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BILL



ANALYSIS

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House Bill 4145 (as reported without amendment)

Sponsor: Representative Goeff Hansen

House Committee: Tourism, Outdoor Recreation and Natural Resources

Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 5-18-09

RATIONALE

Public Act 237 of 2006 codified procedures that local governments and the Department of Natural Resources (DNR) must follow regarding the establishment of special rules for the use of watercraft. Previously, the absence of a statutory mechanism to guide the Department in making its determinations raised concerns about a lack of due process and inadequate opportunity for public input. The 2006 legislation contained a three-year expiration date to provide for an assessment of the process. It has been suggested that the sunset be eliminated.

CONTENT

The bill would amend the Natural Resources and Environmental Protection Act to eliminate a June 26, 2009, sunset on a section regarding the establishment of special rules for the use of certain watercraft on a body of water.

Section 80110 authorizes the Department of Natural Resources to initiate investigations and inquiries into the need for special rules for the use of vessels, water skis, water sleds, aqua planes, surfboards, or similar devices on any waters of the State to assure compatibility of uses or to protect public safety. If the DNR receives a local unit's resolution under Section 80112, it must initiate an investigation and inquiry into whether the special rules are needed.

(Under that section, political subdivisions that believe that special local ordinances are needed on waters subject to their jurisdiction must inform the DNR and

request assistance in the form of an official resolution approved by a majority of the governing body following a public hearing.)

The DNR's investigation must include a consideration of all of 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.
- Whether any identifiable special problems or conditions exist on the water body for the activities subject to the proposed rules, such as rocks, pier heads, swimming areas, public access sites, shallow waters, and submerged obstacles.
- Whether the proposed special rules would interfere unreasonably with normal navigational traffic.
- Whether conflicts on the water body exist.
- 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 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.

After its investigation and inquiry are completed, the Department must prepare a preliminary report that includes its evaluation of the specified information and its preliminary recommendation as to whether special rules are needed for the water body. The DNR must give a copy of the preliminary report to the political subdivision that has waters subject to its jurisdiction for which the proposed special rules are being considered. The DNR also must schedule a public hearing in the vicinity of the water body to gather public input on the report and the need for special rules.

Within 90 days after the public hearing, if the DNR determines that there is a need for special rules for the water body, it must propose a local ordinance or appropriate changes to a local ordinance. If the DNR determines that there is no need for special rules, it must notify the political subdivision and provide the specific reasons for the determination. The political subdivision may appeal the determination to the Natural Resources Commission, which must make the final agency decision on the need for special rules for a water body.

(Under Section 80111, after the public hearing, a proposed local ordinance must be submitted to the governing body of the political subdivision in which the water body is located. Within 60 days, the governing body must inform the DNR that it approves or disapproves of the proposed ordinance. If the governing body disapproves the proposed ordinance, or if the 60-day period elapses without a reply from the governing body, no further action may be taken. If the governing body approves the ordinance, it must be enacted identically to the ordinance the DNR proposed.)

Section 80110 is scheduled to be repealed effective June 26, 2009. The bill would eliminate that sunset.

MCL 324.80110

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The process established by Public Act 237 reportedly has been effective in addressing concerns about the uniformity of the DNR's determinations regarding the need for special watercraft rules, opportunities for public involvement, and the lack of an appeals process. The June 26, 2009, sunset should be eliminated so that the Department and local governments can continue to resolve issues regarding watercraft use in an equitable manner.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The Department of Natural Resources handles approximately 12 requests from local governments each year. Before the current provisions were enacted, the Department was involved through the administrative rules process.

Fiscal Analyst: Bill Bowerman

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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.