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SFA**BILL ANALYSIS**

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House Bill 5426 (Substitute S-1)
Sponsor: Representative William Callahan
House Committee: Conservation, Environment and Recreation
Senate Committee: Transportation and Tourism

Date Completed: 4-24-98

CONTENT

The bill would create the "Personal Watercraft Safety Act" to do the following:

- Require personal watercraft operators and passengers to wear personal flotation devices, and require children under seven to be accompanied by a parent or guardian or that person's designee.
- Prohibit a person from operating a personal watercraft from one hour before sunset until 9 a.m.
- Require a person, except when traveling at slow--no wake speed, who operated a personal watercraft on a Great Lake to maintain a distance of 150 feet of the shoreline.
- Provide that, as a rule, a person operating a personal watercraft or a person being towed on water skis or similar equipment would have to remain at least 100 feet from any dock, raft, or buoyed or occupied bathing or swimming area, a person in a personal flotation device, or a moored or anchored vessel; and remain at least 200 feet from a submerged diver.
- Require the Department of Natural Resources (DNR) to establish comprehensive educational programs to advance boating safety, put into effect a program to train boat operators, and issue a boating safety certificate to a person who satisfactorily completed the program.
- Prohibit a person under 16 from using a personal watercraft, but permit a person who was at least 12 but less than 16 before January 1, 1999, to use a personal watercraft if he or she obtained a boating safety certificate before that date.
- Prohibit a person born after December 31, 1978, from operating a personal watercraft unless he or she obtained a boating safety certificate.
- Exempt nonresidents of the State from the bill's certification requirements but, after one year, require nonresidents to possess a boating safety certificate or other certificate.

(The bill would define "personal watercraft" as a vessel that used a motor-driven propeller or an internal combustion engine powering a water jet pump as its primary source of propulsion; was designed without an open load carrying area that would retain water; and, was designed to be operated by one or more persons positioned on, rather than within, the confines of the hull.)

The bill would take effect May 22, 1998. The bill is tie-barred to Senate Bill 830, which would amend the Natural Resources and Environmental Protection Act (NREPA) to establish requirements for boat liveries that rented or leased personal watercraft.

Operation

A person could not operate a personal watercraft on the waters of this State unless each person aged 12 or over riding on or being towed behind the personal watercraft was wearing a Type I, Type II, or Type III personal flotation device. Each person on board who was under 12 would have to be wearing a Type I or Type II personal flotation device. In addition, each person on board a personal watercraft would have to be wearing a personal flotation device that was not inflatable. If a child under seven were on board or being towed, he or she would have to be in the company of his or her parent or guardian or a designee of the parent or guardian. ("Waters of this state" would

mean any waters within the territorial limits of the State, including the waters of the Great Lakes that are under the jurisdiction of this State.)

A person could not operate a personal watercraft on the waters of this State during the period beginning one hour before sunset and ending at 9 a.m. "Sunset" would mean that time as determined by the National Weather Service.

While operating a personal watercraft equipped by the manufacturer with a lanyard-type engine cutoff, a person would have to have the lanyard attached to his or her person, clothing, or personal flotation device, as appropriate for the personal watercraft.

A person operating a personal watercraft could not cross within 150 feet behind another vessel, other than a personal watercraft, unless the person was operating the personal watercraft at slow--no wake speed.

A person could not operate a personal watercraft where the water depth was less than two feet, as determined by vertical measurement.

The bill would require a person to operate a personal watercraft in a reasonable and prudent manner. A maneuver that unreasonably or unnecessarily endangered life, limb, or property, including but not limited to all of the following, would constitute 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 was obstructed; and, swerving at the last possible moment to avoid a collision.

A person could not operate a personal watercraft carrying more persons than the watercraft was designed to carry. The bill specifies that a violation of this prohibition would be prima facie evidence of reckless operation of a watercraft.

A person operating a personal watercraft in excess of the speeds established under Part 801 (Marine Safety) of the NREPA would be guilty of reckless operation of a personal watercraft.

The bill specifies that the preceding provisions 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 section 80164 of the NREPA (which regulates races and water events), under a

permit issued by the DNR at the time and place specified in the permit.

Operating Distances

The bill would prohibit a person from operating a personal watercraft in this State within three-fourths of a mile of State-owned land located on an island in a lake that was more than 32 square miles and less than 144 square miles in area. This prohibition would not apply, however, to a channel marked for commercial navigation.

Except when traveling at slow--no wake speed, a person who operated a personal watercraft on one of the Great Lakes that was under the jurisdiction of the State would have to maintain a distance of 150 feet from the shoreline. ("Slow--no wake speed" would mean the use of a vessel at a very slow speed so that the resulting wake or wash was minimal.)

A person who operated a personal watercraft or a person who was being towed by a personal watercraft on a water sled, kite, surfboard, parachute, tube, water ski, or similar equipment would have to maintain a distance of at least 100 feet from a dock, raft, or buoyed or occupied bathing or swimming area, a person in the water or on the water in a personal flotation device, or a vessel moored or anchored, drifting, or sitting in dead water.

An operator or a person being towed also would have to maintain a distance of at least 200 feet from a submerged diver, a vessel engaged in underwater diving activities, or a flotation device displaying the international diving insignia. This provision would not apply if the personal watercraft being operated or the person being towed were proceeding at a slow--no wake speed, or if the personal watercraft or the person were in a navigable channel, canal, river, or stream not otherwise posted.

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 had in his or her immediate possession a boating safety certificate. ("Boating safety course" would mean a course that was approved by the DNR and provided instruction on the safe operation of a personal watercraft that met or exceeded the minimum course content for boating or personal watercraft education

established by the National Association of State Boating Law Administrators education committee (October 1996). "Boating safety certificate" would mean any of the following:

- The document issued by the DNR that certified that the named individual had successfully completed a boating safety course and passed an examination.
- A document issued by the U.S. Coast Guard Auxiliary that certified that the named individual had successfully completed a U.S. Coast Guard Auxiliary course concerning boating safety.
- A written rental agreement provided to an individual named in the agreement, only on the date or dates indicated on the agreement while the individual was operating a personal watercraft leased, hired, or rented from a boat livery.)

The bill specifies that in order to protect the public interest in the prudent and equitable use of the waters of the State and to enhance the enjoyment of pleasure boating and other recreational water sports on the waters of the State, the DNR would be required to establish and pursue comprehensive educational programs designed to advance boating safety.

The Department also would have to put into effect a program to train boat operators, and issue a boating safety certificate to those who satisfactorily completed the program. For the purpose of giving the courses of instruction and awarding boating safety certificates, the DNR could designate as its agent any person it considered qualified to act in this capacity. The DNR, another State agency, or a law enforcement agency of this State or a political subdivision of this State, could not charge for any instruction given or for the award of boating safety certificates.

The DNR would be required to issue a boating safety certificate to each individual who successfully completed a boating safety course and passed an examination. The examination would have to be administered in person and proctored by the DNR or an agent of the Department. The DNR could not issue a boating safety certificate to a person unless he or she had successfully completed a boating safety course and passed an examination. A boating safety certificate would be valid, unless revoked, for the life of the person who earned it.

The DNR Director, by written authorization, could modify or suspend the bill's boating safety certificate requirements if the modification or suspension of the requirements were for persons engaged in a marine event authorized by the Director or for which the Director received a copy of a U.S. Coast Guard authorization.

Beginning on the bill's effective date, the Department would have to consider the number of examinations that were administered or proctored when calculating the State aid to counties that conduct a marine safety program under the NREPA (MCL 324.80117).

Age of Operator

A person under 16 years of age could not use a personal watercraft on the waters of the State. A person who was at least 12 and less than 16 before January 1, 1999, however, could use a personal watercraft if before that date he or she had obtained a boating safety certificate. A person who was born after December 31, 1978, could not operate a personal watercraft upon the waters of the State unless he or she first obtained a boating safety certificate. Within five years after the bill took effect, these graduated age provisions would have to be reviewed by the appropriate committee of both houses of the Legislature to ascertain the effect, if any, the provisions had on the safe operation of personal watercraft on the waters of the State.

The owner of a personal watercraft or a person having charge over or control of a personal watercraft could not authorize or knowingly permit it to be operated in violation of these provisions.

These provisions 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 section 80164 of the NREPA, events, under a permit issued by the Department and at the time and place specified in the permit.

Nonresident Operators

The proposed certification requirements would not apply to a person who was not a resident of the State. Beginning one year after the bill's effective date, however, a nonresident could operate a personal watercraft on the waters of the State only if he or she possessed one of the following: a boating safety certificate; a certificate issued by his or her state of residence that reflected education

and training that was substantially similar to the education and training required to obtain a boating safety certificate under the bill; or, a certificate showing that he or she had successfully completed a course that provided instruction on the safe operation of a personal watercraft that met or exceeded the minimum course content for boating or personal watercraft education established by the National Association of State Boating Law Administrators education committee (October 1996).

Other Provisions

Except as otherwise provided in the bill, a personal watercraft operator would have to comply with Part 801 of the NREPA.

Except as otherwise provided, the DNR would be responsible for the bill's administration. The Department would be required to promulgate rules authorized by the bill under the Administrative Procedures Act, and would have to publish the rules in a convenient form.

Legislative Analyst: S. Lowe

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government, depending on the number of personal watercraft operators trained and the type of boating safety classes offered.

According to the Department, there are an estimated 80,000 personal watercraft registered in the State. However, the number of personal watercraft operators is unknown, and there are often multiple operators per vehicle. At present, the Department provides funding through \$3.2 million in marine safety grants for locally operated boating safety courses and other boating safety or law enforcement functions. There would be minimal anticipated increased costs to the State if the personal watercraft boating safety courses were included as part of the current boating safety program.

Fiscal Analyst: G. Cutler

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.