



House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

PARK AND RECREATION OFFICERS: ENFORCEMENT, WARRANTLESS ARREST AND CITATION POWERS

**House Bill 4388 as enrolled
Public Act 414 of 2000
Third Analysis (1-25-01)**

**Sponsor: Rep. Ron Jelinek
House Committee: Conservation and
Outdoor Recreation
Senate Committee: Natural Resources and
Environmental Affairs**

THE APPARENT PROBLEM:

Under the Natural Resources and Environmental Protection Act (NREPA), the Department of Natural Resources (DNR) is authorized to appoint or commission various kinds of officers: conservation officers (MCL 324.1606), "state park officers" (MCL 324.1606), "park and recreation enforcement officers" (MCL 324.74124), and, beginning in 1998, "state forest officers" (MCL 324.83107). (See BACKGROUND INFORMATION.)

Reportedly, historically there were separately commissioned state park officers and state recreation officers, with separately defined powers. But in 1993, two formerly separate divisions in the DNR – the former Recreation Division and the former Parks Division – were merged into a new Parks and Recreation Division. So although the NREPA currently refers both to commissioned "state park officers" and to "park and recreation enforcement officers," in practice there are only park and recreation officers.

Currently, two different parts of the NREPA give "state park officers" or "park and recreation enforcement officers" enforcement authority on state park lands. Section 1606 of Part 16 of the NREPA (which has to do with the enforcement of laws for protecting wild birds, wild animals, and fish) refers to the enforcement authority of "state park officers" "within the boundaries of state parks," and gives both conservation officers and state park officers who arrest someone without a warrant the option of issuing an "appearance ticket" instead of taking the arrested person into custody. Section 74124 of Part 741 (the state park part of the NREPA) gives commissioned park and recreation enforcement officers limited arrest powers,

a list of specified circumstances under which such officers can make warrantless arrests, and the authority to issue citations ("tickets") for state civil infraction violations and certain traffic civil infractions.

This enforcement authority, however, is statutorily specified only "within the boundaries of state parks" and under the state park part of the act (Part 741). Statutorily, however, park and recreation officers do not have enforcement authority under the waterways part (Part 781) of the NREPA, which governs lands and waterways regulated by the DNR. Problems apparently have arisen when park and recreation officers have attempted to enforce DNR rules and orders on lands and waterways regulated by the DNR under Part 781 of the NREPA, especially at state-controlled boat slips or boating access sites.

At the request of the Department of Natural Resources, legislation has been introduced to update the provisions in the NREPA concerning the arrest, warrantless arrest, and citation authority of state park officers and park and recreation officers and to extend their jurisdiction in a limited way to include state waterways as well as state park lands.

THE CONTENT OF THE BILL:

The bill would amend the Natural Resources and Environmental Protection Act (NREPA) to do all of the following:

- give commissioned park and recreation officers enforcement powers on state lands and waterways regulated by the Department of Natural Resources

under Part 781 (Michigan State Waterways Commission) of the NREPA, in addition to their current enforcement powers on state park land under Part 741 of the NREPA;

- limit the arrest powers of commissioned park and recreation officers on state waterways to “minor offenses” committed in their presence;
- extend the warrantless arrest powers of park and recreation officers to include snowmobile violations on state park land and certain “minor offenses” committed on state waterways in the officer’s presence;
- prohibit park and recreation officers making warrantless arrests on state waterways from taking the arrestees into physical custody (by requiring, instead, that they issue an “appearance ticket” when making such warrantless arrests);
- repeal – and reinsert, with some modifications – the current section in the state park part of the NREPA (Part 741) that gives limited arrest powers to commissioned “park and recreation enforcement officers” to enforce the state park provisions of the NREPA and DNR rules promulgated under these provisions;
- remove park and recreation officers’ ability to issue citations for state civil infractions; and
- strike the current provision that requires a feasibility study with regard to allowing full-time DNR employees to perform the duties of conservation officers under certain circumstances.

Extend enforcement to “waterways.” Currently, section 1606 of Part 16 (Enforcement of Laws for Protection of Wild Birds, Wild Animals, and Fish) of the NREPA allows the Department of Natural Resources (DNR) to commission “state park officers,” within the boundaries of the state parks, to enforce administrative rules promulgated by the DNR, and any laws specified in those rules as enforceable by commissioned state park officers.

The bill would amend this section to do the following:

- substitute “park and recreation officers” for “state park officers,”
- extend park and recreation officers’ enforcement to state waterways (in addition to their current jurisdiction on state park lands), and

- specify the arrest powers of park and recreation officers on property regulated under the waterways part (Part 781) of the NREPA. (See “Arrests,” below.)

General enforcement powers. More specifically, the bill would authorize the DNR to commission park and recreation officers to enforce, “on property regulated under Part 741 [state parks] or 781 [Michigan State Waterways Commission]” (a) as currently, rules promulgated by the DNR, (b) orders issued by the DNR that were authorized in those rules, and (c) as currently, any laws specified in the rules as enforceable by commissioned park and recreation officers. [Note: The section to be repealed by the bill, section 74124 of Part 741, currently gives park and recreation enforcement officers the authority to enforce not only DNR rules (and state laws specified in those rules as being enforceable by park and recreation enforcement officers), but also this part of the NREPA itself. That is, under Part 741, park and recreation enforcement officers are allowed to enforce a state law (the state park part of the NREPA) directly, and not just as specified by a DNR rule.]

The bill also would add a reference to specific DNR rules promulgated (and orders issued) under section 504 of the NREPA, which authorizes the DNR to promulgate rules for the protection of the lands and property under its control. Violations of rules promulgated under this section of the NREPA are state civil infractions carrying civil fines of up to \$500. (See BACKGROUND INFORMATION.)

“State waterways.” The extension of DNR park and recreation officers’ enforcement authority under Part 781 of the NREPA would include not just actual waterways, but also certain lands acquired by the DNR in the course of its regulation of state waterways.

Under Part 781, the DNR has authority over state waterways (defined in this part of the NREPA as “any body of water”), and the Michigan State Waterways Commission is given the power and duty, among other things, to (a) acquire certain lands, rights of way, and easements (those necessary for harbors and channels) and (b) acquire, construct, and maintain harbors, channels, and facilities for vessels in the navigable waters within the borders of the state. “Navigable waters” are defined in the NREPA to include not only waterways navigable by vessels (“or capable of being made navigable by vessels through artificial improvements”), but also the structures and facilities created to facilitate navigation. Thus, under Part 781 of the NREPA, the DNR has jurisdiction not only over waterways but also over certain land and facilities, such

as state-operated small craft mooring facilities and public access sites. The bill would extend the jurisdiction of park and recreation officers to these lands and facilities, including state-operated small craft mooring facilities and public access sites.

Arrests. Currently, the arrest authority of commissioned state park officers is not specified under Part 16 of the NREPA, while Part 741 (section 74124) allows the DNR to commission park and recreation officers with limited arrest powers.

More specifically, section 1606 says that the DNR can commission “state park officers” to enforce, “within the boundaries of the state parks,” (a) DNR rules and (b) any laws specified in those rules as enforceable by commissioned state park officers. Section 74124 says that the director of the DNR may commission “park and recreation enforcement officers” with “limited arrest powers” to enforce (a) the state park section of the NREPA, (b) rules promulgated under this part of the NREPA, and (c) any laws specified in those rules as enforceable by commissioned state park and recreation enforcement officers “upon properties administered by” the DNR under the state park part of the NREPA.

The bill would repeal the provisions in section 74124 and would amend section 1606 to allow park and recreation officers who (a) were enforcing DNR rules, orders, or laws specified in the rules as being enforceable by park and recreation officers (b) on property regulated under Part 781 (state lands and waterways under DNR regulation), to (c) arrest an individual “only for a minor offense committed in the officer’s presence.” In addition, the bill would require park and recreation officers making such arrests to issue an “appearance ticket” (that is, would not allow the officer to take the arrestees into physical custody) as provided under the current warrantless arrest subsection of this section of the NREPA [section 1601(3), currently, 1606(6) in the bill]. (See “Warrantless arrests,” following.)

The bill would define “minor offense, as it is defined in the Code of Criminal Procedure, to mean “a misdemeanor or ordinance violation for which the maximum permissible imprisonment does not exceed 92 days and the maximum permissible fine does not exceed \$1,000.00.” (MCL 761.1) The Code of Criminal Procedure also defines “appearance ticket” to mean “a complaint or written notice issued and subscribed by a police officer or other public servant authorized by law or ordinance to issue it directing a designated person to appear in a designated local

criminal court at a designated future time in connection with his or her alleged commission of a designated violation or violations of state law or local ordinance for which the maximum permissible penalty does not exceed 93 days in jail or a fine or both.” (See MCL 794.9f)

Warrantless arrests and appearance tickets. Section 1606 currently specifies that if a conservation officer or a commissioned state park officer arrests someone without warrant for a misdemeanor (punishable by imprisonment for up to 90 days or a fine, or both) committed in the officer’s presence, the officer is allowed to issue an “appearance tickets” in accordance with procedures under the Code of Criminal Procedure, instead of immediately bringing the person for arraignment by the court having jurisdiction.

The bill would amend this provision by substituting the term “minor offense” for “misdemeanor,” and the term “park and recreation officer” for the term “state park officer,” and would continue to allow park and recreation officers who made warrantless arrests for minor offenses on state park lands the option of issuing (or not) an appearance ticket. However, if the minor offense were committed on state land or state waterways regulated by the DNR under Part 781 of the NREPA, the bill would require that an appearance ticket be issued. That is, a park and recreation officer would be unable, under the bill, to take someone into physical custody if the officer made a warrantless arrest on a state waterway; instead the officer would have to issue an appearance ticket that summoned the offender to appear in court.

Warrantless arrests on state park lands. The bill would repeal and reinstate with minor modifications, and with the addition of snowmobile and personal watercraft safety violations, the current warrantless arrest provisions in the state parks part (Part 741) of the act. (See BACKGROUND INFORMATION.)

More specifically, the bill would allow commissioned park and recreation officers to arrest someone without a warrant on state park land under one or more of the following circumstances:

- If, as currently, in the presence of a park and recreation officer, someone committed an assault, or an assault and battery, in violation of the Penal Code’s provisions on assault, assault and battery (MCL 750.81) or assault and infliction of serious injury (MCL 750.81a).(See BACKGROUND INFORMATION.]

- If a park and recreation officer, as currently, had reasonable cause to believe that a felony had been committed, and reasonable cause to believe that an individual had committed it.

- If a park and recreation officer had received affirmative written or verbal notice (instead of, as currently, “positive information by written, telegraphic, teletypic, telephonic, radio, or other authoritative source”) from a law enforcement officer or agency that a peace officer had a warrant for someone’s arrest.

- If, as currently, someone violated the Michigan Vehicle Code’s provisions prohibiting operating a vehicle while under the influence of liquor (OUIL) [MCL 257.625(1)], operating while impaired by alcohol (OWI) [MCL 257.625(3)], people under 21 with any blood alcohol content [MCL 257.625(6)], or with a commercial driver’s license while intoxicated [MCL 526].

- If someone violated the parts of the NREPA dealing with state parks (Part 741), off-road recreation vehicles (Part 811), snowmobiles (Part 821), or the marine safety section dealing with placement of buoys and swimming at public beaches (Section 80198b).

- If someone violated the recently enacted Personal Watercraft Safety Act (Public Act 116 of 1998, which is due to sunset in 2004) provisions governing the operation of personal watercraft and personal floatation devices, and the maintenance of personal watercraft at a designated distance from shorelines or other areas (MCL 281.1411 and 281.1419).

Warrantless arrests on state “waterways.” The bill would amend the act’s warrantless arrest provisions to allow commissioned park and recreation officers to arrest someone without a warrant for certain “minor offenses” committed on state waterways in the officer’s presence, and to require the park and recreation officer to issue an appearance ticket.

The bill specifies that the minor offenses for which a park and recreation officer could make a warrantless arrest on state “waterways” would have to be one “listed in subsection (3),” which is the list of circumstances (listed above) proposed in the bill under which a park and recreation officer could make a warrantless arrest on state park land. Since this list does not mention “minor offense,” by using the definition of “minor offense” in the Code of Criminal Procedure (“a misdemeanor or ordinance violation for which the maximum permissible imprisonment does not exceed 92 days and the maximum permissible fine does not

exceed \$1,000.00.”), the bill would appear to allow commissioned park and recreation officers to make warrantless when someone committed one or more of the following offenses in the officer’s presence on state land or waterways regulated by the DNR:

(1) An assault or an assault and battery in violation of subsection (1) of section 81 of the Michigan Penal Code, which states that “[a] person who assaults or assaults and batters an individual, if no other punishment is prescribed by law, is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500, or both.” [MCL 750.81(1)]. (All of the other assault and battery violations of sections 81 and 81a of the Michigan Penal Code carry punishments that exceed 92 days’ imprisonment or a fine of \$1,000, or both. See BACKGROUND INFORMATION.)

(2) A violation of the section of the marine safety part of the NREPA that prohibits permitting a person to bathe or swim from a bathing beach maintained primarily for public use unless buoys outlining a safe bathing or swimming area are established in accordance with the act, and that prohibits people who bathe or swim at such beaches from bathing or swimming in waters that are within 100 feet beyond the buoyed bathing or swimming area. Violations of the marine safety part of the NREPA (or rules under this part of the act), unless otherwise specified, are unspecified misdemeanors, and so would fall under the definition of “minor offense.” (See MCL 324.80171.)

(3) “Minimum distance” violations of the Personal Watercraft Safety Act. The act prohibits both of the following, except at a “slow-no wake speed”:

- operating a personal watercraft within 150 feet behind another vessel other than another personal watercraft or within 200 feet of shore;

- operating a personal watercraft or towing a person by a personal watercraft (a) within less than 100 feet from a dock, raft, or buoyed or occupied bathing or swimming area; a person in the water (or on the water in a personal floatation device); or a vessel moored, anchored, drifting, or sitting in dead water; or (b) within less than 200 feet from a submerged diver, a vessel engaged in underwater diving activities, or a floatation device displaying the international diving insignia.

(Violations of the Personal Watercraft Safety Act, unless otherwise specified, are misdemeanors punishable by imprisonment for not more than 90 days

or a fine of not more than \$100, or both, so the listed violations would fall under the definition of “minor offense.” See MCL 281.1439)

It might also be possible for some of the motor vehicle, ORV, and snowmobile violations listed in subsection (3) of the bill to fall under the warrantless arrest provisions of the bill for state waterways. For example, it might be possible for someone to drive while drinking onto a frozen lake or bay that was regulated by the DNR under the “waterways” part of the NREPA.

Civil infractions. Currently, a park and recreation officer may issue a citation for a violation of a state civil infraction or for a civil infraction violation of the Michigan Vehicle Code regarding traffic lights (MCL 257.611), refusing to take a breath test (MCL 257.625a), or speeding (MCL 257.627).

(The Revised Judicature defines “citation” to mean a written complaint or notice to appear in court and upon which a law enforcement officer records the occurrence or existence of a state civil infraction by the person cited. See MCL 600.8801. See BACKGROUND INFORMATION for information on state civil infractions.)

The bill would remove park and recreation officers’ current authority to issue citations for state civil infractions, and would change the motor vehicle civil infractions for which a park and recreation officer could issue a citation. Under the bill, a commissioned park and recreation officer still could issue civil infraction citations for speeding (section 626b), and, in addition, for careless driving. The bill would strike references to violations of the vehicle code involving traffic lights or breath tests.

Repealer. The bill would repeal, and reinstate, with certain modifications, the current section of the NREPA listing the circumstances under which park and recreation officers can make warrantless arrests (MCL 324.74124).

MCL 324.1606

BACKGROUND INFORMATION:

State park officers. Currently, section 1606 of the Natural Resources and Environmental Protection Act (NREPA) authorizes the Department of Natural Resources to commission “state park officers” to enforce, within the boundaries of state parks, DNR rules and any state laws specified in those rules as enforceable by the commissioned state park officers. In carrying out their enforcement duties, state park

officers are vested with the powers, privileges, prerogatives, and immunities conferred upon “peace officers” under state laws. (See below.) Both conservation officers and state park officers also can issue “appearance” tickets for 90-day misdemeanors.

Park and recreation officers. Under the state parks part of the NREPA (Part 741), “park and recreation enforcement officers” currently have limited arrest powers to enforce this part of the act and rules promulgated under this part of the act, as well as any state laws specified in those rules as enforceable by commissioned park and recreation enforcement officers. In performing their duties, park and recreation officers also are vested with the powers, privileges, prerogatives, and immunities conferred on peace officers (see below) by the state’s general laws. Also, under the state civil infractions chapter (Chapter 88) of the Revised Judicature Act (RJA), “park and recreation officers” are included in the list of officers under the definition of “law enforcement officer.” (See MCL 600.8801.)

In addition to their limited arrest powers, the NREPA also gives park and recreation enforcement officers limited warrantless arrest powers on state park lands. The circumstances under which park and recreation enforcement officers can make “warrantless arrests” are listed in the section (MCL 324.74124) that the bill would repeal and reinstate in a rewritten form. Currently, these circumstances are as follows:

(1) If someone commits an assault or an assault and battery punishable under sections 81 (assault or assault and battery) or 81a (assault resulting in serious injury) of the Michigan Penal Code;

(2) If the park and recreation enforcement officer “has reasonable cause to believe that a felony has been committed and reasonable cause to believe that the person has committed it”;

(3) If the park and recreation enforcement officer has “positive information” by an “authoritative source” that a peace officer holds a warrant for the arrest of the person in question;

(4) If someone commits a misdemeanor violation of sections 625 (OUIL, OWI), 625m (intoxicated commercial drivers), or 626 (reckless driving) of the Michigan Vehicle Code;

(5) If someone commits a misdemeanor violation involving off-road vehicles (ORVs);

(6) If someone violates the section of the NREPA regarding prohibited swimming areas at public beaches or a (now repealed) section regarding the operation of personal watercraft, a version of which is now included in the Personal Watercraft Safety Act, Public Act 116 of 1998.

State forest officers. Public Act 418 of 1998 amended the Natural Resources and Environmental Protection Act (NREPA), among other things, to authorize the Department of Natural Resources to commission “state forest officers” to enforce state laws and rules on DNR-administered property. Public Act 80 of 2000 (enrolled Senate Bill 876) amended the Revised Judicature Act (RJA) to include in the definition of “law enforcement officer” a “state forest officer” commissioned under Part 831 (State Forest Recreation) of the NREPA. Like state park officers, commissioned state forest officers, when performing their enforcement activities, “are vested with the powers, privileges, prerogatives, and immunities conferred upon peace officers under the laws of this state.” (MCL 83107).

The definition of “law enforcement officer” in the RJA is in the form of a list that (before Public Act 80 of 2000, which added state forest officers) included all of the following: (1) a sheriff or deputy sheriff; (2) an officer of the police department of a city, village, or township, or the marshal of a city, village, or township; (3) an officer of the Michigan state police; (4) a conservation officer; (5) a state security employee under Public Act 59 of 1935; (6) a motor carrier officer appointed under Public Act 59 of 1935; (7) a public safety officer employed by a university as authorized under state law (Public Acts 278 of 1965 and 120 of 1990); (8) a constable of a political subdivision, if authorized by that political subdivision; and (9) a park and recreation officer commissioned under section 1606 of the Natural Resources and Environmental Protection Act.

According to the Senate Fiscal Agency analysis of Senate Bill 876 dated 11-10-99, there are approximately 100 forest officers throughout the state who provide fire protection and general maintenance services within state forests, as well as enforcing state land use statutes and regulations issued by the Department of Natural Resources.

Conservation officers. Under the Natural Resources and Environmental Protection Act (MCL 324.1606), conservation officers appointed by the Department of Natural Resources are “peace officers” (see below) vested with all the powers, privileges, prerogatives, and

immunities conferred on peace officers by the general laws of the state. Conservation officers have the same power to serve criminal process as sheriffs, the same right as sheriffs to require aid in executing process, and are entitled to the same fees as sheriffs in performing those duties. In a number of different state laws, conservation officers are included under various definitions of “law enforcement officer” (the Revised Judicature Act, MCL 600.8801), “law enforcement agent” (the Michigan Vehicle Code, MCL 257.602a), and “police officer” (NREPA, MCL 324.9501). However, a note on “peace officers” following the section in the Code of Criminal Procedure which describes when a peace officer can arrest without a warrant (MCL 764.15) says that conservation officers are not peace officers under the Code of Criminal Procedure, despite being described as peace officers in the state’s conservation law. Citing *People v. Carey (1985) 383 N.W.2d 81*, the note further says that the conservation law does not give conservation officers power to enforce criminal law or the vehicle code, since it would violate the state constitution’s title-object clause to construe the conservation law more broadly than “as part of the statutory scheme with general purpose of enforcing the fish and game laws.”

Peace officers. The NREPA says that conservation officers are peace officers, and it vests DNR state park officers and state forest officers “with the powers, privileges, prerogatives, and immunities conferred upon peace officers under the laws of the state” when they perform enforcement activities. “Peace officer” is defined variously in various state laws, and often, though not always, includes a requirement that the peace officer be trained in accordance with the Michigan Law Enforcement Officers Training Council Act of 1965 (Public Act 203 of 1965).

The Natural Resources and Environmental Protection Act alone defines “peace officer” at least four times, in Parts 117 (Septage Waste Servicers), 121 (Liquid Industrial Wastes), 445 (Charter and Livery Boat Safety), and 801 (Marine safety). The definitions of “peace officer” in the septage waste servicers (MCL 324.11701) and in the charter and livery boat safety (MCL 324.44501) parts of the NREPA are virtually identical. The definition in the marine safety part of the act (MCL 324.12102) is similar to these two definitions, while that in the liquid industrial wastes part of the act differs from the other three NREPA definitions.

In the septage waste servicers and charter and livery boat safety parts of the NREPA, “peace officer” is defined to mean every sheriff or sheriff’s deputy;

village or township marshal; officer of the police department of any city, village, or township; any state police officer; or (in the charter and livery boat part of the act) “any other police officer or law enforcement officer” (the septage waste servicers part of the act says, instead, “any other peace officer”) – who is trained and certified under the Michigan Law Enforcement Officers Training Council Act of 1965. (The Michigan Law Enforcement Officers Training Council Act defines “police officer” or “law enforcement officer” (MCL 28.602) to mean (“unless the context requires otherwise) either (1) “a regularly employed member of a police force or other organization of a city, county, township, or village, or the state, or of a state university or community college who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of this state,” or (2) “a law enforcement officer of a Michigan Indian tribal police force.”) The definition of “peace officer” in the septage waste servicers part of the act also includes Department of Natural Resources conservation officers, while the charter and livery boat part of the act includes both the director of the DNR and DNR conservation officers.

The definition of “peace officer” in the marine safety part of the NREPA (MCL 324.80104) is similar to the definitions in Parts 117 and 445, with some minor differences: A “peace officer” means “any of the following”: a sheriff or sheriff’s deputy (including a deputy who is authorized by a sheriff to enforce this part of the NREPA and who has satisfactorily completed at least 40 hours of law enforcement training, including training specific to marine safety), a village or township marshal, an officer of the police department of any municipality, a Michigan state police officer, or the director of the Department of Natural Resources and conservation officers employed by the department.

Finally, the liquid industrial wastes part of the NREPA (MCL 324.12102) defines “peace officer” to mean any law enforcement officer who is trained and certified under the Michigan Law Enforcement Officers Training Council Act (see above), or an officer appointed by the director of the Department of State Police.

Although the Personal Watercraft Safety Act (Public Act 116 of 1998, which sunsets in 2004) is not part of the NREPA, it, too, includes a definition of “peace officer.” In this act, “peace officer” is defined to mean either (1) a law enforcement officer as defined in the Michigan Law Enforcement Officers Training Council Act (see above) or (2) a deputy who is authorized by a

sheriff to enforce the act and who has satisfactorily completed at least 40 hours of law enforcement training, including training specific to the act.

In addition to the definitions in the NREPA and the Personal Watercraft Safety Act, “peace officer” is defined and used (often without a definition) in a number of other state laws, including, most notably, the Michigan Vehicle Code and the Michigan Penal Code. The definition of “peace officer” in the Michigan Vehicle Code is similar to the definitions in Parts 117, 445, and 801 of the NREPA (see above), though the vehicle code does not include conservation officers in its definition. (See MCL 257.42.) The Michigan Penal Code definitions of “peace officer” in sections 316(1)(d) and 479b do include conservation officers. Thus, MCL 750.479b defines “peace officer” to mean one or more of the following: (1) A police officer of this state or a political subdivision of this state; (2) a police officer of any entity of the United States; (3) the sheriff of a county of this state or the sheriff’s deputy; (4) a public safety officer of a college or university who is authorized by the governing board of that college or university to enforce state law and the rules and ordinances of the college or university; (5) a conservation officer of the Department of Natural Resources; and (6) a conservation officer of the United States Department of Interior.

Although state law does not appear to explicitly list the “powers, privileges, prerogatives, and immunities” conferred on peace officers, peace officers are mentioned in various laws as being able to arrest people without a warrant under certain circumstances (see, for example, the Code of Criminal Procedure, the Michigan Vehicle Code, the Railroad Code of 1933, the Uniform Criminal Extradition Act, and the Department of Corrections act); to stop and detain people (see, for example, the Liquor Control Code); to issue appearance tickets; and to request assistance. The Fourth Class Cities Act also mentions that the city marshal “as a peace officer . . . shall be vested with all the powers conferred upon sheriffs for the preservation of quiet and good order.” (MCL 87.16) Public Act 329 of 1937 specifically provides peace officers with “reasonable medical, surgical and hospital services” in addition to certain compensation when they “suffer disability as a result of active duty in enforcing the laws of the state or Michigan, or of an adjoining state.”

Assaultive crimes and “minor offenses.” Sections 81 and 81a of the Michigan Penal Code list seven possible assaultive crimes: three misdemeanors and one felony under section 81, and two misdemeanors and one felony under section 81a. Only one of the

misdemeanors listed in these two sections would fall under the Code of Criminal Procedure's definition of "minor offense," which requires that the penalty for the misdemeanor not exceed imprisonment for more than 92 days or a fine of more than \$1,000. This misdemeanor is listed under section 81, subsection (1), which says that "A person who assaults or assaults and batters an individual, if no other punishment is prescribed by law, is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both." The other two misdemeanors listed under section 81 both involve domestic violence. One of the misdemeanors is punishable by imprisonment for not more than 93 days or a fine of not more than \$500, or both; the other is punishable by imprisonment for up to one year or a fine of up to \$1,000, or both. Neither of the two misdemeanors under section 81a qualifies as a "minor offense." One is punishable by imprisonment for up to one year or a fine of \$1,000, or both; the other is punishable by imprisonment for up to one year or a fine of up to \$1,000, or both.

State civil infractions. After a number of legislative attempts to enact a "civil procedures act," Public Act 54 of 1995 (which was later followed in 1996 by a package of "cleanup" legislation) amended the Revised Judicature Act (RJA) to add a chapter on state civil infractions. Among other things, the chapter specifies when a law enforcement officer (which, as defined in the act, includes DNR park and recreation officers) can issue citations for state civil infractions (MCL 600.8807) and the process that follows issuance of a citation, including a formal hearing conducted by a district or municipal court judge. There is no jury trial in such hearings, and the judge decides "by a preponderance of the evidence" whether the defendant is responsible for the state civil infraction (see MCL 600.8821).

"State civil infractions" generally are noncriminal violations ("civil infractions") of state laws or local ordinances that are designated as such by statute. The actual list of state civil infractions named in current law covers a wide range of violations in a variety of different laws, though the majority of state civil infractions appear to be listed in various sections of the Natural Resource and Environmental Protection Act. More specifically, state civil infractions currently designated in Michigan law include violations of the following state laws or parts of state laws:

- A firearms safety inspection section of the State Police enabling act (MCL 28.429);

- The Hazardous Materials Transportation Act (MCL 29.477);

- The Aeronautics Code of the State of Michigan, unless otherwise specified (MCL 259.176) and including hunting from aircraft (MCL 259.179);

- Three sections of the Personal Watercraft Safety Act (violations of which otherwise are misdemeanors), two of which require personal watercraft dealers (a) to tell their customers of local boating safety courses (MCL 281.1435) and (b) to give their customers copies of DNR documents that summarize the laws pertaining to personal watercraft and the safety features of personal watercraft (MCL 281.1437);

- The Playground Equipment Safety Act (for failure to comply with the act's standards for public playground equipment, see MCL 408.684 and MCL 408.685);

- The Michigan Liquor Control Code of 1998 (for a minor to refuse to submit to a preliminary chemical breath test as required by a peace officer who has reasonable cause to believe the minor had consumed alcoholic liquor, see MCL 436.1703);

- The so-called "Veterans' Peddler's Act", Public Act 359 of 1921;

- sections of the Revised Judicature Act of 1961 that (a) prohibit sheriffs and county medical examiners who are licensed to practice law from serving process in an action in which he or she acts as attorney or counsel for a party or from appearing in court as attorney or counsel for a criminal defendant, except in a criminal or civil contempt proceeding (MCL 600.586) and (b) prohibit requiring a Social Security or credit card number on a check as a condition of acceptance (MCL 600.2964);

- The section in the "Jails and Workhouses" part of the Revised Statutes of 1846 that prohibits a person, including public officials or employees, from using prisoners' labor for private benefit or financial gain (MCL 891.10);

- Various sections in the Natural Resources and Environmental Protections Act regarding littering (MCL 324.8905a), refusal to implement and maintain certain soil erosion and sedimentation control measures (MCL 324.9121), failure to require children to wear personal flotation devices (MCL 324.80142), failure to submit to a preliminary chemical breath analysis when required by a peace officer who has reasonable cause to believe that an individual was operating a boat while

being impaired due to alcohol consumption (MCL 324.89189), various violations of the off-road vehicle part of the NREPA (Part 811, including refusal of a preliminary chemical breath test; various certification, titling, and licensing requirements; rental requirements; safety education requirements; and various operating requirements); careless or negligent operation of a snowmobile (MCL 324.82126a) and failure to obtain a required snowmobile trail permit and to have the permit sticker in the proper place on the snowmobile (MCL 324.82118); violations of the state forest recreation part (Part 831), or a rule promulgated under this part, of the NREPA (MCL 324.83109). In addition, as noted below, violations of rules promulgated under section 504 of the NREPA also are state civil infractions.

NREPA section 504. Currently, section 504 of the NREPA reads as follows:

The Department shall promulgate rules for the protection of the lands and property under its control against wrongful use or occupancy as will ensure the carrying out of the intent of this part to protect the lands and property from depredations and to preserve the lands and property from molestation, spoilation, destruction, or any other improper use or occupancy. This section does not allow the department to promulgate a rule that applies to commercial fishing except as otherwise provided by law. The department shall issue orders necessary to implement rules promulgated under this section. These orders shall be effective upon posting. A person who violates a rule promulgated under this section or an order issued under this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$500.00. (MCL 324.504)

In anticipation of the passage of a “civil procedures act,” the former Department of Natural Resources enabling act (Public Act 17 of 1921, which was repealed and incorporated into the NREPA) was amended by Public Act 92 of 1992 to say that the then-current misdemeanor violations of Department of Natural Resources rules or orders issued for the protection of lands and property would become civil infractions upon enactment of a “civil procedures” act. Public Act 54 of 1995 finally did add a state civil infractions chapter to the Revised Judicature Act, in effect implementing a “civil procedures” act (see the House Legislative Analysis Section enrolled analysis for House Bill 4426 of 1995), thereby fulfilling the requirement of Public Act 92 of 1992. Public Act 171 of 1996 then amended the NREPA to change the references to violations of section 504 from “misdemeanors” to “state civil infractions,” and to add

to park and recreation officers’ powers under Part 741 (state parks) the authority to issue citations for violations of state civil infractions and for certain traffic civil infractions. (See the House Legislative Analysis Section analysis of the state civil infraction “cleanup” package of bills that begins with enrolled House Bill 5541 of 1995.) Thus, during the 1995-96 legislative session, misdemeanor violations of the section of the NREPA that allows the DNR to promulgate rules for protecting land and property under DNR control (namely, section 504) were changed to state civil infraction violations, while park and recreation officers also were authorized to issue citations for state civil infraction violations (under MCL 324.74124).

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal implications. (1-19-01)

ARGUMENTS:

For:

The bill would implement needed changes to the Natural Resources and Environmental Protection Act (NREPA), updating and consolidating provisions concerning DNR officers that once operated under two different divisions of the Department of Natural Resources (DNR), the Parks Division and the Recreation Division. The bill would authorize park and recreation officers to enforce DNR rules and orders not just on state park lands under Part 741 of the NREPA but also on state waterways under Part 781 of the NREPA. At the same time, the bill would restrict park and recreation officers’ warrantless arrest powers on state waterways to certain “minor offenses” committed in the officer’s presence and would prohibit the park and recreation officer, in such cases, from taking the offender into physical custody. Instead, the bill would require the officer to issue an “appearance ticket” in these cases.

In particular, the bill would address some current problems by enabling DNR park and recreation officers to enforce DNR rules and orders at boating access sites themselves instead of having to call on local law enforcement officers or conservation officers. Reportedly, there have been problems in the past with having to depend on local law enforcement to deal with boating site violations, both because of the time delay involved and because local law enforcement officers sometimes apparently have believed, erroneously, that park and recreation officers already had the authority to

enforce DNR rules and orders at boating sites. The bill would provide authority, in statute, for commissioned park and recreation officers to enforce DNR rules and orders, both on state waterways as well as on state park lands. This authority is crucial, given the enormous popularity of boating and the shortage of enforcement resources for boating violations. Since the bill reportedly is intended to target waterways violations – and boating access violations in particular – it is important to restrict the ability of parks and recreation officers to make warrantless arrests, since these officers are not fully trained peace officers equipped to deal with the full range of possible criminal conduct.

Against:

Some people have expressed concern that the ability of park and recreation officers to arrest people for misdemeanors could have a negative impact on people's ability to apply for a permit to carry a concealed weapon under legislation passed late in the 1999-2000 legislative session. Under this "CCW" ("carrying concealed weapons") legislation, Public Act 381 of 2000, an applicant for a CCW permit would be denied a permit if, among other things, he or she had been convicted of a misdemeanor for certain offenses for the eight years immediately preceding the application and for any other misdemeanor violation for the three years immediately preceding the application. (See the House Legislative Analysis Section analysis of enrolled House Bill 4530 dated 1-04-01 for further information on the new concealed weapon license provisions.) Some opponents of the bill argue that while park and recreation officers do an excellent and much needed job, park and recreation officers are not trained as police officers and should not have the same authority to conduct misdemeanor arrests as police officers.

Response:

First of all, park and recreation officers already have the authority, as peace officers when enforcing DNR rules and certain state laws on state park lands, to arrest people. All the bill would do with regard to these arrest powers would be to extend limited arrest powers (including certain specified warrantless arrest powers) to park and recreation officers for minor offenses (which are a kind of misdemeanor with specific maximum penalties) committed in the officer's presence on state "waterways" (which, in fact, also include some lands and facilities regulated by the DNR under Part 781 of the NREPA). So if the concern of some opponents of the bill is that park and recreation officers would be granted arrest powers for the first time, this is a mistaken understanding of park and recreation officers' current authority to make arrests. Secondly, however, some opponents of the bill also

appear to argue that the training received by park and recreation officers is not adequate to allow them to make criminal arrests since park and recreation officers undergo only a five-week training. However, currently both the NREPA and the Personal Watercraft Safety Act allow sheriffs to authorize deputies who have satisfactorily completed only 40 hours of law enforcement training to enforce the marine safety provisions of these acts. But 40 hours of law enforcement training amounts to only one five-day week of eight-hour days, in contrast to the five weeks' training required of park and recreation officers. If deputies with only 40 hours' training are allowed to make arrests, as they are, then surely park and recreation officers are qualified to make arrests in the limited areas that current law allows (and that the bill would allow). If some people believe that certain existing misdemeanors should not count against applicants for permits to carry concealed weapons, then one option open to them is to seek to have these misdemeanors changed to state civil infractions. However, other people might well argue that the misdemeanor provisions of the newly enacted CCW law are prudent and necessary protections and should be kept.

Against:

It is unclear why the bill would remove current provisions allowing park and recreation officers to issue citations for state civil infractions. If the bill intended to prohibit park and recreation officers from issuing citations for state civil infractions, it seems unlikely that the bill also would explicitly give park and recreation officers enforcement authority over violations of DNR rules that, under section 504, are state civil infractions. Moreover, park and recreation officers are given the authority to issue citations for state civil infractions under another statute, the Revised Judicature Act (RJA). The RJA authorizes law enforcement officers to issue citations for state civil infractions under certain circumstances, and includes DNR park and recreation officers under its definition of "law enforcement officer."

Against:

Although the bill reportedly is meant to give park and recreation officers the same arrest authority on state waterways as they currently have on state park lands, this bill would not in fact do this because of its restriction of warrantless arrests on waterways to "minor offenses" committed in the officer's presence. Park and recreation officers currently can arrest someone on state park land for certain misdemeanors whose penalties exceed those allowed for "minor offenses" (including certain assaultive offenses under

the Michigan Penal Code) and under circumstances that do not require that the offense be committed in their presence (such as the current provisions allowing warrantless arrests upon “reasonable cause” to believe that a felony had been committed by someone, or upon notification from other law enforcement officers of outstanding warrants). The bill’s restrictions on arrests on state waterways would appear to result in giving differential warrantless arrest authority to park and recreation officers for offenses committed on state park land and those committed on state waterways, which doesn’t make much sense.

Response:

The bill would keep park and recreation officers’ ability to issue citations for state civil infractions committed under the NREPA or DNR rule, including infractions involving off-road vehicles and snowmobiles. Reportedly, enforcement actions taken by park and recreation officers largely involve citations for state civil infractions anyway, so the bill would accomplish what is needed by extending the authority of park and recreation officers to issue citations for these infraction on waterways – in particular, at boating access sites – as well as on state park lands.

Against:

The bill would keep a rather odd list of marine safety-related violations that had been included under park and recreation officers’ warrantless arrest powers under the NREPA prior to the removal of these provisions from the NREPA and their reinstatement under the recently enacted Personal Watercraft Safety Act (Public Act 116 of 1998). Rather than simply allowing park and recreation officers to enforce all violations of the Personal Watercraft Safety Act (all of which are misdemeanors), the only personal watercraft violations for which a park and recreation officer could arrest someone without a warrant have to do with minimum distances that the NREPA requires personal watercraft (or people towed by personal watercraft) to keep from other people or objects (such as vessels or divers’ buoys). And the only other marine safety-related violation mentioned under the bill’s warrantless arrest provisions (regardless of whether the violation took place on state park lands or state waterways) is, oddly enough, one having to do with placing buoys at public swimming beaches and with swimming beyond such buoys. While these are marine safety issues, why are they the only ones singled out for park and recreation officers’ warrantless arrest powers?

Response:

Reportedly, the bill’s amendments regarding the warrantless arrest powers of park and recreation officers on state park lands are intended to maintain the

officers’ current powers by updating references to changes in laws since these powers were enacted. Consequently, the question of the appropriateness of extending these powers, say, to cover all violations of the recently enacted Personal Watercraft Safety Act, are not considered by the bill.

Analyst: S. Ekstrom

#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.