

Legislative Analysis



COMMERCIAL SPORT FISHING AND HUNTING GUIDES

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<http://www.house.mi.gov/hfa>

Senate Bill 103 as reported w/amendments from House committee
Sponsor: Sen. John Cherry

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 104 as reported from House committee
Sponsor: Sen. Kevin Daley

Senate Bill 105 as reported from House committee
Sponsor: Sen. Sean McCann

House Committee: Natural Resources, Environment, Tourism and Outdoor Recreation
Senate Committee: Natural Resources and Agriculture

Complete to 10-5-23

(Enacted as Public Acts 220, 221, and 222 of 2023)

SUMMARY:

Taken together, Senate Bills 103, 104, and 105 would amend the Natural Resources and Environmental Protection Act (NREPA) to set requirements for sport fishing guides and commercial hunting guides while stipulating that the Natural Resources Commission has exclusive authority to regulate sport fishing.

Senate Bills 103 and 104

Senate Bill 103 would amend Part 487 (Sport Fishing) of NREPA to provide for the licensure and regulation of *sport fishing guides*, and SB 104 would amend Part 435 (Hunting and Fishing Licensing) to provide for the licensure and regulation of *commercial hunting guides*.

Under the bills, beginning March 1, 2024, an individual could not act as a sport fishing guide or commercial hunting guide in Michigan unless they possessed both of the following:

- A valid license to act as a sport fishing guide or commercial hunting guide.
- A valid fishing license (for a sport fishing guide) or a valid base license issued under Part 435 of the act (for a commercial hunting guide).

Sport fishing guide would mean an individual who, for a fee or other *consideration* (SB 103) or *consideration of value* (SB 104), provides assistance to another individual in pursuing, capturing, catching, killing, taking, or attempting to take fish. It would *not* include the following:

- The owner of private land while providing assistance to another individual in pursuing, capturing, catching, killing, taking, or attempting to take fish on that land.
- An employee or member of an organization conducting a not-for-profit activity to recruit, retain, or promote fishing, while providing assistance to another individual in taking fish during that activity.
- An individual who has not been convicted of a crime listed below (under the licensure provisions) and who is working under the *direct supervision* of a licensed sport fishing guide.

Direct supervision would mean that visual and vocal contact is constantly maintained between the individual and the applicable licensed guide.

Commercial hunting guide would mean an individual who, for a fee or other **consideration**, provides assistance to another individual in hunting game. It would *not* include the following:

- The owner of private land while providing assistance to another individual in pursuing, capturing, catching, killing, taking, or attempting to take game on that land.
- The owner, employee, or member of a game bird hunting preserve licensed under Part 417 (Game Bird Hunting Preserves) of NREPA, or a designee of the owner, employee, or member, while providing assistance to another individual in pursuing, capturing, catching, killing, taking, or attempting to take game birds authorized to be hunted on that hunting preserve.
- The owner or employee of a **privately owned game ranch** while providing assistance to another individual in pursuing, capturing, catching, killing, taking, or attempting to take privately owned game that they are permitted to own on their privately owned game ranch. (**Privately owned game ranch** would include a cervidae livestock facility registered under the Privately Owned Cervidae Producers Marketing Act.)
- An individual, business, agency, or nonprofit organization providing damage or nuisance animal control services under a permit from the Department of Natural Resources (DNR).
- An employee or member of an organization conducting a not-for-profit event to recruit, retain, or promote hunting, while providing assistance to another individual in hunting game during that event.
- An individual who has not been convicted of a crime listed below (under the licensure provisions) and who is working under the *direct supervision* of a licensed commercial hunting guide when a hunting client is present.
- An individual who provides assistance when a hunting client is not present.
- An individual who is compensated for providing assistance to an **individual with a disability or physical limitation**.

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

Individual with a disability or physical limitation would mean an individual who is determined by a physician to have one or more of the following:

- Blindness (note that this condition could be determined by an optometrist or a physician assistant as well as by a physician).
- The inability to walk more than 200 feet without having to stop and rest.
- Both the inability to use one or both legs or feet *and* the inability to walk without the assistance of another person or the use of a wheelchair, walker, crutch, brace, prosthetic, or other device.
- A lung disease from which the person's forced expiratory volume for one second, when measured by spirometry, is less than one liter, or from which the person's arterial oxygen tension is less than 60 mm/hg of room air at rest.

- A cardiovascular condition that causes the person to measure between 3 and 4 on the New York heart classification scale, or that renders the person incapable of meeting a minimum standard for cardiovascular health that is established by the American Heart Association and approved by the Department of Health and Human Services.
- An arthritic, neurological, or orthopedic condition that severely limits the person's ability to walk.
- The persistent reliance upon an oxygen source other than ordinary air.

Licensure and fees

To obtain a license to act as a sport fishing guide or commercial hunting guide, an individual would have to submit to the DNR the application fee described below and an application in a format determined by the DNR. The DNR could grant a license only if it determined *all* of the following:

- The individual holds a valid certification in first aid and CPR issued by the American Red Cross, the American Heart Association, or a comparable organization approved by the DNR and can provide a copy of the certification upon request.
- The individual has a valid, lawfully obtained Michigan driver's license, an official state personal identification card, or a sportcard issued under Part 435 of NREPA.
- The individual has not been convicted of any of the following in the past three years:
 - Any felony.
 - A violation of any of the following:
 - Obstructing or interfering in the lawful taking of animals or fish.
 - Unlawfully possessing, taking, buying, or selling game or a protected animal; using an illegally constructed snare or cable restraint; or unlawfully importing a cervid carcass or parts.
 - Unlawfully taking or killing any fish, game, fur-bearing animal, or game bird contrary to Part 411 (Protection and Preservation of Fish, Game, and Birds) of the act.
 - Part 445 (Charter and Livery Boat Safety) of the act.
 - Using dynamite, nitroglycerin, any other explosive substance, lime, electricity, or poison to take or kill fish; using unauthorized nets to take game fish; buying or selling game fish or parts of them; or unlawfully taking or possessing sturgeon.
 - Snagging fish in violation of Part 487 of the act.
 - A violation of a law of a *participating state* that is substantially similar to any of the above violations. (*Participating state* would mean a state that enacts legislation to become a member of the Wildlife Compact under Part 16 (Enforcement of Laws for Protection of Wild Birds, Wild Animals, and Fish) of NREPA.)
- The individual is eligible to purchase a license for the game species or fish species for which the individual will be acting as a commercial hunting guide or sport fishing guide. (However, under SB 104, this requirement would not apply to an individual who is ineligible to obtain a hunting license solely because that individual has previously been issued a hunting license for that species.)
- Under SB 103, the individual has either a valid state pilot's license issued by the DNR or a valid captain's license issued by the United States Coast Guard, unless the

individual indicates in writing to the DNR that sport fishing guide activities will not involve the use of a watercraft.

An individual could not act as a sport fishing guide or commercial hunting guide on commercial forestland. An individual also could not act as a guide unless that individual, when acting as a guide, carries a basic first aid kit that includes certain implements and materials specified in the bills.

The application fee for a sport fishing guide license or a commercial hunting guide license would be \$150 for a resident and \$300 for a nonresident. Money collected from these fees would be deposited in the Game and Fish Protection Account. Additionally, the operator of a charter boat licensed under Part 445 would not have to pay an application fee for a sport fishing guide license.

A sport fishing guide license or commercial hunting guide license would be valid for three years after the date it is issued. For a sport fishing guide license, the DNR would have to allow an individual to obtain a public boating access entry pass, as required under section 78105(3) of NREPA, with the sport fishing guide license for each year the guide license is valid. An individual with the guide license would be charged \$300 for the entry pass.

The DNR could revoke a sport fishing guide license or commercial hunting guide license for any of the following reasons:

- The DNR determines that the individual is not eligible to hold a license.
- The individual provides false information.
- For commercial hunting guide licenses, the individual fails to file an annual report, as described below, and that report remains unfiled for more than 90 days after it is due.

Reporting

A commercial hunting guide would have to file an annual report with the DNR, and a sport fishing guide would have to file monthly reports with the DNR. The reports would be in a format determined by the DNR and would contain information related to all the following:

- The species of game or fish for which the individual acted as a commercial hunting guide or sport fishing guide.
- The number of clients that the commercial hunting guide had during the year or the number of clients that the sport fishing guide had for each fishing trip and the number of hours fished for each fishing trip.
- The number of game animals harvested by the clients of the commercial hunting guide or the number of fish caught and released and harvested by the clients of the sport fishing guide.
- Any additional information the DNR requires regarding the biological characteristics of the game animals or fish caught and released or harvested or regarding the fishing activity.
- Additionally, for sport fishing guides:
 - The bodies of water where the individual acted as a sport fishing guide.
 - For any month that the guide did not act as a sport fishing guide, a report stating that the individual did not act as a sport fishing guide during that month.
- Additionally, for commercial hunting guides: the counties where the individual acted as a commercial hunting guide.

A sport fishing guide who fails to file a monthly report that remains unfiled for more than 90 days after the date it was due would be subject to the following:

- A \$100 civil fine for the first violation.
- A \$200 civil fine for the second violation.
- A \$500 civil fine for a third violation.
- For a fourth violation, after notice and an opportunity for a hearing, revocation of the individual's sport fishing guide license.

Information submitted in the above reports would be considered confidential and exempt from disclosure under the Freedom of Information Act (FOIA).

Miscellaneous provisions and other violations

The DNR would have to post annually on its website all of the following:

- The number of applications submitted for a license in the previous year.
- The number of licenses issued in the previous year.
- A list of individuals who have valid licenses.

An individual would have to carry the sport fishing guide license or commercial hunting guide license and present it upon the demand of a conservation officer, a peace officer, a tribal conservation officer, a park and recreation officer if guiding on property regulated under Part 741 or 781 of NREPA, or the owner or occupant of any land where the individual is acting as a sport fishing guide or commercial hunting guide.

An individual who acts as a sport fishing guide or commercial hunting guide without a valid license or on commercial forestland would be subject to a civil fine of up to \$500 for a first violation and up to \$1,000 for a second or subsequent violation. All civil fines collected under the bills would be deposited in the Game and Fish Protection Account.

An individual providing false information to the DNR would be subject to a civil fine of up to \$500. Additionally, sport fishing guides providing false information to the DNR also would be subject to the costs of prosecution.

Senate Bill 105

Currently, Part 401 (Wildlife Conservation) of NREPA provides that the Natural Resources Commission has the exclusive authority to regulate the taking of game in Michigan. Senate Bill 105 would add to this exclusive authority the regulation of sport fishing under Part 487 and specify that the authority includes regulating the use of commercial hunting or sport fishing guides in taking game and fish.

SB 103: Proposed MCL 324.48714a and 324.48714b

SB 104: Proposed MCL 324.43528c and 324.43528d

SB 105: MCL 324.40113a

Each bill would take effect 90 days after its enactment. All three bills are tie-barred to one another, which means that none of them could take effect unless all of them were enacted.

BACKGROUND:

Presently, Michigan does not regulate or track individuals who are aiding others in hunting and fishing activities, outside of requiring all individuals engaging in those activities to have the applicable licenses to hunt or fish in the appropriate seasons (as applicable). The intent of

formalizing oversight of these activities is to provide users of guides some assurance that the individual they are paying to serve as a guide has some training in first aid as well as an applicable captain's license if serving as a fishing guide. Beyond ensuring a minimal level of personal qualifications, the DNR supports this legislation as a way of gathering additional information about popular areas individuals want to hunt and fish to better inform decisions about habitat management projects and other conservation work.

FISCAL IMPACT:

Senate Bill 103 (sport fishing guide licenses) and Senate Bill 104 (commercial hunting guide licenses) are likely to increase costs and revenues for the Department of Natural Resources. The bills would require the department to annually report the number of license applications, licenses awarded, and license recipients. The bills also provide for the regulation and enforcement of guide license requirements by the department. These increased costs may be offset by revenue from licenses sales and license-related fines, which would be credited to the Game and Fish Protection Fund according to the bills. It is unclear whether the aforementioned costs would be met by revenue from license and entry pass sales. The FY 2022-23 DNR budget includes \$79.3 million from the Game and Fish Protection Fund, the majority of which supports programs in wildlife, fisheries, and law enforcement. Senate Bill 105 is unlikely to affect DNR costs or revenues. None of these three bills is likely to affect local government costs or revenues.

POSITIONS:

Representatives of the following entities testified in support of the bills (9-21-23):

- Department of Natural Resources
- Michigan United Conservation Clubs
- Michigan Trout Unlimited
- Congressional Sportsmen's Foundation

The following entities indicated support for the bills (9-21-23):

- Michigan Trappers and Predator Callers Association
- Michigan Environmental Council
- National Deer Association
- Ducks Unlimited
- U.P. Bear Houndsmen Association
- U.P. Sportsmens Alliance
- Michigan Fox Hunters
- Michigan State United Coon Hunters

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.