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House Bill 5401 (Substitute H-3 as passed by the House)
House Bill 5402 (Substitute H-2 as passed by the House)
House Bill 5463 (Substitute H-3 as passed by the House)
Sponsor: Representative Gary Eisen (H.B. 5401 & 5402)
Representative Jim Lilly (H.B. 5463)
House Committee: Natural Resources and Outdoor Recreation
Ways and Means
Senate Committee: Natural Resources

Date Completed: 3-3-20

CONTENT

House Bill 5401 (H-3) would amend Part 801 (Marine Safety) of the Natural Resources and Environmental Protection Act (NREPA) to do the following:

- Authorize the Department of Natural Resources (DNR), a county emergency management coordinator, or a county sheriff to reduce temporarily the maximum vessel speed limit on waters under local or municipal control, if requested by a resolution of the governing body of a county or municipality.
- Prescribe the duties of the DNR, county emergency management coordinator, or county sheriff if the speed limit were reduced.
- Prescribe penalties for violations of a temporary maximum vessel speed limit.

House Bill 5402 (H-2) would amend the Revised Judicature Act to do the following:

- Specify that an "ordinance" would include a temporary vessel speed limit established by a county emergency management coordinator or sheriff.
- Specify that a county or municipality that requested a temporary reduced vessel speed limit would be considered the political subdivision whose ordinance had been violated for the purposes of determining the plaintiff in a civil infraction action.

House Bill 5463 (H-3) would amend Part 801 of NREPA to do the following:

- Define "temporary ordinance".
- Describe the application process for requesting a temporary ordinance from the DNR.
- Require the DNR to conduct an investigation and inquiry into the need for a temporary ordinance.
- Prescribe the procedure for adopting a temporary ordinance.

The bills are tie-barred to each other.

House Bill 5401 (H-3)

The Act allows the DNR to establish maximum motorboat speed limits or to allow unlimited motorboat speed on Michigan waters. On waters for which a speed limit, unlimited speed limit,

or stricter speed restriction is not established under another Act, the speed limit is 55 miles per hour, except for the following: a) in an emergency; b) for authorized peace and conservation officers when engaged in official duties; or c) on the Great Lakes and Lake St. Clair, excluding an area within one mile of the shoreline. A local unit of government having jurisdiction over waters of the State may request the DNR, through a resolution, to reduce the maximum speed limit on those waters by establishing a maximum speed limit of up to 40 miles per hour. The bill would retain this language but specifies that an emergency would be as determined by local government authority. Also, the bill would replace references to "motorboat" with "vessel". "Motorboat" means a vessel propelled wholly or in part by machinery. "Vessel" means every description of watercraft used or capable of being used as a means of transportation on water.

The bill would allow the DNR, the county emergency management coordinator, or the county sheriff, after receiving a resolution of the governing body of a county or municipality, to establish a temporary maximum vessel speed limit on waters under local or municipal control in order to protect life and property during emergency conditions. The use of any type of vessel could not be prohibited.

The DNR, emergency management coordinator, or sheriff would have to specify a maximum fine for violating the speed limit. The maximum fine could not be greater than \$100 for the first violation, or greater than \$500 for a second or subsequent violation.

A reduced speed limit established under the bill could be in effect only during the period from September 1 to June 20 and could not remain in effect for more than 14 days. A speed limit could be reissued once per calendar year.

The DNR, county emergency management coordinator, or county sheriff, as applicable, would have to post the speed limit, the maximum fine, and a description of the affected waters on its website. The DNR, county emergency management coordinator, or county sheriff also would have to 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. Buoys placed for this purpose would be exempt from the permit requirements described under Section 80159 for placing buoys in State waters. The DNR could not order these buoys to be removed because a permit had not been issued. (Section 80159 prohibits a person from placing a beacon or buoy, other than a mooring buoy, in the waters of the State except as authorized by a permit issued by the DNR under Part 13 (Permits) of the Act.)

Under the Act, a person who violates a speed limit is responsible for a State civil infraction and may be ordered to pay a civil fine of up to \$500, unless either of the following conditions exist: a) the speed requirements have been waived by the DNR for authorized marine events; or b) the person violates the speed limit in a manner that constitutes reckless operation of a motorboat, as described in Section 80147.

(Under Section 80147, if a person carelessly and heedlessly operates a vessel upon the waters of the State in disregard of the rights or safety of others, without due caution and circumspection, or at a rate of speed or in a manner that endangers or is likely to endanger a person or property, that person is guilty of reckless operation of a vessel. If convicted of this offense, the court may issue an order prohibiting that person from operating a vessel on the waters of the State for a period of not more than two years. Upon an individual's subsequent conviction, the court must order him or her to complete a marine safety educational program approved by the Department. An order issued under Section 80147 is in addition to any other penalty authorized under Part 801.)

Under the bill, a person who violated a temporary speed limited established by the DNR would be responsible for a State civil infraction and subject to the civil fine described 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 would be subject to the civil fine specified by those individuals.

House Bill 5402 (H-2)

Under the bill, "ordinance" would include a temporary vessel speed limit established by a county management coordinator or sheriff under Section 80146 of NREPA (which House Bill 5401 (H-3) would amend).

Under the Act, a municipal civil infraction action is commenced after the issuance of a citation. The plaintiff in a municipal civil infraction action is the political subdivision whose ordinance has been violated. Under the bill, if the ordinance were a temporary vessel speed limit established by a county emergency management coordinator or sheriff, the county or municipality that requested the ordinance would be considered to be the political subdivision whose ordinance had been violated.

House Bill 5463 (H-3)

Under the Act, the DNR may investigate and inquire into the need for special rules for the use of vessels, water skis, water sleds, aquaplanes, surfboards, or other similar contrivances on any of the waters of the State to assure compatibility of uses and to protect public safety. If the DNR receives a resolution from a local political subdivision requesting special rules, it must initiate an investigation and inquiry. The investigation must consider the following:

- Whether the activities subject to the proposed special rules pose any issues of safety to life or property.
- The profile of the water body, including local jurisdiction, size, geographic location, and amount of vessel traffic.
- The current and historical depth of the water body, including whether there is an established lake level for the water body.
- Whether any identifiable special problems or conditions exist on the water body for the activities subject to the proposed special rules, such as rocks, pier heads, swimming areas, public access sites, shallow waters, and submerged obstacles.
- Whether the proposed special rules would unreasonably interfere with normal navigational traffic.
- Whether user conflicts exist on the water body.
- Complaints received by local law enforcement agencies regarding activities on the water body.
- The status of any accidents that have occurred on the water body.
- Historical uses of the water body and potential future uses of the water body.
- Whether the water body is public or private.
- Whether existing law adequately regulates the activities subject to the proposed special rules.

Once the DNR's investigation is complete, it must prepare a preliminary report that includes its evaluation of the information above and a preliminary recommendation as to whether special rules are needed for the water body. A copy of the report must be provided to the local political subdivision that has waters subject to its jurisdiction and must schedule a public hearing in the vicinity of the subject waters to gather public input on the report and need for special rules. At the hearing, interested parties may present their views on the report and the need for special rules orally or in writing.

Within 90 days after the hearing, if the DNR determines that there is a need for special rules, it must propose a local ordinance or appropriate changes to a local ordinance. If the DNR determines that there is not a need for special rules, it must notify the political subdivision that has waters subject to its jurisdiction and must provide reasons for its decision.

Under the bill, if a political subdivision believed a temporary ordinance was needed for the use of vessels on a water body subject to its jurisdiction, it could submit an application and a resolution for a temporary ordinance to the DNR. An application for a temporary ordinance would have to contain all of the following information:

- The resolution and a copy of the public notice that listed the adoption of the resolution on the agenda.
- The information currently required to request for special rules on a water body (listed above).
- 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 the ordinances, regulations, and rules were enforced.
- If the temporary ordinance were approved, how the political subdivision would provide for and fund the public notice of the ordinance, including buoy placement and signage.
- If the temporary ordinance were approved, how the political subdivision would enforce the ordinance.
- Any other information the political subdivision believed was relevant or necessary.

The DNR would have to review an application with 10 days after receiving it. If the application were complete, the DNR would have to conduct an investigation and inquiry within 10 days into the need for an ordinance. If additional information was needed, the DNR would have to request it and conduct the investigation and inquiry within 10 days after receiving the information.

Within 10 days after completing the investigation, if the DNR determined that there was a need for a temporary ordinance, the DNR would have to propose a temporary ordinance that would affect all boats or boat types on the water body. If the DNR determined that there was not a need for a temporary ordinance, it would have to notify the political subdivision and provide specific reasons for its decision. The political subdivision could appeal the DNR's decision to the Director of the DNR. The Director would have to make the final agency decision on the need for a temporary ordinance.

If the DNR determined that there was a need for an ordinance, it would have to submit to the political subdivision a proposed temporary ordinance. 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 ordinance:

- The governing body of the political subdivision would have to adopt the ordinance at a public meeting.
- The political subdivision notified the DNR of the adoption.

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

A temporary ordinance would expire six months after the DNR was notified of its adoption and could not be extended or renewed in consecutive years.

FISCAL IMPACT

House Bill 5401

The bill may have a negative, though likely minimal, fiscal impact on the DNR and local government. The bill would allow local law enforcement agencies, in conjunction with the DNR, to implement temporary motorboat speed limits during high water conditions on an optional basis. The Department's conservation officers currently are responsible for enforcing watercraft laws and regulations, and any increase in costs would depend on the extent to which temporary motorboat restrictions were implemented.

The bill could result in additional revenue for local libraries. Although it is unknown how many people would be prosecuted under the bill's provisions, any additional revenue from imposed fines would go to local libraries.

House Bill 5402

The bill would have no fiscal impact on State or local government.

House Bill 5463

The bill would increase administrative costs to the DNR and local governments. Under the bill, the DNR and local government entities could incur additional administrative costs through the application and notification process required to implement a temporary ordinance. The process to consider a temporary ordinance would require the DNR to conduct an application review and investigation into the need for the ordinance, and local government entities would have to establish how costs for public notice and signage would be paid. The increased costs associated with the bill would depend upon the extent to which temporary ordinances were implemented and costs likely would vary by application.

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