

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 64

INTRODUCER: Senator Sachs

SUBJECT: Commercial Parasailing

DATE: March 29, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	Pre-meeting
2.			CM	
3.			TR	
4.			EP	
5.				
6.				

I. Summary:

SB 64 amends ch. 327, F.S., relating to Commercial Parasailing. The bill defines commercial parasailing. The bill establishes minimum requirements for liability insurance, maintenance of a weather log, and safety briefings for parasailing participants. The bill regulates launching, tethering, and recovery procedures.

The bill provides minimum specifications for equipment and gear. The bill establishes minimum operational distances from shore, anchored vessels, persons in the water, and certain other objects and structures.

The bill requires that parasailing providers evaluate weather conditions and wind speeds as defined in the bill and prohibits commercial parasailing during certain weather conditions. The bill requires that the vessel operator have licensure from the United States Coast Guard appropriate for the number of passengers and the displacement of the vessel.

The bill provides an effective date of July 1, 2013.

The bill amends sections 327.02, 320.08, 327.391, 328.17, 342.07, 713.78 and 715.07, Florida Statutes. The bill creates section 327.375, Florida Statutes.

II. Present Situation:

The Florida Fish and Wildlife Conservation Commission (FWC) estimates there are approximately 100 active commercial parasail operators in Florida, generally operating along the

Atlantic Ocean and Gulf of Mexico coastlines.¹ One exception is Walt Disney World, which offers parasailing at its Sammy Duvall Watersports Centre on Bay Lake in Orange County.² Personal watercraft and vessel rentals are offered as well.³

Data compiled by the FWC indicates that:⁴

- From January 1, 2001, through December 3, 2012, 19 accidents involving parasail vessels have occurred in Florida, resulting in 18 injuries and six fatalities;
- In nine of the accidents, high winds or sudden wind gusts were a contributing factor;
- In five of the nine accidents with wind as a contributing factor, there was equipment failure;
- The boating accident reports state that the wind gusts were produced by sudden thunderstorms in the area of the parasailing operation;
- The other accidents were caused by a variety of factors, including equipment failure and operator error; and
- Equipment failure was a contributing factor in one accident that was fatal to the parasailing person, but whether a significant role in the equipment failure was played by weather is not yet determined.

Section 327.37, F.S., regulates vessels towing persons on water skis, parasails, and aquaplanes, and addresses safety requirements including observation of the person being towed, time restrictions, use of personal flotation devices, operational distance restrictions, and operations near airports.

Requirements for vessels towing a person on any waters of the state (except those engaged in certain regattas, boat races, marine parades, tournaments, or exhibitions)⁵ include:

- There must be a person, in addition to the operator, in a position to observe the progress of the person being towed on water skis, an aquaplane, or similar device, unless the vessel is equipped with a wide-angle rear view mirror mounted so that the operator of the vessel may observe the progress of the person being towed;⁶
- A person may not operate a vessel on any waters of this state towing a person attached to a parasail or similar device unless there is a person in the vessel, in addition to the operator, in a position to observe the progress of the person being towed, and use of a wide-angle rear view mirror is not acceptable;
- Water skiing, parasailing, aquaplaning, or any similar activity (water sports) may not be engaged in during the hours from one-half hour after sunset to one-half hour before sunrise;
- A noninflatable type I, type II, type III, or type V personal flotation device approved by the United States Coast Guard must be worn by those engaged in water sports;

¹2013 Legislative Analysis for SB 64, Legislative Affairs Office, Florida Fish and Wildlife Conservation Commission undated.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ See s. 327.48, F.S.

⁶ This restriction does not apply to class A motorboats operated by the person being towed which are designed to be incapable of carrying the operator in the motorboat. See s. 327.37(1)(a), F.S.

- A person may not operate or manipulate any vessel, tow rope, or other device by which the direction or location of water skis, parasail, aquaplane, innertube, sled, or similar device may be affected or controlled, in such a way as to cause the water skis, parasail, aquaplane, innertube, sled, or similar device or any person, to collide or strike against or be likely to collide or strike against any vessel, bridge, wharf, pier, dock, buoy, platform, piling, channel marker, or other object, except slalom buoys, ski jumps, or like objects used normally in competitive or recreational skiing; and
- A person may not operate any vessel towing a parasail or engage in parasailing within 100 feet of the marked channel of the Florida Intracoastal Waterway.

A violation of s. 327.37, F.S., is a noncriminal infraction under s. 327.73, F.S. The civil penalty that may be imposed in county court is \$50, but after written warning provided with the issuance of the boating citation, any person who fails to appear or otherwise properly respond to the citation, in addition to the charge relating to violation of the boating laws, shall be charged with the offense of failing to respond to the citation. Upon conviction for such failure to respond, the violator is guilty of a second degree misdemeanor punishable by up to 60 days in jail and a fine not exceeding \$500.

According to the FWC, the Federal Aviation Administration (FAA) regulates parasails as kites because a parasail is a parachute held aloft by wind resulting from the movement of the boat towing it.⁷ The FAA defines a kite as a framework, covered with paper, cloth, metal, or other material, intended to be flown at the end of a rope or cable, and having as its only support the force of the wind moving past its surfaces, and regulates them only to the extent that they are objects in airspace. The regulations provide:⁸

- Except as otherwise provided, no person may operate a moored balloon or kite less than 500 feet from the base of any cloud, more than 500 feet above the surface of the earth, from an area where the ground visibility is less than 3 miles, or within 5 miles of the boundary of any airport;
- The mooring lines must have colored pennants or streamers at not more than 50 foot intervals, starting at 150 feet above the surface of the earth, which are visible for at least one mile; and
- If a person wants to operate a moored balloon or kite between sunset and sunrise, the mooring lines must be lit, to give a visual warning for air navigation.

A parasail operator may obtain a certificate of authorization or a waiver from the FAA containing special provisions allowing deviation from the regulations, in order for the certificate of authorization to remain valid.⁹ According to the FWC, common special provisions imposed by the FAA are:¹⁰

- Required attendance by parasail operators at an annual operator safety and standardization meeting sponsored by the FAA, if available in the area, and if an operator is unable to attend a scheduled annual meeting, the operator must arrange for an individual meeting;

⁷ See *supra* note 1.

⁸ See Title 14 C.F.R. Part 101

⁹ Title 14 C.F.R. s. 101.3

¹⁰ See *supra* note 1.

- A prohibition against conducting parasail operations when the ceiling is less than 1,000 feet above ground level and the ground visibility is less than 2 miles, winds are above 20 miles per hour (mph), and/or gusts of wind are occurring at 15 mph or greater;
- Time restrictions including a prohibition on parasail operations between sunset and sunrise or during any period when a suspension of airport traffic or diversion of other aircraft will cause a hardship to scheduled air carrier operations;
- Distance limits requiring that parasail operations not be conducted closer than 500 feet to any aircraft, and the parasail not be maneuvered so as to force any aircraft toward the swim line (an imaginary line along the coast marking the offshore boundary where most people are likely to swim) or a populated beach;
- A requirement that parasail operators yield the right-of-way to all aircraft;
- Constant observation by the vessel captain and all crew members of the parasail and surrounding airspace to ensure safety, with the observers in a position to observe the operation and airspace and to halt or restrict the parasail operations if necessary; and
- A requirement that the holder of the Certificate of Waiver or Authorization contact the air traffic control tower of an airport when proposed parasail operations are to be conducted within five miles of the airport, at least one week prior to conducting parasail operations, for the purpose of providing real-time notice of activities including the proposed area of operation, the duration of the activity, and the altitude of the parasail.

III. Effect of Proposed Changes:

Section 1 of the bill provides that the title for the act is the White-Miskell Act.

Section 2 of the bill amends s. 327.02, F.S., to define commercial parasailing as the towing (for consideration) of a person by a motorboat, when one or more persons are tethered to the vessel, ascend above the water, and remain suspended under a canopy while the vessel is underway (excluding ultralight air vehicles). The bill also defines sustained wind speed as a wind speed determined by averaging the observed wind speed rounded to the nearest whole knot of speed over a two-minute period. The bill does not describe the specific rounding formula to be used.

Section 3 of the bill creates s. 327.375, F.S., which requires:

- Minimum insurance coverage of at least \$1 million per person and \$2 million per event, with proof of insurance available for inspection at the location where commercial parasailing is offered or provided for consideration;
- Providing the insurance carrier's name and address and the policy number to customers requesting that information;
- 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;
- An observer over the age of 18 who is not a customer and who has no other duties while rider(s) are in or suspended above the water;
- Inspection by the Division of Law Enforcement of the Fish and Wildlife Conservation Commission of the passenger support system used to secure riders;
- Use of braided towlines of a minimum strength and maximum length, along with United States Coast Guard approved flotation devices (other than inflatable devices);

- The parasailing vessel to be in compliance with all United States Coast Guard crewing and equipment requirements;
- The parasailing vessel to be equipped with a functional VHF marine transceiver and a separate electronic device capable of accessing National Weather Service forecasts and current weather conditions;
- Launching and recovery of riders from the vessel only, with a maximum of three persons tethered at any time;
- That the vessel towing a commercial parasailing rider be restricted to operations at least 1,800 feet from shore, whether measuring from the vessel, towline, rider, or apparatus;
- Operations of a parasailing vessel to be limited so as not to come within 400 feet of any structure, bridge, power line, pier, dock, marker¹¹ or other similar fixed objects;
- No operations within 100 feet of the marked channel of the Florida Intracoastal Waterway, or during the period of one-half hour after sunset until one-half hour before sunrise;
- Monitoring of certain wind speed, visibility and lightning storm distances, with operations prohibited when certain thresholds current exist or are forecasted by the National Weather Service;
- Recording certain weather conditions and having the record available for inspection; and
- A safety briefing about the activity, with a description of the inherent risks and evacuation instructions, to be given to all passengers and riders in advance of embarkation or parasailing activities.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the FWC, commercial parasailing operators in Florida will incur additional costs to obtain the insurance coverage stated in the bill, and those costs are difficult to estimate because they will vary with each operator's claims history and current coverage

¹¹ See s. 327.02(22), F.S.

amounts.¹² All insurance agencies contacted by the FWC stated that they base insurance policy coverage on a per person, per occurrence basis, not a per person, per event basis.¹³

According to the FWC, some operators may have to purchase a different towline, and that towlines that meet the minimum specifications in the bill range from approximately \$500 to \$800.¹⁴ The requirement that commercial parasail operators use a towline no longer than 500 feet long may require more frequent changes of towline; as the end of the towline nearest the parasail becomes worn, the towline is typically shortened to eliminate the worn portion.¹⁵

Commercial parasail operators will be unable to operate until their passenger support system has been inspected by the FWC's Division of Law Enforcement, which is not currently required. Operations by commercial parasail businesses may be delayed while acquiring the necessary insurance and bringing equipment into compliance.

C. Government Sector Impact:

According to the FWC, there may be a fiscal impact from costs associated with FWC law enforcement officers educating current commercial parasailing operators on new regulations and how operators may come into compliance.¹⁶ There will also be a fiscal impact associated with developing curriculum to educate FWC law enforcement officers on the conduct of appropriate inspections required in the bill, as well as costs associated with actual inspections of commercial parasailing operators' passenger support systems, but the amount of the fiscal impact is unknown.¹⁷

VI. Technical Deficiencies:

For consistency with existing law, the term of floatation in Line 311 of the bill should be deleted in favor of the term flotation.

VII. Related Issues:

The bill includes requirements similar to or duplicative of existing state law. Section 327.37, F.S., references parasailing, but makes no distinction between commercial parasailing and recreational parasailing operations.

Section 327.37(2) F.S., provides that a person may not engage in parasailing or similar activities such as water skiing or aquaplaning, unless wearing a noninflatable type I, type II, type III, or type V personal flotation device approved by the United States Coast Guard, and may not do so between the hours from one-half hour after sunset to one-half hour before sunrise. However, those restrictions do not apply to a performer engaged in a professional exhibition, or to a person

¹² 2013 Legislative Analysis for SB 64, Legislative Affairs Office, Florida Fish and Wildlife Conservation Commission undated

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

preparing to participate or participating in an official regatta, boat race, marine parade, tournament, or exhibition held in navigable waters of the United States with a permit from the United States Coast Guard¹⁸.

Section 327.37(4), F.S., provides that a person may not operate or manipulate any vessel, tow rope, or other device by which the direction or location of water skis, parasail, aquaplane, innertube, sled, or similar device may be affected or controlled, in such a way as to cause the water skis, parasail, aquaplane, innertube, sled, or similar device or any person thereon to collide or strike against or be likely to collide or strike against any vessel, bridge, wharf, pier, dock, buoy, platform, piling, channel marker, or other object, except slalom buoys, ski jumps, or like objects used normally in competitive or recreational skiing.

The bill mirrors the requirements in s. 327.37(5), F.S., that a person may not operate any vessel towing a parasail or engage in parasailing within 100 feet of the marked channel of the Florida Intracoastal Waterway.

The bill and existing law concerning parasailing impose differing punishments for violations of similar provisions. A violation of s. 327.37, F.S., is a noncriminal infraction under s. 327.73, F.S. The civil penalty that may be imposed in county court is \$50, but after a written warning provided with the issuance of the boating citation, any person who fails to appear or otherwise properly respond to the citation, in addition to the charge relating to violation of the boating laws, shall be charged with the offense of failing to respond to the citation. Upon conviction for such failure to respond, the violator is guilty of a second degree misdemeanor punishable by up to 60 days in jail and a fine not exceeding \$500.

The bill provides that persons who violate any provision of the commercial parasailing section to be created as s. 327.375, commit a second degree misdemeanor punishable by up to 60 days in jail and a fine not exceeding \$500.

The bill does not describe the specific rounding formula to be used in determining sustained wind speed, creating uncertainty in application by those charged with making that calculation.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁸ See ss. 327.37(2) and (3), and s. 327.48, F.S.