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**SFA**



**BILL ANALYSIS**

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Senate Bill 865 (as introduced 2-5-98)  
Senate Bill 830 (as introduced 12-3-97)  
Sponsor: Senator Jon Cisky (S.B. 865)  
          Senator Walter H. North (S.B. 830)  
Committee: Transportation and Tourism

Date Completed: 2-18-98

## **CONTENT**

**Senate Bill 865** 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.
- Require a person, except when traveling at slow--no wake speed, who operated a personal watercraft in a Great Lake to maintain a distance of 150 feet of the shoreline and not cross within 150 feet behind another vessel.
- Require a person operating a personal watercraft or a person being towed on water skis or similar equipment 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, unless the watercraft or the person being towed was proceeding at a slow--no wake speed or the operator was picking up or dropping off a water skier.
- 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.
- Permit a person who was at least 16 but under 19 to use a personal watercraft if he or she obtained a boating safety certificate.
- Prohibit a person born after December 31, 1978, from operating a personal watercraft unless he or she obtained a boating safety certificate.
- 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 person to complete a boating safety course to operate a personal watercraft and require a person operating a personal watercraft on State waters to display his or her certificate upon the demand of a peace officer.
- Require a personal watercraft dealer to advise a person who purchased a new or used personal watercraft of the sources of boating safety courses in his or her area, and establish civil penalties for violations of this requirement.
- Permit a court to issue an order prohibiting a person from operating a personal watercraft on the State's waters for up to two years, and establish misdemeanor penalties for persons who recklessly operated a personal watercraft within a three-year period.
- Establish misdemeanor penalties for other violations of the bill.
- Require the Secretary of State, by April 30, 2000, to track individual offenses of the bill.

**Senate Bill 830** would amend the Natural Resources and Environmental Protection Act (NREPA) to require boater safety training as a condition of renting, leasing, or hiring 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 boater safety training requirements for renting, leasing, or hiring a personal watercraft.**

(Senate Bill 865 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.)

The bills are tie-barred to each other. Senate Bill 865 contains an March 1, 1998, effective date. A more detailed description of the bills follows.

**Senate Bill 865**

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-half hour before "sunset" and ended one-half 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 (Marine Safety) 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 on a water sled, kite, surfboard, parachute, tube, water ski, or similar equipment would have to maintain a distance of at least 100 feet from a diver, 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, unless the vessel being operated or the person being towed was proceeding at a slow--no wake speed or the vessel operator was picking up or dropping off a water skier.

#### Reckless Operation

A person operating a personal watercraft in excess of the speeds established under Part 801 of 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 the negligent operation of the personal watercraft, 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 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 180 days and/or a fine of \$500. 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 one year and/or a fine of \$1,000.

#### Boating Safety Program/Certificate

Except as provided in the bill, 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. If an agent who administered and proctored an examination were eligible for

educational funds under the Marine Safety Fund on the day the bill took effect, the DNR would be required to reimburse the agent for actual and reasonable expenses incurred by the agent in administering and proctoring the examination. 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.

Except as provided in the bill, 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 would have to display only his or her own boating safety certificate, 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 had in his or her possession 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

Except as otherwise provided, 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 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 at least 16 years of age but less than 19 could use a personal watercraft if he or she obtained a boating safety certificate. 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. The owner of a personal watercraft or a person having charge over or control of a personal watercraft could not authorize or knowingly permit the personal watercraft 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 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.

#### 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 NREPA's marine safety provisions.)

The DNR would be required to create and make available to personal watercraft dealers both of the following: a document that summarized the marine safety laws that pertained exclusively to personal watercraft, and a document that summarized the safety features of personal watercraft. The bill specifies that 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 person who violated the bill 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. The bill specifies that law enforcement officers

would be required to enforce the bill.

**Senate Bill 830**

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, 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 up to \$100.

A person who leased, hired, or rented a personal watercraft from a boat livery would be liable for any injury resulting from the negligent operation of the watercraft, 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 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)

Legislative Analyst: L. Arasim

**FISCAL IMPACT**

**Senate Bill 865**

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**

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

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.