

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Committee

BILL: CS/CS/SB 512

INTRODUCER: Budget Committee, Environmental Preservation and Conservation Committee, and Senator Negrón

SUBJECT: Vessels

DATE: April 14, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiggins</u>	<u>Yeatman</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>DeLoach</u>	<u>Meyer, C.</u>	<u>BC</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill removes the criminal penalties for a navigational violation that results in an accident but does not rise to the level of reckless operation, from a misdemeanor of the second degree to a noncriminal infraction. The bill increases the civil penalties for navigation rule violations that result in an accident but do not cause serious bodily injury or death, depending on the judge's discretion, as follows.

- First offense: up to \$250.
- Second offense: up to \$750.
- Third offense: up to \$1,000.

The penalty for a navigation violation that causes serious bodily injury or death is a second degree misdemeanor.

This bill allows boaters who can present proof of boater safety course completion and photo identification to operate a motor vessel without waiting to receive the Florida Fish and Wildlife Conservation Commission (commission) Boating Identification card in the mail. The boater

education certificate must include the student's first and last name, date of birth, and the date that the student passed the course examination.

This bill substantially amends the following sections of the Florida Statutes: 327.33, 327.395, 327.54, 327.73, 327.72, and 327.731(1).

II. Present Situation:

Currently, under s. 327.33(3), F.S., all navigation rule violations are noncriminal infractions except those navigation rule violations that result in boating accidents. If a navigation rule violation results in a boating accident, the charge is increased from a noncriminal infraction to a misdemeanor of the second degree. When a reckless operation violation occurs, the penalties are more severe and include a first degree misdemeanor charge, a maximum \$1,000 fine, and up to one year in jail.

In accordance with s. 327.73, F.S., individuals charged with noncriminal infractions sign and accept a citation indicating a promise to appear in court or pay the civil penalty, by mail or in person, within 30 days. If the person elects to pay the civil penalty, he or she is deemed to have admitted the noncriminal infraction and waived the right to a hearing. Such admittance shall not be used as evidence in any other hearing. The amount of the civil penalty assessed for the noncriminal navigation rule violation is \$50, plus court specific additions if the violator elects to pay the fine without a court appearance. If the person elects to appear in court to plead the case, he or she has waived the limitations of the civil penalty. If the court determines the infraction has been committed, it may impose a civil penalty of up to \$500.¹

Section 327.731 F.S., requires any person who is convicted of two noncriminal infractions in a 12-month period to enroll in, attend, and successfully complete a boating safety course that meets the minimum standards established by the Florida Fish and Wildlife Conservation Commission (commission).

Anyone charged with a navigation rule violation that results in an accident is charged with a second degree misdemeanor. Upon the finding of guilt for a second degree misdemeanor, in accordance with ss. 775.082 and 775.083, F.S., a person may be fined up to \$500 and subjected to imprisonment not to exceed 60 days, at the discretion of the judge. In addition to the punishment, a judge, in accordance with s. 775.089, F.S., can order restitution to a victim for damage or loss related to the defendant's criminal act. There is not a civil penalty provision that an individual may pay in person or by mail for second degree misdemeanors in lieu of sentencing as described above for noncriminal infractions.

Per s. 327.731, F.S., mandatory education is required for anyone convicted under ch. 327, F.S., of a criminal violation, a non-criminal infraction that resulted in a reportable boating accident, as defined in s. 327.30(2), F.S., or two noncriminal infractions in a 12-month period. Additionally, commission rule 68D-36.106, F.A.C. (created pursuant to s. 327.04, F.S.), requires anyone convicted of a noncriminal boating infraction that resulted in a reportable boating accident and

¹ Florida Fish and Wildlife Conservation Commission, *Senate Bill 512 Fiscal Analysis* (February 10, 2011) (on file with the Senate Committee on Environmental Preservation and Conservation)

anyone convicted of any criminal boating violation to complete an additional online boating course. Reportable boating accidents include those that must be reported to law enforcement under s. 327.30(2), F.S. They include:

- Accidents involving any kind of vessel if the accident involves a vessel capsizing.
- A vessel colliding with another vessel or object.
- A vessel sinking.
- Serious personal injury (requiring more than basic first aid).
- Death.
- Disappearance of any person onboard under circumstances suggestive of a likelihood of death or injury.
- Damage to the vessel or any property in an aggregate amount greater than \$2,000.

According to the commission, from 2007 through 2010 there were 452 individuals cited for second degree misdemeanor violations of navigation rules that resulted in a boating accident. During the same time frame, there were 303 individuals cited for noncriminal infractions for navigation rule violations that did not result in a boating accident.

All civil penalties collected for noncriminal infractions related to boating are deposited into the Marine Resources Conservation Trust Fund within the commission, to be used for boating safety education purposes (s. 327.73(8), F.S.). Also, the court assesses the costs payable to the clerk for each noncriminal violation (s. 327.73(11), F.S.).

Under s. 775.083(1), F.S., all fines collected for convictions of second degree misdemeanors are deposited into the county's Fine and Forfeiture Fund (established in section 142.01, F.S.) for use by the clerk of the circuit court in performing court-related functions.

Section 327.395, F.S., requires a person born after January 1, 1988, to have a boater safety identification card to operate a vessel powered by a motor of 10 horsepower or greater. In order to obtain a boater safety identification card, the person must have completed a commission-approved boater education course that meets the minimum eight-hour instruction requirement established by the National Association of State Boating Law Administrators. A person may also obtain a boater safety identification card by passing a course equivalency examination approved by the Florida Fish and Wildlife Conservation Commission (commission) or pass a temporary certificate examination developed or approved by the commission.

The boater safety course may be taken in person at one of the commission's state offices at no charge. An applicant may also take the course online at a cost of up to \$30. The commission lists the approved online courses on their website.² The U.S. Coast Guard also offers a commission-approved course for \$35.

The commission may appoint liveries, marinas, or other agents to administer the boater safety course, as long as the entities adhere to the commission's established guidelines. These private entities offer the course for approximately \$30. However, these entities may not issue a boater

² The Florida Fish and Wildlife Conservation Commission, *Boating Safety Education*, available online at <http://myfwc.com/boating/safety-education/boating-courses/> (last visited on March 15, 2011).

safety card on the premises. These private entities must send a \$2 exam fee to the commission, in addition to providing proof that the applicant successfully passed the course. The commission also allows the private entities to charge and keep an additional \$1 service fee.²

Once the commission has received documented proof that the applicant successfully completed the course, then the commission will mail a boater safety identification card to the applicant. It currently takes the commission up to ten days to mail a card to an applicant who has successfully completed the boating safety course and has provided all of the necessary identification documentation. Incomplete applications may take longer, as the commission must contact the applicant and retrieve any missing information.

III. Effect of Proposed Changes:

Section 1 amends s. 327.33(3), F.S., to remove the criminal charge, for those individuals who violate a navigation rule that results in an accident but does not cause serious bodily injury or death or rise to the level of reckless operation, from a second degree misdemeanor to a noncriminal infraction.

Section 2 amends s. 327.395(6), F.S., to allow the operation of a vessel without a commission-issued Boater Identification card, for up to 90 days, for a boater who can prove boater safety course completion and provide photo identification. In order to prove boater safety course completion, the boater must be able to provide a boater education certificate that includes the student's first and last name, date of birth, and the date he or she passed the course examination.

Section 3 amends s. 327.54(2), F.S., to provide an exemption to allow liveries to accept boater education certificates that contain specific data, under specified conditions outlined in s. 327.395, F.S., as proof of successfully completing the Boater Education Course.

Section 4 amends s. 327.73(1) and (5), F.S., to increase the civil penalty for individuals who violate a navigation rule that result in a boating accident and to provide for increased penalties for repeat offenders. Individuals who commit a navigational violation who are involved in an accident where no one is injured or killed will be subject to increased civil penalties up to \$250 for a first offense, up to \$750 for a second offense, and up to \$1,000 for a third or subsequent offense.

Section 5 reenacts and amends s. 327.72, F.S., to incorporate changes to s. 327.73, F.S., by reference.

Section 6 reenacts s. 327.731(1), F.S., for the purpose of incorporating the amendment to s. 327.73, F.S.

Section 5 provides an effective date of October 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The changes may increase the penalties on boaters who violate navigation rules resulting in boating accidents, especially repeat offenders. Individuals who commit a navigational violation who are involved in an accident where no one is injured or killed will be subject to increased civil penalties up to \$250 for a first offense, up to \$750 for a second offense, and up to \$1,000 for a third or subsequent offense.

The bill would allow liveries to accept the boater education certificate as proof that the course was successfully completed. The certificate must include the boater's first and last name, date of birth, and the date that he or she passed the course. Private entities may see an increase in business if they are allowed to accept the certificate as individuals may rent boats on the premises after successfully completing the boater education course.

C. Government Sector Impact:

According to the commission, there will be an indeterminate positive fiscal impact to the Marine Resources Conservation Trust Fund, due to increased civil penalties collected for noncriminal infractions related to boating. Revenues from these penalties are used for boating safety education purposes.

VI. Technical Deficiencies:

None.

VII. Related Issues:**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Budget Committee on April 14, 2011:

The committee substitute (CS) reduces the civil penalty for navigation rule violations that result in an accident but do not cause serious bodily injury or death for the first offense to \$250.

The CS also allows boaters who can present proof of boater safety course completion and identification to operate a motor vessel without waiting to receive the commission boating identification card in the mail.

CS by Environmental Preservation and Conservation on March 31, 2011:

The Committee Substitute (CS) removes the criminal penalties for a navigational violation that results in an accident but does not rise to the level of reckless operation from a misdemeanor of the second degree to a noncriminal infraction. The CS increases the fines for navigational violations that result in an accident but do not cause bodily injury or death up to \$500 for the first offense, up to \$750 for the second offense, and up to \$1,000 for a third or subsequent offense.

B. Amendments:

None.