

# SENATE BILL No. 322

April 13, 1989, Introduced by Senators FAUST and O'BRIEN and referred to the Committee on Government Operations.

A bill to amend sections 1, 2, 3, 4a, 4b, 4c, 4d, 4e, 4f, 4g, 4h, and 7 of Act No. 173 of the Public Acts of 1929, entitled as amended

"An act to protect and preserve, and to regulate the taking of, aboriginal records and antiquities within this state; to preserve abandoned property of historical or recreational value on the bottomlands of the Great Lakes and regulate the salvage of abandoned property of historical or recreational value; to designate and regulate Great Lakes bottomland preserves; to prescribe the powers and duties of certain state agencies; to create a fund; and to prescribe penalties and provide remedies,"

sections 1, 4a, 4b, 4c, 4d, 4e, 4f, 4g, and 4h as amended and section 7 as added by Act No. 452 of the Public Acts of 1988 and sections 2 and 3 as amended by Act No. 184 of the Public Acts of 1980, being sections 299.51, 299.52, 299.53, 299.54a, 299.54b, 299.54c, 299.54d, 299.54e, 299.54f, 299.54g, 299.54h, and 299.57 of the Michigan Compiled Laws.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1 Section 1. Sections 1, 2, 3, 4a, 4b, 4c, 4d, 4e, 4f, 4g,  
2 4h, and 7 of Act No. 173 of the Public Acts of 1929, sections 1,  
3 4a, 4b, 4c, 4d, 4e, 4f, 4g, and 4h as amended and section 7 as  
4 added by Act No. 452 of the Public Acts of 1988 and sections 2  
5 and 3 as amended by Act No. 184 of the Public Acts of 1980, being  
6 sections 299.51, 299.52, 299.53, 299.54a, 299.54b, 299.54c,  
7 299.54d, 299.54e, 299.54f, 299.54g, 299.54h, and 299.57 of the  
8 Michigan Compiled Laws, are amended to read as follows:

9 Sec. 1. (1) The state reserves to itself the exclusive  
10 right and privilege, except as provided in this act, of explor-  
11 ing, surveying, excavating, and regulating through its authorized  
12 officers, agents, and employees, all aboriginal records and other  
13 antiquities, including mounds, earthworks, forts, burial and vil-  
14 lage sites, mines or other relics, and abandoned property of his-  
15 torical or recreational value found upon or within any of the  
16 lands owned by or under the control of the state.

17 (2) The state reserves to itself a possessory right or title  
18 superior to that of a finder to abandoned property of historical  
19 or recreational value found on the state owned bottomlands of the  
20 Great Lakes. This property shall belong to this state with  
21 administration and protection jointly vested in the department  
22 and the ~~secretary of state~~ MICHIGAN HISTORICAL COMMISSION CRE-  
23 ATED BY THE MICHIGAN HISTORY ACT.

24 Sec. 2. A deed, as provided by this act, given by this  
25 state, except state tax deeds for the conveyance of any land  
26 owned by the state, shall contain a clause reserving to this

1 state a property right in aboriginal antiquities including  
2 mounds, earthworks, forts, burial and village sites, mines, or  
3 other relics and also reserving the right to explore and excavate  
4 for the aboriginal antiquity by and through this state's autho-  
5 rized agent and employee. This section shall apply only to the  
6 sale of tax reverted land. The commission of natural resources  
7 with the approval of the ~~secretary of state~~ MICHIGAN HISTORICAL  
8 COMMISSION CREATED BY THE MICHIGAN HISTORY ACT may waive this  
9 reservation when conveying platted property and when making con-  
10 veyances under Act No. 193 of the Public Acts of 1911, as  
11 amended, being sections 322.481 to 322.484 of the Michigan  
12 Compiled Laws.

13       Sec. 3. A person, either personally or through an agent or  
14 employee, shall not explore or excavate an aboriginal remain cov-  
15 ered by this act upon lands owned by the state, except under a  
16 permit issued by the director of the department of natural  
17 resources with written approval of the ~~secretary of state~~  
18 MICHIGAN HISTORICAL COMMISSION CREATED BY THE MICHIGAN HISTORY  
19 ACT. A permit shall be issued without charge. This section shall  
20 not apply to the Mackinac Island state park commission on lands  
21 owned or controlled by the commission.

22       Sec. 4a. (1) Except as provided in section 4b, a person  
23 shall not recover, alter, or destroy abandoned property which is  
24 in, on, under, or over the bottomlands of the Great Lakes,  
25 including those within a Great Lakes bottomlands preserve, unless  
26 the person has a permit issued jointly by the ~~secretary of~~

1 ~~state~~ MICHIGAN HISTORICAL COMMISSION CREATED BY THE MICHIGAN  
2 HISTORY ACT and the department pursuant to section 4c.

3 (2) A person who recovers abandoned property without a  
4 permit when a permit is required by this act shall transmit the  
5 property to the ~~secretary of state~~ MICHIGAN HISTORICAL COMMIS-  
6 SION CREATED BY THE MICHIGAN HISTORY ACT and the recovered prop-  
7 erty shall be the property of the ~~secretary of state~~  
8 COMMISSION.

9 (3) A person shall not remove, convey, mutilate, or deface a  
10 human body or the remains of a human body located on the bottom-  
11 lands of the Great Lakes.

12 (4) A person who violates subsection (1) by recovering or  
13 destroying abandoned property with a fair market value of \$100.00  
14 or more is guilty of a felony, punishable by imprisonment for not  
15 more than 2 years, or by a fine of not more than \$5,000.00, or  
16 both.

17 Sec. 4b. (1) A person may recover abandoned property out-  
18 side a Great Lakes bottomlands preserve without a permit if the  
19 abandoned property is not attached to, nor located on, in, or  
20 located in the immediate vicinity of and associated with a sunken  
21 aircraft or watercraft and if the abandoned property is recover-  
22 able by hand without mechanical or other assistance.

23 (2) A person who recovers abandoned property valued at more  
24 than \$10.00 without a permit pursuant to subsection (1) shall  
25 file a written report within 30 days after removal of the prop-  
26 erty with the department or the ~~secretary of state~~ MICHIGAN  
27 HISTORICAL COMMISSION CREATED BY THE MICHIGAN HISTORY ACT if the

1 property has been abandoned for more than 30 years. The written  
2 report shall list all recovered property which has been abandoned  
3 for more than 30 years and the location of the property at the  
4 time of recovery. For a period of 90 days after the report is  
5 filed, the person shall make the recovered property available to  
6 the department and the ~~secretary of state~~ COMMISSION for  
7 inspection at a location in this state. If the ~~secretary of~~  
8 ~~state~~ COMMISSION determines that the recovered property does not  
9 have historical value, the ~~secretary of state~~ COMMISSION shall  
10 release the property to the person by means of a written  
11 instrument.

12       Sec. 4c. (1) A permit issued under this section shall  
13 authorize a person to recover abandoned property located on, in,  
14 or located in the immediate vicinity of and associated with a  
15 sunken aircraft or watercraft.

16       (2) A person shall file an application for a permit with the  
17 department on a form prescribed by the department and approved by  
18 the ~~secretary of state~~ MICHIGAN HISTORICAL COMMISSION CREATED  
19 BY THE MICHIGAN HISTORY ACT. The application shall contain all of  
20 the following information:

21       (a) The name and address of the applicant.

22       (b) The name, if known, of the watercraft or aircraft on or  
23 around which recovery operations are to occur and a current pho-  
24 tograph or drawing of the watercraft or aircraft, if available.

25       (c) The location of the abandoned property to be recovered  
26 and the depth of water in which it may be found.

1 (d) A description of each item to be recovered.

2 (e) The method to be used in recovery operations.

3 (f) The proposed disposition of the abandoned property  
4 recovered, including the location at which it will be available  
5 for inspection by the department and the ~~secretary of state~~  
6 COMMISSION.

7 (g) Other information which the department or the ~~secretary~~  
8 ~~of state~~ COMMISSION considers necessary in evaluating the  
9 request for a permit.

10 (3) An application for a permit shall not be considered com-  
11 plete until all information requested on the application form and  
12 any other information requested by the department or the  
13 ~~secretary of state~~ COMMISSION has been received by the  
14 department. After receipt of an otherwise complete application,  
15 the department may request additional information or documents as  
16 are determined to be necessary to make a decision to grant or  
17 deny a permit. The department, or the ~~secretary of state~~  
18 COMMISSION, shall notify the applicant in writing when the appli-  
19 cation is deficient.

20 (4) An applicant notified that an application for a permit  
21 may be deficient and returned due to insufficient information  
22 under subsection (3) shall, within 20 days after the date the  
23 notice is mailed, provide the information. If the applicant  
24 fails to respond within the 20-day period, the application shall  
25 be denied unless the applicant requests additional time and pro-  
26 vides reasonable justification for an extension of time.

1           (5) The department and the ~~secretary of state~~ COMMISSION  
2 shall, with the advice of the committee, approve or disapprove an  
3 application for a permit within 30 days after the date a complete  
4 application is filed with the department. The department and the  
5 ~~secretary of state~~ COMMISSION may approve an application condi-  
6 tionally or unconditionally. A condition to the approval of an  
7 application shall be in writing on the face of the permit. The  
8 department and the ~~secretary of state~~ COMMISSION may impose  
9 such conditions as are considered reasonable and necessary to  
10 protect the public trust and general interests, including condi-  
11 tions that accomplish 1 or more of the following:

12           (a) Protect and preserve the abandoned property to be recov-  
13 ered, and the recreational value of the area in which recovery is  
14 being accomplished.

15           (b) Assure reasonable public access to the abandoned prop-  
16 erty after recovery.

17           (c) Are in conformity with rules applying to activities  
18 within a Great Lakes bottomlands preserve.

19           (d) Prohibit injury, harm, and damage to a bottomlands site  
20 or abandoned property not authorized for removal during and after  
21 salvage operations by the permit holder.

22           (e) Prohibit or limit the amount of discharge of possible  
23 pollutants, such as floating timbers, planking, and other debris,  
24 which may emanate from the shipwreck, plane wreck, or salvage  
25 equipment.

26           (f) Require the permit holder to submit a specific removal  
27 plan prior to commencing any salvaging activities. Among other

1 matters considered appropriate by either the department or the  
2 ~~secretary of state~~ COMMISSION, or both, the removal plan may be  
3 required to ensure the safety of those removing or assisting in  
4 the removal of the abandoned property and to address how the  
5 permit holder proposes to prevent, minimize, or mitigate poten-  
6 tial adverse effects upon the abandoned property to be removed,  
7 that portion of the abandoned property which is not to be  
8 removed, and the surrounding geographic features.

9 (6) The department shall approve an application for a permit  
10 unless the department determines that the abandoned property to  
11 be recovered has substantial recreational value in itself or in  
12 conjunction with other abandoned property in its vicinity under-  
13 water, or the recovery of abandoned property would not comply  
14 with rules applying to a Great Lakes bottomlands preserve.

15 (7) The ~~secretary of state~~ COMMISSION shall approve the  
16 application for a permit unless the ~~secretary of state~~  
17 COMMISSION determines that the abandoned property to be recovered  
18 has substantial historical value in itself or in conjunction with  
19 other abandoned property in its vicinity. If the property has  
20 substantial historical value, the ~~secretary of state~~  
21 COMMISSION, pursuant to subsection (5), may impose a condition to  
22 the approval of the application requiring the applicant to turn  
23 over recovered property to the ~~secretary of state~~ COMMISSION  
24 for the purpose of preserving the property or permitting public  
25 access to the property. The ~~secretary of state~~ COMMISSION may  
26 authorize the display of the property in a public or private  
27 museum or by a local unit of government. In addition to the



1 conditions authorized by subsection (5), the ~~secretary of state~~  
2 COMMISSION may provide for payment of salvage costs in connection  
3 with the recovery of the abandoned property.

4 (8) A person who discovers an abandoned watercraft which is  
5 located outside of a Great Lakes bottomlands preserve shall be  
6 entitled to recover cargo situated on, in, or associated with the  
7 watercraft, if the person applies for a permit pursuant to this  
8 section within 90 days after discovering the watercraft. If an  
9 application for a permit to recover cargo is not filed within 90  
10 days after a watercraft discovery, subject to subsections (4) and  
11 (5) an exclusive cargo recovery permit shall be issued to the  
12 first person applying for such a permit. Only 1 permit to  
13 recover the same cargo shall be issued and operative at a time.  
14 When a watercraft containing cargo is simultaneously discovered  
15 by more than 1 person, a permit shall be approved with respect to  
16 the first person or persons jointly applying for a permit.

17 (9) A person aggrieved by a condition contained on a permit  
18 or by the denial of an application for a permit may request an  
19 administrative review of the condition or the denial by the  
20 director of the department or the ~~secretary of state~~  
21 COMMISSION, whichever disapproves the application or imposes the  
22 condition. A person shall file the request for review with the  
23 department or the ~~secretary of state~~ COMMISSION, whichever is  
24 applicable, within 90 days after the permit application is sub-  
25 mitted to the department. An administrative hearing conducted  
26 pursuant to this subsection shall be conducted under the  
27 procedures set forth in chapter 4 of the administrative

1 procedures act of 1969, Act No. 306 of the Public Acts of 1969,  
2 as amended, being sections 24.271 to 24.287 of the Michigan  
3 Compiled Laws. If neither the department or the ~~secretary of~~  
4 ~~state~~ COMMISSION approves the application and an administrative  
5 review is requested from both the department and the ~~secretary~~  
6 ~~of state~~ COMMISSION, the appeals shall be combined upon request  
7 of the appellant or either the department or the ~~secretary~~  
8 ~~state~~ COMMISSION and a single administrative hearing shall be  
9 conducted. The director of the department and the ~~secretary of~~  
10 ~~state~~ COMMISSION shall issue jointly the final decision and  
11 order in the case.

12 (10) A permit issued under this section shall be valid until  
13 December 31 of the year in which the application for the permit  
14 was filed and is not renewable. If an item designated in a  
15 permit for recovery is not recovered, a permit holder may, upon  
16 request following the expiration of the permit, be issued a new  
17 permit to remove the same abandoned property if the permit holder  
18 demonstrates that diligence in attempting recovery was exercised  
19 under the previously issued permit.

20 (11) A permit issued under this section shall not be trans-  
21 ferred or assigned unless the assignment is approved in writing  
22 by both the department and the ~~secretary of state~~ COMMISSION.

23 Sec. 4d. (1) Within 10 days after recovery of abandoned  
24 property, a person with a permit issued pursuant to section 4c  
25 shall report the recovery in writing to the department. The  
26 person recovering the abandoned property shall give authorized  
27 representatives of the department and the ~~secretary of state~~

1 MICHIGAN HISTORICAL COMMISSION CREATED BY THE MICHIGAN HISTORY  
2 ACT an opportunity to examine the abandoned property for a period  
3 of 90 days after recovery. Recovered abandoned property shall  
4 not be removed from this state without written approval of the  
5 department and the ~~secretary of state~~ COMMISSION. If the recov-  
6 ered abandoned property is removed from the state without written  
7 approval, the attorney general, upon request from the department  
8 or the ~~secretary of state~~ COMMISSION, shall bring an action for  
9 the recovery of the property.

10 (2) If the ~~secretary of state~~ COMMISSION determines that  
11 the recovered abandoned property does not have historical value,  
12 the ~~secretary of state~~ COMMISSION shall release the property to  
13 the person holding the permit by means of a written instrument.

14 Sec. 4e. (1) The department shall establish Great Lakes  
15 bottomlands preserves by rule promulgated pursuant to the admin-  
16 istrative procedures act of 1969, Act No. 306 of the Public Acts  
17 of 1969, being sections 24.201 to 24.328 of the Michigan Compiled  
18 Laws. A Great Lakes bottomlands preserve shall be established by  
19 emergency rule if it is determined by the director of the depart-  
20 ment that this action is necessary to immediately protect an  
21 object or area of historical or recreational value.

22 (2) A Great Lakes bottomlands preserve may be established  
23 whenever a bottomlands area includes a single watercraft of sig-  
24 nificant historical value, includes 2 or more abandoned water-  
25 craft, or contains other features of archaeological, historical,  
26 recreational, geological, or environmental significance.

27 Bottomlands areas containing few or no watercraft or other

1 features directly related to the character of a preserve may be  
2 excluded from preserves.

3 (3) In establishing a Great Lakes bottomlands preserve, the  
4 department shall consider all of the following factors:

5 (a) Whether creating the preserve is necessary to protect  
6 either abandoned property possessing historical or recreational  
7 value, or significant underwater geological or environmental  
8 features.

9 (b) The extent of local public and private support for cre-  
10 ation of the preserve.

11 (c) Whether a preserve development plan has been prepared by  
12 a state or local agency.

13 (d) The extent to which preserve support facilities such as  
14 roads, marinas, charter services, hotels, medical hyperbaric  
15 facilities, and rescue agencies have been developed in or are  
16 planned for the area.

17 (4) The department and the ~~secretary of state~~ MICHIGAN  
18 HISTORICAL COMMISSION CREATED BY THE MICHIGAN HISTORY ACT shall  
19 not grant a permit to recover abandoned artifacts within a Great  
20 Lakes bottomlands preserve except for historical or scientific  
21 purposes or when the recovery will not adversely affect the his-  
22 torical, cultural, or recreational integrity of the preserve area  
23 as a whole.

24 (5) An individual Great Lakes bottomlands preserve shall not  
25 exceed 400 square miles in area. Great Lakes bottomlands pre-  
26 serves shall be limited in total area to not more than 10% of the  
27 Great Lakes bottomlands within this state.

1 (6) Upon the approval of the committee, not more than 1  
2 vessel associated with Great Lakes maritime history may be sunk  
3 intentionally within a Great Lakes bottomlands preserve.  
4 However, no state money shall be expended to purchase, transport,  
5 or sink the vessel.

6 Sec. 4f. (1) The department and the ~~secretary of state~~  
7 MICHIGAN HISTORICAL COMMISSION CREATED BY THE MICHIGAN HISTORY  
8 ACT, jointly or separately, may promulgate rules pursuant to the  
9 administrative procedures act of 1969, Act No. 306 of the Public  
10 Acts of 1969, as amended, being sections 24.201 to 24.328 of the  
11 Michigan Compiled Laws, as are necessary to implement this act.

12 (2) Within each Great Lakes bottomlands preserve, the  
13 department and the ~~secretary of state~~ COMMISSION may jointly  
14 promulgate rules, pursuant to the administrative procedures act  
15 of 1969, Act No. 306 of the Public Acts of 1969, which govern  
16 access to and use of a Great Lakes bottomlands preserve. These  
17 rules may regulate or prohibit the alteration, destruction, or  
18 removal of abandoned property, features, or formations within a  
19 preserve.

20 Sec. 4g. Sections 4a to 4d shall not be considered to  
21 impose the following limitations:

22 (a) A limitation on the right of a person to engage in  
23 diving for recreational purposes in and upon the Great Lakes or  
24 the bottomlands of the Great Lakes.

25 (b) A limitation on the right of the department or the  
26 ~~secretary of state~~ MICHIGAN HISTORICAL COMMISSION CREATED BY  
27 THE MICHIGAN HISTORY ACT to recover, or to contract for the

1 recovery of, abandoned property in and upon the bottomlands of  
2 the Great Lakes.

3 (c) A limitation on the right of a person to own either  
4 abandoned property recovered before July 2, 1980 or abandoned  
5 property released to a person after inspection.

6 Sec. 4h. (1) If the department or the ~~secretary of state~~  
7 MICHIGAN HISTORICAL COMMISSION CREATED BY THE MICHIGAN HISTORY  
8 ACT finds that the holder of a permit issued pursuant to section  
9 3 or 4c is not in compliance with this act, a rule promulgated  
10 under this act, or a provision of or condition in the permit, or  
11 has damaged abandoned property or failed to use diligence in  
12 attempting to recover property for which a permit was issued, the  
13 department or the ~~secretary of state~~ COMMISSION, individually  
14 or jointly, may summarily suspend or revoke the permit. If the  
15 permit holder requests a hearing within 15 days following the  
16 effective date of the suspension or revocation, the department or  
17 the ~~secretary of state~~ COMMISSION shall conduct an administra-  
18 tive hearing pursuant to chapter 4 of the administrative proce-  
19 dures act of 1969, Act No. 306 of the Public Acts of 1969, being  
20 sections 24.271 to 24.287 of the Michigan Compiled Laws, to con-  
21 sider whether the permit should be reinstated.

22 (2) The attorney general, on behalf of the department or the  
23 ~~secretary of state~~ COMMISSION, individually or jointly, may  
24 commence a civil action in circuit court to enforce compliance  
25 with this act, to restrain a violation of this act or any action  
26 contrary to a decision denying a permit, to enjoin the further  
27 removal of artifacts, geological material, or abandoned property,

1 or to order the restoration of an affected area to its prior  
2 condition.

3       Sec. 7. (1) The underwater preserve fund is created as a  
4 separate fund in the state treasury, and it may receive revenue  
5 as provided in this act, or revenue from any other source.

6       (2) Money in the underwater preserve fund shall be appropri-  
7 ated for only the following purposes:

8       (a) To the ~~secretary of state~~ MICHIGAN HISTORICAL COMMIS-  
9 SION CREATED BY THE MICHIGAN HISTORY ACT for the development of  
10 maritime archaeology in this state.

11       (b) To the department of commerce for the promotion of Great  
12 Lakes bottomlands preserves.

13       (c) To the department for the enforcement of this act.

14       Section 2. This amendatory act shall not take effect unless  
15 Senate Bill No. 312  
16 of the 85th Legislature is enacted into law.