

HOUSE BILL No. 5390

December 10, 1991, Introduced by Reps. Alley and DeMars and referred to the Committee on Conservation, Recreation and Environment.

A bill to amend section 8 of Act No. 203 of the Public Acts of 1979, entitled

"Goemaere-Anderson wetland protection act,"

being section 281.708 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 8 of Act No. 203 of the Public Acts of
2 1979, being section 281.708 of the Michigan Compiled Laws, is
3 amended to read as follows:

4 Sec. 8. (1) Within 60 days after receipt of the completed
5 application and fee, the department may hold a hearing. If a
6 hearing is held, it shall be held in the county where the wetland
7 on which the permit is to apply is located. Notice of the hear-
8 ing shall be made in the same manner as for the promulgation of
9 rules under THE ADMINISTRATIVE PROCEDURES ACT OF 1969, Act
10 No. 306 of the Public Acts of 1969, as amended, being sections

1 24.201 to ~~24.315~~ 24.328 of the Michigan Compiled Laws. The
2 department may approve or disapprove a permit application without
3 a public hearing unless a person requests a hearing in writing
4 within 20 days after the mailing of notification of the permit
5 application as required by subsection (3), or the department
6 determines that the permit application is of significant impact
7 to warrant a public hearing.

8 (2) If a hearing is not held, the department shall approve
9 or disapprove the permit application within 90 days after the
10 completed permit application is filed with the department. If a
11 hearing is held, the department shall approve or disapprove the
12 permit application within 90 days after the conclusion of the
13 hearing. The department may approve a permit application,
14 request modifications in the application, or deny the permit
15 application. If the department approves the permit application,
16 the department shall prepare and send the permit to the
17 applicant. If the department denies, or requests a modification
18 of, the permit application, the department shall send notice of
19 the denial or modification request, and the reasons for the
20 denial or the modifications requested to the applicant.
21 Department approval may include the issuance of a permit contain-
22 ing conditions necessary for compliance with this act. If the
23 department does not approve or disapprove the permit application
24 within the time provided by this subsection, the permit applica-
25 tion shall be considered approved, and the department shall be
26 considered to have made the determinations required by section
27 9. The action taken by the department may be appealed pursuant

1 to Act No. 306 of the Public Acts of 1969, as amended. A
2 property owner may, after exhaustion of administrative remedies,
3 bring appropriate legal action in a court of competent
4 jurisdiction.

5 (3) A person who desires notification of pending permit
6 applications may make a written request to the department accom-
7 panied by an annual fee of \$25.00 which shall be credited to the
8 general fund of the state. The department shall prepare a
9 biweekly list of the applications made during the previous 2
10 weeks and shall promptly mail copies of the list for the remain-
11 der of the calendar year to the persons who requested notice.
12 The biweekly list shall state the name and address of each appli-
13 cant, the location of the wetland in the proposed use or develop-
14 ment including the size of both the proposed use or development
15 and of the wetland affected, and a summary statement of the pur-
16 pose of the use or development.

17 (4) A municipality, by ordinance, MAY ADOPT BY REFERENCE
18 THIS ACT AND THE RULES PROMULGATED UNDER THIS ACT OR may ~~provide~~
19 ~~for~~ ADOPT AN ORDINANCE THAT PROVIDES FOR REGULATION OF WETLAND
20 THAT IS THE SAME OR more stringent ~~definition and regulation of~~
21 ~~wetland~~ than is provided under this act. HOWEVER, A MUNICIPAL-
22 ITY THAT ADOPTS A WETLAND ORDINANCE SHALL NOT PROVIDE A DIFFERENT
23 DEFINITION OF WETLAND THAN IS PROVIDED IN THIS ACT, EXCEPT A WET-
24 LAND ORDINANCE MAY REGULATE WETLAND OF LESS THAN 5 ACRES IN SIZE,
25 MAY REGULATE A BUFFER ZONE AROUND WETLAND, AND MUNICIPALITIES IN
26 COUNTIES OF LESS THAN 100,000 POPULATION MAY REGULATE WETLAND
27 REGARDLESS OF WHETHER THE DEPARTMENT HAS COMPLETED ITS INVENTORY

1 OF WETLAND FOR THAT COUNTY. PRIOR TO THE EFFECTIVE DATE OF AN
2 ORDINANCE ADOPTED BY A MUNICIPALITY UNDER THIS SECTION, THE
3 MUNICIPALITY SHALL COMPLETE AN INVENTORY OF ALL WETLAND WITHIN
4 THE MUNICIPALITY THAT IS SUBJECT TO REGULATION BY THE ORDINANCE.
5 THE INVENTORY SHALL BE CONDUCTED IN CONFORMANCE WITH PROCEDURES
6 APPROVED BY THE DEPARTMENT. THIS INVENTORY SHALL BE INCLUDED AS
7 PART OF THE MUNICIPALITY'S ORDINANCE. IF A MUNICIPALITY HAS
8 ADOPTED AN ORDINANCE UNDER THIS SECTION PRIOR TO THE EFFECTIVE
9 DATE OF THE AMENDATORY ACT THAT ADDS SUBSECTION (8), THAT ORDI-
10 NANCE SHALL REMAIN IN EFFECT. HOWEVER, WITHIN 120 DAYS AFTER THE
11 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDS SUBSECTION (8), A
12 MUNICIPALITY MUST BE IN COMPLIANCE WITH THE PROVISIONS OF THIS
13 SECTION TO CONTINUE TO EXERCISE THE AUTHORITY WHICH MAY BE UNDER-
14 TAKEN BY A MUNICIPALITY UNDER THIS SECTION. This subsection is
15 supplemental to the existing authority of a municipality to pro-
16 tect wetland WITHIN ITS JURISDICTION. Each municipality ~~which~~
17 THAT adopts an ordinance regulating ~~wetlands~~ WETLAND shall
18 notify the department. ~~The department shall develop an agree-~~
19 ~~ment with each municipality which has an ordinance regulating~~
20 ~~wetlands. The agreement shall provide for an exchange of infor-~~
21 ~~mation with the department including information regarding the~~
22 ~~environmental impact of each proposed use or development on wet-~~
23 ~~lands, the proposed decision on each application for a proposed~~
24 ~~use or development on wetlands, and other information that may~~
25 ~~assist the municipality in administering its ordinance. The~~
26 ~~agreement shall provide that the department shall not issue a~~
27 ~~permit if the municipality has denied permission for the permit~~

~~1 under its ordinances, unless the permit involves a use or~~
~~2 development of regional or statewide public benefit. The agree-~~
~~3 ment shall require that the~~ A MUNICIPALITY THAT ADOPTS AN ORDI-
4 NANCE DESCRIBED IN THIS SUBSECTION SHALL PROMPTLY FORWARD A COPY
5 OF THE ORDINANCE TO THE DEPARTMENT FOR REVIEW. THE DEPARTMENT
6 HAS 60 DAYS FOLLOWING RECEIPT OF AN ORDINANCE DESCRIBED IN THIS
7 SUBSECTION IN WHICH TO EVALUATE WHETHER THE ORDINANCE IS IN
8 COMPLIANCE. IF THE DEPARTMENT FINDS THE ORDINANCE IN COMPLIANCE
9 WITH THIS ACT, THE DEPARTMENT SHALL NOTIFY THE MUNICIPALITY OF
10 ITS FINDING AND THE MUNICIPALITY IS FREE TO ENFORCE THE ORDINANCE
11 WITHOUT INTERFERENCE FROM THE DEPARTMENT. IF THE ORDINANCE IS
12 NOT IN COMPLIANCE, THE DEPARTMENT SHALL NOTIFY THE MUNICIPALITY
13 WITHIN THE 60 DAYS FOLLOWING RECEIPT OF THE ORDINANCE AND NOTIFY
14 THE MUNICIPALITY OF WHAT IS DEFICIENT IN THE ORDINANCE. A MUNIC-
15 IPALITY SHALL NOT REGULATE WETLAND PURSUANT TO ITS ORDINANCE
16 UNTIL THE DEPARTMENT HAS MADE A FINDING THAT THE ORDINANCE IS IN
17 COMPLIANCE WITH THIS ACT. HOWEVER, IF THE DEPARTMENT DOES NOT
18 ISSUE ITS FINDING TO THE MUNICIPALITY REGARDING ITS EVALUATION OF
19 AN ORDINANCE, THE ORDINANCE SHALL BE CONSIDERED TO BE IN COMPLI-
20 ANCE WITH THE REQUIREMENTS OF THIS SECTION. IF THE DEPARTMENT
21 DETERMINES THAT A MUNICIPALITY IS NOT IMPLEMENTING ITS ORDINANCE
22 IN COMPLIANCE WITH THIS SECTION, THE DEPARTMENT SHALL NOTIFY THE
23 MUNICIPALITY AND THE MUNICIPALITY SHALL CEASE IMPLEMENTING ITS
24 ORDINANCE. UPON SUCH AN ACTION, THE DEPARTMENT SHALL REGULATE
25 ACTIVITY WITHIN WETLAND AS OTHERWISE PROVIDED IN THIS ACT AND
26 RULES PROMULGATED UNDER THIS ACT.

1 (5) A municipality SHALL use an application form supplied by
2 the department. ~~, and that~~ IN A MUNICIPALITY THAT REGULATES
3 WETLAND WITHIN ITS JURISDICTION PURSUANT TO THE AUTHORITY OF THIS
4 SECTION, each person applying for a permit WITHIN THE JURISDIC-
5 TION SHALL make application directly with the municipality. Upon
6 receipt, the municipality shall forward a copy of each applica-
7 tion to the department. ~~The department shall begin reviewing~~
8 ~~the application as provided in this act.~~ The municipality shall
9 review ~~the~~ EACH application FOR A WETLAND PERMIT pursuant to
10 its ordinance and shall modify, approve, or deny the application
11 within 60 days after receipt. The department shall inform any
12 interested person whether a municipality has an ordinance regu-
13 lating ~~wetlands~~ WETLAND WITHIN ITS JURISDICTION. If the
14 department receives an application with respect to a wetland
15 ~~which~~ THAT is located in a municipality ~~which has an ordinance~~
16 ~~regulating wetlands~~ THAT REGULATES WETLAND WITHIN ITS
17 JURISDICTION, the department immediately shall forward the appli-
18 cation to the municipality, which shall modify, deny, or approve
19 the application ~~under~~ AS PROVIDED IN this ~~subsection~~
20 SECTION. ~~The~~ A municipality THAT REGULATES WETLAND AS PROVIDED
21 IN THIS SECTION shall notify the department of its ~~decision~~
22 DECISIONS REGARDING PERMIT APPLICATIONS. ~~The department shall~~
23 ~~proceed as provided in this act.~~ IF A MUNICIPALITY ISSUES PER-
24 MITS PURSUANT TO THE AUTHORITY OF THIS SECTION, THE MUNICIPALITY
25 MAY ASSESS A REASONABLE PERMIT FEE TO THE PERMIT APPLICANT FOR
26 ITS SERVICES IN PROCESSING THE PERMIT APPLICATION. IN ADDITION,
27 THE MUNICIPALITY MAY BILL A PERMIT APPLICANT FOR THE REASONABLE

1 EXPENSES INCURRED BY THE MUNICIPALITY IN HIRING CONSULTANTS TO
2 ASSIST THE MUNICIPALITY IN REVIEWING A PERMIT APPLICATION.

3 (6) IF A MUNICIPALITY GRANTS A PERMIT PURSUANT TO THIS SEC-
4 TION, A PERMIT IS NOT REQUIRED FROM THE DEPARTMENT FOR ACTIVITIES
5 WITHIN THAT WETLAND REGULATED BY THE MUNICIPALITY. A PERMIT
6 GRANTED BY A MUNICIPALITY UNDER THIS ACT IS NOT REVIEWABLE BY THE
7 DEPARTMENT UNLESS THE DEPARTMENT FINDS THAT THE PERMIT IS OR MAY
8 HAVE BEEN GRANTED BY THE MUNICIPALITY IN VIOLATION OF THIS
9 SECTION.

10 (7) ~~-(5)-~~ If a municipality does not have an ordinance regu-
11 lating ~~wetlands~~ WETLAND, the department shall promptly send a
12 copy of ~~the~~ permit ~~application~~ APPLICATIONS THAT IT RECEIVES
13 to the municipality where the wetland is located. The municipal-
14 ity may review the application; may hold a hearing on the appli-
15 cation; and may recommend approval, modification, or denial of
16 the application to the department. The recommendations of the
17 municipality shall be made and returned to the department within
18 45 days after the municipality's receipt of the permit
19 application. The department shall approve, modify, or deny the
20 application as provided in this act.

21 (8) IMMEDIATELY FOLLOWING THE EFFECTIVE DATE OF THIS ACT,
22 THE DEPARTMENT SHALL CONTACT EACH MUNICIPALITY IN THIS STATE AND
23 FULLY INFORM THE MUNICIPALITY OF THE REQUIREMENTS OF THE AMENDA-
24 TORY ACT THAT ADDED THIS SUBSECTION.