

**SFA**

BILL ANALYSIS

Senate Fiscal Agency

• Lansing, Michigan 48909

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Senate Bill 522 (as enrolled)

Senate Bill 807 (as enrolled)

Sponsor: Senator Paul Wartner (S.B. 522)

Senator Dave Honigman (S.B. 807)

First Senate Committee: Natural Resources and Environmental Affairs

Second Senate Committee: Local Government and Urban Development

House Committee: Conservation, Recreation and Environment

Date Completed: 1-5-93

PUBLIC ACT 295 of 1992PUBLIC ACT 296 of 1992**RATIONALE**

Wetland in Michigan may be regulated under a number of different State laws, including the Inland Lakes and Streams Act, the Shorelands Protection and Management Act, and the Great Lakes Submerged Lands Act. Much of the authority for the regulation of wetland by the Department of Natural Resources (DNR) devolves from the Wetland Protection Act. That Act permits a municipality, by ordinance, to provide for more stringent definition and regulation of wetland than the Act provides. Some people contend that this has resulted in a "patchwork quilt" of overly restrictive or diverse local wetland ordinances, and that a compromise, balancing local interests and uniform regulation, is needed.

**CONTENT**

Senate Bill 522 would amend the Wetland Protection Act to:

- Permit a municipality to regulate wetland, if an ordinance met certain requirements, including that it did not provide a wetland definition that differed from the Act's definition.
- Permit an ordinance to regulate wetland that was smaller than two acres but require the ordinance to permit wetland development unless it were determined by a municipality that the area was essential to a municipality's natural resources.
- Require a municipality to notify a wetland owner of its findings when determining that a wetland was

essential to a municipality's natural resources.

- Require an ordinance to permit a landowner to request revaluation of the property if a municipality denied a use permit.
- Permit a landowner who was aggrieved by a determination, action, or inaction resulting from a property revaluation request to protest and appeal the determination, action, or inaction.
- Specify that a landowner's right to institute circuit court proceedings to protect his or her rights would not be limited.
- Require that funds collected under an ordinance, other than criminal fines, be deposited in a municipality's general fund.

Senate Bill 807 would amend the Wetland Protection Act to:

- Require a municipality that wanted to adopt a wetland ordinance to complete and make available to the public at a reasonable cost an inventory of all wetland in the municipality.
- Require a municipality to make available to the public a draft of the inventory map and provide for public comment prior to finalizing the map.
- Give a municipality with an existing wetland ordinance 18 months to



did one or more of the following:

- Supported State or Federal endangered or threatened plants, fish, or wildlife appearing on a list specified in the Endangered Species Act.
- Supported plants or animals of an identified local importance.
- Provided groundwater recharge documented by a public agency.
- Provided flood and storm control by the hydrologic absorption and storage capacity of the wetland.
- Provided wildlife habitat by providing breeding, nesting, or feeding grounds or cover for forms of wildlife, waterfowl, including migratory waterfowl, and rare, threatened, or endangered wildlife species.
- Provided protection of subsurface water resources and provision of valuable watersheds and recharging groundwater supplies.
- Provided pollution treatment by serving as a biological and chemical oxidation basin.
- Provided erosion control by serving as a sedimentation area and filtering basin, absorbing silt and organic matter.
- Provided sources of nutrients in water food cycles and nursery grounds and sanctuaries for fish.

#### Property Revaluation

A municipality that adopted an ordinance would have to include a provision allowing a landowner to request a revaluation of the affected property for assessment purposes to determine its fair market value under the use restriction, if a municipality denied a permit for a proposed wetland use. A landowner who was aggrieved by a determination, action, or inaction under this provision could protest and appeal that determination, action, or inaction pursuant to the General Property Tax Act.

If an applicant were aggrieved by a determination, action, or inaction by the municipality regarding the issuance of a permit, that person could seek judicial review in the same manner as provided in the Administrative Procedures Act. The bill specifies that it would not limit a wetland owner's right to institute proceedings in any State circuit court against

any person when necessary to protect the wetland owner's rights.

#### Fees and Fines

Other than criminal fines, funds collected by a municipality under a local ordinance would have to be deposited in a municipality's general fund.

#### Permitted Wetland Use

The Act permits certain uses of wetland without a permit, subject to other State laws and the owner's regulation. Among those uses are farming, horticulture, silviculture, lumbering, and ranching activities, including plowing, irrigation, irrigation ditching, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, forest products, or upland soil and water conservation practices. Under the bill, wetland altered under this provision could not be used for a purpose, other than one described in this provision, without a permit from the DNR.

#### Senate Bill 807

Prior to the effective date of an ordinance authorized under Senate Bill 522, a municipality that wanted to adopt such an ordinance would have to complete and make available to the public, at a reasonable cost, an inventory of all wetland in the municipality. A municipality located in a county with a population under 100,000 would not be required to include public lands on its map.

A municipality would be required to make available to the public a draft of the inventory map, provide for public notice and comment prior to finalizing the map, and make a written response to written comments the municipality received regarding the contents of the inventory.

A wetland inventory map would not create any legally enforceable presumptions regarding whether property that was or was not included on the map was or was not in fact a wetland.

#### Ordinance In Effect

A municipality that had a wetland ordinance on the bill's effective date would have 18 months from that date to complete an inventory and to comply with the Act, or it could not continue to



After the lease has expired, these landowners then have tried to develop the land for a use not originally contemplated by the Act and without seeking a permit. Under the bill, altered wetland could not be used for purposes other than those permitted under the Act.

#### **Supporting Argument**

Under Senate Bill 807, a municipality that wanted to adopt a wetland ordinance would be required to complete and make available to the public an inventory of all wetland in the municipality. The bill also would provide for the notification of property owners that an inventory map existed, that the owners' properties could be wetland, and that a municipality had a wetland ordinance. The development of wetland inventory maps could reduce conflicts and ordinance violations. In addition, the mere development of these maps could heighten awareness of the presence of wetland in a locality. The bill also would require that wetland use applications be processed to ensure that an applicant did not have to appear before more than one decision-making body in a local government. This could streamline the application process for landowners.

**Response:** By requiring a map of all wetland in a municipality before regulation could occur, the bill could result in the expenditure of funds by local governments for dubious environmental benefit. As specified in the bill, a map would not create any legally enforceable presumption regarding whether the property that was or was not included on the map was or was not a wetland. Nevertheless, a map could create the expectation by some property owners who viewed a map that land they owned was not regulated wetland. Even with a map, a property owner probably would not know for certain whether he or she owned wetland until an on-site determination had been made. Furthermore, requiring that an inventory map be completed by local governments wishing to enact a wetland ordinance could delay enactment of such ordinances until localities completed the mapping exercise. It is also feared that limiting the hearing on an application to not more than one decision-making body could eliminate local wetland or natural feature boards, many of which are staffed by local residents who have expertise and interest in wetland.

#### **Opposing Argument**

Despite improvement of the enrolled version of Senate Bill 522 over the original version, this bill still would make it more difficult to protect wetland in this State. Currently, the Act permits a local government to provide for a more stringent definition and regulation of wetland, and prohibits the DNR from issuing a permit if a municipality denies the permit, unless the permit involves a use or development that is of regional or Statewide benefit. The bill would delete these provisions. Under the bill, a municipality could enact an ordinance, under certain conditions, including that an ordinance's definition of wetland not differ from the Act's definition. In addition, a municipality would have to approve an application for wetland use unless it determined that the wetland was essential to the preservation of the municipality's natural resources. A municipality also would have to show in writing how the wetland was essential to the environment of a municipality. Thus, the burden of proof would rest on the local government and not on the person proposing to develop the wetland. Undoubtedly, many municipalities would have to hire persons who were experts in various environmental and scientific fields to make these determinations. Furthermore, the criteria specified in the bill to determine whether a wetland was environmentally essential are ambiguous and could result in a municipality's going to court to defend its rejection of a permit. Given the financial constraints that many local governments face, a municipality could be inclined to approve a wetland use permit, rather than spend limited resources in an effort to deny a permit. The result of the bill could be further development of wetland.

#### **Opposing Argument**

The bills represent an erosion of a local government's ability to regulate land use. For example, Senate Bill 522 appears to delete a local government's authority to protect wetland buffer zones, which some ordinances now do since the regulation of buffer zones is not addressed in the Act. Local planning and zoning officials are best suited to deal with the separate and unique characteristics of lands within individual governmental units. Thus, local governments should have the authority to enforce stricter regulations than those imposed by the State in order to meet the best interests of the local citizens.