

# Legislative Analysis



## **ALLOW DISABLED PEOPLE TO USE ELECTRIC MOTORS ON WATERWAYS WHERE MOTORS ARE OTHERWISE BANNED**

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**House Bill 5607 without amendment**

**Sponsor: Rep. Brian Calley**

**Committee: Tourism, Outdoor Recreation, and Natural Resources**

**Revised First Analysis (2-14-08)**

**BRIEF SUMMARY:** This bill would allow disabled people who are unable to row or paddle to operate a vessel using an electric motor at a "slow-no wake" speed on all waterways of the state where the use of motors is otherwise prohibited by a marine law. To obtain a marine exemption certificate to override restrictions on motorboat use, disabled persons would need to present a physician's statement to a sheriff's department.

**FISCAL IMPACT:** The bill would have no fiscal impact on the state or local governmental units.

### ***THE APPARENT PROBLEM:***

Under Part 801 (Marine Safety) of the Natural Resources and Environmental Protection Act (NREPA), the Department of Natural Resources is charged with developing marine laws that will assure compatible uses of state waters and protect the public safety. The department must also attempt to make special local regulations uniform as much as is reasonably possible. In some parts of Michigan, all or parts of lakes, rivers, and streams have been closed to motorized vehicles for reasons allowed under Part 801, such as lake water levels, safety, submerged obstacles, or conflicts between different types of uses. Section 80110 of NREPA, MCL 324.30110, sets forth procedures that must be followed, including public notices and hearings, for the adoption of a special local watercraft restriction. The process can be initiated either by the DNR or the local community. Some of Michigan's lakes and streams, or portions of them, have been closed to *all* motorized vessels under these procedures or other marine laws. Others have time-of-day restrictions on high speed boating, or other restrictions. Approximately 70 inland lakes, rivers, and streams have been closed to motorized vessels and another 26 allow only electric motors. See [Background Information](#).

Complete bans on motorized vessels may at times limit the access of persons who are not able to row or paddle to recreational activities available to others. Proponents of the bill want to increase recreational opportunities for disabled persons. The leading witness at the hearing on the bill was a disabled veteran and retired marine boat dealer who had fished on Gifford Lake near Baldwin for over 40 years until it was closed to motorboats recently. After Gifford Lake was closed to motorized vessels, he could no longer go fishing by himself as he cannot row or paddle. To address his concerns and the concerns of others, the bill would allow disabled persons with a marine exemption certificate

(obtained from a sheriff's department upon presenting a physician's statement) to use a boat powered by an electric motor in any Michigan waterway otherwise closed to motorized vessels so long as the vessel operated at a slow-no wake speed.

Among other things, this bill presents the issue of how to best to preserve the prized tranquility or special features of some of Michigan's lakes and rivers; protect safety; and balance competing uses, while increasing recreational opportunities for disabled persons.

### ***THE CONTENT OF THE BILL:***

The bill would add a new Section 80114a to the Natural Resources and Environmental Protection Act to allow disabled people unable to row or paddle to use motorized vessels on any portion of a waterway of the state where the use of motors is otherwise prohibited by a marine law. Such persons would remain subject to all other applicable marine laws.

Under existing NREPA Section 20301(e), MCL 324.20301(3), the term "waterways of the state" means "all groundwaters, lakes, rivers, streams, and other watercourses including the Great Lakes and their connecting waterways within the jurisdiction of the state." Under Section 80104(q), MCL 324.80104(q), "vessel" means "every description of watercraft used or capable of being used as a means of transportation on water."

Requirements. To qualify, a person would have to meet all of the following requirements:

- The individual has a disability that prevents him or her from rowing or paddling a vessel.
- The individual possesses a marine exemption certificate.
- The individual is operating a vessel using an electric motor at slow-no wake speed.

Issuance of marine exemption certificates. Sheriff departments would issue marine exemption certificates to individuals who present a physician's attestation that the physician has examined the individual and found that the person has a disability that prevents rowing or paddling. There is no mention of a fee for obtaining a certificate. The DNR would have to develop and make available a physician's attestation form and a marine exemption certificate.

MCL 324.80114a

### ***BACKGROUND INFORMATION:***

Part 801 (Marine Safety) and in particular, Section 80110 of NREPA, MCL 324.80110, amended by Public Act 237 of 2006, sets forth the procedures for the adoption of special local watercraft restrictions. Section 80110 is set to expire on June 26, 2009.

Examples of special local watercraft restrictions by county, including bans on motorized vessels, can be found on the DNR website:

[http://www.michigan.gov/dnr/0,1607,7-153-10366\\_37141\\_37701---,00.html](http://www.michigan.gov/dnr/0,1607,7-153-10366_37141_37701---,00.html)

According to the DNR, there are approximately 70 lakes, rivers and streams in Michigan that are closed to motorized vessels, and another 26 on which only electric motors may be used. Most are inland lakes, including many private ones, but some rivers or portions of rivers are also closed, including the Two Hearted River in Luce County, Pere Marquette River in Lake County, the Fox River in Schoolcraft County, the Rouge River and portions of the Flint River, and the Jordan River.

We have not researched all other marine laws that might limit the use of motors on Michigan waterways, federal and state laws regarding discrimination against disabled persons, or court decisions relating to such laws. We have not examined whether this bill would have any effect on Natural Rivers Act plans.

### ***ARGUMENTS:***

#### ***For:***

The bill would expand recreational opportunities in Michigan for persons with disabilities that prevent them from rowing or paddling. If persons unable to row or paddle were not allowed to use motorized vehicles on all waterways open to non-motorized vessels, they would be shut out of some recreational opportunities available to others. Restrictions that discriminate against persons with disabilities should not be allowed.

Electric boats are quiet and do not cause disturbances. The bill limits disabled persons to the use of electric motors, which are generally not as noisy, powerful, or polluting as gas-powered motors. In addition, the bill requires disabled persons operating in no-motor areas to travel at slow-no wake speeds. These sensible restrictions will limit the noise, wake, pollution, and other disturbances from the electric motorized used by persons with marine exemption certificates.

#### ***Against:***

No-motor waterways provide opportunities not found elsewhere. The few Michigan waterways where motors are not allowed provide opportunities for bird and wildlife viewing that are not available anywhere else in Michigan. The tranquility of these lakes and streams is highly prized both by local residents and tourists who value this special type of environment. The fact that some bodies of water are closed to motorboats is a drawing card for tourists and residents, touted in real estate and cottage rental advertisements. Perhaps the legitimate concerns of disabled persons regarding recreational opportunities could be addressed in a way that would be less disruptive to these few areas closed to motorboats than would allowing the use of motorized watercraft, especially given the abundance of motorized boating opportunities in Michigan.

Access for disabled persons should be added to the list of factors to be considered under Part 801. Instead of overriding all no-motorized watercraft rules all over Michigan in one fell swoop regardless of local conditions or the presence of available alternatives, perhaps Part 801 could be amended to require the rights of disabled persons to be added to the list of factors that must be considered when hearings on local watercraft restrictions are being held. This approach would allow consideration of both special local conditions and the rights of disabled persons.

If the use of electric motors is allowed on all waterways by persons with marine exemption certificates, the motorized vessels should be limited in size and capabilities. There are a growing number of electric marine motors and boats coming on to the market with greater power and capabilities. The fact that the bill only allows the use of electric motors does not address all concerns about disturbances. If the bill is enacted, additional restrictions should be allowed.

Enforcement of the law will pose challenges. DNR and other law enforcement personnel are already stretched very thin in many areas. Once no-motor lakes and streams are open to the use of motorized vessels by persons with marine exemption certificates, it will impose a burden on law enforcement to ensure that only eligible persons are using motors and to enforce the "slow-no wake" speed limit contained in the bill.

Eligibility for obtaining a marine exemption may need to be tightened up. For example, would a marine exemption certificate be good indefinitely or would a person need to renew it periodically after a doctor's examination?

***POSITIONS:***

The Department of Natural Resources supports the bill. (1-29-08)

The National Marine Manufacturers Association supports the bill. (1-29-08)

The Michigan Environmental Council opposes the bill. (1-29-08)

The Michigan Sheriffs' Association opposes the bill because it would require sheriffs, not the DNR, to issue marine exemption certificates. (2-14-08)

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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.