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FISCAL IMPACT REPORT

SPONSOR: Atkin DATE TYPED: 2/24/01 HB 483
 SHORT TITLE: Boating While Intoxicated Act SB _____
 ANALYST: Rael

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY01	FY02			
Indeterminate			Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

Administrative Office of the Courts (AOC)
 Attorney General's Office (AGO)
 Administrative Office of the District Attorneys (AODA)
 Public Defender Department (PDD)
 Taxation and Revenue Department (TRD)
 Energy, Minerals and Natural Resources Department (EMNRD)

SUMMARY

Synopsis of Bill

Enacts the Boating While Intoxicated Act which sets forth the crime and penalties in a manner which is virtually identical to the current Driving while Under the Influence Statutes.

Significant Issues

Currently, boating while intoxicated is punishable as a misdemeanor offense carrying a maximum penalty of up to 30 days imprisonment and/or a fine of \$50 to \$500.

FISCAL IMPLICATIONS

Some amount of boat certificate number reinstatement fees would be expected. The \$100 reinstatement fee for boat certification numbers is not specifically distributed to any particular fund, so it will be distributed to the state General Fund

EMNRD reports that current funding can absorb any costs that would be incurred by the Energy, Minerals and Natural Resources Department for blood alcohol tests or breath analysis equipment.

ADMINISTRATIVE IMPLICATIONS

This bill proposes an inordinately complex and probably unnecessary administrative burden on the department. The department would be required to track various periods of suspension, track previous suspensions, and conduct additional hearings. Presumably the department would have to report previous suspensions to law enforcement officers. Implementing the provisions of this bill would present a significant opportunity cost to other proposed enhancements and improvements to the Motor Vehicle Division's computer system. If any significant number of hearings were requested, there would be an adverse impact on scheduling Motor Vehicle DWI hearings, since hearing officers are barely keeping-up with scheduled workloads now.

TECHNICAL ISSUES

Section 15 should read that whenever a Certificate of Number for a motorboat or vessel has been suspended rather than revoked to be consistent with Sections 12 through 14.

Additionally, EMNRD recommends the following amendments to remove the reference to vessels in Sections 12(B) through 15 are needed to make them consistent with current laws requiring registration with the Taxation and Revenue Department. Currently, under Section 66-12-4 NMSA 1978, only motorboats must be registered with the Taxation and Revenue Department. Other vessels are not currently required to be registered. Therefore, the Taxation and Revenue Department will only be able to suspend the registration of motorboats at this time.

1. On page 14, line 18 strike "OR VESSEL".
2. On page 15, lines 16, 16 and 17, 18, 19 and 20 and 25; page 16, lines 7, 8, 11 and 21; page 17, lines 4, 10 and 11 and 22; page 18, lines 19, 20 and 21 and 24; page 19, line 6; page 20, lines 8 and 9; page 22, lines 1, 7, 12, 15 and 24; page 23, lines 10, 12, 13, 16 and 17, 20 and 21 and 25; page 24, lines 11 and 20 and 21; and page 25, lines 6 and 7 strike "or vessel".
3. On page 15, line 23; page 19, lines 13 and 14, and 22 and 23; page 20, line 19; page 22, line 17; and page 23, lines 5 and 6 strike "motorboat or vessel's" and insert "motorboat's".
4. On page 19, lines 17 and 18; and page 25, lines 1 and 2 strike "MOTORBOAT OR VESSEL'S" and insert "MOTORBOAT'S".
5. On page 21, line 25; and page 22, lines 2 and 3 strike "motor boat or vessel" and insert "motorboat".

OTHER SUBSTANTIVE ISSUES

- Taxation and Revenue Department registers boats under a joint powers agreement with the Energy, Minerals and Natural Resources Department. It would be more appropriate to assign enforcement responsibility to EMNRD. Which agency actually does the administrative work could then be resolved through the joint powers agreement.

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- The number issued to a boat, and the “certificate of number” are required for all boats, but do not constitute any kind of license to use the boat. There may be legal issues regarding the department’s power, and exactly what it means to “suspend” the number of a boat.
- The potential loss of a driver’s license is said to be a meaningful sanction because a person needs a driver’s license to work and support a family. Clearly, the same rationale does not apply in the context of boating. Although the procedures are every bit as cumbersome and problematic, the deterrent effect is considerably less.

The provision which attempts to apply the Implied Consent Act to boating activities is unworkable. It would create a huge administrative burden for this Department without providing any substantial benefits to public safety.

- The bill addresses the issue of intoxicated water skiers and requires that they submit to chemical testing, but it is unclear who gets “punished” for their transgressions - the water skier or the person operating the boat.
- Interestingly, Section 2 does make illegal the operation of boat, skis, etc. while “*under the influence of intoxicating liquor or any narcotic drug, barbiturate or marijuana.*” Proof of being under the influence of marijuana or barbiturate is problematic. Since marijuana metabolites remain in the system for up to 45 days, the legitimacy of chemical tests may be questioned.
- The bill calls for a 90-day (and, in some cases, one-year) revocation of a boat’s certificate of registration, if, after hearing, found to have been in violation of the law. This could be a rather weak to non-existent deterrent, as the person might be able to finish the prime boating season before ever having to deal with the violation. The “suspension” could then be served during the non-boating season.
- If the public feels a civil sanction is appropriate for those boating while under the influence of intoxicants, there is a more immediate sanction that would provide an effective deterrent: immediate impoundment of the boat for a specified period of time.
- The AODA reports that the penalty section would have more "bite" if prior offenses under the current DWI statutes could be used to enhance these offenses and vice versa.

FAR/njw