

Act No. 72
Public Acts of 2020
Approved by the Governor
April 2, 2020

Filed with the Secretary of State
April 2, 2020

EFFECTIVE DATE: April 2, 2020

**STATE OF MICHIGAN
100TH LEGISLATURE
REGULAR SESSION OF 2020**

Introduced by Reps. Lilly and O'Malley

ENROLLED HOUSE BILL No. 5463

AN ACT to amend 1994 PA 451, entitled “An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to protect the people’s right to hunt and fish; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts,” by amending sections 80104 and 80110 (MCL 324.80104 and 324.80110), section 80104 as amended by 2014 PA 402 and section 80110 as amended by 2006 PA 237, and by adding section 80112a.

The People of the State of Michigan enact:

Sec. 80104. As used in this part:

(a) “Highly restricted personal information” means an individual’s photograph or image, Social Security number, digitized signature, and medical and disability information.

(b) “Passenger” means an individual carried on board, attached to, or towed by a vessel, other than the operator.

(c) “Peace officer” means any of the following:

(i) A sheriff.

(ii) A sheriff’s deputy.

(iii) A deputy who is authorized by a sheriff to enforce this part and who has satisfactorily completed at least 40 hours of law enforcement training, including training specific to this part.

(iv) A village or township marshal.

(v) An officer of the police department of a municipality.

(vi) An officer of the department of state police.

(vii) The director and conservation officers employed by the department.

(d) “Personal information” means information that identifies an individual, including an individual’s driver license number, name, address not including zip code, and telephone number, but does not include information on watercraft operation and equipment-related violations or civil infractions, operator or vehicle registration status, accidents, or other behaviorally related information.

(e) “Personal watercraft” means that term as defined in 40 CFR 1045.801.

(f) “Political subdivision” means a county, metropolitan authority, municipality, or combination of those entities in this state. If a body of water is located in more than 1 political subdivision, all of the subdivisions shall act individually in order to comply with this part, except that if the problem is confined to a specific area of the body of water, only the political subdivision in which the problem waters lie shall act.

(g) “Port” means left, and reference is to the port side of a vessel or to the left side of the vessel.

(h) “Prior conviction” means a conviction for any of the following, whether under a law of this state, a local ordinance substantially corresponding to a law of this state, a law of the United States substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:

(i) A violation or an attempted violation of section 80176(1), (3), (4), (5), (6), or (7), except that only 1 violation or attempted violation of section 80176(6), a local ordinance substantially corresponding to section 80176(6), or a law of another state substantially corresponding to section 80176(6), or a law of the United States substantially corresponding to section 80176(6) may be used as a prior conviction other than for enhancement purposes as provided in section 80178a(1)(b).

(ii) Negligent homicide, manslaughter, or murder resulting from the operation of a vessel or an attempt to commit any of those crimes.

(iii) Former section 73, 73b, or 171(1) of the marine safety act.

(i) “Probate court or family division disposition” means the entry of a probate court order of disposition or family division order of disposition for a child found to be within the provisions of chapter XIII A of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32.

(j) “Prosecuting attorney”, except as the context requires otherwise, means the attorney general, prosecuting attorney of a county, or attorney representing a political subdivision of government.

(k) “Regatta”, “boat race”, “marine parade”, “tournament”, or “exhibition” means an organized water event of limited duration that is conducted according to a prearranged schedule.

(l) “Slow—no wake speed” means a very slow speed whereby the wake or wash created by the vessel would be minimal.

(m) “Starboard” means right, and reference is to the starboard side of a vessel or to the right side of the vessel.

(n) “State aid” means payment made by this state to a county for the conduct of a marine safety program.

(o) “Temporary ordinance” means a type of local ordinance adopted by a political subdivision of this state under section 80112a that includes, but is not limited to, a local watercraft control or administrative rule.

(p) “Undocumented vessel” means a vessel that does not have, and is not required to have, a valid marine document issued by the United States Coast Guard or federal agency successor to the United States Coast Guard.

(q) “Uniform inspection decal” means an adhesive-backed sticker created by the department that is color-coded to indicate the year that it expires and is attached to a vessel in the manner prescribed for decals in section 80122 when a peace officer inspects and determines that the vessel complies with this part.

(r) “Use” means operate, navigate, or employ.

(s) “Vessel” means every description of watercraft used or capable of being used as a means of transportation on water.

(t) “Waters of this state” means any waters within the territorial limits of this state, and includes those waters of the Great Lakes that are under the jurisdiction of this state.

(u) “Waterways account” means the waterways account established in section 2035.

Sec. 80110. (1) Except as provided under section 80112a, the department may initiate an investigation and inquiry into the need for a special rule for the use of vessels, water skis, water sleds, aquaplanes, surfboards, or other similar contrivances on any of the waters of this state to assure compatibility of uses and to protect public safety. If the department receives a resolution under section 80112, the department shall initiate an investigation and inquiry under this subsection.

(2) The department’s investigation and inquiry under subsection (1) into whether a special rule is needed on a water body must include consideration of all of the following:

(a) Whether the activities subject to the proposed rule pose any issues of safety to life or property.

(b) The profile of the water body, including the name of the political subdivision with jurisdiction, size, geographic location, and amount of vessel traffic.

(c) The current and historical depth of the water body, including whether there is an established lake level.

(d) Whether any special problems or conditions exist on the water body for the activities subject to the proposed rule, such as rocks, pier heads, swimming areas, public access sites, shallow waters, and submerged obstacles.

- (e) Whether the proposed rule would unreasonably interfere with normal navigational traffic.
- (f) Whether user conflicts exist on the water body.
- (g) Complaints received by local law enforcement agencies regarding activities on the water body.
- (h) The status of any accidents that have occurred on the water body.
- (i) Historical uses of the water body and potential future uses of the water body.
- (j) Whether the water body is public or private.
- (k) Whether existing law adequately regulates the activities subject to the proposed rule.

(3) Following completion of the department's investigation and inquiry under subsection (1), the department shall prepare a preliminary report that includes the department's evaluation of the items listed in subsection (2) and a preliminary recommendation as to whether a special rule is needed for the waterbody.

(4) On preparation of the preliminary report under subsection (3), the department shall provide a copy of the preliminary report to the political subdivision and schedule a public hearing in the vicinity of the water body to gather public input on the preliminary report and the need for a special rule. The department shall provide notice of the public hearing in a newspaper of general circulation in the area where the water body is located not less than 10 days before the hearing. At the public hearing, any interested person may comment on the preliminary report and the need for a special rule, either orally or in writing.

(5) Within 90 days after the public hearing under subsection (4), if the department determines that a special rule is needed for the water body, the department shall propose a local ordinance or appropriate changes to a local ordinance. If the department determines that a special rule is not needed, the department shall notify the political subdivision and provide the specific reasons for the determination.

(6) A determination by the department under this section that a special rule is not needed for the water body may be appealed to the director by the political subdivision. The director shall make the final agency decision on whether a special rule is needed for the water body.

(7) As used in this section, "water body" includes all or a portion of a waterbody.

Sec. 80112a. (1) If a political subdivision believes a temporary ordinance is needed for the use of vessels on a water body subject to its jurisdiction, the political subdivision may submit an application and a resolution for a temporary ordinance to the department.

(2) An application for a temporary ordinance under this section must contain all of the following information:

- (a) The resolution and a copy of the public notice that lists the adoption of the resolution on the agenda.
- (b) The information required under section 80110(2).
- (c) The circumstances that justify a temporary ordinance rather than a special rule under section 80110.

(d) A complete list of all local ordinances, regulations, and rules concerning the water body and how the ordinances, regulations, and rules are enforced.

(e) If the temporary ordinance is approved, how the political subdivision will provide for and fund the public notice of the temporary ordinance, including, but not limited to, buoy placement and signage.

(f) If the temporary ordinance is approved, how the political subdivision will enforce the temporary ordinance.

(g) Any other information the political subdivision believes is relevant or necessary.

(3) Within 10 days after receiving an application under subsection (2), the department shall review the application. If the application is complete, the department shall conduct an investigation and inquiry within 10 days into the need for a temporary ordinance. If additional information is needed, the department shall request the additional information. Within 10 days after receiving the additional information, the department shall conduct an investigation and inquiry into the need for a temporary ordinance.

(4) Within 10 days after completing the investigation and inquiry under subsection (3), if the department determines that there is a need for a temporary ordinance, the department shall propose a temporary ordinance that affects all boats or boat types on the water body. If the department determines that there is not a need for a temporary ordinance, the department shall notify the political subdivision and provide the specific reasons for the determination.

(5) A determination by the department under this section that there is not a need for a temporary ordinance may be appealed by the political subdivision to the director. The director shall make the final agency decision on the need for a temporary ordinance.

(6) If the department determines there is a need for a temporary ordinance, the department shall submit to the political subdivision a proposed temporary ordinance. Notwithstanding any charter provision or other provision of law, the proposed temporary ordinance takes effect when both of the following requirements are met,

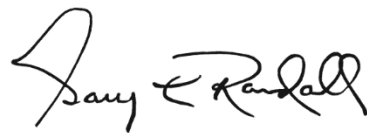
which must occur within 30 days after the department submits the proposed temporary ordinance to the political subdivision:

- (a) The governing body of the political subdivision adopts the ordinance at a public meeting.
- (b) The political subdivision notifies the department of the adoption.
- (7) If the political subdivision fails to notify the department of the adoption of the proposed temporary ordinance, the proposed temporary ordinance is considered disapproved and no further action shall be taken.
- (8) A temporary ordinance expires 6 months after the department is notified of the adoption of the temporary ordinance under subsection (6). The temporary ordinance may be extended or renewed in consecutive years only if the political subdivision is going through the process of adopting a proposed special rule under sections 80110 and 80111, and the public hearing required under section 80110(4) has occurred.
- (9) If the department determines that a special rule is not needed under section 80110(5), and the director denies the appeal under section 80110(6), the political subdivision may not extend or renew a temporary ordinance in consecutive years under subsection (8).
- (10) As used in this section, "water body" includes all or a portion of a water body.

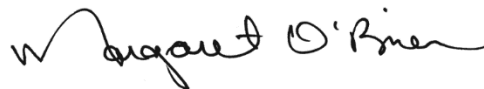
Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 100th Legislature are enacted into law:

- (a) House Bill No. 5401.
- (b) House Bill No. 5402.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor

Compiler's note: House Bill No. 5401, referred to in enacting section 1, was filed with the Secretary of State April 2, 2020, and became 2020 PA 70, Imd. Eff. Apr. 2, 2020.

House Bill No. 5402, also referred to in enacting section 1, was filed with the Secretary of State April 2, 2020, and became 2020 PA 71, Imd. Eff. Apr. 2, 2020.