



**House
Legislative
Analysis
Section**

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-8468

LOCAL WETLAND ORDINANCES

House Bill 5390

Sponsor: Rep. Tom Alley

**Committee: Conservation,
Recreation, and Environment**

Complete to 1-13-92

A SUMMARY OF HOUSE BILL 5390 AS INTRODUCED 12-10-91

House Bill 5390 would amend the Goemaere-Anderson Wetland Protection Act to provide for a uniform definition of "wetland" in all municipal ordinances that regulate local wetland areas; and to permit a municipality to complete an inventory of all wetland areas that are subject to regulation under its wetland ordinance and to issue permits for a proposed use or development in a wetland area. The bill would also require that the Department of Natural Resources (DNR) contact each municipality in the state and fully inform them of the requirements of the bill.

Local Wetland Ordinances. Currently, the act defines "wetland" to mean land containing water at a frequency and duration sufficient to support, and which, under normal circumstances, does support wetland vegetation or aquatic life, and which is:

- Contiguous to a lake, pond, river or stream; or
- Noncontiguous to these bodies of water, and more than 5 acres in size. However, swamps, marshes or bogs greater than five acres and noncontiguous are not considered wetlands, except for purposes of inventorying, in counties of less than 100,000 population, until the department certifies to the Commission of Natural Resources that it has substantially completed its inventory of wetlands in that county; or
- Any size or location, including counties of less than 100,000 population, if the DNR determines that protection of the area is essential to the preservation of the natural resources of the state and if the department has so notified the owner.

Under the act, a municipality may adopt, by ordinance, a more stringent definition and regulation of a wetland area than is required under the act. House Bill 5390 would amend the act to permit a municipality to adopt an ordinance that provided either the same or more stringent regulation than that provided under the act. However, a municipality could not adopt an ordinance that provided a different definition of wetland than is provided in the act. This prohibition would not apply to an ordinance that regulated wetland of less than 5 acres, nor to a buffer zone around a wetland area. The bill would also permit municipalities in counties of less than 100,000 population to regulate wetland, regardless of whether the department had completed its inventory for that county.

Wetland Inventory. The act currently requires that the DNR make a preliminary inventory of all wetlands on a county by county basis. This requirement does not apply to sparsely populated counties of less than 100,000. In these counties, the DNR may designate as wetlands swamps, bogs, or marshes that are noncontiguous to a lake or stream only after

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determining that protection of the area is essential to the preservation of natural resources. Under the bill, a municipality would be required to complete an inventory -- conducted in accordance with DNR procedures -- of all wetland that was subject to regulation, and to include this inventory in its ordinance. A municipality would have to comply with this requirement within 120 days after the effective date of the bill, unless the ordinance was adopted prior to the bill's effective date.

DNR Review. Under the bill, a municipality could not regulate wetland until the DNR had made a finding that its ordinance complied with the act. After adoption, an ordinance would be forwarded to the DNR for review. The department would have 60 days to evaluate compliance and to notify the municipality. If an ordinance were not in compliance, the municipality would be notified of the deficiency within 60 days. However, if the department failed to issue a finding regarding its evaluation, then the ordinance would be considered to be in compliance with the requirements of the act. The department would take over regulation of a municipality's wetland if it were determined that an ordinance was not being implemented in compliance with the act.

Permits. Currently, the act requires that the DNR develop an agreement with each municipality that adopts a wetland ordinance to provide an exchange of information concerning permit applications and the environmental impact of proposed wetland use. An agreement must state that the DNR may not issue a permit for a proposed use or development if the municipality denies permission under its ordinance, unless the permit involves a use or development of regional or statewide benefit. Permit applications are then issued by the DNR. The bill would delete these provisions. Under the bill, permit applications would still be reviewed by the DNR and a municipality, but a municipality that regulated a wetland area within its jurisdiction would issue permits, and would be allowed to assess a reasonable permit fee for its services in processing an application. In addition, a municipality could bill for reasonable expenses incurred in hiring consultants to assist in reviewing an application. If a municipality granted a permit, then one would not be required from the DNR for activities within the wetland that were regulated by the municipality, and would not be reviewable by the department unless it found that the municipality had violated provisions of the act in granting the permit.

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