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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/26/06

SPONSOR     Komadina     LAST UPDATED                      HB                     

SHORT TITLE     Safe Boating Education Requirements     SB     279    

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ANALYST     Lewis    

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB 118

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Energy, Minerals & Natural Resources Department (EMNRD)

Department of Public Safety (DPS)

### SUMMARY

#### FOR THE WATER AND NATURAL RESOURCES COMMITTEE

#### Synopsis of Bill

Senate Bill 279 enacts new sections of the Boat Act, effective January 1, 2007, requiring that:

- 1) the State Parks Division of the Energy, Minerals and Natural Resources Department (EMNRD) adopt safe boating rules applicable to operators of motorboats (including sailboats – see Technical Issues below) and persons in the business of renting or leasing motorboats; and that
- 2) the operator of any vessel being used for recreational purposes must require a child age 12 or under to wear a personal flotation device while the vessel is underway, unless the child is below deck or in an enclosed cabin.

The new safe boating rules apply only to individuals born after January 1, 1989 (i.e. those who are not yet 18 years old on the act's effective date, January 1, 2007). They require that a motorboat operator shall:

- 1) have completed an approved safe boating education course or passed an equivalency examination;

- 2) possess a valid license, issued by the United States Coast Guard or the Canadian government, to operate a vessel; or
- 3) have received, as an authorized operator of a motorboat that is rented or leased for 30 days or less, instructions regarding the safe operation of the motorboat and a summary of the statutes and rules governing the operation of a motorboat.

The new rules further require that a person in the business of renting or leasing motorboats for a period of 30 days or less shall:

- 1) not rent or lease a motorboat to a person unless the person meets the above requirements;
- 2) maintain rental or lease records that include the name and age of each authorized operator; and
- 3) provide each authorized operator with instructions regarding the safe operation of the motorboat and a summary of the statutes and regulations governing the operation of a motorboat.

### **FISCAL IMPLICATIONS**

According to Energy, Minerals and Natural Resources Department (EMNRD), the provisions called for in this legislation will require staff time and some direct expense, but Federal funding currently available to the State Parks Division (SPD) for the Recreational Boating Safety Program would cover expenditures. EMNRD notes, however, that failure to show continued improvement in boating safety education programs could jeopardize substantial federal funds (in excess of \$750,000 per year) that come to New Mexico from the U.S. Coast Guard.

### **SIGNIFICANT ISSUES**

According to the EMNRD, this bill would gradually, over time, require all New Mexico resident boaters to complete a boating safety education course. New Mexico residents 18 or older as of the start of the program would be “grandfathered” and not (potentially ever) be required to complete such a course. EMNRD asserts that the bill would lead to safer recreational boating in New Mexico because boating safety education works.

SB 279 is the result of SJM 15, which passed the 47th Legislature in 2005 and requested the State Parks Division (SPD) to study the options for and feasibility of implementing expanded boating safety education programs for operators of motorboats in the State of New Mexico. The resulting study, “Improving Recreational Boating Safety in New Mexico,” was completed by SPD and presented to the Interim Committee on Water and Natural Resources in November 2005. The study made a number of conclusions, including:

- The number of boating accidents and fatalities in New Mexico is too high.
- The vast majority of motorboat operators involved in boating accidents have no formal boating education or training.
- New Mexico needs to maintain the boating safety education component, as it is a critical element to maintaining eligibility to receive federal Coast Guard grant funds.
- SPD’s current program of offering free, voluntary boating safety education classes is successful and well regarded, but seriously under-utilized.
- Mandatory boating safety education in other states has been shown to reduce serious accidents over time.
- It is feasible and within the capabilities of present staff of the State Parks Division to expand the boating safety education program to reach more boat operators by gradually implement-

ing mandatory requirements based on age.

- There is widespread support for mandatory boating safety education programs for boat operators by the recreational boating industry.
- Boating safety education reduces accidents, injuries, and related financial impacts to society, such as health care and insurance costs.
- Various industry representatives, agencies and marina operators consulted in this study support the need to establish a mandatory education requirement for motorboats operators.
- New Mexico has no state requirement for personal flotation device (PFD) wear that matches the federal requirement. As of September 2005, 46 states have adopted some form of mandatory child PFD wear. The federal requirement is that no person may operate a recreational vessel under way with any child under 13 years old aboard unless each such child is either (1) wearing an appropriate PFD approved by the Coast Guard or (2) below decks or in an enclosed cabin. The Coast Guard reports that of the 676 persons who died in boating accidents across the nation in 2004, 484 drowned (72% of the fatalities); and 431, or 89%, of the drowning victims were not wearing PFDs.

## PERFORMANCE IMPLICATIONS

According to the EMNRD, for several years, including FY06, legislative performance measures for SPD have included metrics related to boating safety (# of boating accidents, # of boat safety inspections). While proposed legislative performance measures for FY07 do not include these metrics, SPD still tracks this data internally to measure agency performance. SB 279 would have a strong positive impact on these performance measures. The goals of the program are to increase the safe operation of motorboats and provide a safer recreation environment by reducing boat accidents that result in injury, death and property damage. This legislation is essential to ensure a safe environment for families and visitors to the state parks and other recreational sites.

## TECHNICAL ISSUES

The Boat Act, in Sec. 66-12-3, defines “motorboat” as “any vessel propelled by machinery, whether or not machinery is the principal source of propulsion” and includes “any vessel propelled or designed to be propelled by sail,” other than a sailboard or windsurf board. “Vessel” is defined to include “every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.”

Is it the Legislature’s intention that the new safe-boating rules should apply to sailboats of all sizes (other than sailboards/windsurfers), as well as to power-driven vessels? If so, the SPD will need to make it clear to the boating public that the new motorboat safety rules apply to sailboats as well. If not, additional clarifying language will be needed.

What if a child is the operator of the “motorboat” or “vessel”? For example, the sole operator of a Sunfish, Laser or sailing dinghy (small sailboats) on one of the state’s lakes might very well be eight or nine years old, or even younger. Can such a child be expected to have completed an approved safe boating education course or passed an equivalency exam? Does the SPD’s safe boating curriculum include equivalent training for children? And in this example is the “operator” (not defined in the Boat Act or in SB 279) responsible for requiring the child to wear a personal flotation device the child him/herself? If not, and if the responsibility falls to the boat’s owner or the child’s parent/guardian, the bill should be amended to make that clear.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

EMNRD suggests that the current situation in which few people voluntarily enroll in boating safety education courses would continue. SPD staff would continue to seek the support of magistrate judges to require violators of boating laws to enroll in and successfully pass the Boating Basics class as part of their penalty. Much-needed safety standards and requirements would continue to be non-existent in New Mexico. Federal funds coming to New Mexico could eventually be jeopardized if New Mexico does not continue to keep the Recreational Boating Safety Program in step with federal regulations and keep up with nationwide trends.

There will also continue to be a conflict between federal regulations and state laws as they pertain to children who are required to wear personal flotation devices. Enforcement will continue to be problematic and confusing to the public because federal officers are enforcing federal regulations on federal properties; and New Mexico officers are enforcing different state laws on state and federal properties.

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