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BOATING SAFETY

House Bill 5426 as enrolled
Public Act 116 of 1998
Sponsor: Rep. William Callahan

Senate Bill 830 as enrolled
Public Act 262 of 1998
Sponsor: Senator Walter H. North

Senate Bills 865 and 897 as enrolled
Public Acts 263 and 264 of 1998
Sponsor: Senator Jon Cisky

**House Committee: Conservation,
Environment and Recreation**
**Senate Committee: Transportation
and Tourism**

Second Analysis (9-9-98)

THE APPARENT PROBLEM:

It is not surprising that there are 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 skis 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 many 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. 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:

The bills would provide new regulations for personal watercraft, as follows:

- House Bill 5426 would establish a Personal Watercraft Safety Act (Public Act 116 of 1998). 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.
- Senate Bill 830 would amend the Natural Resources and Environmental Protection Act (NREPA) to prohibit a boat livery from leasing a personal

watercraft to a person who did not display a boater safety certificate.

- Senate Bill 865 would amend the Personal Watercraft Safety Act established under House Bill 5426 and Senate Bill 897 would amend the Code of Criminal Procedure to, among other things, specify that a personal watercraft owner was liable for any injury caused by careless operation of the vessel; permit a court to issue an order prohibiting a person guilty of reckless operation from operating a personal watercraft; and establish misdemeanor penalties.

Senate Bills 865 and 897 are tie-barred to each other.

House Bill 5426 would establish a Personal Watercraft Safety Act, and would require that certain operators of personal watercraft obtain boating safety certificates. A "boating safety certificate" would be defined under the act to mean either a document issued by the Department of Natural Resources (DNR) or by the U.S. Coast Guard Auxiliary, certifying that the individual named therein had successfully completed a boating safety course; or a written rental agreement provided to an individual operating a rented watercraft. The act would be repealed five years after its effective date.

Personal Watercraft Safety Act. 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, instead, create the Personal Watercraft Safety Act to 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. 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 DNR would be required to promulgate and publish rules under the provisions of the Administrative Procedures Act (MCL 24.201 to 24.328).

Minors. Under the act, a person under 14 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 14 who had

already obtained a boating safety certificate before January 1, 1999. In addition, 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. 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, and 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 to provide boating safety certificates to those who completed the program. The act would also specify that a peace officer could not 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 act would specify that neither the department, a state agency, a law enforcement agency, nor a political subdivision of the state could charge for boating safety instruction or for awarding boating safety certificates.

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 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 8 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 200 feet would have to be maintained from the shorelines of the Great Lakes, except when traveling at slow--no wake speed perpendicular to the shoreline.
- A personal watercraft could not be operated outside a channel or in an area where aquatic rooted vegetation was visible above the surface of the water in the deltaic wetlands of a lake that was greater than 32 square miles and less than 144 square miles in area. (Note: A violation of this provision would be a state civil infraction punishable by a \$25 fine.)
- A seven-year-old who was on board or was being towed behind a personal watercraft would have to be accompanied by a parent, guardian, or parent or guardian designee.
- 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 submerged diver, a vessel engaged in underwater diving activities, or a flotation device displaying the international diving insignia. (The exceptions to these provisions would be when operating or being towed at a slow--no wake

speed, 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.

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).

Out-of-State Residents. The boat safety certification requirements would not apply to an out-of-state resident. However, beginning one year 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.

Senate Bill 830. Part 445 (MCL 324.44522) of the Natural Resources and Environmental Protection Act (NREPA), which regulates charter and livery boat safety, currently prohibits a boat livery from leasing, hiring, or renting a personal watercraft to a person who is under 16 years of age. Among other provisions, the bill would lower the age to 14, and would add that a livery could not lease, hire, or rent a personal watercraft to a person who did not display a boater safety certificate, as required under the Personal Watercraft Safety Act established under House Bill 5426.

Prohibited Actions. The bill would specify that a livery could not lease, hire, or rent a personal watercraft to a person who did not display a boater

safety certificate, unless the person obtained training in the safe use of one from the boat livery prior to leasing, hiring, or renting. The prohibition would apply whether or not the person was *required* to obtain a safety certificate under the Personal Watercraft Safety Act. The bill would also require that the Department of Natural Resources (DNR) provide boat liveries with guidelines for the required training. In addition, the bill would specify that a person who leased, hired, or rented a personal watercraft from a boat livery could not permit an individual who hadn't obtained a boater safety certificate, or other certificate required under the Personal Watercraft Safety Act, to operate the watercraft.

Penalties. A person who violated the provisions of the bill would be guilty of a misdemeanor punishable by imprisonment for up to 90 days, a fine of between \$100 and \$500, or both. 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, a fine of up to \$1,000, or both. 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, a fine of up to \$2,000, or both. Upon a second or subsequent violation, a court could -- in addition to the penalties provided under the bill -- issue an order impounding the personal watercraft for up to one year,

Rental Agreement/Safety Certificate. A boat livery would have to provide a copy of the written rental agreement to each individual who leased, hired, or rented a personal watercraft from the boat livery and who had obtained the required training. The rental agreement would have to include all of the following information: the name of the person who leased, hired, or rented a personal watercraft from the boat livery, and the date(s) of the lease, hire, or rental. The agreement would be a valid boating safety certificate, under the provisions of the Personal Watercraft Safety Act, only for the person named in the certificate on the date(s) of the lease, hire, or rental of the personal watercraft.

Liability. A person who leased, hired, or rented a personal watercraft from a boat livery would be liable for any injury resulting from its negligent operation, whether the negligence consisted of a violation of state statute or a failure to observe ordinary care in the operation that the rules of the common law require. The person would not be liable unless the personal watercraft was being used with his or her expressed or

implied consent. The bill specifies that it would be rebuttably presumed that the personal watercraft was being operated with the knowledge and consent of the person if it were driven at the time of the injury by that person's son, daughter, spouse, father, mother, brother, sister, or other immediate member of the person's family.

Senate Bill 865. 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). The bill would repeal this provision of the act, and would establish provisions under the Personal Watercraft Safety Act established under House Bill 5426 to provide rules for operating a personal watercraft; to impose certain safety requirements on their operators; and to provide penalties for violations of the act, among other provisions. 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 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 ordered to pay 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 ordered to pay 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.

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 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.

FISCAL IMPLICATIONS:

House Bill 5426 would require that boating safety courses be provided to boat operators, free of charge. According to the Department of Natural Resources (DNR), this would have an indeterminate fiscal impact on the state, depending on how many were required.

Senate Bill 830 would require that a boat livery must provide safety training to prospective boat operators, and that the DNR provide the liveries with guidelines for the required training. According to the DNR, an indeterminate cost would be incurred by the state to identify these boat liveries and to distribute the required information, depending on the size of the proposed guidelines, and how many were required.

Senate Bill 865 would require that the DNR provide personal watercraft dealers with a summary of the laws pertaining to personal watercraft and also a document that summarized the watercraft's safety features. This information would have to be provided in generic form. The DNR estimates that this would result in an indeterminate cost to the state; however, it is possible that the information will be provided by personal watercraft manufacturers. (9-9-98)

ARGUMENTS:

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. The bills 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.

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.

Response:

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.

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.