

# HOUSE BILL No. 5724

May 7, 1990, Introduced by Reps. Alley, Bartnik, Niederstadt, Van Singel, Hoekman, Allen, Willis Bullard, Varga, Emmons, Profit, DeMars, Stacey, Ouwinga, Weeks, Gnodtke, Van Regenmorter, Miller, Krause, Gagliardi, Bandstra and Trim and referred to the Committee on Conservation, Recreation and Environment.

A bill to amend the title and sections 2 and 17 of Act No. 203 of the Public Acts of 1979, entitled "Goemaere-Anderson wetland protection act," being sections 281.702 and 281.717 of the Michigan Compiled Laws; and to add sections 17a and 17b.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 2 and 17 of Act No. 203  
2 of the Public Acts of 1979, being sections 281.702 and 281.717 of  
3 the Michigan Compiled Laws, are amended and sections 17a and 17b  
4 are added to read as follows:

### 5 TITLE

6 An act to provide for the preservation, management, protec-  
7 tion, and use of wetlands; to require permits to alter certain  
8 wetlands; to provide for a plan for the preservation, management,  
9 protection, and use of wetlands; TO CREATE AN APPEALS BOARD AND

1 PROVIDE FOR ITS POWERS AND DUTIES; and to provide remedies and  
2 penalties.

3 Sec. 2. As used in this act:

4 (A) "APPEALS BOARD" MEANS THE WETLAND APPEALS BOARD CREATED  
5 PURSUANT TO SECTION 17A.

6 (B) ~~-(a)-~~ "Department" means the department of natural  
7 resources.

8 (C) ~~-(b)-~~ "Director" means the director of the department of  
9 natural resources.

10 (D) ~~-(c)-~~ "Fill material" means soil, rocks, sand, waste of  
11 any kind, or any other material which displaces soil or water or  
12 reduces water retention potential.

13 (E) ~~-(d)-~~ "Minor drainage" includes ditching and tiling for  
14 the removal of excess soil moisture incidental to the planting,  
15 cultivating, protecting, or harvesting of crops or improving the  
16 productivity of land in established use for agriculture, horti-  
17 culture, silviculture, or lumbering.

18 (F) ~~-(e)-~~ "Municipality" means a city, village, township, or  
19 county.

20 (G) ~~-(f)-~~ "Person" means an individual, sole proprietorship,  
21 partnership, corporation, association, municipality, this state,  
22 ~~and~~ instrumentality or agency of this state, the federal gov-  
23 ernment, ~~or~~ an instrumentality or agency of the federal govern-  
24 ment, or other legal entity.

25 (H) ~~-(g)-~~ "Wetland" means land characterized by the presence  
26 of water at a frequency and duration sufficient to support and  
27 that under normal circumstances does support wetland vegetation

1 or aquatic life and is commonly referred to as a bog, swamp, or  
2 marsh and which is any of the following:

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

5       (ii) Not contiguous to the Great Lakes, an inland lake or  
6 pond, or a river or stream; and more than 5 acres in size; except  
7 this subdivision shall not be of effect, except for the purpose  
8 of inventorying, in counties of less than 100,000 population  
9 until the department certifies to the commission of natural  
10 resources it has substantially completed its inventory of wet-  
11 lands in that county.

12       (iii) Not contiguous to the Great Lakes, an inland lake or  
13 pond, or a river or stream; and 5 acres or less in size if the  
14 department determines that protection of the area is essential to  
15 the preservation of the natural resources of the state from pol-  
16 lution, impairment, or destruction and the department has so  
17 notified the owner; except this subdivision may be utilized  
18 regardless of wetland size in a county in which subdivision (ii)  
19 is of no effect; except for the purpose of inventorying, at the  
20 time.

21       Sec. 17. (1) The department shall promulgate and enforce  
22 rules to implement this act pursuant to THE ADMINISTRATIVE PROCE-  
23 DURES ACT OF 1969, Act No. 306 of the Public Acts of 1969, as  
24 amended BEING SECTIONS 24.201 TO 24.328 OF THE MICHIGAN COMPILED  
25 LAWS.

1 (2) If a person is aggrieved by any action or inaction of  
2 the department, the person may PROCEED AS PROVIDED IN  
3 SUBDIVISION (A) OR (B):

4 (A) THE AGGRIEVED PERSON MAY request a formal hearing on the  
5 matter involved. The hearing shall be conducted by the depart-  
6 ment pursuant to Act No. 306 of the Public Acts of 1969, as  
7 amended. ~~-(3)-~~ A determination, action, or inaction by the  
8 department following the FORMAL hearing shall be subject to judi-  
9 cial review as provided in Act No. 306 of the Public Acts of  
10 1969, as amended.

11 (B) THE AGGRIEVED PERSON MAY FILE AN APPEAL WITH THE APPEALS  
12 BOARD PURSUANT TO SECTIONS 17A AND 17B.

13 (3) ~~-(4)-~~ This section does not limit the right of a wetland  
14 owner to institute proceedings in any circuit of the circuit  
15 court of the state against any person when necessary to protect  
16 the wetland owner's rights.

17 SEC. 17A. (1) THERE IS CREATED AS AN INDEPENDENT BOARD  
18 WITHIN THE DEPARTMENT THE WETLAND APPEALS BOARD. THE APPEALS  
19 BOARD SHALL CONSIST OF THE FOLLOWING MEMBERS:

20 (A) TWO MEMBERS APPOINTED BY THE COMMISSION OF AGRICULTURE.  
21 THESE MEMBERS SHALL NOT BE EMPLOYED BY THE DEPARTMENT OF  
22 AGRICULTURE.

23 (B) TWO MEMBERS APPOINTED BY THE COMMISSION OF NATURAL  
24 RESOURCES. THESE MEMBERS SHALL NOT BE EMPLOYED BY THE  
25 DEPARTMENT.

26 (C) ONE MEMBER APPOINTED BY THE GOVERNOR WITH THE ADVICE AND  
27 CONSENT OF THE SENATE.

1 (2) THE MEMBER OF THE APPEALS BOARD APPOINTED BY THE  
2 GOVERNOR SHALL SERVE AS THE CHAIRPERSON OF THE APPEALS BOARD.  
3 THE CHAIRPERSON SHALL PROMOTE THE EFFICIENT OPERATION OF THE  
4 APPEALS BOARD.

5 (3) THE MEMBERS OF THE APPEALS BOARD APPOINTED BY THE COM-  
6 MISSION OF AGRICULTURE AND THE COMMISSION OF NATURAL RESOURCES  
7 SHALL SERVE ON THE APPEALS BOARD FOR 2-YEAR TERMS COMMENCING 30  
8 DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION. HOWEVER, OF THE  
9 FIRST APPEALS BOARD MEMBERS APPOINTED, 1 MEMBER APPOINTED BY THE  
10 COMMISSION OF AGRICULTURE AND 1 MEMBER APPOINTED BY THE COMMIS-  
11 SION OF NATURAL RESOURCES SHALL SERVE A 1-YEAR TERM. THE CHAIR-  
12 PERSON OF THE BOARD SHALL SERVE FOR A 3-YEAR TERM COMMENCING 30  
13 DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION, AND MAY SERVE  
14 ADDITIONAL TERMS AS THE GOVERNOR CONSIDERS APPROPRIATE.

15 (4) EACH MEMBER OF THE APPEALS BOARD SHALL HOLD OFFICE UNTIL  
16 HIS OR HER SUCCESSOR IS APPOINTED. A MEMBER CHOSEN TO FILL A  
17 VACANCY CREATED OTHERWISE THAN BY EXPIRATION OF A TERM SHALL BE  
18 APPOINTED, AS PROVIDED IN THIS SECTION, FOR THE UNEXPIRED TERM OF  
19 THE MEMBER HE OR SHE IS TO REPLACE.

20 (5) APPEALS SHALL BE HEARD BY 2 OR MORE MEMBERS OF THE  
21 APPEALS BOARD IN A COUNTY IN WHICH THE WETLAND AFFECTED BY THE  
22 APPEAL IS LOCATED. A MAJORITY VOTE OF THE MEMBERS OF THE ENTIRE  
23 APPEALS BOARD IS NECESSARY FOR A DETERMINATION OF THE APPEAL.

24 (6) THE CHAIRPERSON OF THE APPEALS BOARD SHALL BE AN ATTOR-  
25 NEY WHO IS A MEMBER IN GOOD STANDING OF THE STATE BAR OF  
26 MICHIGAN. ONE MEMBER APPOINTED BY THE COMMISSION OF AGRICULTURE  
27 AND 1 MEMBER APPOINTED BY THE COMMISSION OF NATURAL RESOURCES

1 SHALL BE AN ATTORNEY WHO IS A MEMBER IN GOOD STANDING OF THE  
2 STATE BAR OF MICHIGAN.

3 (7) EACH MEMBER OF THE APPEALS BOARD SHALL BE REIMBURSED FOR  
4 ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF HIS  
5 OR HER DUTIES AND SHALL BE COMPENSATED FOR HIS OR HER SERVICES AT  
6 THE RATE OF \$100.00 PER DAY. HOWEVER, THE AGGREGATE COMPENSATION  
7 FOR ANY 1 YEAR OF SERVICE SHALL NOT EXCEED \$5,000.00.

8 (8) A MEMBER OF THE APPEALS BOARD MAY BE REMOVED BY THE GOV-  
9 ERNOR FOR INEFFICIENCY, NEGLECT OF DUTY, MISCONDUCT, OR MALFEA-  
10 SANCE IN OFFICE, AFTER BEING GIVEN A WRITTEN STATEMENT OF THE  
11 CHARGES AND AN OPPORTUNITY TO BE HEARD BY A DESIGNEE OF THE GOV-  
12 ERNOR REGARDING THE CHARGE.

13 (9) THE MEMBERS OF THE APPEALS BOARD SHALL NOT IN THE PER-  
14 FORMANCE OF THEIR FUNCTIONS AND THE EXERCISE OF THEIR POWERS  
15 UNDER THIS ACT BE SUBJECT TO THE SUPERVISION, DIRECTION, OR CON-  
16 TROL OF THE COMMISSION OF AGRICULTURE OR THE COMMISSION OF NATU-  
17 RAL RESOURCES OR ANY OFFICER OR EMPLOYEE OF THE DEPARTMENT OF  
18 AGRICULTURE OR THE DEPARTMENT.

19 SEC. 17B. (1) THE APPEALS BOARD SHALL DO ALL OF THE  
20 FOLLOWING:

21 (A) MEET AND FUNCTION AT ANY PLACE WITHIN THE STATE.

22 (B) ADOPT, PROMULGATE, AMEND, AND RESCIND SUITABLE PROCE-  
23 DURAL RULES WITH RESPECT TO THE FUNCTIONING OF THE APPEALS BOARD  
24 AND THE SETTING OF TIME LIMITS FOR THE HEARING OF APPEALS, THE  
25 RENDERING OF DECISIONS ON APPEALS, AND THE FILING OF THE DETERMI-  
26 NATION, DECISION, OR ORDER OF THE APPEALS BOARD WITH THE CLERK OF

1 THE COUNTY IN WHICH THE WETLAND THAT IS THE SUBJECT OF THE APPEAL  
2 IS LOCATED.

3 (C) HEAR APPEALS BY AN AGGRIEVED PARTY TO ANY PROCEEDING  
4 BEFORE THE DEPARTMENT FROM AN ORDER OR DECISION OF THE DEPARTMENT  
5 ISSUED OR MADE PURSUANT TO THIS ACT. APPEALS SHALL BE FILED WITH  
6 THE APPEALS BOARD WITHIN 30 DAYS AFTER SERVICE OF THE ORDER OR  
7 NOTICE OF THE DECISION GIVEN.

8 (D) REVIEW ANY DECISION OR ORDER OF THE DEPARTMENT MADE PUR-  
9 SUANT TO THIS ACT UPON APPEAL BY ANY PERSON AFFECTED BY THAT  
10 ORDER. THE REVIEW SHALL COMMENCE BY THE FILING WITH THE APPEALS  
11 BOARD OF A NOTICE OF REVIEW WITHIN 30 DAYS AFTER SERVICE OF THE  
12 ORDER OR NOTICE OF DECISION.

13 (E) RECEIVE BRIEFS, AND, IF THE APPEALS BOARD CONSIDERS IT  
14 ADVISABLE, HEAR ORAL ARGUMENT WITH RESPECT TO APPEALS.

15 (F) REQUIRE THE SUBMISSION TO IT BY THE DEPARTMENT OF A COPY  
16 OF THE ENTIRE RECORD ON WHICH AN ORDER OR DECISION APPEALED FROM  
17 IS BASED.

18 (G) STAY THE EFFECTIVENESS OF AN ORDER OR DECISION OF THE  
19 DEPARTMENT PENDING THE DETERMINATION OF AN APPEAL IN PROPER CASES  
20 AND ON THE TERMS AND CONDITIONS AS THE APPEALS BOARD MAY  
21 REQUIRE.

22 (2) THE APPEALS BOARD MAY PROMULGATE RULES PURSUANT TO THE  
23 ADMINISTRATIVE PROCEDURES ACT OF 1969, ACT NO. 306 OF THE PUBLIC  
24 ACTS OF 1969, BEING SECTIONS 24.201 TO 24.328 OF THE MICHIGAN  
25 COMPILED LAWS, AS NECESSARY TO IMPLEMENT THEIR POWERS UNDER THIS  
26 ACT.

1       (3) THE APPEALS BOARD MAY AFFIRM, REMAND, OR REVERSE AN  
2 ORDER OR DECISION OF THE DEPARTMENT OR REMAND THE MATTER TO THE  
3 DEPARTMENT FOR FURTHER PROCEEDINGS IN WHOLE, OR WITH RESPECT TO  
4 ANY PART OF THE PROCEEDING, OR WITH RESPECT TO ANY PARTY.

5 HOWEVER, THE APPEALS BOARD SHALL LIMIT ITS REVIEW TO WHETHER THE  
6 ORDER OR DECISION OF THE DEPARTMENT IS 1 MORE OF THE FOLLOWING:

7       (A) IN VIOLATION OF THE CONSTITUTION OR A STATUTE.

8       (B) IN EXCESS OF THE DEPARTMENT'S STATUTORY AUTHORITY OR  
9 JURISDICTION.

10       (C) MADE UPON UNLAWFUL PROCEDURE RESULTING IN MATERIAL PREJ-  
11 UDICE TO A PARTY.

12       (D) NOT SUPPORTED BY COMPETENT, MATERIAL, AND SUBSTANTIAL  
13 EVIDENCE ON THE WHOLE RECORD.

14       (E) ARBITRARY, CAPRICIOUS, OR CLEARLY AN ABUSE OR UNWAR-  
15 RANTED EXERCISE OF DISCRETION.

16       (F) AFFECTED BY OTHER SUBSTANTIAL AND MATERIAL ERROR OF  
17 LAW.

18       (4) UPON THE REQUEST OF A MEMBER OF THE APPEALS BOARD, THE  
19 DEPARTMENT SHALL PROVIDE THE APPEALS BOARD WITH A COPY OF THE  
20 ENTIRE RECORD ON WHICH AN ORDER OR DECISION OF THE DEPARTMENT  
21 UNDER THIS ACT IS BASED.

22       (5) THE DEPARTMENT SHALL BE BOUND BY THE DECISION OF THE  
23 APPEALS BOARD EXCEPT TO THE EXTENT THE DECISION OF THE APPEALS  
24 BOARD IS REVERSED OR OTHERWISE MODIFIED BY A COURT OF COMPETENT  
25 JURISDICTION.