

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: July 8, 2009  
POSITION: Neutral

BILL NUMBER: SB 154  
AUTHOR: J. Benoit

**BILL SUMMARY: Vessels: Operation of Vessel**

This bill would make several changes to boating under the influence provisions to conform the treatment and license suspension requirements to those of driving under the influence.

**FISCAL SUMMARY**

The Department of Motor Vehicles estimates one-time programming costs to implement the bill would be \$270,000.

**COMMENTS**

Finance is neutral because this bill would make penalties for boating under the influence (BUI) more consistent with penalties for driving under the influence (DUI), thereby providing a discentive for BUI with the intent of promoting public safety on waterways.

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Analyst/Principal (0744) J. Gregg	Date	Program Budget Manager Mark Hill	Date
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Department Deputy Director	Date
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Governor's Office:	By:	Date:	Position Approved _____ Position Disapproved _____
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**BILL ANALYSIS** Form DF-43 (Rev 03/95 Buff)

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**ANALYSIS**

## A. Programmatic Analysis

**Existing Law:**

- Provides that a person who is convicted of a first DUI offense is subject to the following penalties when given probation: a possible 48 hours to six months in jail; \$390 to \$1,000 fine plus 250% penalty assessments; completion of a three-month treatment program or a nine-month program if the blood alcohol content was 0.20% or more; six-month license suspension, or 10-month suspension if a nine-month program is ordered; and restricted license may be sought upon proof of enrollment or completion of program, proof of financial responsibility, and payment of fees. However, the court may disallow the restricted license.
- States that a person convicted of a first violation of BUI shall be punished by a fine of not more than \$1,000 or imprisonment in the county jail for not more than six months, or by both that fine and imprisonment. If probation is granted, the court, as a condition of probation, may require the person to participate in and successfully complete a licensed drinking driver treatment program.
- States that no person shall operate any vessel or manipulate water skis, an aquaplane, or a similar device while under the influence of an alcoholic beverage and any drug.
- Provides that no person shall operate any recreational vessel or manipulate any water skis, aquaplane, or similar device if the person has an alcohol concentration of 0.08% or more in his or her blood.
- Provides that a person convicted of a second or subsequent violation of BUI or DUI shall be punished by a fine of not more than \$1,000 or imprisonment in the county jail for not more than one year or by both that fine and imprisonment. If probation is granted, the court may require a person to do either of the following, if available in the county of the person's residence or employment: an 18-month or 30-month alcohol and drug treatment program.
- Provides that a person convicted of BUI and causing great bodily injury is guilty of an alternate felony/misdemeanor with a fine of \$250 to \$5,000. If probation is granted, the court, as a condition of probation, may require a person to participate in and successfully complete a licensed drinking-driver treatment program.

**This bill would:**

- Include BUI with a prior BUI- or DUI-related offense within seven years to the list of convictions that may result in the suspension of driving privileges.
- Require that courts impose, as a condition of probation, a requirement that the person participate in, and successfully complete, a licensed alcohol or drug recovery services program under specified conditions.
- Conform the treatment program requirements for BUI to those required in DUI cases, as specified.
- Add vehicular manslaughter committed during the operation of a vessel to the list of prior offenses that trigger enhanced penalties for subsequent convictions of BUI.

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**Discussion:** The author's office notes, "According to the California Department of Boating and Waterways, 25% of all deaths on California waterways are attributed to boat operators who were under the influence of alcohol.

"Since the mid-1990s, the Department of Motor Vehicles (DMV) operated under the assumption that they had the statutory authority needed to suspend the drivers licenses of individuals who had been boating under the influence."

However, when a plaintiff sought an injunction questioning the DMV's authority to suspend the driving privilege of a person convicted of a BUI, the court granted the injunction believing that the plaintiff would prevail because DMV lacked the authority to suspend or revoke the driving privilege of a person convicted of a BUI. On appeal, the court upheld the injunction and found that state law does not authorize DMV to automatically suspend the driver's license of an individual convicted of BUI. The court noted, "[T]he answer is to introduce legislation such as that drafted by the DMV in 2004, which would plainly give the DMV the authority to suspend driver's licenses for individuals convicted of BUI." [Cinquegrani v. DMV (2004) 163 Cal. App. 4th 741, 850.]

This bill amends Vehicle Code Section 13352 to provided that a violation of a BUI with a specified DUI or BUI prior within seven years shall result in the immediate suspension or revocation of the person's driving privilege. In Cinquegrani, the DMV argued that the license suspension for a BUI was appropriate because a person who is likely to be BUI is also likely to drive under the influence. The court noted that the plaintiffs in that case both had histories of DUI convictions.

#### B. Fiscal Analysis

The Department of Motor Vehicles estimates one-time programming costs to implement the bill would be \$270,000.

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)							Fund Code
		LA	PROP			2009-2010		2010-2011	
	CO	98	FC	FC	FC	FC	FC	FC	
2740/DMV	SO	No	C	\$270			--	--	0044
<u>Fund Code</u>	<u>Title</u>								
0044	Motor Vehicle Account, STF								