

HOUSE BILL No. 4554

April 13, 2011, Introduced by Reps. MacMaster, Huuki, Foster, Horn, Opsommer, Rutledge, McBroom, Johnson, Hughes, Wayne Schmidt, Haugh and Yonker and referred to the Committee on Natural Resources, Tourism, and Outdoor Recreation.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 32601, 32603, 32604, 32606, 32607, and 32609
(MCL 324.32601, 324.32603, 324.32604, 324.32606, 324.32607, and
324.32609), sections 32601, 32603, 32604, 32606, 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~~ **AND LAND IN**
5 **ANY ADJOINING INLAND LAKES AND STREAMS.**

6 (b) "Department" means the department of environmental
7 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 submerged logs
4 as calculated at dockside following delivery to shore.

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

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

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

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

17 (h) "Riparian owner" means a person who owns frontage
18 bordering bottomlands **OR AN INLAND LAKE OR STREAM**.

19 (i) "Riparian rights" means those rights that are associated
20 with the ownership of frontage bordering bottomlands **OR AN INLAND**
21 **LAKE OR STREAM**, subject to the public trust.

22 (j) "Submerged log" means a portion of the trunk of a felled
23 tree that has not been further processed for any end use and is
24 located on, in, over, or under bottomlands. Submerged log does not
25 include a portion of a tree that is located in the Great Lakes or
26 on, in, over, or under bottomlands that poses a navigational or
27 safety hazard or is of no or little commercial value.

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

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

6 (2) The department may issue a permit under this part to a
7 person for the removal of submerged logs from patented lands **OR THE**
8 **BOTTOMLANDS OF INLAND LAKES AND STREAMS** if permission is received
9 from the lawful owner **OR OWNERS** of the patented lands **OR THE**
10 **BOTTOMLANDS OF THE INLAND LAKES AND STREAMS, OR BOTH.**

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

15 (4) For submerged log recovery in underwater preserves
16 established under part 761, the department shall place **REASONABLE**
17 conditions on submerged log removal permits to prevent damage to
18 abandoned watercraft or other features of archaeological,
19 historical, recreational, or environmental significance and to
20 minimize conflicts between recreational activities within the
21 preserve and the submerged log recovery operation.

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

1 ~~log removal permit under this part after December 31, 2003.~~

2 (2) An application for a submerged log removal permit shall be
3 submitted in writing on a form provided by the department and shall
4 include all of the following:

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

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

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

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

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

24 (f) A ~~\$3,500.00~~**\$500.00** application fee.

25 (3) An application for a submerged log removal permit is not
26 complete until all information requested on the application form
27 and any other information requested by the department are received.

1 Within 30 days of its receipt of an application, the department
2 shall notify the applicant in writing if the application is
3 deficient. The applicant shall submit the requested information to
4 the department within 30 days after the date the notice is
5 provided. If the applicant fails to respond within the 30-day
6 period, the department shall deny the submerged log removal permit
7 unless the applicant requests and the department approves an
8 extension of time based upon the applicant's reasonable
9 justification for the extension. **IF THE DEPARTMENT DOES NOT RESPOND**
10 **IN THE REQUIRED TIME, THE PERMIT IS CONSIDERED APPROVED. IF THE**
11 **PERMIT IS DENIED, THE DEPARTMENT SHALL PROVIDE SITE-SPECIFIC**
12 **REASONS BASED UPON SOUND SCIENCE TO SUPPORT THE DENIAL. THE**
13 **RESPONSE SHALL ALSO INCLUDE AN ECONOMIC IMPACT FISCAL ANALYSIS.**

14 (4) Application fees received under this section shall be
15 forwarded to the state treasurer for deposit into the fund **AND MAY**
16 **BE RETURNED TO THE PERMITTEE IF THE PERMIT IS APPROVED BECAUSE OF**
17 **LACK OF RESPONSE FROM THE DEPARTMENT.**

18 Sec. 32606. (1) The department shall review each complete
19 application received for a submerged log removal permit and shall
20 not issue a permit unless the department determines both of the
21 following:

22 (a) That any adverse impacts, including, but not limited to,
23 impacts to the environment, natural resources, riparian rights, and
24 the public trust are minimal and will be mitigated to the extent
25 practicable.

26 (b) That the proposed activity will not unreasonably affect
27 the public health, safety, and welfare.

1 (2) The department may determine that certain areas within a
2 proposed bottomland log removal area described in an application
3 for a submerged log removal permit shall not be authorized for
4 submerged log removal based upon adverse impacts, including, but
5 not limited to, adverse impacts to the environment, natural
6 resources, riparian rights, and the public trust.

7 (3) The department shall make a decision on whether or not to
8 issue a submerged log removal permit under this part within 90 days
9 after the close of the review and comment period under section
10 32605 or, if a public hearing is held under section 32608, within
11 90 days after the date of that public hearing.

12 **(4) IF THE DEPARTMENT DENIES THE ISSUANCE OF A SUBMERGED LOG**
13 **REMOVAL PERMIT, THE DEPARTMENT SHALL NOTIFY THE APPLICANT IN**
14 **WRITING WITHIN 10 DAYS AFTER THE DATE OF THE DENIAL. THE WRITTEN**
15 **NOTICE OF DENIAL SHALL INCLUDE A JUSTIFICATION BASED UPON SOUND**
16 **SCIENCE AND SHALL INCLUDE AN ECONOMIC IMPACT FISCAL ANALYSIS.**

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

20 (2) The department may modify the boundaries of a proposed
21 bottomland log removal area in a submerged log removal permit to
22 avoid overlaps with other active submerged log removal permits or
23 adverse impacts, including, but not limited to, impacts to the
24 environment, natural resources, riparian rights, and the public
25 trust.

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

1 (4) A submerged log removal permit shall contain terms and
2 conditions that are determined by the department to protect the
3 environment, natural resources, riparian rights, and the public
4 trust.

5 (5) Each submerged log removal permit shall expire ~~on January~~
6 ~~1, 2013~~ **5 YEARS AFTER THE DATE THE PERMIT IS APPROVED. An IF**
7 **FEDERAL APPROVAL IS REQUIRED, AN** applicant shall notify the
8 department of the date on which the federal government issued its
9 approval for the submerged log removal permit. Processing fees
10 received under this subsection shall be forwarded to the state
11 treasurer for deposit into the fund.

12 (6) A submerged log removal permit issued under this section
13 is not transferrable unless **THE TRANSFER IS** approved in writing by
14 the department.

15 (7) An applicant for a submerged log removal permit shall
16 provide a performance bond acceptable to the department in the
17 amount of ~~\$100,000.00~~ **\$20,000.00**. The performance bond shall be
18 provided to the department at least 10 days prior to beginning
19 submerged log removal in a bottomland log removal area. The
20 performance bond shall ensure compliance with the submerged log
21 removal permit for the period of the permit or until the authorized
22 submerged log removal is completed to the satisfaction of the
23 department and all payments under section 32609 have been made. The
24 department shall issue a written statement releasing the permittee
25 ~~and OR~~ bonding company, **OR BOTH**, upon termination of the submerged
26 log removal permit and upon satisfaction of the department as to
27 the compliance of the permittee with the terms and conditions of

1 the permit. The department may draw upon the performance bond for
2 delinquent payments as required in section 32609.

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

7 Sec. 32609. (1) The state reserves a payment of ~~2.0~~0.5 times
8 sawlog stumpage value for each submerged log that is removed from
9 unpatented lands. As used in this subsection, "sawlog stumpage
10 value" means the most recent average value of standing timber on
11 state forestlands for each species as determined and reported by
12 the department of natural resources. However, if a species is no
13 longer harvested on state forestlands, "sawlog stumpage value"
14 means the most recent highest value of any species currently being
15 harvested on state forestlands as determined and reported by the
16 department of natural resources.

17 (2) The holder of a submerged log removal permit under this
18 part shall provide the department with a detailed report and all
19 payments due under this section within 30 days after the close of
20 each calendar quarter. The report shall include an accurate scaling
21 at dockside of all submerged logs removed, by species. The
22 permittee shall provide for an independent agent, approved by the
23 department in writing, to conduct the scaling and species
24 determination.

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

27 (4) After a permittee is notified in writing that a payment

1 under this section is overdue, the department may order suspension
2 of the submerged log removal permit until the payment is submitted
3 in full. The permittee shall not resume submerged log removal
4 operations until the department provides written authorization for
5 the operations to resume.

6 (5) Not later than ~~December 31, 2001~~ **1 YEAR AFTER SUBMERGED**
7 **LOG REMOVAL OPERATIONS HAVE COMMENCED**, the department shall conduct
8 a study to determine the fair market value of submerged logs as a
9 potential basis for determining the payment to the state under
10 subsection (1). The department may conduct the study or may enter
11 into a contract, **FOLLOWING ISSUING A REQUEST FOR PROPOSAL**, with a
12 qualified person to conduct the study. Upon completion, the
13 department shall submit a report of the results of the study to the
14 standing committees of the legislature with jurisdiction primarily
15 related to natural resources and the environment and to the senate
16 and house appropriations subcommittees on environmental quality and
17 natural resources.