

Legislative Analysis



TEMPORARY WATER REGULATIONS DURING HIGH WATER CONDITIONS

Phone: (517) 373-8080
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House Bill 5401 (H-3) as reported from committee
House Bill 5402 (H-2) as reported from committee
Sponsor: Rep. Gary R. Eisen

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

House Bill 5463 (H-3) as reported from committee
Sponsor: Rep. Jim Lilly

1st Committee: Natural Resources and Outdoor Recreation
2nd Committee: Ways and Means
Complete to 2-26-20

BRIEF SUMMARY: House Bills 5401 and 5402 would allow the Department of Natural Resources (DNR), county emergency management coordinator, or county sheriff to set temporary vessel speed limits during high water conditions and establish fines for violations. House Bill 5463 would allow a local political subdivision to request a special rule or temporary ordinance for the use of vessels and other devices on a water body subject to its jurisdiction.

FISCAL IMPACT: The bills may increase costs for the DNR or local units of government. (See **Fiscal Information**, below, for a detailed discussion.)

THE APPARENT PROBLEM:

Michigan is currently experiencing near-record water levels statewide, and projections are that these water levels will continue to rise in 2020. In the 1980s, the state experienced similar high water levels, which devastated waterfront properties. Local communities with homes, roads, and businesses on the water are currently experiencing the destructive effects of the high water levels as waves erode shorelines and crash over breakwalls and revetments. While nothing can stop waves caused by wind or storms, speed restrictions can keep vessels from creating wakes that, in high water conditions, can also damage public and private waterfront property. Unfortunately, local communities are currently unable to impose temporary speed restrictions to ensure that boats and other watercraft do not create potentially damaging wakes. Legislation has been offered to give local communities the option of establishing temporary regulations for boats and other vessels and devices during emergency high water conditions.

THE CONTENT OF THE BILLS:

Currently under the Natural Resources and Environmental Protection Act (NREPA), the DNR may establish boating speed limits for Michigan waters. Any area of water that does not have a speed limit established by the DNR has a default speed limit of 55 miles per hour. However, a local unit of government that has jurisdiction over waters in Michigan can request that the DNR reduce the boating speed limits on those waters to 40 miles per hour or less.

House Bill 5401 would amend Part 801 (Marine Safety) of NREPA to change “motorboat” to “vessel” for purposes of these provisions. (As defined in the act, “vessel” means every

watercraft used or capable of being used for transportation on water). The bill would allow a county or municipality, to protect life and property during emergency high water conditions, to request the DNR or applicable county emergency management coordinator or sheriff to establish by order a temporary maximum vessel speed limit for Michigan waters located in or adjacent to the county or municipality. The bill would also specify that the request or order could not prohibit use of any type of vessel. The order would be in effect for up to 14 days, could be reissued once per calendar year, and would have to specify a maximum fine for its violation. The maximum fine could be up to \$100 for a first violation and up to \$500 for a second or subsequent violation. A speed limit under these provisions could only be in effect during the period from September 1 to June 20.

The DNR, emergency management coordinator, or county sheriff, as applicable, would have to do both of the following:

- Post the speed limit, maximum fine, and a description of the affected waters on its website.
- Place buoys sufficient to advise vessel operators of the speed limit. An emergency management coordinator or sheriff would have to consult with the DNR before placing buoys. The requirement for a permit to place a buoy under section 80159 of NREPA would not apply to buoys placed during emergency high water conditions, and the DNR could not order removal of such buoys because a permit had not been issued.

A person who *violated a speed limit established by the DNR* under the above provisions would be responsible for a state civil infraction and subject to a civil fine as specified above. A person who *violated a temporary vessel speed limit established by an emergency management coordinator or sheriff* would be responsible for a municipal civil infraction and subject to a civil fine as specified above.

MCL 324.80146

House Bill 5402 would amend the Revised Judicature Act to update its definitions of “civil infraction” and “municipal civil infraction” to include a violation of an *ordinance*, which would itself be defined to include a temporary vessel speed limit established by a county emergency management coordinator or sheriff under NREPA, as described above.

Additionally, the Revised Judicature Act states that the plaintiff in a municipal civil infraction action is the political subdivision whose ordinance has been violated. The bill would add that, if the ordinance was a temporary vessel speed limit established by the county emergency management coordinator or sheriff under NREPA, the county or municipality that requested the speed limit would be considered the political subdivision whose ordinance was violated.

MCL 600.113, 600.8701, and 600.8703

House Bill 5463 would amend Part 801 of NREPA to allow a local political subdivision to request a special rule or temporary ordinance for the use of vessels and other devices on a water body subject to its jurisdiction.

Currently under NREPA, the DNR can allow a *political subdivision* to issue special local rules for the use of vessels, water skis, water sleds, aquaplanes, surfboards, or other similar devices. These rules apply to the local bodies of water year-round. The DNR conducts investigations

and inquiries into whether these special rules are needed, which includes considering several conditions and pieces of information.

Political subdivision means a Michigan county, metropolitan authority, municipality, or combination of those entities.

A denial of a special rule can currently be appealed to the Michigan Waterways Commission, which then makes the final decision as to whether a rule is needed. Under the bill, appeals would instead be made to the director of the DNR, who would also have the final determination as to whether a rule is needed.

The bill would further allow a political subdivision to request a temporary ordinance for the use of vessels on a water body subject to its jurisdiction. A temporary ordinance would include a local watercraft control or administrative rule. A temporary ordinance would expire after six months and could not be extended or renewed in consecutive years.

A political subdivision could submit an application and a resolution for a temporary ordinance to the DNR. The application would have to contain all of the following information:

- The resolution and a copy of the public notice listing the adoption of the resolution on the agenda.
- The information required for the DNR to conduct investigations and inquiries into whether special rules are needed.
- The circumstances that justify a temporary ordinance rather than a special rule.
- A complete list of all local ordinances, regulations, and rules concerning the water body and how they are enforced.
- How the political subdivision plans to provide for and fund the public notice of the temporary ordinance, including buoy placement and signage, and how it will be enforced.
- Any other information the political subdivision believes is relevant or necessary.

The DNR would have to review the application within 10 days after receiving it. For a complete application, the DNR would have to conduct an investigation and inquiry within 10 days into the need for a temporary ordinance. For an application requiring additional information, the DNR would have to request that information and conduct the investigation and inquiry within 10 days after receiving that information.

Within 10 days after completing its investigation and inquiry, if the DNR determines that there is a need for a temporary ordinance, the DNR would have to propose a temporary ordinance affecting all boats or boat types on the water body. The DNR would have to submit the proposed temporary ordinance to the political subdivision. Notwithstanding any charter provision or other provision of law, the proposed temporary ordinance would take effect when both of the following requirements were met, which would have to occur within 20 days after the DNR submitted the proposed temporary ordinance to the political subdivision:

- The governing body of the political subdivision adopts the ordinance at a public meeting.
- The political subdivision notifies the DNR of the adoption.

If the political subdivision failed to notify the DNR of its adoption of the proposed temporary ordinance, then the proposed temporary ordinance would be considered disapproved and no further action could be taken.

If the DNR determines that there is not a need for a temporary ordinance, the DNR would have to notify the political subdivision and provide the specific reasons for this determination. A denial of a temporary ordinance could be appealed by the political subdivision to the director of the DNR, who would make the final agency decision on the need for a temporary ordinance.

MCL 324.80104 and 324.80110 and proposed MCL 324.80112a

Tie-bars: All three bills are tie-barred to one another, which means that none of them could take effect unless all of them were enacted.

FISCAL INFORMATION:

House Bill 5401 may increase law enforcement costs for the DNR by providing for the implementation and enforcement of temporary motorboat speed limits during high water conditions; however, these limits would not be mandatory under the bill. The bill allows for temporary speed limit enforcement “on water of this state;” the department’s conservation officers are responsible for enforcing laws and regulations related to outdoor recreation activities in Michigan. The extent of this potential cost increase is unclear; departmental law enforcement is already monitoring state waters and enforcing watercraft regulations. There are 235 conservation officers funded by a gross appropriation of \$44.8 million in FY 2019-20. The department may also incur additional costs related to notification of speed limits in the form of signs or buoys publicizing temporary speed limits. The bill is unlikely to generate revenue for the department.

Local governments may realize additional costs similar to the aforementioned for DNR. Local law enforcement agencies vary in the extent to which they patrol waters adjacent to their respective jurisdictions and the bill allows these local agencies to be assisted by the department.

House Bill 5402 would have no fiscal impact on state or local government.

House Bill 5463 is likely to increase administrative costs for the DNR and local units of government if a temporary ordinance is formally considered as provided under the bill. Both state and local government officials may incur these additional costs in the course of following the application and notification procedures outlined in HB 5463. The extent of a potential cost increase is unclear and likely to vary by application. The bill is unlikely to affect revenues and does not provide additional funding to state or local governments to support additional costs. The department’s FY 2019-20 funding is \$438.7 Gross (\$47.0 million GF/GP) and 2,340.1 FTE positions.

ARGUMENTS:

For:

Supporters of the bills argue that temporary speed restrictions on vessels are needed to protect local property interests. During high water conditions, such as Michigan’s current near-record levels, wakes created from vessels in the water can damage docks, piers, homes, yards, parks, roads, businesses, and anything else near the waterfront. Restoration and rebuilding efforts can be costly, especially when added to preventative measures that already take place. Supporters argue that temporary speed restrictions are themselves a worthwhile preventative measure. Temporary speed restrictions are also better suited to Michigan’s current high water

predicament, as the water levels could recede next year or the year after. Water levels can and do fluctuate, both over time and from one community to the next, so a temporary speed restriction that local communities can enforce would be a most fitting response to fluctuating water levels.

Against:

Critics of the bills argue that a temporary speed restriction is not needed, even with the current near-record high water levels, since current law allows for graduated speed restrictions that can take effect during high water conditions. Even though the speed restrictions are permanent, the graduated levels would only be enforced when the water levels reached a critical level, a solution that would take into account Michigan's ever-fluctuating water levels.

POSITIONS:

Representatives of the following entities testified in support of HBs 5401 and 5402 (1-28-20):

- Clay Township
- Hamburg Township

Representatives of the Department of Natural Resources testified in support of HB 5463 (2-11-20), and the department indicated support for the bills (2-25-20).

The following entities indicated support for the bills:

- Michigan Lakes and Streams Association (2-10-20)
- Michigan Municipal League (2-11-20 and 2-18-20)

The following entities indicated support for HBs 5401 and 5402 (1-28-20):

- Michigan Sheriffs Association
- Michigan Waterfront Alliance

The Michigan Townships Association indicated support for HBs 5401 and 5463. (2-25-20)

The Michigan Boating Industries Association indicated a neutral position on the bills as substituted. (2-25-20)

The Michigan Association of Planning indicated opposition to HB 5463. (2-17-20)

Legislative Analyst: Emily S. Smith
Fiscal Analysts: Austin Scott
Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.