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Senate Bill 335 (as reported without amendment)
 Senate Bill 336 (as reported without amendment)
 Sponsor: Senator Phil Arthurhultz
 Committee: State Affairs, Tourism, and Transportation
 Date Completed: 9-23-87

RATIONALE

Given the vast number of lakes and waterways within and surrounding Michigan, boating is one of the State's most popular recreational activities. Many people familiar with boating agree, however, that the State has a severe shortage of slips and other marina facilities for the mooring and storage of watercraft. In fact, it has been suggested that Michigan could use up to 15,000 additional boat slips. Private investors are discouraged from developing new marinas and expanding existing ones, however, because of the high costs associated with acquiring and developing waterfront property. Consequently, some people favor establishing a State fund to acquire and develop harbors, and allowing the Michigan State Waterways Commission to sell or lease the acquired real property.

In addition, if such practices are authorized many feel that the Commission should be expanded in order to assure that adequate oversight of the acquisition and development functions is achieved and that marina industry interests are represented on the Commission.

CONTENT

Senate Bill 335 would create the "Harbor Development Act" to authorize the Michigan State Waterways Commission to acquire, develop, and lease real property for use as a marina. The bill would do all of the following:

- Authorize the Commission to undertake various activities for the purpose of developing marinas.
- Specify procedures for soliciting construction bids and leasing real property.
- Establish and regulate the "Michigan Harbor Development Fund".
- Make the Commission immune from liability for losses resulting from the conditions of leased property.
- Require the Commission to promulgate rules for the bill's implementation.

Senate Bill 336 would amend Public Act 320 of 1947 to increase the size of the Michigan State Waterways Commission from five to seven members and to define the terms "harbor facilities" and "marina".

The bills are tie-barred to each other and to Senate Bill 337, which would amend the Use Tax Act to require that watercraft taxes be credited to the Michigan Harbor Development Fund.

Senate Bill 335**Commission Authorization**

The bill would permit the Commission to do the following:

- Provide assistance to persons wishing to construct, operate, or maintain recreational boat slips on the State's waterways.

- Purchase real property accessible to, or capable of being made accessible to, the State's waterways for the development of marinas.
- Sell or remove structures on acquired real property and sell real property or rights or interest in real property that was not considered essential for the bill's purposes.

In addition, if the Commission determined that acquired real property needed modification or improvement to make it an attractive opportunity to potential investors in a marina, the Commission could construct "nonrevenue-producing" harbor facilities. ("Nonrevenue-producing harbor facilities" would mean portions of harbor facilities that normally would not produce revenue and would include jetties, breakwaters, dredging, and shore protection.) The Commission could lease acquired real property or portions of acquired real property, if it determined that the lease agreement would aid in the construction of a marina, the provision of watercraft storage, or the provision of services normally found at commercial marinas.

Construction and Leasing

The Commission would be required publicly to solicit proposals for marina development and the lease of real property, if it determined that acquired real property was suitable for use as a marina. Such solicitation would have to include a notice in at least one local news publication of general circulation and in at least two journals of statewide circulation that were related to the marina, watercraft, or harbor industries. After a "reasonable time" allowed for bidders to respond, proposals would have to be opened and read publicly. If considered appropriate by the Commission, any proposal could be rejected "for any reason or without cause". The Commission, at its discretion, could waive any defects in any proposal.

In evaluating proposals, the Commission would be required to consider at least all of the following:

- The applicants' technical qualifications and financial responsibility.
- The applicants' ability, including prior experience in operating a marina, to perform efficiently the services necessary to maintain a "sound facility".
- The proposed lease payments.
- The nature and scope of each applicant's plans for the marina.
- Proposed timetables for development of the marina.

A lease entered into by the Commission under the bill would have to be for an initial period of no more than 20 years and could be extended, at the Commission's discretion, if the lessee complied with the provisions of the lease and had made efforts to upgrade and maintain the real

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property. By administrative rule, the Commission would have to establish a penalty schedule for nonpayment on the lease. The Commission also would have to include a provision in the lease that if a lessee were in default on a single payment for more than 60 days, or if a lessee defaulted or delayed making a payment for more than 30 days on more than two occasions in a single year, then the Commission could declare the lease agreement breached and could seek remedies at law or in accordance with the lease agreement. In addition, the Commission would have to specify in each lease agreement that the lessee could be subject to taxation under Public Act 189 of 1953, which provides for the taxation of lessees or users of tax-exempt property.

A lease entered into under the bill, or any interest in such a lease, could not be sold, transferred, or assigned unless first approved by the Commission after receipt of a written application that contained the same information about the purchaser, transferee, or assignee as was required of the original applicant. The bill specifies that these provisions would not restrict transfers by bequest or descent of the lessee (through a will or inheritance from the lessee). The bill also specifies that a lease entered into under the bill could not be issued without consideration and that the Commission could establish annual lease payments that reduced the initial financial burden on the lessee as much as was "reasonably possible", with subsequent payments appropriately increased "to assure payment of the total lease obligation prior to the termination of the lease".

The bill would permit the Commission to act jointly as a lessor with one or more local units of government. Revenue from such a lease would have to be apportioned according to the proportional share of the investments in the construction of nonrevenue-producing harbor facilities and in consideration of the relative land investments of the Commission and the local unit or units.

Finally, the Commission could establish minimum standards for the construction and operation of harbor facilities by a lessee. The standards could include, but would not be limited to, all of the following:

- Restrooms and showers.
- The number of slips available to transient and seasonal watercraft rentals.
- Construction materials, parking lots, and engineering and architectural plans and designs.
- Watercraft launching, storage, and repair facilities.

Harbor Development Fund

The bill would establish the "Michigan Harbor Development Fund" in the State treasury. The Fund would consist of money from both of the following:

- Revenue generated each fiscal year from the portion of the State use tax levied on the sale of watercraft and watercraft motors, beginning with fiscal year 1987-88.
- Revenue received from lease agreements entered into pursuant to the bill. (All revenue from lease contracts would have to be deposited in the Fund and could be used only for the purposes of the proposed Act.)

Money in the Fund could be spent only to acquire real property for marinas through purchase, lease, or condemnation, or to construct, or cause to be constructed, nonrevenue-producing harbor facilities on any of the Great Lakes bordering on Michigan, any waterways connected to any of the Great Lakes, or any inland lake over 10,000 acres in size.

Liability

The bill specifies that the Commission could not be held liable "for loss of life or injury or damage to persons or property as a result of the conditions on real property, waterways, or facilities on real property leased to persons

by the commission" under the bill. This provision, however, would not relieve lessees of any obligations they might otherwise have if they were found to have failed to meet their obligations properly.

Senate Bill 336

The bill would require that one member of the Commission be an owner or operator of a harbor or marina in Michigan and that one member be a representative of the marine-trades industry who was not an owner or operator of a harbor or marina. The first term of the owner-member would expire on September 18, 1989. The first term of the representative of the marine-trades industry would expire on September 18, 1988.

"Harbor facilities" would mean "the structures at a harbor constructed to protect the lake or body of water and the facilities provided within the harbor and ashore for the mooring and servicing of watercraft and the servicing of crews and passengers". "Marina" would mean "a site which contains harbor facilities".

MCL 281.501 and 281.502

FISCAL IMPACT

Senate Bill 335 would have a fiscal impact on the State of approximately \$200,000 for administration. In addition, Section 14 of the bill would result in a diversion of use tax revenues from the sale of watercraft and watercraft motors from the General Fund to the Harbor Development Fund.

This change would reduce GF/GP revenues by approximately \$3 million to \$4 million. The amount of revenue received from leases in Section 14 would be indeterminate. The Department of Natural Resources estimates that this bill would generate the sale of approximately 500 new boats at an average cost of \$75,000, or \$37,500,000 total. This would increase sales tax revenues by \$1,500,000 and would partially offset the use tax earmarking in Section 14.

Senate Bill 336 would have a fiscal impact on the State resulting in an expenditure of about \$2,000 per year for the two commissioners.

ARGUMENTS

Supporting Argument

The demand for boat slips and other harbor facilities on Michigan's waterways far exceeds the supply. Meeting that demand would be highly beneficial not only to boaters and marina owners and operators, but also to the State's tourism industry as a whole. Adequately servicing more boaters would result in more tourist dollars being spent both at marinas and in surrounding communities.

The Michigan Harbor Development Fund, proposed in Senate Bill 335, would serve as a mechanism to entice private sector investment in marina construction projects. Without such encouragement, private investors are unlikely to commit capital resources to development projects on costly waterfront acreage.

In addition, if the Michigan State Waterways Commission were to oversee this program, it would be necessary to expand the Commission's membership in order to provide it with additional expertise. Senate Bills 335 and 336 would go a long way toward bolstering Michigan's tourism industry and should be passed into law.

Opposing Argument

Senate Bill 335 represents nothing more than government encroachment into the private sector. The harbor development program outlined in the bill would unfairly promote government acquisition and development of

harbors at the expense of private developers.

Response: On the contrary, the bill would promote private investment by assisting developers in the most expensive aspects of harbor development projects: acquiring and preparing property for use as a marina. By performing some of the costly preliminary functions of harbor development (e.g., purchasing property, dredging waterways, and ensuring shore protection) the proposed program would encourage the establishment of harbor facilities on the State's waterways.

Opposing Argument

Many waterfront property holders, especially those owning acreage on inland lakes, do not desire further marina development. They feel that the lakes already are too congested and that further development would only detract from the recreational and environmental aspects of their aquatic havens.

Response: The vast majority of the harbor development projects resulting from Senate Bill 335 would be on the Great Lakes, rather than on inland waterways. The bill specifies that development projects from the Fund would be limited to the Great Lakes and their connecting waterways and inland lakes over 10,000 acres in size. According to the Department of Natural Resources, there are only five inland lakes of that size in Michigan.

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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.