



**House
Legislative
Analysis
Section**

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WETLAND USE PERMIT APPEAL BOARD OCT 08 1990

Mich. State Law Library

House Bill 5724

Sponsor: Rep. Tom Alley

Committee: Conservation, Recreation, &
Environment

Complete to 8-13-90

A SUMMARY OF HOUSE BILL 5724 AS INTRODUCED 5-7-90

House Bill 5724 would amend the Wetland Protection Act to allow a person who was aggrieved by an action or inaction of the Department of Natural Resources (DNR) to file an appeal with a newly created Wetland Appeals Board. The board would exist within the DNR and would consist of two members appointed by the Commission of Agriculture (at least one of them would have to be an attorney), two members appointed by the Natural Resources Commission (one an attorney) and one member (an attorney) appointed by the governor with the advice and consent of the Senate. The four members appointed by the commissions could not be employees of the departments regulated by the commissions. The member appointed by the governor would be the chairperson of the board, and the terms of the board members would be staggered. Members would be reimbursed for actual and necessary expenses incurred in the performance of appeal board duties and would be compensated at the rate of \$100 per day. However, aggregate compensation for any one year of service would not exceed \$5,000. Members could be removed by the governor for inefficiency, neglect of duty, misconduct or malfeasance, after being given a written statement of charges and an opportunity to be heard by a designee of the governor regarding the charge.

Responsibilities of the board. The board would hear appeals by an aggrieved party to any proceeding before the department from an order or decision of the department issued or made under the act. Appeals would be filed with the board within 30 days after service of the order or notice of the decision given. Appeals would be heard by two or more members of the appeals board in a county in which the wetland affected by the appeal was located. A majority vote of the members of the entire appeals board would be necessary for a determination of the appeal. The board could promulgate rules under the Administrative Rules Procedures Act that were necessary to implement their powers under the bill. In functioning as members of the appeals board, departmental appointees would not be subject to the supervision or direction of the appointing officers.

Decisions. The board would affirm, remand, or reverse an order or decision of the department or remand the matter to the department for further proceedings. However, the board would limit its review to whether the order or decision of the department was:

- * in violation of the constitution or a statute;
- * in excess of the department's statutory authority or jurisdiction;
- * made upon unlawful procedure resulting in material prejudice to a party;
- * not supported by competent, material, and substantial evidence on the whole record;
- * arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion; or
- * affected by other substantial and material error of law.

House Bill 5724 (8-13-90)

The department would be bound by the decision of the appeals board except to the extent the decision of the appeals board was reversed or modified by a court of competent jurisdiction.

MCL 281.702 et al.