

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: CS/SB 512

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Negron

SUBJECT: Vessels

DATE: March 31, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Yeatman	EP	Fav/CS
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

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 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 \$500;
- second offense up to \$750 and;
- 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 CS 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;

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)

- 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 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 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. 327.73(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 \$500 for a first offense, up to \$750 for a second offense, and up to \$1000 for a third or subsequent offense.

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, F.S., 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 increase the penalties on boaters who violate navigation rules resulting in boating accidents, especially repeat offenders.

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.

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 by Environmental Preservation and Conservation on March 31, 2010:

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
