House
Legislative
Analysis
Section

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REGULATE RECOVERY OF SUBMERGED LOGS

House Bills 5690 and 5691 as enrolled
Public Acts 277 and 278 of 2000
First Analysis (8-9-00)

Sponsor: Rep. Judith Scranton
Committee: Great Lakes and Tourism

THE APPARENT PROBLEM:

There are, according to some estimates, millions of "old slow growth" sunken logs at the bottom of the Great Lakes, the remains of the clearcutting of the Upper Midwest's old growth forest from the late 1800s to the early 1930s. (According to an estimate by one sunken log salvage company, there are one million sunken logs in Lake Superior alone.) The kinds of wood at the bottom of the lakes and their connecting waterways includes not only old growth white pine but various kinds of hardwoods, some species of which no longer even exist. According to the American University's Trade and Environmental Database, old growth sunken logs include walnut, "40-foot strands of red oak, giant white pines, richly figured maples, hemlocks, basswoods, yellow birches and red elms that were all seedlings when Columbus landed in America, but were clearcut almost to the point of extinction in the late 1800s." Of the hardwood species, the red oak, white pine, basswood, and walnut are almost completely extinct in North America. And certainly in Wisconsin, Minnesota, Michigan and Ontario, there no longer are enough trees of these species left standing for a sustainable harvest to cut for profit.

The sunken old growth logs grew under conditions that no longer exist today. Consequently, they represent a unique and irreplaceable natural resource, which makes them even more valuable than the intrinsic high value of their dense, fine-grained wood. Most of the sunken logs grew in conditions that cannot be replicated today because they grew in the immense old growth pine forests that covered much of the Upper Midwest. Not only do the giant white pines no longer exist (except in ecologically and economically insignificant numbers, such as at Hartwick Pines State Park), neither does the canopy under which the old growth hardwoods grew so slowly in the dim light beneath the pines' shadow. Because of these growing conditions – perpetual twilight beneath the pine canopy, combined with the very short growing season and rocky soil – the growth rings of the hardwoods were very narrow. (According to various reports, these old growth trees have anywhere from 18 or 25 to 60 or 70 growth rings per inch, compared with today's tree averages of fewer than 5 to 10 growth rings per inch). And the narrowness of the growth rings, combined with the ages of the trees, means that the wood from these trees is very dense and has an extremely fine grain. Moreover, because these old growth sunken logs have been preserved in very cold water, they are in near perfect condition, and have become the object of much interest to treasure hunters seeking to recover the valuable wood for processing and sale to craftspeople, artisans, custom furniture makers, architects, contractors, and makers of musical instruments, who reportedly are willing to pay almost any price to obtain such rare and irreplaceable fine grained wood.

The value of this wood comes not only from its high quality and scarcity, but because it is unique and irreplaceable, even as the world market for it has expanded. (See BACKGROUND INFORMATION.) Although there apparently is a large number of sunken old growth logs in the Great Lakes and their connecting waterways, the supply is finite. And once exhausted, there is no way to replace it because there no longer exist the kinds of old growth forests in which these trees originally grew. While the timber salvage companies keep the prices that they receive for recovered sunken lumber a closely guarded secret, what is clear is that these prices are potentially very high -- much higher than current prices for freshly cut logs of the same species. Thus, for example, a good-sized red oak log cut from today's forest might be worth as much as $400 unprocessed. When it is milled into raw lumber it could sell for $1,000, and when it is shaved into veneer the value can climb to $4,000 a log. The red oak that has been recovered so far from Lake Superior, however, is of significantly higher quality than any being cut today, and so the prices for which it can be

sold will be correspondingly higher as well. Reportedly, some individual recovered submerged logs have been worth $10,000 or even more, though such logs reportedly also are the exception rather than the norm.

These sunken treasures resulted from the way most of the logs were transported from where they were cut to the sawmills where they would be processed. During the great clearcutting of the old growth forests of the Upper Midwest, once trees were cut, the resulting logs would be "rafted" down rivers and streams to the sawmills located at the mouths of the rivers and along the shores of the Great Lakes. Sometimes the logs were moved hundreds of miles across the Great Lakes to sawmills far from where the logs had been cut. For example, during the latter decades of the 19th century, logs from the Canadian forests on the north shore of Lake Superior would be floated in huge "rafts" -- some as large as ten city blocks -- to sawmills on the shores of Lake Superior and on Saginaw Bay in Lake Huron. Millions of board feet of logs were moved this way, and in the process, millions of logs became saturated with water and sank. For example, an estimated 30 million feet of logs were rafted from Lake Superior to the eastern Michigan mills, and a year later it was said that about 40 million were towed to the Saginaw area. On one estimate, between 10 and 30 percent of the logs moved this way sank, both in the rivers during the "drives" and in the lakes as the logs were being towed in "booms" to sawmills. If just 10 percent of the logs moved in these two years sank in transit, this still would mean that some 7 million board feet of logs would have sunk during the trip from Lake Superior to Saginaw Bay.

Although natural resources, such as sunken logs on the bottomlands of state waterways, are state property, Michigan does not currently statutorily regulate removal of submerged logs on its bottomlands. Some of the submerged log recovery companies that have been operating in other states and countries have expressed a desire to engage in similar commercial recovery efforts in Michigan, and legislation has been introduced to regulate the recovery of sunken logs in the Great Lakes.

THE CONTENT OF THE BILLS:

House Bill 5691 would add a new part (Part 326) to the Natural Resources and Environmental Protection Act (NREPA), "Great Lakes submerged logs recovery," that would explicitly lay state claim to all submerged logs and prohibit the removal of submerged logs from bottomlands without a permit from the Department of Environmental Quality (DEQ). The DEQ could not issue new permits after December 31, 2003, nor would permits be valid after December 31, 2006. House Bill 5690 would add two new sections to the NREPA to create a "Submerged Log Recovery Fund" and a "Great Lakes Fund."

House Bill 5690 would add two new sections to the Natural Resources and Environmental Protection Act (MCL 324.32610 and 324.32611) to create two new funds in the state treasury: the Submerged Log Recovery Fund and the Great Lakes Fund. On December 1, 2001, and on December 1 of each following year, the state treasurer would transfer half of the balance of the Submerged Log Recovery Fund to the Great Lakes Fund and half to the Forest Development Fund. (Under the Michigan Forest Finance Authority part [Part 505] of the Natural Resources and Environmental Protection Act, the Forest Development Fund is used for the payment of principal and interest on any bonds or notes issued by the Forest Finance Authority and for reforestation, forest protection, and timber stand improvement ["and any other purposes authorized by this part"]. MCL 324.50507) The state treasurer could receive money or other assets from any source for deposit into each fund, would direct the investment of each fund, and would credit to each fund the interest and earnings from the fund's investments. Money in the Submerged Log Recovery Fund and in the Great Lakes Fund would remain in the funds at the end of the fiscal year and not lapse to the general fund.

Money from the Submerged Log Recovery Fund would be used, upon appropriation, for the administrative costs of the Departments of Environmental Quality, Natural Resources, and State for implementing the new Part 326 proposed by House Bill 5691 (see below).

The Department of Environmental Quality would expend money from the Great Lakes Fund, upon appropriation, only for environmental projects related to the Great Lakes and areas contiguous to the Great Lakes, including, but not limited to the prevention and management of non-native species, coastal wetland restoration, contaminated sediment cleanup, and underwater preserve management.

House Bill 5691

Submerged log recovery. The bill would reserve to the state title and ownership of all submerged logs lying on, over, in or under "unpatented" bottomlands, and require a permit from the Department of Environmental

Quality (DEQ) in order to remove submerged logs from bottomlands.

("Submerged logs" would refer to portions of the trunks of felled trees that had not been further processed for any end use and that were located on, in, over, or under bottomlands, but would not include underwater logs that posed navigational or safety hazards or that were of little or no commercial value."Bottomlands" would refer to land in the Great Lakes (Lakes Superior, Michigan, Huron, Erie, and Ontario, along with Lake St. Clair) and in bays and harbors of the Great Lakes, lying below and lakeward of the ordinary high water mark. "Patented" lands are government lands whose title has been conveyed to private owners. The bill would define "patented lands" as "any bottomlands lying within a specific government grant area, including a private claim patent or a federal patent.")

The bill also would allow the DEQ, with the permission of the lawful owner of submerged patented lands, to issue a permit to a person for the removal of submerged logs from submerged patented lands. In addition, the bill would allow submerged log recovery in underwater preserves (under Part 761 of the NREPA), but the DEQ would be required to place conditions on permits to do this, both in order to prevent damage to abandoned watercraft or other archaeologically, historically, recreationally, or environmentally significant features and to minimize conflicts between recreational activities within the underwater preserve and the submerged log recovery operation.

Permit applications. For calendar year 2000, the DEQ would establish a time period for the submission of applications for submerged log removal permits. From 2001 through 2003, applications would have to be submitted before February 1 of each year. (No new permits would be issued after December 31, 2003, and no permit would be effective after that date. See "permits," below.)

Applications would have to be submitted in writing on a form provided by the department, and would have to include all of the following:

• A description of the proposed bottomland log removal area, with the area's boundaries delineated by a digital global positioning system ("GPS") or other technology approved by the DEQ. The proposed area would have to be a contiguous bottomland area of not more than 320 acres, square or rectangular in shape, and with the length not more than 6 times the width. The DEQ would have the authority to determine that certain areas within a proposed bottomland log removal area described in an application for a permit would not be authorized for submerged log removal, based on "adverse impacts, including, but not limited to, adverse impacts to the environment, natural resources, riparian rights, and the public trust."

• A description of the methods to be used to raise the submerged logs, the time of year the logs would be raised, and the procedures by which the logs would be transferred to the shore;

• Identification of any adverse environmental impacts associated with the proposed submerged log removal method, and of the steps proposed to mitigate any such impacts;

• Any other information that the DEQ considered necessary to evaluate an application;

• A $3,500 application fee; and

• A $100,000 performance bond (see below).

An application would not be complete until all of the information requested on the form, as well as any other information requested by the DEQ, had been received. Within 30 days of receiving an application, the DEQ would have to notify an applicant in writing if the application were deficient. Within 30 days after the date the notice were provided, the applicant would have to submit the requested information to the department. If an applicant failed to respond within 30 days, the department would have to deny the permit unless the applicant requested, and the department approved, an extension based on the applicant's "reasonable justification" for the extension.

Application fees received under the bill's provisions would be forwarded to the Submerged Log Recovery Fund that would be created under House Bill 5690.

Application review, public hearings. When the DEQ received an application for a submerged log removal permit, it would have to place the application on public notice for 20 days for review and comment, and submit copies of the application to the Departments of Natural Resources and State for their review and comment.

The DEQ would be required to review each application, and would be prohibited from issuing a permit unless the department determined both (a) that any adverse impacts ("including, but not limited to, impacts to the environment, natural resources, riparian

rights, and the public trust") were "minimal" and would be mitigated to the extent "practicable," and (b) that the proposed activity would not unreasonably affect the public health, safety, and welfare.

The DEQ also could hold a public hearing on an application for a submerged log removal permit if it desired additional information before making a decision on the permit application, or upon request, if the request were made within the (20-day) public notice period.

The DEQ would be required to decide whether or not to issue a submerged log removal permit within 90 days after the close of the review and comment period, or, if a public hearing were held, within 90 days after the date of that public hearing.

Aggrieved parties. Within 60 days of the notice of the DEQ's decision (on an application), an applicant for a submerged log removal permit or a riparian owner who was aggrieved by an action or inaction of the DEQ under the bill's provisions would request a formal hearing on the matter under the Administrative Procedures Act.

Permits. Submerged log removal permits could be for up to five years, though the bill would prohibit the DEQ from issuing any permits under the bill after December 31, 2003, and from issuing any permits that were effective beyond December 31, 2006. A permit could not be transferred unless approved by the DEQ in writing.

The bill would prohibit the DEQ from authorizing the same bottomland log removal area in more than one submerged log removal permit at any one time. However, the department would be able to modify the boundaries of a proposed area in a permit to avoid either overlaps with other active submerged log removal permits or adverse impacts.

Submerged log removal plan. Each submerged log removal permit would have to include a submerged log removal plan, approved by the DEQ, that contained terms and conditions that the DEQ had determined would protect the environment, natural resources, riparian rights, and the public trust. (Note: The bill also says that "processing fees received under this subsection" would be forwarded to the state treasurer for deposit into the Submerged Log Recovery Fund, but the language allowing a permit to be extended for an additional two years upon payment of a processing fee was not included in the final version of the bill.)

Performance bonds. At least 10 days before beginning submerged log removal in a bottomland removal area, an applicant for a submerged log removal permit would be required to provide a $100,000 performance bond acceptable to the DEQ. The performance bond would ensure compliance with the permit for the period of the permit or until the authorized submerged log removal had been completed to the satisfaction of the DEQ and all required payments for the fair market value of each submerged log had been made. The department could draw on the performance bond for delinquent payments for the removed logs' fair market value.

Termination of permits. When a permit terminated and the DEQ was satisfied that the permittee had complied with the permit's terms and conditions, the department would have to issue a written statement releasing the permittee and bonding company. A permittee could request in writing, and the DEQ could grant, termination of a submerged log removal permit before the permit's expiration date, including release from quarterly reports and performance bond requirements. Finally, if a permit holder were convicted of a misdemeanor under the bill's provisions (see below), his or her permit would be void as of the date of conviction.

Payments to the state. The bill would reserve to the state a payment of two times the "sawlog stumpage value" for each submerged log removed from unpatented lands. "Sawlog stumpage value" would be defined in this section of the bill to mean:

• for tree species still being harvested on (state forest) lands, the most recent average value of standing timber on state forest lands for each species as determined and reported by the Department of Natural Resources (DNR), or

• for tree species no longer harvested on state forest lands, the most recent highest value of *any* species currently being harvested on state forest lands as determined and reported by the DNR.

Payments by permit holders to the state would be required quarterly, within 30 days after the close of each calendar quarter. Overdue payments could result in permit suspensions. More specifically, after a permit holder had been notified in writing that a payment was overdue, the DEQ could order the permit suspended until payment were submitted in full. The holder of the suspended permit could not resume submerged log removal operations until the DEQ had provided written authorization for the operation to resume. All payments

received would be forwarded to the state treasurer for deposit into the submerged log recovery fund.

Quarterly permit-holder reports. Within 30 days after the close of each calendar quarter, someone holding a submerged log removal permit also would be required to provide the DEQ with a detailed report that would have to include an accurate scaling at dockside of all submerged logs removed, by species. The permit holder would be required to use a department-approved independent agent to conduct the scaling and species determination.

DEQ fair market value study. By December 31, 2001, the DEQ would be required to conduct (either itself, or by contracting with a qualified person) a study to determine the fair market value of submerged logs as a potential basis for determining payments by permit holders to the state. When completed, the DEQ would have to submit a report of the results of this 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.

DEQ annual report. The bill would require the DEQ to prepare a report every year and submit it to the standing committees of the legislature with jurisdiction over issue primarily related to natural resources and the environment and to the Senate and House appropriations subcommittees on environmental quality and natural resources. The annual report would have to include all of the following:

• The number of submerged log removal applications received;

• The number and board feet of submerged logs, by species, that were recovered;

• The amount of money from the Submerged Log Recovery Fund that was spent on administrative costs of the Departments of Environmental Quality, Natural Resources, and State;

• After December 1, 2001, the amount of money transferred from the Submerged Log Recovery Fund to the Great Lakes Fund (created in House Bill 5690) and to the Forest Development Fund;

• An evaluation of the formula for calculating the state payment as to whether the formula adequately reflected the true value to the state of the submerged logs;

• The names and addresses of persons who submitted submerged log removal permit applications to the DEQ; and

• The names and addresses of persons who received permits from the DEQ and the number of submerged logs recovered by each permittee.

Rules promulgation. The DEQ could promulgate rules to implement the bill's provisions.

Civil actions, fines. The DEQ could bring civil actions, in Ingham County Circuit Court or in the circuit court of the county in which a violation occurred, to do one or more of the following:

• Enforce compliance with, or restrain a violation of, the proposed Part 326 and the rules promulgated under it;

• Enjoin the further performance of, or order the removal of, any project that was undertaken contrary to the proposed Part 326 or the rules promulgated under it;

• Enforce a permit issued under the proposed Part 326; or

• Order the restoration, to its prior condition, of an area affected by a violation of Part 326 (proposed by House Bill 5691) or the rules promulgated under it.

In addition to any other relief granted, the circuit court, in an action brought under this section of the bill, could assess a civil fine of up to $5,000 per day for each day of a violation, though any civil fine or remedy assessed, sought, or agreed to by the DEQ would have to be appropriate to the violation. Civil fines recovered under this section of the bill would be forwarded to the state treasurer for deposit into the submerged log recovery fund.

Misdemeanor violations, penalties. A person would be guilty of a misdemeanor, punishable by a fine of up to $10,000 per day for each day of the violation, for doing any of the following:

• Violating the bill's proposed Part 326 provisions or a rule promulgated under the proposed part;

• Violating a permit issued under the proposed part;

• Making 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;

• "Rendering inaccurate" any monitoring device or method required to be maintained by a permit.

In addition to the misdemeanor fines, a court would be required (a) to order a person convicted under this part of the bill to return to the state any logs removed from bottomlands in violation of this part of the bill or the rules promulgated under this part of the bill, or (b) to compensate the state for the full market value of the logs. If the person convicted under this section of the bill had been issued a permit under this proposed part of NREPA, the permit would be void as of the date of the conviction.

BACKGROUND INFORMATION:

Lumbering in Michigan. The number of submerged logs has a great deal to do with the fact that much of Michigan's timber industry depended on water transportation of cut logs to sawmills that generally were located at the mouths of "driving rivers," rivers used to float ("drive") logs downstream from where they were cut down to where they could be sawed into boards.

According to a Department of State Article, "Lumbering in Michigan" by Maria Quinlan, the geographic factors that played an important part in the development of Michigan's lumber industry included the fact that "the state was crisscrossed by a network of rivers which provided convenient transportation for logs to the sawmills and lake ports." When it became apparent by 1840 that the traditional sources of white pine – the wood most in demand for construction in the 19th century – in Maine and New York would be unable to supply the growing demand for lumber, "Michigan, the next state west in the northern pine belt, was the logical place to turn for more lumber." The Saginaw Valley became the leading lumbering area in the state between 1840 and 1860, "when the number of mills in operation throughout the state doubled, and the value of their products increased from $1 million to $6 million annually. Rapid growth continued, and by 1869 the Saginaw Valley was earning $7 million annually." But "as the potential of the lumber business became apparent, companies were organized to begin commercial logging in other areas of the state. Many rivers, such as the Muskegon, that could carry logs quickly were transformed into a valuable means of transportation." By 1869, when Saginaw Valley alone was earning $7 million annually, "Michigan was producing more lumber than any other state, a distinction it continued to hold for thirty years." Lumber production peaked in 1889, with the production of approximately 5.5 billion "board feet" (a "board foot" is the standard unit of lumber measurement, and refers to a piece of wood one foot long, one foot wide, and one inch thick).

Loggers moved inland on both peninsulas, and also moved away from the rivers in search of new sources of timber. "Throughout the first half of the nineteenth century lumbering had been a weather dependent and seasonally limited enterprise" because "cutting was done during the winter when timber could be pulled on large sleds, if there were snow, from where the tree had been felled to banking grounds along a river" where they were held until the spring, when they would be floated on the rivers to the sawmills at the river mouths. Competing companies' logs were sorted into floating "booms" that were held in ponds or bays until they could be floated to the sawmills to be sawed.

The mechanization of mill sawing and other mechanical innovations greatly increased mill capacity, which increased lumber production during the final decades of the 19th century. The continuing demand for wood, coupled with technological change, put pressure on loggers to increase production. One result was that they became less selective in the trees they cut, "cutting inferior quality white pine and logging other kinds of trees," such as the currently very valuable hardwoods. Loggers also increased their output by switching from axes to cross-cut saws in felling timer and substituting horses for oxen as sled teams. The development of "rutters" and water sprinklers to maintain the sled tracks also enabled loggers to haul heavier loads. Two Michigan-initiated innovations of the 1870s, however, were responsible for the largest increases in logging production: the "Big Wheels" invented by Silas Overpack of Manistee and the narrow gauge railroad, whose use was introduced into logging near Muskegon by Maine native Winfield Scott Gerrish. Overpack's "Big Wheels" made the cutting of timber less seasonal by enabling loggers to haul logs in snowless seasons, while Gerrish's introduction of the use of narrow gauge railroad trains in place of sleds made year round logging possible and practical. Though the "river drive" remained an important method of log transportation throughout Michigan's lumbering era, the use of logging railroads allowed year round timber cutting and extended it into areas that until then had been considered too far from the nearest "driving" stream to

make log sledding – and so, of course, timber cutting – practical.

Sunken log recovery. According to the American University's Trade and Environmental Database ("TED"), retrieving sunken logs is not a new idea. The retrieving of sunken lumber has occurred in the rivers and lakes of the Pacific Northwest and in Canada – including British Columbia and Alberta – for years, and one lumber company in Minnesota has been pulling out sunken logs from the Mississippi River since the 1930s, with very little media coverage. Nevertheless, the efforts of Superior Lumber Company in Wisconsin, founded by Wisconsin native and treasure hunter Scott Mitchen, "has spurred other treasure hunters interested in large profits, to hunt for sunken logs in various rivers and lakes in Minnesota, Wisconsin, and Northwest Canada," as well as in Michigan.

According to the American University database, the "recovery of sunken logs in areas of central Canada and the U.S. is not an easy project, and can be a very time-consuming and expensive undertaking. For a recovery company to begin to recover the sunken logs at the bottom of very deep lakes and rivers, large cruiser boats equipped with mechanical grasping arms must be utilized and can be very expensive. In addition to the boats, a successful log recovery operation must have a team of cold water-equipped divers because of the extreme depths and cold temperatures of the water that the logs are being recovered from, and these extreme conditions have actually preserved the wood for over a century. Once a log recovery operation has been developed by a company, and the company begins to earn a profit, it can streamline its operations in the manner that Superior Lumber Company [in Wisconsin] has. In approximately a year, the Superior Lumber Company plans to begin raising the sunken logs with airbags and will utilize a robotically directed crane to raise 30,000 logs and mill them in its own sawmill in nearby Ashland, Wisconsin."

In addition to actual recovery costs, which also include the proper storage of sunken logs once they are recovered, there are the costs of surveying the lakes and locating caches of logs that are significantly large enough to make further investigation worthwhile. One company reports that it already has spent about $200,000 in Michigan just in surveying costs

The market for old growth wood. According to the American University's Trade and Environmental Database, the market for the wood from sunken old growth logs has become increasingly large and is worldwide. The wood is use by custom furniture makers, artisans and craftspeople, contractors, architects, and musical instrument makers, all of whom highly prize the dense, fine-grained wood. According to one newspaper report, singer Johnny Cash has a guitar made from recovered wood. And one company based in Calgary, Alberta, has already processed nearly 200 recovered logs, including an order of red oak that was used for paneling in a recent renovation of the Saddledome, the home of the National Hockey League Calgary Flames team. The Superior Lumber Company headquartered in Ashland, Wisconsin, reportedly has orders from corporations and contractors that include a project at the Getty Museum in Los Angeles, Boeing Company in Seattle, and the architects designing Bill Gates' house on Puget Sound in Washington.

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, House Bill 5691 would result in an indeterminate increase in state restricted revenues. The amount of revenue that would be generated under the bill would depend on the number of permits applied for, the amount and value of submerged logs collected, and the number of violations and degree of enforcement of the bill's provisions. (6-21-00)

ARGUMENTS:

For:

The bills would authorize and regulate the recovery of a valuable state resource, rare old growth sunken logs that have been preserved in the cold depths of the Great Lakes, sometimes for centuries. These sunken logs are a unique nonrenewable natural resource, and their removal can, if not done properly, result in fish habitat and other environmental damage. The bills would benefit the state economically, as well as environmentally.

The bills would benefit the state economically by allowing the entrance and growth of a new industry in the state that could wind up benefitting local economies as well, depending on how many local people were hired to work for timber salvage companies operating in Michigan. In addition, some of the royalties generated from the recovery of sunken logs would go to the Forest Development Fund, which is administered by the Forest Finance Authority, whose mission is "to preserve existing jobs, create new jobs, and alleviate and prevent unemployment through the retention, promotion, and development of forestry and forest industries and to protect the health and vigor of forest resources."

The bills also have a number of potential environmental benefits. For, not only would House Bill 5691 require permits to identify any potential adverse environmental impacts associated with the proposed submerged log removal method and the steps the applicant proposed to mitigate these adverse effects, it also would prohibit the Department of Environmental Quality from issuing a permit unless, among other things, the department found that any adverse impacts (whether to the environment, natural resources, riparian rights, and the public trust) were "minimal" and would be mitigated "to the extent practicable." The DEQ also could decide modify or to not authorize certain areas within a proposed bottomland log removal area based on adverse impacts to the environment (as well as to natural resources, riparian rights, and the public trust), and a submerged log removal plan (which would have to be included in each permit) would have to contain terms and conditions that the DEQ had determined would protect the environment, natural resources, riparian rights, and the public trust.

Meanwhile, some of the royalties generated for the state from recovered sunken logs would go to a newly-created "Great Lakes fund" proposed in House Bill 5960, to be used only for environmental projects – such as the prevention and management of non-native species, coastal wetland restoration, contaminated sediment cleanup, and underwater preserve management – related to the Great Lakes and areas next to the Great Lakes. And some of the royalties would go to the Forest Development Fund, which provides both economic and environmental benefits to the state, since this fund is used for reforestation, forest protection, and timber stand improvement.

Finally, in general the whole submerged log recovery industry can benefit global forests, because essentially such operations are recycling operations in the best sense of the term. When recovered submerged logs are processed, no damage is done to the biodiversity of any forest in the wold, and with the current rates of deforestation, this is a significant and highly desirable environmental benefit.

A number of other states, including New York and Wisconsin -- as well as neighboring Ontario -- already have legislation that regulates the recovery of sunken logs and it is time for Michigan, with its prominent historical role in logging, to do the same.

Against:

Some people believe that the application and royalty fees set in House Bill 5691 are too high and could discourage the very industry that the bills otherwise would make possible by legalizing the removal of submerged logs. If the fees and royalties are too high, no one will apply for permits, and not only will the state get no revenue from this resource, illegal "pirating" of this resource will go on and possibly even increase. They also point out that Wisconsin, for example, has an application fee of only $500 and royalty fees of only 30 to 35 percent of the stumpage value of any log recovered under a permit. Only the most highly capitalized companies will be able to afford to apply for the proposed $3,500 -- permits which are 7 times as much as the $500 permit fees in Wisconsin -- and the proposed royalty fees of twice the average stumpage value could jeopardize potential profits.

On one estimate, recovering sunken timber is 60 percent more expensive than conventional logging. Submerged logs are very fragile and require careful, expensive recovery methods. Inevitably, some of the logs recovered will be commercially useless, and others will be damaged in the process of recovery. In fact, according to one company's estimate, it harvests only 10 to 15 percent of each cache of logs it locates. Not only do the logs first have to be located (by expensive "side scan" sonar), divers then have to decide whether and which logs might be worthwhile to raise, before the expensive process of raising and storing these fragile logs can even begin. In order to be economically viable, timber salvaging companies must be able to both meet their very high operational costs and to make a reasonable profit as well. And finally, it has been pointed out that while there are some extremely valuable sunken logs, these "treasures" are the exception rather than the rule, even though all of the media publicity might appear to indicate otherwise.

Response:

The comparison to Wisconsin's fees and royalties is misleading for a number of reasons. For one thing, the Wisconsin legislation apparently was written with the understanding that a sawmill to process recovered sunken logs would be built in Ashland, Wisconsin, thereby contributing to the town's economic revival and to tourism generally in eastern Wisconsin. In fact, the head of the Superior Lumber Company reportedly raised $1 million from private investors in the Ashland area to renovate a 125,000 square foot former Louisiana Pacific plant (bought from Ashland for $1) in order to house the company headquarters and sawmill in the plant, as well as to lease space to woodworking craftspeople and artisans, along with a retail restaurant complex and a logging museum. These economic development goals apparently were such overriding considerations that the Wisconsin legislature deliberately decided to leave the timber salvaging industry virtually unregulated other than the $500

application fee, which applies to submerged areas no larger than 160 acres, and to keep the tax on recovered logs purposely low (at 2 percent for each recovered log processed and sold, Wisconsin reportedly gets only about 80 cents a log).

In Michigan, while there are similar economic development reasons to encourage the establishment and growth of a "sunken timber" industry, there also are some significant differences. In the first place, there is no reason to believe that any of the timber salvage companies will be investing in building their own sawmills in the state, much less the huge retail and tourism complex that appears to have accompanied the Wisconsin legislation. Secondly, however, the cost of the Michigan application fee, which already has been reduced by $500 from an earlier proposal, is intended to pay for the costs to administer the new program in the Department of Environmental Quality without requiring any additional state general fund appropriations. Setting the fee at $3,500, moreover, should discourage all but those who are serious about engaging in submerged log recovery from submitting applications, so the DEQ would not waste time and money on frivolous applications. (Wisconsin reportedly initially had 800 to 900 applications, and wound up with first 10, and now only a single, operating timber salvage company.) Finally, it should be pointed out that the Michigan permits will be for up to 320 acres, which is double the area allowed under Wisconsin permits. So even aside from these other reasons for the amount of the proposed application fee, the proposed Michigan permit is at most only 3 ½ times that of Wisconsin's – and still is a bargain at that price.

With regard to the royalty fees, some forestry experts believe that the proposed fee of twice the average stumpage value is too low, not too high, since the value of an average tree of a given species can be less than 15 percent of the value of a "high end" tree of the same species. For example, the average stumpage value of red maple is $141 per thousand board feet, but the high-end stumpage value for the same tree species is $1,030 per thousand board feet. Even at twice the average stumpage value of a red maple, which would amount to $242, the royalties proposed in the bill still would amount to less than half of the average stumpage value of the high-end red maples, which would amount to $515. While it is understandable that the timber salvage industry would want to keep the fees it would have to pay the state as low as possible, it still is the state's responsibility to require a fair return to the people of the state in return for allowing the commercial harvesting of this unique, nonrenewable state resource.

While it is expensive to raise submerged logs, and while it is understandable that timber salvage companies want to maximize their potential profits, nevertheless the fees and royalties proposed in the bill are very reasonable, if not actually low, considering the enormous potential profits to be garnered.

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