

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 4840-06  
Bill No.: Perfected SCS for SB 1107  
Subject: Water Patrol; Drunk Driving/Boating; Boats and Watercraft  
Type: Original  
Date: April 2, 2008

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

**FISCAL SUMMARY**

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

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

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 9 pages.

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

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

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).

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

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## 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.

Officials from the **Office of the State Courts Administrator** assume the proposal would not fiscally impact the courts.

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 **Department of Revenue (DOR)** state they will need to update related policies/procedures. However, the costs should be minimal and will be absorbed.

In response to a previous version of this proposal, 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.

ASSUMPTION (continued)

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.

Senate Amendment 3:

In response to a similar proposal from this year (SB 1183), officials from the **Department of Public Safety - Director's Office** and the **Water Patrol** each assumed the amendment would not fiscally impact their respective agencies.

ASSUMPTION (continued)

**Oversight** assumes the amendment, by itself, would not have a direct fiscal impact upon the state. Oversight assumes the amendment would allow the Water Patrol to potentially get appropriations for additional members; however, Oversight assumes that would not be a direct fiscal impact resulting from this bill.

Senate Amendment 5:

Officials from the **Office of the State Courts Administrator** assume the amendment would not have any fiscal impact on the courts.

Officials from the **Office of Prosecution Services (OPS)** assumes the proposed amendment to Section 577.023 would not have a significant direct fiscal impact on County Prosecutors or the OPS.

Officials from the **Department of Corrections** assume this amendment would not have any additional impact to their agency.

Officials from the **Department of Revenue** assume this amendment would not fiscally impact their agency.

<u>FISCAL IMPACT - State Government</u>	FY 2009 (10 Mo.)	FY 2010	FY 2011
<b>GENERAL REVENUE</b>			
Costs - 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> )
<b>ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND</b>	<b>(Less than <u>\$100,000</u>)</b>	<b>(Less than <u>\$100,000</u>)</b>	<b>(Less than <u>\$100,000</u>)</b>
 <u>FISCAL IMPACT - Local Government</u>	 FY 2009 (10 Mo.)	 FY 2010	 FY 2011
	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

### 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 laws relating to the regulation of watercraft.

This act allows local governments to adopt ordinances that provide for the towing of derelict or junk vessels. The current law only provides for the towing of derelict or junk motor vehicles (Section 304.157).

This act provides a definition for the term "skiing" (Section 306.010).

The act provides that any person who sells or transfers ownership of a vessel or outboard motor for which there has been issued a certificate of ownership or manufacturer's statement of origin, the holder shall endorse an assignment on the certificate in a manner prescribed by the director of revenue (Section 306.015).

The act prohibits vessels from exhibiting spotlights, docking lights, or other nonprescribed lights between sunset and sunrise. The act provides that nothing in this specific section shall prohibit the use of additional specialized lighting used in the act of sport fishing (Section 306.100).

This act modifies the negligent operation of a vessel statute by removing the types of waters in which the crime can be committed on and thereby making the crime apply universally regardless of the body of water it was committed upon. Under current law, a person can only commit the crime of negligent operation of a vessel upon the Mississippi River, Missouri River or lakes (Section 306.111).

The act modifies the penalties for operating a vessel while intoxicated by making the offense a Class B misdemeanor regardless of the number of convictions (removes the enhancement of penalties for subsequent convictions). Under current law, it is a Class A misdemeanor for a 2nd boating while intoxicated conviction and a Class D felony for a 3rd or subsequent conviction (Section 306.111).

The act makes the crimes of assault with a vessel and the crime of involuntary manslaughter with a vessel while in an intoxicated condition universally applicable to the whole state rather than just the Mississippi River, Missouri River or lakes (Section 306.111).

FISCAL DESCRIPTION (continued)

Under this act, 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 (Sections 306.112 and 306.117).

The act modifies the penalty provision for operating a vessel with an excessive blood alcohol content by making the crime a Class B misdemeanor regardless of the number of convictions. Under the current law, a 2nd conviction is a Class A misdemeanor and a 3rd or subsequent conviction for this crime is a Class D felony (Section 306.112).

Under this act, the requirement that a nonalcoholic antiseptic be used for cleansing the skin prior to a venapuncture is removed (Section 306.114.4).

This act 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. Under the act, 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. The act also sets a minimum amount of time that such offenders must serve before being eligible for probation or parole. The act 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 306.118).

The act eliminates the requirement that the state water patrol place regulatory markers when closing dangerous waterways (Section 306.124.3).

Under current law, persons are prohibited from operating watercraft at a speed exceeding 30 mph during the period between sunset and sunrise. This prohibition currently only applies to the Mississippi River, the Missouri River, and lakes with an aggregate shoreline in excess of 160 miles. This territorial restriction is repealed so that the speed limit applies universally (Section 306.125).

The act prohibits vessels from being operated at a speed in excess of slow-no wake speed (idle speed) within 100 feet of any emergency vessel displaying its emergency lights (Section 306.132).

FISCAL DESCRIPTION (continued)

This act prohibits persons from positioning their vessels in a manner to obstruct or impede traffic on the waters of this state. Under current law, this prohibition only applies to lakes (Section 306.221).

This act makes certain noise regulations and muffler requirements applicable to all of Missouri. Under the current law, the noise decibel standards and muffler requirements only apply to the Mississippi River, Missouri River, and lakes with an aggregate shoreline exceeding 160 miles (Section 306.147).

This act modifies the crime of involuntary manslaughter in the 1st degree by making it a crime to:

- (1) Operate a vessel in an intoxicated condition and with criminal negligence cause the death of a person;
- (2) Causes the death of a person who is not a passenger of a vessel; or
- (3) With criminal negligence causes the death of emergency watercraft operator by failing to stop or grant the right-of-way to such vessels (Class B felony)(Section 565.024).

This act modifies the crime of assaulting a law enforcement officer, emergency personnel, or probation or parole officer in the 2nd degree by making it a crime to operate a vessel in an intoxicated condition and with criminal negligence cause physical injury to such persons (Section 565.082).

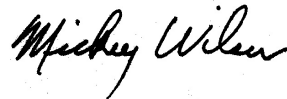
This act makes the abandonment of a vessel on the highway right-of-way or on the waters of this state a Class A misdemeanor (Section 577.080).

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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