

STORAGE NAME: h0023s1.jud

DATE: November 15, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: CS/HB 23

RELATING TO: Boating Safety

SPONSOR(S): Committee on Judiciary, Rep. Crow & others

TIED BILL(S):

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

- (1) JUDICIARY YEAS 5 NAYS 0
 - (2) WATER & RESOURCE MANAGEMENT
 - (3) FINANCE & TAXATION
 - (4) GENERAL GOVERNMENT APPROPRIATIONS
 - (5)
-

I. SUMMARY:

CS/HB 23 addresses a number of personal watercraft and general boating-safety issues.

The bill clarifies the definition of "personal watercraft" ("PWC") as vessels less than 16 feet in length. 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. The bill requires that the registration number for antique vessels be permanently affixed to each side of the forward half of the vessel.

The bill also specifies that required PWC personal flotation devices may not be of the inflatable type. 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 are accompanied by a person 18 years or older both at the time of rental and who is on board and in command during all phases of operation. 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, 2001.

CS/HB 23 allows manufacturers to test vessels and vessel motors, provided the testing does not adversely impact the safety of the boating public and subject to reasonable rules promulgated by the Florida Fish and Wildlife Conservation Commission (the "Commission").

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.

The bill does not appear to have any significant fiscal impact, although it does place limitations on the use of certain funds held in the Marine Resources Conservation Trust Fund.

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

- 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:

- 1. Antique Vessels

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 bill) 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.

- 2. Personal Watercraft

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.

The Commission reports that as of 1998 there were a total of 77, 416 PWC registered as class A-1 vessels, the vast majority of PWC in the state. Given a fee per vessel of \$3.50, the Commission reports that the revenue breakdown is as follows:

77, 416 registered vessels @\$3.50	=	\$270,856
10% (\$.35) to DHSMV	=	\$27,095 (administrative costs)
\$1.50 to Save Manatee TF	=	\$116,124

Remaining \$1.65 to Marine Res. TF = \$127,736.40

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. Operators are not required to carry proof of age, making enforcement difficult.

3. Vessel Testing

There are a number of administrative rules that apply to vessel testing facilities, but all relate in some way to Manatee protection. See, R. 62N-22.003, 62N-22.009(4), and 62N-22.024(3), Fla. Admin. Code.

4. Liveries

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:

1. Antique Vessels

The bill changes the wording of the antique vessel provisions. 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.

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2. Personal watercraft

The bill clarifies that a PWC is a vessel measuring less than 16 feet in length. This definition will have no effect on current registration fees. Except for \$1.50 which goes to the Save the Manatee Trust Fund, PWC registration fees may not 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.

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. 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. 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.

3. Vessel Testing

The bill allows manufacturers are allowed to test vessels and vessel motors, provided the testing does not adversely impact the safety of the boating public, and subject to reasonable rules promulgated by the Commission.

4. Liveries

The bill provides that prior to leasing, hiring, or renting vessels with 10 horsepower or greater motors, liveries must provide instruction regarding the operational characteristics of the vessel, safe vessel operation and vessel right of way, the responsibility of the vessel operator for the safe and proper operation, and local characteristics of the waterway where the vessel will be operated. The instructor must have successfully completed a boater safety course approved by the National Association of State Boating Law Administrators and this state. The livery must also display boating safety information in a place visible to the renting public, and the bill authorizes the Commission to prescribe the contents and size of such information by rule.

The bill prohibits a livery from permitting any leased, hired, or rented PWC to be operated by a person under the age of 18, and exempts from this prohibition persons who are 16 or 17 years of age and are accompanied by a person 18 years of age or older, both at the time of rental and who is on board and in command during all phases of operation. The bill requires the 16 or 17 year old and the adult to comply with s. 327.395, F.S., when applicable. The bill also prohibits liveries from knowingly leasing, hiring, or renting a PWC to any person who has not received PWC safety training and signed a written statement attesting to that.

Liveries must 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.

The bill reenacts paragraph (p) of s. 327.73(1), F.S. 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(27), F.S., to redefine a PWC as a vessel measuring less than 16 feet in length.

Section 2. Amends s. 327.39, F.S., to provide that approved PWC personal flotation devices may not be of the inflatable type. Requires a person operating a PWC to comply with the provisions of s. 327.33, F.S., regarding reckless or careless operation of a vessel. Prohibits a person under the age of 18 from operating a leased, hired, or rented PWC. Exempts from this prohibition persons who are 16 or 17 years of age who are accompanied by a person 18 years of age or older at the time of rental. The adult must be on board and in command during all phases of operation. Requires the 16 or 17 year old and the adult to comply with s. 327.395, F.S., when applicable. Makes it unlawful for any owner or person having charge over or control of a leased, hired, or rented PWC to allow underage or untrained individuals to operate 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, 2001.

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, and subject to reasonable rules adopted by the Florida Fish and Wildlife Conservation Commission.

Section 5. Amends s. 327.54, F.S., to provide that prior to leasing, hiring, or renting vessels with 10 horsepower or greater motors, liveries must provide instruction regarding the operational characteristics of the vessel; safe vessel operation and vessel right of way, the responsibility of the vessel operator for the safe and proper operation, and local characteristics of the waterway where the vessel will be operated. The instructor must have successfully completed a boater safety course approved by the National Association of State Boating Law Administrators and this state. The livery must also display boating safety information in a place visible to the renting public, and the bill authorizes the Commission to prescribe the contents and size of such information by rule.

Prohibits a livery from permitting any leased, hired, or rented PWC to be operated by a person under the age of 18. Exempts from this prohibition persons who are 16 or 17 years of age who are accompanied by a person 18 years of age or older at the time of rental. In addition, the adult must be on board and in command during all phases of operation. Requires the 16 or 17 year old and the adult to comply with s. 327.395, F.S., when applicable. Prohibits liveries from knowingly leasing, hiring, or renting a PWC to any person who has not received PWC safety training and signed a written statement attesting to that.

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. Repeals current livery liability provisions.

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. Requires antique vessels to permanently affix registration numbers 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. 328.48, F.S. and s. 328.54, F.S.

Section 8. Amends s. 328.76, F.S., to prohibit PWC registration fees from being transferred from the Marine Resources Conservation Trust Fund and requires such funds to 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:

According to the Commission, the bill will have no effect on the revenue created by PWC registration.

2. Expenditures:

The bill places limitations on the use of funds acquired through PWC registration. Those funds that are deposited into the Marine Resources Conservation Trust Fund may not be transferred and are only to 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.

This prohibition will not have any binding effect on future acts of the Legislature.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The bill permits persons younger than 18 years of age 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 in command during all phases of operation. This may be subject to challenge based on the distinction in treatment of those persons who must be accompanied by someone over 18 and those who don't need such accompaniment, depending on the ownership status of the craft.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On November 2, 1999, the Committee on Judiciary adopted a strike-everything amendment and made the bill a committee substitute. The amendment removes the re-categorization of PWC and the related fee increase, provides the Commission with certain rulemaking authority regarding safety instructions and the posting of safety information, allows manufacturers to test vessels and motors subject to public safety and reasonable rules, and provides guidelines for the operation of rented PWC by persons younger than 18 years of age. The provisions of the amendment are incorporated in this analysis.

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VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by:

Staff Director:

Michael W. Carlson

P.K. Jameson