

PUBLIC BOTTOMLANDS FOR PRIVATE HARBORS

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Senate Bill 409 as enacted
Public Act 18 of 2018
Sponsor: Sen. Tom Casperson
House Committee: Natural Resources
Senate Committee: Natural Resources
Complete to 6-24-19

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: Senate Bill 409 amends the Natural Resources and Environmental Protection Act (NREPA) to allow the Department of Environmental Quality (now the Department of Environment, Great Lakes, and Energy, known as EGLE) to enter into a lease with an owner of riparian or littoral property regarding use of abutting unpatented lake bottomlands for a private harbor if certain conditions are met.

FISCAL IMPACT: Senate Bill 409 would likely reduce fee revenue for EGLE. The department projected that the new application provisions included in the bill would reduce annual fee revenue from \$10,636 down to \$3,052, resulting in a \$7,584 loss. Noncommercial, single-family residential, private harbors were previously subject to this following annual fee schedule:

Less than a half-acre = \$350
At least a half-acre but less than one acre = \$600
At least one acre but less than one and a half acres = \$850
Equal to or greater than one and a half acres = commercial rate

The bill is unlikely to have a fiscal impact on local units of government.

THE APPARENT PROBLEM:

Part 325 (Great Lakes Submerged Lands) of NREPA gives EGLE authority to charge mandatory compensation for private use of harbors constructed on Great Lakes bottomlands. However, the previous fees were more than what most homeowners could afford. This bill implements an affordable fee structure to provide compensation to the state for private use of unpatented lake bottomlands and allow flexible payment plans.

THE CONTENT OF THE BILL:

Senate Bill 409 allows EGLE to enter into a lease with the owner of riparian or littoral property to use the abutting *unpatented lake bottomlands* and waters over those bottomlands for a private harbor, but only if all of the following conditions are met:

- The owner of the riparian or littoral property occupies the land for single-family residential purposes.

- The private harbor was formed by a breakwater erected on unpatented lake bottomlands and is used exclusively for private, noncommercial recreational watercraft.
- The full term of the lease is 50 years, with two 25-year terms.
- The following consideration:
 - For a lease entered into on or after May 14, 2018 (the effective date of the bill), the landowner pays a lump-sum at the beginning of the first and second 25-year term consisting of 0.5% of twice the current state equalized value of the land that the *riparian rights* or *littoral rights* are attached to, or a schedule as agreed by EGLE.
 - Unless otherwise requested by the lessee and agreed to by EGLE, for a lease entered into before the effective date of this bill, EGLE is required to credit any lease payment made in 2016 against the future payments owed under the terms of a lease entered into after May 14, 2018, as described above.

Bottomland means lands in the Great Lakes, including the bays and harbors, lying below and lakeward of the ordinary high-water mark.

Unpatented lands means the bottomlands that are not submerged patented lands (which are any bottomlands lying within a specific government grant area, including a private claim patent, federal patent, or state swampland patent).

Littoral rights means the water rights on the shoreline along lakes.

Riparian rights means the water rights on the shoreline along rivers or ponds.

BACKGROUND:

Michigan holds the bottomlands and waters of the Great Lakes in trust for the use of the general public. Part 325 of NREPA allows EGLE to authorize the private occupation of those bottomlands. However, many small private recreational boat harbors were built before the bottomland conveyance requirement existed under Part 325. These harbors serve single-family residential properties and generally have sheet-piling or rock breakwaters to capture Great Lakes public trust bottomlands for a permanent private and exclusive use. Under Part 325, these private, noncommercial users are required to obtain authorization to continue to occupy the Great Lakes bottomlands and provide equitable monetary compensation to the public for the permanent private and exclusive use of public trust bottomlands.

ARGUMENTS:

For:

Supporters of the bill argued that, while Part 325 gives authority to EGLE to charge for private usage of public bottomlands, the current fee structure is too expensive. In addition, many, if not all, lakeshore homeowners with current harbors or breakwalls did not originally erect the structures on the bottomlands. Instead, the properties have changed

ownership over decades, with some breakwalls dating back a century. Because the state is rightfully owed compensation, the new fee structure would compensate the state while not overburdening homeowners. Additionally, the flexible payment plan would allow homeowners to choose which payment method suits them to ensure payment to the state.

Against:

Critics of the bill argued that the fee reduction is too great. Compensation is owed to the state for private use of the lake bottomlands because those bottomlands are held in trust for public use. When they are no longer available for public use, just compensation is owed to the state at fair market value, as mandated in other sections within Part 325. However, the proposed fee changes do not adequately attribute an appropriate value to the bottomlands.

Opponents have suggested an alternative to the new fee structure and proposed that a homeowner who does not want to pay, or cannot afford to pay, fair market value for a private harbor can have the choice of either removing the private harbor or receiving a reduced fee and opening it up for public use.

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