

Grassroots anger pushes Congress into action

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"I think it's terrific," Landscapes Unlimited's William Kubly said of proposed changes to the system. Kubly, whose company is headquartered in Lincoln, Neb., but builds golf courses around the country, added: "It's been ridiculous. We've had a 10-by 30-foot piece of land in the middle of a fairway on top of a hill declared a wetland."

"I'm all for wetlands preservation but not in those small pieces. I'd say that's (revision) good news for the golf course industry."

Kubly said the regulatory system "has really been handcuffing us out in the field. And the costs to the owners are getting so

high that it is not cost-effective to build golf courses any more in certain parts of the country due to wetlands and erosion control."

Tom Clark of Wheaton, Md., president of the American Society of Golf Course Architects, said: "I'm encouraged to hear a lot of congressmen are starting to hear from their voters... People are starting to take steps in the right direction."

Rhod Shaw, an aide to Rep. Jimmy Hayes of Louisiana, who drafted the leading wetlands bill, said the move is gaining support in Congress. By early July, 149 co-sponsors from 38 states and Guam had lined up behind the Hayes bill, Shaw said, "because it's a grassroots issue.

Everybody's (congressmen) getting an incredible amount of reaction from home.

"The system's wrong. The system's broken. People should get involved and let their legislators know. Reality is the greatest check for where we need to head on this."

WETLANDS DISAPPEARING

At the center of the problem is the need to preserve the nation's wetlands and to balance that with responsible management and development. Experts say the United States is losing 500,000 acres of wetlands a year, a portion simply becoming open water.

Swamps, marshes and bogs were once considered wasteland. The government en-

couraged draining them for farming or development. The Clean Water Act of 1972 changed that, requiring the owner of wetlands to obtain government permission to build.

There was little controversy until the 1989 manual took effect.

All agree nobody wants "true" wetlands destroyed. Yet the issue has been clouded by lack of consistency in interpreting the wetlands manual and waits of years in some cases.

"We all want to preserve wetlands. The problem is the time it takes to get a permit," Clark said.

"I'm sensitive to wetlands issues myself," Kubly said, adding that the EPA and Corps

149 congressmen co-sponsor 'sweeping' new legislation...

By Mark Leslie

Louisiana Rep. Jimmy Hayes has introduced legislation that he says will enhance protection of wetlands while "providing a legal system for balancing the competing interests of wetlands protection, essential community growth and infrastructure, and private property rights."

Hayes' HR 1330 would "revamp the whole (Clean Water Act Section) 404 program," according to environmental consultant Mike Kelly. Co-authors of the bill are Reps. Don Young of Alaska, Beryl Anthony of Arkansas, Billy Tauzin of Louisiana and Thomas Ridge of Pennsylvania.

Kelly, vice president of Williamsburg Environmental Group, Inc. in Williamsburg, Va., said other bills, besides Hayes', have been introduced—including HR 404 by Rep. John Paul Hammerschmidt, the ranking Republican on the Public Works and Transportation Committee, which Kelly said has a good chance of passage. "But the Hayes bill is the most sweeping."

Rhod Shaw, Hayes' chief of staff and legislative director, who has worked on the legislation for three years, set out to correct

deficiencies in Section 404 such as its "bureaucratic morass for private landowners and local governments"; its ignoring of "basic, fundamental rights of private property owners"; its covering of privately owned lands that provide "minimal wetland functions and values at best"; and its failure to provide incentives and flexibility "to encourage landowners and wetlands users to act responsibly and invest in wetlands restoration, enhancement and preservation."

Shaw said: "Current 404 law is not a management program. It does not get at how you can actively manage, conserve and handle the property. And it does not recognize that you have to have some kind of balancing mechanism to allow central community growth to co-exist with environmental protection."

Noting that 60 to 70 percent of the American population lives within 50 miles of the coast, he added: "We have people living there,



Rep. Jimmy Hayes

moving there. How do we co-exist with those areas?

"We have to start making some pretty tough decisions. That's where HR 1330 really comes about."

HAYES' "FIXES"

A key element of Hayes' HR 1330 is classification of wetlands according to their values "because not all wetlands are created equal," Kelly said. Shaw calls it "narrowing the jurisdictional scope of the program to functional wetlands."

It also aims to immeasurably speed up the approval process; unify the program in the Corps; provide that preventing development of a highest-classified wetland is considered a "taking" for which the landowner must be compensated; and encourage states to establish programs meeting Corps approval.

Under HR 1330, wetlands would be classified under three types. The first would be regulated more strictly than current law. The second would be regulated at the same level. The third would be regulated on a limited basis.

Stressing that HR 1330 is "a discussion vehicle," Shaw said he does not expect the EPA to give up its share of jurisdiction of wetlands and the veto power it enjoys. He simply wants to instigate discussion on the speed of the process.

"Right now we have two federal agencies review an application at two different times, rendering two different decisions. We need a way to make a decision at one time," Shaw said.

SPEED

HR 1330 states that after a prescribed short timeframe, if no action has been rendered by the agency, the permit will be assumed to be granted.

"The environmental community is saying, 'They'll let everything be developed.' The development community is saying, 'They'll deny everything to cover themselves.' Both sides have a valid concern. I see them denying a lot... But, that's fine because the developers who are waiting seven years never get an answer. At least here, a 'no' is better than waiting, because they can reapply and resubmit, and this time they know why the application was denied," Shaw said.

STATE LAWS

The bill would allow and encourage state laws, but those laws would have to be approved by the federal agency in charge. This would put an end to the situation that Geoscience Inc. President Larry Hawkins referred to when he said: "We in Florida have

the feds to deal with. We have the state to deal with. We've got a water management district to deal with — and even the county government, which may be more stringent than all three.

"The key to this whole issue is to try to get some consistency in wetlands definition that serves all four interests, right down to the local government."

The "taking" issue is another that will bring debate. Kelly said: "It will give lawyers work. The Hayes bill sets up more lawsuits if you do have wetlands classified as high value on your property. It sets up compensation if you can't develop."

STRICT SEQUENCING

Another point of debate will likely be what legislation terms "strict sequencing."

"Here we clearly diverged with the environmental community," Shaw said. "In 1989 the EPA and Corps signed a memorandum of agreement on strict sequencing. When you get an application for a permit today, the very first thing we look at is, can this person avoid doing the project in a wetland? So you're told you can't do something on your property even if you don't have the financial wherewithal to buy another property or use another alternative."

MAPPING

Consequently, the EPA or Corps have become planners, not regulators, he said.

The Hayes bill also proposes national mapping to determine wetland areas. This would help prospective landbuyers by letting them know before they buy if a property contains wetlands.

But it would be a project of massive expense and, Shaw said: "I don't expect it to be passed. We just wanted to give people the idea to discuss."

"A lot of tailoring needs to be done to it... Current law isn't working. We're losing 500,000 acres of wetlands a year, anyway. The environment clearly isn't benefiting under current law. And God knows, local communities don't think they're winning under it."

"When you're 0-for-2 on both sides of the fence, maybe it's time to rewrite the law. So we have given 1330 to people to look at and question, 'What do I think about the idea that all wetlands aren't created equal for regulatory purposes. Maybe classification is the way to go. Maybe we ought to look at private landowners' rights. Are we going to compensate them when we take their land for the 'greater good'?"

"We've got people going into bankruptcy because of this."

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