

[No. 278]

(HB 5691)

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," (MCL 324.101 to 324.90106) by adding part 326.

The People of the State of Michigan enact:

PART 326

GREAT LAKES SUBMERGED LOGS RECOVERY

324.32601 Definitions. [M.S.A. 13A.32601]

Sec. 32601. As used in this part:

(a) "Bottomlands" means land in the Great Lakes, and bays and harbors of the Great Lakes, lying below and lakeward of the ordinary high-water mark as described in section 32502.

(b) "Department" means the department of environmental quality.

(c) "Fair market value" means the price based upon the unique historical and physical properties, including, but not limited to, species, growth rates, volume, and condition of the submerged logs as calculated at dockside following delivery to shore.

(d) "Fund" means the submerged log recovery fund created in section 32610.

(e) "Great Lakes" means Lake Superior, Lake Michigan, Lake Huron, and Lake Erie, and includes Lake St. Clair.

(f) "Ordinary high-water mark" means the elevations described in section 32502. When the soil, configuration of the surface, or vegetation has been altered by human activity, the ordinary high-water mark is located where it would have been if this alteration had not occurred.

(g) "Patented lands" means any bottomlands lying within a specific government grant area, including a private claim patent or federal patent.

(h) "Riparian owner" means a person who owns frontage bordering bottomlands.

(i) "Riparian rights" means those rights that are associated with the ownership of frontage bordering bottomlands, subject to the public trust.

(j) "Submerged log" means a portion of the trunk of a felled tree that has not been further processed for any end use and is located on, in, over, or under bottomlands. Submerged log does not include a portion of a tree that is located in the Great Lakes or on, in, over, or under bottomlands that poses a navigational or safety hazard or is of no or little commercial value.

(k) "Unpatented lands" means all bottomlands except patented lands.

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324.32602 Submerged logs; reservation of ownership rights.
[M.S.A. 13A.32602]

Sec. 32602. This state reserves to itself title and ownership of all submerged logs lying on or over, embedded in, or buried under unpatented lands.

324.32603 Removal of submerged logs from bottomlands, patented lands, or underwater preserves; permit. [M.S.A. 13A.32603]

Sec. 32603. (1) A person shall obtain a permit from the department under this part prior to removing submerged logs from bottomlands.

(2) The department may issue a permit under this part to a person for the removal of submerged logs from patented lands if permission is received from the lawful owner of the patented lands.

(3) A person shall not recover, alter, or destroy abandoned property as defined in part 761 while engaging in submerged log removal operations under a submerged log removal permit issued under this part.

(4) For submerged log recovery in underwater preserves established under part 761, the department shall place conditions on submerged log removal 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.

324.32604 Application for submerged log removal permit; form; information; time period for submission; disposition of fees.
[M.S.A. 13A.32604]

Sec. 32604. (1) For calendar year 2000, the department shall establish a time period for the submission of applications for submerged log removal permits under this part. Beginning in 2001, and each year thereafter, applications shall be submitted before February 1 of each calendar year. However, the department shall not issue a submerged log removal permit under this part after December 31, 2003.

(2) An application for a submerged log removal permit shall be submitted in writing on a form provided by the department and shall include all of the following:

(a) A description of the proposed bottomland log removal area with boundaries delineated by a digital global positioning system or other technology approved by the department. The proposed bottomland log removal area shall be a contiguous area of not more than 320 acres. The area proposed shall be square or rectangular in shape, and the length shall not exceed the width by more than a factor of 6.

(b) A description of the methods to be used to raise the submerged logs, the time of year during which submerged logs will be raised, and the procedures to be used for transferring logs to the shore.

(c) Identification of any adverse environmental impacts associated with the proposed submerged log removal method.

(d) Identification of the steps proposed to mitigate any adverse environmental impacts caused by the proposed submerged log removal operation.

(e) Other information that the department considers necessary in evaluating a submerged log removal permit application.

(f) A \$3,500.00 application fee.

(3) An application for a submerged log removal permit is not complete until all information requested on the application form and any other information requested by the

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department are received. Within 30 days of its receipt of an application, the department shall notify the applicant in writing if the application is deficient. The applicant shall submit the requested information to the department within 30 days after the date the notice is provided. If the applicant fails to respond within the 30-day period, the department shall deny the submerged log removal permit unless the applicant requests and the department approves an extension of time based upon the applicant's reasonable justification for the extension.

(4) Application fees received under this section shall be forwarded to the state treasurer for deposit into the fund.

324.32605 Receipt of completed application; review by department; issuance of permit; conditions. [M.S.A. 13A.32605]

Sec. 32605. Upon receiving a complete application for a submerged log removal permit, the department shall do both of the following:

(a) Place the application on public notice for a 20-day period for review and comment.

(b) Submit a copy to the department of natural resources and the department of state for their review and comment.

324.32606 Department review of application; issuance; limitation; time period for making decision. [M.S.A. 13A.32606]

Sec. 32606. (1) The department shall review each complete application received for a submerged log removal permit and shall not issue a permit unless the department determines both of the following:

(a) That any adverse impacts, including, but not limited to, impacts to the environment, natural resources, riparian rights, and the public trust are minimal and will be mitigated to the extent practicable.

(b) That the proposed activity will not unreasonably affect the public health, safety, and welfare.

(2) The department may determine that certain areas within a proposed bottomland log removal area described in an application for a submerged log removal permit shall not be authorized for submerged log removal based upon adverse impacts, including, but not limited to, adverse impacts to the environment, natural resources, riparian rights, and the public trust.

(3) The department shall make a decision on whether or not to issue a submerged log removal permit under this part within 90 days after the close of the review and comment period under section 32605 or, if a public hearing is held under section 32608, within 90 days after the date of that public hearing.

324.32607 Submerged log removal permit; requirements. [M.S.A. 13A.32607]

Sec. 32607. (1) The department shall not authorize the same bottomland log removal area in more than 1 submerged log removal permit at any 1 time.

(2) The department may modify the boundaries of a proposed bottomland log removal area in a submerged log removal permit to avoid overlaps with other active submerged log removal permits or adverse impacts, including, but not limited to, impacts to the environment, natural resources, riparian rights, and the public trust.

(3) A submerged log removal plan approved by the department shall be included in each submerged log removal permit.

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(4) A submerged log removal permit shall contain terms and conditions that are determined by the department to protect the environment, natural resources, riparian rights, and the public trust.

(5) The term of each submerged log removal permit shall not be more than 5 years. The department shall not issue any permit under this part that will be effective beyond December 31, 2006. Processing fees received under this subsection shall be forwarded to the state treasurer for deposit into the fund.

(6) A submerged log removal permit issued under this section is not transferrable unless approved in writing by the department.

(7) An applicant for a submerged log removal permit shall provide a performance bond acceptable to the department in the amount of \$100,000.00. The performance bond shall be provided to the department at least 10 days prior to beginning submerged log removal in a bottomland log removal area. The performance bond shall ensure compliance with the submerged log removal permit for the period of the permit or until the authorized submerged log removal is completed to the satisfaction of the department and all payments under section 32609 have been made. The department shall issue a written statement releasing the permittee and bonding company upon termination of the submerged log removal permit and upon satisfaction of the department as to the compliance of the permittee with the terms and conditions of the permit. The department may draw upon the performance bond for delinquent payments as required in section 32609.

(8) A permittee may request, in writing, and the department may grant, termination of a submerged log removal permit prior to the expiration date, including release from quarterly reports and performance bond requirements.

324.32608 Application for submerged log removal permit; hearing. [M.S.A. 13A.32608]

Sec. 32608. (1) The department may hold a public hearing on an application for a submerged log removal permit if the department desires additional information before making a decision on the permit application, or upon request, if such request is made within the public notice period.

(2) An applicant for a submerged log removal permit or a riparian owner who is aggrieved by an action or inaction of the department under this part may request a formal hearing on the matter, pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, within 60 days of the notice of the department's decision.

324.32609 Sawlog stumpage value; reservation of payments; report and payments due; disposition of payments; overdue payment; study of fair market value of submerged logs. [M.S.A. 13A.32609]

Sec. 32609. (1) The state reserves a payment of 2.0 times sawlog stumpage value for each submerged log that is removed from unpatented lands. As used in this subsection, "sawlog stumpage value" means the most recent average value of standing timber on state forestlands for each species as determined and reported by the department of natural resources. 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 department of natural resources.

(2) The holder of a submerged log removal permit under this part shall provide the department with a detailed report and all payments due under this section within 30 days

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after the close of each calendar quarter. The report shall include an accurate scaling at dockside of all submerged logs removed, by species. The permittee shall provide for an independent agent, approved by the department in writing, to conduct the scaling and species determination.

(3) All payments received under this section shall be forwarded to the state treasurer for deposit into the fund.

(4) After a permittee is notified in writing that a payment under this section is overdue, the department may order suspension of the submerged log removal permit until the payment is submitted in full. The permittee shall not resume submerged log removal operations until the department provides written authorization for the operations to resume.

(5) Not later than December 31, 2001, the department shall conduct a study to determine the fair market value of submerged logs as a potential basis for determining the payment to the state under subsection (1). The department may conduct the study or may enter into a contract with a qualified person to conduct the study. Upon completion, the department shall submit a report of the results of the study 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.

324.32612 Violation; civil action; remedies; civil fine.

[M.S.A. 13A.32612]

Sec. 32612. (1) The department may bring a civil action against a person in the circuit court of the county in which a violation occurs or in Ingham county circuit court to do 1 or more of the following:

- (a) Enforce compliance with this part and the rules promulgated under this part.
- (b) Restrain a violation of this part or the rules promulgated under this part.
- (c) Enjoin the further performance of, or order the removal of, any project that is undertaken contrary to this part or the rules promulgated under this part.
- (d) Enforce a permit issued under this part.
- (e) Order the restoration of an area affected by a violation of this part or the rules promulgated under this part to its prior condition.

(2) In an action brought under this section, the circuit court, in addition to any other relief granted, may assess a civil fine of not more than \$5,000.00 per day for each day of violation of this part or the rules promulgated under this part.

(3) Any civil fine or remedy assessed, sought, or agreed to by the department shall be appropriate to the violation.

(4) Civil fines recovered under this section shall be forwarded to the state treasurer for deposit into the fund.

324.32613 Violation as misdemeanor; penalties. [M.S.A. 13A.32613]

Sec. 32613. (1) A person who does any of the following is guilty of a misdemeanor punishable by a fine of not more than \$10,000.00 per day for each day of violation:

- (a) Violates this part or a rule promulgated under this part.
- (b) Violates a permit issued under this part.
- (c) Makes 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.

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(d) Renders inaccurate any monitoring device or method required to be maintained by a permit.

(2) In addition to any other penalty provided in this section, a court shall order a person convicted under this section to return to the state any logs removed from bottomlands in violation of this part or the rules promulgated under this part, or to compensate the state for the full market value of the logs. If the person convicted under this section had been issued a permit under this part, the permit is void as of the date of conviction.

324.32614 Annual report; submission to legislative committees.
[M.S.A. 13A.32614]

Sec. 32614. (1) The department shall annually prepare a report that includes all of the following:

(a) The number of submerged log removal applications received under this part.

(b) The number of submerged log removal permits issued under this part.

(c) The number and board feet of submerged logs, by species, that were recovered under this part.

(d) The amount of money from the fund that was expended on administrative costs of the department, the department of natural resources, and the department of state under this part.

(e) The amount of money from the fund that was transferred to the Great Lakes fund created in section 32611 and to the forest development fund established under section 50507.

(f) An evaluation of the formula for calculating the state payment under section 32609 as to whether the formula adequately reflects the true value to the state of the submerged logs.

(g) The names and addresses of persons who submitted submerged log removal permit applications to the department.

(h) The names and addresses of persons who received permits from the department and the number of submerged logs recovered by that permittee.

(2) The report prepared under subsection (1) shall be submitted to the standing committees of the legislature with jurisdiction over issues primarily related to natural resources and the environment and to the senate and house appropriations subcommittees on environmental quality and natural resources.

324.32615 Rules. [M.S.A. 13A.32615]

Sec. 32615. The department may promulgate rules to implement this part.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5690 of the 90th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved July 7, 2000.

Filed with Secretary of State July 10, 2000.

Compiler's note: House Bill No. 5690, referred to in enacting section 1, was filed with the Secretary of State July 10, 2000, and became P.A. 2000, No. 277, Imd. Eff. July 10, 2000.
