SF 2177 – Boating While Intoxicated (LSB5318SV)
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Fiscal Note Version – New

Description

Division I of Senate File 2177 removes persons meeting the eligibility requirements for the Green Thumb Program from receiving preference as candidates for temporary positions in conservation and outdoor recreation with the Department of Natural Resources (DNR). It also expands the DNR’s ability to establish fees for camping and rental facilities to include State forests.

Division II repeals Iowa Code chapter 464B, relating to dams; repeals all sections of Iowa Code chapter 464A, which relates to dams and spillways, except Iowa Code section 464A.11; and removes references to those chapters. The Division also transfers Iowa Code section 464A.11 on water trails and low head dams to Iowa Code section 456A.11.

Division III adds definitions of a “throwable personal flotation device” and a “wearable personal flotation device.” The Bill also adds a subsection to Iowa Code section 462A.12 that requires a person who is operating a vessel that is 16 feet or more in length, except a canoe or kayak, to have at least one throwable personal flotation device readily accessible.

Division IV changes the penalties and procedures associated with a boating while intoxicated (BWI) offense. The Bill establishes minimum and maximum times for prison sentences related to BWI, moves language relating to BWI resulting in the injury or death of another person to its own section, amends Iowa Code provisions that relate to the refusal of a chemical test in suspicion of a BWI, and amends Iowa Code section 907.3 to make a BWI offense similar to an operating while intoxicated (OWI) offense. The Bill also raises the fines associated with BWI:
- From $1,000 to $1,250 for a first offense.
- From between $1,500 and $5,000 to between $1,875 and $6,250 for a second offense.
- From between $2,500 and $7,500 to between $3,125 and $9,375 for a third and subsequent offense.

In addition, a simple misdemeanor is created for persons under 21 years of age who operate a motorboat or sailboat with an alcohol concentration equal to or greater than 0.02 and less than 0.08.

Background

Currently, Iowa Code chapter 464A authorizes the Natural Resource Commission (NRC) to erect a dam or spillway across a stream or at the outlet of a lake or to alter or reconstruct an existing dam or spillway in order to increase or decrease its height or permanently affect the water level above the structure. Iowa Code section 464A.11 requires the DNR to establish a water trails and low head dam public hazard program, which develops water trails throughout the State and works to mitigate the danger of low head dams. Iowa Code chapter 464B relates to dams and the protection of banks and embankments.
A violation of Iowa Code section 462A.12 currently results in a scheduled violation of $35. Currently, 571 IAC 37 contains the requirements and definitions for various personal and throwable flotation devices and the requirement for vessels 16 feet or more to have a throwable personal flotation device.

Under current law, a conviction of a first offense of BWI results in a serious misdemeanor, a second offense results in an aggravated misdemeanor, a third or subsequent offense results in a Class D felony, injury to another person due to BWI results in a Class D felony, and the death of another person due to BWI results in a Class B felony. The Bill does not change this, but does make the penalties similar to operating while intoxicated (OWI) offenses. Over the last three years, there has been an average of 23 convictions per year of a first offense of BWI. There have been no convictions during that time span of a second, third, or subsequent offense of BWI or of injury or death caused by a person who was intoxicated while boating. A simple misdemeanor without a specific penalty can result in a fine of between $105 to $855, and the court may order imprisonment not to exceed 30 days in lieu of or in addition to a fine.

Assumptions
- Convictions of BWI will remain consistent after implementation of this Bill at an average of 23 convictions of a first offense per year, and no convictions of a second, third, or subsequent offense, no accidents involving injury, and no accidents involving death.
- There will be an increase in fine revenue as the result of a new simple misdemeanor created for persons under 21 years old; however, the impact is unknown.

Correctional Impact
Senate File 2177 creates a new simple misdemeanor and changes the minimum and maximum prison sentences for a first, second, and third or subsequent offense of BWI; however, due to a lack of conviction data, a correctional impact cannot be estimated. Refer to the Legislative Services Agency (LSA) memo addressed to the General Assembly, Cost Estimates Used for Correctional Impact Statements, dated January 18, 2022, for information related to the correctional system.

Minority Impact
Senate File 2177 establishes a simple misdemeanor, but it is unknown how many convictions may occur. As a result, the minority impact of SF 2177 cannot be estimated. Refer to the LSA memo addressed to the General Assembly, Minority Impact Statement, dated January 18, 2022, for information related to minorities in the criminal justice system.

Fiscal Impact
There will be a minimal increase in revenue from first offenses of BWI due to the increased fine. While there may be an increase in fine and fee revenue from the increase in second, third, and subsequent offenses, the increase is not expected to have a fiscal impact due to the low number of convictions. In addition, there will be an increase to fine revenue and costs associated with the new simple misdemeanor, but the impact cannot be estimated.

Table 1 shows the scheduled fine and surcharge revenue distribution for a first offense under Iowa Code section 462A.14 with the increased fine amount.
Table 2 shows the average cost to the State for a simple misdemeanor.

Table 2 — Average State Cost Per Offense Class Type

<table>
<thead>
<tr>
<th>Offense Class</th>
<th>Total Cost</th>
<th>Minimum</th>
<th>Maximum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Simple Misdemeanor</td>
<td>$40 - $370</td>
<td>$40</td>
<td>$370</td>
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</table>

The Department of Corrections indicates there will be an associated cost to implement this Bill due to Iowa Corrections Offender Network programming, but the impact is unknown.

In addition, the Department of Public Safety may see an increase in the number of specimens sent to the Division of Criminal Investigation lab for analysis, but the costs are expected to be minimal.

Sources
Legislative Services Agency
Department of Human Rights, Criminal and Juvenile Justice Planning Division
Department of Corrections
Department of Public Safety

/s/ Holly M. Lyons
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