



Senate

General Assembly

File No. 529

January Session, 2001

Substitute Senate Bill No. 1220

Senate, May 1, 2001

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING BOATING SAFETY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 15-133 of the general statutes is repealed and the
2 following is substituted in lieu thereof:

3 (a) The rules prescribed by this section shall apply on all state and
4 federal waters.

5 (b) No person shall use a vessel in a manner [which] that
6 unreasonably or unnecessarily interferes with free and proper
7 navigation. Anchoring under a bridge, in a narrow channel or in a
8 congested water not designated as an anchorage area shall be deemed
9 to be such interference, except in case of emergency.

10 (c) No person shall alter, deface or remove any capacity information
11 label affixed to any vessel.

12 (d) No person shall operate a vessel or engage in water skiing:

13 [while under the influence of intoxicating liquor or any drug, or both.
14 For the purposes of this subsection and sections 15-140l or 15-140n, a
15 person shall be considered to be under the influence of intoxicating
16 liquor if the ratio of alcohol in the blood of such person at the time of
17 the alleged offense, as determined by methods prescribed in
18 subsection (a) of section 15-140r, is ten-hundredths of one per cent or
19 more of alcohol, by weight. No person arrested for a violation of this
20 subsection shall operate a vessel or engage in water-skiing upon the
21 waters of this state for a twenty-four-hour period after such arrest.]

22 (1) While under the influence of intoxicating liquor or any drug, or
23 both, or (2) while such person has an elevated blood alcohol content.
24 For the purposes of this section and sections 15-140l, as amended by
25 this act, and 15-140n, as amended by this act, "elevated blood alcohol
26 content" means (A) a ratio of alcohol in the blood of such person that is
27 ten-hundredths of one per cent or more of alcohol, by weight, (B) if
28 such person has been convicted of a violation of this subsection, a ratio
29 of alcohol in the blood of such person that is seven-hundredths of one
30 per cent or more of alcohol, by weight, or (C) if such person is under
31 twenty-one years of age, a ratio of alcohol in the blood of such person
32 that is two-hundredths of one per cent or more of alcohol, by weight.

33 (e) In any prosecution for a violation of subdivision (1) of subsection
34 (d) of this section, evidence respecting the amount of alcohol in the
35 defendant's blood or urine at the time of the alleged offense, as shown
36 by a chemical analysis of the defendant's blood, breath or urine,
37 otherwise admissible under subsection (d) of this section, shall be
38 admissible only at the request of the defendant.

39 ~~[(e)]~~ (f) No person shall operate a vessel or engage in any activity
40 contrary to the regulations [of] adopted by the commissioner.

41 ~~[(f)]~~ (g) No person shall moor a vessel to, obstruct, remove, damage
42 or destroy any navigation aid or any device used to mark a restricted
43 area.

44 [(g)] (h) Any person who violates the provisions of subsection (d) of
45 this section shall: [be fined not less than one hundred dollars nor more
46 than five hundred dollars. Any person who violates any of the
47 provisions of subsection (b), (c) or (f) of this section shall be fined not
48 less than twenty-five dollars nor more than two hundred dollars] (1)
49 For conviction of a first violation, (A) be fined not less than five
50 hundred dollars nor more than one thousand dollars, and (B) be (i)
51 imprisoned not more than six months, forty-eight consecutive hours of
52 which may not be suspended or reduced in any manner, or (ii)
53 imprisoned not more than six months, with the execution of such
54 sentence of imprisonment suspended entirely and a period of
55 probation imposed requiring as a condition of such probation that
56 such person perform one hundred hours of community service, as
57 defined in section 14-227e, and (C) have such person's vessel operating
58 privilege suspended for one year; (2) for conviction of a second
59 violation within ten years of a prior conviction for the same offense,
60 (A) be fined not less than one thousand dollars nor more than four
61 thousand dollars, (B) be imprisoned not more than two years, one
62 hundred twenty consecutive days of which may not be suspended or
63 reduced in any manner, and sentenced to a period of probation
64 requiring as a condition of such probation that such person perform
65 one hundred hours of community service, as defined in section 14-
66 227e, and (C) have such person's vessel operating privilege suspended
67 for three years or until the date of such person's twenty-first birthday,
68 whichever is longer; and (3) for conviction of a third and subsequent
69 violation within ten years of a prior conviction for the same offense,
70 (A) be fined not less than two thousand dollars nor more than eight
71 thousand dollars, (B) be imprisoned not more than three years, one
72 year of which may not be suspended or reduced in any manner, and
73 sentenced to a period of probation requiring as a condition of such
74 probation that such person perform one hundred hours of community
75 service, as defined in section 14-227e, and (C) have such person's
76 operating privilege permanently revoked upon such third offense. Any

77 person who violates the provisions of subsection (c), (f) or (g) of this
78 section shall be fined not less than one hundred dollars and not more
79 than five hundred dollars. Any person who violates the provisions of
80 subsection [(e)] (f) of this section shall have committed an infraction.

81 (i) The suspension of a vessel operating privilege imposed under
82 subsection (h) of this section shall take effect immediately upon
83 expiration of any period in which an appeal of any conviction under
84 subsection (d) of this section may be taken, provided if an appeal is
85 taken, the suspension shall be stayed during the pendency of such
86 appeal. If the suspension takes effect, the defendant shall return, not
87 later than the second business day after the suspension takes effect, by
88 personal delivery or first class mail, the operating privilege
89 documentation, or any certificate issued to the defendant by the
90 commissioner as a condition of operating a vessel on the waters of the
91 state, to the Department of Environmental Protection.

92 (j) Any person who violates the provisions of subsection (b) of this
93 section shall be fined not more than two hundred dollars.

94 (k) (1) A record shall be kept by each court of original jurisdiction of
95 any conviction relating to the operation of a vessel. A summary of such
96 record, with a statement of the number of the operator's safe boating
97 certificate or certificate of personal watercraft operation and the
98 vessel's certificate of number or certificate of decal, shall, within five
99 days after such conviction, forfeiture or any other disposition or nolle,
100 be transmitted to the commissioner by such court. Each court shall
101 report each conviction under subsection (d) of this section to the
102 commissioner. The commissioner shall suspend the vessel operating
103 privilege of the person reported as convicted for the period of time
104 required by subsection (h) of this section. (2) The operating privilege of
105 a person found guilty under subsection (d) of this section who is under
106 eighteen years of age shall be suspended by the commissioner for the
107 period of time set forth in subsection (h) of this section, or until such

108 person attains the age of eighteen years, whichever period is longer.

109 Sec. 2. Section 15-140l of the general statutes is repealed and the
110 following is substituted in lieu thereof:

111 (a) A person commits the offense of reckless operation of a vessel in
112 the first degree while under the influence when, while under the
113 influence of intoxicating liquor or any drug, or both, [he] or while such
114 person has an elevated blood alcohol level content, such person
115 operates a vessel at such speed or maneuvers a vessel in such a manner
116 as to result in (1) death or serious physical injury to another person or
117 (2) damage to property in excess of [one] two thousand dollars.

118 (b) Any person guilty of reckless operation of a vessel in the first
119 degree while under the influence shall be fined not less than one
120 thousand five hundred dollars nor more than [one] five thousand
121 dollars or imprisoned not more than [one year] three years, or both.

122 Sec. 3. Section 15-140n of the general statutes is repealed and the
123 following is substituted in lieu thereof:

124 (a) A person commits the offense of reckless operation of a vessel in
125 the second degree while under the influence when, while under the
126 influence of intoxicating liquor or any drug, or both, [he] or while such
127 person has an elevated blood alcohol level content, such person
128 operates a vessel at such speed or maneuvers a vessel in such a manner
129 as to endanger the life, limb or property of another person.

130 (b) Any person guilty of reckless operation of a vessel in the second
131 degree while under the influence shall be fined not less than [two
132 hundred fifty] seven hundred dollars nor more than one thousand five
133 hundred dollars or imprisoned not more than [six] eleven months, or
134 both.

135 Sec. 4. Section 15-140o of the general statutes is repealed and the
136 following is substituted in lieu thereof:

137 (a) Any officer authorized to enforce the provisions of sections 15-
138 129, 15-133, 15-133b, 15-133c, 15-140e to 15-140u, inclusive, 15-154 and
139 15-156 who arrests an operator for a violation of [subsection]
140 subsections (d) and (e) of section 15-133 or section 15-140k, 15-140l, 15-
141 140m or 15-140n may take the vessel operated in such violation into
142 [his] such officer's custody and shall cause the same to be taken to and
143 stored in a suitable place. There shall be no liability attached to such
144 officer for any damages to such vessel while in [his] such officer's
145 custody. All charges necessarily incurred by such officer in the
146 performance of such duty shall be a lien upon such vessel. The owner
147 or keeper of any marina or other place where such vessel is stored shall
148 have a lien upon the same for [his] such owner's storage charges and if
149 such vessel has been stored for a period of not less than sixty days,
150 such owner or keeper may sell the same for storage charges owed
151 thereon, provided a notice of intent to sell shall be sent to the
152 Commissioner of Environmental Protection, the Commissioner of
153 Motor Vehicles, and the owner of such vessel, if known, five days
154 before the sale of such vessel. If the owner is unknown, such sale shall
155 be advertised by such marina owner or keeper in a newspaper
156 published or having a circulation in the town where such marina or
157 other place is located three times, commencing at least five days before
158 the sale. The proceeds of such sale, after deducting the amount due
159 such marina owner or keeper and all expenses of the officer who
160 placed such vessel in storage, shall be paid to the owner of such vessel
161 or [his] such owner's legal representatives, if claimed by [him] such
162 owner or them at any time within one year from the date of such sale.
163 If such balance is not claimed within said period, it shall escheat to the
164 state.

165 (b) Any vessel [being] that is operated by a person who is arrested
166 for a violation of section 15-140n, [shall] as amended by this act, in
167 connection with such operation, or for a violation of section 15-140l, as
168 amended by this act, after being involved in a boating accident, may be
169 impounded for [twenty-four] a minimum of forty-eight hours after the

170 arrest. Any vessel involved in a boating accident that results in death,
171 serious physical injury, a missing person or property damage in excess
172 of one thousand dollars may be seized for the collection of evidence
173 and held until the investigation of the boating accident or court
174 proceedings are concluded. The trailer utilized by the operator to
175 transport the vessel may also be impounded to facilitate transport and
176 handling of the vessel.

177 Sec. 5. Section 15-140q of the general statutes is repealed and the
178 following is substituted in lieu thereof:

179 (a) Any person who operates a vessel or engages in water skiing in
180 this state shall be deemed to have consented to a chemical analysis of
181 such person's blood, breath or urine, and if such person is a minor,
182 such person's parent or parents or guardian shall also be deemed to
183 have given their consent.

184 [(a)] (b) If any such person, having been placed under arrest for:
185 [violating] (1) Violating subsection (b) of section 53-206d; [, or for] (2)
186 operating a vessel upon the waters of this state while under the
187 influence of intoxicating liquor or any drug, or both; [,] (3) water skiing
188 upon the waters of this state while under the influence of intoxicating
189 liquor or any drug or both; (4) operating a vessel upon the waters of
190 this state or water skiing upon the waters of this state while such
191 person has an elevated blood alcohol content, or while such person's
192 ability to operate such vessel or engage in water skiing is impaired by
193 the consumption of intoxicating liquor and thereafter, after being
194 apprised of [his] such person's constitutional rights, having been
195 requested to submit to a blood, breath or urine test at the option of the
196 [police] peace officer, having been afforded a reasonable opportunity
197 to telephone an attorney prior to the performance of such test and
198 having been informed that such person's vessel operating privilege or
199 the certificate issued by the commissioner as a condition of operating a
200 vessel shall be suspended in accordance with the provisions of this

201 section if such person refuses to submit to such test or if such person
202 submits to such test and the results of such test indicate that such
203 person has an elevated blood alcohol content and that evidence of any
204 such refusal shall be admissible in accordance with subsection (d) of
205 section 15-140r, as amended by this act, and may be used against [him]
206 such person in any criminal prosecution, refuses to submit to the
207 designated test, the test shall not be given; provided, if [the] such
208 person refuses or is unable to submit to a blood test, the [police] peace
209 officer shall designate the breath or urine test as the test to be taken.
210 The peace officer shall make a notation upon the records of the police
211 department that such officer informed such person that such person's
212 operating privilege or certificate issued by the commissioner as a
213 condition of operating a vessel would be suspended if such person
214 refused to submit to such test or if such person submitted to such test
215 and the results of such test indicated that such person has an elevated
216 blood alcohol content.

217 (c) If the person arrested refuses to submit to such test or analysis or
218 submits to such test or analysis, commenced within two hours of the
219 time of operation, and the results of such test or analysis indicate that
220 at the time of the alleged offense such person had an elevated blood
221 alcohol content, the peace officer, acting on behalf of the Commissioner
222 of Environmental Protection, shall immediately revoke the operating
223 privilege of such person for a twenty-four-hour period and shall issue
224 a temporary operating privilege form to such person valid for the
225 period commencing twenty-four hours after issuance and ending
226 thirty-five days after the date such person received notice of such
227 person's arrest by the peace officer. The peace officer shall prepare a
228 written report of the incident and shall mail the report together with a
229 copy of the completed temporary operating privilege form, any
230 certificate taken into possession and a copy of the results of any
231 chemical test or analysis, to the Department of Environmental
232 Protection within three business days. The report shall be made on a
233 form approved by the commissioner and shall be subscribed and

234 sworn to under penalty of false statement as provided in section 53a-
235 157b by the peace officer before whom such refusal was made or who
236 administered or caused to be administered such test or analysis. If the
237 person arrested refused to submit to such test or analysis, the report
238 shall be endorsed by a third person who witnessed such refusal. The
239 report shall set forth the grounds for the officer's belief that there was
240 probable cause to arrest such person for operating such vessel or
241 engaging in water skiing while under the influence of intoxicating
242 liquor or any drug, or both, or while such person has an elevated blood
243 alcohol content, or while the ability of such person to operate such
244 vessel or engage in water skiing was impaired by the consumption of
245 intoxicating liquor, and shall state that such person refused to submit
246 to such test or analysis when requested by such peace officer or that
247 such person submitted to such test or analysis, commenced within two
248 hours of the time of operation, and the results of such test or analysis
249 indicated that such person at the time of the alleged offense had an
250 elevated blood alcohol content.

251 (d) If the person arrested submits to a blood or urine test at the
252 request of the peace officer, and the specimen requires laboratory
253 analysis in order to obtain the test results, and if the test results
254 indicate that such person has an elevated blood alcohol content, the
255 peace officer, immediately upon receipt of the test results, shall notify
256 and submit to the commissioner the written report required pursuant
257 to subsection (c) of this section.

258 (e) Upon receipt of such report, the commissioner shall suspend any
259 certificate issued by said commissioner that is required to operate a
260 vessel or the operating privilege of such person effective as of a date
261 certain, such date shall be no later than thirty-five days after the date
262 such person received notice of such person's arrest by the peace officer.
263 Any person whose certificate or operating privilege is suspended in
264 accordance with this subsection shall be entitled to a hearing before the
265 commissioner to be held prior to the effective date of the suspension.

266 The commissioner shall send a suspension notice to such person
267 informing such person that the certificate or operating privilege is
268 suspended and shall specify the date of such suspension and that such
269 person is entitled to a hearing prior to the effective date of the
270 suspension and may schedule such hearing by contacting the
271 Department of Environmental Protection not later than seven days
272 after the date of mailing of such suspension notice.

273 (f) If such person does not contact the department to schedule a
274 hearing, the commissioner shall affirm the suspension contained in the
275 suspension notice for the appropriate period specified in subsection (i)
276 of this section.

277 (g) If such person contacts the department to schedule a hearing, the
278 department shall assign a date, time and place for the hearing, which
279 date shall be prior to the effective date of the suspension. At the
280 request of such person or hearing officer and upon a showing of good
281 cause, the commissioner may grant one continuance for a period not to
282 exceed ten days. If a continuance is granted, the commissioner shall
283 extend the validity of the temporary operating privilege issued
284 pursuant to subsection (b) of this section for a period not to exceed the
285 period of such continuance. The hearing shall be limited to a
286 determination of the following issues: (1) Whether the peace officer
287 had probable cause to arrest the person for operating the vessel or
288 engaging in water skiing while under the influence of intoxicating
289 liquor or drug, or both, or while such person has an elevated blood
290 alcohol content, or while the ability of such person to operate such
291 vessel or engage in water skiing was impaired by the consumption of
292 intoxicating liquor; (2) whether such person was placed under arrest;
293 (3) whether such person (A) refused to submit to such test or analysis,
294 or (B) submitted to such test or analysis, commenced within two hours
295 of the time of operation, and the results of such test or analysis
296 indicated that at the time of the alleged offense that such person had
297 an elevated blood alcohol content; and (4) whether such person was

298 operating the vessel or engaging in water skiing. In the hearing, the
299 results of the test or analysis shall be sufficient to indicate the ratio of
300 alcohol in the blood of such person at the time of operation, except that
301 if the results of an additional test, administered pursuant to section 15-
302 140r, as amended by this act, indicate that the ratio of alcohol in the
303 blood of such person is twelve-hundredths of one per cent or less of
304 alcohol, by weight, and is higher than the results of the first test,
305 evidence shall be presented that demonstrates that the test results and
306 analysis thereof accurately indicate the blood alcohol content at the
307 time of operation. The fees of any witness summoned to appear at the
308 hearing shall be the same as provided in section 52-260.

309 (h) If, after such hearing, the commissioner finds on any one of said
310 issues in the negative, the commissioner shall reinstate such certificate
311 or operating privilege. If, after such hearing, the commissioner does
312 not find on any one of said issues in the negative or if such person fails
313 to appear at such hearing, the commissioner shall affirm the
314 suspension contained in the suspension notice for the appropriate
315 period specified in subsection (i) of this section. The commissioner
316 shall render a decision at the conclusion of such hearing or send a
317 notice of the decision by certified mail to such person not later than
318 thirty-five days from the date of notice of such person's arrest by the
319 peace officer or, if a continuance is granted, not later than forty-five
320 days from the date such person received notice of such person's arrest
321 by the peace officer. The notice of such decision sent by certified mail
322 to the address of such person as shown by the records of the
323 commissioner shall be sufficient notice to such person that such
324 person's certificate or operating privilege is reinstated or suspended.
325 Unless a continuance of the hearing is granted pursuant to subsection
326 (g) of this section, if the commissioner fails to render a decision within
327 thirty-five days from the date such person received notice of such
328 person's arrest by the peace officer, the commissioner shall reinstate
329 such person's certificate or operating privilege, provided
330 notwithstanding such reinstatement, the commissioner may render a

331 decision not later than two days thereafter suspending such certificate
332 or operating privilege.

333 (i) The commissioner shall suspend the operator's certificate or
334 operating privilege, and revoke the temporary operating privilege
335 issued pursuant to subsection (c) of this section, of a person who does
336 not contact the department to schedule a hearing under subsection (e)
337 of this section, who fails to appear at such hearing, or against whom,
338 after a hearing, the commissioner holds pursuant to subsection (g) of
339 this section. Such suspension shall be as of the effective date contained
340 in the suspension notice or the date the commissioner renders a
341 decision, whichever is later, for a period of: (1) (A) Except as provided
342 in subparagraph (B) of this subdivision, ninety days if such person
343 submitted to a test or analysis and the results of such test or analysis
344 indicated that at the time of the alleged offense that such person had
345 an elevated blood alcohol content, or (B) one hundred twenty days if
346 such person submitted to a test or analysis and the results of such test
347 or analysis indicated that the ratio of alcohol in the blood of such
348 person was sixteen-hundredths of one per cent or more of alcohol, by
349 weight, or (C) six months if such person refused to submit to such test
350 or analysis; (2) if such person has previously had such person's
351 privilege suspended under this section, (A) except as provided in
352 subparagraph (B) of this subdivision, nine months if such person
353 submitted to a test or analysis and the results of such test or analysis
354 indicated that at the time of the alleged offense that such person had
355 an elevated blood alcohol content, (B) ten months if such person
356 submitted to a test or analysis and the results of such test or analysis
357 indicated that the ratio of alcohol in the blood of such person was
358 sixteen-hundredths of one per cent or more of alcohol, by weight, and
359 (C) one year if such person refused to submit to such test or analysis;
360 and (3) if such person has two or more times previously had such
361 person's certificate or operating privilege suspended under this
362 section, (A) except as provided in subparagraph (B) of this subdivision,
363 two years if such person submitted to a test or analysis and the results

364 of such test or analysis indicated that at the time of the alleged offense
365 that such person had an elevated blood alcohol content, (B) two and
366 one-half years if such person submitted to a test or analysis and the
367 results of such test or analysis indicated that the ratio of alcohol in the
368 blood of such person was sixteen-hundredths of one per cent or more
369 of alcohol, by weight, and (C) three years if such person refused to
370 submit to such test or analysis.

371 (j) Notwithstanding the provisions of subsections (b) to (i),
372 inclusive, of this section, any peace officer who obtains the results of a
373 chemical analysis of a blood sample taken from an operator of a vessel
374 involved in an accident who suffered or allegedly suffered physical
375 injury in such accident shall notify the commissioner and submit to the
376 commissioner a written report if such results indicate that at the time
377 of the alleged offense such person had an elevated blood alcohol
378 content, and if such person was arrested for violation of subsection (d)
379 of section 15-133 and sections 15-140l and 15-140n in connection with
380 such accident. The report shall be made on a form approved by the
381 commissioner containing such information as the commissioner
382 prescribes and shall be subscribed and sworn under penalty of false
383 statement, as provided in section 53a-157b, by the peace officer. The
384 commissioner shall, after notice and an opportunity for hearing, which
385 shall be conducted in accordance with chapter 54, suspend the
386 operating privilege of such person for a period of up to ninety days, or,
387 if such person has previously had such person's operating privilege
388 suspended under this section, for a period up to one year. Each
389 hearing conducted under this section shall be limited to a
390 determination of the following issues: (1) Whether the peace officer
391 had probable cause to arrest the person for operating a vessel or
392 engaging in water skiing while under the influence of intoxicating
393 liquor or drug, or both, or while such person has an elevated blood
394 alcohol content, or while the person's ability to operate the vessel or to
395 engage in water skiing was impaired by the consumption of
396 intoxicating liquor; (2) whether such person was placed under arrest;

397 (3) whether such person was operating the vessel or engaged in water
398 skiing; (4) whether the results of the analysis of the blood of such
399 person indicate that such person had an elevated blood alcohol
400 content; and (5) whether the blood sample was obtained in accordance
401 with conditions for admissibility as set forth in subsection (b) of
402 section 15-140r, as amended by this act. If, after such hearing, the
403 commissioner finds on any one of the said issues in the negative, the
404 commissioner shall not impose a suspension. The fees of any witness
405 summoned to appear at the hearing shall be the same as provided by
406 the general statutes for witnesses in criminal cases.

407 (k) The provisions of this section shall apply with the same effect to
408 the refusal by any person to submit to an additional chemical test as
409 provided in subdivision (5) of subsection (a) of section 15-140r, as
410 amended by this act.

411 [(b)] (l) The provisions of this section shall not apply to any person
412 whose physical condition is such that, according to competent medical
413 advice, such test would be inadvisable.

414 [(c)] (m) The state shall pay the reasonable charges of any physician
415 who, at the request of a municipal police department, takes a blood
416 sample for purposes of a test under the provisions of this section.

417 (n) For the purposes of this section, "elevated blood alcohol content"
418 means: (1) A ratio of alcohol in the blood of such person that is ten-
419 hundredths of one per cent or more of alcohol, by weight, (2) if such
420 person has been convicted of a violation of subsection (e) of section 15-
421 133, a ratio of alcohol in the blood of such person that is seven-
422 hundredths of one per cent or more of alcohol, by weight, or (3) if such
423 person is under twenty-one years of age, a ratio of alcohol in the blood
424 of such person that is two-hundredths of one per cent or more of
425 alcohol, by weight.

426 (o) The commissioner may adopt regulations, in accordance with

427 chapter 54, to implement the provisions of this section.

428 Sec. 6. Section 15-140r of the general statutes is repealed and the
429 following is substituted in lieu thereof:

430 [(a) In any criminal prosecution for violation of section 15-140l or
431 15-140n, subsection (a) of section 15-133 or]

432 (a) Except as provided in subsection (d) of this section, in any
433 criminal prosecution for the violation of: (1) Subsection (d) of section
434 15-133; (2) sections 15-140l and 15-140n; and (3) subsection (b) of
435 section 53-206d, evidence respecting the amount of alcohol or drug in
436 the defendant's blood or urine at the time of the alleged offense, as
437 shown by a chemical analysis of the defendant's breath, blood or urine
438 shall be admissible and competent provided: [(1)] (A) The defendant
439 was afforded a reasonable opportunity to telephone an attorney prior
440 to the performance of the test and consented to the taking of the test
441 upon which such analysis is made; [(2)] (B) a true copy of the report of
442 the test result was mailed to or personally delivered to the defendant
443 within twenty-four hours or by the end of the next regular business
444 day, after such result was known, whichever is later; [(3)] (C) the test
445 was performed by or at the direction of a law enforcement officer
446 according to methods and with equipment approved by the
447 Department of Public Health and was performed [by a person certified
448 or recertified for such purpose by said department or recertified by
449 persons certified as instructors by the Commissioner of Public Health.
450 If a blood test is taken, it shall be on a blood sample taken by a person
451 licensed to practice medicine and surgery in this state, a qualified
452 laboratory technician, an emergency medical technician II or a
453 registered nurse] in accordance with the regulations adopted under
454 subsection (b) of this section; [(4)] (D) the device used for such test was
455 checked for accuracy [at the beginning of each workday and no later
456 than the end of each workday by a person certified by the Department
457 of Public Health] in accordance with the regulations adopted under

458 subsection (b) of this section; [(5)] (E) an additional chemical test of the
459 same type was performed [and the device was checked for accuracy by
460 a person certified or recertified by the Department of Public Health,] at
461 least thirty minutes after the initial test was performed or, if requested
462 by the peace officer for reasonable cause, an additional chemical test of
463 a different type was performed to detect the presence of a drug or
464 drugs other than or in addition to alcohol, provided the results of the
465 initial test shall not be inadmissible under this subsection if reasonable
466 efforts were made to have such additional test performed in
467 accordance with the conditions set forth in this subsection and such
468 additional test was not performed or was not performed within a
469 reasonable time, or the results of such additional test are not
470 admissible for failure to meet a condition set forth in this subsection;
471 and [(6)] (F) evidence is presented [which demonstrates that the test
472 results and the analysis thereof accurately reflect] that the test was
473 commenced within two hours of operation of the vessel. In any
474 prosecution under this section it shall be a rebuttable presumption that
475 the results of such chemical analysis establish the ratio of alcohol in the
476 blood of the defendant at the time of the alleged offense, except that if
477 the results of the additional test indicate that the ratio of alcohol in the
478 blood of such defendant is twelve-hundredths of one per cent or less of
479 alcohol, by weight, and is higher than the results of the first test,
480 evidence shall be presented that demonstrates that the test results and
481 the analysis thereof accurately indicate the blood alcohol content at the
482 time of the alleged offense.

483 (b) The Commissioner of Public Health shall ascertain the reliability
484 of each method and type of device offered for chemical testing and
485 analysis purposes of blood, of breath and of urine and certify those
486 methods and types which [he] said commissioner finds suitable for use
487 in testing and analysis of blood, [testing] breath and [testing] urine,
488 respectively in this state. [He] The Commissioner of Public Safety, after
489 consultation with the Commissioner of Public Health, shall adopt
490 regulations governing the conduct of chemical tests, the operation and

491 use of chemical test devices and the training [,] and certification [and
492 annual recertification of operators of such devices as he] of operators
493 of such devices and the drawing or obtaining of blood, breath or urine
494 samples as said commissioner finds necessary to protect the health and
495 safety of persons who submit to chemical tests and to insure
496 reasonable accuracy in testing results. Such regulations shall not
497 require recertification of a peace officer solely because such officer
498 terminates such officer's employment with the law enforcement
499 agency for which certification was originally issued and commences
500 employment with another such agency.

501 (c) If a person is charged with a violation of subsection (d) of section
502 15-133 the charge may not be reduced, nolle or dismissed unless the
503 prosecuting authority states in open court [his] such prosecutor's
504 reasons for the reduction, nolle or dismissal.

505 (d) In any criminal prosecution for a violation of subsection (d) of
506 section 15-133 or section 15-140l or 15-140n, evidence that the
507 defendant refused to submit to a blood, breath or urine test requested
508 in accordance with section 15-140q shall be admissible provided the
509 requirements of subsection (a) of said section have been satisfied. If a
510 case involving a violation of subsection (d) of section 15-133 or section
511 15-140l or 15-140n is tried to a jury, the court shall instruct the jury as
512 to any inference that may or may not be drawn from the defendant's
513 refusal to submit to a blood, breath or urine test.

514 Sec. 7. Section 15-154 of the general statutes is repealed and the
515 following is substituted in lieu thereof:

516 (a) Any harbor master, deputy harbor master, conservation officer,
517 special conservation officer or state police officer and any municipal
518 police officer, any special police officer appointed under sections 29-18
519 and 29-19 or members of the volunteer police auxiliary force
520 established under section 29-22, any town marine officers appointed
521 under section 15-154a and certified by the commissioner for marine

522 police duty and any lake patrolman appointed under section 7-151b
523 may enforce the provisions of this chapter and chapter 446k. In the
524 enforcement of this chapter, such officer may arrest, without previous
525 complaint and warrant, any person who fails to comply with the
526 provisions of this chapter. Failure to appear in court pursuant to such
527 arrest, unless excused by the court or the state's attorney or assistant
528 state's attorney, shall constitute sufficient cause for the suspension by
529 the Commissioner of Motor Vehicles of the boat registration of the boat
530 involved for not more than thirty days or until the matter is resolved
531 by the court, whichever is sooner.

532 (b) When engaged in the enforcement of this chapter and chapter
533 446k such officer shall have the authority to stop and board any vessel
534 which is under way or which is moored on the waters of this state for
535 the purposes of (1) examining decals, certificates and other documents,
536 (2) inspecting safety equipment and waste disposal systems, (3)
537 determining if the operation of such vessel exceeds the noise levels
538 established in subsection (b) of section 15-129, (4) searching when [he]
539 such officer has probable cause to believe that any provision of any
540 law of this state or any rule or regulation of the Department of
541 Environmental Protection relating to boating or water pollution has
542 been violated, (5) determining compliance with [subsection (d)]
543 sections 15-140l and 15-140n and subsections (d) and (e) of section 15-
544 133, as amended by this act, when [he] such officer has probable cause
545 to believe said section or subsection has been violated, and (6) making
546 arrests. No person operating a vessel shall refuse to stop [his] such
547 vessel or, if sea conditions make stopping in that area unsafe, refuse to
548 take [his] such vessel to a designated area after being requested or
549 signalled to do so by an authorized law enforcement officer. Any
550 person operating a vessel who refuses to stop or refuses to take [his]
551 such vessel to the designated area shall have committed an infraction.
552 Any person, when signalled to stop by an officer in a law enforcement
553 vessel using an audible signal device or flashing blue lights, who
554 operates [his] such vessel in disregard of such signal so as to (A)

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Minimal Cost, Potential Revenue Gain, Potential Cost

Affected Agencies: Department of Environmental Protection, Various Criminal Justice Agencies, Department of Public Health and Department of Public Safety

Municipal Impact: Minimal Cost

Explanation

State and Municipal Impact:

It is anticipated that enforcement of violations for operating a vessel or waterskiing while under the influence of alcohol or drugs and related crimes will be handled by the existing Department of Environmental Protection (DEP) and other state and municipal law enforcement personnel. The bill will affect the procedures that are utilized and change the penalties, but is not anticipated to impact the numbers of boaters that are stopped. Any increase in workload to DEP due to potential hearings under the administrative procedure for suspending a person's safe boating certificate is anticipated to be minimal.

Adoption of regulations by the DEP is anticipated to minimally increase their workload and require the diversion of staff away from current duties. It is anticipated that DEP will use the Department of Motor Vehicles (DMV) regulations as a model, (since provisions in the

bill parallel DMV's) which will reduce the work associated with the regulation.

The bill eliminates the current BAC requirements for determining whether someone operated a boat while under the influence and increases the penalties for such operation. This could result in an increase in the number of individuals who could be considered to be operating a boat while under the influence, increase the amount of revenue collected by the state related to the imposition of criminal fines and increase the number of cases that would be prosecuted and punished.

There were almost 500 drunken and reckless boating offenses under the bill's statutes in the year 2000 according to court statistics. The state collected over \$26,000 from fines during that time. The bill establishes the possibility of probation and incarceration for various offenses in the bill and increases the amount of potential incarceration in other cases. It is unknown to what extent the bill's provisions will be implemented in the future. However, these provisions will likely result in additional costs to the criminal justice system, primarily for probation, alternative programs and for incarceration. Since the number of boating violators is not numerous and since the level of enforcement is uncertain, it is not anticipated that costs would be significant. Potential revenue from increased fines could exceed \$100,000.

It is anticipated that other penalties in the bill, such as those imposed for false statements, would result in a minimal impact.

The bill also requires the commissioner of the Department of Public Safety (DPS) to adopt regulations governing the conduct of chemical tests after consultation with the commissioner of the Department of Public Health (DPH). This would have no fiscal impact on DPS since they already have such regulations for conducting such tests on the operators of motor vehicles. It should also be noted that the

responsibility for certifying testing devices (one function of the State Toxicology Laboratory) was transferred from DPH to DPS by PA 99-218.

OLR Bill Analysis

sSB 1220

AN ACT CONCERNING BOATING SAFETY.**SUMMARY:**

This bill makes the laws governing boating while under the influence of alcohol or drugs parallel in some ways to those governing driving while under the influence, thereby substantially increasing the penalties that apply under the boating laws.

Under the bill, a boater is considered to have implicitly given his consent to tests to determine his blood alcohol content (BAC). It requires an officer who arrests a person for boating while under the influence or related crimes to temporarily revoke his authority to engage in boating if he (1) refuses to submit to the test or (2) has an "elevated" BAC. Under the bill, an elevated BAC is (1) .02% if the person is under 21, (2) .07% if the person has previously been convicted of boating under the influence or boating with an elevated BAC, and (3) .10% for anyone else. Under current law, the criminal penalties for boating while under the influence apply to any boater with a BAC of .10% or more.

The bill establishes an administrative procedure for suspending the person's safe boating certificate (required by law in most instances to operate a boat) or operating privilege. The procedure applies if the boater fails to submit to a test or has test results that indicated he was under the influence. (This provision parallels the administrative *per se* law for drunk driving.) The procedure also applies if the boater was impaired, although neither the bill nor current law define "impaired." This procedure is independent of criminal prosecutions for boating while under the influence. The bill establishes a separate administrative suspension procedure if the boater was injured in an accident and arrested for reckless boating.

The bill modifies the standards under which test results are admissible in criminal proceedings for boating under the influence. It is unclear to

what extent these standards apply to the administrative proceedings the bill establishes (see COMMENT).

The bill increases the criminal penalties for boating under the influence and applies them to boating with an elevated BAC. Under current law, the penalty is a fine of \$100 to \$500, regardless of the number of previous offenses. Under the bill, the penalty depends on the number of prior offenses. For any offenses, the bill imposes a fine that is greater than that imposed under current law. For a first offense, it imposes a prison term or probation with community service. For subsequent offenses, it imposes a prison term, probation, and community service. The bill also requires suspension of the boater's operating privilege for a first or second offense and revocation for a third offense (see COMMENT).

The bill expands the definition of reckless boating under the influence and increases the penalty for this crime.

The bill broadens the powers of law enforcement officers to stop and seize boats in connection with violations of boating laws. It requires courts to keep certain records regarding violations of boating laws. It increase fines for several boating laws.

EFFECTIVE DATE: October 1, 2001

IMPLIED CONSENT

Under the bill, anyone who operates a boat or water skis in the state is considered to have consented to a chemical test of his blood, breath, or urine. If the person is a minor, his parents or guardians are also considered to have given their consent. There is currently an implied consent provision for driving but not boating.

Under current law, if a person is arrested for (1) operating a boat while under the influence or (2) carrying a loaded firearm while under the influence or with a BAC of .10% or more, the police officer must ask him to submit to an alcohol test. The bill extends this requirement to arrests made by peace officers, a term that includes conservation officers as well as police officers. (Conservation officers and other officials already can enforce boating laws under another statute.)

The bill also extends the testing provision to people arrested for: (1) water skiing while under the influence, (2) boating or water skiing with an elevated BAC, and (3) boating or water skiing while impaired by alcohol. (Neither current law nor the bill establish boating or water skiing while impaired as a crime). Under motor vehicle law (on which this bill is modeled) impairment is a BAC of 0.7% to .10%.

The bill extends the following requirements to such arrests: (1) the officer must inform the person of his constitutional rights and that refusing to submit to the test may be used against him in a criminal prosecution; (2) he must be given an opportunity to telephone an attorney before taking the test; (3) if he agrees to testing, but cannot or will not submit to a blood test, the officer chooses between a urine or breath test; and (4) if he refuses to submit to any test, no test is given.

The bill requires the officer to inform the person that his boating operating privilege or safe boating certificate will be suspended if he refuses to take the test or if the test indicates that he had an elevated BAC. This provision applies to all arrests, including those for the firearms offense (see COMMENT). The officer must note that he has complied with this requirement on the "police department" record.

TEMPORARY REVOCATION

Under the bill, the officer must immediately revoke the arrested person's operating privilege if he (1) refuses to take an alcohol test or (2) the results of a test taken within two hours of his arrest indicate that he has an elevated BAC. The revocation, which is made on behalf of the Department of Environmental Protection (DEP) commissioner, is for 24 hours. The bill repeals the current law that bans a person who is arrested for boating or water skiing under the influence from engaging in either activity for 24 hours after the arrest.

Under the bill, the officer must issue the person a temporary operating privilege, which is valid for 34 days after the 24-hour revocation period ends. He must prepare a report of the incident, which must be on a DEP-approved form. The report must describe the officer's reasons for believing there was probable cause to arrest the person for boating or water skiing: (1) while under the influence, (2) with an elevated BAC,

or (3) while his ability to boat or water ski was impaired by drinking. The report must state whether the person refused to submit to the test or took a test that began within two hours and showed he had an elevated BAC at the time of the alleged offense. The officer must sign the form under penalty of false statement. If the person refused to take the test, a third party who witnessed the refusal must also sign the report.

The officer must mail the following documents to the commissioner within three business days: the report, a copy of the temporary operating privilege, any certificate the officer took into his possession (although the bill does not authorize him to take such document), and the results of any tests or analyses. If the arrested person takes a blood or urine test that requires laboratory analysis, the officer must notify the commissioner and submit the report immediately upon receiving the results.

ADMINISTRATIVE SUSPENSION

The bill establishes an administrative procedure to suspend the person's operating privilege or boating certificate. (The parallel provision in motor vehicle law is called administrative *per se*.) This suspension is independent of any criminal penalties that may apply.

Notice

Upon receiving the officer's report, the commissioner must suspend the person's boating operating privilege or certificate. The suspension must take place on a date no more than 35 days after the person was arrested. The person is entitled to a hearing before this date. The commissioner must send a notice informing the person of the suspension, when it takes effect, and that he is entitled to a hearing. The notice must inform the person that he can schedule the hearing by contacting DEP within seven days after the notice is mailed. If he does not contact DEP during this period, the commissioner must affirm the suspension.

Hearing

If the person contacts DEP, it must set a date, time, and place for the

hearing (the date must be before the suspension takes effect). If the person or hearing officer requests a continuance and shows good cause, the commissioner can grant one for up to 10 days and must extend the temporary operating privilege for a period no longer than the continuance.

The hearing is limited to the following four questions:

1. Did the officer have probable cause to arrest the person for boating or water skiing (a) while under the influence, (b) with an elevated BAC, or (c) while his ability to boat or water ski was impaired by drinking?
2. Was the person arrested?
3. Did he refuse to submit to the test, or did the results of a test begun within two hours indicate that he an elevated BAC when the alleged offense occurred?
4. Was he operating the boat or engaged in water skiing?

At the hearing, the test results are generally sufficient to indicate the person's BAC when he was boating or water skiing. But, evidence must be submitted that the test results accurately reflect the person's BAC at that time if the second test required by the admissibility standards (described below) (1) indicates a BAC of .12% or less and (2) is higher than the first result.

The witness fees for someone summoned to appear at the hearing are the same as those for criminal and civil cases.

Suspension

A negative answer to any of the four questions requires the commissioner to restore the person's certificate or operating privilege. If all questions result in affirmative findings, or if the person did not appear at the hearing, he must affirm the suspension.

The commissioner must send the person notice of his decision within 35 days of the arrest (45 days if a continuance was granted). The notice

must be sent by certified mail. If there was no continuance and the commissioner does not make his decision within the 35-day period, he must reinstate the certificate or operating privilege, but can reverse this action by deciding the case on day 36 or 37.

The commissioner must revoke the person's temporary operating privilege and suspend the certificate or permanent operating privilege if (1) the person fails to request a hearing, (2) fails to appear at a scheduled hearing, or (3) appears but loses. Table 1 describes the suspension periods.

Table 1: Administrative License Suspension Periods

	<i>First Offense</i>	<i>Second Offense</i>	<i>Third or Subsequent Offense</i>
Test Refused	6 months	One year	3 years
BAC of .16% or more	120 days	10 months	2 years, six months
Other elevated BAC	90 days	9 months	2 years

The penalties also apply to someone who takes the initial test but refuses to take the second test. They are in addition to any suspension penalties imposed by the criminal court.

These provisions do not apply to someone whose condition makes such tests medically inadvisable. DEP may adopt regulations to implement these provisions.

Special Provisions for Injury Accidents

Somewhat different provisions apply if the officer obtains test results from a boater (but not a skier) who was in an accident where he suffered or alleges to have suffered an injury. In such cases, the officer must notify the commissioner if (1) the test results indicate that the boater had an elevated BAC and (2) the boater was arrested for boating under the influence and reckless boating both in the first and second degree in connection with the accident.

The commissioner must provide the boater notice and an opportunity for a hearing before suspending his operating privilege. It appears that the timeline described above for holding the hearing does not apply in these cases, but the bill specifies the hearing must be conducted in accordance with Uniform Administrative Procedure Act.

The bill modifies one of the four questions to be addressed at the hearing and adds a fifth. As noted above, one of the questions the bill requires to be addressed at the hearing is whether the boater (1) refused to submit to the test or (2) took a test that indicated an elevated BAC at the time of the offense. Under the bill, the first part of this question does not apply in the injury accident cases (presumably because the police obtained a blood sample from another source such as a hospital). The bill also requires the hearing to address whether the blood sample was obtained in a way that met the admissibility standards for criminal prosecutions of boating while under the influence cases (described below). If any of the five conditions are not met, the commissioner cannot suspend the boater's operating privilege.

In such cases, the penalty for a first offense is suspension for up to 90 days and for a subsequent offense, up to one year.

CRIMINAL PROSECUTIONS

Threshold

The law prohibits operating a boat while under the influence of alcohol or any drug. Under current law, a boater is considered under the influence of alcohol if his BAC is .10% or more. The bill eliminates this definition, thereby allowing a boater to be convicted if he is found to have operated a boat while under the influence of alcohol, independent of his BAC. But the bill provides that, in any prosecution under this provision, otherwise admissible evidence regarding the BAC of the boater's blood or urine, shown by a chemical analysis of his blood, urine, or breath, is only admissible at his request.

The bill additionally prohibits boating or water skiing with an elevated BAC (.02% if the person is under 21, .07% if the person has previously been convicted of boating or water skiing under the influence, and

.10% for anyone else).

Evidence Admissibility Standards

Current law specifies the circumstances under which test results are admissible in criminal prosecutions of boating while under the influence, reckless boating, and carrying a loaded firearm while under the influence. Among other things, the law specifies who can perform a test and how the testing device must be checked for accuracy. It requires there to be two tests of the same type (breath, blood, or urine). The law also currently requires the Department of Public Health (DPH) commissioner to determine the reliability of each testing device and method. It requires him to adopt regulations for conducting tests, using testing devices, training device operators, and their certification and annual recertification.

The bill eliminates requirements that:

1. the tests be conducted by DPH-certified personnel and that blood tests be conducted by a doctor, registered nurse, laboratory technician, or emergency medical technician II; and
2. the device be checked for accuracy at the start and end of each workday and after each initial test by a DPH-certified person.

Instead, it requires that the tests be conducted and the devices checked in accordance with the regulations. It requires the DPH commissioner to consult with the public safety commissioner in developing the regulations. (Although PA 99-218 transferred DPH's forensic science duties and responsibilities to the Department of Public Safety.) It eliminates the requirement that the regulations require annual recertification of device operators. It bars the regulations from requiring recertification of a peace officer just because he leaves one department and starts work for another. It requires the regulations to cover the drawing or obtaining of blood, breath, and urine samples as the DPH commissioner finds necessary to protect the health and safety of arrested persons and to insure accuracy in testing. It requires the commissioner to determine the reliability of analytic, as well as testing, devices and methods.

Under the bill, results of a second test that was of a different type than the first are admissible if the officer requested it and presents reasonable cause, in order to test for drugs other than, or in addition to, alcohol and had reasonable cause to do so.

The bill eliminates, in most cases, the requirement that evidence be presented that the test results and their analysis accurately reflect the person’s BAC at the time of the alleged offense. (A person’s BAC rises and then falls after he finishes drinking.) Instead, it requires that evidence be presented that the test began within two hours of the operation of the boat (even in firearms cases). It establishes a rebuttable presumption that the test results establish the person’s BAC at the time of the of the alleged offense. But evidence must be submitted demonstrating this relationship if the person’s second test result: (1) indicates a BAC of .12 % or less and (2) is higher than the results of his first test. By law, a second test must be performed at least 30 minutes after the initial test.

By law, evidence that a defendant in a boating or skiing under the influence offense refused to submit to an alcohol test is admissible and the court must instruct a jury concerning what inferences may or may not be drawn from the refusal. The bill extends these provisions to reckless boating under the influence prosecutions.

Penalties

Under current law, a person operating a boat or water skiing under the influence is subject to a fine of \$100 to \$500. The bill increases the penalty by increasing the fine, requiring imprisonment or community service, and requiring the suspension of the boater's "operating privilege" for a first offense. It establishes enhanced penalties for second and subsequent offenses within 10 years of a prior conviction. All the prescribed penalties must be assessed. The new penalties are described in Table 2.

Table 2: Bill’s Penalties for Operating a Boat While Under the Influence

<i>Offense (must be the</i>	<i>Fine</i>	<i>Prison/ Community</i>	<i>Suspension</i>
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<i>same offense)</i>		<i>Service (CS)</i>	
First	\$500-\$1,000	Up to six months, 48 consecutive hours non-suspendable OR probation and 100 hours CS	One year
Second	\$1,000-\$4,000	Two years, 120 consecutive days non-suspendable AND probation and 100 hours CS	Three years
Third or subsequent	\$2,000-\$8,000	Three years, one year non-suspendable AND probation and 100 hours CS	Permanent revocation

The suspension for a boater who is under 18 is for the period specified above, or until he turns 18, whichever is longer. While these penalties parallel those for driving while intoxicated (DWI), the bill has no provisions for a pre-trial alcohol education program. Under motor vehicle statutes, most first offenders can participate in this program. If a driver successfully completes the program, the DWI charge is dismissed.

A suspension goes into effect when the period for taking an appeal of the conviction ends. If an appeal is taken, the suspension is stayed during the appeal. Within two business days of a suspension taking effect, the defendant must mail or deliver the operating privilege document or any certificate issued by the DEP to him as a condition of operating a boat in the state. These provisions do not appear to apply to revocations.

RECKLESS BOATING

The bill broadens the scope and increases the penalty for reckless boating under the influence. Under current law, a person is guilty of this crime in the first degree if he (1) operates a boat while under the influence (i.e. has a BAC of .10% or higher) and (2) kills or seriously injures someone or causes more than \$1,000 in property damage. The bill eliminates the specific BAC standard for operating under the influence. It extends the law to cover cases in which the boater has an elevated BAC (.10%, .07%, or .02%, depending on the circumstances). It also raises the property damage threshold to \$2,000. Under current law, the penalty for this crime is a fine of \$500 to \$1,000, imprisonment for up to one year or both. Under the bill, it is a fine of \$1,500 to \$5,000, imprisonment for up to three years, or both.

Under current law, the crime of reckless operation in the second degree applies to people who operate boats while under the influence (.10%) in a way that endangers another person's life, limb, or property. The bill extends this provision to people boating with an elevated BAC. Under current law, the penalty is a fine of \$250 to \$500, imprisonment for up six months, or both. Under the bill, it is a fine of \$700 to \$1,500, imprisonment for up to 11 months, or both.

POWERS OF LAW ENFORCEMENT OFFICERS

By law, a wide variety of officers can stop and board any boat that is moored or underway to determine compliance with boating laws. The bill extends this power to include determining compliance with the laws that bar reckless boating or skiing under the influence. (The bill also refers to compliance with CGS Sec. 15-133(e), but this provision only governs admissibility of evidence in certain boating under the influence cases.) The officers who can stop boats include harbormasters, conservation officers, state and local police officers, and others. Anyone who fails to stop and engages in behavior such as trying to escape the officer is subject to by a fine of \$100 to \$500 for a first offense and \$500 to \$1,000 for a subsequent offense.

For reckless boating in the second degree, the bill allows an officer authorized to enforce the boating laws to take the arrested person's

boat. This is a separate offense from reckless boating under the influence in the second degree, and covers such things as operating a boat beyond its carrying capacity. The bill extends to such boats provisions that apply to boats taken pursuant to arrests for other boating laws. Among other things, the provisions (1) make the charges incurred by the officer and by the marina where the boat is stored a lien on the boat and (2) allow the marina owner to sell the boat if it is not claimed within 60 days

Under current law, a boat that was operated by a person arrested for reckless boating under the influence in the second degree must be impounded for 24 hours after the arrest. The bill instead allows boats to be impounded for 48 hours or more. It extends this provision to any boat whose operator was arrested for reckless boating under the influence in the first degree after being involved in a boating accident.

The bill allows any boat that was involved in an accident resulting in death, serious injury, a missing person, or property damage greater than \$1,000 to be seized for the collection of evidence. (Although the bill increases the threshold for the underlying offense to \$2,000.) It allows such boats to be held until the accident investigation or court proceedings are over. It also allows the trailer used to transport the boat to be impounded to facilitate the boat's transportation and handling.

Record-Keeping

The bill requires the courts to keep a record of boating law violations. The court must send a summary of the record to the DEP commissioner within five days of a conviction, forfeiture, *nolle*, or other disposition. The summary must include the operator's safe boating certificate or certificate of personal watercraft operation number and the boat's certificate number. In the case of boating while under the influence, the court must report a conviction to the DEP and public safety commissioner. (The bill does not amend CGS Sec. 15-133c, which requires that the court notify DEP of such convictions within 30 days.) The DEP commissioner must suspend the boater's operating privilege for the applicable period specified in the bill.

FINES FOR OTHER BOATING OFFENSES

The bill increases, from \$25 to \$100 to \$100 to \$500, the fine for (1) changing the label on a boat that indicates its capacity and (2) interfering with a navigational aid. It establishes a fine of \$100 to \$500 for violating any DEP boating regulations. Under current law, such violations are infractions with an unspecified fine.

The bill eliminates the \$25 to \$200 fine for anchoring a boat under a bridge and similar offenses.

COMMENT

Unclear Admissibility Standards in Administrative Proceedings

The law requires that alcohol testing meet certain standards in order for the test results to be admissible in criminal prosecutions for boating under the influence. Among other things, the standards (1) require that a second test be conducted to confirm the boater's BAC and (2) specify who can conduct the tests and how testing devices must be tested for accuracy.

The bill extends these requirements to administrative suspension proceedings for boaters involved in injury accidents who are arrested for reckless boating. But it is not clear whether the bill extends them to other administrative suspension cases. It refers in several places to the second test administered pursuant the requirements. But it limits the hearing contesting the suspension to four questions, none of which address whether the test results were produced in a way that meets the requirements. As a result, it appears that a boater could not contest a suspension on the ground that the testing did not meet the admissibility requirements.

Unclear Provisions Regarding Suspension of a Boater's "Operating Privilege"

The bill requires suspension of a boater's "operating privilege" for a first or second conviction of boating while under the influence and revocation for a third conviction. It is unclear what "operating privilege" means. The bill does not define the term and boating statutes do not use it. It appears that the privilege is something other

than the safe boating certificate that the law requires in most instances to operate a boat. This is because another provision of the bill requires administrative suspension of the privilege *or* the certificate if a person refuses to take a test or the test indicates that he had an elevated BAC.

If the bill’s intent is to refer to safe boating certificates, the requirement for revocation for a third conviction conflicts with CGS Sec. 15-140e, which states that certificates are nonrevocable.

By law, a person can operate a boat subject to the safe boating certificate requirements if he has a U.S. Coast Guard license rather than the certificate. It is unclear how the suspension and revocation provisions under the bill’s administrative and criminal provisions apply, when the boater is operating under this license.

Application of Boating Penalties to Firearms Violations

The bill applies its administrative penalties for boating while under the influence to people arrested for the crime of carrying a loaded firearm while under the influence. (It does this by adding the administrative suspension provisions to a law that applies to boating while under the influence and this firearms offense.)

It appears the penalty could not be applied under these provisions. Under the bill, one of the issues at the suspension hearing is whether the officer had been boating or water skiing. Unless the person arrested for the firearms offense was simultaneously engaged in these activities, the commissioner could not suspend his operating privilege.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute Change of Reference
Yea 27 Nay 0

Judiciary Committee

Joint Favorable Report
Yea 40 Nay 0

