGENCY RESTORATION
12 COMMITTEE CREATED UNDER SUBSECTION (9).

13 (C) THE DEPARTMENT, VOLUNTARY WETLAND RESTORATION GROUP, AND
14 THE JOINT AGENCY RESTORATION COMMITTEE SHALL EXPEDITE PERMIT REVIEW
15 FOR VOLUNTARY WETLAND RESTORATION PROJECTS TO THE EXTENT POSSIBLE.

16 (D) EXCEPT FOR SECTIONS 1313 TO 1317, PART 13 APPLIES TO A
17 VOLUNTARY WETLAND RESTORATION PERMIT APPLICATION. APPLICABLE TIME
18 PERIODS UNDER PART 13 AND THIS SECTION RUN CONCURRENTLY.

19 (7) IN REVIEWING A PERMIT APPLICATION FOR A VOLUNTARY WETLAND
20 RESTORATION PROJECT, THE VOLUNTARY WETLAND RESTORATION GROUP SHALL
21 EVALUATE THE NET INCREASE IN WETLAND FUNCTIONS AND SERVICES FROM
22 THE PROJECT. AN APPLICANT SHALL PROVIDE JUSTIFICATION FOR THE
23 ASSERTED NET INCREASE IN WETLAND FUNCTIONS AND SERVICES BASED ON
24 FEDERAL OR STATE AGENCY PROGRAMMATIC AUTHORITY, PUBLISHED RESEARCH,
25 CASE STUDIES, ECOLOGICAL REFERENCE, DEMONSTRATION PROJECTS, OR
26 FEDERAL, REGIONAL, OR STATEWIDE WETLAND OR WILDLIFE RESTORATION AND
27 MANAGEMENT PLANS.

1 (8) THE DEPARTMENT SHALL ISSUE A PERMIT FOR A VOLUNTARY
2 WETLAND RESTORATION PROJECT IF THE PROJECT CONTRIBUTES TO A NET
3 INCREASE IN WETLAND FUNCTIONS AND SERVICES AND MEETS THE
4 REQUIREMENTS OF THIS PART AND SECTION 404 OF TITLE IV OF THE
5 FEDERAL WATER POLLUTION CONTROL ACT, 33 USC 1344.

6 (9) THE DEPARTMENT SHALL CREATE A JOINT AGENCY RESTORATION
7 COMMITTEE COMPRISED OF THE DIRECTORS OR THEIR DESIGNEES OF THE
8 DEPARTMENT, THE DEPARTMENT OF NATURAL RESOURCES, AND THE OFFICE OF
9 THE GREAT LAKES TO MEDIATE PERMIT CONFLICTS REGARDING VOLUNTARY
10 WETLAND RESTORATION PROJECTS AND MAKE A RECOMMENDATION TO THE
11 DEPARTMENT. THE DEPARTMENT SHALL GIVE SERIOUS CONSIDERATION TO
12 RECOMMENDATIONS OF THE JOINT AGENCY RESTORATION COMMITTEE IN ITS
13 PERMIT DECISION. THE APPLICANT MAY FURTHER REQUEST REVIEW UNDER THE
14 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO
15 24.328.

16 (10) THE DEPARTMENT SHALL NOT REQUIRE COMPENSATORY MITIGATION
17 FOR VOLUNTARY WETLAND RESTORATION PROJECT ACTIVITIES THAT RESULT IN
18 A NET INCREASE IN WETLAND FUNCTIONS AND SERVICES.

19 (11) THE DEPARTMENT, IN COOPERATION WITH THE DEPARTMENT OF
20 NATURAL RESOURCES AND VOLUNTARY WETLAND RESTORATION AGENCIES AND
21 ORGANIZATIONS, SHALL DEVELOP NEW OR MODIFIED GENERAL PERMIT OR
22 MINOR PROJECT CATEGORIES FOR VOLUNTARY WETLAND RESTORATION PROJECTS
23 THAT ADDRESS THE SCOPE AND INTENT OF THIS SECTION.

24 (12) A VOLUNTARY WETLAND RESTORATION PROJECT MAY INCLUDE, BUT
25 IS NOT LIMITED TO, ANY OF THE FOLLOWING ACTIVITIES IN ALTERED OR
26 DEGRADED WETLAND OR PREVIOUSLY RESTORED WETLAND IF THE ACTIVITY
27 RESULTS IN A NET INCREASE IN WETLAND FUNCTIONS AND SERVICES:

1 (A) THE REMOVAL OF ACCUMULATED SEDIMENTS.

2 (B) THE INSTALLATION, REMOVAL, AND MAINTENANCE OF WATER
3 CONTROL STRUCTURES, DIKES, AND BERMS; AS WELL AS DISCHARGES OF
4 DREDGED OR FILL MATERIAL TO RESTORE APPROPRIATE GRADE CONFIGURATION
5 AFTER WATER CONTROL STRUCTURES, DIKES, AND BERMS ARE REMOVED.

6 (C) THE INSTALLATION OF WATER SUPPLY DEVICES.

7 (D) THE REMOVAL OF EXISTING DRAINAGE STRUCTURES, SUCH AS DRAIN
8 TILES, AND THE FILLING, BLOCKING, GRADING, OR RESHAPING OF DRAINAGE
9 DITCHES TO RESTORE WETLAND HYDROLOGY.

10 (E) THE INSTALLATION OF STRUCTURES OR FILLS NECESSARY TO
11 RESTORE OR ENHANCE WETLAND HYDROLOGY.

12 (F) THE CONSTRUCTION OF OPEN WATER AREAS.

13 (G) ACTIVITIES NEEDED TO ESTABLISH OR REESTABLISH NATIVE
14 VEGETATION, INCLUDING PLOWING OR DISKING FOR SEEDBED PREPARATION
15 AND THE PLANTING OF APPROPRIATE SPECIES.

16 (H) THE REESTABLISHMENT OF SUBMERGED AQUATIC VEGETATION.

17 (I) MECHANIZED LAND CLEARING OR OTHER ACTIVITIES TO REMOVE
18 NONNATIVE OR INVASIVE VEGETATION.

19 (J) THE INSTALLATION OF NESTING STRUCTURES AND ISLANDS, MICRO
20 AND MACRO TOPOGRAPHY REESTABLISHMENT, DREDGING, SOIL MANIPULATION,
21 CONTROLLING, DISKING, AND OTHER ACTIVITIES RELATED TO A SPECIFIC
22 WETLAND HABITAT OR SPECIES CONSERVATION PRACTICES.

23 (K) THE INSTALLATION AND REMOVAL OF TEMPORARY COFFER DAMS,
24 SOIL MATS, AND OTHER DEVICES USED DURING VOLUNTARY WETLAND
25 RESTORATION CONSTRUCTION ACTIVITIES.

26 (L) CONSTRUCTION OF ANCILLARY FACILITIES THAT INCREASE
27 RECREATIONAL ACCESS, SUCH AS A PARKING LOT OR BOAT RAMP. HOWEVER,

1 SUCH ANCILLARY FACILITIES AND THEIR USE, ALONE, DO NOT CONSTITUTE
2 AN INCREASE IN WETLAND FUNCTIONS AND SERVICES.

3 (13) ALL OF THE FOLLOWING APPLY TO A VOLUNTARY WETLAND
4 RESTORATION PROJECT:

5 (A) A CHANGE IN WETLAND PLANT COMMUNITIES THAT OCCURS WHEN
6 WETLAND HYDROLOGY IS MORE FULLY RESTORED DURING VOLUNTARY WETLAND
7 RESTORATION ACTIVITIES IS NOT CONSIDERED A CONVERSION TO ANOTHER
8 AQUATIC HABITAT TYPE.

9 (B) THE PLACEMENT OF FILL IN AN AREA OF ALTERED OR DEGRADED
10 WETLAND IS NOT CONSIDERED A LOSS OF WETLAND IF THAT AREA CONTINUES
11 TO SUSTAIN THE CHARACTERISTICS OF WETLAND AS DESCRIBED IN SECTION
12 30301(1)(M).

13 (C) VOLUNTARY WETLAND RESTORATION PROJECTS OR ACTIVITIES ARE
14 NOT CONSIDERED A MAJOR DISCHARGE AS DEFINED IN THE MEMORANDUM OF
15 AGREEMENT BETWEEN THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
16 AND THE DEPARTMENT UNDER SECTION 404 OF TITLE IV OF THE FEDERAL
17 WATER POLLUTION CONTROL ACT, 33 USC 1344, UPON APPROVAL BY THE
18 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY OF AN AMENDMENT TO
19 THE MEMORANDUM SO PROVIDING.

20 (14) FORMER WETLAND IS NOT REGULATED UNDER THIS PART UNLESS
21 THE WETLAND WAS MODIFIED IN VIOLATION OF THIS PART OR FORMER 1979
22 PA 203.

23 Enacting section 1. This amendatory act takes effect 120 days
24 after the date it is enacted into law.

25 Enacting section 2. This amendatory act does not take effect
26 unless House Bill No. 5855 of the 99th Legislature is enacted into
27 law.