

Legislative Analysis



DECRIMINALIZE SOME WATERCRAFT VIOLATIONS

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4143 (Proposed Substitute H-2)

Sponsor: Rep. Steve Bieda

Committee: Tourism, Outdoor Recreation, and Natural Resources

Complete to 2-27-07

A SUMMARY OF HOUSE BILL 4143 (Proposed H-2)

- In general, House Bill 4143 would amend Part 801 (Marine Safety) and Part 802 (Personal Watercraft) of the Natural Resources and Environmental Protection Act to decriminalize certain violations of the two parts and related administrative rules, changing them from misdemeanors to state civil infractions. In most cases, the bill specifies that the new civil infractions would be punishable by a fine of up to \$500. For a few Part 801 violations and with respect to violations of administrative rules, the maximum fine would be set by the district or municipal court in which the violation occurred. Violators of Part 802 may also be required to complete a boating safety course.
- In addition, the bill raises the amount of bail that a person who is not a Michigan resident arrested without a warrant for a Part 801 violation may be required to post from \$25 to \$200. (MCL 324.80169)
- Failure to submit to a preliminary breath test when suspected of operating a vessel while intoxicated is currently a state civil infraction punishable by a fine of up to \$100. Under the bill, the maximum fine would be raised to \$500. (MCL 324.80180)

Penalties. Under current law, Parts 801 (Marine Safety) and 802 (Personal Watercraft) both have sections that specify what the "default" penalty is for violations of those sections that are not otherwise specified:

- Part 801. Unless otherwise specified, a violation of Part 801 is a misdemeanor. (MCL 324.80171) Under the Michigan Penal Code, unspecified misdemeanors are punishable by imprisonment of up to 90 days and/or a fine of up to \$500. (MCL 750.504) Under the bill, several violations of Part 801 that currently have no specified penalty would now be designated as civil infractions punishable only by a fine of up to \$500. In a few instances, the bill would designate a statutory violation as a civil infraction but set no maximum penalty. This would also be the case with violations of administrative rules under Part 801. Presumably, then, the penalty would be determined under the Revised Judicature Act of 1961, which allows district and municipal courts to establish a schedule of civil fines, costs, and assessments to be imposed for state civil infractions that occur within the district or city. (MCL 600.8827(6))

- Part 802. Unless otherwise specified, a violation of Part 802 (covering personal watercraft such as jetskis) is a misdemeanor punishable by imprisonment of up to 90 days and/or a fine of up to \$100 (and possibly completion of a boating safety course). (MCL 324.80219) Under the bill, several violations of Part 802 would instead be designated civil infractions punishable by a fine of up to \$500. (Violators presumably could still be required to complete a boating safety course in addition to the fine.)

Specifically, the bill would designate the following violations as civil infractions subject in most cases to a maximum fine of \$500. Part 802 violators may also be required to complete a boating safety course.

Part 801, Marine Safety

- Violating an administrative rule promulgated under Part 801 relating to marine safety. (As described above, the bill designates rule violations as civil infractions but does not specify a maximum penalty.) (MCL 600.80114)
- Operating a vessel without obtaining properly applying for a certificate of number for a vessel, displaying the appropriate decal, or paying required fees. (MCL 324.80122 and 324.80124).
- Violating any of the rules that apply when a collision is imminent or likely (e.g., failing to give way). (MCL 324.80144)
- Failing to operate a vessel in a "careful and prudent manner" and at a rate of speed that does not unreasonably endanger persons or property, or interfering unreasonably with the lawful use of the water by others. (MCL 324.80145) However, violations of this section that constitute reckless operation of a motorboat as described in Section 80147 would still be a misdemeanor.
- Failing to follow an established speed limit or exceeding a slow/no-wake speed where required. (MCL 324.80146)
- Failing to operate in a counterclockwise direction in areas not marked by well defined channels, canals, rivers, or stream courses or to maintain a distance of 100 feet from any dock, raft, buoyed or occupied bathing area, or moored vessel (except when proceeding at a slow/no-wake speed or picking up or dropping off water skiers). (MCL 324.80147)
- Towing a person (or allowing oneself to be towed) on water skis, water sled, surfboard, or similar contrivance between one hour after sunset and one hour before sunrise (i.e., at night). (MCL 324.80151)
- Failing to have a second person in a vessel towing a person on water skis, water sled, aquaplane, surfboard, or similar contrivance who can observe and communicate to the vessel operator the condition and needs of the person being towed, when required by the statute. (MCL 324.80152)

- For divers using a diving suit or other mechanical diving device, failing to place a buoy or boat with an appropriate diver's flag at or near the point of submergence or failing to stay within 100 feet of the diver's flag. For vessel operators, failing to remain at least 200 feet away from a diver's flag. (MCL 324.80155)
- Failure to submit to a preliminary breath test when suspected of operating a vessel while intoxicated. The current penalty is a state civil infraction punishable by a fine of up to \$100. (MCL 324.80180)
- For owners or persons in charge of a bathing beach primarily for public use, failing to use buoys to outline a safe bathing and swimming area. For swimmers, swimming beyond the buoyed bathing or swimming area. (MCL 324.80198b)

Part 802, Personal Watercraft

- Operating a personal watercraft so as to cross within 150 feet behind another vessel (that is not another personal watercraft), except when operating at a slow/no-wake speed. (MCL 324.80205)
- Operating a personal watercraft in water with a depth of less than two feet, except if the personal watercraft is both being operated at a slow/no-wake speed during docking or launching. (MCL 324.80205)
- Operating a personal watercraft (1) when traveling other than perpendicular to the shoreline at a slow/no-wake speed, within 200 feet from the shore of the Great Lakes; (2) within 100 feet of other objects in the water, such as docks, rafts, swimming areas, people, or un-propelled vessels (or allowing oneself to be towed within 100 feet of such objects or persons), except when the personal watercraft is proceeding at a slow/no-wake speed or is being operated in a navigable channel, canal, river or stream not otherwise posted; or (3) within 200 feet of a submerged diver, vessel engaged in underwater diving, or flotation device displaying the international diving insignia (or allowing oneself to be towed within 200 feet of such a diver, vessel or device). (MCL 324.80209)

FISCAL IMPACT:

The bill's fiscal impact on the state and local units of government would depend on how it affected numbers of and sentences for people held responsible for state civil infractions and found guilty of misdemeanors. Increases in applicable fines could benefit local libraries, which are the constitutionally designated recipients of such revenues. Fewer misdemeanor convictions could provide local savings in costs of misdemeanor incarceration or misdemeanor probation. Replacing misdemeanor penalties with civil infraction penalties could reduce revenues going to the state Justice System Fund, which supports various justice-related endeavors in the judicial branch, the Department of State Police, and the Department of Corrections.

The following table shows how the revenues and costs of various penalties would affect the state and local units of government.

Responsible for/Guilty of:	Fine	Court-ordered Costs ("Minimum State Costs")	Costs of Incarceration	Costs of Probation Supervision
State Civil Infraction	To local library	\$10 to state Justice System Fund	Not applicable	Not applicable
Misdemeanor	To local library	\$40 to state Justice System Fund	Local costs of incarceration in county jail; costs vary by county	Local

Legislative Analyst: Shannan Kane
Fiscal Analyst: Marilyn Peterson

■ 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.