



**House
Legislative
Analysis
Section**

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

**EXPLOITATION OF HUMAN
REMAINS IN SHIPWRECKS**

**House Bill 5849 as introduced
First Analysis (5-15-96)**

**Sponsor: Rep. Pat Gagliardi
Committee: Tourism and Recreation**

THE APPARENT PROBLEM:

Michigan's Great Lakes bottomlands preserves are popular tourist attractions and attract hundreds of divers nationwide who enjoy exploring shipwrecks, some famous, either for personal enjoyment or sometimes for purposes of research and study. In some instances, divers have filmed shipwrecks and used this information for various purposes, such as documentary films or perhaps to help medical researchers determine the effects of long-term entombment on a dead human body when it remains in very deep, and extremely cold, waters over a span of several years. In 1994, not long after a particularly famous shipwreck--the Edmund Fitzgerald--was located on the bottom of Lake Superior, a diving expedition was made to film the sunken ship and the area directly surrounding it. Among the more dramatic things discovered and filmed were the dead remains of at least one of the 29 sailors who died when the Edmund Fitzgerald sank during a violent November storm in 1975. In this case, however, the resulting film footage was made into a video and has been marketed by its maker for commercial purposes. Some people believe photography or filming of this sort intrudes on the sanctity of those "buried" there, and that offering for public display such pictures or film desecrates the dead and is insensitive to their survivors. In response, legislation has been proposed that would prohibit such activities and subject violators to a severe fine, imprisonment, or both.

THE CONTENT OF THE BILL:

The bill would amend Part 761 of the Natural Resources and Environmental Protection Act (NREPA), which concerns Aboriginal Records and Antiquities, to specify the following: "The legislature finds that the bottomlands of the Great Lakes where a human body or the remains of a human body are located is a human grave. A person shall not photograph a human body or the remains of a human body in a human grave except for scientific, medical, or law enforcement purposes." Further, the bill would prohibit the public display of a motion picture, photograph, or digital image of a human body or the remains of a human body located on the bottomlands of the Great Lakes.

A violation would be a felony, punishable by imprisonment for up to two years, a fine of up to \$5,000, or both.

MCL 324.76107

FISCAL IMPLICATIONS:

The House Fiscal Agency says the bill would not affect state budget expenditures, but would have an indeterminate fiscal impact on local government revenue and incarceration costs. Under the bill, revenue from the \$5,000 fine would go to local governments and be used to offset their incarceration costs (\$65 per day, or \$23,700 per year). (5-13-96)

ARGUMENTS:

For:

The bill would offer protections to the surviving relatives of sailors who lost their lives in shipwrecks on the Great Lakes by prohibiting someone from either photographing a human body or the remains of one except for scientific, medical, or law enforcement purposes, or publicly displaying such a photograph, film, or digital image. Soon after the wreck of the Edmund Fitzgerald was discovered in 1993, a diver filmed the sunken ship along with a dead human body that presumably was one of the sailors aboard the ship when it sank in 1975. This film was then made into a video and is being sold to the public--which not only desecrates what is essentially a grave site but also displays a crude lack of sensitivity to survivors of the deceased. And apparently, because the body was found at a depth where water temperatures are near freezing, the body was only partially decomposed and is potentially still recognizable. The bill would make it a felony punishable by a severe fine, jail term, or both when someone photographed or filmed a human body found on the bottomlands of the Great Lakes in order to commercially exploit such a tragedy. A similar proposal is being considered in the Canadian province of Ontario (which has jurisdiction over numerous shipwrecks in the Great Lakes, including the Edmund

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Fitzgerald); adopting the bill would encourage other Great Lakes states to do the same.

Against:

The bill would infringe on the free-speech rights of persons to photograph or film Great Lakes shipwrecks and use these recordings for any of a number of reasons, including to inform the public about the details of shipwrecks. For instance, a film could be made that showed a shipwreck and only quick glimpses of human remains and used for documentary or educational purposes, similar to the kinds of films made by the National Geographic Society which appear frequently on public television and elsewhere. Those who make the effort, and in some cases risk their lives, to film such productions should be free to use their own judgment in determining what to film, how to use such a film, and even whether to earn money doing so. Reportedly, there is disagreement even among survivors of the crew of the Edmund Fitzgerald over such films, where some have been supportive of the films produced and others opposed. In prohibiting legitimate uses of such photography and films, the bill could very well be ruled unconstitutional.

Against:

The bill contains vague language that may not be enforceable. For instance, it specifically would prohibit photographing a "human body" or the remains of one in a human grave, and would prohibit public display of a film, motion picture, or digital image of a "human body" or remains of one from Great Lakes bottomlands. It would seem more appropriate to prohibit these activities in reference to *dead* human bodies. Furthermore, the term "grave" is not really defined; instead, the bill merely specifies that the "legislature finds" that Great Lakes bottomlands where a human body or remains of one were found would be a "human grave." This kind of language is too broad and would not likely withstand a court challenge since it could potentially encompass the entire Great Lakes bottomlands. Instead, the bill should define a human grave as specifically referring to the area near a Great Lakes shipwreck in which a dead human body or the remains of one existed. Also, it might be wise to include in the definition of "shipwreck" a sunken aircraft, much like the state of Washington reportedly does in its abandoned shipwreck law.

POSITIONS:

The Great Lakes Shipwreck Historical Society supports the bill. (5-14-96)

The International Ship Masters Association, which represents approximately 800 active and retired officers

on Great Lakes freighters and ships, supports the bill. (5-14-96)

The Great Lakes Maritime Academy supports the bill. (5-14-96)

The Great Lakes Diving Council is strongly opposed to the bill. (5-9-96)

The Michigan Underwater Preserve Council, Inc. is strongly opposed to the bill. (5-9-96)

The Straits of Mackinac Underwater Preserve Committee is strongly opposed to the bill. (5-9-96)

The Alger Underwater Preserve, of Munising, is strongly opposed to the bill. (5-10-96)

Maritime History in Art opposes the bill. (5-13-96)

The Great Lakes DeepQuest Organization, a business involved with deep-water exploration of the Great Lakes, opposes the bill. (5-14-96)

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.