

RESCISSION OF LOCAL WATERCRAFT RULES

House Bill 5520 and 5521 as introduced First Analysis (5-9-00)

**Sponsor: Rep. Michael Kowall
Committee: Conservation and Outdoor
Recreation**

THE APPARENT PROBLEM:

Public Act 36 of 1986 amended the Marine Safety Act to exempt special local watercraft rules from being subject to the state Administrative Procedures Act (APA) when being put into effect. The act applies to certain "special rules for the use of vessels, water skis, water sleds, aquaplanes, surfboards, or other similar contrivances." Control of these activities are the subject of local ordinances (the special rules). The ordinances are prepared for local units of government by the Department of Natural Resources (DNR) either based on the investigations and inquiries of the department or upon the request of the local unit. In either case, the proposed local ordinance must be subject to a public hearing, notice of which must be provided in a newspaper of general circulation in the area at least 10 days beforehand. The local ordinance must also be submitted to the governing body of the local unit with the affected controlled waters. If approved, the ordinance must be enacted exactly as proposed by the DNR. If the ordinance is disapproved or not acted upon, no further action is taken. The act says these local ordinances are to be enforced by state, county, and local peace officers.

Prior to the new procedure for special rules/local ordinances described above, such local watercraft rules had to go through the state's administrative rules process found in the APA, as well as the local approval process. This was said to be unnecessarily time-consuming and cumbersome a procedure, and proponents estimated that the new, streamlined procedure would reduce the ordinance-production timeline by perhaps seven months. However, the 1986 act says that rules promulgated prior to 1986 remain in effect unless rescinded using the APA process (rather than the new, simpler process). This provision, of course, is subject to the same criticisms that led to the 1986 exemption from the APA for new ordinances. The DNR complains that to replace a pre-1986 rule with a new local ordinance takes too much time and consumes too many resources. For example, the APA

requires the publication of a public hearing notice in at least three newspapers in general circulation in the state, one of which must be in the Upper Peninsula. The proposed rescission must be submitted for approval to the Office of Regulatory Reform (ORR), along with a regulatory impact statement, be printed in the Michigan Register, and, if the ORR approves, be the subject of a public hearing attended by DNR officials. Legislation has been introduced that would allow rules on local watercraft control to be rescinded using the same abbreviated process that is used for establishing new local watercraft rules.

THE CONTENT OF THE BILLS:

House Bill 5520 would amend the Natural Resources and Environmental Protection Act (MCL 324.80113) to specify that rules establishing special local watercraft controls promulgated before March 17, 1986 (under former Public Act 303 of 1967, the Marine Safety Act) would remain in effect unless rescinded pursuant to Sections 80108, 80110, 80111, and 80112 (the provisions governing the adoption of new local watercraft control ordinances).

House Bill 5521 would amend the Administrative Procedures Act (MCL 24.207) to specify that the term "rule" in the act would not apply to a rule establishing special local watercraft controls promulgated under former Public Act 303 of 1967 (the Marine Safety Act). The bill would specify that such a rule could be rescinded as provided in the Natural Resources and Environmental Protection Act.

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that the bills would have no fiscal impact on the state or on local governments. (HFA fiscal notes dated 4-25-00)

ARGUMENTS:

For:

The bills, taken together, would allow for a simpler method of rescinding old local watercraft control rules or ordinances so that new ones can be implemented. Often, say DNR representatives, recreational patterns and circumstances change, and new local watercraft ordinances are needed. In 1986, a new procedure was enacted to make it easier to put in place new local watercraft ordinances, a procedure that requires the involvement of the DNR and the local unit. But, to remove pre-1986 rules, the department must use the cumbersome process found in the Administrative Procedures Act. The bills would apply the newer, streamlined process to the rescission of old rules.

Response:

Although no one has raised objections to the bills, it has been noted that changes in rules on a local body of water are often of interest to people throughout the state who travel from their homes to that body of water for recreation; and so the current public notice requirements are not so peculiar. Indeed, one argument made against the 1986 law streamlining the rules process was that it could allow for local restrictions that inappropriately or unfairly affected people outside the locality.

POSITIONS:

The Department of Natural Resources testified that it supports the bills and requested their introduction. (5-4-00)

The Michigan Townships Association has indicated support for the bills. (5-4-00)

Analyst: C. Couch

■ 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.