



Senate Fiscal Agency
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House Bill 5563 (Substitute H-2 as passed by the House)
Sponsor: Representative Andrea LaFontaine
House Committee: Natural Resources
Senate Committee: Natural Resources, Environment and Great Lakes

Date Completed: 11-6-14

CONTENT

The bill would amend Parts 89 (Littering), 801 (Marine Safety), 811 (Off-Road Recreation Vehicles), and 821 (Snowmobiles) of the Natural Resources and Environmental Protection Act to do the following:

- **Prohibit a person from abandoning a vessel, off-road recreation vehicle (ORV), or snowmobile in Michigan.**
- **Include an abandoned vessel, ORV, or snowmobile in the definition of "litter".**
- **Provide that a person who violated the abandonment prohibition and failed to redeem the vessel, ORV, or snowmobile before it was disposed of would be responsible for a State civil infraction and subject to the penalties that apply to littering violations involving abandoned vehicles.**
- **Prescribe procedures for designating a vessel, ORV, or snowmobile as abandoned and taking it into custody.**
- **Prescribe procedures for the removal of an unauthorized vessel, ORV, or snowmobile from private property.**
- **Prescribe procedures by which the owner could contest the designation or removal and redeem the vessel, ORV, or snowmobile.**
- **Create the "Abandoned Vessel, ORV, and Snowmobile Fund".**
- **Prescribe a \$40 redemption fee and require \$25 of it to be deposited in the Fund.**
- **Establish procedures for the sale or disposition of an abandoned vessel, ORV, or snowmobile that was not redeemed.**

The bill would take effect 91 days after it was enacted.

Abandonment of a Vessel

Prohibition against Abandoning a Vessel. The bill would prohibit a person from abandoning a vessel in Michigan. It would be presumed that the last titled owner or, if there were no titled owner, the last registered owner of the vessel was responsible for abandoning it, unless the person provided a record of the vessel's transfer to another person. A person who violated the prohibition and failed to redeem the vessel before it was disposed of (as described below) would be responsible for a State civil infraction as provided in the Act for a littering violation (as described below).

The bill would define "abandoned vessel" as any of the following:

- A vessel that is on private property without the property owner's consent.
- A vessel that has remained in public property that is not a State trunk line highway for at least 48 hours without the permission of the governmental unit with custody of the property.
- A vessel on a motor vehicle or trailer, if the vehicle or trailer displays a valid registration plate, has remained parked on a State trunk line highway for at least 18 hours, and is not under the immediate custody of the owner or the agent of the owner of the vessel, motor vehicle, or trailer.
- A vessel that is stationary on a State trunk line highway, is not on a motor vehicle or trailer as described above, and is not under the immediate custody of the owner or owner's agent.

Taking Abandoned Vessel into Custody. If a vessel qualified as abandoned due to remaining in public property for at least 48 hours without the permission of the applicable governmental unit, or remaining parked on a State trunk line highway on a vehicle or trailer for at least 18 hours, a policy agency having jurisdiction over the vessel or the agency's designee would have to determine whether the vessel had been reported stolen. If it had not, the policy agency could have a towing agency take the vessel into custody.

A police agency that had a vessel taken into custody or that received notice of a vessel taken into custody (as described below) would have to recheck or check if the vessel had been reported stolen. If the vessel had not been reported stolen, within 24 hours after it was taken into custody, the police agency would have to enter it in the Law Enforcement Information Network (LIEN) as an abandoned vessel and notify the Secretary of State (SOS) through the LIEN that the vessel had been taken into custody as abandoned.

The notice to the SOS would have to contain all of the following information:

- The year, make, and vessel identification number, if available.
- The address or approximate location from which the vessel was taken into custody.
- The date on which the vessel was taken into custody.
- The name and address of the police agency.
- The name and business address of the custodian of the vessel.
- The name of the court that had jurisdiction over the case.

Within seven days after receiving the notice, the SOS would have to send to the last titled owner and secured party, as shown on the SOS's records, or, if there were no titled owner, to the last registered owner, by first-class mail or personal service, notice that the vessel was considered abandoned. The notification would have to contain all of the following information:

- The year, make, and vessel identification number, if available.
- The address or approximate location from which the vessel was taken into custody.
- The date on which the vessel was taken into custody.
- The name and address of the police agency that had the vessel taken into custody or received notice of a vessel taken into custody.
- The name and business address of the custodian of the vessel.
- The procedure to contest the fact that the vessel was considered abandoned or the reasonableness of the towing and daily storage fees.
- A form petition that the owner could file in person or by mail with the specified court to request a hearing on the validity of the grounds for taking custody of the vessel.
- A warning that if the vessel were not redeemed or no hearing were requested within 20 days after the notice date, the vessel could be sold and all rights of the owner and secured party to it or to the proceeds of the sale terminated.

The SOS would have to enter the information included in the notice on a website maintained by the SOS for public use in locating vessels that were taken into custody as abandoned.

The SOS would have to maintain the data on the website for one year or until the vessel was disposed of under Part 801, whichever occurred first.

To contest whether the vessel was abandoned or the reasonableness of the towing and daily storage fees (unless the fees were established by contract with the local governmental unit or police agency and complied with requirements prescribed in the bill), the owner would have to request a hearing by filing a petition with the specified court within 20 days after the date of the notice. If the owner requested a hearing, the matter would have to be resolved after a hearing conducted as prescribed in the bill. An owner who requested a hearing could redeem the vessel by posting a towing and storage bond with or paying a fee to the court. The bond or fee would have to be equal to \$40 plus the accrued towing and storage fees.

If the owner did not request a hearing, he or she could redeem the vessel by paying a fee of \$40 and the accrued towing and storage fees to the custodian of the vessel. The custodian would have to forward \$25 of the fee to the SOS within 30 days after receiving it. The SOS would have to deposit the money into the Abandoned Vessel, ORV, and Snowmobile Fund.

If a vessel were on private property without the consent of the property owner, the property owner could have the vessel taken into custody as an abandoned vessel by contacting a local towing agency (a local towing agency whose storage lot was located within 15 miles from the border of the local unit of government having jurisdiction over the abandoned vessel).

Before removing the vessel from private property, the towing agency would have to provide reasonable notice by telephone or otherwise to a police agency having jurisdiction over the vessel that the vessel was being removed. The police agency would have to determine if the vessel had been reported stolen. If it had not, the police agency would have to enter it in the LEIN and notify the SOS. The provisions related to SOS procedures, a hearing to contest the designation of abandoned or the reasonableness of fees, and redemption of a vessel, would apply to a vessel removed from private property.

At least 20 days after a determination in a hearing that a vessel was abandoned or, if a hearing were not requested, at least 20 days after the date of the notice, the following would have to offer the vessel for sale at a public sale as prescribed in the bill:

- The police agency, if the vessel were found on public property.
- The custodian of the vessel, if it were found on private property.

If the ownership of a vessel that was considered abandoned could not be determined either because of the condition of the vessel identification numbers or because a check with SOS records did not reveal ownership, the police agency could sell the vessel at a public sale at least 30 days after public notice of the sale was published.

Unregistered Abandoned Scrap Vessel. Under the bill, a police agency or its designee, or, if the vessel were on private property, the property owner, could have an unregistered abandoned scrap vessel taken into custody, in which case the police agency would have to determine if the vessel had been reported stolen. The bill would define "unregistered abandoned scrap vessel" as a vessel that meets both of the following requirements:

- Is apparently inoperable or damaged, to the extent that the cost of repairing it to make it operational and safe would exceed its fair market value.
- Is not currently registered or titled in Michigan and does not display a current year registration or current year registration decal from another state.

If the vessel had not been reported stolen, the police agency would have to do all of the following:

- Take two photographs of the vessel.
- Within 24 hours after taking the vessel into custody, enter it in the LEIN as an abandoned vessel.
- Make a report to substantiate the vessel as an unregistered abandoned scrap vessel.

The report would have to include the following information:

- The year, make, and vessel identification number, if available, and a brief description of the vessel.
- The date and location of abandonment.
- A detailed listing of the damage or missing equipment.
- The reporting officer's name and title.
- The location where the vessel was being held.

The SOS would have to give the police agency a release form that included a certification that the police agency had complied with the photograph and reporting requirements.

If the police agency determined that the vessel was not reported stolen, within 24 hours (excluding Saturdays, Sundays, and legal holidays) after taking it into custody, the police agency or its designee would have to complete a release form and certification and release the vessel to the towing service.

The towing service would have to complete the certificate of scrapping on the back of the release form and transfer the form to and dispose of the vessel with a scrap metal processor or landfill operator. The processor or operator would have to transfer the form to the SOS.

The SOS would have to retain the records relating to an abandoned scrap vessel for at least two years. The police agency or its designee would have to retain the required photographs for at least two years. After the certificate of scrapping was issued, the SOS could not reissue a certificate of title for the vessel.

Registered Abandoned Scrap Vessel. A police agency or its designee or, if the vessel were on private property, the property owner could have a registered abandoned scrap vessel taken into custody, in which case the police agency would have to determine if the vessel had been reported stolen. "Registered abandoned scrap vessel" would mean a vessel that meets all of the following requirements:

- Is at least seven years old.
- Is apparently inoperable or damaged, to the extent that the cost of repairing it to make it operational and safe would exceed its fair market value.
- Is currently registered or titled in Michigan or displays a current year registration or decal from another state.

If the vessel had not been reported stolen, the police agency would have to follow the same procedures as prescribed for an unregistered abandoned scrap vehicle. Within seven days after the vessel was taken into custody, the SOS would have to send to the last titled or registered owner and secured party, as shown by SOS records, by first-class mail or personal service, notice that the vessel was considered abandoned. The SOS would have to furnish the form for the notice, which would have to contain essentially the same information as required for an abandoned nonscrap vessel that was taken into custody.

Also, provisions for contesting designation of the registered vessel as an abandoned scrap vessel or the reasonableness of towing and storage fees, and redeeming the vessel by posting a bond or paying a fee, would be essentially the same as provided for an abandoned vessel that was not scrap.

If the owner did not redeem the vessel or request a hearing within 20 days after the date of the notice, the secured party could redeem it by paying the \$40 fee plus the accrued charges to the custodian. Within 30 days after receiving the fee, the custodian would have to forward \$25 to the SOS, who would have to deposit it into the Abandoned Vessel, ORV, and Snowmobile Fund.

At least 20 days after a determination that a vessel was abandoned in a hearing or, if a hearing were not requested, at least 20 days after the date of the notice, the police agency or its designee, scrap metal processor or landfill operator, and SOS would have to follow the procedures established by the bill for the disposition of an abandoned vessel.

Removal of Vessel. After determining that a vessel had not been reported stolen, a police agency or a governmental agency designated by the police agency could provide for the immediate removal of a vessel from public or private property to a place of safekeeping at the expense of the vessel's last titled owner or, if there were no titled owner, the last registered owner in any of the following circumstances:

- The vessel was in such a condition that its operation would constitute an immediate hazard to the public.
- The vessel was parked or standing upon a highway, road, or street in a manner that created an immediate public hazard or an obstruction of traffic.
- The vessel was parked in a posted tow-away zone.
- There was reasonable cause to believe that the vessel or any part of it was stolen.
- The vessel had to be seized to preserve evidence of a crime or because there was reasonable cause to believe that the vessel was used in the commission of a crime.
- Removal was necessary in the interest of public safety because of fire, flood, storm, snow, natural or man-made disaster, or other emergency.
- The vessel was interfering with the property owner's or owner's agent's use of private property or was parked in a manner that impeded the movement of another vessel or vehicle.
- The vessel was stopped, standing, or parked in a space designated as parking for people with disabilities and was not permitted by law to be stopped, standing, or parked in such a space.
- The vessel was located in a clearly identified access aisle or access lane immediately adjacent to a space designated as parking for people with disabilities.
- The vessel was interfering with the use of a ramp or curb-cut by people with disabilities.
- The vessel had been involved in a crash and could not be safely operated to remove it from the scene of the crash.
- The vessel was submerged in, partially submerged in, or floating unanchored or untethered upon a public waterway.

If the owner or other person who was legally entitled to possess a vessel to be towed or removed arrived at its location before the actual towing or removal occurred, the vessel would have to be disconnected from the tow truck or other towing vehicle, and the owner or other person could take possession of it and remove it without interference upon the payment of the reasonable service fee to the towing agency, for which the towing agency would have to provide a receipt. (This provision would not apply if the vessel were ordered to be towed by a police agency or designated governmental agency under the following circumstances:

- The vessel was in such a condition that its operation would constitute an immediate hazard to the public.
- There was reasonable cause to believe that the vessel or any part of it was stolen.
- The vessel had to be seized to preserve evidence of a crime or because there was reasonable cause to believe that the vessel was used in the commission of a crime.
- The vessel had been involved in a crash and could not be safely operated to remove it from the scene of the crash.)

Before authorizing the removal, a police agency would have to check to determine if the vessel had been reported stolen. The police agency would have to enter the vessel in the LEIN as abandoned at least seven days after authorizing the removal. The procedures set forth in with regard to abandoned vessels would apply. These provisions would not apply in the case of a vessel removed under any of the following circumstances:

- There was reasonable cause to believe that the vessel or any part of it was stolen.
- The vessel had to be seized to preserve evidence of a crime or because there was reasonable cause to believe that the vessel was used in the commission of a crime.
- The vessel had been involved in a crash and could not be safely operated to remove it from the scene of the crash.

Under any of those circumstances, the towing agency or custodian could not release a removed vessel to the owner unless the policy agency that authorized the removal authorized the release. Between 20 and 30 days after the vessel had been released by the police agency, the towing agency or custodian would have to notify the police agency to enter it in the LEIN as abandoned and the police agency would have to follow the procedures set forth in the bill if the impounded vessel had not been redeemed.

Courts. The district court or a municipal court would have jurisdiction to determine if a police agency, towing agency or custodian, or private property owner had acted properly in reporting or processing an abandoned vessel, an abandoned scrap vessel, or a removed vessel.

The court specified in the notice to a titled or registered owner would be the court that had territorial jurisdiction at the location from which the vessel was removed or where it was abandoned. Venue in the district court would be governed by the Revised Judicature Act.

If the owner failed to pay the accrued towing and storage fees, the towing and storage bond posted with the court to secure redemption of the vessel would have to be used to pay the fees.

The remedies under the bill would be the exclusive remedies for the disposition of abandoned vessels.

Hearing. When a petition to contest the designation of a vessel as abandoned or the reasonableness of fees was filed, the court would have to do both of the following:

- Schedule a hearing within 30 days for the purpose of determining whether the police agency, towing agency or custodian, or private property owner acted in accordance with Part 801.
- Notify the owner, towing agency or custodian, police agency, and, if the vessel were removed from private property, the property owner of the time and place of the hearing.

At the hearing, the police agency, towing agency or custodian, and, if applicable, the private property owner would have the burden of showing by a preponderance of the evidence that they had complied with the requirements of the Act in reporting or processing the abandoned or removed vessel.

After the hearing, the court would have to make a decision that included at least one of the following:

- A finding that the police agency complied with the procedures established for the processing of an abandoned or removed vessel, and an order providing a period of 20 days after the decision for the owner to redeem the vessel.
- A finding that the police agency did not comply with the applicable procedures for the processing of an abandoned vessel or removed vessel and directing that the vessel be

returned to the owner immediately, that the police agency was responsible for the accrued towing and storage charges, and that any fee or bond posted by the owner be returned.

- A finding that the towing and daily storage fees were unreasonable and directing the towing agency or custodian of the vehicle to give the last titled owner or, if there were no titled owner, the last registered owner an appropriate reduction or refund.
- A finding that the owner of the real property complied with the bill's requirements to post a towing or removal notice, if applicable.
- A finding that the owner of the real property did not comply with those requirements, if applicable, and an order requiring the property owner to reimburse the last titled owner of the vessel for the accrued towing and storage charges.
- A finding that the towing agency did not comply with the procedures established for the proper removal and reporting of a removed vessel and an order directing that the vessel be released to the owner immediately, that the towing agency was responsible for the accrued towing and storage fees, and that any fee or bond posted by the owner be returned.
- A finding that the towing agency did comply with the required procedures.

In the case of a finding that the police agency complied with the relevant procedures, if the owner did not redeem the vessel within the 20-day time period, the police agency would have to dispose of it as prescribed in the bill. Within 30 days after the court's decision, the court would have to forward \$25 of the \$40 redemption fee collected from the owner to the SOS. The towing and storage fees and \$15 of the redemption fee would have to be forwarded to the towing agency.

Public Sale of Abandoned/Removed Vessel. A public sale for a vessel that was determined to be abandoned or removed, as well as its contents, would have to be under the control of the police agency or, if a vessel found on private property were being sold, the custodian of the vessel. A police agency, however, could designate the custodian of the vessel or a third party to conduct the auction.

The sale would have to be open to the public and consist of an open auction bidding or bidding by sealed bids.

Except as otherwise provided, the sale would have to be held at least five days after public notice of it was published. The notice would have to be published at least once in a newspaper having a general circulation within the county in which the vessel was abandoned or on a publicly accessible website maintained by the SOS. The notice would have to give a description of the vessel and state the time, date, and location of the sale.

The money received from the sale would have to be applied in the following order of priority:

- Accrued towing and storage charges.
- Expenses incurred by the police agency or the custodian for disposition of the vessel.
- Payment of the \$40 in fees.

If money received from the public sale did not satisfy the accrued towing, storage, and disposal fees, the towing company could collect the unpaid balance from the last titled owner or, if there were no titled owner, the last registered owner, subject to the fee amounts prescribed in the bill.

Any remaining money would have to be sent to the Department of Treasury's Unclaimed Property Division to be disbursed as follows:

- To the secured party, if any, in the amount of the debt outstanding on the vessel.
- The remainder to the owner.

A reasonable attempt would have to be made to mail the remainder to the last title owner or, if there were no titled owner, to the last registered owner. If the remainder could not be delivered, it would become the property of the local unit of government whose police agency entered the vessel in the LEIN.

If there were no bidders on the vessel, the police agency or the custodian could do one of the following:

- Turn the vessel over to the towing firm or the custodian to satisfy charges against the vessel by completing the release form described in the bill.
- Obtain title to the vessel for the police agency or the unit of government the police agency represented, by paying the towing and storage charges and applying for title to the vessel.
- Holding another public sale.

If the vessel were turned over to the towing firm or the custodian, if the vessel's value did not satisfy the accrued towing, storage, and disposal fees, the custodian could collect the balance from the last titled owner or, if there were no titled owner, the last registered owner, subject to the fee amounts prescribe in the bill.

Upon disposition of the vessel, the police agency or towing agency or custodian would have to provide the SOS and the police agency, if that police agency did not conduct the sale, with the vessel's disposition and the name of the agency that disposed of it. The police agency would have to cancel the entry in the LEIN.

Towing & Storage Fees. A towing service and/or custodian of a vessel could recover towing fees or, subject to provisions described below, storage fees from the last titled owner or, if there were no titled owner, the last registered owner of a vessel considered abandoned or removed under the bill.

If a vessel were released for disposition under the bill, the amount of storage fees that could be collected would be the least of the following:

- The daily storage rate established by contract or agreement with the law enforcement agency or unit of government that authorized the towing and storage of the vessel.
- The daily storage rate charged by the storage facility.
- \$1,000.

Those amounts would not apply to a commercial vessel or a vessel that was owned or leased by an entity other than an individual.

Vessels on Private Property. The provisions regarding abandoned vessels and abandoned scrap vessels would not apply to a vessel that was owned by the person who owned the private real property on which the vessel was located and would not prohibit or preempt a local unit of government from regulating the number and placement of vessels on private property.

Except as provided below, an owner or lessor of private real property would have to post a notice before authorizing the towing or removal of a vessel from the property without the consent of the vessel's owner or other person who was legally entitled to possess the vessel. The bill prescribes requirements for the placement, appearance, content, and installation of the sign.

The notice requirements would not apply to property that was appurtenant to and obviously part of a single- or dual-family residence, or to a vessel removed from private property under the bill. The requirements also would not apply if notice of both of the following were personally given to the owner or other person legally entitled to control of a vessel: that the

area where the vessel was parked was reserved or otherwise unavailable to unauthorized vessels, and that the vessel was subject to towing or removal from private real property without the consent of the vessel owner or other person.

Off-Road Recreation Vehicles & Snowmobiles

The bill would prohibit a person from abandoning an ORV or snowmobile in Michigan. The last titled owner of the ORV and the last registered owner of the snowmobile would be presumed to be responsible for abandoning it unless he or she provided a record of its transfer to another person.

The bill's provisions regarding abandoned vessels would apply to an ORV and snowmobile in the same manner as those provisions would apply to a vessel. The provision allowing the police agency or custodian to obtain the title if there were no bidders at a public sale, however, would not apply to a snowmobile.

A person who violated the prohibition against abandoning an ORV or snowmobile, and failed to redeem it before it was disposed of, would be responsible for a civil infraction and would have to be ordered to pay a civil fine of \$50.

Abandoned Vessel, ORV, & Snowmobile Fund

The bill would create the Fund within the State Treasury. The State Treasurer could receive money or other assets from any source for deposit into the Fund. The State Treasurer would have to direct the investment and the Fund, and credit to it any interest and other earnings from Fund investments. Money in the Fund at the close of the fiscal year would remain in the Fund and would not lapse to the General Fund. The Department of State would be the Fund administrator for auditing purposes.

The Department of State would have to spend money from the Fund, upon appropriation, to administer the bill's provisions regarding abandoned vessels, ORVs, and snowmobiles and other related provisions of the Act.

Littering

Part 89 prohibits a person from knowingly, without the consent of the public authority having supervision of public property or the owner of private property, dumping, depositing, placing, throwing, or leaving, or causing or permitting the dumping, deposit, placement, throwing, or leaving, of litter on public or private property or water other than property designated and set aside for such purposes.

"Litter" means any of the following:

- Rubbish, refuse, waste material, garbage, offal, paper, glass, cans, bottles, trash, debris, or other foreign substances.
- A vehicle that is considered abandoned under the Michigan Vehicle Code.

Under the bill, the term also would include a vessel, ORV, or snowmobile that was considered abandoned.

If the litter consists of an abandoned vehicle, the violator is responsible for a State civil infraction and is subject to a civil fine of at least \$500 but not more than \$2,500. For a subsequent violation, the fine is at least \$1,000 and not more than \$5,000. The court, however, may not order the payment of a fine unless the vehicle has been disposed of under the Michigan Vehicle Code. Under the bill, the fine also would apply if the litter were an abandoned vessel, ORV, or snowmobile, and the court could not order payment if the vessel, ORV, or snowmobile had been disposed of under Part 801.

FISCAL IMPACT

The bill would have a negligible fiscal impact on the State and local units of government. The bill would outline a process for the disposition of abandoned watercraft, off-road vehicles, and snowmobiles, and provide a mechanism for the involved parties to recover some associated costs. Neither the Department of Natural Resources nor another governmental entity currently tracks the numbers of these abandonments, but they are relatively infrequent. Since a statutory process for disposition does not exist, however, when these abandonments occur the governmental agencies and private towing/storage companies do not have a way to recover their costs.

The owner of an abandoned watercraft, ORV, or snowmobile would be required to post a bond or pay a fee of \$40 if he or she wished to redeem the "vehicle", and then pay for the costs of recovering and storing it. Unredeemed vehicles would be sold at auction and the proceeds would be disbursed in the following order: reimbursement of the towing company for its expenses, reimbursement of the police agency or custodian of the vehicle, and payment of the \$40 fee. Any remaining auction proceeds would go to the Unclaimed Property Division in the Department of Treasury.

The bill also would create the Abandoned Vessel, ORV, and Snowmobile Fund, which would receive \$25 of each \$40 fee paid by abandoned vehicle owners. The Fund would be used by the Department of State to offset costs related to administration of abandoned watercraft, ORVs, and snowmobiles. It is unknown how much revenue the Fund would receive each year.

In addition, the bill would make it a civil infraction for the owner of a vessel, snowmobile, or ORV to abandon it. By including the violation in current provisions that make littering a State civil infraction, the bill could result in an increase in State civil infraction fine revenue, which is statutorily dedicated to public libraries. The bill also would provide for a separate \$50 civil infraction fine for the abandonment of an ORV or snowmobile. Civil infraction fine revenue also is dedicated to public libraries.

The bill would have a negligible fiscal impact on the Department of State Police and other law enforcement agencies. The proposed requirements are similar to what is already being provided in regard to vehicles, and the occasions in which actions would need to be taken with respect to abandoned watercraft, snowmobiles, or ORVs, as provided under the bill, have been estimated to be infrequent.

According to the Department of State, the requirements in the bill would not result in additional costs to the Department, and the proposed responsibilities of the Secretary of State would be performed with existing resources.

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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.