

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 Environmental Preservation and Conservation Committee

BILL: SB 512

INTRODUCER: Senator Negron

SUBJECT: Vessels

DATE: March 25, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Yeatman	EP	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The bill revises provisions for navigation rule violations that result in boating accidents that do not rise to the level of reckless operation to be considered noncriminal infractions rather than second degree misdemeanors. The bill increases the civil penalties for all first time navigation rule violations from \$50 to up to a maximum of \$500. Second offenses would increase from \$50 up to a maximum of \$750 and third offenses from \$50 up to a maximum of \$1000. All navigation violations, accident or not, makes it a noncriminal infraction.

This bill amends sections 327.33, 327.73, 327.70, 327.72, and 327.731 (1) of the Florida Statutes.

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 a 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/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 (FWC or 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 s. 775.082, F.S., and s.775.083, F.S., a person may be fined up to \$500 and/or 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 mail-in 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 Chapter 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 twelve month period. Additionally, Commission rule 68D-36.106, F.A.C. (created under Legislative authority granted in s. 327.04, F.S.), requires anyone convicted of a noncriminal boating infraction that resulted in a reportable boating accident and 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; or
- damage to the vessel or any property in an aggregate amount greater than \$2000.00.

According to the FWC, from 2007-2010, 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 to be used for boating safety education purposes (see

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)

s. 327.73(8), F.S.). Also, the court assesses the costs payable to the Clerk for each noncriminal violation (see 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.

III. Effect of Proposed Changes:

Section 1 amends s. 327.33(3), F.S. and removes the criminal charge for those individuals who violate a navigation rule that results in an accident. In effect, no navigational rule violations will result in criminal charges unless the violations rise to the level of reckless operation (as defined in s. 327.33(a), F.S.). This change would remove the ability of a judge to mandate restitution to a victim resulting from a criminal act under s. 775.089, F.S. Additionally, a person whose only boating safety violation within 12 months is a navigation rule violation resulting in a non-reportable boating accident would no longer have to attend a mandatory education course.

Further, since the navigation rule violations would no longer be considered criminal infractions the State will no longer be represented in court by a prosecuting attorney during court proceedings related to a citation for a navigation rule violation that caused a boating accident. The burden of presenting the case would fall to the FWC officer that issued the citation. This would include accidents that caused serious bodily injury or death, unless the operator was operating in a reckless manner.

Section 2 amends s. 327.73(1) and (5), F.S., to increase the possible civil fine penalty for individuals who violate a navigation rule but whose violation does not result in a boating accident and to provide for increased penalties for repeat offenders. These changes may also substantially decrease the possible penalty for those individuals whose violation did result in a boating accident. The bill increases the civil penalty for navigation rule violations to an amount up to \$500 for a first offense, up to \$750 for a second offense, and up to \$1000 for a third offense. Providing a variable fine with a maximum limit, as opposed to a fixed amount, would require violators to go to a hearing for every offense in order for the hearing officer to determine the amount on each offense. The civil penalty amount as written may also be the same for those involved in an accident and those not involved in an accident. There would be no provision in statute to require those that caused an accident by violating a navigation rule to go to a hearing, unless the accident causes the death of another or causes serious bodily injury as defined in s. 327.353(1), F.S.

The pay by mail fine for those individuals whose first navigation rule violation did not cause an accident would be increased to up to \$500 for a first violation, at the judge's discretion. The same civil penalty could be assessed by the judge for violations of navigation rules that did result in a boating accident.

Section 3 amends s. 327.70(2)(a)1., F.S. This is a technical change to remove an unneeded reference to reckless or careless operation of vessel in section 327.33(3)(b), F.S.

Section 4 amends s. 327.72, F.S., to incorporate changes to s. 327.73 by reference.

Section 5 reenacts s. 327.731(1), F.S., for the purpose of incorporating the amendment to s. 327.73, F.S.

Section 6 creates 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 reduce penalties imposed on boaters who violate navigation rules resulting in boating accidents and may increase fines on boaters who violate navigation rules that do not result in an accident.

The pay by mail fine for those individuals whose violation did not cause an accident would be increased to up to \$500 for a first violation. This higher monetary fine may increase the amount of cases that go to court and must be heard by a judge and processed by a clerk.

C. Government Sector Impact:

According to the FWC, there will be a fiscal impact because all civil penalties collected for noncriminal infractions related to boating are deposited into the Marine Resources Conservation Trust Fund to be used for boating safety education purposes. The exact fiscal impact is unknown.

Counties may see a change in the amount collected in levied fines but an estimated amount is undetermined.

Law enforcement agencies that investigate boating accidents or issue uniform boating citations will be affected. These changes may increase the amount of time law

enforcement spends in court, since each challenged citation will require an officer's presence. There will no longer be a financial incentive for boaters to pay a fine rather than challenge the citation in court.

These changes may decrease the State Attorneys' workload because they will no longer have to prosecute navigation rule violations that result in boating accidents. The State Attorney does not prosecute noncriminal violations, but does prosecute second degree misdemeanors, and all navigation rule violations that do not constitute reckless operation will now be noncriminal infractions.

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.)

None.

B. Amendments:

None.