

BOATING SAFETY

House Bills 4248 (Substitute H-6)

Sponsor: Rep. Jessie Dalman

House Bill 5426 (Substitute H-2)

Sponsor: Rep. William Callahan

First Analysis (3-10-98)

**Committee: Conservation, Environment
and Recreation**

THE APPARENT PROBLEM:

It is not surprising that there is more recreational watercraft registered in Michigan than in any other state, considering Michigan's proximity to the Great Lakes and its abundance of inland lakes and streams. The popularity of boating, however, carries with it certain dangers, such as the congestion of waterways and the irresponsible operation of vessels. Of particular concern, in recent years, has been the widespread popularity of recreational boats. Many of these are crafts less than 16 feet in length, of the category that includes personal watercraft, or jet skis. Jet skis are small boats powered by an inboard engine and a jet pump mechanism. Some are designed to be ridden while sitting; others are ridden by operators who are either kneeling or standing. In response to their growing popularity and corresponding potential for accidents, the operation of jet skis was regulated under Public Acts 183 and 184 of 1990. (Public Acts 183 and 184 amended the Marine Safety Act and the Charter and Livery Boat Safety Act, now parts 801 and 445 of the Natural Resources and Environmental Protection Act, respectively.) However, according to the Department of Natural Resources, although jet skids constitute only 5 percent of the boats on Michigan waters, they are involved in nearly half of all on-the-water accidents. For many people, these boats -- with their unique and penetrating noise -- prevent lakeside property owners from enjoying the natural resources of a lake. Lakeside residents and visitors also complain that the operators of jet skis exhibit a lack of boating safety knowledge and courtesy to other boaters. Moreover, since these boats are often operated in the shallow waters at the edge of lakeshores, environmentalists have long warned about their effect on emerging aquatic vegetation and on wildlife. As the 1998 boating season approaches, many feel that more stringent standards should be imposed on this type of recreational boat and that, in

general, safety standards should be increased with regard to the operation of watercraft, particularly by minors.

THE CONTENT OF THE BILLS:

House Bill 5426 would repeal current regulations concerning personal watercraft and, instead, establish a Personal Watercraft Safety Act, which would take effect May 22, 1998. However, except as otherwise provided in the new act, a personal watercraft operator would be required to comply with Part 801 of the NREPA. The act would specify that a person born after December 31, 1978 could not operate a personal watercraft without first obtaining a boating safety certificate. House Bill 4248 would amend Part 801 of the Natural Resources and Environmental Protection Act (NREPA) to specify that, for other boats, operators born after January 1, 1979, would have to successfully complete a boating safety course. The following is a summary of the provisions of the bills:

House Bill 4248 would amend Part 801 of Subchapter 5 of the NREPA, which regulates watercraft and marine safety (MCL 324.80101 et al.), as follows:

Minors. Currently, under the act, certain restrictions apply to minors who operate motorboats. The act specifies that a person under 12 years of age may operate a motorboat powered by a motor of up to 35 horsepower only if he or she is under the supervision of a person on board who is at least 16 years of age. The bill would amend this provision to require that a minor must be 14 years of age and that he or she must be under the supervision of a person of at least 16 years of age who possesses a boating safety certificate, and would add that the minor would also have to possess a boating safety certificate issued in

accordance with the provisions of the bill. The act also specifies that a person age 12 through 15 may operate a motorboat only if he or she has a boating safety certificate or is accompanied by at least one person 16 years of age or older. Under the bill, this provision would apply to a youth of 14 through 17 years of age who possessed a boating safety certificate or ID (the act would delete the provision specifying that this age group could operate a boat if accompanied by a person 16 years or older without a safety certificate).

Boating Safety Courses. The bill would define a "boating safety course" to mean a course approved by the Department of Natural Resources that provided instruction on the safe operation of a vessel which met or exceeded the guidelines established by the National Association of State Boating Law Administrators (October 1996). Under the act, the Department of Natural Resources (DNR) is required to establish education programs designed to advance boating and general water safety. It must also establish, at no cost, a training program for youthful boat operators and issue a boating safety certificate to those who satisfactorily complete the program. The bill would specify, instead, that no fee would be charged to boat operators less than 17 years of age. In addition, the bill would specify that any person approved by the DNR and designated as one of its agents could offer a department-approved boating safety course, include a video course, or a home study course for applicants who were 17 years of age or older. Participants would be charged a fee for the instruction or materials received during the course. After successful completion of the course, an individual would receive a boating safety certificate or ID. In addition, the bill would require that the DNR consider the number of exams that were administered or proctored when calculating state aid to counties.

Boating Safety Certificates. House Bill 4248 would define a "boating safety certificate" to mean a document issued under Part 801 of the NREPA which certified that the individual named in the certificate had successfully completed a boating safety course. The bill would specify that, beginning January 1, 1999, a person born on or after January 1, 1979 could not operate a vessel on state waters without either having a boating safety certificate in his or her immediate possession, successfully completing a boating safety course, passing an examination, or -- until December 31, 2001 -- establishing residency and

presenting a valid boat operator's license or certificate from another state in order to receive this certificate. The certificate would be valid for the life of the person who earned it. However, the following persons and vessels would be exempt from these provisions:

- A person who held a valid license to operate a charter or livery boat, as defined under Part 445 of the NREPA.
- A person who operated a vessel that was exempt from registration under the provisions of the act.
- The operator of a personal watercraft.
- Until December 31, 2001, a person who held a valid operator's license or certificate from his or her state of residence.
- A person between the ages of 12 and 18 who had passed a boating safety course and obtained a boating safety certificate.

Penalties. Under the bill, a parent who had custody of a minor who violated the provisions of Part 801 of the act (watercraft and marine safety provisions) would be responsible for a state civil infraction, and could be ordered to pay a civil fine of up to \$100 if the parent knew that the minor would violate the provisions of Part 801, or the parent acted to further the violation.

An individual who violated provisions of the NREPA as a result of colliding with another vessel, operating a boat recklessly, or operating while under the influence of alcohol, would be required to participate in a boating safety course, in addition to any other penalties imposed under the provisions of the act.

Administrative Rules. The act would require that the DNR promulgate rules under the Administrative Procedures Act that would provide for the examination of an applicant's physical and mental qualifications to operate a vessel in a manner that didn't jeopardize the safety of persons or property, and to ascertain whether facts existed that would bar a boating safety certificate, ID, or license sticker from being issued. The act would specify that a person conducting an examination could not investigate facts other than those directly pertaining to the applicant's ability to safely operate a vessel, or those declared by the DNR to be prerequisite to the issuance of a boating safety certificate, ID, or license sticker.

Fog Bells. House Bill 4248 would specify that, notwithstanding any rule promulgated under the act, a vessel less than 40 feet in length would not have to be equipped with a fog bell.

Flotation Devices. The bill would prohibit a person from using a vessel that was of a type or configuration not defined under the Michigan Administrative Code as an outboard motorboat, an inboard or inboard-outboard motorboat, a sailboat, rowboat, canoe or kayak, on state waters unless at least one Type I, II, III, or IV personal flotation device was on board for each person. In addition, the operator of the vessel could not permit a person who was under 12 years of age to travel on board a vessel unless that person wore a Type I or II flotation device as described in the Michigan Administrative Code.

House Bill 5426. Currently, regulations on personal watercraft are included under Part 801 of Subchapter 5 of the NREPA, which regulates marine safety (MCL 324.80101 to 324.80199). House Bill 5426 would repeal this provision of the act, and would create the Personal Watercraft Safety Act. The bill would provide rules for operating a personal watercraft (a vessel whose primary source of propulsion is a motor-driven propeller or an internal combustion engine powering a water jet pump, that is designed without an open load carrying area, and that can be operated by one or more persons positioned on, rather than within, the confines of the hull); to impose certain safety requirements on their operators; and to provide penalties for violations of the act, among other provisions.

The provisions of the act would not apply to personal watercraft that were owned and used principally by a state or political subdivision outside Michigan and were clearly marked and identifiable as such. The DNR would be required to promulgate and publish rules under the provisions of the Administrative Procedures Act (MCL 24.201 to 24.328). The act would take effect May 22, 1998.

Minors. Under the act, a person under 16 years of age would not be permitted to operate a personal watercraft. However, this restriction would not apply to a person between the ages of 12 and 16 who had already obtained a boating safety certificate before the effective date of the bill. The act would also specify that a person born after December 31, 1978 could not operate a personal watercraft without first obtaining a boating safety certificate.

The act would also specify that the appropriate legislative committee would be required to review the graduated age requirements of these provisions of the act within 5 years after the bill's effective date to ascertain the effect they had upon the safe operation of personal watercraft in state waters. In addition, the act would specify that the owner of a personal watercraft, or a person having charge over or control of one, could not authorize or knowingly permit it to be operated in violation of the provisions of the act. The provisions of the act concerning minors 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 provisions of the NREPA that regulate these events.

Boating Safety Programs. Under the act, the DNR would be required to establish educational programs to advance boating safety, and to put into effect through its agents, at no charge to the recipients, a training program for boat operators and boating safety certificates to those who completed the program. The act would specify that each person who was required, under the act, to complete a boating safety course, would have to carry a boating safety certificate in his or her immediate possession when operating a personal watercraft and display it to a peace officer when requested to do so. (A peace officer could not, however, stop a personal watercraft solely in order to determine whether the operator had a boating safety certificate.) However, the director of the DNR could, by written authorization, modify or suspend boating safety certificate requirements for individuals engaged in a marine event that had been authorized by the director, or for which the director had received a U.S. Coast Guard authorization. The boat safety certification requirements would not apply to an out-of-state resident. However, beginning three years after the effective date of the bill, an out-of-state resident would be required to have in his or her possession either a boating safety certificate, an equivalent certificate issued by the person's home state, or one showing that he or she had successfully completed a "boating safety course," as defined under the act.

The following rules would apply to the DNR's boating safety program:

- The DNR or its agents would issue a boating safety certificate only to a person who successfully completed a boating safety course and passed an

exam. Unless revoked, a safety certificate would be valid for the life of the person who earned it.

- Beginning on the effective date of the act, the DNR would be required to take into consideration the number of examinations that had been administered or proctored when calculating state aid to counties, as required under Part 801 of the Natural Resources and Environmental Protection Act (NREPA), concerning marine safety programs (MCL 324.80117).

Requirements for operating personal watercraft. The following is a brief description of some of the requirements concerning personal watercraft:

- Each person on board such a vessel would be required to wear a personal flotation device (PFD) that was not inflatable; each person 12 years of age or older riding or being towed behind one would be required to wear a type I, II, or III PFD; and each person under 12 years of age would have to wear a type I or type II PFD, as described in the Michigan Administrative Code (R 281 1234).
- Hours of operation would begin at 9 a.m. and end one hour before sunset.
- Personal watercraft could not cross within 150 feet behind another vessel, unless being operated at slow--no wake speed; nor could they be operated where the water depth was less than two feet, as determined by vertical measurement.
- A distance of 150 feet would have to be maintained from the shorelines of the Great Lakes, except when traveling at slow--no wake speed.
- A person being towed would have to maintain a distance of at least 100 feet from a dock, raft, buoyed or occupied bathing or swimming area, a person in the water in a PFD, or a vessel moored, anchored, drifting, or sitting in dead water; and a vessel could not be operated within 200 feet of a buoyed diver's flag unless the personal watercraft was involved in tendering the diving operation. (The exceptions to this would be when operating or being towed at a slow--no wake speed, when picking up or dropping off a water skier, or when the vessel or the person being towed is in an unposted navigable channel.)

The act would specify that these rules would not apply to a performer engaged in a professional exhibition, or a person preparing to participate in a regatta, race, marine parade, tournament, or exhibition held in

compliance with the NREPA, at the time and place specified under a permit issued by the DNR.

Owner Liability. An owner would be liable for any injury caused by negligent operation of a personal watercraft, whether the negligence consisted of a violation of state laws or in the failure to observe the ordinary care that the rules of the common law require. However, an owner would not be liable unless the vessel was used with his or her consent. (If the vessel was driven by a member of the owner's immediate family, it would be presumed that the owner had given consent.

Reckless Operation. The following are some of the activities that would constitute reckless operation of a personal watercraft:

- Certain maneuvers, such as weaving through congested traffic, or swerving at the last possible moment to avoid a collision.
- Operating a personal watercraft while carrying more persons than the vessel was designed to carry (which would be considered *prima facie* evidence of reckless operation).
- Operating a personal watercraft in excess of established speeds, as specified in the Natural Resources and Environmental Protection Act (MCL 324.80101 to 80199).

In addition, a person who operated a personal watercraft in disregard of the rights or safety of others would be guilty of reckless operation and would be prohibited, by court order, from operating a personal watercraft for up to two years and required to participate in a boating safety course. A second violation within a three-year period would be a misdemeanor, punishable by imprisonment for up to 30 days, a fine of \$1,000, or both. Additional violations within a five-year period would be a misdemeanor, punishable by imprisonment for up to 90 days, a fine of up to \$2,000, or both.

Dealers. A dealer (defined under the act to 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) of new or used personal watercraft would be required to advise each person who bought a personal watercraft of the sources of boating safety courses in the area. A

person who violated this provision would be guilty of a civil infraction and would be liable for a \$100 civil fine.

The DNR would be required to provide personal watercraft dealers with a summary of the laws pertaining exclusively to personal watercraft and a summary of the safety features of personal watercraft. The dealer would be required to provide copies to each person who purchased a personal watercraft. A dealer who violated this provision would be responsible for a state civil infraction and liable for a civil fine of \$100.

Penalties. A violation of the provisions of the act would be a misdemeanor, punishable by imprisonment for up to 15 days, a fine of up to \$100, or both. In addition a violator could be required to participate in and complete a boating safety course. The secretary of state would be required to track individual offenses of the act by April 30, 2000, by pursuing and implementing a comprehensive technology system and working cooperatively with the appropriate state agencies.

The act would be enforced by peace officers. The court could waive fines and costs for a person who received a citation for violating the certification requirements for boating safety courses, for minors, or for nonresidents if it received proof within ten days from a law enforcement agency that the person had produced a valid boating safety certificate before the appearance date on the citation.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency (HFA), the bill would have an indeterminate fiscal impact on the state. House Bill 5426 would require that boating safety courses be provided to boat operators, free of charge. The program would not result in costs to the state, however, if they were provided at the same time -- and at the same location -- as other marine safety programs. (3-9-98)

ARGUMENTS:

For:

House Bill 4248 would require that the Department of Natural Resources (DNR) establish a program to train boat operators born on or after January 1, 1979, and issue completion certificates to those who successfully complete the program. In testimony before the House Conservation, Environment and Recreation

Committee, a representative of the National Transportation Safety Board reported that studies of boating fatalities indicate that training is essential for public safety. A safety board study involving 407 fatal accidents concluded that operators lack basic skills and knowledge or appreciation of the dangers involved in operating improperly loaded or overloaded vessels, or operating in hazardous waters. Also, according to the study, collisions suggest that operators lack knowledge of basic "rules of the road", and there are problems with strong winds and drinking while boating, all indicative of a lack of safe boating practices. The safety board has recommended (Safety Recommendation M-93-1) that all states implement programs of minimum boating safety standards to reduce the number of accidents that would include the demonstration of a knowledge of safety boating rules, and an ability to operate the vessel, and that the operator possess a certificate of completion of recreational boating safety training.

For:

With increasing numbers of boaters in Michigan come problems with congestion of waterways and careless operation of boats and jet skis. Many people believe that most of the problems encountered by lakeside residents and boaters can be attributed to these vessels, and especially to jet skis. In addition to the increase in noise levels, jet skis threaten wildlife and -- by stirring up the bottom areas of lakes in shallow water -- contribute to soil erosion and weed growth. House Bill 5426 would make numerous changes, including requirements that the operators of these boats attend boating safety training programs; and that stiffer penalties be provided for reckless behavior, to improve the safety of jet skis in Michigan, which, in turn, would make this recreational activity more enjoyable for both residents and out-of-state vacationers.

Response:

As introduced, House Bill 5426 would have required that *all* boat operators, including the operators of personal watercraft, successfully complete boating safety programs before being allowed to operate boats. These provisions were aimed at the operators of personal watercraft, and particularly at those in the "under-30" age group -- who, according to critics, are most likely to be responsible for safety problems. Consequently, many believe that the mandatory educational provisions should have been retained. Critics charge that jet skis attract inexperienced boaters who are unfamiliar with water safety rules. Moreover, it has been pointed out that the design of these vessels encourages behavior such as wave-

chasing and driving in the wake of larger craft. (In fact, personal watercraft are popularly called "jet skis" or "wave runners.") According to a recent article, fatalities have been going down, even as use has increased, in all other forms of recreational boating except personal watercraft (*Detroit News*, March 4, 1998). Other news reports indicate that the National Park Service, having been flooded with complaints from those who are worried about pollution, disturbance of wildlife near lakeshores, and conflicts with boaters and fishers, is considering banning personal watercraft from national parks (*Escanaba Daily Press*, February 14, 1998). Consequently, while the bill would establish educational programs for younger watercraft operators, some have suggested that the bill should also require that boaters perform the equivalent of a "road test." Absent such a requirement, young people will still be able to buy a boat and drive it without any previous boating experience.

Against:

As written, the bills contain some inconsistencies that could confuse boaters, many of whom own both personal watercraft and other vessels. Specifically, it is unclear whether the bills would allow boating safety programs to be provided at no charge to *all* recipients. For example, House Bill 4248 would require that the DNR provide boating safety programs. The bill further specifies that the programs would be provided at no cost for boat operators under 17 years of age. On the other hand, House Bill 5426 specifies only that the DNR would have to establish these boating safety program "at no charge to recipients."

Also, House Bill 4248 would generally allow a person of 14 to 17 years of age to operate a motorboat, provided that he or she possessed boating safety certificate. House Bill 5426, on the other hand would prohibit a person under 16 years of age from operating a personal watercraft, unless that person owned a boating safety certificate before the effective date of the bill. Other inconsistencies are evident: House Bill 4248 specifies that a boat operator born on or after January 1, 1979 would have to possess a boating safety certificate. However, this requirement would not take effect until January 1, 1999. House Bill 5426 specifies that a boater born after December 31, 1978 could not operate a personal watercraft without first obtaining a boating safety certificate. The provisions of House Bill 5426 would take effect May 22, 1998. The bills should be amended to provide consistency between the rules that would apply to

boaters and those that would apply to the operators of personal watercraft.

POSITIONS:

The National Marine Manufacturers and Personal Watercraft Industry Associations support the bills. However, the associations maintain that both bills should be amended to provide identical provision. (3-9-98)

The Michigan Lake Property Owners Association supports the bills. (3-9-98)

The Department of Natural Resources (DNR) has no position on the bills. (3-10-98)

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.