

**House Bill 4363 (Substitute H-6)**  
**First Analysis (3-31-98)**

**Sponsor: Rep. Penny Crissman**  
**Committee: Conservation, Environment**  
**and Recreation**

***THE APPARENT PROBLEM:***

Michigan has an abundance of inland lakes and more registered recreational watercraft than any other state. However, access to Michigan's lakes for boaters has long been a point of contention with many state residents. Those who have homes on lakes generally don't want public access sites, while non-waterfront property owners maintain their prerogative to gain access to this natural resource. The former claim that the lakes are overcrowded and there are too many access sites. The latter assert that public access is inadequate and point to the long lines that stall boaters at these sites on weekends and holidays.

The Department of Natural Resources' (DNR) role in constructing access sites has also come under criticism -- both from lakefront property owners and from local governments. In fact, the procedures followed by the department in establishing access sites were recently challenged in court by Burt Township in Cheboygan County. The department has one public boat launch facility at Burt Lake State Park and had planned to construct another on the opposite side of the lake. Burt Township requested that the DNR apply for township approval. When the DNR denied the request, the township obtained an injunction in the Cheboygan County Circuit Court that blocked the project. The department appealed, but the court of appeals upheld the trial court's injunction (*Township of Burt v Department of Natural Resources, No. 200328 [Mich. App. Dec. 30, 1997]*).

In the lawsuit, the township argued that the department was required to comply with township zoning ordinances before building the boat launch. The DNR claimed that its status as a state agency rendered it immune from this requirement. The court ruled, in effect, that while the legislature had assigned the DNR the task of providing outdoor recreational facilities, it had also assigned similar responsibilities to local units of government, such as townships, and, unless a local zoning ordinance totally prohibited a lawful land use, the DNR would have to comply with local zoning

rules. It is likely that this case will be appealed to the supreme court. However, in light of these problems, legislation has been proposed that would provide for more communication between the parties involved -- the department, local units of government, and lakeshore property owners -- when public access sites are established.

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

The bill would amend Part 781 of the Natural Resources and Environmental Protection Act (NREPA), which regulates the Michigan State Waterways Commission, to establish guidelines for acquiring public lake access sites to launch boats on inland lakes, to establish a Public Boating Access Site Advisory Committee, and to require that the Department of Natural Resources (DNR) establish a public boating access sites grant program. The bill would also specify procedures that would have to be observed when an option on land intended for use as a boating access site was obtained. Among these, the bill would specify that the DNR notify the local unit of government when it attempted to procure an option on land intended for use as a boating access site, and allow a local unit to exercise an option to purchase the land. The bill would also specify that the DNR could promulgate rules to implement the provisions of Part 781.

Public Boating Access Site Advisory Committee. The committee would be established to advise the DNR and the legislature on the state's method of acquiring public boating access sites, and would consist of 20 members representing the boating industry; recreational users; riparian owners; local public officials who had public boating access sites within their local unit of government; experts from Michigan institutions of higher education; and other interested parties, as appointed by the department. At least two members of the committee would have to be representatives of the general public. The bill would

require that the committee review and make recommendations regarding the current method of acquiring and operating public boating access sites. Additionally, the committee would be required to make recommendations on all of the following:

- The protection of the ecological integrity of lakes from degradation.
- The protection of the boating public and other lake users, including, but not limited to, riparian owners, from overly intense use of lakes.
- The provision of recreational boating opportunities for members of the general public.
- Other issues the committee considered relevant.

The committee would have to comply with the provisions of the Open Meetings Act (MCL 15.261 to 15.275). Within six months after the advisory committee was established, it would be required to deliver a report to the DNR, the Natural Resources Commission, and the legislature on administrative and legislative changes that should be considered by the state in acquiring and operating public boating access sites. The committee would be disbanded after one year.

Option on Proposed Access Site. Under the bill, the DNR would be required to obtain a 90-day option on land that it intended to acquire. In obtaining the option, the bill would require that the DNR attempt to negotiate an option that could be transferred to a local unit of government. When placing the option, the DNR would have to notify the municipality and the county where the land was located of the option and hold a public hearing within the municipality regarding the proposed purchase and operation of the land as a public boating access site.

During the 90-day period in which the department held an option, the municipality or county in which the land was located could do either of the following:

- Notify the DNR that it intended to operate a public boating access site on that land, in which case the DNR would have to transfer the option, if possible, to the municipality or county so that it could exercise the option and purchase the land.

- Identify another suitable location on the lake that the DNR could acquire for a public boating site that was comparable for development to the one proposed by the department.

Agreement on Operation of Public Access Site. The bill would also specify that, if a municipality exercised an option to purchase land, this would be contingent upon the municipality or county and the department entering into a legally enforceable agreement that specified how a public boating access site would be operated. Under the bill, the agreement would have to provide that the access site would be operated in the same manner as one that was operated by the department, unless the department agreed to alternative terms. An agreement would also provide that, in a situation where a municipality or county violated the agreement, the department could operate the site in compliance with the agreement.

Public Hearings. In addition to the public hearing held by the DNR when it obtained an option, the bill would specify that the municipality or county in which the proposed public boating access site was located could hold a public hearing on the proposed purchase and development of the land as a public boating access site. In addition, the municipality or county would also be required to notify the department if a public hearing was held, and a department representative would have to attend the hearing.

Public Boating Access Sites Grant Program. The program would be established to provide local units of government with funds, from money in the Michigan State Waterways Fund, for all, or a portion, of the cost of either or both of the following:

- Acquiring land to establish a public boating access site.
- Developing a public boating access site.

The following provisions would also apply to a local unit of government under the program:

- A grant could also be used as a local unit of government's required match under the laws governing the Natural Resources Trust Fund or under another state or federal program.

- A local unit that received a grant would have to agree to operate the public boating access site in accordance with the DNR's operational requirements.
- A local unit that wished to be considered for a grant would be required to submit an application to the DNR, in a manner described by the department and containing the required information.

MCL 324.78101 et al.

**FISCAL IMPLICATIONS:**

The House Fiscal Agency estimates that the bill would have an indeterminate impact on state funds. The Department of Natural Resources' workload would increase, but this cost would depend on the number of public access sites established each year. (3-25-98)

**ARGUMENTS:**

**For:**

Until now, the Department of Natural Resource's method of establishing public access sites on state waters has sparked anger and outrage from lakeshore property owners. At one northern lake, this anger gave birth to a lake property owners association. Eventually, four residents with properties adjacent to the proposed site eventually filled suit against the DNR, with the result that an injunction was placed against the proposed construction. However, rather than incur these costly lawsuits, it makes sense that the DNR be more accountable to the desires of local communities. Communication between the parties affected by proposed access sites -- the department, local units of government, and lakeshore property owners -- is also necessary. The bill's provisions would encourage these goals.

**Response:**

One version of House Bill 4363 would have specified that a goal of the proposed Public Boating Access Site Advisory Committee would be to require that public access sites comply with local zoning ordinances. Since this provision mirrors a recent ruling by the Michigan Court of Appeals (*Township of Burt v Department of Natural Resources, No. 200328 [Mich. App. Dec. 30, 1997]*), it makes sense to include it as a goal of the proposed committee. However, the bill was amended to delete the requirement.

**Against:**

*Township of Burt v Department of Natural Resources* involved the issue of whether or not the DNR has exclusive jurisdiction over public access sites. In defense of its position, the department cited Article 4, Section 52 of the state constitution, which reads:

"The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in the interest of the health, safety and general welfare of the people. The legislature shall provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction."

The dissenting opinion in *Township of Burt v Department of Natural Resources* would seem to reflect the viewpoint of those citizens who don't own lakeshore property: "the navigable waters within this state belong to all the citizens of this state." The opinion cited current statutes that grant the DNR "the power and jurisdiction over the management, control, and disposition of all land under the public domain, except for those lands under the public domain that are managed by other state agencies to carry out their assigned duties and responsibilities." Moreover, the dissenting opinion also noted that, while the Natural Resources and Environmental Protection Act (NREPA) contemplates opportunities for cooperation between the DNR and local units of government, it does not reflect an intent that the DNR's implementation of its purpose be subject to or dependent on local cooperation. It is likely that the state supreme court will decide whether the DNR is required to comply with local zoning ordinances when establishing public access sites. Until these issues have been decided, the DNR should not give up its jurisdiction over public access sites.

**POSITIONS:**

The Department of Natural Resources (DNR) supports the bill. (3-25-98)

The Michigan United Conservation Clubs (MUCC) supports the bill. (3-25-98)

The Michigan Lake Property Owners Association supports the bill. (3-25-98)

The Michigan Boating Industry Association supports the bill. (3-25-98)

The Michigan Townships Association (MTA) supported the version of the bill that required that local zoning ordinances be taken into consideration by the proposed public boating access site advisory committee, but withdrew its support when the bill was amended to delete this provision. (3-26-98)

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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.