

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 347 Commercial and Recreational Water Activities

**SPONSOR(S):** Regulatory Affairs Committee; Clarke-Reed and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 320

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	12 Y, 0 N	Butler	Luczynski
2) Agriculture & Natural Resources Appropriations Subcommittee	12 Y, 0 N	Massengale	Massengale
3) Regulatory Affairs Committee	17 Y, 0 N, As CS	Butler	Hamon

### SUMMARY ANALYSIS

According to the Florida Fish and Wildlife Conservation Commission (FWC), there have been 21 accidents involving parasailing, resulting in 23 injuries and 6 fatalities in the last 13 years. The primary causes of these accidents include high winds, wind gusts, equipment failure, and operator error.

The bill establishes minimum liability insurance requirements for owners or operators of commercial parasailing, requires each operator to use all available means to determine and record the weather conditions before embarking, and forbids commercial parasailing during severe weather conditions. The bill also requires United States Coast Guard licensure for each operator of a commercial parasailing vessel.

The bill provides for a criminal penalty for violations of the new commercial parasailing provisions.

The bill defines "parasailing," "kite boarding," "kite surfing," "moored ballooning," and "sustained wind speed."

The bill provides operational limitations for parasailing, kite boarding, kite surfing, and moored ballooning near airports and prohibits operation of a moored balloon within 100 feet of the marked channel of the Florida Intracoastal Waterway.

The bill may have a small fiscal impact on FWC, which should be absorbed by existing resources. The bill is not anticipated to have a fiscal impact on local government. The fiscal impact on the private sector is indeterminate as the bill requires commercial parasailing operators to have liability insurance and certain communications and weather monitoring equipment that they may or may not already have in place.

The bill has an effective date of October 1, 2014.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

Parasailing is a commercial and recreational activity where one or more persons are towed behind a boat while suspended under a canopy, chute, or parasail above the water. Kite boarding, also known as kite surfing, is a recreational and competitive water-based activity where a rider harnesses the power of the wind with a large controllable kite to be propelled across the water on a kiteboard similar to a wakeboard or a small surfboard. Moored ballooning is an activity where passengers are raised into the sky by a balloon, often filled with hot air, that is restrained by a cable attached to the ground, which is raised and lowered by use of a winch.

In Florida, commercial parasailing is generally conducted along the Atlantic Ocean and Gulf of Mexico coastlines, with one known exception at Walt Disney World where parasailing takes place on Bay Lake in Orange County.

There are over 200 commercial parasailing operators currently operating in the United States, over half operating in Florida.<sup>1</sup> Approximately 3.8 million people participate in the parasailing industry each year.<sup>2</sup>

Currently, the Florida Fish and Wildlife Conservation Commission (FWC) is charged with investigating parasailing accidents and cooperates with the United States Coast Guard and local law enforcement investigations. Data compiled by FWC indicates that:<sup>3</sup>

- From January 1, 2001, through October 30, 2013, 21 accidents involving parasail vessels have occurred in Florida, resulting in 23 injuries and 6 fatalities;
- High winds or sudden wind gusts were a contributing factor in 10 of the 21 accidents;
- Equipment failure due to the wind occurred in 6 of the 10 accidents where wind gusts were a contributing factor;
- Sudden thunderstorms caused many of the wind gusts that contributed to these accidents;
- Several factors, including equipment failure and operator error, were the cause of 11 of the 21 accidents; and,
- Equipment failure was a contributing factor in one fatality in 2012.<sup>4</sup>

The Parasail Safety Council, a trade association of parasailing companies, estimates approximately 73 fatalities and approximately 1,700 other injuries have occurred over the span of 30 years and approximately 130 million parasailing ventures throughout the United States.<sup>5</sup>

In Florida, the most recent incident occurred on July 1, 2013, and resulted in critical injuries to two teenage girls who were parasailing off Panama City Beach.<sup>6</sup> Weather conditions caused the vessel to

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<sup>1</sup> See Parasail Safety Council Website, <http://www.parasail.org/> (last visited Jan. 15, 2014) (estimating 138 Florida parasailing operators); Parasail Safety Council, *Why are some Parasailing Accidents Fatal?*, <http://www.parasail.org/accident-statistics.html> (last visited Jan. 15, 2014) (estimating over 200 parasailing operators nationwide); see also Florida Fish and Wildlife Conservation Commission, Agency Legislative Analysis for SB 320: Commercial Parasailing (Dec. 4, 2013) (on file with the Business & Professional Regulation Subcommittee) (estimating over 100 parasailing operators in Florida).

<sup>2</sup> Parasail Safety Council, *Why are some Parasailing Accidents Fatal?*, <http://www.parasail.org/accident-statistics.html> (last visited Jan. 15, 2014).

<sup>3</sup> Florida Fish and Wildlife Conservation Commission, Agency Legislative Analysis for SB 320: Commercial Parasailing.

<sup>4</sup> Rafael Olmeda, *Lawsuit filed in Pompano Beach parasailing death* (June 12, 2013) available at [http://articles.sun-sentinel.com/2013-06-12/news/fl-parasailing-death-lawsuit-20130612\\_1\\_stephen-miskell-negligence-lawsuit-sands-harbor-resort](http://articles.sun-sentinel.com/2013-06-12/news/fl-parasailing-death-lawsuit-20130612_1_stephen-miskell-negligence-lawsuit-sands-harbor-resort).

<sup>5</sup> Parasail Safety Council, *Parasailing Accident Data (1982-2012)*, <http://www.parasail.org/accident-statistics.html> (last visited Jan. 15, 2014).

<sup>6</sup> United States Coast Guard, UPDATE: Coast Guard investigates parasail accident near the Commodore Condominiums in Panama City Beach (July 18, 2013), available at <http://www.uscgnews.com/go/doc/4007/1855061/UPDATE-Coast-Guard-investigates-parasail-accident-near-the-Commodore-Condominiums-in-Panama-City-Beach> (last visited Jan. 15, 2014).

lose connection to and control of the parasail, resulting in the parasail drifting out of control toward shore and hitting a building, power line, and several parked cars.<sup>7</sup>

### Current Florida Regulations on Commercial and Recreational Water Activities

Florida does not directly regulate kite boarding, kite surfing, or moored ballooning, and has few substantive regulations on parasailing.

Section 327.37, F.S., regulates parasailing to the degree that it regulates all vessels that tow persons on water skis, parasails, and aquaplanes. The requirements of s. 327.37, F.S., include:

- A person may not operate a vessel towing a person unless there is another person, in addition to the operator, in position to observe the person being towed;<sup>8</sup>
- Parasailing may not be conducted one-half hour before sunrise or one-half hour after sunset;<sup>9</sup>
- United States Coast Guard approved non-inflatable personal flotation devices must be worn by all persons engaged in parasailing;<sup>10</sup> and,
- A person may not operate a vessel towing a parasail or engage in parasailing within 100 feet of the marked channel of the Florida Intracoastal Waterway.<sup>11</sup>

A violation of s. 327.37, F.S., is a noncriminal infraction and provides for a civil penalty of \$50 that may be imposed in county court.

### Current Federal Regulations on Commercial and Recreational Water Activities

Parasails and the kites used for kite boarding and kite surfing, impact the National Airspace System and meet the legal definition of any “kite” that weighs more than five pounds and is intended to be flown at the end of a rope or cable.<sup>12</sup> The Federal Aviation Administration (FAA) regulates kites to maintain a safe atmosphere for the flying public.<sup>13</sup> The FAA regulations for kites are generally applied to moored balloons.

Specifically, the FAA regulation on “kites” and “moored balloons” states:

Except as provided . . . no person may operate a moored balloon or kite:

- (1) Less than 500 feet from the base of any cloud;
- (2) More than 500 feet above the surface of the earth;
- (3) From an area where the ground visibility is less than three miles; or
- (4) Within five miles of the boundary of any airport.<sup>14</sup>

Further, each parasail, kite, or moored balloon must have colored pennants or streamers every 50 feet that are visible for one mile, starting at 150 feet above the earth’s surface.<sup>15</sup> Operating at night is disallowed under the FAA regulations unless the entire mooring line is lit to give visual warning for air navigation; however, night operation is prohibited by Florida regulation except during the half hour directly after sunset and the half hour directly before sunrise.<sup>16</sup>

### **Effect of the Bill**

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<sup>7</sup> Dennis Pillion, *Second girl injured in Panama City Beach parasailing accident released from Indiana hospital*, AL.com, [http://blog.al.com/gulf-coast/2013/08/second\\_girl\\_injured\\_in\\_parasail.html](http://blog.al.com/gulf-coast/2013/08/second_girl_injured_in_parasail.html) (last visited Jan. 15, 2014).

<sup>8</sup> Section 327.37(1)(b), F.S.

<sup>9</sup> Section 327.37(2)(a), F.S.

<sup>10</sup> Section 327.37(2)(b), F.S.

<sup>11</sup> Section 327.37(5), F.S.

<sup>12</sup> 14 C.F.R. §101.1 (2013).

<sup>13</sup> Federal Aviation Administration, *Parasail Operations Regulated by the FAA*, Air Traffic Bulletin 2012-2, (April 2012), [http://www.faa.gov/air\\_traffic/publications/media/ATB2012-2.pdf](http://www.faa.gov/air_traffic/publications/media/ATB2012-2.pdf) (last visited Jan. 23, 2014).

<sup>14</sup> 14 C.F.R. §101.13 (2013).

<sup>15</sup> 14 C.F.R. §101.17 (2013).

<sup>16</sup> 14 C.F.R. §101.17 (2013); see also Section 327.37(2)(a), F.S. (It should be noted that kiteboarding, kite surfing, or moored ballooning is not explicitly prohibited at night like parasail operation is; however, it is likely that these activities are covered by the general inclusion of “similar activities” in this section).

The act may be cited as the “White-Miskell Act.” The act is named for two women who died from parasailing accidents in Pompano Beach. Amber White, 15, died in 2007 after windy conditions caused the line connecting the parasail she and her sister were riding to break free of its vessel and they collided with a hotel roof. Kathleen Miskell, 28, died in 2012 after a harness malfunction caused her to drop 200 feet into the water where she drowned.

### Definitions

The bill defines “commercial parasailing” as:

[P]roviding or offering to provide, for consideration, any activity involving the towing of a person by a motorboat if:

- (a) One or more persons are tethered to the towing vessel;
- (b) The person or persons ascend above the water; and
- (c) The person or persons remain suspended under a canopy, chute, or parasail above the water while the vessel is underway.

The bill specifically excludes ultralight glider towing as defined in 14 C.F.R. § 103 in its definition of commercial parasailing.

The bill defines “kite boarding” or “kite surfing” as:

[A]n activity which a kite board or surf board is tethered to a kite so as to harness the power of the wind and propel the board across a body of water. For purposes of this subsection, “kite” has the same meaning as pursuant to 14 C.F.R. part 101.

The bill defines “moored ballooning” as “the operation of a moored balloon pursuant to 14 C.F.R. part 101.”

The bill defines “sustained wind speed” as:

[W]ind speed determined by averaging the observed wind speed rounded up to the nearest mile per hour over a 2-minute period.

### Insurance Requirements

The bill requires that an owner or operator cannot engage in commercial parasailing unless the owner or operator first obtains and maintains liability insurance providing bodily liability coverage from an insurance carrier licensed in Florida, or approved by the Florida Office of Insurance Regulation, or an eligible surplus lines insurer. This liability insurance must provide bodily injury coverage amounts of at least \$1 million per occurrence and \$2 million annual aggregate.

Proof of insurance in compliance with the mandates for this bill must be available for inspection at the location where commercial parasailing is offered or provided for consideration. This proof of insurance must be available for each customer and FWC to inspect upon request.

### Equipment Requirements

The bill requires that a commercial parasailing vessel must have both a functional VHF marine transceiver and a separate device capable of accessing the National Weather Service forecasts and current weather conditions.

The bill requires that the operator of a commercial parasailing vessel maintain a weather log. The operator must record all prevailing and forecasted weather conditions, and must use all available means to determine these conditions. The log must be used each time passengers are to be taken out on the water. The weather log must be available for inspection at all times at the operator’s place of business.

## Operational Requirements

The bill includes the following operational requirements:

- A current and valid license issued by the United States Coast Guard to the person operating the parasailing vessel which is appropriate for the number of passengers and the size of the vessel.
- Commercial parasailing is prohibited when the weather conditions include:
  - Sustained wind speeds over 20 mph;
  - Wind gusts 15 mph higher than sustained wind speeds;
  - Wind speeds during gusts exceed 25 mph;
  - Rain or heavy fog results in visibility of less than 0.5 miles; or
  - A known lightning storm comes within 7 miles of the parasailing area.

Further, a person may not operate a vessel towing a parasail, engage in parasailing, or moored ballooning within 2 miles of the boundary of any airport unless otherwise permitted under Federal Law.

The bill prohibits moored ballooning within 100 feet of a marked channel of the Florida Intracoastal Waterway, including it in the current restrictions on parasailing.

A person may not engage in kite boarding or kite surfing within an area which extends 1 mile in a direct line along the centerline of an airport runway, and which has a width measuring one-half mile unless otherwise permitted under Federal Law.

## Penalties

The bill provides that a violation of the commercial parasailing provisions in the bill is a second degree misdemeanor, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. Misdemeanors of the second degree are punishable by up to 60 days in jail and/or a fine of up to \$500, at the discretion of the Court.<sup>17</sup>

According to industry representatives, it is standard practice to have parasailing participants sign an assumption of risk, release of liability and indemnification agreement (waiver). Florida courts generally enforce such waiver agreements when they are unambiguous; however, Florida courts have held that such waivers may not serve as a release of liability in cases of *negligence per se*, that is, when the injury arises from a violation of a statute designed to protect the well-being of the person signing the waiver.<sup>18</sup>

Thus, injuries sustained due to violation by a person or operator of those statutory provisions in the bill designed to safeguard participants potentially could result in liability even where the participant signed a waiver agreement.

Current law provides noncriminal penalties for deviating from certain parasailing operational guidelines. The bill provides new operational guidelines, including prohibiting operation near airports for parasailing, kite boarding, kite surfing, and moored ballooning and for operating a moored balloon within 100 feet of a channel of the Florida Intracoastal Waterway. Generally, a violation of the operational limitations in the bill will be a noncriminal violation.<sup>19</sup>

## B. SECTION DIRECTORY:

**Section 1** provides that the title for the act is the “White-Miskall Act.”

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<sup>17</sup> Sections 775.082 and 775.083, F.S.

<sup>18</sup> See generally *deJesus v. Seaboard Coast Line R. Co.*, 281 So.2d 198, 201 (Fla. 1973) (stating “negligence per se is a violation of any other statute which establishes a duty to take precautions to protect a particular class of persons from a particular injury or type of injury”); *Torres v. Offshore Prof'l Tour, Inc.*, 629 So.2d 192, 194 (Fla. 3rd DCA 1993) (stating “[t]he enforcement of a release or waiver immunizing a [party] from liability for breach of a positive statutory duty designed to protect the well-being of the person executing the release, . . . would be contrary to public policy”) [internal citations omitted].

<sup>19</sup> Section 327.73(1)(i), F.S.

**Section 2** amends s. 327.02, F.S., to define “commercial parasailing” “kiteboarding,” “kite surfing,” “moored ballooning,” and “sustained wind speed.”

**Section 3** amends s. 327.37, F.S., to include moored ballooning in the prohibitions on parasailing within 100 feet of a marked channel of the Florida Intracoastal Waterway, and to provide operational prohibitions for parasailing, kite boarding, kite surfing, and moored ballooning near airports.

**Section 4** creates s. 327.375, F.S., relating to parasailing; provides an insurance mandate for the owner or operator of a commercial parasailing operation; requires a current and valid United States Coast Guard license for an operator; requires a VHF marine transceiver and weather radio; prohibits parasailing in certain wind conditions; requires maintenance of a weather log by the operator; and, provides for criminal penalties for noncompliance.

**Sections 5 to 10** amends ss. 320.08, 327.391, 328.17, 342.07, 713.78, and 715.07, F.S., to conform and correct statutory cross-references.

**Section 11** provides an effective date of October 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to the Florida Fish and Wildlife Conservation Commission staff, they anticipate using existing resources to implement the requirements of this bill.<sup>20</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The fiscal impact on the private sector is indeterminate as the bill requires commercial parasailing operators to have liability insurance and certain communications and weather monitoring equipment that they may or may not already have in place. According to sources within the insurance and parasailing industries, the proposed insurance and operational requirements are equivalent to what they currently hold and should have no fiscal impact. Parasailing operators who do not hold insurance or do not currently have the required equipment will be required to obtain the necessary coverage and acquire the necessary equipment.<sup>21</sup>

### D. FISCAL COMMENTS:

None.

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<sup>20</sup> Florida Fish and Wildlife Conservation Commission, Agency Legislative Analysis for SB 320: Commercial Parasailing (on file with the Business & Professional Regulation Subcommittee).

<sup>21</sup> *Id.*

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not Applicable. This bill does not appear to affect county or municipal governments.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On April 10, 2014, the Regulatory Affair Committee adopted two amendments to define “kite boarding,” “kite surfing,” and “moored ballooning,” and provide operational limitations for parasailing, kite boarding, kite surfing, and moored ballooning near airports. The title was updated to reflect the additional water activities.

The staff analysis is drafted to reflect the committee substitute.