



**House
Legislative
Analysis
Section**

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WETLAND ACT FEES

**House Bill 4967 with floor amendments
adopted on 8-17-93
First Analysis (8-31-93)**

**Sponsor: Rep. Jan Dolan
Committee: Appropriations**

THE APPARENT PROBLEM:

The Department of Natural Resources (DNR) administers a number of acts that require permits for projects that may affect land or water resources, such as operating marinas, performing construction work in certain areas near water, using chemicals to control "aquatic nuisances," and the like. Recent budget cutbacks have hampered the department's ability to process applications, however, and a substantial backlog of permit applications has developed. The proposed DNR budget for the coming fiscal year includes an appropriation of \$1.27 million to fund 17 full-time-equated positions that are anticipated to enable the department to reduce the backlog; similar appropriations have been proposed for subsequent fiscal years through 1994-95. However, those appropriations are predicated on the establishment of a steady source of revenue through increased fees. Increased fees have been proposed and largely enacted through a package of Senate bills (see Background Information).

Fee revenue goes into the general fund, which provides about half of the funding for the DNR's land and water resource management division (with the remainder coming primarily from federal funds). Efforts to make various programs throughout state government more self-supporting typically have included earmarking fee revenue for the administration and enforcement of the program(s) that generated it. Thus, part of the land and water management fee package includes the creation of a restricted revenue fund that would receive fee revenue and be used exclusively for certain purposes.

While much of the package has been through both chambers of the legislature, one element remains: a bill to increase permit application fees for projects in wetlands. Legislation to amend the wetland protection act has been proposed.

THE CONTENT OF THE BILL:

The bill would amend the Goemaere-Anderson Wetland Protection Act to replace the \$25 permit fee (required for construction in or filling, dredging, or draining a wetland) with a three-step schedule of fees from \$50 to \$2,000 depending on the project. The bill also would establish fees for having the DNR determine whether given property is wetland. New fees would expire October 1, 1995. The bill could not take effect unless Senate Bill 238 (which would create the Land and Water Management Permit Fee Fund) also was enacted. Further details follow.

Permit fees. Someone who wants to construct, operate, or maintain any use or development of a wetland, or who wants to fill, dredge, or drain a wetland, must first obtain a permit from the DNR. A permit application fee of \$25 is charged, unless the person already has a permit issued under the Inland Lakes and Streams Act or under Public Act 61 of 1969 (which is the act regulating oil and gas wells).

The bill would replace the \$25 permit application fee with the following fees, to be submitted with a permit application:

- \$50 for a project that fell into a category for which the DNR had issued a general permit valid on a statewide or county basis (such applications are processed individually and are subject to the current \$25 fee);
- \$2,000 for a "major project," including 10,000 cubic yards or more of wetland fill, new golf courses affecting wetland, or subdivisions or condominiums affecting wetland;
- \$500 for all other projects.

A fee would not be charged more than once for each project. Fees would revert to \$25 on October 1, 1995.

Other acts. When a project required review and approval under the wetland act and any of several other acts, only one permit fee would have to be paid, but it would have to be the highest of the applicable fees possible under the various acts. Those other acts would be: the Inland Lakes and Streams Act, the Great Lakes Submerged Lands Act, the Shorelands Protection and Management Act, the section of the Subdivision Control Act that deals with submission of plats to the water resources commission, and the section of the water resources commission act that deals with flood control and cooperation with other governments. The bill would delete language that excuses someone with a permit under the Inland Lakes and Streams Act or Public Act 61 of 1939 (which deals with oil and gas well regulation) from paying a permit fee under the wetland act.

Violative projects. If work had been done in violation of a wetland permit requirement and restoration was not ordered by the department, the department could accept a permit application if accompanied by a fee of twice the amount otherwise required. However, a seawall built for a single family dwelling which was in violation of a wetland permit requirement would be excused from all wetland permit fees through January 1, 1994.

Wetland determination. Until October 1, 1995, a request to have the DNR determine whether particular property was wetland would have to be accompanied by a fee. The fee would be \$50 for a parcel of five acres or less, and \$10 per acre for parcels larger than five acres.

Dedication of fees. Wetland fees would go into the Land and Water Management Permit Fee Fund to be created under the Inland Lakes and Streams Act by Senate Bill 238. Money in the fund would be dedicated to implementation of various specified acts relating to water and shoreland resources, and would not revert to the general fund at the end of a fiscal year.

Tie-bar. The bill could not take effect unless Senate Bill 238 was enacted.

MCL 281.707 et al.

BACKGROUND INFORMATION:

The bill is one of a package of bills increasing various land and water resources management fees.

It is tie-barred to Senate Bill 238, which would amend the Inland Lakes and Streams Act to increase fees under that act and establish a restricted revenue fund to receive fees under that act and the other acts being amended by bills in the package. Senate Bill 238 is on the Senate calendar awaiting concurrence in House amendments. Other bills in the package are: Senate Bill 239 (now Public Act 150 of 1993), Senate Bill 241 (on the Senate calendar awaiting concurrence), Senate Bill 243 (Public Act 151 of 1993), Senate Bill 244 (Public Act 152 of 1993), Senate Bill 245 (Public Act 153 of 1993), Senate Bill 246 (Public Act 154 of 1993), and Senate Bill 719 (Public Act 155 of 1993).

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would generate about \$180,000 annually, an increase of about \$172,500 over the \$7,500 that is now generated through wetland fees. (8-16-93)

ARGUMENTS:

For:

The bill is part of a package of legislation, some of which has already been enacted, that would increase permit fees for various land and water resources management programs and allocate that revenue to the programs. Fees would more closely reflect actual costs. Programs' reliance on general fund support would be reduced, while program revenue would be increased to help make the programs more self-supporting. Increased revenue would enable the department to add staff to process permits and administer the programs, which have suffered from recent budget cuts, with resultant permit backlogs. With timelier review and processing of permit applications, inconveniences to homeowners, builders, and other businesses would be minimized.

Against:

Many may perceive the bill, like the package that includes it, to represent an increase in taxes in the form of an increase in fees.

Against:

Although the wetland program, like the other programs affected by the package, has been underfunded, the bill could serve to institutionalize that underfunding. With a dedicated source of revenue in a restricted fund, there may be less pressure to come up with the additional revenue

from the general fund and elsewhere needed to fully fund the program.

Against:

A House floor amendment to the bill eliminated a provision that would have given the DNR authority to issue appearance tickets for minor violations. That provision should be restored, so that minor infractions may be dealt with efficiently and effectively without having to resort to the expense and cumbersomeness of criminal prosecution. Such authority for the DNR should not be controversial, as both the House and Senate have accepted a similar provision in Senate Bill 238. Further, authority for appearance tickets was recommended in the 1992 report of the Land and Water Management Division Permit Review Committee; that committee included representation from major environmental, business, and industry groups. Without the use of appearance tickets to deal with minor violations, enforcement of the wetland act will continue to be at the mercy of prosecutorial priorities.

Response:

Some may have qualms about granting the DNR stronger enforcement capability without the protections of due process of law afforded by formal criminal procedure. Such matters are in any event outside the proper scope of the bill, which is meant to be a fee bill. Matters of substantive policy should be reserved for some other bill and reviewed by committees responsible for that subject area.

Rebuttal:

The Code of Criminal Procedure lays out the process for appearance tickets for minor offenses, which already include certain game and fish violations. The matter is handled by a district court magistrate; if the alleged offender pleads not guilty, the matter goes to the prosecutor for a decision on whether to bring a formal criminal complaint. If the prosecutor decides to proceed, the defendant is, of course, afforded the full protections of criminal law.

Against:

Under a committee amendment that was adopted by the full House, the bill proposes to temporarily exempt out-of-compliance seawalls from wetland permit fees. A number of questions have arising about this amendment. For one thing, it apparently is aimed at temporarily excusing certain projects from the double fee that applies to projects undertaken without a permit (thus giving homeowners a grace period in which to comply);

however, because the language refers to the entire section that provides for fees (as opposed to the subsection that provides for the double fee penalty), the language temporarily exempts the projects from all fees. Second, it is not clear how seawalls come under the wetland act; one would expect such projects to fall under the Inland Lakes and Streams Act. The language should be clarified.

POSITIONS:

The Department of Natural Resources supports the bill. (8-20-93)

Clean Water Action supports the bill. (8-20-93)

The Michigan Association of Homebuilders supports the bill. (8-20-93)

The Michigan Environmental Council supports the bill. (8-23-93)

The Michigan United Conservation Clubs supported the bill as introduced, which included language authorizing the DNR to issue appearance tickets for minor offenses. (8-24-93)

The Michigan Townships Association does not have a position at this time. (8-20-93)