

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 293 Vessels

**SPONSOR(S):** Agriculture & Natural Resources Subcommittee, Harrell and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 512

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N, As CS	Deslatte	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) State Affairs Committee			

### SUMMARY ANALYSIS

Currently, any person who violates navigational rules that results in a boating accident, but whose violation did not constitute reckless operation of a vessel, is guilty of a second degree misdemeanor.

The bill amends current statute by removing the criminal penalty for individuals who violate a navigational rule that results in an accident and makes these noncriminal infractions, so long as it does not constitute reckless operation of a vessel and does not cause serious bodily injury or death. Any individual who violates navigational rules that causes serious bodily injury or death commits a second degree misdemeanor.

The bill increases the fine for all violations of navigational rules resulting in an accident not causing serious bodily injury or death to the following:

- For the first offense, up to a maximum of \$500.
- For the second offense, up to a maximum of \$750.
- For a third or subsequent offense, up to a maximum of \$1,000.

Lastly, the bill deletes a duplicative provision, makes technical changes, and reenacts s. 327.731(1), F.S., to incorporate changes for mandatory education requirements for violators.

According to the FWCC analysis, the bill appears to have a positive fiscal impact on FWCC revenues because of the increase in fines that will be collected for certain violations of navigational rules and deposited into the Marine Resources Conservation Trust Fund, to be used for boating education purposes. However, the exact fiscal impact is unknown. The bill also appears to have a positive fiscal impact on local governments by eliminating the criminal penalty, and thus reducing court costs and/or county jail costs.

The bill has an effective date of October 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Currently, any person who violates navigational rules that results in a boating accident, but whose violation did not constitute reckless operation of a vessel, is guilty of a second degree misdemeanor, punishable by a fine of up to \$500 and/or imprisoned for up to 60 days<sup>1</sup>. In addition, a judge can order restitution to a victim for damage or loss related to the defendant's criminal act.

Any person who violates navigational rules that does not result in a boating accident and does not constitute reckless operation of a vessel, is guilty of a noncriminal violation.<sup>2</sup> Section 775.08, F.S., defines a noncriminal violation as 'any offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by no other penalty than a fine, forfeiture, or other civil penalty. A noncriminal violation does not constitute a crime, and conviction for a noncriminal violation shall not give rise to any legal disability based on a criminal offense.'

Section 327.73, F.S., provides that any person charged with a noncriminal infraction will be cited and must appear before a county court or pay the civil penalty, which is \$50. If a person chooses to appear in court, he/she has waived the limitations of the civil penalty. If the court determines the person guilty, a civil penalty of up to \$500 may be imposed. Any person failing to appear for the boating citation will also be charged with failing to respond and, if convicted, will be guilty of a second degree misdemeanor.

Any person convicted of a criminal violation, a non-criminal infraction that resulted in a reportable boating accident, or two non-criminal infractions in a 12-month period is required to enroll in a boating safety course that meets minimum standards established by the Florida Fish and Wildlife Conservation Commission (FWCC).<sup>3</sup>

According to the FWCC analysis, from 2007-2010, there were 452 individuals cited for second degree misdemeanor violations of navigational rules that resulted in a boating accident. During that same period, there were 303 individuals cited for noncriminal infractions for navigational rule violations that did not result in a boating accident.

##### **Effect of Proposed Changes**

The bill amends current statute by removing the criminal penalty for individuals who violate a navigational rule that results in an accident and makes these noncriminal infractions, so long as it does not constitute reckless operation of a vessel and does not cause serious bodily injury or death. Any individual who violates navigational rules that causes serious bodily injury or death commits a second degree misdemeanor.

The bill increases the fine for all violations of navigational rules resulting in an accident not causing serious bodily injury or death to the following:

- For the first offense, up to a maximum of \$500.
- For the second offense, up to a maximum of \$750.
- For a third or subsequent offense, up to a maximum of \$1,000.

---

<sup>1</sup> Section 775.082 or s. 775.083, F.S.

<sup>22</sup> For a complete list of noncriminal infractions relating to vessel laws, see s. 327.33, F.S.

<sup>3</sup> Rule 68D-36.106, Florida Administrative Code (F.A.C.)

Lastly, the bill deletes a duplicative provision, makes technical changes, and reenacts s. 327.731(1), F.S., to incorporate changes for mandatory education requirements for violators.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 327.33, F.S., revising penalty provisions for violation of navigation rules; providing misdemeanor penalties for a violation that results in a boating accident causing serious bodily injury or death; providing that under certain circumstances a violation of navigation rules is a noncriminal violation.

**Section 2.** Amends s. 327.73, F.S., providing for increased penalties for certain noncriminal violations; deleting a duplicate provision.

**Section 3.** Reenacts and amends s. 327.72, F.S., relating to penalties, to incorporate changes made by the act in references thereto.

**Section 4.** Reenacts s. 327.731(1), F.S., relating to mandatory education for violators, to incorporate changes made by the act in references thereto.

**Section 5.** Provides an effective date of October 1, 2011.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

See Fiscal Comments Section

2. Expenditures:

None

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None

2. Expenditures:

By removing the criminal penalty for individuals who violate navigational rules that result in an accident and making them noncriminal infractions, there could be a reduction in court costs and/or county jail costs.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None

**D. FISCAL COMMENTS:**

According to the FWCC analysis, the bill appears to have a positive fiscal impact on the FWCC revenues because of the increase in fines that will be collected for certain violations of navigational rules, which are deposited into the Marine Resources Conservation Trust Fund, to be used for boating education purposes. However, the exact fiscal impact is unknown.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### **2. Other:**

None

#### **B. RULE-MAKING AUTHORITY:**

The bill does not provide additional rule making authority and none is required.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 22, 2011, the Subcommittee on Agriculture & Natural Resources amended HB 293 as a Committee Substitute (CS). The CS provides that any individual who violates navigational rules that causes serious bodily injury or death commits a second degree misdemeanor. The CS also provides for higher penalties for a violation of navigation rules resulting in an accident that does not cause serious bodily injury or death.