# Local Mandate Fiscal Impact Estimate Kentucky Legislative Research Commission 2015 Regular Session

#### **Part I: Measure Information**

Bill Request #: 1300 R1
Bill #: HB 291
Bill Subject/Title: AN ACT relating to boating under the influence
Sponsor: Representative Jeff Hoover
Unit of Government: X City X County X Urban-County Unified Local
X Charter County X Consolidated Local X Government
Office(s) Impacted: local law enforcement
Requirement: X Mandatory Optional
Effect on Powers & Duties: X Modifies Existing Adds New Eliminates Existing

### Part II: Purpose and Mechanics

The purpose of HB 291 is to treat boating under the influence of drugs or alcohol (BUI) the same as driving a car under the influence of drugs or alcohol (DUI) for purposes of fines and jail time.

Currently, KRS 235.240 prohibits operating a motorboat or vessel negligently (KRS 235.240 (1)), or while under the influence of alcohol or drugs (KRS 235.240(2)). KRS 235.990(2) establishes the specific, tiered penalties for violating KRS 235.240, which are not broken out separately for violations of subsections (1) and (2). The penalties are broken out for first, second and third offenses of either subsection, and are enhanced for second and third offenses, including fines and/or jail time of "not less than" 30 days for a third or subsequent offense of negligent operation of a boat *or* operating a boat under the influence. Refusal to submit to a blood or breath alcohol analysis is an offense. Under current law there is no time limit on the "look back" period for prior offenses to enhance penalties for subsequent offenses.

HB 291 would amend KRS 235.990(2) and break it into two subsections. Subsection (2)(a) would impose tiered penalties for negligent operation of a motor vessel and would limit potential jail time for a third or subsequent conviction for negligent operation to

"not more than" 30 days and/or a fine. Subsection (2)(b) would impose separate, tiered penalties for operation while under the influence of alcohol or drugs. The fines for this offense and potential jail time would be greater than under current law and would, in fact, be the same as those imposed under KRS 189A.010 for DUI. The first conviction of BUI could result in 48 hours up to a maximum of 30 days in jail, plus a fine. A second conviction would mandate seven days to six months in the county jail. Conviction of a third offense would result in a mandatory minimum of 30 days and maximum 12 months in jail. A person convicted of a second or subsequent offense may also be sentenced to community labor for ten days up to a maximum of 12 months. The bill would classify a fourth or subsequent conviction for operating under the influence a Class D felony.

HB 291 would limit the look back period for prior offenses to five years. This means that each prior offense would "fall off" and not be considered for purposes of enhancing penalties for subsequent offenses after five years.

#### Part III: Fiscal Explanation, Bill Provisions, and Estimated Cost

## The fiscal impact of HB 291 is expected to be minimal.

According to law enforcement the incidence of repeat violations of KRS 235.240 for boating under the influence is low and, therefore, the impact of HB 291 would be expected to be minimal.

Under current law there is no potential jail time for a first or second offense BUI. HB 291 would allow the possibility of jail time for a first offense and mandatory jail time for a second or subsequent offense. Therefore there is some possibility of increased incarcerations under the bill. Local governments are responsible for the incarceration costs of persons convicted of a misdemeanor and those charged with a misdemeanor who does not post bail. A person convicted of a Class B misdemeanor may be incarcerated for up to 90 days. A person convicted of a Class A misdemeanor may be incarcerated for up to one year. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an estimated average of \$31.34 per day.

When a court denies bail to a Class D felony defendant, the local government is responsible for incarcerating the defendant until disposition of the case. Again, while the expense of housing inmates varies by jail, each additional inmate increases facility costs by an estimated average of \$31.34 per day. Upon sentencing, a Class D felon is housed in one of Kentucky's full service jails for the duration of his or her sentence. The Department of Corrections pays a jail \$31.34 per day to house a Class D felon. Since the per diem pays for the estimated average cost of housing a Class D felon, the per diem may be less than, equal to, or greater than the actual housing cost.

 Data Source(s):
 Louisville Metro Police Department and Code Enforcement, LRC staff

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