

Act No. 452
Public Act of 1988
Approved by the Governor
December 24, 1989
Filed by the Secretary of State
December 27, 1989

**STATE OF MICHIGAN
84TH LEGISLATURE
REGULAR SESSION OF 1988**

Introduced by Senators Faust, Irwin, Ehlers, DeGrow, Binsfeld, Geo. Hart, Cherry, Geake, Schwarz, Arthurhultz, Mack, Barcia, DiNello, J. Hart, Dingell, Sederburg, Pollack, Vaughn, Miller, Kelly, Gast, Posthumus, Carl, Dillingham and O'Brien

ENROLLED SENATE BILL No. 721

AN ACT to amend the title and sections 1, 1a, 4, 4a, 4b, 4c, 4d, 4e, 4f, 4g, 4h, and 5 of Act No. 173 of the Public Acts of 1929, entitled as amended "An act to protect and preserve, and to regulate the taking of, aboriginal records and antiquities within this state; to preserve abandoned property of historical or recreational value on the bottomlands of the great lakes and regulate the salvage of abandoned property of historical or recreational value; to designate and regulate great lakes bottomland preserves; and to prescribe penalties," section 1 as amended and sections 1a, 4a, 4b, 4c, 4d, 4e, 4f, 4g, and 4h as added by Act No. 184 of the Public Acts of 1980, being sections 299.51, 299.51a, 299.54, 299.54a, 299.54b, 299.54c, 299.54d, 299.54e, 299.54f, 299.54g, 299.54h, and 299.55 of the Michigan Compiled Laws; and to add sections 1b, 4i, 6, and 7.

The People of the State of Michigan enact:

Section 1. The title and sections 1, 1a, 4, 4a, 4b, 4c, 4d, 4e, 4f, 4g, 4h, and 5 of Act No. 173 of the Public Acts of 1929, section 1 as amended by and sections 1a, 4a, 4b, 4c, 4d, 4e, 4f, 4g, and 4h as added by Act No. 184 of the Public Acts of 1980, being sections 299.51, 299.51a, 299.54, 299.54a, 299.54b, 299.54c, 299.54d, 299.54e, 299.54f, 299.54g, 299.54h, and 299.55 of the Michigan Compiled Laws, are amended and sections 1b, 4i, 6, and 7 are added to read as follows:

TITLE

An act to protect and preserve, and to regulate the taking of, aboriginal records and antiquities within this state; to preserve abandoned property of historical or recreational value on the bottomlands of the Great Lakes and regulate the salvage of abandoned property of historical or recreational value; to designate and regulate Great Lakes bottomland preserves; to prescribe the powers and duties of certain state agencies; to create a fund; and to prescribe penalties and provide remedies.

Sec. 1. (1) The state reserves to itself the exclusive right and privilege, except as provided in this act, of exploring, surveying, excavating, and regulating through its authorized officers, agents, and employees, all aboriginal records and other antiquities, including mounds, earthworks, forts, burial and village sites, mines or other relics, and abandoned property of historical or recreational value found upon or within any of the lands owned by or under the control of the state.

(2) The state reserves to itself a possessory right or title superior to that of a finder to abandoned property of historical or recreational value found on the state owned bottomlands of the Great Lakes. This property shall belong to this state with administration and protection jointly vested in the department and the secretary of state.

Sec. 1a. As used in this act:

(a) "Abandoned property" means an aircraft; a watercraft, including a ship, boat, canoe, skiff, raft, or barge; the rigging, gear, fittings, trappings, and equipment of an aircraft or watercraft; the personal property of the officers, crew, and passengers of an aircraft or watercraft; and the cargo of an aircraft or watercraft which have been deserted, relinquished, cast away, or left behind and for which attempts at reclamation have been abandoned by owners and insurers. Abandoned property also means materials resulting from activities of historic and prehistoric native Americans.

(b) "Bottomlands" means the unpatented lake bottomlands of the Great Lakes.

(c) "Committee" means the underwater salvage and preserve committee created in section 1b.

(d) "Department" means the department of natural resources.

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

(f) "Great Lakes bottomlands preserve" means an area located on the bottomlands of the Great Lakes and extending upward to and including the surface of the water, which is delineated and set aside by rule promulgated pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, for special protection of abandoned property of historical value, or ecological, educational, geological, or scenic features or formations having recreational, educational, or scientific value. A preserve may encompass a single object, feature, or formation, or a collection of several objects, features, or formations.

(g) "Historical value" means value relating to, or illustrative of, Michigan history, including the statehood, territorial, colonial, and historic, and prehistoric native American periods.

(h) "Mechanical or other assistance" means all manmade devices, including pry bars, wrenches and other hand or power tools, cutting torches, explosives, winches, flotation bags, lines to surface, extra divers buoyancy devices, and other buoyancy devices, used to raise or remove artifacts.

(i) "Recreational value" means value relating to an activity which the public engages in, or may engage in, for recreation or sport, including scuba diving and fishing.

Sec. 1b. (1) The underwater salvage and preserve committee is created in the department to provide technical and other advice to the director of the department and the secretary of state with respect to their responsibilities under this act.

(2) The underwater salvage and preserve committee shall consist of 9 members appointed as follows:

(a) Two individuals appointed by the director of the department who have primary responsibility in the department for administering this act.

(b) Two individuals appointed by the secretary of state who have primary responsibility in the department of state for administering this act.

(c) One individual appointed by the director of commerce.

(d) Four individuals appointed by the governor with the advice and consent of the senate from the general public. Two of these individuals shall have experience in recreational scuba diving.

(3) An individual appointed to the committee shall serve for a term of 3 years. A vacancy on the committee shall be filled in the same manner as an original appointment and the term of a member appointed to fill a vacancy shall be for 3 years. Members of the committee shall serve without compensation, except for their regular state salary where applicable.

(4) The chairperson of the committee shall alternate between the representatives from the department and the department of state. The chairperson shall be designated by the director of the department or the secretary of state, whichever is applicable from among his or her representatives on the committee. The chairperson's term shall run for 12 months, from October 1 through September 30. The director of the department shall appoint the first chairperson of the committee for a term ending September 30, 1989. The chairperson shall call meetings as necessary but not less than 4 times per year, set the agenda for meetings, ensure that adequate minutes are taken, and file an annual report of committee proceedings with the head of the departments of state, natural resources, and commerce.

(5) The committee is an advisory body and may perform all of the following functions:

(a) Make recommendations with regard to the creation and boundaries of Great Lakes underwater preserves.

- (b) Review applications for underwater salvage permits and make recommendations regarding issuance.
- (c) Consider and make recommendations regarding the charging of permit fees and the appropriate use of revenue generated by those fees.
- (d) Consider the need for and the content of rules intended to implement this act and make recommendations concerning the promulgation of rules.
- (e) Consider and make recommendations concerning appropriate legislation.
- (f) Consider and make recommendations concerning program operation.
- (6) The committee shall not replace or supersede the responsibility or authority of the secretary of state or the director of the department to carry out their responsibilities under this act.

Sec. 4. Without the consent of the land owner, a person shall not remove any relics or records of antiquity such as human or other bones; shells, stone, bone, or copper implements; pottery or shards of pottery, or similar artifacts and objects from the premises where they have been discovered.

Sec. 4a. (1) Except as provided in section 4b, a person shall not recover, alter, or destroy abandoned property which is in, on, under, or over the bottomlands of the Great Lakes, including those within a Great Lakes bottomlands preserve, unless the person has a permit issued jointly by the secretary of state and the department pursuant to section 4c.

(2) A person who recovers abandoned property without a permit when a permit is required by this act shall transmit the property to the secretary of state and the recovered property shall be the property of the secretary of state.

(3) A person shall not remove, convey, mutilate, or deface a human body or the remains of a human body located on the bottomlands of the Great Lakes.

(4) A person who violates subsection (1) by recovering or destroying abandoned property with a fair market value of \$100.00 or more is guilty of a felony, punishable by imprisonment for not more than 2 years, or by a fine of not more than \$5,000.00, or both.

Sec. 4b. (1) A person may recover abandoned property outside a Great Lakes bottomlands preserve without a permit if the abandoned property is not attached to, nor located on, in, or located in the immediate vicinity of and associated with a sunken aircraft or watercraft and if the abandoned property is recoverable by hand without mechanical or other assistance.

(2) A person who recovers abandoned property valued at more than \$10.00 without a permit pursuant to subsection (1) shall file a written report within 30 days after removal of the property with the department or the secretary of state if the property has been abandoned for more than 30 years. The written report shall list all recovered property which has been abandoned for more than 30 years and the location of the property at the time of recovery. For a period of 90 days after the report is filed, the person shall make the recovered property available to the department and the secretary of state for inspection at a location in this state. If the secretary of state determines that the recovered property does not have historical value, the secretary of state shall release the property to the person by means of a written instrument.

Sec. 4c. (1) A permit issued under this section shall authorize a person to recover abandoned property located on, in, or located in the immediate vicinity of and associated with a sunken aircraft or watercraft.

(2) A person shall file an application for a permit with the department on a form prescribed by the department and approved by the secretary of state. The application shall contain all of the following information:

- (a) The name and address of the applicant.
- (b) The name, if known, of the watercraft or aircraft on or around which recovery operations are to occur and a current photograph or drawing of the watercraft or aircraft, if available.
- (c) The location of the abandoned property to be recovered and the depth of water in which it may be found.
- (d) A description of each item to be recovered.
- (e) The method to be used in recovery operations.
- (f) The proposed disposition of the abandoned property recovered, including the location at which it will be available for inspection by the department and the secretary of state.
- (g) Other information which the department or the secretary of state considers necessary in evaluating the request for a permit.

(3) An application for a permit shall not be considered complete until all information requested on the application form and any other information requested by the department or the secretary of state has been received by the department. After receipt of an otherwise complete application, the department may request

additional information or documents as are determined to be necessary to make a decision to grant or deny a permit. The department, or the secretary of state, shall notify the applicant in writing when the application is deficient.

(4) An applicant notified that an application for a permit may be deficient and returned due to insufficient information under subsection (3) shall, within 20 days after the date the notice is mailed, provide the information. If the applicant fails to respond within the 20-day period, the application shall be denied unless the applicant requests additional time and provides reasonable justification for an extension of time.

(5) The department and the secretary of state shall, with the advice of the committee, approve or disapprove an application for a permit within 30 days after the date a complete application is filed with the department. The department and the secretary of state may approve an application conditionally or unconditionally. A condition to the approval of an application shall be in writing on the face of the permit. The department and the secretary of state may impose such conditions as are considered reasonable and necessary to protect the public trust and general interests, including conditions that accomplish 1 or more of the following:

(a) Protect and preserve the abandoned property to be recovered, and the recreational value of the area in which recovery is being accomplished.

(b) Assure reasonable public access to the abandoned property after recovery.

(c) Are in conformity with rules applying to activities within a Great Lakes bottomlands preserve.

(d) Prohibit injury, harm, and damage to a bottomlands site or abandoned property not authorized for removal during and after salvage operations by the permit holder.

(e) Prohibit or limit the amount of discharge of possible pollutants, such as floating timbers, planking, and other debris, which may emanate from the shipwreck, plane wreck, or salvage equipment.

(f) Require the permit holder to submit a specific removal plan prior to commencing any salvaging activities. Among other matters considered appropriate by either the department or the secretary of state, or both, the removal plan may be required to ensure the safety of those removing or assisting in the removal of the abandoned property and to address how the permit holder proposes to prevent, minimize, or mitigate potential adverse effects upon the abandoned property to be removed, that portion of the abandoned property which is not to be removed, and the surrounding geographic features.

(6) The department shall approve an application for a permit unless the department determines that the abandoned property to be recovered has substantial recreational value in itself or in conjunction with other abandoned property in its vicinity underwater, or the recovery of abandoned property would not comply with rules applying to a Great Lakes bottomlands preserve.

(7) The secretary of state shall approve the application for a permit unless the secretary of state determines that the abandoned property to be recovered has substantial historical value in itself or in conjunction with other abandoned property in its vicinity. If the property has substantial historical value, the secretary of state, pursuant to subsection (5), may impose a condition to the approval of the application requiring the applicant to turn over recovered property to the secretary of state for the purpose of preserving the property or permitting public access to the property. The secretary of state may authorize the display of the property in a public or private museum or by a local unit of government. In addition to the conditions authorized by subsection (5), the secretary of state may provide for payment of salvage costs in connection with the recovery of the abandoned property.

(8) A person who discovers an abandoned watercraft which is located outside of a Great Lakes bottomlands preserve shall be entitled to recover cargo situated on, in, or associated with the watercraft, if the person applies for a permit pursuant to this section within 90 days after discovering the watercraft. If an application for a permit to recover cargo is not filed within 90 days after a watercraft discovery, subject to subsections (4) and (5) an exclusive cargo recovery permit shall be issued to the first person applying for such a permit. Only 1 permit to recover the same cargo shall be issued and operative at a time. When a watercraft containing cargo is simultaneously discovered by more than 1 person, a permit shall be approved with respect to the first person or persons jointly applying for a permit.

(9) A person aggrieved by a condition contained on a permit or by the denial of an application for a permit may request an administrative review of the condition or the denial by the director of the department or the secretary of state, whichever disapproves the application or imposes the condition. A person shall file the request for review with the department or the secretary of state, whichever is applicable, within 90 days after the permit application is submitted to the department. An administrative hearing conducted pursuant to this subsection shall be conducted under the procedures set forth in chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.271 to 24.287 of the Michigan Compiled Laws. If neither the department or the secretary of state approves the application and an administrative review is requested from both the department and the secretary of state, the appeals shall be combined upon request of the appellant or either the department or the secretary of state and a single

administrative hearing shall be conducted. The director of the department and the secretary of state shall issue jointly the final decision and order in the case.

(10) A permit issued under this section shall be valid until December 31 of the year in which the application for the permit was filed and is not renewable. If an item designated in a permit for recovery is not recovered, a permit holder may, upon request following the expiration of the permit, be issued a new permit to remove the same abandoned property if the permit holder demonstrates that diligence in attempting recovery was exercised under the previously issued permit.

(11) A permit issued under this section shall not be transferred or assigned unless the assignment is approved in writing by both the department and the secretary of state.

Sec. 4d. (1) Within 10 days after recovery of abandoned property, a person with a permit issued pursuant to section 4c shall report the recovery in writing to the department. The person recovering the abandoned property shall give authorized representatives of the department and the secretary of state an opportunity to examine the abandoned property for a period of 90 days after recovery. Recovered abandoned property shall not be removed from this state without written approval of the department and the secretary of state. If the recovered abandoned property is removed from the state without written approval, the attorney general, upon request from the department or the secretary of state, shall bring an action for the recovery of the property.

(2) If the secretary of state determines that the recovered abandoned property does not have historical value, the secretary of state shall release the property to the person holding the permit by means of a written instrument.

Sec. 4e. (1) The department shall establish Great Lakes bottomlands preserves by rule promulgated pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. A Great Lakes bottomlands preserve shall be established by emergency rule if it is determined by the director of the department that this action is necessary to immediately protect an object or area of historical or recreational value.

(2) A Great Lakes bottomlands preserve may be established whenever a bottomlands area includes a single watercraft of significant historical value, includes 2 or more abandoned watercraft, or contains other features of archaeological, historical, recreational, geological, or environmental significance. Bottomlands areas containing few or no watercraft or other features directly related to the character of a preserve may be excluded from preserves.

(3) In establishing a Great Lakes bottomlands preserve, the department shall consider all of the following factors:

(a) Whether creating the preserve is necessary to protect either abandoned property possessing historical or recreational value, or significant underwater geological or environmental features.

(b) The extent of local public and private support for creation of the preserve.

(c) Whether a preserve development plan has been prepared by a state or local agency.

(d) The extent to which preserve support facilities such as roads, marinas, charter services, hotels, medical hyperbaric facilities, and rescue agencies have been developed in or are planned for the area.

(4) The department and the secretary of state shall not grant a permit to recover abandoned artifacts within a Great Lakes bottomlands preserve except for historical or scientific purposes or when the recovery will not adversely affect the historical, cultural, or recreational integrity of the preserve area as a whole.

(5) An individual Great Lakes bottomlands preserve shall not exceed 400 square miles in area. Great Lakes bottomlands preserves shall be limited in total area to not more than 10% of the Great Lakes bottomlands within this state.

(6) Upon the approval of the committee, not more than 1 vessel associated with Great Lakes maritime history may be sunk intentionally within a Great Lakes bottomlands preserve. However, no state money shall be expended to purchase, transport, or sink the vessel.

Sec. 4f. (1) The department and the secretary of state, jointly or separately, may promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, as are necessary to implement this act.

(2) Within each Great Lakes bottomlands preserve, the department and the secretary of state may jointly promulgate rules, pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, which govern access to and use of a Great Lakes bottomlands preserve. These rules may regulate or prohibit the alteration, destruction, or removal of abandoned property, features, or formations within a preserve.

Sec. 4g. Sections 4a to 4d shall not be considered to impose the following limitations:

(a) A limitation on the right of a person to engage in diving for recreational purposes in and upon the Great Lakes or the bottomlands of the Great Lakes.

(b) A limitation on the right of the department or the secretary of state to recover, or to contract for the recovery of, abandoned property in and upon the bottomlands of the Great Lakes.

(c) A limitation on the right of a person to own either abandoned property recovered before July 2, 1980 or abandoned property released to a person after inspection.

Sec. 4h. (1) If the department or the secretary of state finds that the holder of a permit issued pursuant to section 3 or 4c is not in compliance with this act, a rule promulgated under this act, or a provision of or condition in the permit, or has damaged abandoned property or failed to use diligence in attempting to recover property for which a permit was issued, the department or the secretary of state, individually or jointly, may summarily suspend or revoke the permit. If the permit holder requests a hearing within 15 days following the effective date of the suspension or revocation, the department or the secretary of state shall conduct an administrative hearing pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws, to consider whether the permit should be reinstated.

(2) The attorney general, on behalf of the department or the secretary of state, individually or jointly, may commence a civil action in circuit court to enforce compliance with this act, to restrain a violation of this act or any action contrary to a decision denying a permit, to enjoin the further removal of artifacts, geological material, or abandoned property, or to order the restoration of an affected area to its prior condition.

Sec. 4i. Each person who participates in the sport of scuba diving on the Great Lakes bottomlands accepts the dangers which adhere in that sport insofar as the dangers are obvious and necessary. Those dangers include, but are not limited to, injuries which can result from entanglements in sunken watercraft or aircraft; the condition of sunken watercraft or aircraft; the location of sunken watercraft or aircraft; the failure of the state to fund staff or programs at bottomlands preserves; and the depth of the objects and bottomlands within preserves.

Sec. 5. (1) A person who violates section 3 or 4 of this act is guilty of a misdemeanor, and shall be punished by a fine of not more than \$100.00 or by imprisonment for not more than 30 days, or both.

(2) A person who violates sections 4a to 4e or a rule promulgated under this act is guilty of a misdemeanor. Unless another penalty is provided in this act, a person convicted of a misdemeanor under this subsection shall be punished by a fine of not more than \$500.00 or by imprisonment for not more than 6 months, or both.

Sec. 6. (1) If a person who violates this act or a rule promulgated under this act uses a watercraft, mechanical or other assistance, scuba gear, sonar equipment, a motor vehicle, or any other equipment or apparatus during the course of committing the violation, the items so used may be attached, proceeded against, and confiscated as prescribed in this act.

(2) To effect confiscation, the law enforcement or conservation officer seizing the property shall file a verified complaint in the circuit court for the county in which the seizure was made or in the circuit court for Ingham county. The complaint shall set forth the kind of property seized, the time and place of the seizure, the reasons for the seizure, and a demand for the property's condemnation and confiscation. Upon the filing of the complaint, an order shall be issued requiring the owner to show cause why the property should not be confiscated. The substance of the complaint shall be stated in the order. The order to show cause shall fix the time for service of the order and for the hearing on the proposed condemnation and confiscation.

(3) The order to show cause shall be served on the owner of the property as soon as possible, but not less than 7 days before the complaint is to be heard. The court, for cause shown, may hear the complaint on shorter notice. If the owner is not known or cannot be found, notice may be served in 1 or more of the following ways:

(a) By posting a copy of the order in 3 public places for 3 consecutive weeks in the county in which the seizure was made and by sending a copy of the order by certified mail to the last known business or residential address of the owner. If the last addresses of the owner are not known, mailing a copy of the order is not required.

(b) By publishing a copy of the order in a newspaper once each week for 3 consecutive weeks in the county where the seizure was made and by sending a copy of the order by registered mail to the last known residential address of the owner. If the last residential address of the owner is not known, mailing a copy of the order is not required.

(c) In such a manner as the court directs.

(4) Upon hearing of the complaint, if the court determines that the property mentioned in the petition was possessed, shipped, or used contrary to law, either by the owner or by a person lawfully in possession of the property under an agreement with the owner, an order shall be made condemning and confiscating the property and directing its sale or other disposal by the director of the department. If the owner signs a property

release, a court proceeding shall not be necessary. At the hearing, if the court determines that the property was not possessed, shipped, or used contrary to law, the court shall order the director of the department to immediately return the property to its owner.

(5) The department shall deposit the proceeds it receives under this section into the state treasury to the credit of the underwater preserve fund created in section 7.

Sec. 7. (1) The underwater preserve fund is created as a separate fund in the state treasury, and it may receive revenue as provided in this act, or revenue from any other source.

(2) Money in the underwater preserve fund shall be appropriated for only the following purposes:

- (a) To the secretary of state for the development of maritime archaeology in this state.
- (b) To the department of commerce for the promotion of Great Lakes bottomlands preserves.
- (c) To the department for the enforcement of this act.

Section 2. This amendatory act shall take effect January 1, 1989.

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Secretary of the Senate.

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Clerk of the House of Representatives.

Approved.....

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Governor.