

Act No. 561
Public Acts of 2018
Approved by the Governor
December 27, 2018
Filed with the Secretary of State
December 28, 2018
EFFECTIVE DATE: April 27, 2019

STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018

Introduced by Reps. Howell, Bellino, LaFave, Sheppard, Lucido, Lilly, Kosowski, Rendon, Dianda, Cole, Glenn, Reilly, Hauck, Hornberger, VanSingel, Miller, VanderWall and Chirkun

ENROLLED HOUSE BILL No. 5854

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to protect the people's right to hunt and fish; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," 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:

Sec. 30312d. The department shall develop a blueberry production assistance program to provide wetland delineation and preapplication services and assistance with avoidance and minimization. The department shall coordinate this program with the department of agriculture and rural development. The department shall also provide education and outreach on wetland regulations and agricultural activities and assist interested parties with the development of wetland mitigation banks for the purpose of providing required compensatory mitigation for agricultural impacts.

Sec. 30312f. (1) The legislature finds that voluntary restoration of altered or degraded wetland or former wetland by qualified agencies and organizations helps to restore lost wetland functions and services, and is therefore valuable to the people of this state. Accordingly, the department shall develop a program to facilitate voluntary wetland restoration projects in coordination with state, federal, tribal, and nongovernmental agencies and organizations specializing in wetland restoration and conservation. The program shall include, but not be limited to, enhancing coordination, consistency, and operational procedures and improving and streamlining the permitting process, to facilitate a net increase in wetland functions and services. The department shall convene these agencies and organizations at least quarterly to review the program, suggest and develop improvements, and provide training and guidance in voluntary wetland restoration.

(2) The department and the department of natural resources shall develop and lead a voluntary wetland restoration group to simplify and streamline the permit process for voluntary wetland restoration projects with the intent of giving greater credence and flexibility to agencies and organizations specializing in wetland restoration and conservation. The voluntary wetland restoration group shall consist of designated staff from the department and the department of natural resources, working in collaboration on the review of permit applications. The group shall, after seeking input from agencies and organizations specializing in wetland restoration and conservation, develop voluntary wetland restoration permit applications and guidelines to implement a voluntary wetland restoration permit program consistent with this section.

(3) A permit is not required for voluntary wetland restoration activities that meet any of the following:

(a) The section 30305(2)(f) exemption for maintenance or operation of serviceable structures. Operation of serviceable structures as used in section 30305(2)(f) includes management of water levels using serviceable structures.

(b) The section 30305(2)(n) exemption for operation or maintenance of serviceable dikes and levees.

(4) There is no fee for a preapplication meeting under section 30306b with the voluntary wetland restoration group for a voluntary wetland restoration project conducted with a person described in subsection (5). The purpose of such a preapplication meeting is an outcome-based assessment of a project made by evaluating overall net increases in wetland functions and services and acreage. Such a preapplication meeting may include, but is not limited to, any of the following:

(a) Presentation of project outcomes related to net increases in wetland functions and services and project purposes and justifications.

(b) Suggestions that will minimize permitting delays, including information needed for permit application review.

(c) Options for maximizing net increases in wetland functions and services while minimizing other impacts.

(d) Coordination with the United States Environmental Protection Agency, United States Army Corps of Engineers, and United States Fish and Wildlife Service, if applicable.

(5) Any of the following persons may apply for a permit under this part, including authorization to proceed under a general permit, for a voluntary wetland restoration project:

(a) A state or federal agency, including the department of natural resources, the United States Fish and Wildlife Service, the United States Forest Service, or the United States Department of Agriculture, Natural Resources Conservation Service.

(b) A tribal agency.

(c) A nongovernmental organization whose stated primary mission, purpose, or programs include wetland conservation.

(d) A person that is in partnership through a written agreement with an entity described in subdivision (a), (b), or (c).

(6) Voluntary wetland restoration applications shall be processed subject to all of the following:

(a) Not more than 30 days after submission of an application for a permit for a voluntary wetland restoration project, the voluntary wetland restoration group shall review the application and do 1 of the following:

(i) Notify the applicant of the status of the application.

(ii) Recommend issuance of a permit to the department.

(iii) If the application is not administratively complete, request additional information from the applicant to make the application administratively complete as provided in part 13.

(b) If the department has not made a permit decision within 60 days after an application for a permit is considered administratively complete, at the request of the applicant, any conflict shall be mediated by the joint agency restoration committee created under subsection (9).

(c) The department, voluntary wetland restoration group, and the joint agency restoration committee shall expedite permit review for voluntary wetland restoration projects to the extent possible.

(d) Except for sections 1313 to 1317, part 13 applies to a voluntary wetland restoration permit application. Applicable time periods under part 13 and this section run concurrently.

(7) In reviewing a permit application for a voluntary wetland restoration project, the voluntary wetland restoration group shall evaluate the net increase in wetland functions and services from the project. An applicant shall 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.

(8) The department shall issue a permit for a voluntary wetland restoration project if the project contributes to a net increase in wetland functions and services and meets the requirements of this part and section 404 of title IV of the federal water pollution control act, 33 USC 1344.

(9) The department shall create a joint agency restoration committee comprised of the directors or their designees of the department, the department of natural resources, and the office of the Great Lakes to mediate permit conflicts regarding voluntary wetland restoration projects and make a recommendation to the department. The department shall give serious consideration to recommendations of the joint agency restoration committee in its permit decision. The applicant may further request review under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(10) The department shall not require compensatory mitigation for voluntary wetland restoration project activities that result in a net increase in wetland functions and services.

(11) The department, in cooperation with the department of natural resources and voluntary wetland restoration agencies and organizations, shall develop new or modified general permit or minor project categories for voluntary wetland restoration projects that address the scope and intent of this section.

(12) A voluntary wetland restoration project may include, but is not limited to, 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:

(a) The removal of accumulated sediments.

(b) The installation, removal, and maintenance of water control structures, dikes, and berms; as well as discharges of dredged or fill material to restore appropriate grade configuration after water control structures, dikes, and berms are removed.

(c) The installation of water supply devices.

(d) The removal of existing drainage structures, such as drain tiles, and the filling, blocking, grading, or reshaping of drainage ditches to restore wetland hydrology.

(e) The installation of structures or fills necessary to restore or enhance wetland hydrology.

(f) The construction of open water areas.

(g) Activities needed to establish or reestablish native vegetation, including plowing or disking for seedbed preparation and the planting of appropriate species.

(h) The reestablishment of submerged aquatic vegetation.

(i) Mechanized land clearing or other activities to remove nonnative or invasive vegetation.

(j) The installation of nesting structures and islands, micro and macro topography reestablishment, dredging, soil manipulation, controlling, disking, and other activities related to a specific wetland habitat or species conservation practices.

(k) The installation and removal of temporary coffer dams, soil mats, and other devices used during voluntary wetland restoration construction activities.

(l) Construction of ancillary facilities that increase recreational access, such as a parking lot or boat ramp. However, such ancillary facilities and their use, alone, do not constitute an increase in wetland functions and services.

(13) All of the following apply to a voluntary wetland restoration project:

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

(b) The placement of fill in an area of altered or degraded wetland is not considered a loss of wetland if that area continues to sustain the characteristics of wetland as described in section 30301(1)(m).

(c) Voluntary wetland restoration projects or activities are not considered a major discharge as defined in the memorandum of agreement between the United States Environmental Protection Agency and the department under section 404 of title IV of the federal water pollution control act, 33 USC 1344, upon approval by the United States Environmental Protection Agency of an amendment to the memorandum so providing.

(14) Former wetland is not regulated under this part unless the wetland was modified in violation of this part or former 1979 PA 203.

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

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor