

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2554

SPONSOR: Transportation Committee and Senator King

SUBJECT: Boating Safety

DATE: April 13, 2000 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Vickers</u>	<u>Meyer</u>	<u>TR</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>NR</u>	_____
3.	_____	_____	<u>FP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This CS implements numerous changes to Florida’s boating safety laws.

The CS redefines “personal watercraft” (PWC) to eliminate the class reference in favor of a size reference. The CS clarifies what boating safety information rental facilities are required to display. The CS requires PWC rental facilities to obtain and carry liability insurance. The CS also identifies the boating safety information displays and training for which the Fish and Wildlife Conservation Commission (Commission) will have the authority to set standards.

The CS increases the size for the flag displayed on a vessel or structure and provides for the location of the flag on the vessel. The CS requires boaters to make reasonable efforts to stay certain distances away from divers-down flags. The CS also moves the diver flag section to the boating safety section (ch. 327, F.S.) and decriminalizes the diver flag section. The CS amends the accident report form to match that for automobile crash reports and requires use of boating accident report forms distributed by the Commission.

The CS revises a number of boating under the influence (BUI) laws to parallel comparable driving under the influence (DUI) laws. The United States Waterway Marking System is adopted by reference, eliminating obsolete references to repealed marking systems. The CS clarifies the criteria for establishing boating restricted areas and provides for the application of those criteria to local ordinance zones. Finally, the CS prohibits the use of certain inflatable personal flotation devices.

This CS substantially amends the following sections of Florida Statutes: 327.02, 327.22, 327.33, 861.065, 327.35, 327.355, 327.36, 327.37, 327.39, 327.395, 327.40, 327.41, 327.46, 327.54, 327.60, 327.72, 327.73, 327.731, 327.803, 328.48, 328.56, 328.70, 328.72, 328.76, 316.193, 316.635, 318.32, 318.38, 320.08, 713.78, 715.07, 938.17, 947.146, 985.05, and 985.212. This CS creates the following sections of the Florida Statutes: 327.302 and 327.49.

II. Present Situation:**Regulation of Vessels by Counties and Municipalities**

Section 327.22, F.S., authorizes counties and cities expending money for the patrol, regulation, and maintenance of lakes, rivers, or waters, and for other boating related activities within said city or county, to regulate vessels resident in said city or county. Local governments may adopt ordinances providing for the enforcement of noncriminal violations of s. 327.33, F.S., relating to careless operation of a vessel that results in the endangerment or damaging of property. These ordinances apply only in designated restricted areas which are properly marked and in need of shore line protection.

Section 327.46, F.S., provides that using the procedures established in chapter 120, the Administrative Procedures Act (APA), the Fish and Wildlife Conservation Commission has the authority to establish restricted areas on the waters of the state for any purpose deemed necessary for public safety. Each restricted area must be developed by the FWCC in consultation and coordination with the governing body of the county or city in which the restricted area is located.

Finally, s. 327.60, F.S., provides nothing in specified sections of chapter 327 shall be construed to prevent the adoption of any ordinance or local law relating to the operation and equipment of vessels, except no ordinance or local law may apply to the Florida Intracoastal Waterway, and provides said local laws or ordinances are operative only when they are not in conflict with the provisions of chapter 327 or any amendments thereto or any regulations thereunder.

According to information provided by the FWCC, local governments have been enacting ordinances prohibiting the use of personal watercraft during certain hours, and limiting the speed at which personal watercraft can be operated in near-shore waters.

Divers-Down Flags

Section 861.065, F.S., states a diver is a person who is wholly or partially submerged in the waters of the state, and who is equipped with a face mask and snorkel, or an underwater breathing apparatus. Divers-down flags are square or rectangular, and approximately 4 units high by 5 units long, with a 1-unit diagonal white stripe on a red background. The stripe must begin at the top staff-side (left) and extend diagonally to the opposite lower corner. The flag must be free-flying and must be lowered when all divers are aboard or ashore. The minimum size is 12 inches by 12 inches.

Divers are required to prominently display one or more divers-down flags in an area where diving occurs, other than when diving in an area customarily used for swimming. Divers are required to make reasonable efforts to stay within 100 feet of the flag on rivers, inlets, and in navigation channels. Section 327.33, F.S., requires persons operating vessels on rivers, inlets, and in navigation channels are required to make a reasonable effort to maintain a distance of 100 feet from any divers-down flag. A vessel operator who comes within 100 feet of a diver commits a noncriminal violation, punishable by a \$50 civil penalty. A diver who commits a willful violation

of s. 861.065, F.S., commits a second degree misdemeanor (criminal violation) and can be fined up to \$500 and be sentenced to up to 60 days in jail.

Information provided by the FWCC indicates the following:

- Average statewide fine for a divers-down flag violation is approximately \$100.
- In 1997, the Florida Marine Patrol and the Game & Fresh Water Fish Commission issued 228 tickets for divers-down flag violations. In 1998, 233 tickets were issued.
- The average conviction rate on a divers-down flag violation is 95 percent.

Boating under the Influence (BUI) - s. 327.35, F.S.

Persons who operate a vessel with a blood-alcohol level of .08 or more grams of alcohol per 100 milliliters of blood; or persons with a breath-alcohol level of .08 or more grams of alcohol per 210 liters of breath, or persons who operate a vessel while under the influence of controlled substances specified in chapter 893; are guilty of the offense of boating under the influence. Persons guilty of a BUI are subject to fines and jail terms in varying degrees based on the number of convictions.

- Persons convicted of BUI are subject to a fine of not more than \$500, and a jail sentence of not more than six months for a first conviction.
- Persons convicted of four or more BUIs are guilty of third degree felonies and subject to fines of at least \$1,000 but not to exceed \$5,000, and a jail sentence not to exceed five years.
- Persons guilty of BUI who operate a vessel and cause the death of another human being commit BUI manslaughter, a second degree felony, punishable by a fine not to exceed \$10,000, and a jail term not to exceed fifteen years.
- Persons guilty of a BUI resulting in death who fail to report the accident or render aid as required by s. 316.062, F.S. commit a felony of the first degree, punishable by a prison term not to exceed 30 years and/or a fine not to exceed \$10,000. Persons who meet the definition of a habitual felony offender may be punished with a life sentence.
- Persons found guilty of violating BUI provisions and who have a blood-alcohol or breath-alcohol level of .20, or persons who are convicted of BUI and who were accompanied by a person under the age of 18 years at the time of the offense, are subject to enhanced penalties.

Section 327.35 provides that in addition to fines and sentences imposed by the court, any BUI offender must be placed on a monthly reporting probation and be required to attend a substance abuse course as specified by the court. The agency conducting the course may refer the offender to an authorized service provider for evaluation and treatment. Treatment resulting from the evaluation may not be waived without a supporting evaluation done by a court appointed agency with access to the original evaluation. The offender must bear the cost of education, treatments, and evaluations under these provisions.

Finally, s. 327.35, F.S., provides previous out-of-state convictions for driving under the influence are also considered previous convictions for violations of Florida's BUI laws.

The FWCC reports 346 BUI arrests were made in 1998. Of the 1,282 reported recreational boating accidents, 74 were directly related to alcohol use.

Personal Watercraft (PWC)

PWC are currently defined as either Class A-1 or A-2 vessels, depending on their length, and their use of an outboard or inboard motor powering a water jet pump as a primary power source. PWCs 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 PWCs are classified as A-1 vessels and as such, are subject to a \$3.50 registration fee, with a \$1 surcharge for the State Law Enforcement Radio System Trust Fund, and a \$2.25 service charge to the county tax collector, for a total fee of \$6.75.

The FWCC reports that in 1998, 77,416 PWC were registered in Florida as Class A-1 vessels.

Class A-2 PWC (12-16 feet in length) pay a total registration fee of \$13.75. Of the total fee, \$1 goes to the State Law Enforcement Radio System Trust Fund, \$2.25 is paid to the county tax collector as a service charge, \$2.85 is returned to the county where the vessel is registered, \$1.50 goes to the Save the Manatee Trust Fund for manatee and marine mammal research, protection and recovery; and manatee rescue, rehabilitation and release; and \$2 is deposited into the Invasive Plant Control Trust Fund which receives \$2 from all non-commercial registration fees, except for class A-1 vessels. For commercial vessel registrations, 40 percent is deposited into the Invasive Plant Control Trust Fund, and 40 percent must be used for law enforcement and quality control programs.

The remainder of all vessel registration fees are deposited in the Marine Resources Conservation Trust Fund (MRCTF) for recreational channel marking; public launching facilities; aquatic weed control; manatee protection, recovery, rescue, rehabilitation and release; and marine mammal protection and recovery.

In 1998, PWC accounted for approximately 10 percent of all vessels; 34 percent of all boating accidents; and 50 percent of all boating injuries, including fatalities. Of the 431 PWC accidents reported in 1998, 327 resulted in injury and 11 resulted in death. All other types of recreational vessels reported 851 accidents, 323 injuries, and 59 fatalities indicating that PWC have a disproportionate number of accidents and fatalities compared to all other recreational vessels.

Florida currently requires Type I, II, III or V personal flotation devices as approved by the United States Coast Guard, must be worn when persons are operating, riding on, or being towed behind a PWC. Life jackets that inflate manually or automatically are currently permitted. Also, a PWC may be operated from one-half hour before sunrise to one-half hour after sunset. However, manufacturers do not equip PWC with running lights. Reckless operation of a 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 to operate a PWC is 14. The minimum age to rent a PWC 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 which makes enforcement difficult.

Liveries

Section 327.54, F.S., provides safety regulations for liveries. Current law provides liveries may not:

- Knowingly lease, hire, or rent a vessel to any person when the vessel is equipped with a motor of 10 horsepower or greater, unless prerental or preride instruction is provided;
- Lease, hire, or rent a PWC to any person under 16 years of age;
- Lease, hire, or rent a PWC without displaying boating safety information; and
- Lease, hire, or rent a PWC without receiving a signature from the lessee stating that the lessee has received instruction in the safe handling of a PWC.

III. Effect of Proposed Changes:

Section 1. Amends s. 327.02, F.S., to redefine commercial vessel, motorboat, navigation rules, recreational vessel, operate, personal watercraft, marker, and livery vessel.

Section 2. Amends s. 327.22, F.S., to clarify provisions governing the regulation of vessels by municipalities and counties.

Section 3. Creates s. 327.302, F.S., to provide that the Fish and Wildlife Conservation Commission (FWCC) shall prepare and, upon request, supply law enforcement entities with forms for accident reports. Provides that electronically produced reports must contain at least the same information as provided for in forms approved by the FWCC.

Section 4. Amends s. 327.33, F.S., to provide a conforming change to provisions contained in Section 6.

Section 5. Renumbers s. 861.065, F.S., as s. 327.331, F.S. Increases the size of divers flags required to be displayed on vessels. Provides that vessel operators must make a reasonable effort to maintain a distance of 100 feet from any divers-down flag while on a river, inlet, or navigation channel. Requires that divers must make a reasonable effort to stay within 300 feet of the divers-down flag on all waters other than rivers, inlets, or navigation channels, and requires that vessel operators must make a reasonable effort to maintain a distance of 300 feet under the same conditions. Provides conditions under which vessels may approach within 100 feet or 300 feet of a divers-down flag.

Section 6. Provides that effective October 1, 2001, criminal penalties for divers-down flag violations shall become noncriminal infractions.

Section 7. Amends s. 327.35(3), F.S., to provide that persons commit a felony of the first degree for boating under the influence (BUI) manslaughter if at the time of an accident resulting in death, the person knew or should have known that the accident occurred, and the person failed to give information and render first aid as provided in s. 327.30, F.S.

Amends s. 327.35(4), F.S., to provide that enhanced penalties will apply for persons convicted of BUI who have a blood-alcohol or breath-alcohol level of .16 instead of .20. Enhanced penalties

also apply to persons who are convicted of a BUI and who were accompanied in the vessel by a person under the age of 18 years at the time of the offense.

Amends s. 327.35(5), F.S., to clarify monthly reporting probation requirements, and substance abuse education and treatment provisions for convicted BUI offenders. Provides that offenders who fail to report for required treatment, or who fail to complete treatment and education requirements, shall be ordered by the court not to operate a vessel on any waters of the state for the remainder of the probation period.

Amends s. 327.35, F.S., to provide that previous out-of-state convictions for DUI/BUI will also be considered as previous convictions for violation of the Florida's BUI laws. Provides exemptions from BUI provisions contained in s. 327.35, F.S., for persons on board a vessel that is docked or otherwise made fast to the shore, and for vessel owners or operators not in actual physical control of the vessel and who have a designated driver. The designated driver can not consume any alcoholic beverage, or used any chemical or controlled substances.

Section 8. Amends s. 327.355, F.S., to clarify that breath alcohol levels are no longer measured in "percent" for breathalyser tests. Maintains provisions that persons under the age of 21 with a breath-alcohol level of .02 or higher may not operate or be in physical control of a vessel.

Section 9. Contains technical revisions to s. 327.36, F.S.

Section 10. Amends s. 327.37, F.S., to provide that persons may not engage in parasailing, water skiing, aquaplaning, or similar activities, unless they are wearing noninflatable type 1 through type 5 personal flotation devices approved by the U.S. Coast Guard.

Section 11. Amends s. 327.39, F.S., to provide that persons may not operate a personal watercraft (PWC) unless the persons riding on, or being towed behind, such vessel are wearing a noninflatable type 1 through type 5 personal flotation device approved by the U.S. Coast Guard. Requires a person operating a PWC to comply with laws governing negligent operation of a vessel. Provides that it is unlawful for any owner of, or any person having charge or control over, a leased, hired, or rented PWC to allow a PWC to be operated by a person who has not received instruction in the safe handling of a PWC and signed a written statement attesting to the same; and provides that persons violating this provision create a second-degree misdemeanor, punishable by up to a \$500 fine and up to 60 days in jail. Authorizes the FWCC to establish rules prescribing instruction in the safe handling of PWC.

Section 12. Amends s. 327.395, F.S., to provide that any commission-approved boater education or boater safety course-equivalency examination developed or approved by the commission, must include a component regarding diving awareness.

Section 13. Amends s. 327.40, F.S., to update provisions regulating the placement of waterway markers for safety and navigation on the waters and shores of the state. Provides that no person, county, municipality, or other governmental entity can place safety or navigation markers without a permit from the Division of Law Enforcement at the FWCC. Provides the FWCC with rulemaking authority pursuant to chapter 120.

Section 14. Amends s. 327.41, F.S., to update provisions regulating the placement of uniform waterway regulatory markers in the waters of the state.

Section 15. Amends s. 327.46, F.S., to clarify the authority of the FWCC to establish restricted areas on the waters of the state for any public safety purposes. The placement of any regulatory markers on the waters of the state, including the Intracoastal Waterway, requires a permit issued by the Division of Law Enforcement at the FWCC.

Section 16. Creates s. 327.49, F.S., to provide for the testing of vessels to ensure acceptable boating safety standards. Provides that the FWCC may adopt reasonable rules to implement testing pursuant to the provisions of chapter 120.

Section 17. Amends s. 327.54, F.S., to provide that when knowingly leasing, renting, or hiring vessels with motors of 10 horsepower or greater, liveries must provide prerenal or preride instruction that includes but is not limited to 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 of the vessel; 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. Provides that the FWCC shall prescribe by rule, pursuant to chapter 120, the contents and size of the boating safety information displayed by the livery.

Raises the age of a person to whom liveries may rent, lease, or hire a PWC from 16 years of age to 18 years of age. Provides that a livery may not knowingly lease, hire, or rent a PWC to any person who has not received instruction in the safe handling of PWC in compliance with the rules established by the FWCC pursuant to chapter 120. Provides the person must sign a written statement attesting to the fact that he or she has received said instruction.

Requires liveries that lease, hire, or rent PWC, or liveries that offer to lease, hire, or rent PWC, obtain and carry in full force and effect a liability insurance policy providing coverage of at least \$500,000 per person and \$1,000,000 per event. Provides the livery must have proof of insurance available for inspection at each location where PWC are being leased, hired, or rented. Repeals language providing persons leasing the vessel from the livery are liable for violations and accidents occurring while said person is in charge of such vessel.

Section 18. Amends s. 327.60 to provide ordinances or local laws adopted by cities and counties may not discriminate against personal watercraft.

Section 19. Amends s. 327.72, F.S., to provide that persons have 30 days instead of 10 days to pay civil penalties assessed for failure to comply with the provisions of chapters 327 or 328.

Section 20. Amends s. 327.73, F.S., to incorporate amendments to personal watercraft violations contained in paragraph (p) of subsection (1) of said section. Provides persons who fail to comply with court requirements, or who fail to pay assessed civil penalties must pay additional court costs of \$12. Provides for public works service or community service in lieu of payment of civil penalties. Provides for additional community service in situations where noncriminal infractions

have caused a death. Creates new court costs to be assessed in addition to civil penalties for swimming and diving infractions, for nonmoving boat violations, and for boating infractions. Provides for an additional \$2 or \$3 court cost for each infraction when the cost is assessed by a city or county. Provides court costs imposed under these provisions may be used to fund law enforcement training.

Section 21. Effective October 1, 2001, amends s. 327.73, F.S., to provide that divers-down flag violations are noncriminal violations subject to a \$50 civil penalty.

Section 22. Effective October 1, 2001, amends s. 327.731, F.S., to provide that, in certain circumstances, persons convicted of divers-down flag violations must attend and complete a boating safety course.

Section 23. Amends s. 327.803 to increase the membership of the Boating Advisory Council to seventeen. Provides that a representative from the scuba diving industry shall be appointed to the Council.

Section 24. Amends s. 328.48, F.S., to provide technical revisions relating to vessel registration.

Section 25. Amends s. 328.56, F.S., to provide technical revisions relating to vessel registration numbers.

Section 26. Amends s. 328.70, F.S., to provide technical revisions relating to uniform registration fees. Provides that livery vessels will be classified as “commercial” or “recreational” depending on use.

Section 27. Amends s. 328.72, F.S., to provide that antique vessel registrations shall be permanently attached to each side of the forward half of a vessel.

Section 28. Contains a technical revision to s. 328.76, F.S., relating to the Marine Resources Conservation Trust Fund.

Section 29. Amends s. 316.193, F.S., to provide that previous out-of-state convictions for DUI or BUI will count as previous convictions for violation of DUI provisions.

Section 30. Amends s. 316.635, F.S., to provide courts with authority over minors for traffic violations will also have authority over minors for boating violations.

Section 31. Amends s. 318.32, F.S., to provide hearing officers with jurisdiction over civil traffic infractions may also have jurisdiction over civil boating infractions. Provides that said hearing officers may not hear cases involving traffic or boating accidents resulting in an injury or death, and may not hear a criminal traffic or boating offense case or a case involving a civil traffic or boating infraction issued in conjunction with a criminal traffic offense.

Section 32. Amends s. 318.38, F.S., to correct a cross-reference.

Section 33. Amends s. 320.08, F.S., to correct a cross-reference.

Section 34. Amends s. 713.78, F.S., to redefine “vessel” for purposes of filing liens for recovering, towing, or storing vehicles and documented vessels.

Section 35. Amends s. 715.07, F.S., to correct a cross-reference.

Section 36. Amends s. 938.17, F.S., to provide for additional court costs to be assessed in the amount of \$3 for criminal boating offenses, as well as criminal traffic offenses, in counties in which the sheriff’s office is a partner in a juvenile assessment center, or a partner in a suspension program developed in conjunction with the district school board in the county of the sheriff’s jurisdiction.

Section 37. Amends s. 947.146, F.S., to provide persons convicted of BUI manslaughter under the provisions of s. 327.35(3)(c)(3), F.S., and who have been sentenced as habitual offenders, are not eligible to participate in control release programs.

Section 38. Amends s. 985.05, F.S., to provide records pertaining to children charged with traffic or boating offenses may be destroyed for cases in which there is no allegation of delinquency. Provides any official records pertaining to boating violations shall be forward to the FWCC.

Section 39. Amends s. 985.212, F.S., to provide the fingerprinting and photographing of juvenile traffic or boating violators is not prohibited. Provides all records of such traffic or boating violations shall be kept in the full name of the violator and that such records are open to inspection and publication in the same manner as adult traffic or boating violators.

Section 40. The CS provides that with certain exceptions, neither the Department of Environmental Protection or the Trustees of the Internal Improvement Trust Fund may restrict the number of vessels moored at private single-family docks exempted under s. 403.813, F.S.

Section 41. Except where otherwise provided, provides an effective date of October 1, 2000.

IV. **Constitutional Issues:**

A. **Municipality/County Mandates Restrictions:**

None.

B. **Public Records/Open Meetings Issues:**

None.

C. **Trust Funds Restrictions:**

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Liveries that rent, lease, or hire PWC are required to obtain liability insurance in specified amounts. The CS provides owners of liveries who are convicted of violating the liability insurance provision commit a second-degree misdemeanor, punishable by up to a \$500 fine and a jail sentence of up to 60 days.

Noncriminal penalties (\$50 fine), which will be imposed beginning in October, 2001, may result in more divers being ticketed for divers-down flag violations. Until October, 2001, persons convicted of divers-down flag violations may be fined up to \$500 and receive a jail sentence of up to 60 days.

The CS provides for the assessment of court costs in addition to civil penalties for swimming, diving, and boating infractions, with up to \$5 in additional assessments to be collected for county and city governments to use for law enforcement training.

The CS lowers the blood-alcohol or breath-alcohol level required to trigger enhanced BUI penalties from .20 to .16. Enhanced penalties range from no more than a \$1,000 fine and up to 9 months in jail for a first conviction, to no more than a \$5,000 fine and up to 12 months in jail for a third conviction. The CS provides previous out-of-state convictions for DUI or BUI will count as previous convictions for violation of Florida's DUI or BUI laws thereby providing for increased penalties based on the number of DUI or BUI convictions.

C. Government Sector Impact:

The fiscal impact of the CS on state and local governments is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The United States Coast Guard Boating Safety Report shows that in 1999, Florida ranked number one in the country with 58 boating fatalities reported, one of our the lowest fatality rates in the past eight years. Texas and California, ranked second and third in the nation, reported 45 and 44 boating fatalities respectively.

Florida's 1998 Boating Accident Statistical Report as produced by the Department of Environmental Protection shows that in 1997, Florida ranked third in the nation with 796,662 registered recreational vessels. The Department of Highway Safety and Motor Vehicles reports

that in 1998, Florida had 809,160 registered vessels, both commercial and recreational; and 1,282 recreational accidents. The Florida Marine Patrol investigated 56 percent of the accidents, and Game and Fresh Water Fish Commission investigated 13 percent. Other law enforcement investigators included local law enforcement such as the police department and the sheriff's office.

The highest number of accidents occurred in April (185) and the lowest number occurred in February (55). More accidents occurred between the hours of 2 p.m. - 4 p.m., and the highest number of accidents occurred in the waters of the bays and sounds of the state (257), with rivers and creeks following a close second (255), and the waters of the ocean and gulf in third place (250). Collisions with other vessels accounted for the highest type of accident (412). Of the 3,627 persons involved in recreational accidents, more than 2,500 were not wearing personal flotation devices, and more than 2,900 reported no injury.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
