

## TEMPORARY WATER REGULATIONS DURING HIGH WATER CONDITIONS

House Bills 5401 and 5402 as enacted  
Public Acts 70 and 71 of 2020  
Sponsor: Rep. Gary R. Eisen

House Bill 5463 as enacted  
Public Act 72 of 2020  
Sponsor: Rep. Jim Lilly

1st House Committee: Natural Resources and Outdoor Recreation  
2nd House Committee: Ways and Means  
Senate Committee: Natural Resources  
Complete to 4-8-20

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

Analysis available at  
<http://www.legislature.mi.gov>

**BRIEF SUMMARY:** House Bills 5401 and 5402 allow the Department of Natural Resources (DNR), county emergency management coordinator, or county sheriff to set temporary vessel speed limits during high water conditions and establish fines for violations. House Bill 5463 allows a local political subdivision to request a special rule or temporary ordinance for the use of vessels and other devices on a water body subject to its jurisdiction.

**FISCAL IMPACT:** The bills may increase costs for the DNR or local units of government. (See **Fiscal Information**, below, for a detailed discussion.)

### **THE APPARENT PROBLEM:**

Michigan is currently experiencing near-record water levels statewide, and projections are that these water levels will continue to rise in 2020. In the 1980s, the state experienced similar high water levels, which devastated waterfront properties. Local communities with homes, roads, and businesses on the water are currently experiencing the destructive effects of the high water levels as waves erode shorelines and crash over breakwalls and revetments. While nothing can stop waves caused by wind or storms, speed restrictions can keep vessels from creating wakes that, in high water conditions, can also damage public and private waterfront property. Unfortunately, local communities are currently unable to impose temporary speed restrictions to ensure that boats and other watercraft do not create potentially damaging wakes. Legislation has been offered to give local communities the option of establishing temporary regulations for boats and other vessels and devices during emergency high water conditions.

### **THE CONTENT OF THE BILLS:**

Under the Natural Resources and Environmental Protection Act (NREPA), the DNR may establish boating speed limits for Michigan waters. Any area of water that does not have a speed limit established by the DNR has a default speed limit of 55 miles per hour. However, a local unit of government that has jurisdiction over waters in Michigan can request that the DNR reduce the boating speed limits on those waters to 40 miles per hour or less.

**House Bill 5401** amends Part 801 (Marine Safety) of NREPA to change “motorboat” to “vessel” for purposes of these provisions. (As defined in the act, “vessel” means every watercraft used or capable of being used for transportation on water). The bill allows a county or municipality, to protect life and property during emergency high water conditions, to request the DNR or applicable county emergency management coordinator or sheriff to establish by order a temporary reduced maximum vessel speed limit for Michigan waters located in or adjacent to the county or municipality. A request or order cannot prohibit the use of any type of vessel. If an order is granted, the DNR, county emergency management coordinator, or sheriff must do all of the following:

- Specify a maximum fine for violating the temporary speed limit of up to \$100 for a first violation and up to \$500 for a second or subsequent violation.
- Notify the other authorities authorized to issue temporary speed limits under the act.
- Post the temporary speed limit, maximum fine, and a description of the affected waters on its website.
- Subject to section 80159 of the act,<sup>1</sup> place buoys sufficient to advise vessel operators of the temporary speed limit.

A temporary speed limit remains in effect for up to 14 days and can be reissued once per calendar year. A temporary speed limit can be reissued twice in a calendar year only if, before adopting the resolution requesting the second reissuance, the county or municipality submitted to the DNR an application and resolution for a temporary ordinance under section 80112a (added by HB 5463; see below) in lieu of the temporary speed limit described above.

A temporary speed limit described above can only be in effect during the period from September 1 to June 20. However, a temporary speed limit can be in effect from June 21 to June 30 if it is the first or second reissuance of a temporary speed limit and if, before adopting the resolution requesting the second reissuance, the county or municipality submitted to the DNR an application and resolution for a temporary ordinance under section 80112a in lieu of the temporary speed limit described above.

During a state of emergency or disaster declared by the governor, the governor may establish restricted wake zones if necessary and appropriate to address emergency or disaster conditions.

A person who *violates a speed limit established by the DNR* under the above provisions is responsible for a state civil infraction and subject to a civil fine as specified above. A person who *violates a temporary vessel speed limit established by an emergency management coordinator or sheriff* is responsible for a municipal civil infraction and subject to a civil fine as specified above.

MCL 324.80146

**House Bill 5402** amends the Revised Judicature Act to update its definitions of “civil infraction” and “municipal civil infraction” to include a violation of an *ordinance*, which is itself defined to include a temporary vessel speed limit established by a county emergency management coordinator or sheriff under NREPA, as described above.

---

<sup>1</sup> MCL 324.80159: <http://legislature.mi.gov/doc.aspx?mcl-324-80159>

Additionally, under the act, the plaintiff in a municipal civil infraction action is the political subdivision whose ordinance has been violated. The bill adds that, for an ordinance that is a temporary vessel speed limit established by the county emergency management coordinator or sheriff under NREPA, the county or municipality that requested the speed limit is considered the political subdivision whose ordinance was violated.

MCL 600.113, 600.8701, and 600.8703

**House Bill 5463** amends Part 801 of NREPA to allow a local political subdivision to request a special rule or temporary ordinance for the use of vessels and other devices on a water body subject to its jurisdiction.

Under the act, the DNR can allow a *political subdivision* to issue special local rules for the use of vessels, water skis, water sleds, aquaplanes, surfboards, or other similar devices. These rules apply to the local bodies of water year-round. The DNR conducts investigations and inquiries into whether these special rules are needed, considering several specified conditions and pieces of information.

*Political subdivision* means a Michigan county, city, village, township, or metropolitan authority or a combination of those entities.

Previously under the act, denial of a special rule could be appealed to the Michigan Waterways Commission, which would then make the final decision as to whether a rule was needed. Under the bill, appeals are instead made to the director of the DNR, who has the final determination as to whether a rule is needed.

The bill further allows a political subdivision to request a temporary ordinance for the use of vessels on a water body subject to its jurisdiction. A temporary ordinance includes a local watercraft control or administrative rule.

Under new section 80112a, a political subdivision may submit an application and a resolution for a temporary ordinance to the DNR. The application must contain all of the following information:

- The resolution and a copy of the public notice listing the adoption of the resolution on the agenda.
- The information required for the DNR to conduct investigations and inquiries into whether special rules are needed.
- The circumstances that justify a temporary ordinance rather than a special rule.
- A complete list of all local ordinances, regulations, and rules concerning the water body and how they are enforced.
- How the political subdivision plans to provide for and fund the public notice of the temporary ordinance, including buoy placement and signage, and how it will be enforced.
- Any other information the political subdivision believes is relevant or necessary.

The DNR must review the application within 10 days after receiving it. For a complete application, the DNR must conduct an investigation and inquiry within 10 days into the need for a temporary ordinance. For an application requiring additional information, the DNR must

request that information and conduct the investigation and inquiry within 10 days after receiving it.

Within 10 days after completing its investigation and inquiry, if the DNR determines that there is a need for a temporary ordinance, the DNR must propose a temporary ordinance affecting all boats or boat types on the water body. The DNR must submit the proposed temporary ordinance to the political subdivision. Notwithstanding any charter provision or other provision of law, the proposed temporary ordinance takes effect when both of the following requirements are met, which must occur within 30 days after the DNR submits the proposed temporary ordinance to the political subdivision:

- The governing body of the political subdivision adopts the ordinance at a public meeting.
- The political subdivision notifies the DNR of the adoption.

If the political subdivision fails to notify the DNR of its adoption of the proposed temporary ordinance, the proposed temporary ordinance is considered disapproved and no further action can be taken.

If the DNR determines that there is not a need for a temporary ordinance, the DNR must notify the political subdivision and provide the specific reasons for this determination. A denial of a temporary ordinance may be appealed by the political subdivision to the director of the DNR, who makes the final agency decision on the need for a temporary ordinance.

A temporary ordinance granted under the bill expires after six months and can be extended or renewed in consecutive years only if the political subdivision is going through the process of adopting a proposed special rule under sections 80110 and 80111<sup>2</sup> of the act, and the public hearing required under section 80110(4) has occurred. However, if the DNR determines that a special rule is not needed under section 80110(5), and the director denies the appeal under 80110(6), the political subdivision cannot extend or renew a temporary ordinance in consecutive years.

MCL 324.80104, 324.80110, and 324.80112a

The bills took effect April 2, 2020.

### ***FISCAL INFORMATION:***

House Bill 5401 may increase law enforcement costs for the DNR by providing for the implementation and enforcement of temporary motorboat speed limits during high water conditions; however, these limits would not be mandatory under the bill. The bill allows for temporary speed limit enforcement “on water of this state;” the department’s conservation officers are responsible for enforcing laws and regulations related to outdoor recreation activities in Michigan. The extent of this potential cost increase is unclear; departmental law enforcement is already monitoring state waters and enforcing watercraft regulations. There are 235 conservation officers funded by a gross appropriation of \$44.8 million in FY 2019-20. The department may also incur additional costs related to notification of speed limits in the form of

---

<sup>2</sup> MCL 324.80111: <http://legislature.mi.gov/doc.aspx?mcl-324-80111>

signs or buoys publicizing temporary speed limits. The bill is unlikely to generate revenue for the department.

Local governments may realize additional costs similar to the aforementioned for DNR. Local law enforcement agencies vary in the extent to which they patrol waters adjacent to their respective jurisdictions and the bill allows these local agencies to be assisted by the department.

House Bill 5402 would have no fiscal impact on state or local government.

House Bill 5463 is likely to increase administrative costs for the DNR and local units of government if a temporary ordinance is formally considered as provided under the bill. Both state and local government officials may incur these additional costs in the course of following the application and notification procedures outlined in HB 5463. The extent of a potential cost increase is unclear and likely to vary by application. The bill is unlikely to affect revenues and does not provide additional funding to state or local governments to support additional costs. The department's FY 2019-20 funding is \$438.7 Gross (\$47.0 million GF/GP) and 2,340.1 FTE positions.

***ARGUMENTS:***

***For:***

Supporters of the bills argued that temporary reduced speed restrictions on vessels are needed to protect local property interests. During high water conditions, such as Michigan's current near-record levels, wakes created from vessels in the water can damage docks, piers, homes, yards, parks, roads, businesses, and anything else near the waterfront. Restoration and rebuilding efforts can be costly, especially when added to preventative measures that already take place. Supporters argued that temporary speed restrictions are themselves a worthwhile preventative measure. Temporary speed restrictions are also better suited to Michigan's current high water predicament, as the water levels could recede next year or the year after. Water levels can and do fluctuate, both over time and from one community to the next, so a temporary speed restriction that local communities can enforce is a fitting response to fluctuating water levels.

***Against:***

Critics of the bills argued that a temporary reduced speed restriction is not needed, even with the current near-record high water levels, since current law allows for graduated speed restrictions that can take effect during high water conditions. Even though the speed restrictions are permanent, the graduated levels would only be enforced when the water levels reached a critical level, a solution that would also take into account Michigan's ever-fluctuating water levels.

Legislative Analyst: Emily S. Smith  
Fiscal Analysts: Austin Scott  
Robin Risko

---

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.