

SENATE BILL No. 593

November 5, 1991, Introduced by Senator WARTNER and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend sections 3, 7, 8, and 21 of Act No. 203 of the Public Acts of 1979, entitled "Goemaere-Anderson wetland protection act," being sections 281.703, 281.707, 281.708, and 281.721 of the Michigan Compiled Laws; and to add section 8a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 3, 7, 8, and 21 of Act No. 203 of the
2 Public Acts of 1979, being sections 281.703, 281.707, 281.708,
3 and 281.721 of the Michigan Compiled Laws, are amended and
4 section 8a is added to read as follows:

5 Sec. 3. (1) The legislature finds that:

6 (a) Wetland conservation is a matter of state concern since
7 a wetland of 1 ~~county~~ MUNICIPALITY may be affected by acts on a
8 river, lake, stream, or wetland of other ~~counties~~
9 MUNICIPALITIES. THE GOALS AND POLICIES UNDERLYING THIS ACT

1 TRANSCEND THE BOUNDARIES OF MUNICIPALITIES. THERE IS A NEED FOR
2 UNIFORMITY AND CERTAINTY IN THE REGULATION OF WETLAND; A NEED TO
3 ENSURE THAT THE GOALS AND POLICIES OF THIS ACT ARE FOLLOWED
4 THROUGHOUT THE STATE; A NEED TO ENSURE THAT A STATEWIDE BODY OF
5 EXPERTISE IS APPLIED TO THE REGULATION OF WETLAND; AND A NEED TO
6 ENSURE THAT THE REGULATION OF WETLAND DOES NOT UNREASONABLY
7 RESTRICT PROPERTY RIGHTS AND THAT THE RESTRICTIONS ON THE USE OF
8 WETLAND THAT ARE IMPOSED ARE IMPOSED UNIFORMLY. THERE IS ACCORD-
9 INGLY A NEED THAT THIS ACT PREEMPT THE EFFORTS OF ANY MUNICIPAL-
10 ITY TO REGULATE WETLAND WITHIN THE BOUNDARIES OF THE
11 MUNICIPALITY.

12 (b) A loss of a wetland may deprive the people of the state
13 of some or all of the following benefits to be derived from the
14 wetland:

15 (i) Flood and storm control by the hydrologic absorption and
16 storage capacity of the wetland.

17 (ii) Wildlife habitat by providing breeding, nesting, and
18 feeding grounds and cover for many forms of wildlife, waterfowl,
19 including migratory waterfowl, and rare, threatened, or endan-
20 gered wildlife species.

21 (iii) Protection of subsurface water resources and provision
22 of valuable watersheds and recharging ground water supplies.

23 (iv) Pollution treatment by serving as a biological and
24 chemical oxidation basin.

25 (v) Erosion control by serving as a sedimentation area and
26 filtering basin, absorbing silt and organic matter.

1 (vi) Sources of nutrients in water food cycles and nursery
2 grounds and sanctuaries for fish.

3 (c) Wetlands are valuable as an agricultural resource for
4 the production of food and fiber, including certain crops which
5 may only be grown on sites developed from wetland.

6 (d) That the extraction and processing of nonfuel minerals
7 may necessitate the use of wetland, if it is determined pursuant
8 to section 9 that the proposed activity is dependent upon being
9 located in the wetland, and that a prudent and feasible alterna-
10 tive does not exist.

11 (2) In the administration of this act, the department shall
12 consider the criteria provided in subsection (1).

13 Sec. 7. (1) ~~Except as provided in section 8(4), to~~ TO
14 obtain a permit for a use or development listed in section 5, the
15 person desiring the permit shall file an application with the
16 department on a form provided by the department accompanied by a
17 fee of \$25.00. A person who has a permit for the particular
18 activity under THE INLAND LAKES AND STREAMS ACT OF 1972, Act
19 No. 346 of the Public Acts of 1972, BEING SECTIONS 281.951 TO
20 281.965 OF THE MICHIGAN COMPILED LAWS, or Act No. 61 of the
21 Public Acts of 1939, as amended, being sections 319.1 to 319.27
22 of the Michigan Compiled Laws, does not need to pay the fee pre-
23 scribed by this subsection. The application shall include:

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

25 (b) The location of the wetland.

26 (c) A description of the wetland on which the use or
27 development is to be made.

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

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

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

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

14 Sec. 8. (1) Within 60 days after receipt of the completed
15 application and fee, the department may hold a hearing. If a
16 hearing is held, it shall be held in the county where the wetland
17 on which the permit is to apply is located. Notice of the hear-
18 ing shall be made in the same manner as for the promulgation of
19 rules under THE ADMINISTRATIVE PROCEDURES ACT OF 1969, Act No.
20 306 of the Public Acts of 1969, as amended, being sections 24.201
21 to ~~24.315~~ 24.328 of the Michigan Compiled Laws. The department
22 may approve or disapprove a permit application without a public
23 hearing unless a person requests a hearing in writing within 20
24 days after the mailing of notification of the permit application
25 as required by subsection (3), or the department determines that
26 the permit application is of significant impact to warrant a
27 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) A municipality, by ordinance, may provide for more~~
11 ~~stringent definition and regulation of wetland than is provided~~
12 ~~under this act. This subsection is supplemental to the existing~~
13 ~~authority of a municipality to protect wetland. Each municipal-~~
14 ~~ity which adopts an ordinance regulating wetlands shall notify~~
15 ~~the department. The department shall develop an agreement with~~
16 ~~each municipality which has an ordinance regulating wetlands.~~
17 ~~The agreement shall provide for an exchange of information with~~
18 ~~the department including information regarding the environmental~~
19 ~~impact of each proposed use or development on wetlands, the pro-~~
20 ~~posed decision on each application for a proposed use or develop-~~
21 ~~ment on wetlands, and other information that may assist the~~
22 ~~municipality in administering its ordinance. The agreement shall~~
23 ~~provide that the department shall not issue a permit if the~~
24 ~~municipality has denied permission for the permit under its ordi-~~
25 ~~nances, unless the permit involves a use or development of~~
26 ~~regional or statewide public benefit. The agreement shall~~
27 ~~require that the municipality use an application form supplied by~~

~~1 the department, and that each person applying for a permit make
2 application directly with the municipality. Upon receipt, the
3 municipality shall forward a copy of each application to the
4 department. The department shall begin reviewing the application
5 as provided in this act. The municipality shall review the
6 application pursuant to its ordinance and shall modify, approve,
7 or deny the application within 60 days after receipt. The
8 department shall inform any interested person whether a munici-
9 pality has an ordinance regulating wetlands. If the department
10 receives an application with respect to a wetland which is
11 located in a municipality which has an ordinance regulating wet-
12 lands, the department immediately shall forward the application
13 to the municipality, which shall modify, deny, or approve the
14 application under this subsection. The municipality shall notify
15 the department of its decision. The department shall proceed as
16 provided in this act.~~

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

1 (4) THE DEPARTMENT SHALL PROMPTLY SEND A COPY OF THE PERMIT
2 APPLICATION TO THE MUNICIPALITY WHERE THE WETLAND IS LOCATED.
3 THE MUNICIPALITY MAY REVIEW THE APPLICATION; MAY HOLD A HEARING
4 ON THE APPLICATION; AND MAY RECOMMEND APPROVAL, MODIFICATION, OR
5 DENIAL OF THE APPLICATION TO THE DEPARTMENT. THE RECOMMENDATIONS
6 OF THE MUNICIPALITY SHALL BE MADE AND RETURNED TO THE DEPARTMENT
7 WITHIN 45 DAYS AFTER THE MUNICIPALITY'S RECEIPT OF THE PERMIT
8 APPLICATION. THE DEPARTMENT SHALL APPROVE, MODIFY, OR DENY THE
9 APPLICATION AS PROVIDED IN THIS ACT.

10 SEC. 8A. A MUNICIPALITY SHALL NOT ENACT OR ENFORCE AN ORDI-
11 NANCE RELATING TO THE DEVELOPMENT OR USE OF WETLAND OR OTHERWISE
12 REGULATE THE DEVELOPMENT OR USE OF WETLAND, EXCEPT THAT A ZONING
13 ORDINANCE ENACTED PURSUANT TO THE APPLICABLE ZONING ENABLING ACT
14 MAY IMPOSE REGULATIONS THAT HAVE GENERAL APPLICABILITY THROUGHOUT
15 A ZONING DISTRICT AND MAY CONSIDER THE PRESENCE OF NATURAL
16 RESOURCES AND OTHER FACTORS IF THOSE CONSIDERATIONS ARE NOT BASED
17 STRICTLY ON THE WETLAND CHARACTER OF LAND.

18 Sec. 21. (1) ~~This~~ EXCEPT AS OTHERWISE PROVIDED IN
19 SECTION 8A, THIS act shall not be construed to abrogate rights or
20 authority otherwise provided by law.

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

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

5 (a) Compensate the property owner for the full amount of the
6 lost value.

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

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

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