

# Legislative Analysis



## SUBMERGED LOG RECOVERY

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**House Bill: 4554 (Substitute H-3)**

**Sponsor: Rep. Greg MacMaster**

**Committee: Natural Resources, Tourism, and Outdoor Recreation**

**First Analysis: 6-22-11**

**BRIEF SUMMARY:** House Bill 4554 (H-3) would amend Part 326 of the Natural Resources and Environmental Protection Act (NREPA) to allow for new permits to be issued by the Department of Environmental Quality (DEQ) for the harvesting of submerged logs from the Great Lakes bottomlands. It would establish new guidelines for permits, establish new application fees, and put in place a new mechanism for the state to collect revenue from recovered submerged logs.

**FISCAL IMPACT:** House Bill 4554 would have an indeterminate fiscal impact on the Department of Environmental Quality. While the bill may increase revenues to the Department by extending the authorization to issue permits, the provisions of the bill make several changes that may affect the revenues that the Department would receive from the program. (For additional information, see *Fiscal Information*, later in the analysis.)

### **THE APPARENT PROBLEM:**

According to the DEQ, the Great Lakes Submerged Logs Recovery Program "provides for the legal and controlled recovery of abandoned old growth logs that were not captured and processed during Michigan's logging era." Part 326 of NREPA regulates the harvesting of submerged logs from the bottomlands of the Great Lakes. These logs are considered the property of the state, and Part 326 ensures the state receives proper compensation for the logs. Under current law, the DEQ cannot issue a submerged log removal permit after December 31, 2003, and all submerged log permits expire on January 1, 2013. Few permits have been issued under this program, even fewer are currently active, and no submerged logs have been recovered to date. This bill would allow the current program to continue by allowing for new permits to be issued. It would also make changes to the reimbursement structure by requiring submerged loggers to pay a percentage of the sale price of the log for each submerged log that is recovered.

### **THE CONTENT OF THE BILL:**

This bill would make several changes to NREPA by:

- Amending Section 1301 to add a new permit for "submerged log removal from Great Lakes bottomland," as detailed in Section 32603. It also adds a new processing period for these permits by establishing a 90-day period after the close of the review or comment period under Section 32604, or if a public hearing is

held, 90 days after the date of the public hearing for a permit issued under Section 32603.

- Amending Section 30102 to specify that a person cannot remove submerged logs from rivers or streams for the purpose of submerged log recovery without having first received a permit. However, it does not prohibit the department from issuing a permit for other purposes, including removing logjams or removing logs that interfere with navigation.
- Amending Section 30104 to establish a \$500 application fee for a submerged log removal permit.
- Amending Section 32603 to read " a person shall not remove submerged logs from bottomlands except as authorized by a permit issued by the department pursuant to Part 13." Currently, the department has the authority to place conditions on permits to prevent damage to abandoned watercraft or other features of archaeological, historical, recreational, or environmental significance. This bill would change that to allow the department to place '*reasonable*' conditions on permits.
- Amending Section 32604 to require submerged log removal permit applications to be submitted to the department before February 1 of each calendar year. It also deletes a provision restricting the department from issuing any new permits after December 31, 2002.
- Amending Section 32606 to require the department to condition a submerged log removal permit on compliance with the permittee having provided the department with a \$3,000 log recovery fee and a bond as required under Section 32607. It also requires the department to notify the applicant in writing within 10 days of the date the department approves or denies a submerged log removal permit. Additionally, the department would be required to forward all log recovery fees to the State Treasurer for deposit into the Great Lakes Fund, contained in Section 32611.
- Amending Section 32607 to change the expiration date to 5 years after the date the permit is issued. (Currently, all permits are set to expire on January 1, 2013). However, if a permit was issued prior to the effective date of this bill, the permit would expire 5 years after this bill goes into effect. Also included in this section, applicants currently have to provide a performance bond worth \$100,000. This bill would change that provision to require a bond of at least \$10,000 but not more than \$100,000, and base the amount on the permit conditions, including costs of restoration. It also states the term of the bond must extend for 1 year following the permit's expiration.

*"Bond"* is defined as a performance bond from a surety company authorized to transact business in Michigan or an irrevocable letter of credit, in favor of the department.

- Amending Section 32609 to change the structure through which the state receives compensation for recovered submerged logs. Currently, permit holders are required to pay the state 2 times the sawlog stumpage value<sup>1</sup> for each log that is recovered. This bill would change the reimbursement model to require each permit holder to pay the state 15% of the sawlog stumpage value of each submerged log that is recovered. It also changes the definition of sawlog stumpage value to mean the price at which the submerged logs are sold for.
- Deleting a provision requiring the department to conduct a study to determine the fair market value of submerged logs as a potential basis for determining the payment to the state. This study was to have been conducted no later than December 31, 2001.

MCL 324.1301, et al.

### ***BACKGROUND INFORMATION:***

Many other states and Canada allow for the recovery of submerged logs within their waters. However, there is no uniform standard for how governments collect revenue from these operations. For example, Maine has a \$100 application fee and requires the applicant to provide compensation for the logs in an amount not less than 20% of the market value of the logs after they are salvaged and ready for sale.<sup>2</sup> Wisconsin, seen as an industry leader, requires a \$500 application fee, a bond of at least \$10,000, and reserves for itself 30% of the stumpage value.<sup>3</sup> The Georgia House of Representatives recently defeated SB 218, which would have allowed for the sale of sunken "deadhead" logs to interested parties who would then be responsible for the recovery and removal and removal of the logs.<sup>4</sup> The Canadian government considers the removal/alteration of bottomlands harmful to fish habitat and all submerged log removal activities must comply with subsection 35(1) of the Fisheries Act.

The market for old growth wood. The market for the wood from submerged old growth logs has grown increasingly large. Recovered wood is used by custom furniture makers, artists, contractors, architects, and the makers of high end musical instruments. It has been reported that Johnny Cash used a custom made guitar crafted from recovered wood. Committee testimony has placed the value of submerged logs as high as \$30,000-\$40,000, depending on the size of the log and the species of the wood.

Permits under Part 301. The removal of submerged logs from inland lakes and streams is currently allowed with a dredging permit issued under Part 301. A Part 301 permit must be obtained before, among other things, "dredging or filling bottomland." Since

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<sup>1</sup> As currently written, the sawlog stumpage value is defined as the most recent average value of standing timber on state forestlands for each species as determined and reported by the DNR. However, if a species is no longer harvested on state forestlands, sawlog stumpage value means the most recent highest value of any species currently being harvested on state forestlands as determined and reported by the DNR.

<sup>2</sup> <http://www.maine.gov/doc/parks/programs/sublands/PDF/059c055.pdf>

<sup>3</sup> <https://docs.legis.wisconsin.gov/statutes/statutes/170/12/1/c>

<sup>4</sup> <http://www.legis.ga.gov/Legislation/en-US/display.aspx?Legislation=33489>

submerged logs are often embedded within the bottomlands, a permit under this section would allow for their removal. Currently, there is no mechanism for the DEQ to track which permits were issued to exclusively remove submerged logs, or to track the number of logs that have been removed. A dredging permit under this part, depending on the size of the project, would cost \$50 for a minor project<sup>5</sup> or \$500 for a dredging project of 10,000 cubic yards or more. The application process for a dredging permit, including information on public hearings, is included in MCL 324.30105.

### ***FISCAL INFORMATION:***

House Bill 4554 would have an indeterminate fiscal impact on the Department of Environmental Quality. While the bill may increase revenues to the Department by extending the authorization to issue permits, the provisions of the bill make several changes that may affect the revenues that the Department would receive from the program.

One important change is that the submerged log removal application fee is reduced to \$500 from the current cost of \$3,500. The bill also provides that once a permit has been issued, it is conditioned upon the payment of a new \$3,000 Log Recovery Fee which must be deposited into the Great Lakes Fund. In addition, a new application fee of \$500 is created for log removal from bottomlands of an inland lake.

Under current law, for each submerged log recovered, the State receives 2.0 times the sawlog stumpage value. Under the bill's provisions, the State would receive 15% of the sawlog stumpage value - which is redefined as the market price received from selling the logs. All payments received from the stumpage value are required to be deposited into the Submerged Log Recovery Fund. As of May of 2011, although state permits have been issued, no logs have been recovered under these permits yet and, thus, no revenue has been deposited into the Fund. When the Fund does receive revenue, the balance of the Fund each year is statutorily required to be transferred as follows: 50% to the Great Lakes Fund and 50% to the Forest Development Fund.

### ***ARGUMENTS:***

#### ***For:***

Supporters believe this legislation will help create jobs. Currently, other states are reaping the financial benefits of submerged log recovery. Estimates have placed the number of logs in the Great Lakes in the millions. By reducing the application fee and making it easier for operations to start, it seems inevitable there will be a positive impact on Michigan's economy.

Submerged log recovery is already allowed under state law and this is simply an extension of an existing program. For a variety of reasons, very few permits have been

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<sup>5</sup> Minor projects are listed in R 281.816 of the Michigan Administrative Code and can be accessed at [http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin\\_Num=28100811&Dpt=EQ&RngHigh=](http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=28100811&Dpt=EQ&RngHigh=)

issued and utilized under the current law.<sup>6</sup> This will eliminate deadlines to allow new permits to be issued, as well as, extend the expiration date beyond the current date of 2013.

Reclaiming submerged logs that have already been cut from forests will help reduce the number of trees that need to be harvested now. Each previously cut old growth log salvaged from the Great Lakes is one less log that needs to be cut from a present forest.

***Against:***

There were concerns raised during committee testimony about what constituted "reasonable" conditions. It is possible there could be conflicts involving the interpretation of the conditions the department places on permits. Some fear this gives the department wide latitude and could result in burdensome guidelines being attached to submerged log recovery permits.

Concerns were also raised about the potential environmental impact submerged log recovery could have. Since many submerged logs are resting on or under the Great Lakes bottomland it is possible silt and debris could be stirred up during a log recovery operation. This presents an issue in areas that may contain contamination. There are also concerns that removing submerged logs could disrupt fish ecosystems that have sprung up around the logs, especially in shallow areas.

***POSITIONS:***

The Michigan Department of Environmental Quality supports the bill. (6-14-11)

The Burt Lake Preservation Association is neutral on the bill. (6-22-11)

The Torch Lake Protection Alliance is neutral on the bill. (6-22-11)

The Michigan Environmental Council opposes the bill. (5-10-11)

Michigan Trout Unlimited opposes the bill. (5-10-11)

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■ 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.

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<sup>6</sup> The Department of Environmental Quality issued a total of 12 permits prior to December 31, 2003. There are 7 permits currently active and no submerged logs have been recovered under those permits.