

# HOUSE BILL No. 5373

December 4, 1991, Introduced by Rep. Jaye and referred to the Committee on Conservation, Recreation and Environment.

A bill to amend sections 2, 6, 7, and 8 of Act No. 203 of the Public Acts of 1979, entitled "Goemaere-Anderson wetland protection act," being sections 281.702, 281.706, 281.707, and 281.708 of the Michigan Compiled Laws; and to add sections 2a, 2b, and 8a.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Sections 2, 6, 7, and 8 of Act No. 203 of the  
2 Public Acts of 1979, being sections 281.702, 281.706, 281.707,  
3 and 281.708 of the Michigan Compiled Laws, are amended and  
4 sections 2a, 2b, and 8a are added to read as follows:

5       Sec. 2. As used in this act:

6       (a) "Department" means the department of natural resources.

7       (b) "Director" means the director of the department of  
8 natural resources.

1 (c) "Fill material" means soil, rocks, sand, waste of any  
2 kind, or any other material ~~which displaces~~ THAT IS COMMONLY  
3 USED IN PLACE OF soil or water or ~~reduces~~ TO REDUCE water  
4 retention potential.

5 (d) "Minor drainage" includes ditching and tiling for the  
6 removal of excess soil moisture incidental to the planting, cul-  
7 tivating, protecting, or harvesting of crops or improving the  
8 productivity of land in established use for agriculture, horti-  
9 culture, silviculture, or lumbering.

10 (e) "Municipality" means a city, village, township, or  
11 county.

12 (f) "Person" means an individual, sole proprietorship, part-  
13 nership, corporation, association, municipality, this state, and  
14 instrumentality or agency of this state, the federal government,  
15 or an instrumentality or agency of the federal government, or  
16 other legal entity.

17 (g) "Wetland" means, UNTIL RULES ARE PROMULGATED UNDER  
18 SECTION 2A WHICH DEFINE WETLAND FOR PURPOSES OF THIS ACT, land  
19 characterized by the presence of water at a frequency and dura-  
20 tion sufficient to support and that under normal circumstances  
21 does support wetland vegetation or aquatic life and is commonly  
22 referred to as a bog, swamp, or marsh and which is any of the  
23 following:

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

26 (ii) Not contiguous to the Great Lakes, an inland lake or  
27 pond, or a river or stream; and more than 5 acres in size; except

1 this subdivision shall not be of effect, except for the purpose  
2 of inventorying, in counties of less than 100,000 population  
3 until the department certifies to the commission of natural  
4 resources it has substantially completed its inventory of wet-  
5 lands in that county.

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

15 (H) "WETLAND" MEANS, AFTER RULES ARE PROMULGATED UNDER  
16 SECTION 2A, LAND WHICH HAS A PREDOMINANCE OF HYDRIC SOILS AND  
17 WHICH IS INUNDATED BY SURFACE WATER AT A FREQUENCY AND DURATION  
18 SUFFICIENT TO SUPPORT, AND THAT UNDER NORMAL CIRCUMSTANCES DOES  
19 SUPPORT, A PREVALENCE OF VEGETATION TYPICALLY ADAPTED FOR LIFE IN  
20 SATURATED SOIL CONDITIONS. WETLAND GENERALLY INCLUDES A SWAMP,  
21 MARSH, BOG, AND SIMILAR AREAS.

22 SEC. 2A. THE DIRECTOR SHALL SUBMIT RULES TO THE JOINT COM-  
23 MITTEE ON ADMINISTRATIVE RULES AS SOON AS POSSIBLE THAT GOVERN  
24 THE DELINEATION OF LAND AS WETLAND FOR PURPOSES OF THIS ACT.  
25 LAND SHALL BE DELINEATED AS WETLAND ONLY IF THE LAND IS WETLAND  
26 UNDER SECTION 502 OF THE FEDERAL WATER POLLUTION CONTROL ACT, 33

1 U.S.C. 1362. HOWEVER, THE RULES SHALL NOT DO ANY OF THE  
2 FOLLOWING:

3 (A) RESULT IN THE DELINEATION OF LAND AS WETLAND UNLESS  
4 CLEAR EVIDENCE OF WETLAND HYDROLOGY, HYDROPHYTIC VEGETATION, AND  
5 HYDRIC SOIL ARE FOUND TO BE PRESENT DURING THE PERIOD IN WHICH  
6 THE DELINEATION IS MADE. THE DELINEATION SHALL BE CONDUCTED  
7 DURING THE GROWING SEASON UNLESS OTHERWISE REQUESTED BY THE  
8 APPLICANT.

9 (B) RESULT IN THE CLASSIFICATION OF VEGETATION AS HYDRO-  
10 PHYTIC IF THE VEGETATION IS EQUALLY ADAPTED TO DRY OR WET SOIL  
11 CONDITIONS OR IS MORE TYPICALLY ADAPTED TO DRY SOIL CONDITIONS  
12 THAN TO WET SOIL CONDITIONS.

13 (C) RESULT IN THE CLASSIFICATION OF LAND AS WETLAND UNLESS  
14 SOME OBLIGATE WETLAND VEGETATION IS FOUND TO BE PRESENT DURING  
15 THE PERIOD OF DELINEATION, UNLESS THE VEGETATION HAS BEEN REMOVED  
16 FOR THE PURPOSE OF EVADING JURISDICTION UNDER THIS ACT. IN THIS  
17 CIRCUMSTANCE, THIS SUBDIVISION SHALL NOT APPLY.

18 (D) RESULT IN THE CONCLUSION THAT WETLAND HYDROLOGY IS  
19 PRESENT UNLESS WATER IS FOUND TO BE PRESENT AT THE SURFACE OF THE  
20 LAND FOR AT LEAST 21 CONSECUTIVE DAYS DURING THE GROWING SEASON  
21 IN WHICH SUCH DELINEATION IS MADE AND FOR 21 CONSECUTIVE DAYS IN  
22 THE GROWING SEASONS IN A MAJORITY OF THE YEARS FOR WHICH RECORDS  
23 ARE AVAILABLE.

24 (E) RESULT IN THE CLASSIFICATION OF LAND AS WETLAND THAT IS  
25 TEMPORARILY OR INCIDENTALLY CREATED AS A RESULT OF ADJACENT  
26 DEVELOPMENT ACTIVITY.

1        SEC. 2B. THE DEPARTMENT SHALL ANNUALLY HIRE SUFFICIENT  
2 SEASONAL, TEMPORARY CONTRACT EMPLOYEES TO REVIEW PERMIT  
3 APPLICATIONS TO ASSURE THAT THE REQUIREMENTS OF THIS ACT ARE FUL-  
4 FILLED IN A TIMELY MANNER.

5        Sec. 6. (1) Activities which require a permit under THE  
6 GREAT LAKES SUBMERGED LANDS ACT, Act No. 247 of the Public Acts  
7 of 1955, as amended, being sections 322.701 to 322.715 of the  
8 Michigan Compiled Laws, or THE INLAND LAKES AND STREAMS ACT OF  
9 1972, Act No. 346 of the Public Acts of 1972, being sections  
10 281.951 to 281.965 of the Michigan Compiled Laws, ~~shall~~ DO not  
11 require a permit under this act.

12        (2) The following uses shall be allowed in a wetland without  
13 a permit subject to other laws of this state and the owner's  
14 regulation:

15        (a) Fishing, trapping, or hunting.

16        (b) Swimming or boating.

17        (c) Hiking.

18        (d) Grazing of animals.

19        (e) Farming, horticulture, silviculture, lumbering, and  
20 ranching activities, including plowing, irrigation, irrigation  
21 ditching, seeding, cultivating, minor drainage, harvesting for  
22 the production of food, fiber, and forest products, or upland  
23 soil and water conservation practices.

24        (f) Maintenance or operation of serviceable structures in  
25 existence on the effective date of this act or constructed pursu-  
26 ant to this act.

1 (g) Construction or maintenance of farm or stock ponds.

2 (h) Maintenance, operation, or improvement which includes  
3 straightening, widening, or deepening of the following which is  
4 necessary for the production or harvesting of agricultural  
5 products:

6 (i) An existing private agricultural drain.

7 (ii) That portion of a drain legally established pursuant to  
8 THE DRAIN CODE OF 1956, Act No. 40 of the Public Acts of 1956, as  
9 amended, being sections 280.1 to 280.630 of the Michigan Compiled  
10 Laws, which has been constructed or improved for drainage  
11 purposes.

12 (iii) A drain constructed pursuant to other provisions of  
13 this act.

14 (j) Construction or maintenance of farm roads, forest roads,  
15 or temporary roads for moving mining or forestry equipment, if  
16 the roads are constructed and maintained in a manner to assure  
17 that any adverse effect on the wetland will be otherwise  
18 minimized.

19 (k) Drainage necessary for the production and harvesting of  
20 agricultural products if the wetland is owned by a person who is  
21 engaged in commercial farming and the land is to be used for the  
22 production and harvesting of agricultural products. Except as  
23 otherwise provided in this act, land improved under this subdivi-  
24 sion after ~~the effective date of this act~~ OCTOBER 1, 1980 shall  
25 not be used for ~~nonfarming~~ purposes OTHER THAN FARMING OR SIL-  
26 VICULTURE PURPOSES without a permit from the department. This  
27 subdivision ~~shall~~ DOES not apply to a wetland which is

1 contiguous to a lake or stream, or to a tributary of a lake or  
2 stream, or to a wetland which the department has determined by  
3 clear and convincing evidence to be a wetland which is necessary  
4 to be preserved for the public interest, in which case a permit  
5 shall be required.

6       (l) Maintenance, ~~or~~ improvement, ~~of~~ OR CONSTRUCTION OF  
7 USES THAT PROMOTE THE PUBLIC HEALTH AND SAFETY, INCLUDING, BUT  
8 NOT LIMITED TO, public streets, highways, ~~or~~ roads, ~~within the~~  
9 ~~right of way and in such~~ BRIDGES, AND SEWER AND WATER LINES.  
10 USES DESCRIBED IN THIS SUBDIVISION SHALL BE CONSTRUCTED IN a  
11 manner as to assure that any adverse effect on the wetland will  
12 be otherwise minimized. ~~Maintenance or improvement does not~~  
13 ~~include adding extra lanes; increasing the right of way; or devi-~~  
14 ~~ating from the existing location of the street, highway, or~~  
15 ~~road.~~

16       (m) Maintenance, repair, or operation of gas or oil pipe-  
17 lines and construction of gas or oil pipelines having a diameter  
18 of 6 inches or less, if the pipelines are constructed, main-  
19 tained, or repaired in a manner to assure that any adverse effect  
20 on the wetland will be otherwise minimized.

21       (n) Maintenance, repair, or operation of electric transmis-  
22 sion and distribution power lines and construction of distribu-  
23 tion power lines if the distribution power lines are constructed,  
24 maintained, or repaired in a manner to assure that any adverse  
25 effect on the wetland will be otherwise minimized.

26       (o) Operation or maintenance, including reconstruction of  
27 recently damaged parts, of serviceable dikes and levees in

1 existence on the effective date of this act or constructed  
2 pursuant to this act.

3 (p) Construction of iron and copper mining tailings basins  
4 and water storage areas.

5 (3) After the effective date of this act but immediately  
6 prior to the approval of a state program under section 404 of  
7 title 4 of the clean water act of 1977, 33 U.S.C. 1344, where a  
8 project solely involves the discharge of fill material subject to  
9 the individual permit requirements of section 404 of title 4 of  
10 the clean water act of 1977, 33 U.S.C. 1344, an additional  
11 permit shall not be required by this act.

12 Sec. 7. (1) ~~Except as provided in section 8(4), to~~ TO  
13 obtain a permit for a use or development listed in section 5, the  
14 person desiring the permit shall file an application with the  
15 department on a form provided by the department accompanied by a  
16 fee of \$25.00. A person who has a permit for the particular  
17 activity under Act No. 346 of the Public Acts of 1972, or Act  
18 No. 61 of the Public Acts of 1939, as amended, being sections  
19 319.1 to 319.27 of the Michigan Compiled Laws, does not need to  
20 pay the fee prescribed by this subsection. The application shall  
21 include:

22 (a) The person's name and address.

23 (b) The location of the wetland.

24 (c) A description of the wetland on which the use or devel-  
25 opment is to be made.

26 (d) A statement describing the proposed use or development.



(e) The wetland owner's name and address.

(f) An environmental assessment on a form supplied by the department, of the proposed use or development if requested by the department which shall include effects upon wetland benefits and the effects upon the water quality, flow, and levels, and the wildlife, fish, and vegetation within a contiguous lake, river, or stream.

(2) For the purposes of subsection (1), a proposed use or development of a wetland shall be considered as a single permit application under this act if the scope, extent, and purpose of a use or development are made known at the time of the application for the permit.

Sec. 8. (1) Within 60 days after receipt of the completed application and fee, the department may hold a hearing. If a hearing is held, it shall be held in the county where the wetland on which the permit is to apply is located. Notice of the hearing shall be made in the same manner as for the promulgation of rules under THE ADMINISTRATIVE PROCEDURES ACT OF 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to ~~24.315~~ 24.328 of the Michigan Compiled Laws. The department may approve or disapprove a permit application without a public hearing unless a person requests a hearing in writing within 20 days after the mailing of notification of the permit application as required by subsection (3), or the department determines that the permit application is of significant impact to warrant a public hearing.

1       (2) If a hearing is not held, the department shall approve  
2 or disapprove the permit application within 90 days after the  
3 completed permit application is filed with the department. If a  
4 hearing is held, the department shall approve or disapprove the  
5 permit application within 90 days after the conclusion of the  
6 hearing. The department may approve a permit application,  
7 request modifications in the application, or deny the permit  
8 application. If the department approves the permit application,  
9 the department shall prepare and send the permit to the  
10 applicant. If the department denies, or requests a modification  
11 of, the permit application, the department shall send notice of  
12 the denial or modification request, and the reasons for the  
13 denial or the modifications requested to the applicant.  
14 Department approval may include the issuance of a permit contain-  
15 ing conditions necessary for compliance with this act. If the  
16 department does not approve or disapprove the permit application  
17 within the time provided by this subsection, the permit applica-  
18 tion shall be considered approved, and the department shall be  
19 considered to have made the determinations required by section  
20 9. The action taken by the department may be appealed pursuant  
21 to Act No. 306 of the Public Acts of 1969, as amended. A prop-  
22 erty owner may, after exhaustion of administrative remedies,  
23 bring appropriate legal action in a court of competent  
24 jurisdiction.

25       (3) A person who desires notification of pending permit  
26 applications may make a written request to the department  
27 accompanied by an annual fee of \$25.00 which shall be credited to

1 the general fund of the state. The department shall prepare a  
2 biweekly list of the applications made during the previous 2  
3 weeks and shall promptly mail copies of the list for the remain-  
4 der of the calendar year to the persons who requested notice.  
5 The biweekly list shall state the name and address of each appli-  
6 cant, the location of the wetland in the proposed use or develop-  
7 ment including the size of both the proposed use or development  
8 and of the wetland affected, and a summary statement of the pur-  
9 pose of the use or development.

10 (4) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A MUNICIPAL-  
11 ITY SHALL NOT ENACT, MAINTAIN, OR ENFORCE AN ORDINANCE OR RESOLU-  
12 TION THAT CONTRADICTS OR CONFLICTS IN ANY MANNER WITH THIS ACT.  
13 IT IS THE EXPRESS LEGISLATIVE INTENT THAT THIS ACT PREEMPT ANY  
14 LOCAL ORDINANCE OR REGULATION THAT PURPORTS TO DUPLICATE, EXTEND,  
15 OR REVISE IN ANY MANNER THE PROVISIONS OF THIS ACT. ~~A municipal-~~  
16 ~~ity, by ordinance, may provide for more stringent definition and~~  
17 ~~regulation of wetland than is provided under this act. This sub-~~  
18 ~~section is supplemental to the existing authority of a municipal-~~  
19 ~~ity to protect wetland. Each municipality which adopts an ordi-~~  
20 ~~nance regulating wetlands shall notify the department. The~~  
21 ~~department shall develop an agreement with each municipality~~  
22 ~~which has an ordinance regulating wetlands. The agreement shall~~  
23 ~~provide for an exchange of information with the department~~  
24 ~~including information regarding the environmental impact of each~~  
25 ~~proposed use or development on wetlands, the proposed decision on~~  
26 ~~each application for a proposed use or development on wetlands,~~  
27 ~~and other information that may assist the municipality in~~

~~1 administering its ordinance. The agreement shall provide that  
2 the department shall not issue a permit if the municipality has  
3 denied permission for the permit under its ordinances, unless the  
4 permit involves a use or development of regional or statewide  
5 public benefit. The agreement shall require that the municipal-  
6 ity use an application form supplied by the department, and that  
7 each person applying for a permit make application directly with  
8 the municipality. Upon receipt, the municipality shall forward a  
9 copy of each application to the department. The department shall  
10 begin reviewing the application as provided in this act. The  
11 municipality shall review the application pursuant to its ordi-  
12 nance and shall modify, approve, or deny the application within  
13 60 days after receipt. The department shall inform any inter-  
14 ested person whether a municipality has an ordinance regulating  
15 wetlands. If the department receives an application with respect  
16 to a wetland which is located in a municipality which has an  
17 ordinance regulating wetlands, the department immediately shall  
18 forward the application to the municipality, which shall modify,  
19 deny, or approve the application under this subsection. The  
20 municipality shall notify the department of its decision. The  
21 department shall proceed as provided in this act.~~

~~22 (5) If a municipality does not have an ordinance regulating  
23 wetlands, the department shall promptly send a copy of the permit  
24 application to the municipality where the wetland is located.  
25 The municipality may review the application, may hold a hearing  
26 on the application, and may recommend approval, modification, or  
27 denial of the application to the department. The recommendations~~

~~1 of the municipality shall be made and returned to the department~~  
~~2 within 45 days after the municipality's receipt of the permit~~  
~~3 application. The department shall approve, modify, or deny the~~  
~~4 application as provided in this act.~~

5 (5) AS USED IN THIS SECTION, "COMPLETED APPLICATION" MEANS  
6 AN APPLICATION FORM PROVIDED BY THE DEPARTMENT THAT HAS ALL OF  
7 THE SPACES ON THE APPLICATION FORM THAT REQUIRE INFORMATION FROM  
8 THE APPLICANT FILLED IN WITH RESPONSIVE INFORMATION.

9 SEC. 8A. THE DIRECTOR SHALL SEND A COPY OF A PERMIT APPLI-  
10 CATION AND NOTICE TO THE ASSESSOR OF THE MUNICIPALITY IN WHICH  
11 PROPERTY IS LOCATED WHENEVER A PERMIT IS DENIED UNDER THIS ACT.  
12 THE TAX ASSESSOR SHALL UTILIZE THIS INFORMATION IN DETERMINING  
13 THE REDUCTION IN THE FAIR MARKET VALUE OF THAT PROPERTY THAT HAS  
14 RESULTED FROM THE LIMITATION ON THE USE OF THE PROPERTY.