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BILL



ANALYSIS

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House Bill 5164 (Substitute H-2 as passed by the House)
Sponsor: Representative Peter Pettalia
House Committee: Natural Resources, Tourism, and Outdoor Recreation
Senate Committee: Outdoor Recreation and Tourism

Date Completed: 5-24-12

CONTENT

The bill would amend Parts 13 (Permits), 20 (Michigan Conservation and Recreation Legacy Fund), and 445 (Charter and Livery Boat Safety) of the Natural Resources and Environmental Protection Act to do the following:

- **Revise livery boat inspection and permit requirements, and apply the inspection requirements only to *motorized* livery boats.**
- **Reduce the processing time for a boat livery permit from 150 days to 30 days.**
- **Require a boat livery permit to be issued if at least one livery boat and its associated equipment passed inspection, or the livery rented or offered for rent at least one nonmotorized livery boat.**
- **Exclude from the definition of "boat livery" all rental units where vessels are furnished only for the use of the people occupying the units.**
- **Exclude a nonmotorized raft from the definition of "livery boat".**
- **Require the Department of Natural Resources (DNR) and a conservation officer to exercise the powers and perform the duties of the county sheriff's department regarding permit applications and inspections, if a county did not receive State aid to conduct a marine safety program.**
- **Establish a \$100 fee for the dockside inspection of a navigable waters livery boat.**
- **Specify that inspection fees credited to the Waterways Account would have to be deposited in the Marine Safety Subaccount.**
- **Authorize a peace officer to conduct additional livery boat inspections after giving at least 72 hours' advance notice.**
- **Provide that an individual renting a livery boat would not be responsible for a Part 445 rule violation if the boat or equipment were in violation when the owner relinquished possession of the boat.**

The bill would take effect on June 1, 2012.

Waterways Account

Under Part 20, money in the Waterways Account must be spent, upon appropriation, only as provided in Parts 781 (Michigan State Waterways Commission), 791 (Harbor Development), and 801 (Marine Safety) and for the administration of the Account. The bill also would refer to Part 445. In Part 445, the bill would require certain fees forwarded to the Account to be credited to its Marine Safety Subaccount (also called the Marine Safety Fund).

Livery Permit & Routine Inspection

Section 44514 prohibits a person from operating a boat livery unless the boats and equipment are inspected and a permit to operate a boat livery is issued under Part 445. The bill would repeal this section. Instead, regardless of whether the livery boats were

motorized or nonmotorized, a person could not operate a boat livery except as authorized by a permit issued pursuant to Part 13. Under Part 13, the processing period for a boat livery permit is 150 days. The bill would reduce the processing period to 30 days.

The bill would prohibit a boat livery from renting a motorized livery boat unless the boat had a current annual inspection decal, plate, or tab as provided under Part 445.

Currently, the owner of a boat livery must apply to the sheriff of the county in which the livery is located for inspection of its boats and equipment and, subject to certain exceptions, pay an inspection fee. The sheriff must forward the fee to the Department of Natural Resources (DNR). Upon receiving the fee and the application, the DNR must perform the required inspection or provide for inspection by the county sheriff or sheriff's deputy.

Under the bill, a boat livery owner would have to submit an application for a permit to the applicable sheriff's department. In addition to the information currently required, the application would have to indicate whether the boats were motorized. After a sheriff's department received an application, if the livery rented or offered for rent one or more *motorized* boats, the sheriff or a deputy would have to inspect those boats and associated equipment to determine if they met the minimum safety standards established under Part 445 rules.

The DNR and a conservation officer would have to exercise the powers and perform the duties of the county sheriff's department and a sheriff or deputy sheriff regarding permit applications and inspections if the county did not receive State aid to conduct a marine safety program, or if the livery rented or offered to rent a navigable waters livery boat. ("Navigable waters livery boat" would mean a livery boat that is more than 20 feet long and that is rented or offered for rent for use on navigable waters.)

An application for a boat livery permit would have to be accompanied by an inspection fee of \$100 for each navigable waters livery boat that the livery rented or offered to rent. The fee would have to be forwarded to the Department of Treasury and credited to the Marine Safety Subaccount of the Waterways Account. An inspection of a navigable waters livery boat would have to be a comprehensive dockside inspection.

Under Section 44517, upon completion of the required inspection, the DNR, sheriff, or deputy must approve the issuance of a permit to operate a boat livery, if the requirements of Part 445 are met. The bill would repeal this section. Instead, a boat livery permit would have to be issued if either of the following applied:

- One or more motorized livery boats and their associated equipment passed inspection.
- The livery rented or offered for rent one or more nonmotorized livery boats.

The livery owner would have to ensure that a boat livery permit was displayed prominently on the site of the livery. The permit would expire on May 31 of the year following the year in which it was issued.

The DNR would have to furnish boat livery permit application forms, blank permits, registration decals, and inspection decals, plates, or tabs to the sheriff's department.

Part 445 requires an inspecting officer designated by the DNR to affix or cause to be affixed an inspection plate, decal, or tab to each inspected livery boat that meets the minimum safety standards established under Part 445 rules. Under the bill, this requirement would apply to each *motorized* livery boat that passed the inspection. The bill also would refer to the county sheriff or deputy sheriff, rather than a DNR-designated inspecting officer. The decal, plate, or tab would expire on May 31 of the year following the year in which it was issued.

The bill would retain the requirement that a boat livery owner pay a \$2 fee to the inspecting officer for each livery boat, but specifies that the fee would apply to a motorized livery boat other than a navigable waters livery boat.

The fee must be forwarded to the treasurer of the county in which the fee is collected to be credited for the purpose of reimbursing the sheriff's department for expenses incurred under Part 445. If a conservation officer performs the inspection, however, the fee must be forwarded to the Department of Treasury to be credited to the Waterways Account. The bill would require a fee forwarded to the Department to be credited to the Marine Safety Subaccount of the Waterways Account.

Currently, "boat livery" means either of the following:

- A place of business or any location where a person rents any vessel to the general public for noncommercial use on the waters of the State.
- A place where a person offers cabins, cottages, motel or hotel rooms, or other similar rental units where vessels are furnished for the use of the person renting the unit.

The term does not include a single privately owned cabin or cottage leased or rented to another where a vessel is furnished for the use of the person renting the unit.

The bill would define "boat livery" as a place of business or any location where a person rents any vessel other than a nonmotorized raft to the general public for noncommercial use. The term would not include any place where a person offers cabins, cottages, motel or hotel rooms, or other similar rental units if vessels are furnished only for the use of the people occupying the units.

"Livery boat" means a vessel that is rented by a boat livery or a boat owner or his or her agent if the livery, owner, or agent relinquishes complete physical control of the vessel to the renter while retaining legal title to the vessel. The bill provides that the term would not include a nonmotorized raft.

Navigable Waters Livery Boat

Under Section 44517, any livery boat more than 20 feet long, except for a class E vessel that is a livery boat, that is used or to be used on navigable waters without the owner being on board or operating the vessel, is subject to an inspection fee prescribed by Section 44511 for each livery boat to be inspected. The fees must be forwarded to the DNR, which must use them to develop and maintain an inspection education and enforcement program. Upon receiving the fee and an application for an inspection and permit, the DNR must inspect all livery boats and their equipment, or provide for their inspection by the county sheriff or a deputy. Upon completion, the DNR, sheriff, or deputy must approve the issuance of a boat livery permit. As noted above, the bill would repeal Section 44517.

Section 44511 provides for the dry dock and dockside inspection of this type of livery boat or a charter boat and requires the owner to pay to the DNR an inspection fee according to a schedule. The bill would eliminate references to the livery boat in these provisions.

Livery Boat Rental

Under Part 445, a boat livery owner may not rent a livery boat more than 20 feet in length to be used on navigable water except pursuant to a written rental contract between the owner and the renter. A livery owner or his or her agent may not permit a livery boat to depart the livery premises if any of the following applies:

- The equipment required pursuant to Part 445 rules is not aboard the boat.
- The boat contains more individuals than the maximum number approved for it.
- The boat is equipped with a motor with a horsepower rating in excess of the maximum approved for the boat.

Under the bill, the owner or agent could not relinquish physical control of the boat to the person renting it or someone in that person's party under any of these conditions.

The bill provides that the individual renting a livery boat, or an individual in his or her party, would not be responsible for a Part 445 rule violation if the boat or equipment were in violation when the owner relinquished possession to the renter or individual in his or her party.

Currently, a livery boat inspection decal, plate, or tab must indicate the maximum number of people approved for the boat. Under the bill, a livery boat would have to display the maximum number of people and maximum weight of people, gear, and other items the boat was capable of safely carrying under normal conditions. The information could be displayed on the inspection decal, plate, or tab required for a motorized livery boat; on a manufacturer's plate, decal, or tab; or by other means.

Part 445 provides that an owner of a nonmotorized livery boat is not liable for an injury to or the death of a user of the boat resulting from a "risk inherent in the use or operation of a nonmotorized livery boat". That phrase means a danger or condition that is an integral part of the use or operation of the boat and is one or more of the conditions specified in the Act. The conditions include having on board more people than the maximum number approved for the boat, unless its owner knowingly allowed the boat to leave the livery's premises with more people than the maximum approved number or weight, or did not inform the user properly of the maximum weight or number of people approved for the boat. The bill would refer to the weight of people, gear, and other items. The bill also would allow liability if a nonmotorized livery boat did not display the maximum number of people or maximum weight of people, gear, or other items permitted to be carried on board when the livery owner relinquished physical control of the boat to the renter or an individual in his or her party.

Random Inspection

Under the bill, in addition to the annual inspections of motorized livery boats or inspections under Section 80166, a peace officer could inspect any boat at a boat livery. The officer would have to give the owner at least 72 hours' notice and conduct the inspection at a reasonable time.

(Section 80166 authorizes a peace officer to stop a vessel that does not bear an inspection decal and inspect the vessel and its equipment.)

MCL 324.1301 et al.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the Department of Natural Resources and on county sheriff's departments by creating a new dockside livery boat inspection requirement and an associated fee. The fee would be \$100 annually and would be credited to the Marine Safety Fund and used to reimburse county sheriffs for inspections conducted. In cases where a county receives no reimbursement through DNR marine safety grants, DNR conservation officers would conduct the inspections and the DNR Law Enforcement Division would receive revenue from the \$100 fee. It is likely that this fee would be sufficient cover the costs of conducting inspections, but if it were not, the difference between the fee and the actual costs would come from the general operating funds of either county sheriffs or the DNR Law Enforcement Division, whichever was applicable.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.