

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 233 Vessel Safety
SPONSOR(S): Agriculture & Natural Resources Committee, Kiar
TIED BILLS: **IDEN./SIM. BILLS:** SB 100

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Agriculture & Natural Resources Policy Committee	12 Y, 0 N, As CS	Deslatte	Reese
2)	Public Safety & Domestic Security Policy Committee	12 Y, 2 N	Krol	Cunningham
3)	General Government Policy Council	6 Y, 8 N	Deslatte	Hamby
4)				
5)				

SUMMARY ANALYSIS

The bill states that no person under the age of 16 can operate watercraft except under adult supervision. The bill makes it unlawful for the owner of, or any person having charge or control over a personal watercraft, to authorize or knowingly permit the watercraft to be operated by a person under 16 years of age or by a person who does not hold a boating safety identification card in compliance with current law.

The bill makes it unlawful for the owner of, or any person having charge or control over any leased, hired, or rented personal watercraft to authorize or knowingly permit the watercraft to be operated by anyone who has not received instruction in the safe handling of personal watercraft in compliance with current law, and rules established by the Fish and Wildlife Conservation Commission (FWCC).

The bill requires anyone receiving instruction in the safe handling of personal watercraft pursuant to a program established by rule of the FWCC to provide the owner of, or person having charge or control over, a leased, hired or rented personal watercraft, or a livery with a written statement attesting to the same. The requirement provides for the instruction to be pursuant to rules of the FWCC or any other program established by rule of the FWCC.

The bill requires that any agent or employee delivering information on safe operation of personal watercraft must enroll in, attend, and successfully complete, at his or her own expense, a boating safety course approved by the National Association of State Boating Law Administrators (NASBLA) and the FWCC.

The bill does not have a fiscal impact on state or local governments. There may be a fiscal impact on the private sector, although it is not anticipated to be significant. Livery personnel who have not attended a boating safety course would be required to do so before providing pre-rental or pre-ride instruction. Courses that meet this requirement cost an average of \$22 per student.

The bill has an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

According to the latest data from the FWCC, from 2004 through 2008, a total of 38 operators of personal watercraft who were 14 to less than 16 years of age were involved in reportable boating accidents, eight (8) of which were rented personal watercraft.

Currently, s. 327.395, F.S., states that any person born on or after January 1, 1988 may not operate a vessel¹ powered by a motor of 10 horsepower or greater unless such person has in his or her possession aboard the vessel photographic identification and a boater safety identification card issued by the FWCC.² Operators born on or after January 1, 1988 are exempt from the boating education requirement if they are:

- Licensed by the United States Coast Guard (USCG) to serve as master on a vessel;
- Operating a vessel on a private lake or pond;
- Accompanied in the vessel by a person who is exempt or who holds an identification card in compliance with this section, is 18 years of age or older, and is attendant to the operation of the vessel and responsible for the safe operation of the vessel and for any violation that occurs during the operation;
- A nonresident who has in his or her possession proof that he or she has completed a boater education course or equivalency examination in another state which meets or exceeds the requirements;
- Operating a vessel within 90 days after the purchase of that vessel and has available for inspection aboard that vessel a bill of sale meeting the requirements of s. 328.46(1), F.S.; or
- Exempted by rule of the commission.

The FWCC's rule 68D-36.104, F.A.C., specifies that boating safety courses offered by the FWCC pursuant to s. 327.395, F.S., must maintain current approval by the National Association of State

¹ Section 327.02(39) F.S., defines "vessel" as "synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution and includes every of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water description."

² As of January 1, 2010, the age requirement changed to a person born on or after January 1, 1988, as passed by the Legislature in the 2009 session. Each year the age range will grow by one year. For example, any person 22 years old and younger is required to have a boater safety identification card in 2010 and in 2011 the age requirement will change to any person 23 and younger.

Boating Law Administrators (NASBLA). The NASBLA³ is a professional association representing the recreational boating authorities of all 50 states and the U.S. territories. The NASBLA's objectives are to foster partnerships among and between the states, the USCG and others, to craft model boating laws, to maintain national education and training standards, and to advocate the needs of the state boating programs before the U.S. Congress and federal agencies.

According to the FWCC, its participation with the NASBLA is aimed at maintaining national consistency and reciprocity agreements with regard to boating education, and the FWCC uses NASBLA rules as guidelines for developing rules. The Executive Director can adopt NASBLA rules by reference, but the FWCC is the final decider regarding approval of boating course content.

Florida law currently allows individuals 14 years of age or older to operate a personal watercraft on waters of the state provided they meet the boating safety education requirements specified in s. 327.395, F.S. Section 327.39, F.S., makes it a misdemeanor of the second degree⁴ for any person having charge or control over a personal watercraft to knowingly let a person younger than fourteen years operate that personal watercraft.

Currently, s. 327.54, F.S., provides for regulation of livery vessels. A livery vessel is defined by s. 327.02(18), F.S., to mean any vessel leased, rented, or chartered to another for consideration. A livery may not knowingly lease, hire, or rent a vessel to any person whenever:

- The number of persons intending to use the vessel exceeds the number considered to constitute a maximum safety load for the vessel;
- The horsepower of the motor exceeds the capacity of the vessel;
- The vessel does not contain the required safety equipment;
- The vessel is not seaworthy;
- The vessel is equipped with a motor of 10 horsepower or greater, unless the livery provides pre-rental or pre-ride instruction that includes, but is not limited to, the operational characteristics of the vessel to be rented, safe vessel operation and vessel right-of-way rules, the responsibility of the vessel operator for the safe and proper operation of the vessel, and the local characteristics of the waterway where the vessel will be operated.

Any person delivering this information on behalf of the livery must have successfully completed a boater safety course approved by the NASBLA and the state. The FWCC is the state's primary agent for this course approval; however, the FWCC may appoint liveries, marinas or other persons to administer the boating safety course.⁵

Section 327.54, F.S., provides that a livery may not knowingly lease, hire, or rent a personal watercraft to any person who has not received instruction in safe handling of personal watercraft pursuant to the FWCC's rules. The person obtaining a personal watercraft from a livery must provide the livery with a written statement attesting to his or her compliance with FWCC's rules. A livery may not lease, hire, or rent a personal watercraft to any person who is less than 18 years of age.

Rule 68D-36.107 of the Florida Administrative Code (F.A.C.) provides additional requirements for liveries renting or leasing personal watercraft. The rule establishes minimum instructional requirements that persons renting or leasing personal watercraft must provide to all individuals intending to operate the personal watercraft. These requirements include:

- Operator responsibility and ethics;
- Navigation rules;
- Navigation aids, buoys and waterway markers;
- Awareness to changes in weather and water conditions;
- Water skiing and other activities specific to personal watercraft;

³ NASBLA website, <http://www.nasbla.org>

⁴ As punishable in ss. 775.082 or 775.083, F.S., as a term of imprisonment not exceeding 60 days and a fine of up to \$500.

⁵ Section 327.395(4), F.S.

- Boating accident causes, prevention, and legal requirements of the operator;
- Propulsion, steering and stopping characteristics of personal watercraft; and
- Awareness of other vessels and dangers of reckless operations, manatees, and environmental concerns.

Finally, the rule specifies that a livery may not lease or rent a personal watercraft to any person unless, prior to rental, a safe operation instructional tape is shown to the potential renter, or safe operation literature is provided and reviewed with each prospective operator. That livery must also provide an on-the-water demonstration and observe each person who will operate the personal watercraft to verify the prospective operators' ability to safely handle the personal watercraft. Any person delivering this information on behalf of the livery must have successfully completed a boater safety course approved by the NASBLA and the state.

Effect of Proposed Changes

The bill states that no person under the age of 16 can operate watercraft without adult supervision. The bill also makes it unlawful for the owner of any personal watercraft, or any person having charge over or control of a personal watercraft, to authorize or knowingly permit the watercraft to be operated by a person under 16 years of age or by a person born on or after January 1, 1988 who does not hold a boating safety identification card to operate a personal watercraft in compliance with s. 327.395, F.S.

The bill amends current law making it unlawful for the owner of, or any person having charge or control over any leased, hired, or rented personal watercraft to authorize or knowingly permit the watercraft to be operated by anyone who has not received instruction in the safe handling of personal watercraft in compliance with rules of the FWCC. The instruction must be in compliance with s. 327.54, F.S.

The bill requires anyone receiving instruction in the safe handling of personal watercraft pursuant to a program established by rule of the FWCC to provide the owner of, or person having charge or control over, a leased, hired or rented personal watercraft, or a livery with a written statement attesting to the same. The requirement provides for the instruction to be pursuant to rule 68D-36.107, F.A.C. or any other program established by rule of the FWCC.

The bill provides that a livery may not knowingly lease, hire, or rent a personal watercraft to any person who has not received instruction in the safe handling of personal watercraft pursuant to rule 68D-36.107, F.A.C. or any other rule established by the commission pursuant to chapter 120.

The bill requires that any agent or employee delivering the required instruction in the safe handling of personal watercraft enroll in, attend, and successfully complete a boating safety course that meets the minimum standards established by the FWCC and the National Association of State Boating Law Administrators (NASBLA).

B. SECTION DIRECTORY:

Section 1. Amends s. 327.39, F.S., revising certain requirements for operating personal watercraft.

Section 2. Amends s. 327.54, F.S., revising the requirements relating to the boating safety course required for leasing or renting a personal watercraft from a livery.

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:
None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None
2. Expenditures:
None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the FWCC analysis, fiscal impacts to the private sector are not anticipated to be significant. Livery personnel who have not successfully completed a boating safety course would be required to do so before providing pre-rental or pre-ride instruction. Courses that meet this requirement cost an average of \$22 per student

- D. FISCAL COMMENTS:**
None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:
None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On February 3, 2010, the Agriculture & Natural Resources Policy Committee amended and passed HB 233 as a Committee Substitute.

The first amendment changes the word 'persons' delivering information in a livery to 'agents or employees' who work at the livery.

The second amendment deletes the increase from 14 to 16 years of age to operate a personal watercraft and states that no person under the age of 16 can operate watercraft except under adult supervision.

On March 17, 2010, the General Government Policy Council adopted an amendment to CS/HB 233. The amendment defined what "adult supervision" means. Subsequently, the bill failed.