

PERSONAL WATERCRAFT

Senate Bill 865 (Substitute H-1)
Senate Bill 897 as passed by the
Senate
First Analysis (5-5-98)

Sponsor: Senator Jon Cisky
House Committee: Conservation,
Environment and Recreation
Senate Committee: Transportation
and Tourism

THE APPARENT PROBLEM:

Jet skis, or 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 has 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 percent 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.

THE CONTENT OF THE BILLS:

The bills would specify that a personal watercraft owner was liable for any injury caused by careless operation of the vessel; require the operator of a

personal watercraft to display a boating safety certificate to a peace officer when requested to do so; permit a court to issue an order prohibiting a person who operated a personal watercraft recklessly from operating one for up to two years; require that the Department of Natural Resources (DNR) provide personal watercraft dealers with a summary of the marine safety laws pertaining to personal watercraft and a summary of the safety features of personal watercraft; and establish misdemeanor penalties for violations of the bill. In addition, the bills would allow an appearance ticket to be issued for a misdemeanor violation of the Personal Watercraft Safety Act, which would be established under House Bill 5426. Senate Bills 865 and 897 are tie-barred to each other.

Senate Bill 897. Under Chapter IV of the Code of Criminal Procedure (MCL 764.9f), an "appearance ticket" is defined to mean a complaint or written notice issued and subscribed by a police officer or other public servant authorized by law or ordinance to issue it, directing a designated person to appear in a designated local criminal court at a designated future time in connection with his or her alleged commission of a designated violation or violations of state law or local ordinance for which, except for violations of the Natural Resources and Environmental Protection Act (NREPA), the maximum permissible penalty does not exceed 90 days in jail and a fine of \$500.

The code also specifies that an appearance ticket may be issued for a penalty exceeding 92 days in jail and a fine for a misdemeanor violation of either Part 487 or Part 401 of the Natural Resources and Environmental Protection Act (NREPA). (Part 487 of the NREPA regulates sport fishing, and Part 401 regulates wildlife

conservation.) Senate Bill 895 would extend this provision to include a misdemeanor violation of the Personal Watercraft Safety Act that would be established under the provisions of House Bill 5426.

Senate Bill 865. The bill specifies that it would apply to personal watercraft and associated equipment used on state waters. 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.

Operation. The bill would repeal current provisions in the NREPA (MCL 324.80143) 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.

Provisions of the NREPA that the bill would repeal do the following: prohibit the operation of a personal watercraft between the hours from sunset to sunrise, 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 the current prohibition against operating a personal watercraft on the waters of the state carrying more persons than the watercraft is designed to carry, and maintaining a distance of 100 feet behind other vessels, other than personal watercraft, that are traveling at a speed greater than slow-no wake speed.

Other provisions of the NREPA that would be repealed under the bill include the provisions that prohibition against a person under the age of 12 operating a personal watercraft, and the requirement that a person 12 through 15 years of age must be accompanied by a person 16 years of age or older or

possess a boating safety certificate in order to operate a personal watercraft.

Reckless Operation. 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. However, 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. Upon a person's second or subsequent conviction under this provision, the court could issue an order impounding that person's personal watercraft for up to one year if the person owned the personal watercraft, or the person was the minor child of an owner of the personal watercraft. In addition, the person would have to pay storage costs for the impoundment.

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 displayed his or her boating safety certificate upon the demand of a person who identified himself or herself as a peace officer. The bill would also specify that a person could only display his or her own boating safety certificate to a peace officer, and could not display a fraudulent one. In addition, the bill would specify that a peace officer could not stop a personal watercraft solely to determine whether the operator had a boating safety certificate in his or her possession.

Dealer/DNR Requirements. Under the bill, 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.

In addition, 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.

Further, 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 liable for a \$100 civil fine.

Violations. A person who violated the bill would be guilty of a misdemeanor, unless otherwise specified, 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.

The provisions of the bills would be enforced by peace officers. 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 applicable certification that was valid on the date the violation occurred.

HOUSE COMMITTEE ACTION:

The House Conservation, Environment and Recreation Committee reported a Substitute H-1 for Senate Bill 865 that would make several changes to the Senate-passed (S-2) version, as follows:

- (1) It deletes new language that would have been added by S-2 regarding the operation of personal watercraft.
- (2) It deletes new language that would have been added by S-2 that prohibits a person under the age of 12 from operating a personal watercraft, and the requirement that a person 12 through 15 years of age must be accompanied by a person 16 years of age or older or possess a boating safety certificate in order to operate a personal watercraft.
- (3) It deletes the requirement that the DNR establish a comprehensive education program to train boat operators and issue a boating safety certificate to a person who satisfactorily completes the program.
- (4) It deletes the provision that would have prohibited a person born after December 31, 1978 from operating a personal watercraft unless he or she obtained a boating safety certificate.
- (5) It deletes the provision that would have exempted non residents of the state from the bill's certification requirements for one year.
- (6) It deletes the April 1, 1998 effective date.
- (7) It deletes the tie-bar to Senate Bill 897, which would amend current regulations on boat liveries in the Natural Resources and Environmental Protection Act (NREPA) to comply with the provisions of the proposed Personal Watercraft and Safety Act.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, Senate Bill 897 would have no impact on state funds. (5-4-98)

Fiscal information for Senate Bill 865 is not available.

ARGUMENTS:

For:

The bills would make the use of personal watercraft a safer recreational activity on the state's waters. 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 percent of the total number of registered boats and vessels in Michigan, they account for approximately 43 percent 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 specify penalties for reckless operation of a personal watercraft. 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.

Against:

The bills are unnecessary. 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 Department of Natural Resources (DNR).

Others point out that personal watercraft are currently regulated under the marine safety provisions of Part 801 of the NREPA. Senate Bill 865 would repeal 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, the Natural Resources and Environmental Protection Act (NREPA) already includes the provision that an owner of a vessel, including a personal watercraft, is liable for injuries resulting from its negligent operation (MCL 324.80157).

Further, some have expressed concern about splitting the provisions on personal watercraft from the NREPA in order to create a separate act. It is argued

that personal watercraft are considered vessels and should be regulated under the NREPA as are other vessels, such as boats, to avoid confusion and conflicts.

POSITIONS:

The Michigan Boating Industries Association supports the bills. (5-4-98)

The Michigan Sheriffs' Association supports the bills. (5-4-98)

The National Marine Manufacturers Association has no position on the bills. (5-5-98)

The Personal Watercraft Industry Association opposes the bills. (5-5-98)

The Department of Natural Resources (DNR) opposes the bills. (5-4-98)

Analyst: R. Young

■ 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.