

Legislative Analysis



LOCAL WATERCRAFT RULES ON COUNTRY SCENIC NATURAL RIVERS

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House Bill 6215 as introduced
Sponsor: Rep. Dave Hildenbrand
Committee: Local Government and Urban Policy

First Analysis (7-11-06)

BRIEF SUMMARY: A local government could adopt an ordinance to regulate the use of watercraft on a country scenic natural river.

FISCAL IMPACT: This bill would not have a fiscal impact on the State. Local governmental revenue realized through fines assessed for violation of enacted ordinances would increase by an indeterminate amount.

THE APPARENT PROBLEM:

Local residents of Vergennes Township in Kent County would like the township to be able to regulate the speed of boats along a two and one-half mile stretch of the Flat River. Some feel that boats going at a high rate of speed along this stretch, located between two dams, pose a danger to people swimming, fishing, and kayaking, especially at bends in the river.

Current law provides a process by which the Department of Natural Resources can initiate investigations and inquiries into the need for special rules on state waters and then prepare a local ordinance if controls are considered necessary. The local unit can approve or disapprove the ordinance. A local unit that believes a special local ordinance is needed can initiate the process by informing the DNR and requesting assistance. According to the bill's sponsor, after investigating the situation on the Flat River between the dams, the DNR declined to act on the township's petition for a special rule based on the lack of any accidents to date between boats traveling too fast and swimmers, kayakers, or people fishing.

Legislation is being offered that would allow a local unit to regulate the use of watercraft on those rivers designated as country scenic natural rivers (currently, four rivers have that designation, including the Flat River).

THE CONTENT OF THE BILL:

The bill would amend the Natural Resources and Environmental Protection Act (MCL 324.80112 and 324.80113) to allow a political subdivision to adopt a local ordinance regulating the use of vessels, water skis, aquaplanes, surfboards, and similar equipment on rivers designated as *country scenic natural rivers*. Such ordinances would be exempt from the usual process of establishing local ordinances on state waters under Part 801.

Currently, NREPA allows the DNR to initiate investigations and inquiries into the need for such special rules on state waters and then to prepare a local ordinance if controls are considered necessary. The local unit can approve or disapprove the ordinance. A local unit that believes a special local ordinance is needed can initiate the process by informing the DNR and requesting assistance. (A revision of these procedures has recently been made by House Bill 5125, which became Public Act 237 of 2006, with immediate effect. The revision provides statutory criteria for determining whether special rules are necessary and provides an appeal process to the Natural Resources Commission for local units.)

BACKGROUND INFORMATION:

The Natural River Act, Public Act 451 of 1994, placed the responsibility for guiding the protection of designated rivers in a statewide natural rivers system with the Department of Natural Resources. According to information about the Natural River Program posted on the DNR's website, there are three broad classes of natural rivers. Wilderness refers to a free flowing river, with essentially primitive, undeveloped adjacent lands. Wild scenic is a river with wild, forested borders; near development; and moderately accessible. A country scenic natural river is one in an agricultural setting with pastoral borders, some homes, and readily accessible. The Flat, Rogue, White, and Huron Rivers are classified as country scenic natural rivers.

ARGUMENTS:

For:

Though no accidents have occurred yet, residents of Vergennes Township believe that boats traveling too fast on a particular stretch of the Flat River located between two dams pose a danger to others using the river for fishing, swimming, and kayaking. They would like that portion of the river to be designated as a no wake zone. Attempts to use the current statutory mechanism to request the DNR to adopt a special rule regulating the speed of boats along this stretch of river failed when the DNR decided that there was a lack of any history of accidents or near misses to support a special rule.

Township officials and residents feel that authority to make decisions regarding public safety along the river is best left to the local units. Under the bill, a local unit could adopt an ordinance to regulate the use of various types of watercraft only on those rivers with country scenic natural river designation. The bill would apply only to the Flat, Rogue, White, and Huron Rivers. In addition, to be designated as a country scenic natural river, the river must be easily accessible by the public. Therefore, enactment of the bill would restore local control to local governments, but would not compromise or limit the public's access to use the rivers.

Against:

Michigan's waterways are held in trust for the public; therefore, it is the state's responsibility to regulate their usage. Giving locals the authority to start regulating waterways river by river and lake by lake would eventually erode the public's rights to

access. Furthermore, the bill may no longer be needed. Public Act 237 of 2006 (enrolled House Bill 5125), which was signed and effective on June 27, 2006, may have addressed a major concern raised by Vergennes Township.

Public Act 237 details criteria for determining if special rules are necessary and provides an appeals process by which a local unit can appeal to the Natural Resources Commission the DNR's denial of its request; heretofore, a determination of the DNR was final. Also, prior to the new provisions, the DNR could only look at public safety issues in its determination to adopt a special rule or propose a local ordinance; under Public Act 237, the department can consider other issues such as compatibility of uses or wildlife concerns.

Moreover, though it appeared the intent of House Bill 6215 was to address the concerns of a community to control the speed of boats along a specific section of a country scenic natural river, the wording of the proposed language ("regulating the use of" various types of watercraft) could be open to broader interpretations, including allowing a township to restrict the use of a particular type of watercraft to specific hours or days of the week. Perhaps more time should be given to see if the statutory changes made by Public Act 237 are sufficient to address the concerns of Vergennes Township.

POSITIONS:

The Michigan Environmental Council indicated support for the bill. (6-22-06)

A representative of the Department of Natural Resources testified in opposition to the bill. (6-22-06)

The Michigan Boating Industries Association indicated opposition to the bill. (6-22-06)

The National Marine Manufacturers Association indicated opposition to the bill. (6-22-06)

The Michigan United Conservation Clubs (MUCC) indicated opposition to the bill. (6-22-06)

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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.