

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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BILL: CS/SB 1454

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Hutson

SUBJECT: Vessels

DATE: February 17, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	<b>Fav/CS</b>
2.	Harkness	Sadberry	ACJ	<b>Recommend: Favorable</b>
3.			FP	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1454 revises what constitutes careless operation of a vessel and requires the issuance of safety inspection decals by law enforcement officers to operators of vessels that have be found, during a safety inspection initiated by a law enforcement officer, to be in compliance with the safety equipment carriage and use requirements. The bill prohibits law enforcement officers from stopping a vessel solely for the purpose of inspection safety equipment carriage requirements if the vessel has a properly displayed valid safety inspection decal, unless there is reasonable suspicion that a violation of the safety equipment carriage or use requirements is occurring or has occurred.

The bill has a negative, but indeterminate, fiscal impact due to bill's requirement that the Fish and Wildlife Conservation Commission (FWC) create and administer safety inspection decals.

The bill has an effective date of July 1, 2016.

**II. Present Situation:**

**Reckless or Careless Operation of a Vessel**

A person who operates a vessel in willful or wanton disregard for the safety of persons or property at a speed or in a manner as to endanger, or likely to endanger, life or limb, or damage

the property of, or injure any person is guilty of reckless operation of a vessel.<sup>1</sup> The penalty for committing reckless operation of a vessel is a misdemeanor of the first degree, which is punishable by maximum imprisonment of one year or a maximum fine of \$1,000.<sup>2</sup>

A person who fails to operate a vessel in a reasonable and prudent manner, having regard for other waterborne traffic, posted speed and wake restrictions, and all other attendant circumstances so as not to endanger the life, limb, or property of any person is guilty of careless operation of a vessel. Careless operation of a vessel is a noncriminal violation, which is punishable by a civil penalty of \$50.<sup>3</sup>

### **Inspections, Enforcement, and Safety Decals**

The U.S. Constitution protects people from unreasonable searches and seizures by the government.<sup>4</sup> The Fourth Amendment provides that “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated....”<sup>5</sup> The extent to which an individual is protected by the Fourth Amendment depends on the location of the search or seizure. None of the similar safeguards that are applicable to stops of motor vehicles on less than a probable cause are necessary predicates to stop a vessel.<sup>6</sup>

Under Florida law, officers are authorized to cause any inspections to be made of all vessels in accordance with the Florida Vessel Safety Law, as well as the vessel titling, certificate, and registration requirements.<sup>7</sup> Additionally, the Fish and Wildlife Conservation Commission (FWC) or any other law enforcement agency is authorized to make any investigation necessary to secure information required to carry out and enforce the Florida Vessel Safety Law, as well as the vessel titling, certificate, and registration requirements.<sup>8</sup>

The following items are examples of what an officer may check for as part of safety inspection:

- Visible distress signals.
- Fire extinguishers.
- Navigation lights.
- Personal floatation devices
- Sound-producing devices.<sup>9</sup>

An officer is prohibited from boarding a vessel to make a safety inspection if the owner or operator is not aboard.<sup>10</sup> If the owner or operator is aboard, an officer is authorized to board a vessel with the consent or when the officer has probable cause or knowledge to believe that a

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<sup>1</sup> Section 327.33(1), F.S.

<sup>2</sup> Section 327.33(1), F.S.

<sup>3</sup> Sections 327.33(2) and 327.73(1)(h), F.S.

<sup>4</sup> U.S. CONST. amend. IV.

<sup>5</sup> *Id.*

<sup>6</sup> U.S. Government Publishing Office, *Amendment 4-Searches and Seizures*, pg. 1423 (Oct. 5, 2014) available at <https://www.congress.gov/content/conan/pdf/GPO-CONAN-REV-2014-10-5.pdf>.

<sup>7</sup> Section 327.70(1), F.S.

<sup>8</sup> Section 327.70(4), F.S.; s. 328.18, F.S.

<sup>9</sup> FWC, *Boating Regulations, Equipment and Lighting Requirements*, <http://myfwc.com/boating/regulations/#nogo> (last visited Feb. 10, 2016).

<sup>10</sup> Section 327.56, F.S.

violation of the Florida Vessel Safety Law is occurring.<sup>11</sup> An officer may board a vessel if the operator refuses or is unable to display the safety equipment required by law, if requested to do so by an officer, or when the safety equipment to be inspected is permanently installed and is not visible for inspection unless the officer boards the vessel.<sup>12</sup>

The Florida Vessel Safety Law, as well as the vessel titling, certificate, and registration requirements are required to be enforced by the following entities or officers:

- The Division of Law Enforcement of the FWC and its officers;
- The sheriffs of the various counties and their deputies;
- The municipal police officers; and
- Any other law enforcement officer described in s. 943.10, F.S.<sup>13</sup>

The United States Coast Guard offers Vessel Safety Checks (VSC) free of charge.<sup>14</sup> Boats that pass the examination are awarded a distinctive VSC Decal that alerts the Coast Guard, Harbor Patrol, and other law enforcement agencies that the boat was found to be in full compliance with all Federal and State boating laws for that year.<sup>15</sup> The decal is to be immediately affixed to a portion of the boat where it is readily visible to law enforcement authorities.<sup>16</sup>

**2014 Uniform Boating Citation Summary**

Citation	FWC	Other
<p><b><u>Negligent Operation of a Vessel</u></b></p> <ul style="list-style-type: none"> <li>• Reckless operation of a vessel</li> <li>• Careless operation of a vessel</li> <li>• Navigation rule violation resulting in an accident</li> <li>• Navigation rule violation not resulting in an accident</li> <li>• Failure to report an accident</li> </ul>	802	468
<p><b><u>Registration and Numbering</u></b></p> <ul style="list-style-type: none"> <li>• Operation of unregistered/unnumbered vessels</li> <li>• Application, certificate, number or decal violation</li> <li>• Special manufacturer and dealer numbers</li> <li>• Violation relating to vessel titling</li> <li>• Violation relating to Hull Identification Numbers</li> </ul>	1,052	416
<p><b><u>Safety Equipment and Regulations</u></b></p> <ul style="list-style-type: none"> <li>• Equipment and lighting requirements</li> </ul>	3,416	525

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Section 327.70, F.S.; s. 943.10, F.S., defines the term “law enforcement officer” as “any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state...”

<sup>14</sup> U.S. Coast Guard Auxiliary, *Vessel Safety Check Website*, <http://wow.uscgaux.info/content.php?unit=V-DEPT&category=welcome> (last visited Feb. 9, 2016).

<sup>15</sup> U.S. Coast Guard, *Vessel Safety Check Manual*, pg. 2-4, 2-5 (Oct. 2014) available at [http://vdept.cgau.org/pdf-files/CIM\\_16796\\_8A\\_Printable\\_Version.pdf](http://vdept.cgau.org/pdf-files/CIM_16796_8A_Printable_Version.pdf).

<sup>16</sup> *Id.*

### III. Effect of Proposed Changes:

**Section 1** amends s. 327.33, F.S., to revise what constitutes careless operation of a vessel to only apply if a person is operating a vessel in an unreasonable or imprudent manner so as to endanger the life, limb, or property of another person outside of the vessel or endanger the life, limb, or property of any person due to vessel overloading or excessive speed.

**Section 2** amends s. 327.70, F.S., to:

- Require a law enforcement officer to issue a safety inspection decal to the operator of a vessel upon demonstrated compliance with safety equipment carriage and use requirements during a safety inspection initiated by the law enforcement officer.
- Provide that a safety inspection decal signifies that the vessel is deemed to have met the safety equipment carriage and use requirements as provided in chapter 327, F.S., at the time and location of the inspection.
- Provide the following display requirements for a safety inspection decal, if displayed:
  - Must be located within six inches of the vessel's properly displayed vessel registration decal; or
  - For non-motorized vessels which are not required to be registered, must be located on the forward half of the port side of the vessel above the waterline.
- Prohibit law enforcement officers from stopping a vessel solely for the purpose of inspecting safety equipment carriage and use requirements if the vessel has a properly displayed valid safety inspection decal, created or approved by the Division of Law Enforcement of the Fish and Wildlife Conservation Commission, except when there is a reasonable suspicion that a violation of the safety equipment carriage or use requirements is occurring or has occurred.
- Clarify that the intent of the subsection is not to restrict vessel stops for any other unlawful purpose.

The bill is effective July 1, 2016.

### 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:**

None.

**C. Government Sector Impact:**

CS/SB 1454 requires the Fish and Wildlife Conservation Commission to create and administer safety inspection decals. The cost of creating such decals is unknown at this time.

**VI. Technical Deficiencies:**

The bill clarifies that the intent is not to restrict vessel stops for any other “unlawful purpose.” This should be amended to say “lawful purpose.”

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 327.33 and 327.70.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

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

**CS by Environmental Preservation and Conservation on February 9, 2016:**

The CS removes the revision as to what constitutes the reckless operation of a vessel and reinstates the authority of law enforcement officers to inspect vessels in accordance with chapters 327 and 327, F.S., and cause any investigation necessary to secure information required to carry out and enforce the provisions of chapters 327 and 328, F.S.

The CS requires a law enforcement officer, upon demonstrated compliance with safety equipment carriage and use requirements during a safety inspection initiated by a law enforcement officer, to issue a safety inspection decal to the operator of such vessel. The CS provides display requirements for the safety inspection decal, if displayed. The CS prohibits law enforcement officers from stopping a vessel solely for the purpose of inspecting safety equipment carriage requirements if the vessel has a properly displayed valid safety inspection decal, except when there is a reasonable suspicion that a violation of the safety equipment carriage or use requirements is occurring or has occurred.

**B. Amendments:**

None.