

REQUIRE OWNER IDENTIFICATION ON RAFTS

House Bill 5193 (Substitute H-1) First Analysis (4-25-00)

Sponsor: Rep. Terry Geiger
**Committee: Conservation and Outdoor
Recreation**

THE APPARENT PROBLEM:

A retired man with property fronting on Jordan Lake near Hastings in the Lower Peninsula returned from a winter stay in Florida to find that an unidentified recreational raft had pulled loose from its mooring, and grounded off shore in front of his beach. The raft, consisting of empty barrels and planking, had one barrel missing and one barrel filled with water. When the property owner checked with the Department of Natural Resources, apparently he was told not only that the raft's removal was his responsibility but also that he would be liable should anyone on the lake be injured if they ran into the partially sunken raft. Reportedly the property owner was told it would cost him \$200 to have the raft removed professionally, and so, with the help of a neighbor, eventually removed and disposed of the raft himself.

Legislation, modeled after existing legislation requiring the identification of fishing shanties (see BACKGROUND INFORMATION), has been introduced to address this problem.

THE CONTENT OF THE BILL:

The bill would amend the Natural Resources and Environmental Protection Act to prohibit a person from placing or using an anchored raft on the waters of the state unless the name and address of the owner were affixed to the raft above the water line in legible letters not less than two inches high. The letters would have to be readily visible and consist of materials that were not soluble in water. The bill specifies that placing the owner's name and address on a piece of wood and affixing that piece of wood to the raft would not constitute compliance with the bill's requirements.

A person who violated the bill would be guilty of a misdemeanor, punishable by imprisonment for up to 30 days, a fine of \$100 to \$500, or both, and the costs of prosecution. Upon conviction, the court would have to order the violator to reimburse the government entity

that removed the raft from the water an amount equal to three times the costs of removal.

MCL 324.80163

BACKGROUND INFORMATION:

Fishing shanties. Current legislation governing fishing shanties reads, in part, as follows (MCL 324.46502 and 324.46509):

Sec. 46502. (1) A person shall not set, place, erect, or cause to be set, placed, or erected, or use a fishing shanty at any time upon the ice in waters over which the state has jurisdiction, unless the name and address of the owner is affixed to each side of the outside of the fishing shanty in legible letters not less than 2 inches in height. The letters shall be readily visible and consist of materials that are not soluble in water.

(2) Placing the owner's name and address on a piece of wood, plastic, or other material and affixing that piece of material to the fishing shanty is not compliance with this section.

Sec. 46509. (1) A person who violates this part is guilty of a misdemeanor, punishable by imprisonment for not more than 30 days, or a fine of not less than \$100.00 or more than \$500.00, or both, and costs of prosecution.

(2) Upon conviction for the violation of this part, the court shall order the defendant to reimburse the governmental entity that removes or provides for the removal of the fishing shanty from the water or the ice an amount equal to 3 times the cost of removal.

Abandoned vehicles. Under the Michigan Vehicle Code (MCL 257.252a), police agencies must place a sticker on vehicles that appear abandoned and may (but are not required to) remove vehicles deemed "abandoned." If the identified owner of an abandoned

vehicle does not reclaim it, the police agency must then auction the vehicle off. If the owner cannot be identified, the police agency may auction off the vehicle. This part of the vehicle code says, in part,

(1) As used in this section, 'abandoned vehicle' means a vehicle which has remained on public property or private property for a period of 48 hours after a police agency or other governmental agency designated by the police agency has affixed a written notice on the vehicle.

(2) If a vehicle has remained on public or private property for a period of time so that it appears to the police agency to be abandoned, the police agency shall do all of the following:

(a) Determine if the vehicle has been reported stolen.

(b) Affix a written notice to the vehicle. The written notice shall contain the following information:

(i) The date and time the notice was affixed.

(ii) The name and address of the police agency taking the action.

(iii) The name and badge number of the police officer affixing the notice.

(iv) The date and time the vehicle may be taken into custody and stored at the owner's expense or scrapped if the vehicle is not removed.

(v) The year, make, and vehicle identification number of the vehicle, if available.

(3) If the vehicle is not removed within 48 hours after the date the notice was affixed, the vehicle is deemed abandoned and the police agency may have the vehicle taken into custody.

If a police agency takes a vehicle into custody, it must, within seven days, send the owner a notice stating, among other things, that the vehicle was deemed abandoned, the procedure to redeem the vehicle, and a warning that failure to redeem the vehicle within 20 days after the date of the notice could result in the sale of the vehicle and the termination of the owner's rights to the vehicle or the proceeds of the sale. Not less than 20 days after the notice (and if the owner has not requested an allowed hearing contesting the fact that the vehicle had been abandoned or the reasonableness of the towing fees and daily storage fees), if the owner has not redeemed the vehicle, the police agency must

offer the vehicle for sale at a public sale. If the owner cannot be identified, the police agency *may* sell the vehicle at public sale not less than 30 days after publishing notice of the sale.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, any fines collected under the bill would provide revenue to local libraries, but the bill would have no fiscal implications for the state, since it does not require the Department of Natural Resources to do any additional enforcement activities. (4-24-00)

ARGUMENTS:

For:

People should not have to be responsible, much less liable, for other people's wandering outdoor recreational equipment. The bill would provide a mechanism and an incentive for raft owners to make sure that their rafts were properly identified and that the owners could be contacted if their rafts slipped their moorings and wound up off shore of someone else's property. The incentive for properly identifying anchored rafts would be avoidance of the misdemeanor fines (a minimum of \$100) and possible 30-day jail sentence. If a properly identified raft did slip its moorings, there then also would be a way to contact the owner to have it removed.

Against:

The bill would seem to do little to prevent the problem it supposedly is intended to address, since the problem is that of unidentified rafts drifting away from their moorings and the subsequent problems the rafts may cause to other property owners. If someone did violate the act and failed to put their name and address on their raft as required, there still would be no way to track them down and have them remove, or pay for the removal of, their wandering raft. Moreover, even if a properly identified raft did slip its moorings and drift off shore from someone else's property, nothing in the bill requires an owner to reclaim and remove his or her raft should the person decide that it wasn't worth the effort to do so. So where is the incentive for recalcitrant raft owners? Finally, who would enforce the law? And, given existing problems enforcing even basic marine safety measures – whether due to short-staffing or underfunding – is it realistic to expect that the bill, if enacted, would even be enforced?

Moreover, while the bill would provide for reimbursement to the governmental entity that removed

such a raft, this would occur only when the owner were identified and convicted for the violation of failing to properly identify his or her raft. If the owner couldn't be tracked down because he or she had violated the act, there would be no way for anyone to be reimbursed for the raft's removal. (The bill specifies "anchored raft," but clearly it would be the unanchored rafts that would constitute the problem.) The bill, further, says only that a defendant would, upon conviction, be ordered to reimburse the governmental entity that removed or provided for the removal of the raft. It doesn't actually require anyone, government entity or otherwise, to remove a raft that had slipped its moorings. Shouldn't there be a requirement that when a raft had drifted off shore of someone's property the state or a local unit of government would have to remove it within a certain period of time, just as police agencies now remove abandoned vehicles from public roads and highways? And shouldn't private property owners be reimbursed too if they wind up removing and disposing of such rafts?

Response:

Most people would obey the law once they knew it existed. The bill, therefore, would serve more as a persuasive device for getting people to properly identify their rafts so that problems such as those experienced by the Hastings resident could be avoided. Moreover, it should be pointed out that the procedures police agencies must and may follow with regard to abandoned motor vehicles probably would not work for "abandoned" rafts, both because of financial and procedural considerations. Under the Michigan Vehicle Code (see BACKGROUND INFORMATION), police agencies are allowed, but not required, to remove vehicles deemed to have been abandoned. And if a police agency does remove an abandoned vehicle, the agency may charge towing and storage fees to an owner who reclaims the vehicle. If the identified owner doesn't redeem his or her vehicle, the police agency must auction it off. The vehicle code, however, provides a number of specific protections to owners that, in part, are possible because of the vehicle registration system. Requiring the state or local governments to remove strayed rafts, without providing a reimbursement mechanism for when the owners could not be found, could impose an unacceptable financial burden on these government entities. At least in the case of motor vehicles, most of which will be much more valuable financially than most rafts, police agencies that retrieve abandoned vehicles can auction the vehicles off, if unclaimed, and thereby recoup their retrieval and storage costs. Moreover, providing raft owners with procedural protections similar to those provided to owners of abandoned vehicles under the vehicle code would be very cumbersome, possibly

more cumbersome than the governmental units involved would care to deal with.

POSITIONS:

The Department of Natural Resources does not have a position on the bill. (4-24-00)

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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.