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BILL ANALYSIS

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Senate Bill 103 through 105 (as introduced 3-1-23)

(Senate-passed version)

Sponsor: Senator John Cherry (S.B. 103)

Senator Kevin Daley (S.B. 104)

Senator Sean McCann (S.B. 105)

Committee: Natural Resources and Agriculture

Date Completed: 5-15-23

INTRODUCTION

Taken together, the bills would require an individual to be licensed as a sport fishing or commercial hunting guide in the State if the individual assisted another individual in the pursuit of fish or game for a fee or other economic benefit. The bills would prescribe licensure requirements, fees, and penalties, and reporting requirements of guides and the Department of Natural Resources (DNR). In addition, the bills would specify that the Natural Resources Commission would be the exclusive authority to regulate the use of sport fishing or commercial hunting guides in the taking of fish and game.

The bills are tie-barred, and each bill would take effect 90 days after its enactment.

PREVIOUS LEGISLATION

(Please note: This section does not provide a comprehensive account of all previous legislative efforts on the relevant subject matter.)

Senate Bills 103, 104, and 105 are reintroductions of House Bills 5358, 5359, and 5360, respectively, of the 2021-2022 Legislative Session. The House Bills were reported out of the House Committee of Natural Resources and Outdoor Recreation but received no further action.

Proposed MCL 324.7814a & 324.7814b (S.B. 103)

Proposed MCL 324.43528c & 324.43528d (S.B. 104)

MCL 324.401113a (S.B. 105)

BRIEF FISCAL IMPACT

The bills would have an indeterminate, but positive fiscal impact on a number of State departments as well as local units of government. The extent of this impact would depend upon the number of licenses issued and the number of civil fines imposed as a result of the bills.

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CONTENT

Senate Bills 103 and 104 would amend Parts 487 (Sport Fishing) and 435 (Hunting and Fishing Licensing), respectively, of the Natural Resources and Environmental Protection Act (NREPA) to require an individual to obtain a license from the DNR to act as a sport fishing or commercial hunting guide, beginning March 1, 2024. Specifically, the bills would do the following:

- Prescribe eligibility criteria for a guide license, including first aid certification and a record clean of NREPA violations and felony convictions.
- Prohibit a person from acting as a sport fishing or commercial hunting guide on commercial forestland.
- Authorize the DNR to revoke a guide license for specified reasons.
- Require a guide to file regular reports with the DNR and prescribe the penalties for failing to file the report.
- Prescribe a civil fine for acting as a guide without a license and require the money to be deposited in the Game and Fish Protection Account.
- Require the DNR to post certain license information to its website.
- Prescribe a civil fine for providing false information to the DNR.

Senate Bill 105 would amend Part 401 (Wildlife Conservation) of NREPA to include regulating sport fishing and the use of commercial guides in taking game, in the Commission's exclusive authority to regulate the taking of game and fish in Michigan.

Senate Bills 103 and 104 are described in further detail below.

Senate Bill 103

Beginning March 1, 2024, the bill would prohibit a person from acting as a sport fishing guide on an inland lake or stream in Michigan unless he or she possessed the following:

- A sport fishing guide license issued by the DNR.
- A valid fishing license.

("Inland lake or stream" means an artificial or natural pond or impoundment that is a water of the United States or a natural or artificial lake, pond, or impoundment; a river, stream, or creek which may or may not be serving as a drain; or any other body of water that has definite banks, a bed, and visible evidence of a continued flow or continued occurrence of water, including the St. Mary's, St. Clair, and Detroit Rivers. The term does not include the Great Lakes, Lake St. Clair, or a lake or pond that has a service area of less than five acres.)

"Sport fishing guide" would mean an individual who, for a fee or other consideration, assists another individual in pursuing, capturing, catching, killing, taking, or attempting to take fish. A sport fishing guide would not include the following:

- An employee or member of an organization conducting a not-for-profit activity to recruit, retain, or promote fishing, while assisting another individual in taking fish during that activity.
- The owner of private land while assisting another individual in pursuing, capturing, catching, killing, taking, or attempting to take fish on that private land.
- An individual who had not been convicted of certain crimes within the last three years and was working under direct supervision of a licensed sport fishing guide.

“Consideration of value” would mean an economic benefit, inducement, right, or profit, including monetary payment accruing to an individual person but would not include a voluntary sharing of the actual expenses of the guiding activity by monetary contribution or donation of fuel, food, beverage, or other supplies.

“Direct supervision” would mean that visual and vocal contact is constantly maintained between that individual and the licensing sport fishing guide.

The bill would prohibit a person from acting as a sport fishing guide on commercial forestland.

Sport Fishing Guide Licensure

To obtain a license to act as a sport fishing guide, an individual would have to submit to the DNR an application fee and application. Under the bill, the application for a sport fishing guide license to be on a form provided by the DNR.

The DNR would have to grant a sport fishing guide license to an individual if it determined that he or she met all the following:

- Held a valid certification in first aid and cardiopulmonary resuscitation issued by the American Red Cross, the American Heart Association, or a comparable organization approved by the DNR, and that individual could provide a copy of the certification to the DNR upon request.
- Had a valid, lawfully obtained Michigan driver license, official State personal identification card, or sportcard (which the DNR must issue to a license or license applicant who does not possess a Michigan driver license or other identification).
- Was eligible to purchase a license for the fish species for which the individual was acting as a sport fishing guide.
- Unless the individual has indicated in writing to the DNR that sport fishing guiding activities would occur without the use of a watercraft, either a valid Michigan pilot license or a valid captain’s license issued by the United States Coast Guard.

Additionally, the individual could not have been convicted of any of the following within the past three years:

- A violation of Section 40112, which prohibits an individual from obstructing or interfering in the lawful taking of animals or fish.
- A violation of Section 40118 (2-6) or (13-17), which prohibits the taking of certain game, and certain methods of taking that game, under Part 401 (Wildlife Conservation) and a violation of an order issued under that Part.
- A violation of Section 41105, which prohibits killing any fish or game contrary to an order under Part 401.
- A violation of Section 44524, which prescribes the penalty for a violation under Part 445 (Charter and Livery Boat Safety).
- A violation of Section 48738 (2) or (3), which prohibits an individual from taking fish in an illegal manner or possessing sturgeon in violation of Part 487 (Aquatic Species).
- A violation of Section 48739 (1-3), which prohibits snagging a fish in violation of Part 487.
- Any felony.
- A violation of a law of a participating state that corresponded to the any violation listed above.

“Participating state” would mean a state that is a member of the Interstate Wildlife Violator Compact. (The Interstate Wildlife Violator Compact established a process for non-residents of participating states who violate wildlife laws to be treated as a resident in the state where the

violation was committed including reciprocal recognition of license privilege suspension by member states.)

A sport fishing guide license would be valid for three years after the date it was issued. Additionally, with a sport fishing license guide, the DNR would have to allow an individual to obtain a public boating access entry pass for each year the guide license was valid. The DNR could revoke a license after notice and opportunity for a hearing pursuant to the Administrative Procedures Act for any of the following reasons:

- The DNR determined that the individual was not eligible to hold a sport fishing guide license.
- The individual provided false information under the requirements of the bill.
- The individual failed to file an annual report (described below) after a fourth violation.

Sport Fishing Guide License Fees

Except as otherwise provided, the DNR would have to charge a resident applying for a sport fishing guide license an application fee of \$150. A nonresident would be subject to an application fee of \$300. The operator of a charter boat licensed under Part 445 would be exempt from the application fee. The money collected from application fees would have to be deposited into the Game and Fish Protection Account.

If an individual elected to obtain a public boating access pass with a sport fishing guide license the DNR would charge the individual a \$300 fee. The money collected for a public boating access pass would be deposited into the Waterways Account.

Reporting to DNR

The bill would require a sport fishing guide to file monthly reports to the DNR, in a format determined by the DNR. The reports would have to contain information related to all the following:

- The species of fish, for which the individual acted as a guide.
- The number of clients the guide had for each fishing trip and the number of hours fished during each trip.
- The number of fish caught and released, and the number of fish harvested by the guide's clients.
- The bodies of water where the individual acted as guide.
- Any additional information the DNR required regarding the biological characteristics of the fish caught and released or harvested.

If an individual did not act as a guide during a certain month, he or she would have to report that to the DNR.

Information submitted in a report would be confidential and would not be subject to disclosure under the Freedom of Information Act.

If an individual failed to file a monthly report and the report remained unfiled for more than 90 days after it was due, the individual would be subject to the following:

- For a first violation, a \$100 civil fine.
- For a second violation, a \$200 civil fine.
- For a third violation, a \$300 civil fine.

- For a fourth violation, after notice and an opportunity for a hearing, a revocation of the individuals sport fishing guide license.

Reporting by the DNR

Under the bill, the DNR would have to annually post the following on its website:

- The number of applicants who submitted a sport fishing guide license in the previous year.
- The number of sport fishing guide licenses issued in the previous year.
- A list of individuals who held valid sport fishing licenses.

Sport Fishing Guide Equipment

A sport fishing guide would have to carry his or her sport fishing guide license and exhibit the license upon demand of a conservation officer, peace officer, tribal conservation officer, park and recreation officer, or the owner or occupant of any land under Part 741 (State Parks Systems), Part 781 (Michigan State Waterways Commission) or the land where the individual was acting as a guide, as applicable.

An individual could not act as a sport fishing guide unless that individual, when acting as a guide, carried a basic first aid kit that included at least the following:

- Tourniquet, chest seals, and compression gauze.
- CPR mask.
- Trauma sheers.
- Sterile eyewash.
- Mylar emergency blanket.
- Bandages.
- Moleskin.
- Tweezers.

Penalties

An individual who acted as a sport fishing guide without a valid license or acted as a sport fishing guide on commercial forestland would be subject to a civil fine of up to \$500, or, for a second or subsequent violation, the a civil fine of up to \$1,000. A civil fine would have to be deposited in the Game and Fish Protection Account.

An individual who provided false information to the DNR would be subject to a civil fine of up to \$500 and the cost of prosecution.

Senate Bill 104

Beginning March 1, 2024, the bill would prohibit a person from acting as a commercial hunting guide in Michigan, unless he or she possessed the following:

- A commercial guide license issued by the DNR.
- A valid base license (which authorizes the licensee to hunt for small game, except for animals or birds that require a special license).

"Commercial hunting guide" would mean an individual who, for a fee or other consideration of value, assists another individual in hunting game. "Commercial hunting guide" would not include the following:

- The owner of private land while assisting another individual in pursuing, capturing, killing, taking, or attempting to take game on that private land.
- The owner, employee, or member of a game bird hunting preserve licensed under Part 417 (Game Bird Hunting Preserves), or his or her designee, while assisting another person in pursuing, capturing, catching, killing, taking, or attempting to take game birds authorized to be hunted on that preserve.
- The owner or employee of a privately owned cervid ranch while assisting another person in pursuing, capturing, catching, killing, taking, or attempting to take privately owned game on that ranch.
- An individual, business, agency, or nonprofit organization issued a license from the DNR to provide damage or nuisance animal control services, while providing those services.
- An employee or member of an organization conducting an event to recruit, retain, or promote hunting for children or people with disabilities, while assisting another individual in hunting game during that event.
- An individual who had not been convicted of certain crimes within the last three years and was working under direct supervision of a licensed sport fishing guide.
- An individual who provided assistance when a hunting client was not present.
- An individual who was compensated for assisting an individual with a disability or physical limitation.

The bill would prohibit a person from acting as a sport fishing guide on commercial forestland.

Commercial Hunting Guide Licensure

To obtain a license to act as a commercial hunting guide, an individual would have to submit to the DNR the application fee prescribed below and an application. Under the bill, the application for a commercial hunting guide license to be on a form provided by the DNR.

The DNR could only grant a commercial hunting guide license to an individual if it determined that he or she met all the following:

- Held a valid certification in first aid and cardiopulmonary resuscitation issued by the American Red Cross, the American Heart Association, or a comparable organization approved by the DNR, and that individual could provide a copy of the certification to the DNR upon request.
- Had a valid, lawfully obtained Michigan driver license, official State personal identification card, or sportcard (which the DNR must issue to a license or license applicant who does not possess a Michigan driver license or other identification).
- Was eligible to purchase a license for the game species for which the individual was acting as a commercial hunting guide; however, this would not apply to an individual who was ineligible solely because he or she had previously been issued a hunting license for that species.

Additionally, the individual could not have been convicted of any of the violations described above in the summary for Senate Bill 103.

A commercial hunting guide license would be valid for three years after the date it was issued. The DNR could revoke a license after notice and opportunity for a hearing pursuant to the Administrative Procedures Act for any of the following reasons:

- The DNR determined that the individual was not eligible to hold a commercial hunting guide license.
- The individual provided false information under the requirements of the bill.

- The individual failed to file an annual report (described below) and the report was more than 90 days overdue.

Commercial Hunting Guide License Fees

Except as otherwise provided, the DNR would have to charge a resident applying for a sport fishing guide license an application fee of \$150 and a nonresident would be subject to an application fee of \$300. The operator of a charter boat licensed under Part 445 would be exempt from the application fee. The money collected from application fees would have to be deposited into the Game and Fish Protection Account.

Reporting to DNR

The bill would require a commercial hunting guide to file monthly reports to the DNR, in a format determined by the Department. The reports would have to contain information related to the following:

- The counties in which the individual acted as a guide.
- The species of game for which the individual acted as a guide.
- The number of clients the guide had during the year.
- The number of game animals harvested by the guide's clients.
- Any additional information the DNR required regarding the biological characteristics of the game animals harvested.

Information submitted in a report would be confidential and would not be subject to disclosure under the Freedom of Information Act.

Reporting by the DNR

Under the bill, the DNR would have to annually post the following on its website:

- The number of applicants who submitted a commercial hunting guide license in the previous year.
- The number of commercial hunting guide licenses issued in the previous year.
- A list of individuals who held valid commercial hunting guide licenses.

Commercial Hunting Guide Equipment

A commercial hunting guide would have to carry his or her commercial hunting guide license and exhibit the license upon demand of a conservation officer, peace officer, tribal conservation officer, park and recreation officer, or the owner or occupant of any land under Part 741, Part 781, or the land where the individual was acting as a guide, as applicable.

An individual could not act as a commercial hunting guide unless that individual, when acting as a guide, carried a basic first aid kit that included at least the following:

- Tourniquet, chest seals, and compression gauze.
- CPR mask.
- Trauma sheers.
- Sterile eyewash.
- Mylar emergency blanket.
- Bandages.
- Moleskin.
- Tweezers.

Penalties

An individual who acted as a commercial hunting guide without a valid license or acted as a commercial hunting guide on commercial forestland would be subject to a civil fine of up to \$500, or, for a second or subsequent violation, to a civil fine of up to \$1,000. A civil fine would have to be deposited in the Game and Fish Protection Account.

An individual who provided false information to the DNR would be subject to a civil fine of up to \$500.

FISCAL IMPACT

The bills could have a positive fiscal impact on the State and local units of government. They would impose civil fines ranging from \$100 to \$1,000, depending on the violation. Revenue collected from civil fines is used to support local libraries. Additionally, \$10 of the civil fine would be deposited into the state Justice System Fund, which supports justice-related activities across State government in the Departments of Corrections, Health and Human Services, State Police, and Treasury. It also supports justice-related issues in the Legislative Retirement System and the Judiciary. The amount of revenue to the State or for local libraries is indeterminate and dependent on the actual number of violations.

The bills also would have an indeterminate positive impact on the DNR dependent upon the number of sport fishing guide licenses that were issued and the additional administrative costs associated with implementing the bill.

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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.