



**House
Legislative
Analysis
Section**

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ST. CLAIR FLATS CONVEYANCES

House Bill 4355 as introduced
First Analysis (3-11-93)

Sponsor: Rep. Terry London
Committee: State Affairs

THE APPARENT PROBLEM:

Public Act 326 of 1913, known as the St. Clair Flats act, provides for the leasing, control, and taxation of certain state lands: lake bottom lands, made lands (filled bottom lands), and "unpatented overflowed lands" (basically Great Lakes bottom lands that were granted -- whether by the French, the British, or the United States government -- to settlers before Michigan became a state. They were never surveyed and never under private control). The act authorizes the state to lease these lands and, with certain specific exceptions, prohibits the state from deeding or conveying the lands.

People do lease bottomlands from the state, improving them by building seawalls, docks, and cottages on the land. Some of these leases are long-term, for up to 100 years. However, when people who have only ten or fifteen years left on their leases apply for loans for further improvements, the loans are denied because the applicant doesn't control the property for a long enough period of time. At constituent request, legislation has been introduced that would allow the state to sell these properties to lessees under certain circumstances.

THE CONTENT OF THE BILL:

The bill would amend Public Act 326 of 1913 to allow the Department of Natural Resources (DNR) to sell, upon application by the lessee and for fair market value (not including such improvements as buildings, seawalls, and docks), six parcels of land on the St. Clair Flats in St. Clair County that currently are being leased. The parcels of land lie along the North Channel, the Middle Channel, and the Sni Bora Channel.

The deeds would have the same provisions regarding use and occupancy as the current leases, and the state would keep its right to regulate public hunting, fishing, and navigation. The DNR would have to do a site inspection and, if necessary, set

stakes to identify the boundaries of the land to be deeded, and applicants also could be required to provide a boundary survey of the area in question. All structures (including existing seawalls) would have to meet the requirements of the township building code and county and state sanitation codes, and would have to be on land that was adequately protected from erosion. Deeds couldn't include any land (under the original lease) that was under water or that lay below the ordinary high water mark of Lake St. Clair.

MCL 322.402 and 322.402i

BACKGROUND INFORMATION:

The St. Clair Flats. The St. Clair Flats, located at the mouth of the St. Clair River, are regarded as one of the state's most valuable natural resources and are unique in the Great Lakes basin, constituting the largest delta wetland system in the basin. In addition to its intrinsic value as the largest deltaic wetland system in the Great Lakes, the Flats also represent 88 percent of the remaining wetlands on the Michigan side of Lake St. Clair. The Flats are important biologically, acting as the major nursery for fish stocks for the entire Lake St. Clair region, as well as offering important food, cover, and breeding areas for other wildlife, including migratory waterfowl. The Flats also are within easy access of over three million residents within the metropolitan Detroit area, and have received national recognition as a popular spot for hunting, fishing, and boating.

Prior to 1900, the Flats contained over 13,500 acres of wetlands. Because of residential and commercial development since then, over 80 percent of these unique wetlands have been destroyed, with fewer than 4,500 acres of wetlands remaining today. In past years, these marsh lands often were looked on as swamp wasteland with little value, thereby

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inadvertently encouraging intensive private development and the loss or endangerment of the Flats' natural resources and public recreational opportunities. Court decisions in the early 1900s declared the Flats to be state-owned bottomlands, but early state laws, and a lack of regulatory enforcement by state and local governments, allowed the use of state-owned bottomlands for private residential and commercial use involving dredging, filling, and bulkheading. The St. Clair Flats act (Public Act 326 of 1913) authorized the leasing or deeding of 1,900 state-owned public bottomland lots for private use, while retaining for the state the rights of navigation, hunting, and fishing. Currently, 1,292 lots (or parts of lots) remain in the hands of private individuals. Of these, 667 are deeded (that is, sold to private owners), while 625 are under a lease agreement. These privately controlled parcels effectively remove approximately 2,990 acres -- or 22 percent -- of the St. Clair Flats, as surveyed, from the public trust use.

Leases over Flats parcels under Public Act 326 of 1913 were issued for 99 years, with the lease term being divided into two periods for updating lease considerations. The first rental period was for 50 years, and the original rental fees ranged from 20 cents to one dollar per front foot, depending on the location of the average sized lot (500 feet deep with 200 feet of riparian frontage). The second period was for 49 years and the rental fees could be no more than double that of the first term. Consequently, lease rates for the total 99 year period range between \$120 and \$600, or \$1.21 to \$6.06 per year for a 2.3 acre lot. However, tax reverted lots frequently were re-leased for only a few cents per year. Under a 1949 amendment to the act, certain parts of the Flats were converted from leases to deeds. Because the amounts paid to the state for these deeded lands were based on 1913 property values, the state deeded lots for from \$1.50 to \$3 per front foot, depending on lot location. This meant that 500-foot deep lots with 200 feet of frontage on Lake St. Clair went for a total of \$300 to \$600 for the entire 2.3 acre lot. This practice was discontinued in 1978, with the implementation of a 1963 Natural Resources Commission order which required that any future deed conversions of Flats properties be based on current market values of the properties. The commission further stipulated that all appraisals be based on the property in an unimproved condition and that credit should be

allowed for any unexpired portion of the lease equity.

There are four main channels running through the Flats: the North Channel, which divides into the Sni Bora and Middle Channels, and the South Channel. Although many residential and a few commercial developments are located throughout the Flats, the higher densities of development occur along the main channels. The South Channel has the highest concentration of residential development, with the majority of the residences reportedly in good condition. Developed parcels are occupied by seasonal and permanent cottages and homes. The Middle Channel also has high concentrations of residences in good condition, while the remainder of the Flats has scattered areas of development in good condition or with dilapidated or deteriorating structures.

Although legislation historically authorized the conversion of state-owned public trust bottomlands to private leases and deeds, changes in public attitudes and increasing scientific documentation of the value of wetlands has resulted in legislation more protective of such lands. The Great Lakes Submerged Lands Act (Public Act 247 of 1955), as amended, authorizes construction activities only when they do not substantially impair the public use of the affected bottomlands for hunting, fishing, swimming, pleasure boating, or navigation, or when the public trust will not otherwise be impaired. The Great Lakes Shorelands Protection and Management Act (Public Act 245 of 1970) and the Goemaere-Anderson Wetlands Protection Act (Public Act 203 of 1979) give wetlands, such as the St. Clair Flats, additional protection.

In March 1981, after holding formal and informal meetings with members of the public, the Department of Natural Resources issued management recommendations -- including management recommendations for developed parcels of land -- for the St. Clair Flats. In the management document, the DNR defines developed parcels as properties consisting of an existing habitable structure which does not violate state or local building codes and local sanitary codes, and which is located on a parcel of land that is adequately protected against erosion (that is, bulkheads are in good condition). The document recommends that a condition of further re-leasing or deed conversion be that both the structure and the lot, including any bulkheading, be well

maintained at the time of application, where "well maintained" is taken to mean that the structures are in compliance with township building and county and state sanitation codes and are located on land that is adequately protected against erosion. Money paid for leases or deeds for well maintained parcels, further, should be based on fair market value for the parcel, minus lot improvements, as determined at the time the option was implemented.

Earlier amendments to the St. Clair Flats act. Over the years, a number of amendments have been made to Public Act 326 of 1913, authorizing the state to convey certain lands.

* Section 402a of the act (added by Public Act 215 of 1949) authorizes conveyance of certain lands (under lease or not) that front on or are a part of the south, middle and Sni Bora channel sections of the St. Clair Flats (in St. Clair county);

* Section 402g (added by Public Act 221 of 1956) allows the conveyance of certain other leased North Channel St. Clair Flats lots (at appraised market value, not including improvements such as dredging, leveling off, sheet piling, docks, and buildings); and

* Section 402h (added by Public Act 107 of 1961) authorizes the leasing or deeding of certain lands contiguous to certain water highways no longer needed for navigation, access to surveyed lots, or for any public purpose.

FISCAL IMPLICATIONS:

With regard to a similar bill introduced last session, the Department of Natural Resources said there would be a small but indeterminate one-time increase to the state general fund from the sale of the six St. Clair Flats parcels. (11-12-92)

ARGUMENTS:

For:

The bill would accomplish two desirable goals: it would help protect the public health and the natural resources of the St. Clair Flats by implementing some of the management recommendations developed by the Department of Natural Resources in consultation with concerned citizens, while at the same time it would help some of the private residents of the Flats to improve and maintain their property.

People who have been leasing property under the St. Clair Flats act (Public Act 326 of 1913) often improve the land, dredging it, leveling it off, filling

submerged wetland areas, and adding seawalls, docks, and buildings. There have been problems with some of these developed parcels of land, however.

Because of the extremely high water table, septic systems may not function properly and pose potential public health hazards to both recreational and residential users of the Flats (some of whom apparently take untreated Flats water for household use). In fact, reportedly, some people simply set up outhouses discharging human waste directly into the water. Despite these potential sanitary problems, St. Clair County reportedly continues to grant septic field permits. While most applications for new permits are denied by the county sanitarian, a county health department appeals board apparently frequently overturns the denial and issues the permits. In addition, even though the St. Clair County Circuit Court ordered Clay Township in 1974 to stop issuing building permits on Harsens Island that would threaten or degrade the waters of the state, the township apparently still issues building permits. The bill would begin to address this problem by requiring that deeded lands meet the township building code and county and state sanitation codes.

In addition, however, people whose leases will be up in ten to fifteen years and who want to take out improvement loans often have difficulty in getting the loan because they don't control the property for a long enough period of time. The DNR says that the six parcels of land in the bill are not critical to the state from a resource point of view. In fact, it is to the state's advantage that these properties be kept up and improved, since, without maintenance, these properties would deteriorate and eventually wash into Lake St. Clair. Not only would the bill allow currently leased land to be maintained and improved, it also would continue to protect the state's legitimate interests in the uses of such land by putting into statute requirements for any future such conveyances.

POSITIONS:

The Department of Natural Resources supports the bill. (3-10-93)