

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA**BILL ANALYSIS**

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 5691 (Substitute S-3 as passed by the Senate)
Sponsor: Representative Judith Scranton
House Committee: Great Lakes and Tourism
Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 6-21-00

RATIONALE

Apparently there is a significant number of logs that lie preserved on the bed of the Great Lakes, remnants of logging operations that stretch back over several centuries. During lumber rafting to various sawmills, 20% to 30% of the lumber being shipped evidently became water-logged and fell to the lake bed, where it has remained for many centuries. These logs include red oak, flaming red birch, maple, cherry, elm, walnut, and other hardwoods, including some species that no longer exist as standing timber. The low temperatures and oxygen content of the lakes preserve the logs, including some that reportedly are nearly 700 years old. Because these logs once grew under conifers in low light and limited nutrient conditions, they matured more slowly than do the fast-growing varieties modern tree farms use now. As a result, the wood has a superfine grain, with 25 to 70 growth rings per inch, compared with an average of six to 15 growth rings per inch in today's harvested trees.

Considered extremely valuable, these submerged logs are a rare commodity that is used to build heirloom furniture, handicrafts, fine veneer, and musical instruments. Reportedly, the wood is treasured for its stability, grain, and color and maintains crisp, clear lines during shaving and routing. In addition, the wood apparently is ideal for musical instruments because the lake water has chemically altered the fibers of the logs, giving the wood added resonance.

Since there is no current regulation of the recovery of submerged logs, it has been reported that there have been pirating acts involving the removal of this timber. Some people are concerned that without regulation, some companies may be destroying the environment, disturbing the natural habitat, or releasing or exposing harmful or toxic substances in their submerged log recovery process.

CONTENT

The bill would create a new Part 326 (Great Lakes

Submerged Logs Recovery) of the Natural Resources and Environmental Protection Act (NREPA) to require a person to obtain a submerged log removal permit from the Department of Environmental Quality (DEQ) before removing submerged logs from bottomlands; set permit application requirements including a description of the proposed removal area, a description of the methods to be used, identification of adverse environmental impacts, and a \$3,500 application fee; prohibit the DEQ from issuing a permit after December 31, 2003; provide that a permit would be valid for up to five years; require an applicant to submit a \$100,000 performance bond acceptable to the DEQ; require public notice of permit applications and allow the DEQ to hold a public hearing on an application; provide that the State would reserve a payment of 2.0 times sawlog stumpage value for each submerged log that was removed; require a permit holder to provide the DEQ with a detailed report and all payments within 30 days after the close of each calendar quarter; allow the DEQ to bring a civil action against a person who violated the bill; impose misdemeanor penalties for violations; require the DEQ to conduct a study to determine the fair market value of submerged logs; require the DEQ to report annually to the Legislature; and allow the DEQ to promulgate rules to implement the bill. The bill is tie-barred to House Bill 5690, which would create the "Submerged Log Recovery Fund" and the "Great Lakes Fund".

("Submerged log" would mean a portion of a trunk of a felled tree that had not been further processed for any end use and was located on, in, over, or under bottomlands. It would not include a portion of a tree that was located in the Great Lakes or on, in, over, or under bottomlands that posed a navigational or safety hazard or was of no or little commercial value. "Great Lakes" would mean Lake Superior, Lake Michigan, Lake Huron, and Lake Erie, and would include Lake St. Clair. "Bottomlands" would mean

land in the Great Lakes, and bays and harbors of the Great Lakes, lying below and lakeward of the ordinary high-water mark. "Ordinary high-water mark" would mean the elevations described in Part 325 (Great Lakes Submerged Lands). When the soil, configuration of the surface, or vegetation had been altered by human activity, the ordinary high-water mark would be located where it would have been if the alteration had not occurred.)

Submerged Log Removal Permit

The bill provides that the State would reserve to itself title and ownership of all submerged logs lying on or over, embedded in, or buried under unpatented lands. A person would have to obtain a permit from the DEQ before removing submerged logs from bottomlands. The DEQ could issue a permit to a person for the removal of submerged logs from patented lands if permission were received from the lawful owner of the patented lands. A person could not recover, alter, or destroy abandoned property while engaging in submerged log removal operations under a permit. ("Patented lands" would mean any bottomlands lying within a specific grant area, including a private claim patent or Federal patent. "Unpatented lands" would mean all bottomlands except patented lands.)

For submerged log recovery in underwater preserves established under Part 761 (Aboriginal Records and Antiquities), the DEQ would have to place conditions on the permits to prevent damage to abandoned watercraft or other features of archaeological, historical, recreational, or environmental significance and to minimize conflicts between recreational activities within the preserve and the submerged log recovery operation.

Permit Application

For calendar year 2000, the DEQ would have to establish a time period for the submission of applications for permits. Beginning in 2001, and each year thereafter, applications would have to be submitted before February 1 of each calendar year, but the DEQ could not issue a permit after December 31, 2003. An application for a permit would have to be submitted in writing and include a \$3,500 application fee, as well as the following:

- A description of the proposed bottomland log removal area with boundaries delineated by a digital globe positioning system or other technology approved by the Department. The proposed log removal area would have to be a contiguous area of up to 320 acres, square or rectangular in shape, and the length could not exceed the width by more than a factor of six.
- A description of the methods to be used to raise

the submerged logs, the time of year they would be raised, and the procedures to be used for transferring logs to the shore.

- Identification of any adverse environmental impacts associated with the proposed submerged log removal method.
- Identification of the steps proposed to mitigate any adverse environmental impacts caused by the proposed removal operation.
- Other information that the DEQ considered necessary in evaluating the application.

An application would not be complete until the DEQ received all information requested. Within 30 days of receiving an application, the Department would have to notify the applicant in writing if the application was deficient. The applicant would have to submit the requested information to the DEQ within 30 days after the date the notice was provided. If the applicant failed to respond within the 30-day period, the DEQ would have to deny the permit unless the applicant requested and the DEQ approved an extension of time based upon the applicant's reasonable justification for the extension.

The term of each permit could not be more than five years, and the DEQ could not issue a permit that would be effective beyond December 31, 2006. A permittee could request in writing, and the DEQ could grant, termination of a permit before the expiration date, including release from quarterly reports and performance bond requirements. A permit would not be transferrable unless approved in writing by the DEQ.

Application fees would have to be forwarded to the State Treasurer for deposit into the Submerged Log Recovery Fund (proposed by House Bill 5690).

An applicant also would have to provide a \$100,000 performance bond acceptable to the DEQ at least 10 days before beginning the submerged log removal in a bottomland log removal area. The performance bond would have to ensure compliance with the permit for the period of the permit or until the authorized submerged log removal was completed to the satisfaction of the DEQ and all payments to the State had been made. The DEQ would have to issue a written statement releasing the permittee and bonding company upon termination of the permit and upon satisfaction of the DEQ as to the permittee's compliance with the terms and conditions of the permit. The DEQ could draw upon the performance bond for delinquent payments as required in the bill.

Application Review

Upon receiving a complete application for a submerged log removal permit, the DEQ would have to place the application on public notice for a 20-day

period for review and comment, and submit a copy to the Department of Natural Resources (DNR) and the Department of State for their review and comment. The DEQ would have to review each complete permit application and could not issue a permit unless it had determined that any adverse impacts, including impacts on the environment, natural resources, riparian rights, and the public trust, were minimal and would be mitigated to the extent practicable, and that the proposed activity would not unreasonably affect the public health, safety, and welfare.

The DEQ could determine that certain areas within a proposed bottomland log removal area described in a permit application could not be authorized for submerged log removal based upon adverse impacts, including adverse impacts on the environment, natural resources, riparian rights, and the public trust.

The DEQ would have to decide whether to issue a permit within 90 days after the close of the review and comment period, or if a public hearing were held, within 90 days of that hearing.

The DEQ could hold a public hearing on an application if the DEQ desired additional information before making a decision on the permit application, or upon request, if a request were made within the public notice period.

A permit applicant or a riparian owner who was aggrieved by an action or inaction of the DEQ under Part 326 could request a formal hearing on the matter pursuant to the Administrative Procedures Act, within 60 days of the notice of the DEQ's decision.

Log Removal Area & Plan

The DEQ could not authorize the same bottomland log removal area in more than one submerged log removal permit at any one time. The DEQ could modify boundaries of a proposed bottomland log removal area in a removal permit to avoid overlaps with other active submerged log removal permits or adverse impacts including impacts on the environment, natural resources, riparian rights, and the public trust. A submerged log removal plan approved by the DEQ would have to be included in each permit. A permit would have to contain terms and conditions that were determined by the DEQ to protect the environment, natural resources, and the public trust.

Payment

The bill provides that the State would reserve a payment of 2.0 times sawlog stumpage value for each submerged log that was removed from

unpatented lands. ("Sawlog stumpage value" would mean the most recent average value of standing timber on State forestlands for each species as determined and reported by the DNR. If a species were no longer harvested on State forestlands, however, the term would mean the most recent highest value of any species currently being harvested on State forestlands as determined and reported by the DNR.) All payments would have to be forwarded to the State Treasurer for deposit into the proposed Fund. After a permittee was notified that a payment was overdue, the DEQ could order suspension of the permit until the payment was submitted in full. The permittee could not resume operations until the DEQ provided written authorization for the operations to resume.

Civil Action

The DEQ could bring a civil action against a person in the circuit court of the county in which a violation occurred or in Ingham County Circuit Court to enforce compliance with Part 326 and the rules promulgated under it; restrain a violation of Part 326 or the rules; enjoin further performance of, or order the removal of, any project that was undertaken contrary to Part 326 or the rules; enforce a permit issued under Part 326; and/or order the restoration of an area affected by a violation of Part 326 or the rules to its prior condition.

In addition to any other relief granted, the circuit court could assess a civil fine of up to \$5,000 per day for each day of violation of Part 326 or the rules promulgated under it. Any civil fine or remedy assessed, sought, or agreed to by the DEQ would have to be appropriate to the violation. Civil fines recovered under the bill would have to be forwarded to the State Treasurer for deposit into the Fund.

Penalties

A person who did the following would be guilty of a misdemeanor punishable by a fine of up to \$10,000 per day for each day of violation: violated Part 326 or a rule promulgated under it; violated a permit issued under Part 326; made a false statement, representation, or certification in an application for or with regard to a permit or in a notice or report required by a permit; or rendered inaccurate any monitoring device or method required to be maintained by a permit.

In addition to any other penalties provided, a court would have to order a person convicted under this provision to return to the State any logs removed from bottomlands in violation of Part 326, or to compensate the State for the full market value of the logs. If the person convicted had been issued a submerged log removal permit, the permit would be

void as of the date of conviction.

Reports

A permit holder would have to provide the DEQ with a detailed report and all payments due to the State within 30 days after the close of each calendar quarter. The report would have to include an accurate scaling at dockside of all submerged logs removed, by species. The permittee would have to provide for an independent agent, approved by the DEQ, to conduct the scaling and species determination.

By December 31, 2001, the DEQ would have to conduct a study to determine the fair market value of submerged logs as a potential basis for determining the payment of sawlog stumpage value to the State. The DEQ could conduct the study or could enter into a contract with a qualified person to conduct the study. Upon completion, the DEQ would have to submit a report of the study results to the standing committees of the Legislature with jurisdiction primarily related to natural resources and the environment and to the Senate and House Appropriations Subcommittees on Environmental Quality and Natural Resources. ("Fair market value" would mean the price based on the unique historical and physical properties, including species, growth rates, volume, and condition of the submerged logs as calculated at dockside following delivery to shore.)

The bill also would require the DEQ to report annually to the same legislative committees all of the following: the number of permit applications received and issued; the number and board feet of submerged logs, by species, that were recovered under the bill; the amount of money from the Fund that was spent on the administrative costs of the DEQ, the DNR, and the Department of State under the bill; the amount of money from the Fund that was transferred to the Great Lakes Fund and the Forest Development Fund; an evaluation of the formula for calculating the State payment under the bill as to whether the formula adequately reflected the true value to the State of the submerged logs; the names and addresses of persons who submitted permit applications; and the names and addresses of persons who received permits and the number of logs recovered by each permittee.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill would help regulate and control the practice

of submerged log removal from the Great Lakes bottomlands by establishing a permit program. The bill would provide various measures to ensure that the removal process would be environmentally sound, have little impact on the surrounding area, and cause minimal disturbance to the natural habitat. It would make certain that the proposed bottomland log removal area was not home to any endangered species or possible historic landmarks, such as sunken vessels.

In addition, since good quality submerged logs are a valuable State commodity, the bill would require a payment of 2.0 times sawlog stumpage value for each submerged log that was removed. The DEQ would have to conduct a study to determine the fair market value of submerged logs in order to retain a fair and reasonable payment to the State.

Opposing Argument

The \$3,500 application fee and 2.0 times sawlog stumpage value royalty to the State would be higher than the amount charged by any other state, such as Wisconsin and New York, which also impose fees for submerged log removal. The proposed fees would prevent small companies from participating in the responsible practice of underwater log removal.

Response: The DNR reports that Wisconsin and New York have lower rates because those states had different motives when the fees were first imposed. For example, Wisconsin's motive was to build a sawmill to provide jobs to the area.

Legislative Analyst: N. Nagata

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

FISCAL IMPACT

The bill would result in an indeterminate increase in State restricted revenue. The amount of revenue that would be generated under the bill would depend on the number of permits applied for, the amount and value of submerged logs collected, and the number of violations and degree of enforcement of the provisions of the bill.

Fiscal Analyst: P. Graham