

**SFA**

BILL ANALYSIS

Senate Fiscal Agency

• Lansing, Michigan 48909

• (517) 373-5383

**Senate Bill 335 (as enrolled)****PUBLIC ACT 79 of 1988****Sponsor: Senator Phil Arthurs****Senate Committee: State Affairs, Tourism, and Transportation****House Committee: Appropriations****Date Completed: 10-13-88****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. Nevertheless, private investors are discouraged from developing new marinas and expanding existing ones 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.

**CONTENT**

The bill 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.
- Immunize the Commission from liability for losses resulting from the conditions of leased property.
- Require the Commission to promulgate rules for the bill's implementation.

The bill is tie-barred to House Bill 4709 (Public Act 65 of 1988), which created the Michigan State Waterways Fund and the Harbor Development Fund.

**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, when the demand for recreational boat slips exceeded the available supply.
- 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 25 years and could be extended for up to 5 years, 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 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

S.B. 335 (10-13-88)

**OVER**

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 of 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.

#### 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.

The bill also specifies that a person could not deny any individual the "full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations" created by the bill because of race, religion, color, national origin, sex, age, or marital status.

### **FISCAL IMPACT**

Administration costs for salaries and wages, and contractual services, supplies and materials necessary to implement the bill would be about \$200,000 per year which presumably would be funded by the Michigan Harbor Development Fund created in Public Act 65 of 1988. The purchase of real estate authorized by the bill would be subject to authorized appropriations which presumably will also be made from the Michigan Harbor Development Fund. There would be indeterminate revenues from future leases. The revenues would be credited to the Harbor Development Fund.

The bill would have no fiscal impact upon a local unit of government. However, a local unit of government could

choose to develop harbor facilities pursuant to the bill by contractual arrangements with the Michigan State Waterways Commission.

### **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, established in Public Act 65 of 1988, would serve as a mechanism to entice private sector investment in marina construction projects as authorized by the bill. Without such encouragement, private investors are unlikely to commit capital resources to development projects on costly waterfront acreage.

#### ***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.

Legislative Analyst: P. Affholter  
Fiscal Analyst: A. Rich

---

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.