

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill authorizes the FWC to enforce federal security zones and creates criminal penalties for committing certain violations of those zones.

B. EFFECT OF PROPOSED CHANGES:

VEHICLE HEADLIGHT REQUIREMENTS

Current Situation

Section 316.217, F.S., requires every vehicle operated upon a highway in Florida to display lighted lamps and illuminating devices at any time from sunset to sunrise and during any rain, smoke, or fog. Section 316.003(53), F.S., provides a broad definition of the term "highway" including every private and public roadway. The statutes do not contain an exemption from the lighting requirements for law enforcement officers.

According to the Florida Fish and Wildlife Conservation Commission (FWC), law enforcement officers of federal, state, county, and municipal agencies utilize operating without headlights as a valuable tool in conducting investigations and apprehension of violators. It not only assists the officers in performing their duties but provides a level of safety when an officer is approaching a potentially dangerous situation. The use of headlights when approaching potential criminal activities places the officer at a tactical disadvantage while greatly impeding the ability of officers to apprehend violators and discover criminal acts.

Effect of Proposed Changes

This bill creates a new s. 316.217(4), F.S., to allow law enforcement vehicles to be operated without headlights if:

1. Operation without headlights is necessary to the performance of the officers' duties;
2. The law enforcement agency has written policies authorizing and providing guidelines for operating without headlights;
3. The law enforcement vehicle is operated in compliance with the agency's policy; and,
4. Operation without headlights may be safely accomplished.

The new provision also specifies that an operator of a vehicle has a duty to drive with due regard for the safety of all persons and is not protected by this provision from the consequences of his or her reckless disregard for the safety of others.

WRITTEN REPORTS OF ACCIDENTS

Current Situation

Section 327.30, F.S., requires the operator of a vessel to immediately report to either the FWC, the chief of police, or the county sheriff any collision, accident, or other casualty involving a vessel in or upon or entering into or exiting from the water, including capsizing, collision with another vessel or object, sinking, personal injury requiring medical treatment beyond immediate first aid, death, disappearance of any person from on board under circumstances which indicate the possibility of death or injury, or damage to any vessel or other property in an apparent aggregate amount of at least \$2,000.

In addition, Section 327.301, F.S., requires an operator of a vessel that is involved in an accident resulting in bodily injury, death, or disappearance of any person or damage to any vessel or other property in an apparent aggregate amount of at least \$500 to forward a written report of the accident to the FWC within the time limits specified in 33 C.F.R. s. 173.55. If the operator of the vessel is physically incapable of making a written report, the owner of the vessel must submit the written report. However, when the investigating officer has made a written report of the accident the operator need not forward a written report to the FWC.

According to the FWC, rental personal watercraft have been involved in 11.6% of all reported boating accidents in Florida during the past four years, even though rental watercraft account for an average of 0.34% of all registered vessels in the State. During this same time period, rental personal watercraft have been involved in 39.5% of all reported personal watercraft accidents in Florida.

The FWC has repeatedly received reports of incidents where rental vessels were involved in reportable boating accidents but the operators did not report the accidents. In each of these situations, the vessel operator reported they were not informed that Florida has a requirement for the operator to report a boating accident. In many of these cases, the operator was not a Florida resident, making any subsequent investigation of the accident difficult. Failure to report a boating accident reduces FWC's ability to accurately depict the safety issues related to rental vessels involved in boating accidents, evaluate boating accident statistical data, and formulate strategies to reduce future accidents.

Effect of Proposed Changes

The bill amends s. 327.301(1), F.S., to increase from \$500 to \$2,000 the threshold for requiring written reports regarding damage to vessels or property from operators and owners. In addition, the owner of the vessel must submit the report if the operator is incapable of doing so regardless of whether the operator is "physically" incapacitated. The bill also increases from \$500 to \$2000 the threshold for requiring law enforcement officers to submit written reports to the FWC within 24 hours after completing an investigation. The bill also creates s. 327.301(6), F.S., to require persons who rent, charter, or lease vessels to submit written reports of accidents involving their rental watercraft. The Florida Boating Advisory Council recommends this revision.

MANDATORY EDUCATION FOR VIOLATORS

Current Law

Section 327.731, F.S., requires persons who are convicted of two noncriminal boating infractions within a 12-month period to complete a boating safety course that meets the FWC's minimum requirements and to submit proof of completion to the FWC within 90 days. Currently, noncriminal infractions include violations of s. 327.65, F.S., which relates to muffling device restrictions.

Effect of Proposed Changes

This bill amends s. 327.731(1), F.S., to delete muffling device violations leaving only boating safety violations as violations that trigger the requirement to complete a mandatory boating safety course.

SAFETY ZONES, SECURITY ZONES, & REGULATED NAVIGATION AREAS

Current Situation

Currently, the United States Coast Guard is the only entity authorized to establish security zones on waterways in order to protect potential targets from terrorist attack. Security zones are areas of water with restricted vessel access that provide security to targets vulnerable to terrorist attack, i.e., cruise ships, ports, nuclear reactors, sporting stadiums, hotels, conference centers, space centers, and military installations. The FWC, as part of Florida's homeland defense mission, is responsible for patrolling zones established by the Coast Guard; however, neither Federal nor Florida law authorizes the FWC to enforce federally established security zones. This creates a situation whereby, if a violation occurs in a federal security zone, FWC officers may only attempt to detain a violator until a Coast Guard vessel arrives.

Since September 11, 2001, FWC has provided over 40,000 hours of directed patrol addressing domestic security at a cost of over \$2 million. Specific locations for security missions have included: Port of Jacksonville, Blount Island Ammunition Depot, Port Canaveral, Kennedy Space Center, Turkey Point and Crystal River Nuclear Power Plants, Port Everglades, Port of Miami, Port of Key West, Port of Tampa, McDill Air Force Base, Patrick Air Force Base, Pensacola Naval Air Station, and Hurlburt Field.

Effect of Proposed Changes

This bill creates s. 327.461, F.S., to authorize the FWC to enforce federal waterway safety zones, security zones, and regulated navigation areas, when requested by the federal government through the Florida Mutual Aid Plan administered by the Florida Department of Law Enforcement for the purpose of providing protection for potential targets, while minimizing impact to the boating public. Specifically, the bill:

- prohibits operation of a vessel in violation of a safety zone, security zone, regulated navigation area, or naval vessel protection zone;
- permits state and local law enforcement personnel to enforce these federal zones at the request of the federal authority if there is a compelling need to protect the residents and infrastructure of the state;

The bill also establishes criminal penalties for violating federal security zones as follows:

- a person who violates any such federal zone commits a misdemeanor of the first degree;
- a person who continues to operate or authorize the operation of a vessel in violation of a federal zone after being warned not to do so, or who refuses to leave after being ordered to do so by law enforcement or military personnel, commits a felony of the third degree;
- a person who enters a federal zone by swimming, diving, wading or similar means commits a misdemeanor in the first degree;
- a person who remains within or reenters a federal zone after being warned not to do so, or who refuses to leave after being ordered to do so by law enforcement or military personnel, commits a felony of the third degree;
- each incursion into a federal zone is considered a separate offense;
- entry into a federal zone that is authorized by the captain of the port or the captain's designee is not a violation.

The bill amends s. 901.15, F.S., to provide that a law enforcement officer may arrest a person without a warrant when there is probable cause to believe that the person has committed a violation of a safety zone, security zone, regulated navigation area, or naval vessel protection zone as described in s. 327.461, F.S.

C. SECTION DIRECTORY:

- Section 1. Amends s. 316.217, F.S., providing an exception for the operation of law enforcement vehicles without headlights.
- Section 2. Amends s. 327.301, F.S., revising vessel accident reporting requirements.
- Section 3. Amends s. 327.35215, F.S., deleting obsolete reference regarding disposition of moneys collected for civil and criminal penalties.
- Section 4. Creates s. 327.461, F.S., authorizing state and local law enforcement agencies to enforce federal security zones and providing criminal penalties.
- Section 5. Amends s. 327.731, F.S., revising requirements to complete boater safety class for noncriminal infractions.
- Section 6. Reenacts s. 327.73, F.S.
- Section 7. Amends s. 901.15, F.S., authorizing arrest without a warrant under certain circumstances involving violations of federal security zones.
- Section 8. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues: None.
- 2. Expenditures: The cost of providing enforcement of federal security zones on the water is indeterminate but potentially substantial.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues: None.
- 2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to

raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

The bill is titled as an act relating to "vessel safety;" however, the body of the bill revises headlight requirements applicable to law enforcement vehicles operated on highways of the state. As such, the bill may be regarded as embracing more than one subject in violation of s. 6, Art. III of the Florida Constitution.

B. RULE-MAKING AUTHORITY: This bill creates s. 327.461, F.S., to authorize the FWC to enforce federal waterway safety zones, security zones, and regulated navigation areas, when requested by the federal government through the Florida Mutual Aid Plan administered by the Florida Department of Law Enforcement for the purpose of providing protection for potential targets, while minimizing impact to the boating public. However, this new provision does not provide specific statutory authority to the FWC to adopt rules implementing this provision. It is unclear whether it will be necessary for the FWC to adopt rules implementing the provision or whether current rulemaking authority of the FWC is sufficient if rules are required.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 17, 2004, the Committee on Natural Resources adopted an amendment offered by Rep. Davis to delete revisions to s. 327.39, F.S., related to personal watercraft and revisions to s. 327.395, F.S., related to boating safety identification cards.