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BILL ANALYSIS

Senate Fiscal Agency

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House Bill 4245 (as reported with amendments)

Sponsor: Representative Jerry C. Bartnik

House Committee: Tourism, Fisheries, and Wildlife

Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 4-20-89

RATIONALE

The Watercraft Pollution Control Act prohibits dumping raw sewage, oil, and garbage from watercraft into Michigan waters and requires marine toilets either to be self-contained or connected to an incinerator. Despite these restrictions, sewage contamination of popular bays and harbors continues to be a problem. Tests conducted at several sites in Little Traverse Bay and Lake Charlevoix by the Tip of the Mitt Watershed Council and the Lake Charlevoix Association found levels of fecal coliform bacteria well in excess of those considered to be a public health risk. The studies of the area led the Tip of the Mitt Watershed Council to conclude that boating, rather than land-based sites, was the source of the pollution. According to the Department of Natural Resources (DNR), enforcement of the Act's prohibition against sewage discharges has been hampered by a judicial interpretation that enforcement action can be taken only upon observing an illegal discharge. Some feel that the Act should be strengthened by prohibiting watercraft from having workable bypass connections capable of discharging sewage directly into the water, and by enabling the State to inspect watercraft for compliance with that requirement.

CONTENT

The bill would amend the Watercraft Pollution Control Act to revise regulations prohibiting the discharge of sewage from watercraft and to repeal certain provisions of the Act. The bill would take effect on May 1, 1990.

The Act prohibits a watercraft owner or operator from owning, using, or permitting the use of a "marine toilet" unless it is equipped with an approved holding tank or an incinerating device. The bill, instead, would prohibit the mooring or operating of a watercraft, unless it had a "marine sanitation device" that was so equipped. In addition, the bill would prohibit the mooring or operation of a watercraft on Michigan's waters if it had a marine sanitation device that was equipped with a bypass connection, pump, or other means of discharging sewage into the water, unless the connection, pump, or device was rendered incapable of directly or indirectly discharging sewage into the water. (The bill specifies, however, that this prohibition could not be construed to prohibit either a "properly installed" discharge line used to empty sewage at an onshore pump-out station or a portable marine sanitation device.) A bypass connection, pump, or other device would have to be rendered incapable of discharging sewage into the water by one of the following methods:

- Removing a section of pipe or tubing that allows discharge, placing a cap over the remaining pipe or tubing, and placing a DNR-approved seal over the cap.
- Closing a valve to prevent discharge and placing a DNR-approved seal over the closed valve.

To comply with those requirements, the seal would have to be applied in a manner that precluded either reattaching the pipe or

reopening the valve without breaking it. The seal would have to be unbroken at the time of inspection.

The bill provides that if the DNR or its designee inspected a watercraft and determined that it was in compliance with the Act, then the DNR or designee would have to place on the watercraft a sticker indicating the date of inspection. Such inspections could not be made more than once a year, except upon probable cause. The DNR, by rule, could exempt certain ocean going watercraft from the marine sanitation device and inspection sticker requirements.

The Act requires "public, private, and commercial marinas, yacht clubs, docks, and wharves used for mooring, serving, or otherwise handling watercraft of the size capable of being equipped with marine toilet facilities" to provide Department of Public Health (DPH)-approved pump-out facilities. The bill would instead require "all docking facilities" except those that had a capacity of 15 watercraft or less and those "holding only small watercraft of a type not equipped with a marine sanitation device" to provide such facilities. In addition, all pump-out facility plans and installations would have to be approved by the DPH or its authorized representative.

The Act allows an "installation" required to have pump-out facilities to contract to use the pump-out facilities of an "adjacent installation". The bill instead would allow an "existing docking facility" to contract for the use of the pump-out facilities of a "docking facility in the vicinity". Further, the bill specifies that this exception could not apply to a docking facility constructed after the bill's effective date, or whose capacity was expanded by an amount exceeding 25% of the capacity existing before the effective date, or by more than 15 slips, whichever was less.

The Act also prohibits the discharge of oil "or oily wastes" from a watercraft into the waters of this State. The bill would delete "or oily wastes" and extend the prohibition to the discharge of oil from a docking facility. The bill specifies that both the owner and operator

(rather than either the owner or operator) of a watercraft from which oil was discharged would be held liable to the State for costs incurred for its removal. Under the bill, the State could also bring action against both to recover clean-up costs.

The Act authorizes the Water Resources Commission to promulgate rules for carrying out duties and powers that the Act conferred. The bill would allow the DNR and the DPH, rather than the Commission, to promulgate rules to carry out the Act and would require the Departments to appoint and consult with an advisory committee that represented the major interests affected by a proposed rule before promulgating it. The Act specifies that a violation of the Act is a misdemeanor and carries a maximum fine of \$500. The bill would make a violation of a rule promulgated under the Act a misdemeanor and make either violation subject to the fine, 92 days' imprisonment, or both.

The bill would repeal provisions of the Act that require State-owned, -operated, or -leased marinas to have pumping stations.

MCL 323.331 et al.

SENATE COMMITTEE ACTION

The Senate Committee on Natural Resources and Environmental Affairs adopted amendments to the bill that specify two methods by which a bypass connection pump or other device would have to be rendered incapable of discharging sewage into water, and require the DPH, rather than the DNR, to approve docking facilities' pump-out facility plans and installations. In addition, the Committee amendments would authorize the DPH to promulgate rules to regulate docking facilities' water supplies and sewage systems, pump-out facilities, and dockside sanitary facilities.

FISCAL IMPACT

According to the DNR (2-23-89), the bill would have no fiscal implications. Current DNR marine safety program activities include

inspecting boats for compliance with State law and provisions of the bill would be enforced at the time of inspection. The bill would not authorize funding for the advisory committee that would have to be appointed by the DNR or the DPH before it promulgated a rule.

ARGUMENTS

Supporting Argument

Although the law prohibits discharging sewage from boats, violations occur with enough frequency to cause unacceptably high coliform bacteria levels in many popular recreational waters. The bill, by enabling the DNR and DPH to prohibit toilet bypass plumbing, would give the sewage discharge prohibition more force. Anti-pollution efforts would be aided further by strengthening the requirement for larger marinas to have sewage pump-out facilities, rather than continuing to allow them to contract for the use of such facilities. The bill thus would improve environmental protection on Michigan's waterways, and safeguard the health of Michigan's residents and visitors.

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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.