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Senate Bill 721**Sponsor: Senator William Faust****Committee: Natural Resources and Environmental Affairs****Date Completed: 5-3-88*****SUMMARY OF SENATE BILL 721 as introduced 2-23-88:***

Senate Bill 721 would amend Public Act 173 of 1929, which regulates Great Lakes bottomlands preserves, to do all of the following:

- Create the "Underwater Salvage and Preserve Committee" in the Department of Natural Resources (DNR).
- Revise the application procedure for and conditions of a permit to recover abandoned property located in, on, or in the vicinity of a sunken watercraft or aircraft.
- Specify the procedures for the DNR to use when establishing great Lakes bottomlands preserves.
- Provide for the suspension or revocation of a recovery permit and authorize a civil action to ensure compliance with the Act.
- Provide for the forfeiture of equipment used during the course of committing a violation of the Act.
- Create and regulate the "Underwater Preserve Fund".
- Make other provisions pertaining to penalties for violations of the Act, the promulgation of rules, and inherent risks in the sport of scuba diving.

Underwater Salvage and Preserve Committee

The "Underwater Salvage and Preserve Committee" would be created to provide technical and other advice to the Director of the DNR and the Secretary of State regarding their responsibilities under the Act. The Committee would consist of two members appointed by the Director of the DNR, who had primary responsibility in the DNR for administering the Act; two members appointed by the Secretary of State who had primary responsibility in the Department of State for administering the Act; one member appointed by the Director of the Department of Commerce; and four members appointed jointly from the general public by the Secretary of State and the Director of the DNR. (Two of the members appointed from the general public would have to be experienced in recreational scuba diving.) Members of the Committee would serve three-year terms, and a vacancy would be filled in the same manner as original appointment. Members would serve without compensation, except for their regular State salary where applicable.

The chairperson of the Committee would alternate between the representatives from the DNR and the Department of State and would be designated by the Director of the DNR or the Secretary of State. The term of the chairperson would be one fiscal year, with the first chairperson being named by the DNR to a term ending September 30, 1988. The chair would have to file an annual report with the Secretary of State, the Director of the DNR, and the Director of the Department of Commerce. As an advisory body, the Committee could do all of the following:

- Recommend the creation of and boundaries for Great Lakes Underwater Preserves.
- Review applications for underwater salvage permits and make recommendations regarding their issuance.
- Consider the need for and content of rules to implement the bill and make recommendations concerning the promulgation of rules.
- Consider and make recommendations concerning appropriate legislation and program operation.

The bill specifies that the Committee could not supersede or replace the responsibility or authority of either the Secretary of State or the DNR Director to carry out their respective responsibilities under the Act.

Underwater Property Recovery Permit

The Act allows the DNR to issue permits to authorize the recovery of abandoned property located on or in a sunken aircraft or watercraft. The bill would add "or located in the immediate vicinity of and associated with" such a sunken vessel. The bill would require that the application form for such a permit, which must be prescribed by the DNR, be approved by the Secretary of State.

The bill specifies that an application for a permit would not be complete until all information requested by the DNR and the Secretary of State was received by the DNR. The DNR could request additional information after the submission of an application. The DNR or the Secretary of State would have to notify an applicant in writing if the application were deficient, and the applicant would have 20 days to provide the additional information. If the applicant failed to respond, the application would be denied unless the applicant requested and provided reasonable justification for an extension.

The Act requires the DNR and the Secretary of State to approve or disapprove a permit application within 30 days after the filing of a complete application. The bill specifies that such a decision would have to be made with the advice of the Committee. Also, the Act allows an application to be approved conditionally; the bill would allow the DNR and the Secretary of State to impose conditions "as are considered reasonable and necessary to protect the public trust and general interest". In addition to the conditions allowed by the Act, the bill would include those that accomplished one or more of the following:

- Prohibited injury, harm, and damage to a bottomlands site or abandoned property that was not authorized for removal by the permit holder.
- Prohibited or limited the amount of discharge of pollutants or debris that may emanate from a shipwreck or salvage equipment.

S.B. 721 (5-3-88)

- Required the permit holder to submit a removal plan before beginning salvage operations.

The removal plan could be required in order to ensure the safety of those involved in the removal of abandoned property and to address how the permit holder proposed to prevent, minimize, or mitigate adverse effects on the property and the surrounding geographic features.

A person who discovered an abandoned watercraft outside of a Great Lakes bottomlands preserve would be entitled to recover any cargo without historical value, if the person applied for a permit within 90 days after the discovery. If the individual failed to apply within 90 days, an exclusive cargo recovery permit would have to be issued to the first person who applied for one. Only one such permit at a time could be issued and operative. If a discovery were made simultaneously by more than one individual, a permit could only be approved only for the first person or persons jointly applying.

Permits issued under the Act would be valid until December 31 of the year that the application was filed. An application could not be renewed. If an item designated in the permit were not recovered, a permit holder could, upon request following the permit's expiration, be issued a new permit to remove the item or items if the permit holder demonstrated that diligence in attempting the recovery was exercised under the expired permit. Permits could not be transferred or assigned unless approved in writing by both the DNR and the Secretary of State.

DNR Establishment of Great Lakes Bottomlands Preserves

The Act requires the DNR to establish Great Lakes bottomlands preserves, and the bill would require that this be done by rule promulgated under the Administrative Procedures Act. The bill further specifies that a bottomlands preserve could be established whenever a bottomlands area included a single watercraft of historical value; two or more abandoned watercraft; or other features of archaeological, historical, recreational, geological, or environmental significance. Bottomlands areas that contained few or no watercraft or features related to the character of a preserve could be excluded from preserves. In establishing bottomlands preserves, the DNR and the Secretary of State would have to consider all of the following:

- Whether creation of a preserve was necessary to protect either abandoned property possessing historical or recreational value or significant underwater geological or environmental features.
- The extent of local support for creation of a preserve.
- Whether a preserve development plan was prepared by a State or local agency.
- The extent to which preserve support facilities (e.g., roads, marinas, charter services, hotels, medical decompression facilities, and rescue agencies) had been developed in or were planned for the area.

A permit to recover abandoned artifacts within a bottomlands preserve could not be granted except for historical or scientific purposes or when the recovery would not adversely affect the historical, recreational, or cultural integrity of the preserve as a whole.

The Act limits the total area of Great Lakes bottomlands preserves to not 5% of the Great Lakes bottomlands within Michigan. The bill would increase that limit to 10%, and specifies that individual Great Lakes bottomlands preserves could not exceed 400 square miles in area. The bill also would authorize, upon the approval of the Committee, the sinking of not more than one vessel associated with Great

Lakes maritime history within a Great Lakes bottomlands preserve. No State money could be used to purchase, transport, or sink such a vessel, however.

Suspension, Revocation, and Civil Actions

The DNR or the Secretary of State, individually or jointly, could summarily suspend or revoke a permit if either found that a permit holder was not in compliance with the Act, a rule promulgated under it, or a provision or condition of the permit. Damaging abandoned property or failure to use diligence in attempting to recover property for which a permit was issued also would be grounds for suspension or revocation of a permit. If a permit holder requested a hearing within 15 days after a suspension or revocation took effect, the DNR or the Secretary of State would have to conduct an administrative hearing to consider whether the permit should be reinstated.

The bill would authorize the Attorney General to commence a civil action in Circuit Court, on behalf of the DNR or the Secretary of State, or both, to enforce compliance with the Act; to restrain a violation of the Act or an action contrary to a decision to deny a permit; to enjoin further removal of artifacts, geological material, or abandoned property; or to order the restoration of an affected area to its prior condition.

Forfeiture of Equipment

A watercraft, motor vehicle, or any other equipment or apparatus used to commit a violation of the Act or rules promulgated under it could be "attached, proceeded against, and confiscated".

In order to confiscate, a law enforcement or conservation officer who seized the property would have to file a complaint in the Circuit Court for the county in which the seizure was made or in the Circuit Court for Ingham County. The complaint would have to specify the kind of property seized, the time and place of seizure, the reasons for the seizure, and a demand for the property's condemnation and confiscation. Upon the filing of such a complaint, an order would have to be issued requiring the owner to show cause why the property should not be confiscated.

The order would have to be served on the owner of the property as soon as possible, and at least seven days before the complaint would be heard. The court, for cause shown, could hear the complaint on shorter notice. If the owner of the property were not known or could not be located, the required notice could be served by posting a copy in three public places for three consecutive weeks in the county where seizure occurred and by sending a copy of the order by certified mail to the last known address of the owner; by publishing a copy in a newspaper once a week for three consecutive weeks in the county where seizure occurred and by sending a copy by registered mail to the last known address of the owner; or in another manner as the court directed.

If the court determined that the property was possessed, shipped, or used contrary to law, the court would have to issue an order condemning and confiscating the property and directing its sale or other disposal by the Director of the DNR. If the owner signed a release, the court proceeding would not be necessary. If the court determined that the property was not possessed, shipped, or used contrary to law, the court would have to order the Director of the DNR to return the property to its owner immediately. Proceeds received from the sale or disposal of confiscated property would have to be credited to the proposed Underwater Preserve Fund.

Underwater Preserve Fund

The bill would establish the Underwater Preserve Fund as a separate fund in the State Treasury. Money in the Fund could be appropriated only for the following purposes:

- To the Secretary of State for the development of maritime archaeology in Michigan.
- To the Department of Commerce for the promotion of Great Lakes bottomlands preserves.
- To the DNR for the enforcement of the Act.

Other Provisions

Penalties. A person who recovered, altered, or destroyed abandoned property in, on, under, or over the bottomlands of the Great Lakes without a permit to do so issued jointly by the DNR and the Secretary of State would be guilty of a felony if the property had a fair market value of \$100 or more. Such a violation would be punishable by imprisonment for up to two years, a maximum fine of \$5,000, or both. A person who otherwise violated the permit provisions of the Act or a rule promulgated under it would be guilty of a misdemeanor, punishable by a maximum fine of \$5,000, imprisonment for up to six months, or both.

Rules. The bill would authorize the DNR and the Secretary of State to promulgate rules jointly for each Great Lakes bottomlands preserve. The rules would govern access to and use of preserves, and could regulate or prohibit the alteration, removal, or destruction of abandoned property, features, or formations within a preserve.

Scuba Diving. The bill specifies that anyone who participated in the sport of scuba diving on the Great Lakes bottomlands would be accepting "the dangers which adhere in that sport insofar as the dangers are obvious and necessary". Such dangers would include but not be limited to all of the following:

- Injuries that could result from entanglements in sunken watercraft or aircraft.
- The condition or location of sunken watercraft or aircraft.
- The failure of the State to fund staff or programs at bottomlands preserves.
- The depth of the objects and bottomlands within preserves.

MCL 299.51 et al.

Legislative Analyst: P. Affholter

FISCAL IMPACT

This bill would require \$4,000 to \$15,000 added costs to the State for holding meetings, promulgating rules, and administration expenses. There would be no revenue generated from the issuance of permits pursuant to section 4c. The Underwater Preserve Fund could not be used to administer the Act. There would be no costs to local units of government.

Fiscal Analyst: A. Rich

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.