

HOUSE BILL No. 5685

February 6, 2008, Introduced by Reps. Walker, Moolenaar, Mayes, Steil, David Law, Amos, Hansen, Booher, Pastor and Elsenheimer and referred to the Committee on Tourism, Outdoor Recreation and Natural Resources.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 32601, 32603, 32604, 32605, 32607, and 32609
(MCL 324.32601, 324.32603, 324.32604, 324.32605, 324.32607, and
324.32609), sections 32601, 32603, 32604, 32605, and 32609 as added
by 2000 PA 278 and section 32607 as amended by 2004 PA 546.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 32601. As used in this part:

2 (a) "Bottomlands" means land in the Great Lakes, and bays and
3 harbors of the Great Lakes, lying below and lakeward of the
4 ordinary high-water mark. ~~as described in section 32502.~~

5 (b) "Department" means the department of environmental
6 quality.

1 (c) "Fair market value" means the price based upon the unique
2 historical and physical properties, including, but not limited to,
3 species, growth rates, volume, and condition of the **USABLE**
4 submerged logs as calculated at dockside following delivery to
5 shore.

6 (d) "Fund" means the submerged log recovery fund created in
7 section 32610.

8 (e) "Great Lakes" means Lake Superior, Lake Michigan, Lake
9 Huron, and Lake Erie, and includes Lake St. Clair.

10 (f) "Ordinary high-water mark" means the elevations described
11 in section 32502. When the soil, configuration of the surface, or
12 vegetation has been altered by human activity, the ordinary high-
13 water mark is located where it would have been if this alteration
14 had not occurred.

15 (g) "Patented lands" means any bottomlands lying within a
16 specific government grant area, including a private claim patent or
17 federal patent.

18 (h) "Riparian owner" means a person who owns frontage
19 bordering bottomlands.

20 (i) "Riparian rights" means those rights that are associated
21 with the ownership of frontage bordering bottomlands, subject to
22 the public trust.

23 (j) "Submerged log" means a portion of the trunk of a felled
24 tree that has not been further processed for any end use and is
25 located on, in, over, or under bottomlands. Submerged log does not
26 include a portion of a tree that is located in the Great Lakes or
27 on, in, over, or under bottomlands that poses a navigational or

1 safety hazard or is of no or little commercial value.

2 (k) "Unpatented lands" means all bottomlands except patented
3 lands.

4 Sec. 32603. (1) A person shall obtain a permit from the
5 department under this part prior to removing submerged logs from
6 bottomlands.

7 (2) The department may issue a permit under this part to a
8 person for the removal of submerged logs from patented lands if
9 permission is received from the lawful owner of the patented lands.

10 (3) A person shall not recover, alter, or destroy abandoned
11 property as defined in part 761 while engaging in submerged log
12 removal operations under a submerged log removal permit issued
13 under this part.

14 (4) For submerged log recovery in ~~underwater preserves~~ **A GREAT**
15 **LAKES BOTTOMLAND PRESERVE** established under part 761, the
16 department shall place conditions on submerged log removal permits
17 to prevent damage to abandoned watercraft or other features of
18 archaeological, historical, recreational, or environmental
19 significance and to minimize conflicts between recreational
20 activities within the **GREAT LAKES BOTTOMLAND** preserve and the
21 submerged log recovery operation. **A PERSON SHALL NOT BE ALLOWED TO**
22 **RECOVER SUBMERGED LOGS THAT ARE ASSOCIATED WITH A SHIPWRECK.**

23 Sec. 32604. ~~(1) For calendar year 2000, the department shall~~
24 ~~establish a time period for the submission of applications for~~
25 ~~submerged log removal permits under this part. Beginning in 2001,~~
26 ~~and each year thereafter, applications shall be submitted before~~
27 ~~February 1 of each calendar year. However, the department shall not~~

1 ~~issue a submerged log removal permit under this part after December~~
2 ~~31, 2003.~~

3 (1) ~~(2) An application~~ **A PERSON MAY APPLY** for a submerged log
4 removal permit ~~shall be submitted in writing~~ **BY SUBMITTING AN**
5 **APPLICATION TO THE DEPARTMENT** on a form provided by the department.
6 ~~and~~ **THE APPLICATION** shall include all of the following:

7 (a) A description of the proposed bottomland log removal area
8 with boundaries delineated by a digital global positioning system
9 or other technology approved by the department. The proposed
10 bottomland log removal area shall be a contiguous area of not more
11 than 320 acres. The area proposed shall be square or rectangular in
12 shape, and the length shall not exceed the width by more than a
13 factor of 6.

14 (b) A description of the methods to be used to raise the
15 submerged logs, the time of year during which submerged logs will
16 be raised, and the procedures to be used for transferring logs to
17 the shore.

18 (c) Identification of any adverse environmental impacts
19 associated with the proposed submerged log removal method.

20 (d) Identification of the steps proposed to mitigate any
21 adverse environmental impacts caused by the proposed submerged log
22 removal operation.

23 (e) Other information that the department considers necessary
24 in evaluating a submerged log removal permit application.

25 (f) A ~~\$3,500.00~~ **\$1,000.00** application fee.

26 (2) ~~(3)~~ An application for a submerged log removal permit is
27 not **ADMINISTRATIVELY** complete until all information requested on

1 the application form and any other information requested by the
2 department are received. Within 30 days of its receipt of an
3 application, the department shall notify the applicant in writing
4 if the application is deficient. The applicant shall submit the
5 requested information to the department within 30 days after the
6 date the notice is provided. If the applicant fails to respond
7 within the 30-day period, the department shall deny the submerged
8 log removal permit unless the applicant requests and the department
9 approves an extension of time based upon the applicant's reasonable
10 justification for the extension. **THE DEPARTMENT SHALL GRANT OR DENY**
11 **AN APPLICATION FOR A PERMIT WITHIN 120 DAYS AFTER THE DEPARTMENT**
12 **RECEIVES AN ADMINISTRATIVELY COMPLETE APPLICATION.**

13 (3) ~~(4)~~ Application fees received under this section shall be
14 forwarded to the state treasurer for deposit into the fund.

15 Sec. 32605. Upon receiving a complete application for a
16 submerged log removal permit, the department shall do both of the
17 following:

18 (a) Place the application on public notice for a 20-day period
19 for review and comment.

20 (b) Submit a copy to the department of natural resources and
21 ~~the department of state~~ **UNDERWATER SALVAGE AND PRESERVE COMMITTEE**
22 **CREATED IN SECTION 76103** for their review and comment.

23 Sec. 32607. (1) The department shall not authorize the same
24 bottomland log removal area in more than 1 submerged log removal
25 permit at any 1 time.

26 (2) The department may modify the boundaries of a proposed
27 bottomland log removal area in a submerged log removal permit to

1 avoid overlaps with other active submerged log removal permits or
2 adverse impacts, including, but not limited to, impacts to the
3 environment, natural resources, riparian rights, and the public
4 trust.

5 (3) A submerged log removal plan approved by the department
6 shall be included in each submerged log removal permit.

7 (4) A submerged log removal permit shall contain terms and
8 conditions that are determined by the department to protect the
9 environment, natural resources, riparian rights, and the public
10 trust, —INCLUDING ALL OF THE FOLLOWING:

11 (A) LOGS SHALL NOT BE DRAGGED ON THE BOTTOMLANDS OR REMOVED
12 FROM THE WATER BY PULLING THEM UP THE BANK OF THE SHORE.

13 (B) LOGS SHALL BE LIFTED FROM THE WATER AND CARRIED TO A
14 COMMERCIAL DOCK OR A PERMITTED BOAT RAMP FOR REMOVAL.

15 (C) THE PERMITTEE SHALL ONLY REMOVE PRECUT LOGS THAT HAVE BEEN
16 CUT ON BOTH ENDS OF THE LOG.

17 (D) THE PERMITTEE SHALL NOT REMOVE LOGS THAT HAVE BEEN
18 DELIBERATELY STACKED FOR THE DEVELOPMENT OF FISH POPULATIONS.

19 (E) THE DEPARTMENT, WITH THE APPROVAL OF THE DEPARTMENT OF
20 NATURAL RESOURCES, MAY REQUIRE THE PERMITTEE TO PLACE BRUSH OR
21 OTHER HABITAT SUSTAINING MATERIAL ON BOTTOMLAND AT THE LOCATION IN
22 WHICH THE LOGS WERE REMOVED TO MINIMIZE THE IMPACT OF LOG REMOVAL
23 ON AQUATIC SPECIES. THE PERMITTEE MAY UTILIZE HABITAT REPLACEMENT
24 REQUIREMENTS ISSUED BY THE UNITED STATES ARMY CORPS OF ENGINEERS TO
25 FULFILL HABITAT MITIGATION REQUIREMENTS OF THE DEPARTMENT OR THE
26 DEPARTMENT OF NATURAL RESOURCES UNDER THIS SUBSECTION. THE
27 PLACEMENT OF MATERIALS ON BOTTOMLAND AS A CONDITION OF A LOG

1 REMOVAL PERMIT IS EXEMPT FROM THE PERMIT REQUIREMENT OF PART 325.

2 (F) BASED UPON INPUT FROM THE DEPARTMENT OF NATURAL RESOURCES,
3 THE DEPARTMENT MAY LIMIT THE LOCATION OR TIME OF YEAR THAT THAT LOG
4 REMOVAL MAY TAKE PLACE TO ENSURE THAT THE LOG REMOVAL DOES NOT
5 ADVERSELY AFFECT FISH SPAWNING AREAS.

6 (5) ~~Each~~ A submerged log removal permit **THAT WAS ISSUED PRIOR**
7 **TO THE EFFECTIVE DATE OF THE 2008 AMENDATORY ACT THAT AMENDED THIS**
8 **SUBSECTION** shall expire on January 1, 2013. **A SUBMERGED LOG REMOVAL**
9 **PERMIT THAT IS ISSUED AFTER THE EFFECTIVE DATE OF THE 2008**

10 **AMENDATORY ACT THAT AMENDED THIS SUBSECTION IS EFFECTIVE FOR A**
11 **PERIOD OF 5 YEARS AFTER ALL NECESSARY FEDERAL, STATE, AND LOCAL**
12 **AUTHORIZATIONS FOR THE SUBMERGED LOG RECOVERY OPERATION HAVE BEEN**
13 **RECEIVED.** An applicant shall notify the department of the date on
14 which the federal government issued its approval for the submerged
15 log removal permit. ~~Processing fees received under this subsection~~
16 ~~shall be forwarded to the state treasurer for deposit into the~~
17 ~~fund.~~

18 (6) A submerged log removal permit issued under this section
19 is not transferrable unless approved in writing by the department.

20 (7) ~~An applicant for~~ **A PERSON HOLDING** a submerged log removal
21 permit shall provide **TO THE DEPARTMENT A MECHANISM OF FINANCIAL**
22 **ASSURANCE ACCEPTABLE TO THE DEPARTMENT OR** a performance bond
23 ~~acceptable to the department~~ in the amount of \$100,000.00. The
24 **FINANCIAL ASSURANCE OR** performance bond shall be provided ~~to the~~
25 ~~department~~ at least 10 days prior to beginning submerged log
26 removal in a bottomland log removal area. The **FINANCIAL ASSURANCE**
27 **OR** performance bond shall ensure compliance with the submerged log

1 removal permit for the period of the permit. ~~or until the~~
 2 ~~authorized submerged log removal is completed to the satisfaction~~
 3 ~~of the department and all payments under section 32609 have been~~
 4 ~~made. The~~ **WITHIN 60 DAYS AFTER THE EXPIRATION OF A SUBMERGED LOG**
 5 **REMOVAL PERMIT, THE** department shall issue a written statement
 6 releasing the permittee and bonding company ~~upon termination of the~~
 7 ~~submerged log removal permit and upon satisfaction of the~~
 8 ~~department as to the compliance of the permittee with the terms and~~
 9 ~~conditions of the permit~~ **FROM THE FINANCIAL ASSURANCE OR**
 10 **PERFORMANCE BOND REQUIREMENT OR SHALL NOTIFY THE PERMITTEE**
 11 **SPECIFICALLY WHAT ACTIONS ARE REQUIRED IN ORDER TO COMPLY WITH THE**
 12 **TERMS OF THE PERMIT AND TO OBTAIN THE RELEASE.** ~~The department may~~
 13 ~~draw upon the performance bond for delinquent payments as required~~
 14 ~~in section 32609.~~

15 (8) A permittee may request, in writing, and the department
 16 may grant, termination of a submerged log removal permit prior to
 17 the expiration date, including release from quarterly reports and
 18 performance bond requirements.

19 Sec. 32609. (1) The state reserves a payment of ~~2.0 times~~ **50%**
 20 **OF THE** sawlog stumpage value for each **USABLE** submerged log that is
 21 removed from unpatented lands. As used in this subsection, "sawlog
 22 stumpage value" means the most recent average value of standing
 23 timber on state forestlands for each species as determined and
 24 reported by the department of natural resources. However, if a
 25 species is no longer harvested on state forestlands, "sawlog
 26 stumpage value" means the most recent highest value of any species
 27 currently being harvested on state forestlands as determined and

1 reported by the department of natural resources.

2 (2) The holder of a submerged log removal permit under this
3 part shall provide the department with a detailed report and all
4 payments due under this section within 30 days after the close of
5 each calendar quarter. The report shall include an accurate scaling
6 at dockside of all submerged logs removed, by species. The
7 permittee shall provide for an independent agent, approved by the
8 department in writing, to conduct the scaling and species
9 determination.

10 (3) All payments received under this section shall be
11 forwarded to the state treasurer for deposit into the fund.

12 (4) After a permittee is notified in writing that a payment
13 under this section is overdue, the department may order suspension
14 of the submerged log removal permit until the payment is submitted
15 in full. The permittee shall not resume submerged log removal
16 operations until the department provides written authorization for
17 the operations to resume.

18 (5) ~~Not later than December 31, 2001, the~~ **THE** department shall
19 ~~conduct a study to~~ **ANNUALLY** determine the fair market value of
20 submerged logs ~~as a potential basis for determining the payment to~~
21 ~~the state under subsection (1). The department may conduct the~~
22 ~~study or may enter into a contract with a qualified person to~~
23 ~~conduct the study. Upon completion, the department~~ **AND** shall submit
24 a report of the results of the study **DETERMINATION** to the standing
25 committees of the legislature with jurisdiction primarily related
26 to natural resources and the environment and to the senate and
27 house appropriations subcommittees on environmental quality and

1 natural resources.