

# Legislative Analysis



## **PUBLIC USE OF ROAD ENDS ON INLAND LAKES AND STREAMS**

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

**House Bill 4463 (Substitute H-2)**

**House Bill 4464 (Substitute H-3)**

**Sponsor: Rep. Matthew Gillard**

**Committee: Tourism, Outdoor Recreation, and Natural Resources**

**Complete to 6-4-07**

## **A SUMMARY OF HOUSE BILLS 4463 & 4464 AS REPORTED FROM COMMITTEE**

### **BRIEF SUMMARY:**

House Bill 4463 (H-2) would require the Department to Environmental Quality (DEQ) to issue a marina permit under Part 301 of Natural Resources and Environmental Protection Act (MCL 324.30106) to a local unit of government with jurisdiction over an appropriate road end terminating on an inland lake or stream for the construction of a seasonal dock, if the local unit has adopted an ordinance with specified requirements.

House Bill 4464 (H-3) would amend Section 253 of the Land Division Act (MCL 560.253) to establish a presumption that the purpose of a dedication, gift, or grant of a road, street, or alley ending at a lake or stream (or a common area, right-of-way, or park contiguous to a lake or stream) includes "the seasonal mooring of boats, sunbathing, and lounging as otherwise authorized by law." This presumption would be conclusive unless rebutted with evidence showing that the plat proprietor intended to prohibit these activities. The presumption would not apply (1) if the road end grant says "for road use only" (or substantially similar language); or (2) to road ends owned by or immediately adjacent to properties owned by the State of Michigan.

The bills are tie-barred. More detail about House Bill 4463 (Substitute H-2) is provided later.

### **FISCAL IMPACT:**

The bills would not have a fiscal impact on the state or on local governmental units.

### **DETAILED SUMMARY:**

#### **House Bill 4463 (H-2)**

Under Section 30106 of NREPA, the DEQ decides whether to issue a marina permit after examining whether a proposed structure or project would have an adverse impact on the public trust or riparian rights. In making its decision, the DEQ must consider (1) the possible effects on the inland lake or stream and upon waters from which or into which

its water flows; and (2) the uses of all such waters, including uses for recreation, fish and wildlife, aesthetics, local government, agriculture, commerce, and industry. In addition, the DEQ is prohibited from issuing a permit if a proposed project or structure would unlawfully impair or destroy any of the waters or other natural resources of the state. Section 30106 expressly states that Part 301 does not modify the rights and responsibilities of any riparian owner to the use of his or her riparian water. A marina permit must specify that the project will not cause unlawful pollution as defined by Part 31.

In comparison, House Bill 4463 would *require* the DEQ to issue a marina permit applied for by any local unit of government with jurisdiction over an appropriate road end when that local unit has adopted a marina ordinance containing the provisions required by the bill. Specifically, the DEQ would have to issue a permit if:

- The applicant is a local unit of government.
- The proposed marina is located at road end (1) that is under the local governmental unit's jurisdiction and that would provide public access to an inland lake or stream; and (2) to which the presumption in Section 253(2) of the Land Division Act (contained in House Bill 4464, to which the bill is tie-barred) would apply.
- The permit application is to construct, install, or maintain a seasonal dock.
- The local unit of government has adopted an ordinance in compliance with Section 30106a of the bill.

Requirements of the local ordinance. Section 30106a of the bill sets forth the provisions that would have to be contained in a local ordinance to qualify the local governmental unit for a marina permit under the bill. As used in this section of the bill, "road end" would mean "the end of a road, street, or alley that terminates at an inland lake or stream, or terminates at a common area, a right-of-way, or a public park that is contiguous to the shoreline of an inland lake or stream."

## **Docks**

- Only one nonexclusive public dock would be allowed at the end of any public lateral road. (The terms "public lateral road" or "lateral road" appear throughout the bill but are not defined.)
- A survey to ensure that the dock remains within the right-of-way of the road (as extended into the waters of the inland lake or stream) and does not encroach on or over the riparian bottomland of adjacent property would be required. Stakes and drawings from a previously conducted survey, if identifiable, could be used.
- The dock could only be installed between May 1 and September 30 of each year.
- The dock's length could not exceed 250 feet.
- The dock could not be more than 5 feet wide, unless required by state or federal law.
- The dock would have to be constructed to allow access for law enforcement or emergency personnel.
- The length of the dock could not unreasonably interfere with the safety and navigability of the waters of the inland lake or stream.

## **Hoists**

- Only a permitted boat hoist would be allowed within the area of any public lateral road as extended into the inland lake or stream. The augering or driving of any other boat mooring posts would be prohibited
- A local ordinance regarding the construction, installation, or maintenance of boat hoists on the road end, and in the adjacent waters, to establish seasonal overnight mooring or docking of unoccupied vessels would have to include, but would not be limited to, all of the following requirements:
  - (1) Lateral road-end hoists would have to be placed in a uniform straight line running away from and parallel to the shoreline in a manner that keeps the hoist and associated moored watercraft within the right-of-way of the public road as extended into the waters of the inland lake or stream. Watercraft moored in hoists could not encroach onto or over the riparian bottomland of adjacent property.
  - (2) Lateral road-end hoists would have to be placed at least 20 feet offshore and could not unreasonably interfere with the ingress, egress, safety, and navigability of the waters of the inland lake or stream.
  - (3) Boat hoists could not be placed in such a way as to impede access for law enforcement or emergency personnel.
  - (4) Boat hoists would only be allowed between May 1 and September 30 of each year.

## **Land use permits**

A lateral road terminating at the water's edge of an inland lake or stream could not be altered, improved, or maintained in any manner without first obtaining an appropriate land use permit for the desired activity. The local ordinance could require that additional permits be obtained from the county road commission or drain commission.

## **Use of lottery to allocate hoists and slips among local residents**

A local ordinance would have to provide for a lottery to allocate the use of boat hoists and boat slips among residents of the local unit of government if the demand for the use of these facilities is greater than the supply. (The term "resident" is not defined in the bill.)

## **Fees**

- If fees are to be charged for use of marina facilities, the ordinance would have to set forth an itemization of the specific fees. Fees assessed could be used by the local unit of government only to pay for the installation, removal, and maintenance of docks and boat hoists, for necessary surveys related to the marina or road end, and for law enforcement activities.

- The ordinance would have to provide for fees for the use of boat slips and boat hoists at the marina that were equivalent to fees for similar services charged at other marinas on that inland lake or stream or at a comparable inland lake or stream.

[Note: It is currently unclear how these two fee provisions are to be harmonized. The first provision set forth above suggests that a local unit of government would not necessarily have to charge fees for its marina facilities, but if it does it would have to itemize the fees in its ordinance and use the money generated only for certain activities. The second provision could be read to suggest that fees reflecting the fair market value of the facilities would have to be charged.]

### **Violations**

The ordinance would have to provide that a person who violated the ordinance was responsible for a municipal infraction and would be subject to a fine of not more than \$500 per violation.

### **Ordinance could allow sunbathing and lounging activities between sunrise and sunset.**

A local ordinance allowing a road end marina could also authorize the use of the waterfront within the boundaries of the road end for sunbathing and lounging activities. If so, the ordinance would have to specify what uses were permitted, what uses were prohibited, and the hours of operation (not to exceed sunrise to sunset).

### **Authorized marinas protected from nuisance liability.**

A marina operated by a local unit of government in compliance with the bill could not be found to be a public or private nuisance.

### **POSITIONS:**

The Department of Environmental Quality is opposed to House Bill 4463 as introduced and as passed by the Committee (Substitute H-2). (5-21-07)

The Department of Natural Resources supports House Bill 4464 as amended (Substitute H-3). (6-1-07)

Legislative Analyst: Shannan Kane  
Fiscal Analyst: Kirk Lindquist

---

■ 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.