

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4840-01
Bill No.: SB 1107
Subject: Water Patrol; Drunk Driving/Boating; Boats and Watercraft
Type: Original
Date: February 22, 2008

Bill Summary: This proposal modifies various provisions relating to the Water Patrol and watercraft regulations.

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
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 8 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 Conservation**, **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 similar proposal from this year (HB 1715), officials from the **Office of Prosecution Services (OPS)** stated while the provisions of this proposed legislation will likely have some impact on the number of criminal charges referred to prosecutors for prosecution and upon the complexity of prosecuting some of those cases, it is assumed that the fiscal impact upon county prosecutors or the Office of Prosecution Services will not be a significant one.

Officials from the **Office of the State Public Defender (SPD)** state 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 they will need to update related policies/procedures. However, the costs should be minimal and will be absorbed.

Officials from the **Department of Corrections (DOC)** state 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

ASSUMPTION (continued)

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 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.

<u>FISCAL IMPACT - State Government</u>	FY 2009 (10 Mo.)	FY 2010	FY 2011
GENERAL REVENUE			
<u>Costs - Department of Corrections Incarceration and/or supervision</u>	(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>)

<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 act modifies various provisions relating to the Water Patrol and watercraft regulations.

SECTION 304.157 - allows local governments to tow vessels that are derelict and harmful to the public health under the authority of a local ordinance in the same manner as towing motor vehicles in the same condition.

SECTION 306.010 - defines the term "skiing" as any activity that involves a person or persons being towed by a vessel, including but not limited to, water skiing, wake boarding, wake surfing, knee boarding, and tubing.

SECTION 306.015 - in the event of a sale or transfer of ownership of a vessel or outboard motor for which a certificate of ownership or manufacturer's statement of origin has been issued, the holder of such certificate shall endorse on the same an assignment thereof, with warranty of title in form prescribed thereon, and prescribed by the director of the department of revenue, with a

FISCAL DESCRIPTION (continued)

statement of all liens or encumbrances on the vessel or outboard motor, and deliver the same to the buyer at the time of delivery. However, when the transfer occurs within a corporation holding a license to operate as a dealer, it shall not be treated as a retail sale.

SECTION 306.100 - prohibits vessels from displaying continuous spotlights, docking lights, and other non-prescribed lights from sunset to sunrise.

SECTION 306.111 - it is possible for a person to commit the crimes of negligent operation of a vessel, operating a vessel while intoxicated, involuntary manslaughter with a vessel, and assault with a vessel in the second degree on any waters of the state, rather than only the Mississippi River, Missouri River, or the lakes of this state.

SECTIONS 306.112, 306.114 & 306.117 - 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.

The requirement for a nonalcoholic antiseptic to be used for cleansing the skin before drawing blood for a BAC test is removed from statute.

In court, it shall be presumed that a person was not intoxicated if such person's BAC was .05 or less. If the person's BAC was more than .05 but less than .08, the fact shall not give rise to any presumption regarding the person's intoxication, but may be considered as evidence of intoxication. If the person's BAC was more than .08, it shall be prima facie evidence that the person was intoxicated while boating.

SECTION 306.118 - creates the classifications of "prior", "persistent", "aggravated", and "chronic" for repeat intoxication-related boating offenders. The penalties for each classification of offenders increase respectively based on the number and severity of the offenses committed. The penalties in this section treat persons found guilty of or pleading guilty to intoxication-related boating offenses in a similar manner as persons pleading guilty to or found guilty to intoxication-related traffic offenses.

No court shall suspend the imposition of sentence for prior, persistent, aggravated, or chronic offenders or allow a person to pay a fine instead of serving a prison term. This section also sets a minimum amount of time that such offenders must serve before being eligible for probation or parole.

FISCAL DESCRIPTION (continued)

This section also outlines the requirements that must be met to prove a person is a prior, persistent, aggravated, or chronic offender and provides the same court procedure for intoxication-related boating cases as for intoxication-related traffic offender cases.

SECTION 306.124 - allows the Water Patrol, due to a man-made or natural disaster, to close waters of the state without the use of official regulatory markers.

SECTIONS 306.125, 306.126, & 306.127 - currently, certain watercraft regulations only apply to certain lakes and rivers in the state. Under this act, such requirements are applicable to all waters of the state. In addition, a person must display a flag at all times when operating a water craft rather than from only 11 a.m. to sunset. The provision allowing such flags to not be displayed during towing is repealed.

SECTION 306.132 - vessels shall not be operated at a speed in excess of slow no-wake speed within 100 feet of any emergency vessel that has red or blue lighting displayed.

SECTION 306.147- has certain motorboat muffler and noise regulations applicable on all waters of the state instead of only specific lakes and rivers.

SECTION 306.163 - currently, the Governor appoints a commissioner of the Water Patrol. This section requires such commissioner to be from the uniformed membership of the patrol.

SECTION 306.221 - prohibits a person from operating a vessel as to obstruct or impede the normal flow of traffic on the waters of this state rather than only the lakes of the state.

SECTION 565.024 - Under this act, a person commits involuntary manslaughter in the first degree if he or she:

1. operates a vessel while intoxicated and acts with criminal negligence to cause the death of a person;
2. causes the death of a person not a passenger in the vessel operated by the defendant; or
3. operates a vessel by not stopping when required for an emergency vehicle or upon request of the water patrol directing traffic and when doing so, acts with criminal negligence to cause the death of a person operating an emergency watercraft. A person who commits involuntary manslaughter by causing the death of an emergency watercraft operator in this way is guilty of a Class B felony.

FISCAL DESCRIPTION (continued)

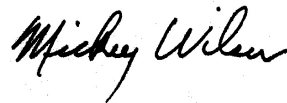
SECTION 565.082 - expands the crime of assault of a law enforcement officer in the second degree to include operating a vessel while in an intoxicated condition and when doing so, acting with criminal negligence to cause physical injury to an officer.

SECTION 577.080 - makes it a crime to abandon a vessel in the same manner as it is criminal to abandon a motor vehicle or trailer. Such crime is a Class A misdemeanor.

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

SOURCES OF INFORMATION

Department of Public Safety - Water Patrol
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



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