



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 4505 (Substitute H-2 as passed by the House)
House Bill 4506 (Substitute H-1 as passed by the House)
House Bill 4507 (Substitute H-3 as passed by the House)
Sponsor: Representative David M. Gubow
House Committee: Judiciary and Civil Rights
Senate Committee: Transportation and Tourism

Date Completed: 4-24-96

CONTENT

House Bill 4505 (H-2) would amend the Revised Judicature Act (RJA) to provide that a traffic bureau established by a district court could accept admissions, and collect civil fines and costs, for State civil infractions under Part 801 (governing marine safety) of the Natural Resources and Environmental Protection Act (NREPA) or a corresponding local ordinance (in addition to civil infractions under the Michigan Vehicle Code). The bill also would amend the RJA's definition of "state civil infraction" to include a civil infraction involving a violation of a local ordinance that was designated by statute as a State civil infraction (in addition to a civil infraction involving a violation of State law that is designated by statute as a State civil infraction).

House Bill 4506 (H-1) would amend the Code of Criminal Procedure to provide that a complaint signed by a peace officer would have to be treated as made under oath if the offense alleged in the complaint were a minor offense committed under circumstances permitting the officer's issuance of a citation under Section 80180 of the NREPA. (Currently, this applies to minor offenses committed under circumstances permitting the officer's issuance of a citation under the Michigan Vehicle Code. Section 80180 of the NREPA pertains to the warrantless arrest and preliminary chemical breath analysis of a person involved in an accident in which a person operated a vessel while under the influence of alcohol and/or drugs.)

House Bill 4507 (H-3) would amend Part 801 of the NREPA to make certain violations of that part State civil infractions; provide for the issuance of a citation for a violation that was a misdemeanor or a State civil infraction; specify that a person issued a citation for a State civil infraction could admit responsibility in person, by representation, or by mail, or deny responsibility and appear for an informal or formal hearing; provide that nonresidents who committed a State civil infraction or a misdemeanor could guarantee their appearance by leaving a guaranteed appearance certificate or a sum of up to \$100; and replace the term "long-term incapacitating injury" with the term "serious impairment of a body function" in the Act's drunk boating provisions.

The three bills are tie-barred to each other. A detailed description of **House Bill 4507 (H-3)** follows.

Designation of State Civil Infractions

The bill would define "state civil infraction" as "an act or omission prohibited by marine law that is subject to a civil sanction, but that is not a crime as defined in section 5 of the Michigan Penal Code". (The NREPA defines "marine law" as Part 801, a local ordinance adopted in conformity with Part 801, or a rule promulgated under Part 801. Section 5 of the Michigan Penal Code defines "crime" as an act or omission forbidden by law that is not designated as a civil infraction, and that is punishable upon conviction by any one or more of the following: imprisonment; fine not designated a

civil fine; removal from office; disqualification to hold an office of trust, honor, or profit under the State; any other penal discipline.)

Under the Act, except as otherwise provided, a marine law violation is a misdemeanor. The bill would designate the following as State civil infractions:

- Failing to present a vessel's certificate of number upon a peace officer's request.
- Failing to paint a vessel's number on the vessel or to display a decal.
- Failing to notify the Secretary of State if a vessel owner's address no longer conforms to the address appearing on the certificate of number.
 - Operating a vessel in violation of the Act's personal flotation device requirements. (This violation currently is punishable by a \$100 civil fine.)
- Disobeying rules that apply if vessels are being operated in a manner that makes collision imminent or likely.
- Failing to operate a vessel in careful manner or operating a vessel at a dangerous or unreasonable speed.
- Exceeding the Act's maximum speed limit. (The bill would delete a provision that a person violating the speed limit is guilty of reckless operation of a motorboat.)
- Operating a motorboat at more than slow--no wake speed under certain circumstances.
- Operating a vessel that is towing someone on water skis or another contrivance in violation of certain requirements.
- Operating a vessel within a lawfully authorized restricted area.
- Intentionally interfering with the operation of a vessel.
- Operating a vessel within 200 feet of a diver's flag.
- Disobeying buoy or beacon requirements.
- Refusing to submit to a preliminary chemical breath analysis upon a lawful request by a peace officer. (This violation currently is punishable by a maximum civil fine of \$100.)
- Disobeying bathing beach requirements.

The bill specifies that a marine law violation designated a State civil infraction would not be a lesser included offense of a criminal offense.

If a person were found to be responsible or responsible "with explanation" for a State civil

infraction, a court could order the person to pay a civil fine of up to \$100. A civil fine ordered under these provisions would be exclusively applicable to the support of public libraries and county law libraries in the same manner as provided by law for penal fines assessed and collected for violation of a penal law of the State; the bill specifies that this provision "is intended to maintain a source of revenue for public libraries that previously received penal fines for those misdemeanor violations of this part that are now state civil infractions".

A political subdivision could not enact a local ordinance that provided a criminal penalty for an act or omission that was a State civil infraction under the NREPA, or that imposed a penalty in excess of that prescribed in the Act. A local ordinance that was in conflict with the NREPA would be void to the extent of the conflict. A political subdivision could not designate as a State civil infraction or municipal civil infraction an act or omission that was a misdemeanor or felony under the NREPA.

A person who violated an administrative rule promulgated under Part 801 or a local ordinance enacted in accordance with the Act would be responsible for a State civil infraction.

Citations

Form/Issuance of Citations. As used in Part 801, "citation" would mean an original and three copies of a written notice to appear, on a form approved by the Secretary of State, Attorney General, State Court Administrator, and Director of the Department of State Police, upon which a peace officer recorded an occurrence of a person's alleged violation of a marine law. Each citation issued by a peace officer would have to contain the name of the State or political subdivision acting as plaintiff, the name and address of the person to whom the citation was issued, the alleged marine law violation, the place there the person had to appear in court, the court's telephone number, the time at or by which the appearance had to be made, and the additional information required by the bill.

Each citation would have to contain a notice in boldfaced type that the failure of a person to appear within the time specified in the citation or at the time scheduled for a hearing or appearance would result in entry of a default judgment against the person. Timely application to the court for a hearing or return of the citation with an admission

of responsibility and with full payment of applicable civil fines and costs for a State civil infraction would constitute a timely appearance.

The peace officer issuing a citation for a marine law violation that was a misdemeanor would have to give the person to whom it was issued the second copy of the citation. If the marine law violation were a State civil infraction, the peace officer would have to give the person the third copy of the citation.

State Civil Infraction Citations. A citation would have to inform the person alleged to be responsible for a State civil infraction that he or she could do one of the following at or by the time specified for appearance:

- Admit responsibility for the State civil infraction in person, by representation, or by mail.
- Admit responsibility "with explanation" in person, by representation, or by mail.
- Deny responsibility by either appearing in person for an informal hearing before a judge or district court magistrate without being represented by an attorney, or appearing in court for a formal hearing before a judge, with the opportunity of being represented by an attorney.

The citation also would have to inform the person that if he or she desired to admit responsibility "with explanation" other than by mail or to have an informal or a formal hearing, the person would be required to apply to the court in person, by mail, or by telephone, within the time specified for appearance and obtain a scheduled date and time to appear for a hearing. A hearing date could be specified on the citation.

Misdemeanor Citations. Currently, when a person is arrested without a warrant for a violation punishable as a misdemeanor (other than negligent homicide, operating a vessel while under the influence of liquor or a controlled substance, or reckless operation of a vessel), the arresting officer must prepare a written notice to appear in court. Upon demand, the arrested person must be arraigned by a magistrate or district court judge in lieu of being given the notice. The bill, instead, would require the arresting officer to prepare as soon and as completely as possible an original and three copies of a written citation to appear in court. The officer would have to inform the alleged offender of the violation and give him or her the second copy of the citation. Upon the person's demand, the officer would have to take him or her

to be arraigned before a judge or district court magistrate in lieu of giving the person the citation.

If a peace officer issued a citation under these provisions for a misdemeanor punishable by imprisonment for not more than 90 days, a court having jurisdiction could accept a plea of guilty or not guilty upon the citation without receipt of a sworn complaint, but could not make a docket return on the complaint until the officer signed the complaint. If the person to whom the citation was issued pleaded not guilty, the court could hold no further proceedings until a sworn complaint was filed with the magistrate or judge. A court could not issue an arrest warrant for a person to whom a citation was issued until a sworn complaint against him or her was filed with the court.

Other Citation Provisions. Each police chief, the Director of the Law Enforcement Division of the Department of Natural Resources, the Director of the Department of State Police, and each sheriff would have to issue citation books of consecutively numbered citations to each peace officer of his or her department whose duties could or would include enforcement of marine law. Those individuals also would have to obtain a receipt from the officer to whom a citation book had been issued upon a form created by the Secretary of State, the Attorney General, the State Court Administrator, and the State Police Director.

Before the expiration of 48 hours after the completion of his or her tour of duty, a peace officer to whom a citation book had been issued and who had recorded the occurrence of a marine law violation upon a citation, would have to deliver to his or her police chief or to a person duly authorized by the police chief to receive citations all copies of the citation duly signed. The chief or authorized person would have to deposit the original with the court having jurisdiction over the offense within three days after the date of the citation, excluding Saturdays, Sundays, and legal holidays. A citation would be deposited with the court if the original were mailed within two days after the date of the citation.

If a citation were spoiled, mutilated, or voided, the peace officer who issued it would have to endorse the citation with a statement fully explaining its condition, and provide his or her chief officer or that person's authorized designee with the statement.

The bill specifies that the Act would not prevent a person who was not a peace officer from applying for the issuance of a criminal complaint for a

marine law violation that was not a State civil infraction, and that person would not be required to show that the alleged offender had been issued a citation in connection with the offense.

The State Treasurer would have to establish procedures to ensure the accountability of all jurisdictions processing marine law violation citations. The record showing the issuance and subsequent disposition would have to be maintained complete for at least five years following the issuance and disposition and the records and notices would have to be made available for public inspection. The fiscal officer of the political subdivision to which a marine law enforcement agency or department was responsible would have to conduct a complete audit of citation records of that political subdivision at least annually. The State Treasurer could audit those records at any time.

A person who knowingly falsified a citation or copies of a citation, or a record of the issuance of a citation, or disposed of a citation, copy, or record, in a manner other than as required by Part 801, or attempted to falsify or dispose, or attempted to incite or procure another to falsify or dispose, would be guilty of a misdemeanor punishable by imprisonment for up to one year and/or a maximum fine of \$500.

State Civil Infraction Violations

A peace officer who witnessed a person committing a marine law violation that was a State civil infraction could do one or more of the following:

- Direct the person either to bring the vessel to a stop or maneuver it in a manner that permitted the peace officer to come alongside.
- Detain the person temporarily to make a record of the vessel check.
- Prepare and subscribe, as soon and as completely as possible, a citation for one or more State civil infractions.

If a peace officer of a political subdivision witnessed a person violating Part 801 or a substantially corresponding local ordinance within that political subdivision, and that violation were a State civil infraction, the peace officer could pursue, stop, and detain the person outside the political subdivision where the violation occurred to exercise the authority and perform the duties prescribed in these provisions.

A peace officer could issue a citation to a person who was the operator of a vessel involved in an accident if, based upon personal investigation, the officer had reasonable cause to believe that the person was responsible for a State civil infraction in connection with the accident.

A peace officer could issue a citation to a person who was the operator of a vessel if each of the following occurred: 1) based upon the peace officer's personal investigation of a complaint by a witness to an alleged violation of Part 801 or a rule or local ordinance established in conformity with Part 801, the officer had reasonable cause to believe that the operator was responsible for a State civil infraction; and 2) the prosecuting attorney or attorney for the political subdivision having jurisdiction provided written approval of the issuance of the citation.

Nonresidents Committing State Civil Infractions

If a person who was not a resident of this State were stopped or detained for a State civil infraction as provided above, and that person had in his or her possession an identification document, the peace officer making the stop would have to take the document as security for the nonresident's appearance in court and satisfaction of any order that could be issued, and would have to issue a citation to that person. Within 48 hours of receiving an identification document, the peace officer would have to deliver it to the court named in the citation or to the applicable chief police officer or person authorized by him or her to receive citations and identification documents. The chief police officer or authorized person would have to deposit the document and citation with the court in the same manner as prescribed for citations. Failure to deliver the document would be contempt of court.

In lieu of the officer's taking the identification document or before appearance in court, the person stopped could guarantee to the officer or to the court for his or her appearance by leaving with the officer or court a guaranteed appearance certificate or a sum of money up to \$100.

If a judge or district court magistrate were available for an immediate appearance, and a nonresident to whom a citation was issued demanded an immediate hearing, the peace officer issuing the citation would have to take the nonresident before the judge or magistrate immediately for a hearing on the alleged State civil infraction. The court would have to return to the

nonresident his or her identification upon completion of an informal hearing or upon the person's admission of responsibility, if judgment were entered for the person, an adverse judgment against the person were satisfied, or the person provided the court with a guaranteed appearance certificate or a sum of money up to \$100 as security for payment of any fines or costs ordered.

If a nonresident defendant requested a formal hearing, the court would have to schedule a hearing as provided in the Revised Judicature Act, but would have to retain the person's identification document until final resolution of the matter unless he or she left with the court a guaranteed appearance certificate or deposit as security for appearance at the formal hearing.

The officer receiving a guaranteed appearance certificate of deposit of money would have to do each of the following:

- Give the person stopped for an alleged State civil infraction a receipt for the certificate or deposit.
- Give the person the written citation required above.
- Within 48 hours after the peace officer received a certificate or deposit, deposit it with the court identified in the citation, with the chief officer of his or her department of agency, or with the authorized agent of the chief officer.

A chief officer of a department or agency or his or her authorized agent would have to deliver a certificate or money received to the court in the same manner as prescribed in the bill for citations. That person's failure to deliver a certificate or deposit of money would be embezzlement of public money.

If the person who posted a certificate or deposit failed to appear as required in the citation or for a scheduled formal hearing, the court having jurisdiction and venue over the State civil infraction would have to enter a default judgment against the person, and the person would forfeit the guaranteed appearance certificate or money deposited. The court would have to apply money forfeited to any civil fine or costs ordered.

"Guaranteed appearance certificate" would mean a card or certificate containing a printed statement that a surety company authorized to do business in this State guaranteed the appearance of the person signing the card or certificate, and that the company, if the person failed to appear in court at

the time of trial or sentencing or of a scheduled informal or formal hearing or to pay any fine or costs imposed, would pay any fine, costs, or bond forfeiture imposed on the person in a total amount not to exceed \$200.

Nonresidents Committing Misdemeanors

Under the NREPA, if a nonresident of this State is arrested without a warrant for a violation of Part 801 (other than negligent homicide, operating a vessel under the influence, or reckless operation of a vessel), the arresting officer, upon the person's demand, must immediately take him or her for arraignment by a magistrate or a district court judge. If a magistrate or judge is not available or an immediate trial cannot be had, the person may recognize to the officer for his or her appearance by leaving a sum of money up to \$25; the officer must give the person a receipt and a written summons; and the deposit must be forfeited if the person fails to appear. Under the bill, these provisions would apply to a nonresident who was arrested without a warrant for a marine law violation punishable as a misdemeanor (other than negligent homicide, operating under the influence, or reckless operation). If a magistrate or judge were not available or an immediate trial could not be had, the person could recognize to the arresting officer for his or her appearance by leaving a guaranteed appearance certificate or sum of money up to \$100. The officer would have to give the person a written citation and a receipt for the guaranteed appearance certificate or the money deposited. If the person failed to appear, the certificate or deposit would be forfeited.

Currently, within 48 hours after taking a deposit, the officer must deposit the money with the magistrate or judge named in the notice to appear, together with a report stating the facts relating to the arrest. Failure to make the report and deposit the money is embezzlement of public money. The bill provides, instead, that within 48 hours after a peace officer received a certificate or a deposit of money, the officer would have to deliver the certificate or deposit and a report stating the facts relating to the arrest to the court named in the citation, or to the police chief or person authorized by the chief to receive certificates and deposits. The chief or authorized person would have to deposit with the court the certificate or money and the citation.

The failure of a person in receipt of money under these provisions to deposit that money in the manner prescribed would be embezzlement of public money.

Operating under the Influence

Serious Impairment of Body Function. Currently, a person who operates a vessel under the influence of intoxicating liquor and/or a controlled substance, or with a blood alcohol content of .10% or more, and by the operation of that vessel causes a long-term incapacitating injury to another person, is guilty of a felony punishable by imprisonment for up to five years and/or a fine of not less than \$1,000 or more than \$5,000. The bill would replace the phrase “long-term incapacitating injury” with “serious impairment of a body function”. “Serious impairment of a body function” would include, but not be limited to, one or more of the following:

- Loss of a limb or use of a limb.
- Loss of a hand, foot, finger, or thumb, or use of a hand, foot, finger, or thumb.
- Loss of an eye or ear or use of an eye or ear.
- Loss or substantial impairment of a bodily function.
- Serious visible disfigurement.
- A comatose state lasting for more than three years.
- Measurable brain damage or mental impairment.
- A skull fracture or other serious bone fracture.
- Subdural hemorrhage or subdural hematoma.

The bill would delete the current definition of “long-term incapacitating injury”, i.e., an injury that causes serious impairment of a body function.

Administrative Order Processing Fee. The Act provides that if a person is charged with or convicted of a violation involving operating a vessel under the influence, or a substantially corresponding local ordinance, and the person fails to answer a citation or a notice to appear, or fails to comply with an order or judgment of the court, the court immediately must notify the person that if he or she fails to appear within seven days or fails to comply with the order or judgment within 14 days, the Secretary of State will issue an order with no expiration date that the person not operate a vessel on the waters of this State. An order imposed under this provision remains in effect until the court informs the Secretary of State that the person has appeared and that all matters relating to the violation are resolved, and the person has paid to the court a \$25 administrative order processing fee.

Under the bill, the court collecting this fee would have to transmit 60% to the Secretary of State to defray expenses incurred by the Secretary of State under the NREPA.

Other Provisions

Currently, a peace officer who observes a marine law violation may immediately arrest the person without a warrant or issue to the person a written or verbal warning. Under the bill, this would apply to a marine law violation that was a felony or a misdemeanor.

If a person received a citation for failing to present a vessel's certificate of number to a peace officer upon request, the court would have to waive any fine and costs, upon receipt of certification by a law enforcement agency that the person, before the appearance date on the citation, produced a certificate of number that was valid on the date the violation occurred.

The bill provides that, for purposes of Part 801, a complaint signed by a peace officer would have to be treated as made under oath if the violation alleged in the complaint were either a State civil infraction or a “minor offense” (as defined in the Code of Criminal Procedure) and occurred or were committed in the signing officer's presence or under circumstances permitting the officer's issuance of a citation under Part 801, and if the complaint contained a statement declaring that, under the penalties of perjury, the statements in the complaint were true to the best of the officer's information, knowledge, and belief. (“Minor offense”, under the Code of Criminal Procedure, refers to a misdemeanor or ordinance violation for which the maximum permissible imprisonment does not exceed 92 days and the maximum permissible fine does not exceed \$500.)

The bill specifies that Section 4-a of Chapter 1 of the Revised Statutes of 1846 would apply to a violation of Part 801 of the NREPA, and to a violation of a substantially corresponding local ordinance, if the violation occurred before the bill's effective date and would otherwise be designated a State civil infraction upon the bill's effective date. (Section 4-a of the 1846 statutes provides, “The repeal of any statute or part thereof shall not have the effect to release or relinquish any penalty, forfeiture, or liability incurred under such statute or any part thereof, unless the repealing act shall so expressly provide, and such statute and part thereof shall be treated as still remaining in force for the purpose of instituting or sustaining any

proper action or prosecution for the enforcement of such penalty, forfeiture or liability.”)

The bill would repeal Section 80153 of the NREPA, which provides, “An occupant or operator of any vessel under way on the waters of this state shall not sit, stand, or walk upon any portion of the vessel not specially designed for that purpose, except when immediately necessary for the safe and reasonable navigation or operation of the vessel.”

The bill specifies an effective date of January 1, 1996.

MCL 600.113 et al. (H.B. 4505)
764.1e (H.B. 4506)
324.80101 et al. (H.B. 4507)

Legislative Analyst: S. Margules

FISCAL IMPACT

The bills would have no fiscal impact on the Department of Corrections, and are anticipated to have little or no fiscal impact on local criminal justice systems. Given that most of the violations that the bills would change from misdemeanors to State civil infractions are likely currently punished with fines (rather than jail and or probation), there likely would be little impact on local courts and law enforcement agencies as a result of changing these violations from misdemeanors to civil infractions.

Fiscal Analyst: M. Hansen
B. Baker
M. Bain

S9596\S4505SA

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.