

# SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

**BILL NO.** House Bill 1185

**PRINTER NO.** 3862

**AMOUNT**

See Fiscal Impact

**FUND**

Fish Fund  
Boat Fund

**DATE INTRODUCED**

April 10, 2019

**PRIME SPONSOR**

Representative Mentzer

**DESCRIPTION**

House Bill 1185 amends Title 30 (Fish and Boat Code) to increase and/or clarify penalties relating to damage to the Pennsylvania Fish and Boat Commission (commission) property; littering; boating education; boating under the influence; and aggravated assault by watercraft.

Damage to Property:

House Bill 1185 amends Section 703 (relating to damage to property) by adding a new subsection (b) requiring that an individual who intentionally or recklessly destroys or causes damage to the commission property, shall upon conviction make restitution in addition to paying the penalty currently provided for in statute. The restitution is to be based on the total cost to repair or replace the destroyed or damaged property.

Littering:

House Bill 1185 also amends Section 2503 (relating to littering) to require an individual who is convicted or acknowledges guilt of a violation of littering to be liable to pay, upon demand of the person having legal control of the land or water, a sum equal to the cost of disposal of the discarded item, in addition to paying the penalty currently provided for in statute.

Boating Education:

Section 5103 (relating to boating education) is amended to provide that an individual who is required to complete mandatory boater education and operates a motorboat on Commonwealth waters:

- without first obtaining a certificate of boating safety education commits a summary offense of the second degree (fine of \$150 or imprisonment not exceeding 20 days); and
- without having a valid certificate of boating safety education in the person's possession commits a summary offense of the fourth degree (fine of \$25).

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If an individual operates a motorboat without a certificate of boating safety education in their possession and claims to have obtained a certificate, the waterways conservation officer or other law enforcement officer must give the operator seven days to produce the original certificate.

### Boating Under the Influence:

Section 5502 (relating to operating watercraft under influence of alcohol or a controlled substance) is amended to provide that Accelerated Rehabilitative Disposition (ARD) may not be brought as a charge option if:

- the defendant has been found guilty or accepted ARD for either Boating Under the Influence (BUI) under Title 30 or Driving Under the Influence (DUI) under Title 75 (Vehicle Code) within the last 10 years, unless the charge was an ungraded misdemeanor under Title 75; and
- there was a passenger under 14 years of age in the watercraft the defendant was operating.

Section 5502, subsection (c) (relating to grading) is also amended to provide that an individual who operates a watercraft under the influence with a minor passenger under the age of 18 commits a misdemeanor of the first degree (fine of \$1,500 to \$10,000, or imprisonment not exceeding five years, or both). Subsection (c) (1) (relating to penalties) is also amended to provide that such action will result in an additional penalty of a fine of no less than \$1,000 and completion of 100 hours of community service for a first offense; a fine of not less than \$2,500 and imprisonment of one to six months for a second offense; and imprisonment of six months to two years for a third or subsequent offense.

### Aggravated Assault by Watercraft:

Additionally, language is added in a new section, Section 5502.4 (relating to aggravated assault by watercraft) to provide that an individual who recklessly or with gross negligence causes serious bodily injury to another person while engaged in a violation of the title or regulations promulgated under the title applying to the operation or equipment of boats or watercraft, except operating watercraft under the influence, commits aggravated assault by watercraft, a felony of the third degree (a fine of \$2,500 to \$15,000, or imprisonment not exceeding seven years, or both), when the violation is the cause of the injury.

House Bill 1185 also makes technical wording changes, updates terminology and removes outdated language.

This legislation will take effect in 60 days.

### **FISCAL IMPACT:**

According to the commission, each year the commission spends approximately \$10,000 in lost time and materials repairing damage to the commission's property. This estimate does not include the time attributed to the commission's Bureau of Law Enforcement investigation. As a result of the change requiring individuals who intentionally damage commission property to pay for those damages, the commission may realize reduced costs.

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The amendment to 30 PA.C.S. § 2503 (relating to littering) provides for reimbursement for the cost of disposal of illegally discarded items and will have a minimal effect on commission spending.

### Boating Education:

According to its 2019 annual report, the Pennsylvania Fish and Boat Commission issued boating safety education certificates to 987 students from October 1, 2018, through September 30, 2019. Additionally, there were 4,086 citations issued for various violations, of which 1,630 were for boating-related safety violations. Assuming that 25 additional citations are issued to individuals for operating a motorboat without having a valid certificate of boating safety education in the person's possession and failing to provide proof of having such certification within seven days of when the violation occurs, an additional \$625 will be deposited into the Boat Fund.

### Boating Under the Influence:

According to the latest data available from the Pennsylvania Commission on Sentencing, there were 21 convictions of 30 PA.C.S. § 5502 (relating to operating watercraft under influence of alcohol or a controlled substance) in 2018. Seven of the convictions resulted in a minimum county jail sentence, seven resulted in a sentence of County Intermediate Punishment (CIP) and seven resulted in six months of county probation. No data is available to determine if any of the 21 offenses involved a minor passenger.

This offense is graded as a misdemeanor of the first degree, which is punishable by a term of imprisonment, the maximum of which is not more than five years and a fine not exceeding \$10,000. Using a marginal cost per day of \$18.34, costs for the State Correctional Institutions could increase by approximately \$6,700 annually for each conviction. Assuming seven convictions result in a sentence of imprisonment in a State Correctional Institution, the Department of Corrections would incur annual costs of approximately \$47,000.

### Aggravated Assault by Watercraft:

This offense is graded as a felony of the third degree, which is punishable by a term of imprisonment, the maximum of which is not more than seven years and a fine of \$15,000. Using a marginal cost per day of \$18.34, costs for the State Correctional Institutions could increase by approximately \$6,700 annually for each conviction.

According to the Administrative Office of Pennsylvania Courts (AOPC), enactment of this legislation will have no fiscal impact on the Judiciary.