



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 626 (Substitute S-1 as reported)
Senate Bill 627 (as reported without amendment)
Sponsor: Senator Jim Marleau
Committee: Transportation

Date Completed: 10-17-18

RATIONALE

Several Michigan municipalities have adopted policies that restrict or prohibit seaplane operations on public waterways in Michigan. Some believe that allowing municipalities to create rules regarding seaplane use on waterways within their respective jurisdictions could lead to a patchwork of regulations that could confuse seaplane pilots, particularly because pilots usually fly under uniform standards promulgated by agencies, such as the Federal Aviation Administration. In order to create more consistent and accommodating seaplane rules across the State, it has been suggested that the Michigan Aeronautics Commission be authorized to determine statewide policy for seaplane takeoff, operation, and landings on State waters.

CONTENT

Senate Bills 626 (S-1) and 627 would amend the Aeronautics Code and Part 801 (Marine Safety) of the Natural Resources and Environmental Protection Act, respectively, to give the Michigan Aeronautics Commission authority over the operation of seaplanes on the waters of the State, with one exception, as described below.

Each bill would take effect 90 days after it was enacted.

The bills are tie-barred.

Senate Bill 626 (S-1)

The bill would authorize the Michigan Aeronautics Commission, by rule, to provide for the landing, operation, and take-off of seaplanes on and from the State's waters.

The bill also specifies that, to ensure safety and uniformity in the operation of aircraft on the waters of the State, the Commission's authority would be exclusive to the extent exercised by rule of the Commission, and any rule promulgated would control over any charter, ordinance, or other regulation of a political subdivision. However, a rule promulgated under the bill would not control over a charter provision, ordinance, or other regulation of a political subdivision that restricted the landing, docking, and takeoff of seaplanes from Michigan waters if the provision, ordinance, or regulation were adopted before January 1, 2016, and the Commission could not promulgate a rule to attempt to supersede such a provision, ordinance, or regulation.

Senate Bill 627

The bill specifies that Part 801 of the Natural Resources and Environmental Protection Act would not apply to the landing, operation, and take-off of seaplanes on and from waters subject to the jurisdiction of the State, to the extent that the activity was regulated by rules promulgated under the Aeronautics Code.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Currently, local governments may restrict seaplane use on waterways under their jurisdiction. This is inconsistent aviation policy, as pilots generally operate under a set of standards that do not vary to the degree that they could under Michigan law. If jurisdictions continue to regulate seaplanes differently across the State and do not inform the Michigan Aeronautics Commission, pilots will not know which bodies of water are accessible for landing. This patchwork of regulations could be confusing for pilots. The bills would create a uniform policy throughout Michigan that would ensure safe and consistent seaplane operation.

Supporting Argument

Seaplanes provide Michigan residents and visitors a unique way to travel to hard-to-reach areas, which creates tourism opportunities. For example, tourists may fly in a seaplane to destinations like Mackinac Island. Moreover, the State is home to several seaplane training schools, which draw students from across the United States. By continuing to allow municipalities to restrict or regulate seaplane use on waterways under their jurisdiction, the State could become an unattractive place for seaplane operators or prospective seaplane operators. The bills would alleviate this concern.

Opposing Argument

Courts have affirmed that local governments have the authority to control seaplane use in waterways under their jurisdiction. In 1993, a seaplane pilot sued the City of Lake Angelus after he was informed his landing on the lake violated city ordinances. In challenging the ordinances, the pilot contended that the ordinances prohibiting the operation of seaplanes on the surface of Lake Angelus were preempted by Federal law. The United States District Court for the Eastern Michigan District held that the City's policies were preempted by Federal law. The defendant appealed, and, in *Gustafson v. City of Lake Angelus*, 76 F3d 778 (1996), the Sixth Circuit reversed the lower court. In its opinion, the court noted that while Federal law preempts state law in a number of areas with respect to aviation, the Federal Aviation Act did not occupy the field of land and water use regulations in such a way as to preempt the City ordinances.

Following this case, the Seaplane Pilots Association requested that the Michigan Aeronautics Commission clarify that all bodies of water of appropriate size, including Lake Angelus, should be open to waterborne aircraft operations, regardless of municipal ordinances. In response, the Commission promulgated a rule prescribing a process by which a local ordinance could be overridden. The City of Lake Angelus, concerned that the administrative process prescribed under the rule would result in "expensive, lengthy, and burdensome multistage administrative and legal proceedings", filed an action for a declaration of judgment challenging the validity of the administrative rule. In 2004, the Michigan Court of Appeals held that the Commission's authority to approve the location of airports and landing fields did not empower it to authorize the landing and takeoff of seaplanes on a body of water in violation of a city ordinance.¹ Further, the court held that the Commission was not empowered to require a city to locate a flying field on a body of water located entirely within the city that it determined was not an appropriate landing field for seaplanes.²

¹ *City of Lake Angelus v. Michigan Aeronautics Commission*, 260 Mich App 371.

² The court did not address the city's arguments that the administrative rule was invalid under the Home Rule City Act, the City and Village Zoning Act, or any other statute, or several Michigan Supreme Court cases.

If enacted, the bills would diminish a municipality's ability to govern itself. Municipalities should be allowed to manage vehicular traffic in atypical locations, particularly when it concerns public safety.

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

Senate Bill 626 (S-1)

The bill would not have a direct impact on State or local government; however, granting rule-making power to the Aeronautics Commission regarding seaplane operations has the potential to minimally increase revenue, by fees, or expenditures, as administrative costs, for both the State and local units of government.

Senate Bill 627

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Michael Siracuse
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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.