

Legislative Analysis



ELIMINATE INSPECTIONS FOR NON-MOTORIZED LIVERY BOATS

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House Bill 5164 (Substitute H-2)

Sponsor: Rep. Peter Pettalia

Committee: Natural Resources, Tourism, and Outdoor Recreation

Revised First Analysis (5-10-12)

BRIEF SUMMARY: The bill would eliminate inspection requirements for non-motorized livery boats, which include kayaks and canoes, and alter the inspection and permit requirements for motorized livery boats.

The bill is similar to Senate Bill 821 (S-3), which was passed by the Senate on March 22, 2012.

FISCAL IMPACT: House Bill 5164 (H-2) would have no significant fiscal impact to the Department of Natural Resources. Under the provisions of the bill, an application for a boat livery permit from any facility that rents navigable waters livery boats would now need to include an inspection fee of \$100 for each navigable waters livery boat that will be offered to rent. The revenues from these fees are to be deposited into the Marine Safety Subaccount of the Waterways Fund Account. The bill requires that the Department shall perform all of the inspections of navigable waters livery boats. It is anticipated that the fee revenue from the \$100 inspection fee will offset any additional inspection costs to the DNR.

County Sheriff Departments receive state funding for watercraft inspection activities. The DNR awards Marine Safety Grants to counties to fund county sheriff watercraft enforcement, watercraft safety inspections, and education programs. These grants are funded by the Marine Safety Fund, a state restricted fund, and by federal funding. In FY 2010-2011, the DNR awarded grants to all Michigan counties but two. (Livingston and Shiawassee did not apply for funding.) The grant awards totaled \$3.0 million -- of this funding, \$2.0 million was from the Marine Safety Fund and \$1.0 million was from federal funding.

The bill would have no fiscal impact on the Department of State.

THE APPARENT PROBLEM:

Part 445 of the Natural Resources and Environmental Protection Act requires owners of boat liveries (boat rental facilities) to have each livery boat inspected annually. Owners must submit an application to the county sheriff of the county in which the livery is located for inspection of livery boats and equipment. Owners are charged a \$2 fee for inspections of non-motorized livery boats, which consist mainly of canoes and kayaks. Some feel that because of advances in the technology of building materials, canoes and

kayaks no longer need to be inspected by state or county officials. According to testimony, inspections of non-motorized livery boats do not increase the safety of the vessel and only result in additional expense for the business owner and the law enforcement agency that must conduct the inspection. As such, legislation has been proposed to eliminate the inspection requirement for non-motorized livery boats altogether.

THE CONTENT OF THE BILL:

House Bill 5164 (H-2) would amend Parts 13 (Permits) and 445 (Charter and Livery Boat Safety) of the Natural Resources and Environmental Protection Act to (1) eliminate inspection requirements for non-motorized livery boats, which include kayaks and canoes, and (2) alter the inspection and permit requirements for motorized livery boats. A detailed section-by-section analysis follows.

Section 1301 - Definitions

The bill would amend the definition of "*boat livery*" and "*livery boat*" to explicitly exclude non-motorized rafts. It would also change the definition of "*boat livery*" to exclude all rental units where vessels are furnished only for the use of the people occupying the units. Additionally, the bill would add a definition for "*navigable waters livery boat*" to mean a livery boat that is more than 20 feet long and is rented or offered for rent for use on navigable waters.

Section 44511 - Inspection Fee Distribution

The bill specifies that inspection fees that are collected will be credited to the Marine Safety Subaccount of the Waterways Account. Under current law, inspection fees are credited to the waterways account.

Section 44516 - Boat Livery Permit

The bill prohibits a boat livery from renting a motorized livery boat unless it has a current annual inspection decal, plate, or tab. Additionally, no one is permitted to operate a boat livery except as authorized by a permit issued under Part 13 of NREPA. Boat livery owners would be required to submit an application for a boat livery permit to the sheriff's department in the county where the livery is located. The application would have to be accompanied by a \$100 inspection fee for each navigable waters livery boat that is rented or offered for rent. Inspections of navigable waters livery boats would have to be comprehensive dockside inspection

Upon receiving a boat livery permit application, the county Sheriff's department would have to conduct an inspection of any boat livery that rents or offers to rent one or more motorized livery boats. The motorized livery boats and any associated equipment would have to be inspected to verify they meet the minimum safety standards.

The bill specifies a livery boat permit must be issued if one or more motorized livery boats and their associated equipment pass inspection, or the boat livery rents or offers to rent one or more non-motorized livery boats.

Boat livery owners would be responsible for ensuring that livery permits are prominently displayed on the livery site. Boat livery permits would expire on May 31 of the year following the year they were issued.

The bill would 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 and a sheriff's deputy if a county does not receive state aid to conduct a Marine Safety Program, or the boat livery rents or offers to rent a navigable waters livery boat.

The DNR would be required to furnish boat livery permit applications; blank boat livery permits; registration decals; and inspection decals, plates, or tabs to the county sheriff's department.

Section 44518 - Inspection and Fees

The county sheriff or deputy sheriff would be required to attach an inspection decal, plate, or tab to each motorized livery boat that passed the required safety inspection. Inspection decals, plates, or tabs would expire on May 31 of the year following the year in which it was issued, and must contain the maximum occupancy, maximum horsepower of the motor, and other information reasonably required by the DNR for motorized livery boats only (this provision currently applies to both motorized and non-motorized boats).

As is currently required, boat livery owners would be required to pay a \$2 fee for each decal, plate, or tab for motorized livery boats. However, this would not apply to navigable waters livery boats, which are newly defined under this bill. The fees collected would be forwarded to the respective county treasurer to be used for reimbursing the sheriff's department for the incurred expenses of the inspection. If the inspection was performed by a conservation officer, the fee would be credited to the Marine Safety Subaccount of the Waterways Account.

Section 44520 - Responsibility for Violations

Under the bill, the individual renting a livery boat, or someone part of the renter's party, would not be responsible for a violation of a Part 445 violation if the livery boat or equipment was in violation when the owner relinquished possession to the renter.

Additionally, a livery boat must display that maximum number of persons and maximum weight of persons, gear, and other items the boat is capable of safely carrying under normal conditions. The information can be displayed on the inspection decal, plate, or tab that is required for a motorized livery boat; on a manufacturer's plate, decal, plate, or tab; or by other means.

Section 44520a - Liability for Injury or Death

Under this section, owners of non-motorized livery boats are not liable for injury or the death of a user that is the result of a risk inherent in the use or operation of the non-motorized livery boat. The act contains several instances of what constitutes an inherent risk, including exceeding the number of people or the maximum weight approved for the boat if the owner knowingly allowed the boat to leave the livery's premises with the excess people or weight on board. The bill would add an additional circumstance to include if a non-motorized livery boat did not display the maximum number of people or weight to be carried on board when the livery owner relinquished physical control of the boat to the renter.

Section 44522a - Additional Inspections

The bill would authorize a peace officer to inspect any livery boat at a boat livery, in addition to the mandated safety inspections. The peace officer would have to provide the boat livery owner at least 72 hours advance notice of an inspection under this section and must conduct the inspection at a reasonable time.

Enacting Section 1

The bill would repeal Sections 44514 and 44517 of NREPA. Section 44514 requires anyone operating a boat livery to first obtain a boat livery permit and to have all boats and equipment inspected. The bill contains provisions requiring anyone operating a boat livery that offers motorized livery boats to undergo an inspection. Section 44517 specifies inspection fees for livery boats that are over 20 feet long and requires the DNR to inspect or provide for a county sheriff's department inspection of a boat livery and its equipment. The bill contains a provision requiring the DNR to inspect all livery boats over 20 feet long, instead of allowing the county sheriff to do so.

Enacting Section 2

The bill would take effect on January 1, 2013.

MCL 324.44514 et al.

BACKGROUND INFORMATION:

Section 44516 of the bill would require the DNR to perform the inspection duties of the county sheriff's department if a county does not receive *state aid* to conduct a Marine Safety Program, or the boat livery rents or offers to rent a navigable waters livery boat. According to a DNR boilerplate report from 2011, only two counties (Livingston and Shiawassee) did not receive a Marine Safety Grant. Under this bill the DNR would be responsible for inspections in those two counties.

For a complete list of 2011 Marine Safety Grant Awards by county, please see:
http://www.michigan.gov/documents/dnr/Sec._802_PA_63_of_2011_report_marine_safety_grant_program_373586_7.pdf

ARGUMENTS:

For:

The bill would eliminate the inspection requirements for non-motorized livery boats, which supporters feel are unnecessary and provide no significant increase in boat safety. The materials used to build non-motorized boats have progressed from wood, which may need frequent inspections, to a synthetic fiber that is less susceptible to damage. Additionally, according to testimony, many boat liveries conduct their own regular inspections to ensure safety.

Eliminating the inspection would also save local sheriff's departments money as they would not have to conduct annual inspections. Under current law, owners of non-motorized livery boats are required to pay an inspection fee of \$2 each year, which does not adequately cover the cost of the inspection. Additionally, there was concern whether

some Sheriff's departments are conducting the inspections or simply collecting the \$2 inspection fee and issuing the decal. Testimony indicated at least one instance of this happening.

The bill defines "navigable waters livery boat" (a boat that is more than 20 feet long and intended for use on navigable waters) and distinguishes it from other livery boats. Further, the bill would now require an inspection fee for all navigable waters livery boats. Currently, some of these boats are charged a \$2 inspection fee and others are charged \$100. This bill would clarify the inspection fee and ensure that all livery boat owners are paying the same inspection fees. Additionally, the bill would require the DNR to assume inspection responsibilities of navigable waters livery boats in place of county sheriff's departments. According to the department, there are some sheriff's departments that are not experienced in inspecting boats of this size and having the DNR conduct these inspections will ensure these boats receive a thorough inspection by qualified and experienced individuals.

Against:

There was no opposition at the committee level.

POSITIONS:

Association of Paddlesport Providers supports the bill. (5-1-12)

Michigan Boating Industries Association supports the bill. (5-1-12)

Michigan Department of Natural Resources is neutral on the bill. (5-1-12)

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