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SFA



BILL ANALYSIS

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Senate Bill 865 (Substitute S-2 as reported)
Senate Bill 830 (Substitute S-1 as reported)
Senate Bill 897 (as reported without amendment)
Sponsor: Senator Jon Cisky (S.B. 865 & S.B. 897)
Senator Walter H. North (S.B. 830)
Committee: Transportation and Tourism

Date Completed: 3-11-98

RATIONALE

Personal watercraft are small vessels, operated by one to three persons who kneel or stand on the hull, that use a motor-driven propeller or an internal combustion engine to power a water jet pump which serves as the primary source of propulsion. These vessels are smaller than most boats, easy to maneuver, and can travel at speeds of more than 50 miles per hour. Given their design and maneuverability, personal watercraft reportedly have been the fastest growing segment of the recreational boating industry. In 1994, there were 40,000 personal watercraft registered in the State. Three years later, approximately 90,000 personal watercraft were registered, which accounted for 10% of the more than 960,000 registered boats in the State. The increasing number of personal watercraft on State waters has resulted in growing concerns about the safe operation of these craft. The operation of personal watercraft currently is regulated under Part 801 (Marine Safety) of the Natural Resources and Environmental Protection Act (NREPA) which, among other things, requires operators to wear a personal flotation device, prohibits operation between sunset and sunrise, and establishes age limits for a person who wants to operate, lease, hire, or rent a personal watercraft. Despite these regulations, personal watercraft apparently accounted for 173 of 402 boating accidents reported in the State in 1997. Consequently, some people believe that a more comprehensive approach is needed to regulate the use of these watercraft.

CONTENT

Senate Bill 865 (S-2) would create the "Personal Watercraft and Safety Act" to do the following:

-- Repeal and reenact some provisions in the Natural Resources and Environmental

Protection Act governing the operation of personal watercraft.

- Prohibit a person from operating a personal watercraft one hour before sunset and one hour after sunrise.
- Require a person, except when traveling at slow--no wake speed, who operated a personal watercraft on a Great Lake to maintain a distance of 150 feet of the shoreline and not cross within 150 feet behind another vessel.
- Provide that, as a rule, a person operating a personal watercraft or a person being towed on water skis or similar equipment would have to remain at least 100 feet from any dock, raft, or buoyed or occupied bathing or swimming area, a person in a personal flotation device, or a moored or anchored vessel; and remain at least 200 feet from a submerged diver.
- Require the Department of Natural Resources (DNR) to establish a comprehensive educational program to train boat operators, and issue a boating safety certificate to a person who satisfactorily completed the program.
- Prohibit a person under 16 years of age from using a personal watercraft on State waters, but permit a person who was at least 12 years but less than 16 to operate a personal watercraft if he or she had obtained a boating safety certificate before the bill's effective date.
- Prohibit a person born after December 31, 1978, from operating a personal watercraft unless he or she obtained a boating safety certificate.
- Prohibit a person who was required to complete a boating safety course from operating a personal watercraft on State waters unless he or she had a boating safety

certificate and require the individual to display his or her certificate upon the demand of a peace officer.

- Exempt nonresidents of the State from the bill's certification requirements for one year, and then permit nonresidents to operate a personal watercraft if they possessed a boating safety certificate from their own state.
- Require the DNR to create and make available to personal watercraft dealers a summary of the marine safety laws pertaining to personal watercraft and a summary of the safety features of personal watercraft.
- Require a personal watercraft dealer to advise a purchaser of the sources of boating safety courses in his or her area, and establish a civil penalty for violations of this requirement.
- Permit a court to issue an order prohibiting a person, who recklessly operated a personal watercraft, from operating a personal watercraft on the State's waters for up to two years.
- Establish misdemeanor penalties for violations of the bill.
- Require the Secretary of State, by April 30, 2000, to track individual offenses of the bill.

Senate Bill 830 (S-1) would amend the NREPA to prohibit a boat livery from leasing, hiring, or renting a personal watercraft to a person who did not display a boating safety certificate unless he or she obtained training on the safe use of a personal watercraft from the boat livery; prohibit a person who leased, hired, or rented a personal watercraft from permitting another person to operate the craft if that person did not have boating safety certification; require a boat livery to provide a copy of the written rental agreement to a person who leased, hired, or rented a personal watercraft; specify that a person who rented, leased or hired a personal watercraft would be liable for injury resulting from the negligent operation of the craft, if it were being used with his or her expressed or implied consent; and, establish misdemeanor penalties for persons who violated the bill's boating safety training requirements for renting, leasing, or hiring a personal watercraft.

Senate Bill 897 would amend the Code of Criminal Procedure to allow the issuance of an appearance ticket for a misdemeanor violation of the proposed Personal Watercraft Safety Act

for which the maximum permissible penalty did not exceed 92 days in jail and a fine.

(Senate Bill 865 (S-2) would define "personal watercraft" as a vessel that used a motor-driven propeller or an internal combustion engine powering a water jet pump as its primary source of propulsion; was designed without an open load carrying area that would retain water; and, was designed to be operated by one or more persons positioned on, rather than within, the confines of the hull.)

Senate Bill 865 (S-2) is tie-barred to Senate Bills 830 and 897, and contains an April 1, 1998, effective date. Senate Bills 830 (S-1) and 897 are tie-barred to Senate Bill 865. A more detailed description of the Senate Bills 865 (S-2) and 830 (S-1) follows.

Senate Bill 865 (S-2)

Application

The bill specifies that it would apply to personal watercraft and associated equipment used on the waters of the State. Except where expressly indicated otherwise, the bill would not apply to a personal watercraft that was all of the following: owned by a state or political subdivision of a state other than Michigan and its political subdivisions, used principally for governmental purposes, and clearly marked and identifiable as personal watercraft that was used principally for governmental purposes.

("Associated equipment" would mean any of the following that were not radio equipment: an original system, part, or component of a personal watercraft at the time that the boat had been manufactured, or a similar part or component manufactured or sold for replacement; repair or improvement of an original or replacement system, part, or component; an accessory or equipment for, or appurtenance to, a personal watercraft; or, a marine safety article, accessory, or equipment intended for use by a person on board a boat. "Waters of the state" would mean any waters within the territorial limits of the State, and would include those waters of the Great Lakes that were under the jurisdiction of the State.)

Operation

The bill would repeal and reenact current provisions in the NREPA that prohibit a person from operating a personal watercraft unless each person

riding on or being towed behind the watercraft is wearing a personal flotation device, that concern the operation of a personal watercraft equipped with a lanyard-type engine cutoff, and that require the lanyard to be attached to the operator's clothing or personal flotation device (MCL 324.80143).

Currently, under the section of the NREPA that the bill would repeal, a person may not operate a personal watercraft on the State's waters "between the hours from sunset to sunrise". The bill specifies that a person could not operate a personal watercraft during the period that began one hour before "sunset" and ended one hour after "sunrise". The bill would define sunset and sunrise to mean those times as determined by the National Weather Service.

The bill would add that except as otherwise provided in the bill, a personal watercraft operator would have to comply with Part 801 of the NREPA.

Operating Distance

Provisions of the NREPA that the bill would repeal and reenact do the following: require a person to operate a personal watercraft in a reasonable and prudent manner; prohibit the reckless operation of a personal watercraft; and, specify that a maneuver that unreasonably or unnecessarily endangers life, limb, or property, including but not limited to all of the following, constitutes reckless operation of a personal watercraft: weaving through congested vessel traffic; jumping the wake of another vessel unreasonably or unnecessarily close to the other vessel or when visibility around the other vessel is obstructed; and, swerving at the last possible moment to avoid a collision. In addition, the bill would repeal and reenact the current prohibition against operating a personal watercraft on the waters of the State carrying more persons than the watercraft is designed to carry. The bill specifies that a violation of this prohibition would be prima facie evidence of reckless operation of a watercraft.

The bill would add that a person operating a personal watercraft on the waters of the State could not cross within 150 feet behind another vessel, unless the person was operating the personal watercraft at slow--no wake speed. The bill specifies that this provision would not apply to a performer engaged in a professional exhibition or a person preparing to participate or participating in a regatta, race, marine parade, tournament, or exhibition held in compliance with NREPA regulations of races and water events (MCL 324.80164), under a permit issued by the

Department at the time and place specified in the permit. ("Slow--no wake speed" would mean the use of a vessel at a very slow speed so that the resulting wake or wash was minimal.)

Except when traveling at slow--no wake speed, a person who operated a personal watercraft on one of the Great Lakes that was under the jurisdiction of the State would have to maintain a distance of 150 feet from the shoreline.

A person who operated a personal watercraft on the State's waters or a person who was being towed by a personal watercraft on a water sled, kite, surfboard, parachute, tube, water ski, or similar equipment on the State's waters would have to maintain a distance of at least 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 flotation device, or a vessel moored or anchored, drifting, or sitting in dead water. An operator or a person being towed also would have to maintain a distance of at least 200 feet from a submerged diver, vessel engaged in underwater diving activities, or a flotation device displaying the international diving insignia. These provisions would not apply under either of the following conditions: the personal watercraft being operated or the person being towed was proceeding at a slow--no wake speed or the operator of the personal watercraft was picking up or dropping off a water skier; or, the personal watercraft being operated or the person being towed was in navigable channels not otherwise posted.

Reckless Operation

A person operating a personal watercraft in excess of the speeds established under Part 801 of the NREPA would be guilty of reckless operation of a personal watercraft under the bill.

The bill specifies that the owner of a personal watercraft would be liable for any injury occasioned by its negligent operation, whether the negligence consisted of a violation of the State's statutes, or in the failure to observe the ordinary care in the operation that the rules of the common law required. The owner would not be liable unless the personal watercraft was being used with his or her expressed or implied consent. The bill also specifies that it would be rebuttably presumed that the personal watercraft was being operated with the knowledge and consent of the owner if it were driven at the time of the injury by his or her son, daughter, spouse, father, mother, brother, sister, or other immediate member of the owner's family.

If a person carelessly and heedlessly operated a personal watercraft upon the State's waters in disregard of the rights or safety of others, without due caution and circumspection, or at a rate of speed or in a manner that endangered or was likely to endanger a person or property, that person would be guilty of reckless operation of a personal watercraft and would be subject to the penalties specified in the bill, as applicable.

Upon a person's conviction under these provisions, the court could issue an order prohibiting the person from operating a personal watercraft on the State's waters for up to two years and would have to order the person to participate in and complete a boating safety course. An order issued pursuant to this provision would be in addition to any other penalty authorized under the bill.

A person who violated these provisions twice within a three-year period would be guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a fine of up to \$1,000. A person who violated these provisions three or more times within a five-year period would be guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a fine of up to \$2,000.

Boating Safety Program/Certificate

An individual who was required to complete a boating safety course under the bill could not operate a personal watercraft upon the waters of the State unless that individual had in his or her immediate possession a boating safety certificate. ("Boating safety course" would mean a course that was approved by the DNR and provided instruction on the safe operation of a personal watercraft that met or exceeded the minimum course content for boating or personal watercraft education established by the National Association of State Boating Law Administrators education committee, October 1996.)

The bill specifies that in order to protect the public interest in the prudent and equitable use of the waters of the State and to enhance the enjoyment of pleasure boating and other recreational water sports on the waters of the State, the DNR would be required to establish and pursue comprehensive educational programs designed to advance boating safety. The Department also would have to put into effect a program to train boat operators, and issue a boating safety certificate to those who satisfactorily completed the program. For the purpose of giving the courses of instruction and awarding boating safety certificates, the DNR could designate as its agent any person it considered qualified to act in this capacity. A charge could not be made for any instruction given or for the award of boating safety certificates.

The DNR would be required to issue a boating safety certificate to each individual who successfully completed a boating safety course and passed an examination. The examination would have to be administered in person and proctored by the DNR or an agent of the Department. The DNR could not issue a boating safety certificate to a person unless he or she had successfully completed a boating safety course and passed an examination. A boating safety certificate would be valid, unless revoked, for the life of the person who earned it. Beginning on the bill's effective date, the Department would have to consider the number of examinations that were administered or proctored when calculating the State aid to counties that conduct a marine safety program under the NREPA (MCL 324.80117).

An individual who was required to complete a boating safety course and who operated a personal watercraft on the waters of the State would have to display his or her boating certificate upon the demand of a peace officer who identified himself or

herself as a peace officer. A person could display only his or her own boating safety certificate upon the demand of peace officer, and could not display a fraudulent boating safety certificate. A peace officer could not stop a personal watercraft solely for the purpose of determining whether the operator possessed a boating safety certificate.

The DNR Director, by written authorization, could modify or suspend the bill's boating safety certificate requirements if the modification or suspension of the requirements were for persons engaged in a marine event authorized by the Director or for which the Director received a copy of a U.S. Coast Guard authorization.

Age of Operator

A person under 16 years of age could not use a personal watercraft on the waters of the State. A person who was at least 12 years of age and less than 16, however, could use a personal watercraft if he or she had obtained a boating safety certificate before the bill's effective date. A person who was born after December 31, 1978, could not operate a personal watercraft upon the waters of the State unless he or she first obtained a boating safety certificate. Within five years after the bill took effect, these graduated age provisions would have to be reviewed by the appropriate committee of both houses of the Legislature to ascertain the effect, if any, the provisions had on the safe operation of personal watercraft on the waters of the State.

The owner of a personal watercraft or a person having charge over or control of a personal watercraft could not authorize or knowingly permit it to be operated in violation of these provisions.

The bill specifies that these provisions would not apply to a performer engaged in a professional exhibition or a person preparing to participate or participating in a regatta, race, marine parade, tournament, or exhibition held in compliance with the NREPA's provisions authorizing races and other water events, under a permit issued by the Department and at the time and place specified in the permit.

Nonresident Operators

The proposed certification requirements would not apply to a person who was not a resident of the State. Beginning one year after the bill's effective date, however, a nonresident could operate a personal watercraft on the waters of the State only

if he or she possessed one of the following: a boating safety certificate; a certificate issued by his or her state of residence that reflected education and training that was substantially similar to the education and training required to obtain a boating safety certificate under the bill; or, a certificate showing that he or she had successfully completed a course that provided instruction on the safe operation of a personal watercraft that met or exceeded the minimum course content for boating or personal watercraft education established by the National Association of State Boating Law Administrators education committee, October 1996.

Dealer/DNR Requirements

A dealer of a new or used personal watercraft would be required to advise each person who bought a personal watercraft from the dealer of the sources of boating safety courses in the area. A dealer who violated this provision would be responsible for a State civil infraction and would be liable for a \$100 civil fine. ("Dealer" would mean a person or an authorized representative of that person who annually purchased from a manufacturer, or who was engaged in selling or manufacturing, six or more personal watercraft that required certificates of number under Part 801 of the NREPA.

The DNR would be required to create and make available to personal watercraft dealers both of the following: a document that summarized the laws that pertained exclusively to personal watercraft, and a document that summarized the safety features of personal watercraft. This document could be a generic document and could not represent the safety features of a particular style or brand of personal watercraft. A dealer would have to provide a copy of each of these documents to each person who bought a personal watercraft from that dealer. A dealer who violated this provision would be responsible for a State civil infraction and would be liable for a \$100 civil fine.

Except as otherwise provided, the DNR would be responsible for the bill's administration. The Department would be required to promulgate rules authorized by the bill under the Administrative Procedures Act, and would have to publish the rules in a convenient form.

Violations

Unless otherwise specified in the bill, a person who violated the bill would be guilty of a misdemeanor,

punishable by imprisonment for up to 90 days and/or a fine of not more than \$100. In addition, a violator could be required to participate in and complete a boating safety course.

By April 30, 2000, the Secretary of State would be required to begin tracking individual offenses of the bill. In order to accomplish the tracking requirement, the Secretary of State would have to pursue and implement a comprehensive technology system, and work cooperatively with appropriate departments of the State.

Peace officers would have to enforce the bill. If a person had received a citation for a violation of the bill's certification requirements, the court would have to waive any fine and costs upon receiving, within 10 days after the citation was issued, proof of certification by a law enforcement agency that the person, before the appearance date on the citation, produced a valid boating safety certificate or other certification, as applicable, that was valid on the date the violation occurred.

Senate Bill 830 (S-1)

The NREPA currently prohibits a boat livery from leasing, hiring, or renting a personal watercraft to a person who is under 16 years of age. The bill would add that a livery could not lease, hire, or rent a personal watercraft to a person who did not display a boater safety certificate, as required under the "Personal Watercraft Safety Act", unless the person obtained training in the safe use of a personal watercraft from the boat livery prior to the lease, hire, or rent of the personal watercraft. A person who leased, hired, or rented a personal watercraft from a boat livery could not permit an individual to operate the watercraft if he or she had not obtained a boater safety certificate or other certificate, as required under the Personal Watercraft Safety Act. A person who violated these provisions would be guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a fine of at least \$100 but not more than \$500. A person who violated these provisions twice within a three-year period would be guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a fine of up to \$1,000. A person who violated these provisions three or more times within a five-year period would be guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a maximum fine of \$2,000.

A boat livery would have to provide a copy of the written rental agreement to each individual who leased, hired, or rented a personal watercraft from

the boat livery and who had obtained the required training. The rental agreement would have to include all of the following information: the name of the person who leased, hired, or rented a personal watercraft from the boat livery, and the date(s) of the lease, hire, or rental. The agreement would be a valid boating safety certificate under the Personal Watercraft Safety Act only for the person named in the certificate on the date(s) of the lease, hire, or rental of the personal watercraft.

A person who leased, hired, or rented a personal watercraft from a boat livery would be liable for any injury resulting from its negligent operation, whether the negligence consisted of a violation of State statute, or the failure to observe ordinary care in the operation that the rules of the common law required. The person would not be liable unless the personal watercraft were being used with his or her expressed or implied consent. The bill specifies that it would be rebuttably presumed that the personal watercraft was being operated with the knowledge and consent of the person if it were driven at the time of the injury by his or her son, daughter, spouse, father, mother, brother, sister, or other immediate member of the person's family.

MCL 324.44522 (S.B. 830)
764.9f (S.B. 897)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The increasing number of personal watercraft on the State's waters has been accompanied by a growing dissatisfaction with the reckless operation of these craft. While personal watercraft make up 10% of the total number of registered boats and vessels in Michigan, they account for approximately 43% of the boating accidents in the State. Furthermore, local police agencies that enforce the State's marine laws report that many personal watercraft operators are not familiar with boating laws and do not understand their responsibilities as personal watercraft operators. The bills would address these issues by doing the following: requiring the DNR to establish a comprehensive educational program to train boat operators, providing for the issuance of a boating safety certificate, establishing age limits for persons to operate a personal watercraft, requiring certain operators to obtain a boating safety certificate, and setting distance requirements from shorelines, docks, swimming areas, and other vessels. In addition, distance requirements and educational opportunities could help address noise complaints as personal watercraft operators would have to maintain certain distances from shorelines and could be made aware of proper operation of the craft to minimize noise levels. Also, the owner of a personal watercraft would be liable for any injury resulting from its negligent operation by an operator who had received the owner's expressed or implied consent to use the craft. Thus, owners would be discouraged from allowing persons who were not knowledgeable or experienced in using a personal watercraft to operate the vessel in a manner that would result in an injury to another person or property.

Opposing Argument

Many people perceive the reckless operation of personal watercraft on the State's lakes and rivers to be greater than the actual situation. For example, there was only one fatality involving a personal watercraft in 1997 compared with 20 fatalities resulting from boating accidents the same year, according to the DNR. Regardless of this record, many shoreline property owners and other water enthusiasts contend that the proposed regulations are needed to address concerns about reckless operation of personal watercraft. Currently, personal watercraft are regulated under

the marine safety provisions of Part 801 of the NREPA. Senate Bill 865 (S-2) would repeal and reenact in a new Act many of the same provisions that specifically govern the operation of personal watercraft as well as those provisions that apply to all vessels. For example, a person who operated a personal watercraft or a person who was being towed by a personal watercraft would have to stay at least 100 feet from a dock, raft, or swimming area. This requirement already is established for vessels, including personal watercraft, in the NREPA (MCL 324.80149). In addition, the NREPA includes provisions that an owner of a vessel, including a personal watercraft, is liable for injuries resulting from its negligent operation (MCL 324.80157). Some people have expressed concern about splitting from the NREPA the provisions on personal watercraft in order to create a separate Act. Personal watercraft are considered vessels and should be regulated under the NREPA as are other vessels, such as boats, to avoid confusion and conflicts. If personal watercraft are to be regulated under a separate Act, however, it is not certain whether the bills' provisions, particularly those found in Senate Bill 865 (S-2), would enhance the regulation of these craft.

Response: The bills would make numerous changes, including establishing a comprehensive educational program to train boat operators, setting age limits for personal watercraft operators, requiring certain operators to obtain a boating safety certificate, establishing distance requirements specifically for personal watercraft, and specifying penalties for reckless operation of a personal watercraft. The provisions would make the use of personal watercraft a safer recreational activity on the State's waters.

Legislative Analyst: L. Arasim

FISCAL IMPACT

Senate Bill 865 (S-2)

The bill would have an indeterminate fiscal impact on State and local government, dependent upon the amount of fines imposed and the cost of and demand for a boating safety program. The bill would use current Marine Safety Fund appropriations to cover costs associated with a boating safety education program, exam, and certification. At present, these funds are allocated to local county sheriffs departments on a grant basis for boating law enforcement purposes.

Senate Bill 830 (S-1)

The bill would have an indeterminate fiscal impact on State government, depending on the number of violations and amount of fine revenue obtained.

Senate Bill 897

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: G. Cutler

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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.