

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4105-05
Bill No.: SCS for HCS for HB 1715 with SA 1
Subject: Boats and Watercraft; Transportation; Water Patrol
Type: Original
Date: May 8, 2008

Bill Summary: This proposal enacts various provisions relating to watercraft.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
General Revenue	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
Total Estimated Net Effect on General Revenue Fund	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Highway Funds	(\$48,000)	\$0	\$0
Total Estimated Net Effect on <u>Other</u> State Funds	(\$48,000)	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 9 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Total Estimated Net Effect on FTE	0	0	0

- Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).
- Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Public Safety - Water Patrol, Department of Natural Resources** and the **Department of Health and Senior Services** each assume the proposal will not fiscally impact their respective agencies.

In response to a previous version of this proposal, officials from the **Department of Conservation** assumed the proposal will not fiscally impact their agency.

Officials from the **Office of Prosecution Services (OPS)** assume the provisions of this proposed legislation modify and extend existing criminal laws. The OPS assumes this proposal would have some direct fiscal impact on those County Prosecutors having within their counties, rivers or bodies of water upon which vessels are frequently operated. Any fiscal impact would result from an increase in the number of cases referred for prosecution for violations of these laws. In the absence of any estimates of the number of additional criminal cases that would be referred to County Prosecutors for charges because of this proposed legislation, it is not possible to provide estimates concerning the extent of any fiscal impact. It is assumed this proposal would not have a significant direct fiscal impact on the Office of Prosecution Services

In response to a previous version of this proposal, officials from the **Office of the State Public Defender (SPD)** stated while the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional funding for this specific bill, the SPD will continue to request sufficient appropriations to provide competent and effective representation in all its cases.

Officials from the **Office of the State Courts Administrator (CTS)** state the proposed legislation would increase the jurisdiction of the Water Patrol to include any water of the state, rather than only the Mississippi River, Missouri River, or the lakes of this state. In addition, a person commits the crime of operating a vessel with excessive blood alcohol content (BAC) if such person operates a vessel with a BAC of .08 rather than .10.

Some cases may become protracted. Depending on the degree of enforcement, there could be a significant increase in the number of cases filed. However, CTS has no way of estimating that increase. Any significant increase would be reflected in future budget requests.

Officials from the **Department of Revenue (DOR)** state the proposal will have minimal fiscal impact on their agency. A mailing to the boat dealers for notification of changes to policies

ASSUMPTION (continued)

and procedures would be required. The cost will be absorbed.

Officials from the **Department of Corrections (DOC)** stated at this time they are unable to determine the number of people who would be convicted under the provisions of this bill and therefore the number of additional inmate beds that may be required as a consequence of passage of this proposal. Estimated construction cost for one new medium to maximum-security inmate bed is \$55,000. Utilizing this per-bed cost provides for a conservative estimate by the DOC, as facility start-up costs are not included and entire facilities and/or housing units would have to be constructed to cover the cost of housing new commitments resulting from the cumulative effect of various new legislation, if adopted as statute.

This bill aligns the boating while intoxicated (BWI) statutes to mirror the driving while intoxicated (DWI) statutes by lowering the blood alcohol content from ten-hundredths to eight-hundredths of one percent or more by weight of alcohol in the person's blood.

Lowering the blood alcohol content will result in more BWI arrests. The Missouri Water Patrol reports 431 BWI arrests in CY 2006 and 357 BWI arrests in CY 2007. Conversely, the University of Missouri reports 420 DWI arrests in CY 2006. Seven percent of those arrested for DWI had blood alcohol content levels from .08 to .099. Therefore, the Missouri Water Patrol can reasonably expect to arrest approximately 382 people for BWI, subject only to manpower limitations.

Of the 357 arrests for BWI, the Missouri Water Patrol reports 327 were for a first offense, 12 were for a second offense, and 3 were for a third offense. Currently, there is one new probation case in DOC for the class D felony offense (MOCODE 54310) of BWI. A search of the DOC database reveals only two other offenders sentenced for a third offense of BWI.

The bottom line is BWI arrests will likely increase. In spite of the increase, annual felony BWI arrest will not reach the same level of felony DWI arrest. The BWI statute at the ten-hundredths level has been in existence since 1993 and only three offenders have been sentenced for a third offense. While the total impact to DOC is unknown, it is likely to be under \$100,000.

Currently, the DOC cannot predict the number of new commitments which may result from the creation of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court. If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in operational cost either through incarceration (FY07 average of \$41.21 per inmate, per day or an annual cost of \$15,040 per inmate) or through supervision

ASSUMPTION (continued)

provided by the Board of Probation and Parole (FY07 average of \$2.43 per offender, per day or an annual cost of \$887 per offender).

In summary, supervision by the DOC through probation or incarceration would result in additional unknown costs to the department. Seven (7) persons would have to be incarcerated per fiscal year to exceed \$100,000 annually. Due to the narrow scope of this new crime, it is assumed the impact would be less than \$100,000 per year for the DOC.

Officials from the **Department of Public Safety - Missouri Highway Patrol** state changes to Section 577.023 states that MULES will be searched for intoxication-related traffic offenses. However, MULES is not currently designed to access databases that include this information. The Patrol would have to create new queries to access databases outside of MULES. A consultant would need to be hired, and this would require 480 hours of work to develop these new queries, at a cost of \$100 per hour. This would be a total of \$48,000 (480 hours x \$100 per hour).

Senate Amendment 1:

In response to the perfected version of this proposal, officials from the **Missouri Water Patrol** stated they anticipate there are fewer than 20 of these boats statewide. They would normally have to pay \$100, and this amendment would require \$55 instead. So the total impact would be \$900 (20 x (\$100 - \$55)) or less.

In response to the perfected version of this proposal, officials from the **Department of Revenue** stated the amendment would have minimal impact on their agency and defer to the State Water Patrol's estimate of \$900 loss in revenue.

Oversight assumes \$900 loss would be incurred by the state over a three year renewal period, or an average of \$300 per year. Oversight assumes this amount is not material and has not reflected it in the fiscal note.

<u>FISCAL IMPACT - State Government</u>	FY 2009 (10 Mo.)	FY 2010	FY 2011
GENERAL REVENUE			
<u>Costs</u> - Department of Corrections Incarceration and/or supervision	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)

HIGHWAY FUNDS

<u>Costs</u> - Missouri Highway Patrol Updates to the MULES system to search by intoxication-related traffic offenses	(<u>\$48,000</u>)	<u>\$0</u>	<u>\$0</u>
ESTIMATED NET EFFECT TO THE HIGHWAY FUNDS	(<u>\$48,000</u>)	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2009 (10 Mo.)	FY 2010	FY 2011
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This bill changes the laws regarding watercraft. In its main provisions, the bill:

- (1) Specifies that a person commits the crimes of negligent operation of a vessel, operating a vessel while intoxicated, involuntary manslaughter with a vessel, assault with a vessel in the second degree, and operating a vessel with excessive blood-alcohol content on any waters of this state. Currently, those crimes can only be committed on the Mississippi River, Missouri River, or any lake in this state;
- (2) Lowers the weight of alcohol necessary in a person's blood in order for there to be a presumption that the person is intoxicated from .1 of 1% to .08 of 1%;
- (3) Defines "prior offender" as any person who has pled guilty to or been found guilty of one intoxication-related boating offense within five years of the intoxication-related boating offense for which the person is charged. A person proved to be a prior offender will be guilty of a class A misdemeanor and will not be eligible for probation or parole until he or she has served a minimum of five days' imprisonment;
- (4) Defines "persistent offender" as a person who has pled guilty to or been found guilty of two or more intoxication-related boating offenses, involuntary manslaughter with a vessel, assault with a vessel in the second degree, or assault of a law enforcement officer in the second degree while in an intoxicated condition or under the influence of a controlled substance operates a vehicle or motorboat to cause injury to the law enforcement officer. A person proved to be a persistent offender will be guilty of a class D felony and will not be eligible for probation or parole until he or she has served a minimum of 10 days' imprisonment;
- (5) Defines "aggravated offender" as a person who has pled guilty to or been found guilty of three intoxication-related boating offenses or has pled guilty to or been found guilty of one of more intoxication-related boating offense and any of the following: involuntary manslaughter with a vessel, assault with a vessel in the second degree, or assault of a law enforcement officer in the second degree while in an intoxicated condition or under the influence of a controlled substance operates a vehicle or motorboat to cause injury to the law enforcement officer. A person proved to be an aggravated offender will be guilty of a class C felony and will not be eligible for probation or parole until he or she has served a minimum of 60 days' imprisonment;
- (6) Defines "chronic offender" as a person who has pled guilty to or been found guilty of four or more intoxication-related offenses; has pled guilty to or been found guilty of, on two or more separate occasions, any combination of the following: involuntary manslaughter with a vessel, assault with a vessel in the second degree, or assault of a law enforcement officer in the second

FISCAL DESCRIPTION (continued)

degree while in an intoxicated condition or under the influence of a controlled substance; or has pled guilty to or been found guilty of two or more intoxication-related offenses and any of the following: involuntary manslaughter with a vessel, assault with a vessel in the second degree, or assault of a law enforcement officer in the second degree while in an intoxicated condition or under the influence of a controlled substance operates a vehicle or motorboat to cause injury to the law enforcement officer. A person proved to be a chronic offender will be guilty of a class B felony and will not be eligible for probation or parole until he or she has served a minimum of two years' imprisonment;

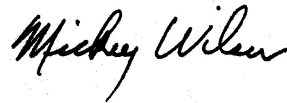
- (7) Specifies that no prior, persistent, aggravated, or chronic offender will be given an imposition of sentence;
- (8) Specifies that a person will be guilty of the crime of involuntary manslaughter if he or she operates a vessel in an intoxicated condition and in doing so acts with criminal negligence to cause the death of any person or operates a vessel in violation of subsections 1 and 2 of Section 306.132, RSMo, and causes the death of any person authorized to operate an emergency watercraft;
- (9) Expands the crime of assault of a law enforcement officer to include the operation of a vessel with criminal negligence to cause physical injury to a law enforcement officer, emergency personnel, or probation and parole officer; and
- (10) Expands the crime of abandoning a motor vehicle to include the abandonment of a vessel on the right-of-way of any public road or state highway.
- (11) Makes changes in subsection 577.023.16 to require searches to be allowed to be conducted on the Missouri Uniform Law Enforcement System maintained by the Missouri Highway Patrol of intoxication-related traffic offenses. There is an emergency clause on this part of the bill only.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

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SOURCES OF INFORMATION

Department of Public Safety
Department of Revenue
Office of the State Courts Administrator
Department of Corrections
Office of Prosecution Services
Office of the State Public Defender
Department of Health and Senior Services
Department of Conservation
Department of Natural Resources



Mickey Wilson, CPA
Director
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