



**House
Legislative
Analysis
Section**

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BOATING: CIVIL INFRACTIONS

House Bill 4639 (Substitute H-2)
House Bill 4640 (Substitute H-3)
House Bill 4641 as introduced
First Analysis (9-21-93)

Sponsor: Rep. David M. Gubow
Committee: Judiciary

THE APPARENT PROBLEM:

The registration and operation of watercraft is governed by the provisions of the Marine Safety Act, much as the Michigan Vehicle Code governs the registration and operation of motor vehicles. However, one major difference between the two laws is that the boating law does not provide for civil infractions; thus, minor violations must be processed as misdemeanors, with concomitant time and expense for boaters, law enforcement, and local courts. This aspect of the boating law was highlighted by recent amendments to the Marine Safety Act that provided for drunk boating penalties under provisions analogous to the vehicle code's provisions on drunk driving. One of those amendments made the refusal to submit to a preliminary breath test a civil infraction; however, neither the Marine Safety Act nor the vehicle code provide for marine law civil infractions.

With Michigan's lakes--especially in urban areas--filling with increasing numbers of boaters, jet skiers, water skiers, and swimmers, local marine safety patrols are contending with increased demands on their time and resources. To many, a sensible course would be to simplify enforcement of boating regulations by making many minor violations civil infractions in the same way that minor motor vehicle violations were made civil infractions. Legislation to accomplish this has been proposed.

THE CONTENT OF THE BILLS:

The bills would provide for marine law civil infractions to be issued under the Marine Safety Act. None of the bills could take effect unless all were enacted. A more detailed explanation follows.

House Bill 4639 would amend the Marine Safety Act (MCL 281.1006 et al.) to change various violations of the act from misdemeanors to marine law civil infractions. (The act now specifies one

civil infraction: refusal to take a preliminary breath test. Violations other than those addressed by the bill are and would remain misdemeanors or felonies). Procedures for issuing and processing marine law civil infraction citations would parallel those in the Michigan Vehicle Code. As under the vehicle code, a person could admit responsibility, admit responsibility "with explanation," or deny responsibility for an alleged civil infraction. Provisions for development of citation forms, issuance and auditing of citations, court review, and payment of fines would be virtually identical to the vehicle code's provisions for vehicular civil infractions.

There would be some differences, however. For example, with regard to a driver from out-of-state, the vehicle code requires an officer to confiscate the person's driver's license as security for the court appearance; as an alternative, the person may guarantee his or her appearance by leaving with the officer or court a guaranteed appearance certificate (issued by a surety company) or a cash guarantee of up to \$100. For out-of-state boaters, the bill would call for the confiscation of the operator's "identification document" (meaning his or her driver's license or government-issued identification card), and limit the cash guarantee to \$50. Another difference would be that while the vehicle code requires officers to turn in their citations at or before the end of their shifts, the bill would allow up to 48 hours after the end of a shift for an officer to turn in his or her boating tickets. Unlike the vehicle code, the bill would contain no explicit prohibition against ticket quotas or officers receiving fees for writing tickets.

The following would become civil infractions, enforceable as violations of state law or local ordinance (where applicable):

**** refusing to present a vessel's certificate of number upon the request of a peace officer;**

**** failing to make good on a check written to pay a fee required under the act;**

**** failing to paint or attach the certificate of number or display a state decal on a vessel as required;**

**** failing to notify the secretary of state of a change of address;**

**** violating various restrictions on water skiing (towing too close to shore, skiing at night, failing to have a second person on board to watch the skier);**

**** boating within an area marked off by buoys, or coming too close to a diver's warning buoy, or diving without marking one's location with the distinctive warning buoy or flag;**

**** intentionally rocking a boat (except under supervised training), or sitting, standing, or walking on parts of a vessel not designed for such (except when immediately necessary for the safe operation of the boat, such as when docking);**

**** setting out buoys or beacons improperly or without authorization from the Department of Natural Resources;**

**** failing to set off a public swimming area with buoys, knowingly permitting swimmers to swim outside of such buoys, or swimming within 100 feet outside the buoyed area.**

**** failing to comply with the federal Inland Navigational Rules Act of 1980. (These rules address "rules of the road" of boating and certain other matters, such as required equipment. This provision would replace Section 71, which now specifies rules for passing and yielding, and which the bill would repeal.)**

A political subdivision could not enact a local ordinance that provided a criminal penalty for an act or omission that was a civil infraction, or that imposed a penalty in excess of that prescribed by the Marine Safety Act. A local ordinance that conflicted with the act would be void to the extent of the conflict.

Various boat registration fees would be increased to the nearest whole dollar amount. (Public Act 39 of 1993 requires the secretary of state to round to the nearest whole dollar any fee computed under the act that results in a figure other than a whole dollar amount.)

The bill would specify distribution of fees. It would assign 60 percent of each \$25 administrative order processing fee to the secretary of state to defray that department's expenses incurred under the act (current law provides for the secretary of state to issue an order forbidding certain violators to operate vessels on Michigan waters, and such an order remains in force until the violator has appeared in court to resolve all matters pertaining to the violation and has also paid a \$25 administrative order processing fee to the court.)

The bill also would require that minimum costs of \$5 be ordered (the vehicle code similarly imposes a \$5 minimum, and assigns the money to the justice training fund). The court could add to a fine and costs a fee of up to \$25 to defray local costs in training marine safety officers. Money from the collection of this fee would go into marine safety peace officer training fund to be administered by the law enforcement division of the Department of Natural Resources, and used for the training of local marine safety officers.

House Bill 4640 would amend the Revised Judicature Act (MCL 600.113 et al.) to extend existing civil infraction provisions on standard of proof (which is by a preponderance of the evidence), prosecutorial appearances, assessment of court costs, and magistrate powers to civil infractions under the Marine Safety Act. The bill also would allow admissions of boating civil infractions to be processed by a local traffic bureau.

House Bill 4641 would amend the Code of Criminal Procedure (MCL 764.1e) to treat a peace officer's signed complaint as made under oath if the offense in question involved drunk boating or was otherwise a felony or misdemeanor under the Marine Safety Act. (The provision now applies to certain vehicle code violations; complementary language exists in the vehicle code and would be added to the Marine Safety Act by House Bill 4639).

BACKGROUND INFORMATION:

According to the DNR, county officers wrote about 5,600 boating tickets in 1992, and state conservation officers wrote about 1,700.

FISCAL IMPLICATIONS:

There is no fiscal information at present. (9-20-93)

ARGUMENTS:**For:**

The legislation would provide for civil infraction citations to be issued under the Marine Safety Act, thus eliminating the need to process many minor violations, which are now misdemeanors, as criminal offenses. With marine law civil infractions, boaters and law enforcement alike can benefit from procedures that enable fines to be paid by mail, and that reserve costly and time-consuming court appearances for contested matters. The change to marine law civil infractions is highly sensible and long overdue.

Against:

House Bill 4639 would allow courts to assess fees that would go into a fund for training marine safety officers. However, with both the size of the fee (up to \$25) and whether to impose it left to the option of the local courts, the bill would fall far short of establishing a reliable source of revenue for boat patrol training. Further, the fund could be spent only on training of local officers, even though state conservation officers write many boating tickets and constitute a major factor in marine safety enforcement. With state needs as great as they are, it seems only fair that any available money be spent on training all officers who enforce the Marine Safety Act, not just local officers. In addition, the provisions setting up the funding lack specificity and guidance for administrators. It would be better to set up such a fund and administer it through an independent commission such as the marine safety education commission proposed by Senate Bill 687.

Against:

House Bill 4639 would repeal a current section of the Marine Safety Act that clearly explains the rules of passing and yielding for boaters, and instead adopt certain federal rules by reference. This may have several unintended effects. The federal rules go beyond the "rules of the road" for boaters, and

address some matters of "associated equipment" (such as horns, lights, and whistles) but not other matters of equipment (such as personal flotation devices). Thus, to adopt the federal rules by reference is to risk inconsistency in Michigan law. Further, it unnecessarily complicates Michigan law by creating the necessity to refer to federal rules in addition to state statute. Finally, those federal rules do not as written apply to all the waters of Michigan, thus raising the question of whether someone boating someplace not addressed by federal rules would, under Michigan law, have to comply with those rules; by simply requiring compliance with the federal rules, the bill could open up a regulatory gap.

POSITIONS:

The Department of State supports the bills. (9-16-93)

The Michigan Deputy Sheriffs Association supports the bills. (9-14-93)

The Michigan Sheriffs Association supports the bills. (9-14-93)

The Department of Natural Resources supports the concept of providing for marine law civil infractions, but has concerns about the incorporation of certain federal rules by reference. (9-20-93)