

# SENATE BILL No. 1044

November 29, 1988, Introduced by Senators BINSFELD, GAST, MACK, ARTHURHULTZ, DILLINGHAM, DI NELLO, WELBORN, CROPSEY, CRUCE, EHLERS, FESSLER, NICHOLS, POSTHUMUS, SCHWARZ, SEDERBURG, DE GROW, N. SMITH, SHINKLE, CARL, GEO. HART and J. HART and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend sections 6, 8, 9, and 21 of Act No. 203 of the Public Acts of 1979, entitled "Goemaere-Anderson wetland protection act," being sections 281.706, 281.708, 281.709, and 281.721 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 6, 8, 9, and 21 of Act No. 203 of the  
2 Public Acts of 1979, being sections 281.706, 281.708, 281.709,  
3 and 281.721 of the Michigan Compiled Laws, are amended to read as  
4 follows:

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

1 281.951 to 281.965 of the Michigan Compiled Laws, shall not  
2 require a permit under this act.

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

6 (a) Fishing, trapping, or hunting.

7 (b) Swimming or boating.

8 (c) Hiking.

9 (d) Grazing of animals.

10 (e) Farming, horticulture, silviculture, lumbering, and  
11 ranching activities, including plowing, irrigation, irrigation  
12 ditching, seeding, cultivating, minor drainage, harvesting for  
13 the production of food, fiber, and forest products, or upland  
14 soil and water conservation practices.

15 (f) Maintenance or operation of serviceable structures in  
16 existence on the effective date of this act or constructed pursu-  
17 ant to this act.

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

19 (h) Maintenance, operation, or improvement which includes  
20 straightening, widening, or deepening of the following which is  
21 necessary for the production or harvesting of agricultural  
22 products:

23 (i) An existing private agricultural drain.

24 (ii) That portion of a drain legally established pursuant to  
25 THE DRAIN CODE OF 1956, Act No. 40 of the Public Acts of 1956, as  
26 amended, being sections 280.1 to 280.630 of the Michigan Compiled

1 Laws, which has been constructed or improved for drainage  
2 purposes.

3 (iii) A drain constructed pursuant to other provisions of  
4 this act.

5 (j) Construction or maintenance of farm roads, forest roads,  
6 or temporary roads for moving mining or forestry equipment, if  
7 the roads are constructed and maintained in a manner to assure  
8 that any adverse effect on the wetland will be otherwise  
9 minimized.

10 (k) Drainage necessary for the production and harvesting of  
11 agricultural products if the wetland is owned by a person who is  
12 engaged in commercial farming and the land is to be used for the  
13 production and harvesting of agricultural products. Except as  
14 otherwise provided in this act, land improved under this subdivi-  
15 sion after the effective date of this act shall not be used for  
16 nonfarming purposes without a permit from the department. This  
17 subdivision shall not apply to a wetland which is contiguous to a  
18 lake or stream, or to a tributary of a lake or stream, or to a  
19 wetland which the department has determined by clear and convinc-  
20 ing evidence to be a wetland which is necessary to be preserved  
21 for the public interest, in which case a permit shall be  
22 required.

23 (l) Maintenance or improvement of public streets, highways,  
24 or roads, within the right of way and in such a manner as to  
25 assure that any adverse effect on the wetland will be otherwise  
26 minimized. Maintenance or improvement does not include adding

1 extra lanes; increasing the right of way; or deviating from the  
2 existing location of the street, highway, or road.

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

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

13 (o) Operation or maintenance, including reconstruction of  
14 recently damaged parts, of serviceable dikes and levees in exis-  
15 tence on the effective date of this act or constructed pursuant  
16 to this act.

17 (p) Construction of iron and copper mining tailings basins  
18 and water storage areas.

19 (Q) SITING, CONSTRUCTION, AND MAINTENANCE OF GOLF COURSES.

20 (3) After the effective date of this act but immediately  
21 prior to the approval of a state program under section 404 of  
22 title ~~4~~ IV of the ~~clean water act of 1977~~ FEDERAL WATER POL-  
23 LUTION CONTROL ACT, 33 U.S.C. 1344, where a project solely  
24 involves the discharge of fill material subject to the individual  
25 permit requirements of section 404 of title ~~4~~ IV of the ~~clean~~  
26 ~~water act of 1977~~ FEDERAL WATER POLLUTION CONTROL ACT, 33

1 U.S.C. 1344, an additional permit shall not be required by this  
2 act.

3       Sec. 8. (1) Within 60 days after receipt of the completed  
4 application and fee, the department may hold a hearing. If a  
5 hearing is held, it shall be held in the county where the wetland  
6 on which the permit is to apply is located. Notice of the hear-  
7 ing shall be made in the same manner as for the promulgation of  
8 rules under THE ADMINISTRATIVE PROCEDURES ACT OF 1969, Act  
9 No. 306 of the Public Acts of 1969, as amended, being sections  
10 24.201 to ~~24.315~~ 24.328 of the Michigan Compiled Laws. The  
11 department may approve or disapprove a permit application without  
12 a public hearing unless a person requests a hearing in writing  
13 within 20 days after the mailing of notification of the permit  
14 application as required by subsection (3), or the department  
15 determines that the permit application is of significant impact  
16 to warrant a public hearing.

17       (2) If a hearing is not held, the department shall approve  
18 or disapprove the permit application within 90 days after the  
19 completed permit application is filed with the department. If a  
20 hearing is held, the department shall approve or disapprove the  
21 permit application within 90 days after the conclusion of the  
22 hearing. THE 90-DAY TIME PERIOD DURING WHICH THE DEPARTMENT MAY  
23 APPROVE OR DISAPPROVE A PERMIT APPLICATION SHALL BE EXTENDED FOR  
24 NOT MORE THAN 90 DAYS UPON THE REQUEST OF AN APPLICANT. The  
25 department may approve a permit application, request modifica-  
26 tions in the application, or deny the permit application. If the  
27 department approves the permit application, the department shall

1 prepare and send the permit to the applicant. If the department  
2 denies, or requests a modification of, the permit application,  
3 the department shall send notice of the denial or modification  
4 request, and the reasons for the denial or the modifications  
5 requested to the applicant. Department approval may include the  
6 issuance of a permit containing conditions necessary for compli-  
7 ance with this act. If the department does not approve or disap-  
8 prove the permit application within the time provided by this  
9 subsection, the permit application shall be considered approved,  
10 and the department shall be considered to have made the determi-  
11 nations required by section 9. The action taken by the depart-  
12 ment may be appealed pursuant to THE ADMINISTRATIVE PROCEDURES  
13 ACT OF 1969, Act No. 306 of the Public Acts of 1969, as amended.  
14 A property owner may, after exhaustion of administrative reme-  
15 dies, bring appropriate legal action in a court of competent  
16 jurisdiction.

17 (3) A person who desires notification of pending permit  
18 applications may make a written request to the department accom-  
19 panied by an annual fee of \$25.00 which shall be credited to the  
20 general fund of the state. The department shall prepare a  
21 biweekly list of the applications made during the previous 2  
22 weeks and shall promptly mail copies of the list for the remain-  
23 der of the calendar year to the persons who requested notice.  
24 The biweekly list shall state the name and address of each appli-  
25 cant, the location of the wetland in the proposed use or develop-  
26 ment including the size of both the proposed use or development

1 and of the wetland affected, and a summary statement of the  
2 purpose of the use or development.

3 (4) A municipality, by ordinance, may provide for more  
4 stringent definition and regulation of wetland than is provided  
5 under this act. This subsection is supplemental to the existing  
6 authority of a municipality to protect wetland. Each municipal-  
7 ity which adopts an ordinance regulating wetlands shall notify  
8 the department. The department shall develop an agreement with  
9 each municipality which has an ordinance regulating wetlands.  
10 The agreement shall provide for an exchange of information with  
11 the department including information regarding the environmental  
12 impact of each proposed use or development on wetlands, the pro-  
13 posed decision on each application for a proposed use or develop-  
14 ment on wetlands, and other information that may assist the  
15 municipality in administering its ordinance. The agreement shall  
16 provide that the department shall not issue a permit if the  
17 municipality has denied permission for the permit under its ordi-  
18 nances, unless the permit involves a use or development of  
19 regional or statewide public benefit. The agreement shall  
20 require that the municipality use an application form supplied by  
21 the department, and that each person applying for a permit make  
22 application directly with the municipality. Upon receipt, the  
23 municipality shall forward a copy of each application to the  
24 department. The department shall begin reviewing the application  
25 as provided in this act. The municipality shall review the  
26 application pursuant to its ordinance and shall modify, approve,  
27 or deny the application within 60 days after receipt. The

1 department shall inform any interested person whether a  
2 municipality has an ordinance regulating wetlands. If the  
3 department receives an application with respect to a wetland  
4 which is located in a municipality which has an ordinance regu-  
5 lating wetlands, the department immediately shall forward the  
6 application to the municipality, which shall modify, deny, or  
7 approve the application under this subsection. The municipality  
8 shall notify the department of its decision. The department  
9 shall proceed as provided in this act.

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

20 Sec. 9. (1) A permit for an activity listed in section 5  
21 shall not be approved unless the department determines that the  
22 issuance of a permit is in the public interest, that the permit  
23 is necessary to realize the benefits derived from the activity,  
24 and that the activity is otherwise lawful.

25 (2) In determining whether the activity is in the public  
26 interest, the benefit which reasonably may be expected to accrue  
27 from the proposal shall be balanced against the reasonably

1 foreseeable detriments of the activity. The decision shall  
2 reflect the national and state concern for the protection of nat-  
3 ural resources from pollution, impairment, and destruction. The  
4 following general criteria shall be considered:

5 (a) The relative extent of the public and private need for  
6 the proposed activity.

7 (b) The availability of feasible and prudent alternative  
8 locations ON LANDS OWNED BY THE APPLICANT OR ON LANDS THAT THE  
9 APPLICANT HOLDS AN OPTION TO PURCHASE and methods to accomplish  
10 the expected benefits from the activity.

11 (c) The extent and permanence of the beneficial or detrimen-  
12 tal effects which the proposed activity may have on the public  
13 and private uses to which the area is suited, including the bene-  
14 fits the wetland provides.

15 (d) The probable impact of each proposal in relation to the  
16 cumulative effect created by other existing and anticipated  
17 activities in the watershed.

18 (e) The probable impact on recognized historic, cultural,  
19 scenic, ecological, or recreational values and on the public  
20 health or fish or wildlife.

21 (f) The size of the wetland being considered.

22 (g) The amount of remaining wetland in the general area.

23 (h) Proximity to any waterway.

24 (i) Economic value, both public and private, of the proposed  
25 land change to the general area.

1 (3) In considering a permit application, the department  
2 shall give serious consideration to findings of necessity for the  
3 proposed activity which have been made by other state agencies.

4 (4) A permit shall not be issued unless it is shown that an  
5 unacceptable disruption will not result to the aquatic  
6 resources. In determining whether a disruption to the aquatic  
7 resources is unacceptable, the criteria set forth in section 3  
8 and subsection (2) shall be considered. A permit shall not be  
9 issued unless the applicant also shows either of the following:

10 (a) The proposed activity is primarily dependent upon being  
11 located in the wetland.

12 (b) A feasible and prudent alternative does not exist ON  
13 LANDS OWNED BY THE APPLICANT OR ON LANDS THAT THE APPLICANT HOLDS  
14 AN OPTION TO PURCHASE.

15 Sec. 21. (1) This act shall not be construed to abrogate  
16 rights or authority otherwise provided by law.

17 (2) For the purposes of determining if there has been a  
18 taking of property without just compensation under Michigan law,  
19 an owner of property who has sought and been denied a permit or  
20 has been made subject to modifications or conditions in the  
21 permit under this act or the department's action or inaction pur-  
22 suant to this act may file an action in a court of competent  
23 jurisdiction.

24 (3) If the court determines that an action of the department  
25 pursuant to this act constitutes a taking of the property of a  
26 person then the court shall order the department ~~, at the~~  
27 ~~department's option, to do one or more of the following: (a)~~

1 ~~Compensate~~ TO COMPENSATE the property owner for the full amount  
2 of the lost value. THE LOST VALUE SHALL BE CALCULATED BASED UPON  
3 THE USE THAT THE OWNER PLANNED FOR THE PROPERTY AS STATED IN THE  
4 OWNER'S APPLICATION FOR A PERMIT.

5 ~~(b) Purchase the property in the public interest as deter-~~  
6 ~~mined before its value was affected by this act or the~~  
7 ~~department's action or inaction pursuant to this act.~~

8 ~~(c) Modify its action or inaction with respect to the prop-~~  
9 ~~erty so as to minimize the detrimental affect to the property's~~  
10 ~~value.~~

11 ~~(4) For the purposes of this section, the value of the prop-~~  
12 ~~erty may not exceed that share which the area in dispute occupies~~  
13 ~~in the total parcel of land, of the state equalized evaluation of~~  
14 ~~the total parcel, multiplied by 2, as determined by an inspection~~  
15 ~~of the most recent assessment roll of the township or city in~~  
16 ~~which the parcel is located.~~