

STORAGE NAME: h0023.jud

DATE: October 1, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HB 23

RELATING TO: Boating Safety

SPONSOR(S): Rep. Crow

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIARY
 - (2) WATER & RESOURCE MANAGEMENT
 - (3) FINANCE & TAXATION
 - (4) GENERAL GOVERNMENT APPROPRIATIONS
 - (5)
-

I. SUMMARY:

This bill addresses a number of boating-safety issues.

The bill clarifies the definition of "personal watercraft" ("PWC") as vessels less than 16 feet in length. It subjects PWC to a \$10.50 registration fee. The bill provides that PWC registration fees cannot be transferred from the Marine Resources Conservation Trust Fund and may only be used for on-the-water enforcement of boating laws, rules and ordinances and for boating safety education and training. However, \$1.50 of the fee goes into the Save the Manatee Trust Fund. The bill requires that, for antique vessels, the registration number must be permanently affixed to each side of the forward half of the vessel, and decals identifying a boat as an antique vessel must be displayed.

The bill also specifies that required PWC personal flotation devices may not be of the inflatable type. Furthermore, the bill prohibits operation of PWC between sunset and sunrise. In addition, the bill states that persons under the age of 18 may not operate a rented PWC unless they are 16 or 17 years of age and someone 18 years or older is on board. The bill makes it unlawful for any owner or others in control of rented PWC to allow operation by underage or untrained individuals. It raises the minimum age of a person who may operate a PWC to 15, effective July, 1, 2000.

HB 23 allows manufacturers to test vessels and vessel motors, provided the testing does not adversely impact the safety of the boating public. In addition, the bill addresses a number of boating education and insurance issues for businesses that rent PWC.

Except as otherwise noted, the bill takes effect July 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

The bill creates new regulations governing PWC operation.

2. Lower Taxes Yes No N/A

The bill reclassifies PWC into a higher fee registration class.

3. Individual Freedom Yes No N/A

The bill creates liability for adults who accompany minors on PWC.

4. Personal Responsibility Yes No N/A

5. Family Empowerment Yes No N/A

B. PRESENT SITUATION:

Prior to the 1999 legislative session, pursuant to s. 327.25(2), F.S., antique vessels could display their registration numbers on either the port side of the windshield or on the forward half of the hull. This provision conflicted not only with s. 327.11, F.S., but with preemptive federal regulations. The state had received a notice from the United States Coast Guard stating that its \$3.9 million federal boating safety grant could be jeopardized if this provision was not corrected by May 1999. When it appeared that HB 979 (substantially the same as this HB 23) was not going to pass both houses during the 1999 Session, language was amended onto both CS/CS/2ND ENG/ SB 864 and CS/CS/3RD ENG/SB 1270 regarding antique vessel registration which complied with federal law. The two provisions were different, and in such a situation, the preface to the Florida Statutes, "Statutory Construction", requires the last bill passed to be considered as expressing the will of the Legislature. The last language to pass was not the language included in HB 979.

PWC are currently defined as either A-1 or A-2 vessels, depending on their length, using an outboard, or inboard motor powering a water jet pump, as their primary motive power source. They are 8 to 16 feet long and are designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vessel. Most are classified as A-1 vessels and as such are subject to a \$3.50 registration fee. Those 12 to 16 feet, A-2 vessels, pay a \$10.50 registration fee, with \$2.85 returned to the county where the vessel is registered. The first \$1.50 of all registration fees goes to the Save the Manatee Trust Fund of which \$1 goes to manatee and marine mammal research, protection and recovery and 50¢ goes to manatee rescue, rehabilitation and release. The Aquatic Plant Control Trust Fund receives \$2 from non-commercial registration fees, except for class A-1 vessels, and 40 percent from commercial vessel registration fees. Forty percent of the registration fees from commercial vessels must be used for law enforcement and quality control programs. The remainder of the funds are deposited in the Marine Resources Conservation Trust Fund for recreational channel marking; public launching facilities; aquatic weed control; manatee protection, recovery, rescue, rehabilitation and release; and marine mammal protection and recovery.

Historically, PWC have been involved in a high number of accidents in proportion to the number of PWC registered. In 1998, less than 10 percent of all registered vessels were PWC, but PWC accounted for 50 percent of all injuries and 33 percent of all accidents. Rented PWC, which make up less than one half of one percent of all registered vessels, account for 22 percent of all boating accidents and over two thirds of all PWC accidents.

Personal flotation devices are required when operating, riding on, or being towed behind PWC. Life jackets that inflate manually or automatically are currently permitted. Personal watercraft may be operated until one-half hour after sunset to one-half hour before sunrise. However, manufacturers do not equip PWC with running lights. Reckless operation of PWC is prohibited by s. 327.39(4), F.S., but this provision does not include the more general description of reckless or careless operation of a vessel found in s. 327.33, F.S. The minimum age for PWC operation is 14. The minimum age for PWC rental is 16 but, once the PWC has been rented, the PWC may be operated by persons as young as 14 years of age. However, operators are not required to carry proof of age, making enforcement difficult.

Liveries may not lease a vessel powered by a motor of 10 horsepower or greater to persons required to comply with s. 327.395, F.S., unless they have a boater safety identification card. Livery liability is presently governed by both s. 327.54, F.S., for land-locked lakes that are not under federal jurisdiction and 46 U.S.C. Appendix ss. 181-189 for all other waters.

C. EFFECT OF PROPOSED CHANGES:

The bill changes the wording of the antique vessel provisions of the bill to comport with the language in last year's bill (HB 979). The bill clarifies that a PWC is a vessel measuring less than 16 feet in length. PWC under 12 feet in length, currently classified as A-1 vessels with a \$3.50 registration fee, are reclassified as A-2 vessels with a \$10.50 registration fee.

The bill requires antique vessels to have their registration number permanently affixed to each side of the forward half of the vessel. Decals identifying the vessel as an antique vessel would have to be displayed as provided in s. 327.11, F.S. and s. 327.14, F.S.

Except for \$1.50 which goes to the Save the Manatee Trust Fund, PWC registration fees could not be transferred from the Marine Resources Conservation Trust Fund and could only be used for on-the-water enforcement of boating laws, rules and ordinances and for boating safety education and training.

The bill bans the use of inflatable personal flotation devices on PWC. A PWC operator could become incapacitated and unable to manually inflate the device; life jackets that inflate automatically can do so at inappropriate times when the wearer gets wet. Operation of PWC is prohibited between sunset and sunrise. Section 327.33, F.S., regarding reckless or careless operation of a vessel, is applied to PWC. In addition, the bill states that persons under the age of 18 may not operate a rented PWC, unless they are 16 or 17 years of age and an adult, 18 years or older, is on board. The adult would be responsible for any violation that occurred during operation and both the 16 or 17 year old and the adult would have to comply with s. 327.395, F.S., when applicable. The bill makes it unlawful for any owner or others in control of rented PWC to allow operation by underage or untrained individuals.

The minimum age of PWC operators is raised from age 14 to age 15, effective July 1, 2000.

Manufacturers are allowed to test vessels and vessel motors, provided the testing does not adversely impact the safety of the boating public.

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The bill provides that prior to renting vessels powered by motors of 10 horsepower or more, liveries are to provide instruction regarding the operational characteristics of the vessel; laws and regulations, navigation rules, and personal responsibility; and local characteristics of the waterway to be used. The instructor is required to have successfully completed a boater safety course approved by the National Association of State Boating Law Administrators in this state. The vessel livery would also have to display boating safety information in a place visible to the renting public. Leasing of a PWC to anyone under age 18 is prohibited, unless they are 16 or 17 years of age and accompanied and attended to by someone who is 18 years or older. This adult is responsible for any violation that occurs during operation. Both the 16 or 17 year old and the adult must comply with s. 327.395, F.S., when applicable. Liveries can not knowingly rent a PWC to any person who had not received PWC safety training and signed a written statement attesting to that. Livery liability limitations are governed by the provisions of 46 U.S.C. Appendix ss. 181-189. Under the bill, PWC liveries are required to carry and show proof of insurance in full force and effect against accident, loss, injury, property damage, or other casualty in the amount of \$500,000 per person and \$1 million per event. The bill repeals current livery liability provisions.

Paragraph (p) of s. 327.73(1), F.S. is reenacted to incorporate the amendments to ss. 327.39 and 327.395, F.S., referring to PWC and boater safety education.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 327.02, F.S., to redefine PWC as a vessel measuring less than 16 feet in length, which are designed to be ridden on rather than in.

Section 2: Amends s. 327.39, F.S., to provide that approved PWC personal flotation devices may not be of the inflatable type. Prohibits operation of PWC between sunset and sunrise. Applies s. 327.33, F.S., regarding reckless or careless operation of a vessel, to PWC. States that no person under the age of 18 may operate a rented PWC unless they are 16 or 17 years of age and are accompanied by an adult, 18 years or older, on board. The adult is responsible for any violation that occurs during operation and both the 16 or 17 year old and the adult must comply with s. 327.395, F.S., when applicable. Makes it unlawful for any owner or others in control of rented PWC to allow underage or untrained individuals to operate those PWC.

Section 3: Amends s. 327.39, F.S., to raise the minimum age for operation of any PWC to 15 years of age, effective July, 1, 2000.

Section 4: Amends s. 327.49, F.S., to authorize manufacturers to test vessels and vessel motors, provided the testing does not adversely impact the safety of the boating public.

Section 5: Amends s. 327.54, F.S., to provide that prior to renting vessels with 10 horsepower or greater motors, liveries must provide instruction regarding the operational characteristics of the vessel; laws and regulations, navigation rules, and personal responsibility; and local characteristics of the waterway to be used. The instructor must have successfully completed a boater safety course approved by the National Association of State Boating Law Administrators and this state. The vessel livery must also display boating safety information in a place visible to the renting public. Prohibits leasing of PWC to anyone under age 18, unless they are 16 or 17 years of age and are accompanied and attended to by an adult who is 18 years or older. The adult is responsible for any violation that occurs during operation and both the 16 or 17 year old and the adult must comply with s. 327.395, F.S., when applicable. Liveries may not knowingly rent a PWC to any person who has not received PWC safety training and signed a written statement attesting to that. Livery liability limitations are governed by the provisions of 46 U.S.C. Appendix ss. 181-189. Requires PWC liveries to

carry and show proof of insurance in full force and effect against accident, loss, injury, property damage, or other casualty in the amount of \$500,000 per person and \$1 million per event. Current livery liability provisions are repealed.

Section 6: Amends paragraph (p) of s. 327.73(1), F.S., to incorporate the amendments to s. 327.39, F.S., referring to PWC and boater safety education.

Section 7: Amends s. 328.72, F.S., to classify all PWC as class A-2 vessels subject to \$10.50 registration fees. Requires that, for antique vessels, the registration number must be permanently affixed to each side of the forward half of the vessel. Decals identifying the vessel as an antique vessel must be displayed as provided in s. 327.11, F.S. and s. 327.14, F.S.

Section 8: Amends s. 328.76, F.S., to provide that except for \$1.50 to the Save the Manatee Trust Fund, of which \$1 goes to manatee and marine mammal research, protection and recovery and 50¢ goes to manatee rescue, rehabilitation and release, PWC registration fees cannot be transferred from the Marine Resources Conservation Trust Fund and may be used only for on-the-water enforcement of boating laws, rules and ordinances and for boating safety education and training.

Section 9: Except as otherwise provided, the bill takes effect July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Marine Resources Conservation Trust Fund and the Aquatic Plant Control Trust Funds are affected by this bill.

First, the monies acquired from PWC registration fees would increase due to the classification of PWC as A-2 vessels. The associated fees would increase from \$3.50 to \$10.50. While \$1.50 would still go to the Save the Manatee Trust Fund, the bill provides that the remainder of the registration fee would go to the Marine Resources Conservation Trust Fund. These funds could not be transferred and could only be used for on-the-water enforcement of boating laws, rules, and ordinances or for boating safety education and training. Thus, use of funds from PWC fees for recreational channel marking; public launching facilities; aquatic weed control; manatee protection, recovery, rescue, rehabilitation and release; and marine mammal protection and recovery would be prohibited.

Second, \$2 from registration fees of non-commercial vessels not classified as A-2 would typically be deposited into the Aquatic Plant Control Trust Fund. However, under the bill, all funds from PWC fees, except for the \$1.50 to the Save the Manatee Trust Fund, would go to the Marine Resources Conservation Trust Fund. Thus, an increase in revenue from the PWC newly classified as A-2 would not occur. A reduction in funds would occur as a result of exempting fees from previously classified A-2 watercraft from being deposited into the Aquatic Plant Control Trust Fund.

Expenditures:

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

Revenues:

2. Expenditures

N/A

C.

N/A

D.

DEP estimates approximately \$541,416 in additional revenue will be generated by increased

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION

A. APPLICABILITY OF THE MANDATES PROVISION:

the expenditure of funds. d funds or take an action requiring

REDUCTION OF REVENUE RAISING AUTHORITY:

Th
in the aggregate.

C.

This bill does not reduce the percentage of state tax shared with counties and municipalities.

COMMENTS:

CONSTITUTIONAL ISSUES:

1. additional s. 327.39 (5)(b), F.S., indicates that the individual at least 18 years on board the leased, hired, or rented PWC will be "responsible for any violation that during the operation" of the watercraft. The language "responsible for any

If it is claimed a criminal
definite warni

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will be found to be unconstitutionally vague. *Cuda v. State*, 622 So.2d 502 (Fla 5 DCA 1993); *Cuda v. State*, 639 So.2d 22 (Fla. 1994).

Individuals over 18 years of age in the PWC would also be chargeable with crimes solely as a result of having rented the watercraft. The 18 year old could be forcibly restrained by the 16 or 17 year old prior to the minor committing a felony, and this bill would make the 18 year old chargeable with the violation.

Certain other violations -- such as emissions from the watercraft which exceed clean air parameters or vehicle registration violations -- have traditionally been the responsibility of the vehicle owner, not operator. Through this legislation, the burden to properly maintain and pay taxes on these vehicles could be shifted in certain cases to renters of the vehicles.

2. The bill permits 15 to 18 year olds to operate PWC which are not leased, hired, or rented (i.e. owned by the individual, the individual's family or borrowed from family or friends) without someone at least 18 being aboard and without someone over 18 being responsible for any violations which occur. The ownership status of the craft may not be considered by the courts to be a rational basis for the distinction in treatment of: (a) which 15 to 18 year olds must be accompanied by someone over 18; (b) which 15 to 18 year olds must bear responsibility for any violation which occurs; or (c) the remedies available to anyone harmed by the violation. These distinctions may raise concerns related to the Equal Protection Clause of the federal and state constitutions.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Newly created s. 327.40, F.S., testing vessels and vessel motors, allows testing irrespective of existing local ordinances or state law that would have prohibited or limited such tests, eg., wake regulations, speed regulations, environmental regulations. This raises issues regarding preemption and homerule.

Newly created s. 327.39(6)(b)2., F.S., requires the department to "establish standards" regarding instruction in the safe handling of personal watercraft. The creation of such standards may require rulemaking by the agency per Chapter 120, F.S.

Section 327.54(1)(e), F.S., as amended, does not provide for rulemaking authority in order to more thoroughly address, for example, what "displaying boating safety information in a place visible to the renting public" might require as well as further detail on what the parental or prerde instruction would entail.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

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VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by:

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