

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2013

Bill Number: H.86 Name of Bill: Motor Boat; Noise Levels

Agency/ Dept: State Police Marine Division Author of Bill Review: Sgt. J.R. Underhill
Boating Law Administrator

Date of Bill Review: January 28, 2013 Status of Bill: (check one):

☒ Upon Introduction ☐ As passed by 1st body ☐ As passed by both bodies ☐ Fiscal

Recommended Position:

☒ Support ☐ Oppose ☐ Remain Neutral ☐ Support with modifications identified in #8 below

Analysis of Bill

1. Summary of bill and issue it addresses.

This bill proposes to revise existing standards governing maximum operating noise levels of motorboats and to authorize enforcement officers to direct that motorboats be moored until a noise level violation is corrected.

The noise level would be changed from 82 decibels on the A scale to 75 decibels when subjected to a shoreline sound level measurement as prescribed by Society of Automotive Engineers (SAE) standard J1970 as amended or 90 decibels when subjected to a stationary sound level measurement test as prescribed by SAE standard J2005, as amended.

2. Is there a need for this bill?

The Vermont State Police Marine Division has been tasked with enforcing the laws under Title 23 Vermont Statutes, Chapter 29 that pertain to snowmobile and motorboat enforcement.

The National Association of State Boating Law Administrators originally created a model act for motorboat noise on December 11, 1989, subsequently amended on September 26, 1991 and approved in revised form on September 21, 2005 as part of the 2005 NASBLA Model Acts Review and Standardization Project. Intended to be used in conjunction with SAE Standards J1970 and J2005, the act requires all motorboats with above-water exhaust to install mufflers to reduce exhaust noise and limits the shoreline sound level to 75 decibels.

In September 2002, the NASBLA membership approved a related resolution -No.2002-1, requesting the United States Coast Guard to initiate rule-making to require manufacturers of inboard motorboats to install effective muffler systems in constant operation on the motorboat. While thirty-two states had adopted legislation noise regulations equivalent to the requirements described in the Model Act for Motorboat Noise,

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manufacturers had continued to build non-compliant inboard motorboats, putting the purchasers and operators of these boats at odds with law enforcement. Moreover, according to the resolution, excessive noise from these non-compliant vessels continued to put the operators in danger of not hearing emergency sound signals, and to create an additional stressor with the potential to degrade operator performance.

In May 2003, the National Marine Manufacturers (NMMA) Board of Directors voted to formally endorse the NASBLA Model Act for Motorboat Noise, and published NMMA Guidelines for Boat Noise.

In April 2005, the NASBLA Boats & Associated Equipment and Law Enforcement Committees reviewed proposed revisions to this model act as part of the aforementioned Model Acts Review Project; made additional changes; and subsequently recommended this version to the NASBLA membership. * A similar version actually had been adopted by NASBLA membership in November 1975, as Chapter 14 of the "Uniform Boating Code"; the Code was designed as a guide or standard for state boating laws and regulations.

It appears as though the 2013 Vermont legislative session has adopted a portion of the model legislation directly from the NASBLA Law Enforcement Committee as standard language for H. 84.

This legislation re-states the manufacturer's standards and is consistent with national standards. Boat motors are being manufactured to this standard currently so only modified vessels under way would not be in compliance.

3. What are likely to be the fiscal and programmatic implications of this bill for this Department?

The cost incurred would be law enforcement training costs and equipment costs associated with purchasing, certification, calibration and maintenance training with noise measuring devices.

Testing locations would also been limited because the law refers to a shore line sound measurement test as prescribed by the Society of Automotive Engineers (SAE). A pre-determined location would need to be selected and maintained prior to enforcement action.

The Vermont State Police would be the primary law enforcement agency responsible for enforcing this law. As stated above there would be equipment and training costs associated with this bill.

The state would be responsible for explaining the test standard in a court of law.

This situation occurred in the past when the data master was first introduced as the primary DWI/BWI/SWI breath sampling device. Expert testimony was called into a court of law to explain the operation and calibration of the testing equipment. It is quite possible that these new proposed standards would be challenged in a Vermont Court of Law until the standard and equipment are recognized.

Over the past several years it has been the policy of the Coast Guard's Boating Safety Division to not allow for the reimbursement of costs associated with the enforcement of sound level abatement laws and regulations under the State Recreational Boating Safety (RBS) Grant Program. This was due in large part to the

assumption that these laws solely addressed “noise pollution” and were in large part spurred by the complaints of residents along waterways frequented by offending vessels. It was therefore considered an environmental issue versus a safety issue.

After internal Coast Guard discussions regarding the possible impact by prolonged exposure to high levels of sound (a boating stressor) posed to the operators of boats, it was determined that a change in policy was warranted.

Costs associated with the enforcement of sound abatement laws and regulations are considered allowable costs under the State RBS Grant Program and are subject to reimbursement under existing laws as outlined in 46 USC 131 and policy as outlined in the State RBS Grant Program Guide COMPDTPB P16755.3A. These costs shall include, but are not limited to, the purchase and maintenance of measuring equipment, training for officers, appropriate salaries for activity, and appropriate vessel and facility operational costs associated with enforcement of these laws and regulations. This change was effective beginning with the FY2011 grant year.

4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?

All State Agencies assigned to enforce Recreational Boating Laws receive sub grant funding from the Vermont State Police Marine Division through a 50/50 match fund grant. Therefore, all entities who receive federal funding would incur the same expenses as the State Police. However, enforcement of unlawful motorboat noise is now allowable for reimbursement under matching federal funds.

5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it?

All County and Municipal Agencies assigned to enforce Recreational Boating Laws receive sub grant funding from the Vermont State Police Marine Division through a 50/50 match fund grant. Therefore, all entities who receive federal funding would incur the same expenses as the State Police. However, enforcement of unlawful motorboat noise is now allowable for reimbursement under matching federal funds.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why?

The primary advocates of this proposed legislation would be the National Association of State Boating Law Administrators, waterfront landowners, non-powered craft operators and other outdoor recreational enthusiasts. The primary advocates would probably agree that lowering the noise levels is a quality of life issue as well as a safety issue.

6.2 Who else is likely to oppose the proposal and why?

The primary opponents of this legislation would be large powered sport craft owners- (Cigarette, Donzi, Scarab, Formula etc.) which have factory installed exhaust by-pass systems. The owners of these performance style vessels have paid extra money for high performance systems and would oppose any legislation that restricts their use.

7. Rationale for recommendation:

As currently written, the state law for the noise level of any motorized vessel is measured at a distance of 50 feet or more from the vessel must not exceed 82 decibels in normal operating environments. The use of cutouts is prohibited on state waters. Many cigarette boats are in fact equipped with cut out devices allowing the operator to enjoy better performance from the engine.

It is important to keep in mind that under state law the use of cut outs is prohibited except for motor boats competing in a regatta or boat race approved as provided in Title 23 VSA 3316. The use of cut outs are allowed on such motorboats while on trial runs, during a period not to exceed 48 hours immediately preceding such regatta or race and for such motorboats competing in official trial for speed records during a period not to exceed 48 hours immediately following a regatta or race.

During the 2011 boating season the State Police Marine Patrols had one motorboat noise complaint on Lake Champlain, specifically in the South Hero region. During the 2012 boating season State Police Marine Patrols did not receive any motor boat noise complaints.

Traditionally, the majority of vessels that are inspected by State Police Marine Patrols are found to be in compliance with current state law.

The U.S. Coast Guard, National Association of State Boating Law Administrators, and The National Marine Manufacturer (NMAA) Board of Directors endorse the model act for motor boat noise.

State Police Marine Patrols have been assigned decibel meters for enforcing loud vessels violations. The State Police Marine Patrols also inspect vessels to verify compliance with all applicable Title 23 Motor boat laws.

The Vermont State Police endorses this legislation as it is consistent with 32 other states motor boat noise laws.

Lake Champlain is multi-jurisdictional with the deep channel mark as the state boundary with the state of New York. The state of New York has established noise levels for recreational boats. In addition to the prohibition against muffler cut out systems, the law stipulates that vessel noise must not exceed either 90 decibels when subject to a stationary test or 75 decibels when tested while moving. It is also illegal to manufacture or sell a boat that does not meet these specifications. It is also against the law to remove, alter or modify a muffling system which will cause the vessel to operate in violation of the above noted standards.

8. Specific modifications that would be needed to recommend support of this bill: *(Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.)*

The bill as written does not require any specific modifications that would change recommended position.