

REQUIRE I.D. ON FLOATING RAFTS

House Bill 4145 (Substitute H-2) First Analysis (6-5-01)

Sponsor: Rep. Gary A. Newell
**Committee: Conservation and Outdoor
Recreation**

THE APPARENT PROBLEM:

Part 801 of the Natural Resources and Environmental Protection Act (NREPA) regulates marine safety, including floating rafts that are used for recreational purposes and are anchored during the swimming and fishing season on state waters. Anchored rafts are sometimes left in the water at the end of the summer season. They can be damaged or destroyed when the body of water freezes over in winter, and some are subsequently abandoned by their owners. These, and other rafts that have broken loose from their moorings, become a liability to lakeshore property owners since they are legally responsible if a raft floating on their property injures a passing swimmer. However, the act specifies only that the Department of Natural Resources may order anchored rafts to be removed when it considers them hazardous to other boats.

Some lakefront property owners' associations have complained about this difficulty. The problem is similar to that encountered with ice fishing shanties, which are sometimes abandoned at the end of the ice fishing season. (See *Background Information* for details.) To correct that situation, the act regulating ice fishing shanties on Michigan's lakes requires that each ice shanty be identified with the owner's name and address. Penalties are imposed on owners who fail to remove them before ice conditions made their removal unsafe. In addition, legislation was enacted several years ago to require that shanties be removed from the ice by a specific date. In response to concerns, legislation has been proposed that would require identification on floating rafts, and impose penalties on owners who failed to do so.

THE CONTENT OF THE BILL:

Currently, Part 801 of the Natural Resources and Environmental Protection Act (NREPA), which regulates marine safety, specifies only that the Department of Natural Resources (DNR) may order the removal or relocation of an anchored raft it considers a hazard to navigation. House Bill 4145

would amend the act to require identification on floating rafts, as follows:

Requirements. The bill would amend Part 801 to specify that an anchored raft could not be set, placed, erected, or used at any time upon state waters unless a reflective device was affixed to each side of the outside of the anchored raft, and the owner's name and address was affixed to two opposite sides of the outside of the raft in legible letters. The letters would have to be readily visible and consist of materials that were not water-soluble.

Penalties. A person who violated the bill's requirements would be guilty of a civil infraction, punishable by a fine of not less than \$100 or more than \$500, and costs of prosecution. In addition, a person who violated the provisions of the bill would be ordered by the court, upon conviction, to reimburse the governmental entity that removed the raft, or that provided for its removal, in an amount equal to three times the cost of removal.

MCL 324.80163

BACKGROUND INFORMATION:

Public Act 274 of 1993 repealed and replaced the act regulating the use of ice fishing shanties on Michigan's lakes to place provisions concerning ice shanties in the Natural Resources and Environmental Protection Act (NREPA). The act requires that each structure be identified with the owner's name and address, in legible two-inch letters, and provides penalties for owners who fail to remove ice shanties before ice conditions make removal unsafe. The act also requires that those who erect shanties on the ice of the Great Lakes remove them before ice conditions are unsafe, or before a date specified under the act, and requires reimbursement to municipalities by those who fail to comply with these provisions. Final removal dates are staggered throughout the state's geographic

regions to coincide with the anticipated dates at which ice thaws in each zone.

Prior to the enactment of Public Act 274, the law had required identification on each structure and removal before ice conditions were unsafe. However, with the exception of Lake St. Clair, the act provided no date for final removal of ice shanties. Some communities had enacted local ordinances in an attempt to ensure that the shanties were removed before the spring thaw. However, problems still existed in many areas. The shorelines of some lakes border more than one municipality. Many ice shanty owners visit the area on weekends only, and some owners are out-of-state residents. They, and other owners, were often unwilling to make a return trip to remove an ice shanty. For these and other reasons, many ice shanties were abandoned. When they sank they often posed a threat to boaters. The cost of this negligence was usually borne by the local municipality.

In addition to requiring that owners remove ice shanties before a final removal date, Public Act 274 also prohibited local units of government from passing ordinances, rules, or regulations concerning fishing shanties. Local governments could still remove or destroy one that hadn't been removed by the appropriate deadline, and could also require that ice shanties be registered. This made it easier for municipalities to track down owners to receive reimbursement for their costs.

FISCAL IMPLICATIONS:

Under the bill, it would be a civil infraction to use an anchored raft that didn't have the owner's name and address affixed to each side. Fines would be collected by local governmental units. The House Fiscal Agency (HFA) estimates that the bill would have no impact on state funds. (5-23-01)

ARGUMENTS:

For:

It sometimes happens that floating rafts that are used for swimming or fishing in the summer are left in place after the water around them has frozen. Left to the ravages of winter, some are damaged and then abandoned by their owners, and left to pose a problem for the public. Rafts that drift near the shores of lakefront property can pose a danger to swimmers and to other boats. Moreover, according to Michigan law, a riparian owner (one who owns land or property abutting water) on inland waters may also be liable for any damages caused by

obstructions in the water (*A Guide to Public Rights on Michigan Waters*, Law Enforcement Division Report No. 9, Michigan Department of Natural Resources, pp. 1, 2, 23, and 24), such as a floating raft. The bill seeks to address this problem in the same manner as current laws regarding ice shanties – by requiring that the identification of the owner be affixed to a raft, with strict penalties for those who violate this requirement. It should then be easier for local municipalities to track down the owners of the rafts, and to collect fines as reimbursement for their costs and for their efforts.

Response:

In addition to requiring I.D. on fishing shanties, the act which regulates the use of ice fishing shanties on Michigan lakes also requires that each structure be removed from the water before a specific date. According to the Department of Natural Resources (DNR), the number of complaints from lakefront property owners regarding rafts drifting onto private property has gone down since this provision was enacted. House Bill 4145 should also include this requirement. However, the bill may be unnecessary, since, according to the DNR, there are no statistics that would indicate a widespread problem in the state associated with these rafts.

For:

As introduced, a violation of the bill would have been a misdemeanor, punishable by a fine of between \$100 and \$500, imprisonment for up to 30 days, or both. This provision was replaced by one that would make a violation a civil infraction with no imprisonment. The change was effected because concerns were voiced that the public might be confused, since the bill does not define the term "raft." For example, some people think of pontoon boats without motors as "rafts." It is unfair, it is argued, to impose a stricter penalty when it is likely that there will be confusion.

Response:

Since it was intended that the bill mirror current provisions concerning ice shanty removals, the stricter penalty should be retained. In any case, "anchored rafts" is defined elsewhere in the act to mean all types of nonpowered rafts that are used for recreational purposes and that are anchored seasonally on state waters (MCL 324.80101).

POSITIONS:

The Michigan Waterfront Alliance (an alliance of approximately 1500 Michigan lake associations) supports the bill. (5-31-01)

The Michigan Boating Industries Association supports the bill. (5-31-01)

The Department of Natural Resources (DNR) has no position on the bill. (5-31-01)

Analyst: R. Young

■ 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.