

MARINE LAW CIVIL INFRACTIONS

House Bills 4483-4491 as introduced First Analysis (4-8-97)

Sponsor: Rep. David M. Gubow
**Committee: Conservation, Environment
and Recreation**

THE APPARENT PROBLEM:

Currently, most violations of the marine safety part (part 801 of subchapter 5) of the Natural Resources and Environmental Protection Act are misdemeanors, with the exception of a few enumerated felonies and two state civil infractions. (See BACKGROUND INFORMATION.) Some people believe that certain minor boating infractions should be decriminalized, much as the 1978 laws creating "motor" civil infractions did with minor traffic and parking offenses. Thus, in the 1993-94 legislative session, a package of bills (House Bills 4639-41) was proposed that would have created a category of civil infractions to be known as "marine law civil infractions." The bills passed the House, but died in the Senate. A similar package of bills, introduced in the 1995-96 session (House Bills 4505-4507), also passed the House but again died in the Senate. (In addition, last session, Public Act 54 of 1995 created a new class of civil infractions, "state civil infractions," under the Revised Judicature Act [RJA].) Similar legislation has been introduced this session to decriminalize certain minor boating violations.

THE CONTENT OF THE BILLS:

The bills would designate most current misdemeanor violations of state marine law as state civil infractions, and would allow local units of government to adopt ordinances consistent with the marine safety law that designated violations as state civil infractions.

House Bill 4483 would amend the Natural Resources and Environmental Protection Act (MCL 324.80101 et al.) to change most current marine law misdemeanor violations to state civil infractions. It also would establish requirements for tracking and preserving citations and citation records, and would establish procedures for handling nonresidents stopped for marine law state civil infractions, as well as make other changes described below.

Marine law state civil infractions. The bill would make the following violations of the act state civil infractions (as defined in the Revised Judicature Act), rather than misdemeanors:

- (1) Failure to present a vessel's certificate of number upon the request of a peace officer;
- (2) Failure to properly paint or attach the number from a vessel's certificate of number on the vessel, or to keep the number legible;
- (3) Failure to properly display required decals;
- (4) Failure to notify the secretary of state of a change of address;
- (5) Failure to use required flotation devices;
- (6) Violations of passing and right of way rules;
- (7) Speeding violations;
- (8) Operating in prohibited areas;
- (9) Water skiing, sledding, or surfboarding without a required observer or proper rear-view mirrors;
- (10) Interfering (including intentionally rocking, tipping, or jostling) with the operation of a vessel by someone outside the vessel;
- (11) Violations of provisions regulating the placement of buoys or beacons;
- (12) Violations of administrative rules promulgated under the bill or of local ordinances enacted in accord with existing sections of marine law allowing special rules and changes in ordinances regulating the use of watercraft; and
- (13) Violations of the regulations regarding swimming at public beaches.

Under the bill, a marine law violation that was designated a state civil infraction would not be a lesser included offense of a criminal offense.

Citations. The bill would define "citation" in a way similar to the definition in the new state civil infractions chapter (Chapter 88) of the Revised Judicature Act. The RJA defines "citation" to mean "a written complaint or notice to appear in court upon which a law enforcement officer records the occurrence or existence of [one] or more state civil infractions by the person cited." The bill would define "citation" to mean "a written complaint or notice to appear in court upon which a peace officer records the occurrence or existence of [one] or more marine law violations by the person cited." (Emphasis added.)

Warrantless arrests. When someone was arrested without a warrant for a marine law misdemeanor violation (other than negligent homicide, drunk or reckless boating), the arresting officer would have to prepare as soon and as completely as possible an "appearance ticket," issue and serve it on the alleged violator, inform him or her of the violation, and give him or her the misdemeanor copy of the citation. ("Appearance ticket" would be defined by reference to the Code of Criminal Procedure, where it is defined as "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 a misdemeanor violation of either the Michigan Sportsmen Fishing Law or the Game Law of 1929 for which the maximum permissible penalty does not exceed 92 days in jail] the maximum permissible penalty does not exceed 90 days in jail and a fine of \$500.") The officer would have to inform the alleged offender of the violation and give him or her the misdemeanor copy of the citation. As is now the case, the arrested person could demand to be arraigned instead of being given the citation. The place of court appearance specified in the citation would have to be in the district or municipal court within the judicial district in which the alleged offense occurred (instead of before a magistrate or a district judge in the township or county in which the alleged offense occurred and who has jurisdiction of the offense).

If a peace officer issued a citation under this section of the act, the court could accept a plea without receipt of the sworn complaint, but could not make a docket return on the complaint until the officer signed the complaint. If the defendant pled not guilty, the court could not hold further proceedings until a sworn complaint was filed with the magistrate or judge. A court also couldn't issue an arrest warrant to a person so cited until a sworn complaint against the person was filed.

Citation records. Books of consecutively numbered citations would be issued to peace officers whose duties could or would include enforcement of marine law. ("Peace officer," under NREPA, includes sheriffs and sheriff's deputies (including certain special deputies authorized to enforce marine safety laws), village or township marshals, any municipal police officers, state police officers, the director of the DNR and conservation officers employed by the DNR.) Citation books would be issued by police chiefs, sheriffs, the director of the Law Enforcement Division of the Department of Natural Resources (DNR), and the director of the Department of State Police (who also would obtain receipts from each officer to whom a citation book was issued).

Within 48 hours after going off duty, a peace officer who had issued a marine law violation citation would be required to deliver all copies of the citation ("duly signed") to either the officer's police chief or to someone authorized by the police chief to receive citations. Within three days of the date of the citation (excluding Saturdays, Sundays, and legal holidays) the police chief (or the person authorized by him or her) would be required to deposit the citation with the court having jurisdiction over the offense. A citation could be "deposited" with a court by mailing the original of the citation by first class mail to the court not later than two days after the date of the citation.

If a citation were spoiled, mutilated, or voided, the issuing peace officer would have to endorse it with a statement fully explaining its condition and provide his or her chief officer (or that officer's authorized designee) with the statement.

As in the case of the traffic violations of Michigan Vehicle Code, the state treasurer would be required to establish procedures to ensure the accountability of all jurisdictions processing marine law violation citations. Citation records and notices would have to be made available for public inspection, with the records (showing the issuance and subsequent disposition) being maintained ("complete") for at least five years. The fiscal officer of the local unit of government would be required to conduct a complete audit of citation records at least every year, and the state treasurer could audit the citation records at any time.

It would be a misdemeanor, punishable by imprisonment for up to one year or a fine of up to \$500 (or both), to do any of the following:

- * knowingly falsify a citation or copies of a citation, or a record of the issuance of a citation;
- * knowingly dispose of a citation, copy, or record other than as required in the bill; or

* attempt to incite or procure someone else to falsify or incorrectly dispose of citations, copies, or records.

Nonresidents. Nonresidents who were stopped or detained by a peace officer for a state civil infraction under the bill who had with them an identification document would have that document taken by the peace officer as security for the nonresident's appearance in court and satisfaction of any order that might be issued. The officer would issue a citation and, within 48 hours of taking the identification document, would deliver the document to the court (or to the applicable chief police officer or person authorized by the chief police officer to receive citations and identification documents). If the identification document were delivered to the chief police officer, he or she would be required to deposit the document and citation with the court in accordance with the bill's requirements for citations. Failure to deliver the identification document would be contempt of court.

Instead of surrendering an identification document (or before appearance in court), a nonresident could guarantee his or her appearance by leaving (with the officer or the court) either a guaranteed appearance certificate or a sum of money not more than \$100. (The bill would define "guaranteed appearance certificate" to mean "a card or certificate containing a printed statement that a surety company authorized to do business in this state guarantee[d] the appearance of the person whose signature appear[ed] on the card or certificate, and that the company, if the person fail[ed] to appear in court at the time of a scheduled informal or formal hearing or to pay any fine or costs imposed [under the bill], [would] pay any fine, costs, or bond forfeiture imposed on the person in a total amount not to exceed \$200.")

The bill would increase to \$100 (from the current \$25) the maximum amount of money that a nonresident would have to deposit for his or her appearance (\$100 is the maximum civil fine for a state civil infraction); the bill also would allow nonresidents to leave a guaranteed appearance certificate instead of a sum of money.

If a judge or district court magistrate was available for an immediate appearance, and a nonresident to whom a citation had been issued demanded an immediate hearing, the peace officer would have to take the nonresident before the judge or magistrate immediately for a hearing on the alleged state civil infraction. After completion of the hearing or after the nonresident admitted responsibility, the court would have to return the nonresident's identification if any of the following occurred: (a) judgement was entered for that person; (b) an adverse judgement against that person was satisfied; or (c) the person provided the court with a guaranteed appearance certificate or a sum of money not

to exceed \$100 as security for payment of any fines or costs ordered.

If the nonresident defendant requested a formal hearing, the court would have to schedule a hearing as provided by the Revised Judicature Act, but would keep his or her identification document until final resolution of the matter unless he or she left a guaranteed appearance certificate or a deposit of money.

An officer receiving a guaranteed appearance certificate or deposit of money would be required to (a) give the person a receipt and a written citation, and (b) within 48 hours of receipt, deposit the certificate or money with the court, the chief officer of his or her department, or the authorized agent of his or her chief officer. As in the case of citations and identification documents, the chief officer (or his or her authorized agent) would have to deliver a certificate or sum of money to the court in the same manner as prescribed in the bill for delivering citations, and failure to deliver certificates or deposits of money as required would be embezzlement of public money.

If someone who posted a guaranteed certificate or deposit failed to appear as required, the court would enter a default judgment against him or her, and he or she would forfeit the certificate or the money deposited. The court would have to apply any forfeited money to any civil fine or costs ordered under the bill.

Penalties. Anyone found to be responsible (or responsible "with explanation") for a state civil infraction could be ordered by the court to pay a civil fine of not more than \$100. However, if someone was cited for not producing a certificate of number when requested by a peace officer, the court would be required to waive any fines and costs if the person subsequently presented a certificate of number, that was valid on the date of the violation, to the law enforcement agency before the appearance date on the citation.

Libraries. Civil fines ordered under the bill (or a rule promulgated under the bill) would be exclusively applied to the support of public libraries and county law libraries in the same manner as is provided by law for criminal fines imposed for violations of state penal laws. This provision would be expressly intended to maintain a source of revenue for public libraries that previously received criminal fines for the misdemeanor violations that the bill would change to civil infractions.

"Long-term incapacitating injuries." Currently, under the act, someone who causes a long term incapacitating injury while "drunk boating" is guilty of a felony. The bill would delete the existing definition of "long term incapacitating injury" and instead define (and use in its place) "serious impairment of a body function," which

would include, but not be limited to, one or more of the following: loss of (or loss of the use of) a limb, hand, foot, finger, thumb, eye, or ear; loss or substantial impairment of a bodily function; serious visible disfigurement; a comatose state that lasted for more than three days; measurable brain damage or mental impairment; a skull fracture or other serious bone fracture; or subdural hemorrhage or hematoma.

Preemption. The bill would prohibit political subdivisions from enacting local ordinances that provided a criminal penalty for what would be civil infractions under the bill. Political subdivisions also couldn't impose penalties in excess of those proposed in the bill, nor could they designate as a state civil infraction or a municipal civil infraction anything that was a felony or misdemeanor under the bill or act. Local ordinances in conflict with the bill or the act would be void to the extent of the conflict.

Court fees. A court that collected an administrative order processing fee under section 80193 would be required to send 60 percent of the collected amount to the secretary of state to defray expenses he or she incurred under the act.

Grandfather clause. Section 4a of chapter 1 of the Revised Statutes of 1846 (MCL 8.4a) -- which provides that repeal of laws or parts of laws doesn't exempt people from having to pay penalties incurred under the repealed law unless the repealer explicitly says it does -- would apply to violations of the marine safety part (part 801) of the Natural Resources and Environmental Protection Act (and to violations of local ordinances substantially corresponding to NREPA) if the violation: (a) occurred before the effective date of the bill and (b) would otherwise be designated a civil infraction under the bill.

Repealer. The bill would repeal the section of the act (80153) that prohibits people from sitting, standing, or walking on any part of a vessel, operated on the waters of the state, that wasn't specially designed for that purpose.

Tie-bar. House Bill 4483 is tie-barred to House Bills 4484 through 4491 (all of which are tie-barred to each other and to House Bill 4483), which would amend various state laws to bring them into conformity with the changes proposed by House Bill 4483. More specifically, the bills would make the following changes:

House Bill 4484 would amend the Code of Criminal Procedure (MCL 764.1e) to add a reference to the marine safety part of the Natural Resources and Environmental Protection Act (NREPA) to the section of the code regarding complaints signed by peace officers.

House Bill 4485 would amend the Revised Judicature Act (MCL 600.113 et al.) to specify that except as otherwise provided in the RJA, civil infraction actions involving marine law violations would be governed by the marine safety part (Part 801) of the Natural Resources and Environmental Protection Act (NREPA). The bill also would give the district court authority over most violations of the marine safety part of NREPA. More specifically, it would allow the district court to assess costs, as provided in section 80198r, in marine civil infraction actions (as it does now in the case of the Michigan Vehicle Code) and to collect fines and costs for such infractions, and would grant district court magistrates the authority both (a) to hear and preside over civil infraction admissions (and "admissions with explanation") and to conduct informal hearings in civil infraction actions, as well as (b) to arraign and sentence guilty or "no contest" pleas for violations of the marine safety part of NREPA except for violations of 80171(1) and (3), in which case magistrates would be able to arraign defendants and set bond for these violations). However, district court magistrates could not conduct informal hearings in marine law civil infraction actions until they had successfully completed a special training course, to be provided periodically by the State Court Administrator, in marine law adjudications and sanctions.

Note: The references in House Bill 4485 to sections or subsections of the marine safety part of the NREPA -- to sections 80198n, 80198r, 80171(1), and 80171(3) -- are to sections that do not currently exist in the act or in the bill.

House Bill 4486 would amend the township board enabling act (MCL 41.183) and House Bill 4487 would amend the Charter Township Act (MCL 42.21) to allow township boards to adopt ordinances consistent with the marine safety part (Part 801) of the NREPA that designate violations as state civil infractions with civil fines up to \$100 and to prohibit township ordinances from designating as municipal civil infractions violations that are state civil infractions under marine law. House Bill 4488 would amend the General Law Village Act (MCL 66.2), House Bill 4489 would amend the Home Rule Village Act (MCL 78.25a), House Bill 4490 would amend the Fourth Class City Act (MCL 89.2), and House Bill 4491 would amend the Home Rule City Act (MCL 117.4l) to do the same for villages and cities.

BACKGROUND INFORMATION:

Current boating crimes. The Marine Safety Act (Public Act 303 of 1967) was amended several times before it was repealed and added, as the watercraft and marine safety part (Part 801), to the Natural Resources and Environmental Protection Act (NREPA) by Public Act 58 of 1995. Under the Marine Safety Act, as added to

the NREPA, all boating violations are misdemeanors except for two state civil infractions and four felonies. One civil infraction was added by Public Act 301 of 1992, and consists of the refusal to take a preliminary breath test (PBT) upon the lawful request of a peace officer. The other civil infractions originally was added by Public Act 269 of 1993 as a "civil fine," for failing to require young children to wear "personal flotation devices" in boats. Public 174 of 1996 amended the (now) marine safety part [section 80183] of the NREPA to change the PBT refusal civil infraction and the civil fine for failure to use children's life preservers into "state civil infractions," after passage of Public Act 54 of 1995, which created state civil infractions.

Felony violations of marine law involve certain "drunk boating" violations. The Marine Safety Act's "drunk boating" provisions were amended in 1982 and again in 1992, both times following extensive revision of state laws on drunk driving. Prior to the 1992 revisions, the only marine law felony violation was a third (or subsequent) conviction within ten years for operating (or allowing someone to operate) a boat under the influence of "intoxicating liquor or a controlled substance" (OUIL). Anyone convicted of operating a boat when visibly impaired (OWI) was guilty of a misdemeanor. Public Act 301 of 1992 repealed these provisions of the Marine Safety Act and replaced them with provisions similar to the Michigan Vehicle Code's drunk driving provisions. Among other things, the 1992 amendments created the felonies of causing the death or long-term incapacitating injury of another individual by OUIL, and added an offense called "felonious boating" (see below).

Current felony violations under the marine safety part of NREPA include the following:

- (a) drunk boating (OUIL) that results in (a) death or (b) serious ("long-term incapacitating") injury;
- (b) third (and subsequent) convictions within a ten year period for drunk boating (OUIL); and
- (c) an offense called "felonious boating," which involves operating a vessel "carelessly and heedlessly in wilful and wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property and thereby injures so as to cripple any person, but not causing death."

The act also defines a "felony in which a vessel was used," to mean a felony, during the commission of which, the person committing the felony operated a vessel, and, while operating it, "presented real or potential harm to persons or property" under one of four circumstances: the vessel either was necessary for

committing the felony or was used as an instrument of the felony, to transport a victim of the felony, or to flee the scene of the felony.

Civil infractions. Civil infractions are non-criminal violations of relatively minor state or local laws or ordinances such that the person "responsible for" (rather than, as in criminal violations, "guilty of") the infraction is subject to civil fines but not, as is the case with crimes, imprisonment or penal fines. Before 1978, there were no non-criminal violations of state law. But in 1978, the legislature enacted legislation that decriminalized certain minor traffic and parking violations by creating, for the first time, certain ("motor") civil infractions.

The 1978 civil infraction legislation also added identical definitions of "civil infraction" to both the Michigan Vehicle Code and to the Revised Judicature Act. The vehicle code definition, which has not changed since being added by Public Act 510 of 1978 (MCL 257.6a), defines "civil infraction" to mean "an act or omission prohibited by law which is not a crime as defined in [the Michigan Penal Code], and for which civil sanctions may be ordered." The penal code (MCL 750.5) defines "crime" to mean "an act or omission forbidden by law which is not designated as a civil infraction, and which is punishable upon conviction by any [one] of the following: (a) imprisonment, (b) fine not designated a civil fine, (c) removal from office, (d) disqualification to hold an office of trust, honor, or profit under the state, (e) other penal discipline."

The decriminalization of various minor violations of state law continued over the years, with a distinction being made between "motor" and "nonmotor" civil infractions. During the 1993-94 and 1995-96 legislative sessions, however, packages of legislation added new categories of civil infractions that distinguished between civil infractions that violated state laws and those that violated municipal ordinances. Public Acts 12-26 of 1994 created "municipal civil infractions" while Public Acts 54 and 55 of 1995 created "state civil infractions." Another package of legislation in the 1993-94 legislative session (Public Acts 82-94 of 1994) also created a specific subset of municipal civil infractions called "railway municipal civil infractions."

The 1994 legislation that created municipal civil infractions (Public Act 54) also amended the definition of "civil infraction" in the Revised Judicature Act, which, until this time, had been identical to that in the Michigan Vehicle Code, and added a definition of "state civil infraction" ("a civil infraction involving a violation of state law that is designated by statute as a state civil infraction"). The definition of "civil infraction," unlike that in the vehicle code, is not restricted to crimes as defined by the Michigan Criminal

Code, and reflects the distinction between violations of state laws and municipal ordinances. More specifically, the new RJA definition of "civil infraction" is "an act or omission that is prohibited by a law and is not a crime under that law or that is prohibited by ordinance and is not a crime under that ordinance, and for which civil sanctions may be ordered." The definition of "state civil infraction" added by Public Act 54 of 1995 was amended by Public Act 79 of 1996 to include violations of city, township, village, or county ordinances that are designated by statute as state civil infractions.

A set of "clean up" bills was enacted last session (Public Acts 169-78, 183, and 187 of 1996) to bring a number of laws referencing "civil infractions," "civil fines," and "civil violations" into conformity with the new state civil infraction act, Public Act 54 of 1995. For more information on the state civil infraction act and the "clean up" legislation of last session, see the House Legislative Analysis Section analyses of House Bills 4426 and 4427 dated 8-9-95 and of House Bill 5541 et al. dated 8-5-96.

Legislative history. Last session's package of bills differed from this session's package mainly in that House Bill 4483 of this session would leave as misdemeanors five violations that House Bill 4507 of last session would have changed to state civil infractions. The five violations are (1) operation of boats in "a careful and prudent manner" (80145); (2) "slow/no-wake" speed (80148); (3) operation of boats in a counter-clockwise manner in waters not marked by well-defined channels (80149); (4) water skiing after dark (80151); and (5) placing of diving buoys/flags (80155). Under House Bill 4483, violations of all five sections would remain misdemeanors.

In addition, House Bill 4483 does not contain some of the procedural provisions for issuing citations that were included in last session's bill, but which also were incorporated into the new state civil infractions chapter of the Revised Judicature Act by Public Act 54 of 1995 (enrolled House Bill 4426).

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bills would result in an indeterminate increase in state and local revenues, with actual revenue depending on the volume and severity of the infractions and the ultimate disposition of the cases. (3-20-97)

ARGUMENTS:

For:

Many people believe that it is long past time to change certain minor boating violations from misdemeanors into civil infractions. Currently, with two exceptions, all violations of marine safety laws are criminal, that is, either misdemeanors or felonies, despite the fact that most people wouldn't consider many minor violations -- such as failure to properly display required boat decals -- as truly "criminal" acts. In addition to public perceptions about the relative seriousness of certain boating violations, moreover, requiring that even minor boating violations be processed as misdemeanors results in what many believe to be unnecessarily expensive and time-consuming court procedures for boaters, law enforcement people, and local courts. What is more, the number of lakes in Michigan (11,037, according to one report) and the increasing number and variety of users of the state's waterways imposes an ever-increasing burden on sometimes already underfunded and overburdened local law enforcement agencies and local courts.

Rather than creating a separate system of "marine law civil infractions," the bills would designate minor violations of the marine safety part of the Natural Resources and Environmental Protection Act (as well as corresponding local ordinances and marine safety rules of the Department of Natural Resources) as "state civil infractions." The bills would eliminate the need to process these minor violations as criminal offenses, thereby reducing the cost of adjudication and removing criminal sanctions from violations that most people don't think of as criminal. What is more, boaters and law enforcement people alike could benefit from procedures that allowed fines to be paid by mail, and that reserved costly and time-consuming court appearances for contested matters. The change to state civil infractions is highly sensible and long overdue.

Against:

Changing misdemeanors to civil infractions with no other guarantees of accountability would only remove what little deterrent now exists. The question is, are the deterrents provided by the state civil infraction provisions enough to protect people from unsafe boating practices or failure to have the proper boating equipment? At least now a warrant can be issued for a violator's arrest; under the bill, if most boating violations became state civil infractions violators wouldn't even have their licenses

suspended immediately. Instead, if a violator had a driver's license, its renewal would be held up when the violator went to renew it, which could take up to three years. For example, mandatory safety training and operator licensing would encourage accountability and discourage improper behavior whose only punishment otherwise would be a monetary fine. Unless such mechanisms are put in place, violations of minor marine safety laws should remain misdemeanors.

Response:

Because minor violations of marine law would be considered state civil infractions, the "accountability mechanism" for these marine law violations would be that specified in the law for state civil infractions, namely, driver's license sanctions. Failure to respond to a citation would result in the defendant's being unable to obtain or renew his or her driver's license. Recent legislation, at least with regard to minors, has been enacted to impose driver's license sanctions for non-driving offenses, and the bill would seem to be a logical extension of imposing these kinds of license sanctions on drivers for certain non-driving offenses.

Reply:

As has been pointed out in other instances when driver's license sanctions have been proposed as an enforcement mechanism for non-driving offenses, the effectiveness of this approach is questionable. For one thing, using driver's license sanctions as an enforcement mechanism creates a system of unequal punishment: people with driver's licenses are subject to sanctions to which those without licenses are immune. Many people also believe that driver's license sanctions should be reserved for driving violations, and that it is unfair and illogical to use such sanctions for non-driving offenses. Finally, however, not only are driver's license sanctions ineffective when applied to nondrivers; such sanctions appear to be fairly ineffective at getting licensed drivers to pay their traffic tickets or obey drunk driving laws. In fact, the secretary of state reportedly has said that up to one-third of drivers facing license suspensions due to traffic violations simply opt to allow their licenses to be suspended rather than go to court. So license sanctions have hardly been ideal enforcement mechanisms even in the case of licensed drivers found responsible for traffic violations.

Against:

While the bills may make some needed changes to simplify the enforcement of the state's marine law, they entirely fail to address one of the most pressing of the current problems with boating violations: irresponsible operators of personal watercraft (PWCs). PWCs (also commonly known by the trademark name "Jet Skis") reportedly are the fastest growing segment of the recreational boating industry. According to one report, in Michigan alone there are some 50,000 registered PWCs, with sales of these little "motor scooter" boats

up 33 percent in 1994. PWCs are small, fiberglass, single- or two-person boats that are more like water scooters, with handlebars similar to those on a snowmobile or motorcycle, than traditional boats. They are smaller, more affordable, and more convenient to store and transport than full-sized boats, and are highly maneuverable on the water. They also are involved in a disproportionate number of boating accidents, running counter to the trend during the past decade of declining fatalities in recreational boating. According to one report, fatalities have fallen by half -- as boat ownership has doubled -- for all boats except PWCs: PWCs account for only five percent of all boats nationwide, but account for nearly half (46 percent) of boating accidents. The situation in Michigan is similar: PWCs make up just five percent of the state's registered boats but they account for between 30 percent and half of boating accidents in the state.

According to testimony presented last session to the House Judiciary and Civil Rights Committee, PWCs have changed life on the state's waterways -- unfortunately, for the worse. Many people who live on or use the state's lakes or waterways complain that too many jet skiers are reckless, inconsiderate, and a hazard to themselves and others. Although many PWC violations apparently can be attributed to the ignorance of the PWC operator, it also is apparent that not all violators are ignorant of the law: there have been reports of PWC operators who deliberately wait until the overburdened and understaffed local police patrols are elsewhere before going out onto the water so as to avoid possible ticketing for reckless behavior. And even when marine patrols are out on the water, the often underfunded and understaffed sheriffs' departments find it hard to adequately police the rapidly increasing numbers of watercraft users. In addition to the complaints about reckless and hazardous behavior, many complaints also center on the incessant noise pollution caused by PWCs. Reportedly, not only are PWCs on some lakes for up to 18 hours a day in the summer, apparently some jet skiers also start their "season" when the ice first leaves in early spring and stop only when the ice returns around Thanksgiving. Finally, unmonitored public access sites reportedly contribute further opportunities for misuse and abuse of the state's waterways; reportedly, besides unacceptable levels of noise pollution, there also can be significant problems with oil slicks from the fueling of jet skis. The bills do not address the problems caused by irresponsible and sometimes dangerous jet skiers.

Response:

In the first place, the bills would keep personal watercraft violations misdemeanors, rather than changing them to civil infractions, so there would still be criminal penalties for PWC violations. But according to many people, the problem with PWCs is not with the machines themselves, or with existing water safety laws;

rather, the problem is with ignorant and/or reckless jet ski operators. Since PWCs are so easy and attractive to use, apparently many people who have never operated boats before are going out on PWCs without bothering to learn how to operate them safely and legally. In fact, apparently many people don't even realize that PWCs are classified as a kind of boat, and so unless they already are experienced boaters they don't even think to inform themselves about marine safety laws, let alone follow them. Thus, rather than amending existing marine safety law, perhaps what is needed is some kind of required education program or mandated examination -- like that required of motorists -- before people are allowed to operate boats, including PWCs. In addition, enforcement of existing law could be increased, and prosecution of violations could be prosecuted more vigorously.

POSITIONS:

The Michigan Boating Industries Association strongly supports the bills. (4-1-97)

The Michigan Sheriffs Association supports the bills. (4-2-97)

The Department of Natural Resources supports the concept of the bills. (4-3-97)

The Michigan Deputy Sheriffs Association opposes the bills. (4-4-97)

Analyst: S. Ekstrom

■ 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.