

STORAGE NAME: h2225.jud

DATE: April 7, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HB 2225 (PCB WRM 00-03)

RELATING TO: Fish & Wildlife Conservation Commission/Responsibility

SPONSOR(S): Committee on Water & Resource Management and Representative Alexander

TIED BILL(S):

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

- (1) WATER & RESOURCE MANAGEMENT YEAS 11 NAYS 0
 - (2) JUDICIARY
 - (3) FINANCE AND TAXATION
 - (4) GENERAL GOVERNMENT APPROPRIATIONS
 - (5)
-

I. SUMMARY:

The bill proposes to enhance Florida's boating safety laws as enforced by the Fish and Wildlife Conservation Commission (FWCC). The bill lowers the blood-alcohol or breath-alcohol level required to trigger enhanced penalties for boating under the influence (BUI), expands treatment requirements for BUI offenders, and provides that previous out-of-state convictions for BUI or DUI will count as previous convictions in Florida for BUI or DUI violations.

The bill proposes changes to boating safety laws regulating the size and use of divers-down flags, the operation and safe handling of personal watercraft (PWC), and the lease, hire or rental of vessels or PWC from liveries, including requirements for liveries to carry liability insurance. The bill authorizes the testing of vessels and vessel motors, and provides specifications for pre-ride and pre-rental vessel safety instruction programs.

The bill creates a combination saltwater/freshwater fishing license, a combination hunting, freshwater fishing and saltwater fishing license, and clarifies disability exemption requirements for hunting and fishing licenses.

The bill appears to have a minimal fiscal impact on state and local governments. It contains provides rulemaking authority.

The bill does not trigger local-government mandate requirements or raise constitutional issues. Except as otherwise provided, the proposed bill takes effect on October 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

The bill requires that the FWCC prepare and, upon request, supply law enforcement entities with accident report forms which must contain specific information. Accident reports must be made in writing on the forms approved by the FWCC. Currently, there is no requirement that law enforcement officers submit boating accident reports on specific forms.

The bill creates new civil penalties and fines for violations of boating laws.

2. Lower Taxes Yes No N/A

3. Individual Freedom Yes No N/A

The bill provides that liveries must obtain liability insurance coverage in specified amounts, and must provide specific preride or prerenal instruction. The bill places additional restrictions on divers by requiring a new size flag to be displayed on vessels, and by imposing additional safety requirements, and authorizing future noncriminal monetary sanctions for violations of proposed diving laws.

The bill places restrictions on operators and riders of personal watercraft by limiting the type of personal flotation device which may be worn. The bill makes it unlawful for the owner of a leased, hired, or rented personal watercraft, or any person having charge over a leased, hired, or rented personal watercraft, to authorize or knowingly permit the watercraft to be operated by a person who has not received instruction in the safe handling of a PWC. The person must sign a written statement that attests to receipt of instruction.

The bill raises the age of individuals who are authorized to lease, rent, or hire a PWC from 16 to 18 years of age. Further, the bill provides that no one may operate a leased, hired, or rented PWC without receiving instruction in the safe handling of said PWC, and without signing a statement attesting to the same.

4. Personal Responsibility Yes No N/A

5. Family Empowerment Yes No N/A

B. PRESENT SITUATION:

General Boating Information

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 the lowest fatality numbers 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 & 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.

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 the city or county to regulate vessels resident in the 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 endangering or damaging 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 FWCC 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 that 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 that no ordinance or local law may apply to the Florida Intracoastal Waterway, and providing that said local laws or ordinances are operative only when they are not in conflict with the provisions of chapter 327.

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 that 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 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 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 that 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.

Information provided by the FWCC indicates the following:

- o Average statewide fine for a divers-down flag violation is approximately \$100.
- o 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.
- o 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 or breath-alcohol level of .08 or more 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.

- o 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.
- o 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.
- o 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.
- o 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.
- o 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, F.S., 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, treatment, and evaluations under these provisions.

Finally, s. 327.35, F.S., provides that 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 that 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. Given a fee per vessel of \$3.50, the FWCC reports the revenue breakdown as follows:

77,416 registered vessels @\$3.50	=	\$270,956
10% (\$.35) to DHSMV	=	\$27,096 (administrative costs)
\$1.50 to Save Manatee TF	=	\$116,124
Remaining \$1.65 to Marine Res. TF	=	\$127,736

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. PWC have a disproportionate number of accidents and fatalities compared to all other recreational vessels.

Florida currently requires that 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.

Vessel Testing

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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(7), 62N-22.009(4), and 62N-22.024(3), Fla. Admin. Code.

Liveries

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

- o 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;
- o Lease, hire, or rent a PWC to any person under 16 years of age;
- o Lease, hire, or rent a PWC without displaying boating safety information; and
- o 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.

Antique Vessel Registration

Prior to the 1999 legislative session, s. 327.25(2), F.S., provided that 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 notice from the United States Coast Guard that its \$3.9 million federal boating safety grant could be jeopardized if this provision was not corrected by May 1999. The conflict has not been corrected by the Legislature but the state has not, as yet, lost grant money.

Disability Exemptions for Fishing and Hunting Licenses

Chapters 370 and 372, F.S., regulate income exceptions and license exemptions for disabled Florida residents. Saltwater products licenses and saltwater fishing licenses are regulated under chapter 370. Freshwater fishing and hunting licenses are regulated under chapter 372.

Under the provisions of s. 370.05(2), F.S., persons engaged in the sale of saltwater products, or engaged in the harvesting of saltwater products with specified gear or equipment, must have a valid saltwater products license as issued by the FWCC. Further, persons selling species that have been designated as a "restricted species" are required to have a restricted species endorsement on a saltwater products license. A "restricted species" endorsement may only be issued to persons meeting specific income criteria, however s. 370.06(2)(a)2.g., F.S., provides exceptions to the income requirements including, but not limited to, the following:

- o Any resident who is certified to be totally and permanently disabled by a verified written statement, based upon the criteria for total disability in chapter 440, from a physician licensed in this state.
- o Any resident who is certified to be totally and permanently disabled by any branch of the United States Armed Services, by the Social Security Administration, or by the United States Department of Veterans' Affairs, or;
- o Residents who hold a valid identification card issued pursuant to s. 295.17, F.S. Under s. 295.17, F.S., the Florida Department of Veterans' Affairs is authorized to issue an identification card to any veteran who is a permanent Florida resident, and who has been adjudged by the United States Department of Veterans' Affairs, or its predecessor, to have a 100-percent service-connected permanent and total disability rating for compensation. An identification card may also be issued to a veteran determined to have a 100-percent service-connected total and permanent disability, and who is receiving disability retirement pay from any branch of the United States Armed Forces. The identification card may be used by the veteran as proof of 100-percent, service-connected permanent and total disability for any benefit provided by state law.

Persons meeting these requirements are exempt from the income requirements for a restricted species endorsement so long as they held a saltwater products license for at least 3 of the last 5 license years prior to the date of disability.

In ss. 370.0605(4) and 372.561(5), F.S., exemptions to license requirements for saltwater fishing, freshwater fishing, and hunting licenses and permits are provided for the following:

- o Permanent and totally disabled Florida residents as certified by the United States Department of Veterans' Affairs, or its predecessor; by the United States Social Security Administration, or by any branch of the United States Armed Forces.
- o Residents certified as permanently and totally disabled upon the verified written statement of a physician licensed to practice medicine in Florida, and based upon the criteria for permanent and total disability as established in chapter 440 governing Workers' Compensation.
- o Residents who hold a valid identification card issued pursuant to s. 295.17., F.S., upon presentation of same.

Any license issued under the provisions of these sections after January 1, 1997, will expire 5 years from date of issuance and must be reissued upon request. Further, a Disability Award Notice issued by the United States Social Security Administration is not sufficient proof of permanent and total disability for purposes of receiving an exemption for license and permit fees unless the form certifies that the Florida resident is permanently and totally disabled.

Saltwater Fishing, Freshwater Fishing, and Hunting Licenses

Fees for hunting licenses, and for saltwater and freshwater fishing licenses were not affected by the creation of the FWCC. Revision 5 to the State Constitution provided that only the Legislature can establish license fees for all hunting and fishing licenses and permits, as well as establish penalties for violations of FWCC regulations.

Florida's recreational **saltwater fishing licenses** were created in 1989 and to date, have raised more than \$78 million in revenues. In fiscal year 1998-1999, more than 900,000 resident and non-resident recreational saltwater fishing licenses were sold, and more than \$10 million in revenue was collected. Data provided by the FWCC shows the following sales information:

- o 594,562 resident annual \$12 recreational saltwater licenses - \$7,134,744
- o 86,825 non-resident annual \$30 recreational saltwater licenses - \$2,604,750
- o 67,102 non-resident 7-day \$15 recreational saltwater licenses - \$1,006,530
- o 237,187 non-resident 3-day \$5 recreational saltwater licenses - \$1,185,935

Florida's **freshwater fishing licenses** were created in 1929. A resident annual license costs \$12; a non-resident annual license costs \$30, and the non-resident 7-day license cost \$15. In 1996, the Legislature authorized a non-resident 3-day license to be sold for \$5. To encourage the sale of 7-day licenses instead, the 3-day license was repealed at the request of the old Game & Fish Commission during the 1999 Regular Legislative Session. Fees for annual resident and non-resident licenses have not been increased since 1989. For fiscal year 1998-1999, data submitted by the FWCC indicates sales of the following:

- o 416,662 resident annual \$12 recreational freshwater licenses - \$4,999,944
- o 45,513 non-resident annual \$30 recreational freshwater licenses - \$1,365,390
- o 28,165 non-resident, 7-day, \$15 recreational freshwater licenses - \$422,475
- o 89,133 non-resident, 3-day, \$5 recreational freshwater licenses - \$445,665

Data submitted for fiscal year 1999-2000 shows that from July 1, 1999 through October 31, 1999, the FWCC has sold 9,045 non-resident, 7-day, \$15 licenses, thus increasing sales for the first six months of this fiscal year by more than 6,000 over the first six months of the last year. The final six months of this fiscal year will determine if the repeal of the 3-day license creates the desired effect.

Resident and non-resident annual hunting licenses were established in 1929. In 1989, the Legislature created a non-resident 10-day license for \$25. While the non-resident annual license was increased to \$150 in 1989, the resident annual license has remained constant since 1979 at a fee of \$11. For fiscal year 1998-1999, the FWCC reports the following:

- o 97,596 resident annual \$11 hunting licenses - \$1,073,556
- o 444 non-resident annual \$150 hunting licenses - \$66,600
- o 5,244 non-resident, 10-day, \$25 licenses - \$131,100

C. EFFECT OF PROPOSED CHANGES:

HB 2225 does the following:

- o Provides changes to boating safety laws regulating the size and use of divers-down flags, the operation of personal watercraft, and the lease, hire, or rental of vessels and personal watercraft from liveries.
- o Requires that liveries obtain liability insurance in the amount of \$500,000 per person and \$1,000,000 per incident.
- o Reduces the blood-alcohol and breath-alcohol level required to trigger enhanced BUI penalties from .20 to .16.
- o Provides that BUI offenders who fail to report for treatment, or who fail to complete treatment or substance abuse education programs, will not be allowed to operate vessels on the waters of the state during a probationary period.
- o Provides that previous out-of-state convictions for BUI/DUI will count as previous convictions in Florida for BUI/DUI violations.
- o Provides for instruction in the safe handling of personal watercraft.
- o Provides for the testing of vessels and vessel motors.
- o Provides specifications for pre-ride and pre-rental vessel safety instruction programs provided by liveries.
- o Creates fees and penalties for violation of boating safety provisions.
- o Provides that ordinances and local laws enacted by cities and counties to regulate the operation and equipment of vessels may not discriminate against personal watercraft.
- o Provides that a representative of the scuba diving industry may sit on the Boating Advisory Council.
- o Provides for a \$24 annual resident combination freshwater fishing and saltwater fishing license.
- o Provides for an annual \$34 resident combination hunting, freshwater fishing, and saltwater fishing license.
- o Repeals the \$5/3-day non-resident saltwater fishing license.
- o Clarifies disability exemption requirements for all hunting and fishing licenses, and for restricted species endorsements on saltwater products licenses.
- o Authorizes the FWCC to establish free saltwater fishing days by rule.
- o Repeals outdated license requirements for fur and hide dealers.

D. SECTION-BY-SECTION ANALYSIS:

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 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. 327.32, F.S., to provide that limitations of liability for negligent operation of a vessel shall be governed by the provisions of 46 U.S.C. Current state law provides that liability is limited to the operator in immediate charge of the vessel and the owner of the vessel if the owner is present when the vessel is being recklessly or carelessly operated.

Section 5. Amends s. 327.33, F.S., to provide a conforming change to provisions contained in Section 6.

Section 6. Renumbers s. 861.065, F.S., as s. 327.331, F.S. The bill increases the size of divers flags required to be displayed on vessels and 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. It 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. The bill provides conditions under which vessels may approach within 100 feet or 300 feet of a divers-down flag.

Section 7. Provides that effective October 1, 2001, criminal penalties for divers-down flag violations shall become noncriminal infractions.

Section 8. Amends s. 327.35(3), F.S., to provide that persons commit a felony of the first degree for 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.

The bill 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. This would be different from the DUI statute, which provides enhanced penalties for BAL of 0.20 or higher. 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.

It amends s. 327.35(5), F.S., to clarify monthly reporting probation requirements, and substance abuse education and treatment provisions for convicted BUI offenders. It 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.

The bill 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. It 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 9. Amends s. 327.355, F.S., to clarify that breath alcohol levels are no longer measured in “percent” for breathalyser tests. It 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 10. Contains technical revisions to s. 327.36, F.S.

Section 11. It 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 12. Amends s. 327.39, F.S., to provide that persons may not operate a 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. The bill requires a person operating a PWC to comply with laws governing negligent operation of a vessel. It 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. It authorizes the FWCC to establish rules prescribing instruction in the safe handling of PWC.

Section 13. It 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 14. 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 15. Amends s. 327.41, F.S., to update provisions regulating the placement of uniform waterway regulatory markers in the waters of the state.

Section 16. 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 17. 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 18. 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 pre-rental or pre-ride 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 that the person must sign a written statement attesting to the fact that he or she has received said instruction.

Requires that 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 that the livery must have proof of insurance available for inspection at each location where PWC are being leased, hired, or rented. Repeals language providing that persons leasing the vessel from the livery are liable for violations and accidents occurring while said person is in charge of such vessel.

Section 19. Amends s. 327.60, F.S., to provide that ordinances or local laws adopted by cities and counties may not discriminate against personal watercraft.

Section 20. 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 21. Amends s. 327.73, F.S., to incorporate amendments to personal watercraft violations contained in paragraph (p) of subsection (1) of said section. Provides that 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 that court costs imposed under these provisions may be used to fund law enforcement training.

Section 22. 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 23. 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 24. Amends s. 327.803, F.S., 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 25. Amends s. 328.48, F.S., to provide technical revisions relating to vessel registration.

Section 26. Amends s. 328.56, F.S., to provide technical revisions relating to vessel registration numbers.

Section 27. 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 28. 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 29. Contains a technical revision to s. 328.76, F.S., relating to the Marine Resources Conservation Trust Fund.

Section 30. Amends s. 370.06, F.S., effective July 1, 2000, to clarify disability exemption requirements for a restricted species endorsement on a saltwater products license.

Section 31. Amends s. 370.0605, F.S., effective July 1, 2000, to create an annual \$24 resident combination license for the taking of freshwater and saltwater fish; an annual \$34 resident combination license to hunt and to take freshwater and saltwater fish; to clarify disability exemption requirements for all saltwater fishing licenses authorized pursuant to s. 370.0605, F.S.; and to authorize the FWCC to designate no more than 2 consecutive or nonconsecutive days in each year as free saltwater fishing days.

Section 32. Amends s. 370.12, F.S., to repeal an obsolete reference to an executive order.

Sections 33 through 44. Conforms the provisions of HB 2225 to the provisions of HB 1071 (formerly PCB WRM 00-01) which transferred portions of chapter 372 regulating freshwater fishing to Part II of chapter 370. Effective July 1, 2000, provides for the creation of an annual \$24 resident combination license for the taking of freshwater and saltwater fish; an annual \$34 resident combination license to hunt and to take freshwater and saltwater fish; and amends provisions regulating the sale of a permanent \$12 hunting and fishing license to residents 64 years of age or older to specify that the license is for hunting, freshwater fishing and saltwater fishing. Clarifies disability exemption requirements for freshwater fishing licenses. Contains cross-reference corrections.

Amends s. 372.57, F.S., effective July 1, 2000, to conform to HB 1071 (formerly PCB WRM 00-01) and to provide for licenses and permits for the taking of game. Creates an annual \$34 resident combination license to hunt and take freshwater and saltwater fish; and amends provisions regulating the sale of a permanent \$12 hunting and fishing license to residents 64 years of age or older to specify that the license is for hunting, freshwater fishing, and saltwater fishing. Clarifies disability exemption requirements for hunting licenses.

Section 45. 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 46. Amends s. 316.635, F.S., to provide that courts with authority over minors for traffic violations will also have authority over minors for boating violations.

Section 47. Amends s. 318.32, F.S., to provide that 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 48. Amends s. 318.38, F.S., to conform to the analogous provision for driving offenses.

Section 49. Amends s. 320.08, F.S., to correct a cross-reference.

Section 50. Amends s. 713.78, F.S., to redefine "vessel" for purposes of filing liens for recovering, towing, or storing vehicles and documented vessels.

Section 51. Amends s. 715.07, F.S., to correct a cross-reference.

Section 52. 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 53. Amends s. 947.146, F.S., to provide that 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 54. Amends s. 985.05, F.S., to provide that records pertaining to children charged with traffic or boating offenses may be destroyed for cases in which there is no allegation of delinquency. Provides that any official records pertaining to boating violations shall be forward to the FWCC.

Section 55. Amends s. 985.212, F.S., to provide that the fingerprinting and photographing of juvenile boating violators is not prohibited. Provides that all records of such 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 boating violators. This section conforms the boating regulation to the current traffic regulation.

Section 56. Except where otherwise provided, provides an effective date of October 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Combination Licenses

The FWCC projects no revenue impact from the creation of the combination saltwater/freshwater fishing license, and the combination hunting/saltwater/freshwater fishing license. The licenses are being created as a user convenience - the user will carry one license instead of two or three.

The FWCC expects to create no additional interest in recreational hunting or fishing by creating the combination licenses.

Repeal of the \$5/3-day non-resident saltwater fishing license

The FWCC projects the following:

FY 1999-2000 Projected Sales - 237,187 x \$5, 3-day =	\$1,185,935
FY 1999-2000 Projected Sales - 67,102 x \$15, 7-day =	\$1,006,530
FY 1999-2000 Projected Sales - 86,825 x \$30, annual =	<u>\$2,604,750</u>
FY 1999-2000 TOTAL PROJECTED SALES	\$4,797,215

FY 2000-2001 Projected Sales - (no 3-day licenses) =	\$ 0
FY 2000-2001 Projected Sales - 228,217 x \$15, 7-day =	\$3,423,251
FY 2000-2001 Projected Sales - 86,825 x \$30, annual =	<u>\$2,604,750</u>

FY 2000-2001 TOTAL PROJECTED SALES **\$6,028,001**

Positive Revenue Impact **\$1,230,768**

The FWCC estimates that 68% of 3-day license holders (161,115) will purchase the 7-day license instead.

Impact of Penalty Provisions

Staff of the Office of Economic & Demographic Research has notified committee staff that the fiscal impact of HB 2225 on the state's prison system is minimal.

2. Expenditures:

Staff of the Office of Economic & Demographic Research has notified committee staff that fiscal impact of the penalty provisions of HB 2225 on state government is minimal.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Staff of the Office of Economic & Demographic Research has notified committee staff that the fiscal impact of HB 2225 on local government is minimal.

2. Expenditures:

Staff of the Office of Economic & Demographic Research has notified committee staff that the fiscal impact of HB 2225 on local government is minimal.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Some economic impact on the private sector can be expected from the implementation of HB 2225 as liveries that rent, lease, or hire PWC are required to obtain liability insurance in specified amounts. 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.

Also, divers can expect to feel some impact from the implementation of HB 2225. Although the costs may be minimal, vessels are required to display larger size divers-down flags. 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.

Under the provisions of HB 2225, persons who currently have inflatable type 1 through type 5 personal flotation devices as authorized by the United States Coast Guard are required to purchase type 1 through type 5 noninflatable personal flotation devices. A violation of this provision is a noncriminal infraction, subject to a \$50 civil penalty.

HB 2225 provides that court costs be assessed 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.

Further, HB 2225 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.

Owners of leased, hired, or rented PWC and persons having charge or control over a leased, hired, or rented PWC, commit a second-degree misdemeanor if they authorize or knowingly permit a PWC to be operated by a person who has not received instruction in the safe handling of PWC, and may be fined up to \$500 and receive a jail sentence of up to 60 days.

Finally, HB 2225 provides that 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.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision is not applicable to HB 2225 because the proposed bill does not require cities or counties to expend funds, or to take actions regarding the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

HB 2225 does not reduce the revenue-raising authority of counties or municipalities.

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

HB 2225 does not reduce the state tax revenues shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

Section 12 of HB 2225 provides the FWCC with the authority to establish rules prescribing the instruction to be given for the safe handling of personal watercraft, taking into account the nature and operational characteristics of personal watercraft, and general principles and regulations pertaining to boating safety.

Section 14 of HB 2225 provides the FWCC with the authority to establish rules, pursuant to chapter 120, implementing the provisions of s. 327.40, F.S., the uniform marking of waterways in Florida for safety or navigation purposes.

Section 15 of HB 2225 expands the authority of the FWCC to establish restricted areas on the waters of the state by rule, pursuant to chapter 120.

Section 17 of HB 2225 provides the FWCC with rulemaking authority to prescribe the contents and size of boating safety information to be displayed by liveries to the renting public.

C. OTHER COMMENTS:

Section 20 of the bill provides for criminal penalties for failing to pay a fine imposed pursuant to s. 327.73, F.S. This provision could not be enforced against a person who demonstrates an inability to pay the penalty. See e.g. Art. I, s. 11, Fla. Const. (prohibiting imprisonment for failure to pay debts). If a person willfully refused to pay and had the ability to pay, criminal sanctions could be imposed.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At the March 14, 2000, meeting of the Water & Resource Management Committee, committee members adopted four amendments to WRM PCB 00-03 (now HB 2225) which provide the following:

- o Section 327.395, F.S., is amended to provide that a diving awareness component be included in FWCC-approved boater education or boater safety courses, and in course equivalency examinations developed or approved by the FWCC.
- o Section 327.33, F.S., is amended to provide that boaters violating the safety zone established for divers in s. 327.331, F.S., are guilty of recklessly operation a vessel, thereby committing a first degree misdemeanor, carrying penalties of a fine up to \$1,000 and up to one year in jail.
- o Section 327.331, F.S., is amended effective October 1, 2001, to provide that persons violating the provisions of s. 327.331, F.S., are committing noncriminal infractions, carrying a \$50 civil penalty, except for persons who are guilty of reckless operation of a vessel as provided in s. 327.33, F.S., above.
- o Section 327.73, F.S., is amended effective October 1, 2001, to provide that persons violating the provisions of s. 327.331, F.S., are committing noncriminal infractions, carrying a \$50 civil penalty, except for persons who are guilty of reckless operation of a vessel as provided in s. 327.33, F.S., above.

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VII. SIGNATURES:

COMMITTEE ON WATER & RESOURCE MANAGEMENT:

Prepared by:

Staff Director:

Karon A. Molloy

Joyce Pugh

AS REVISED BY THE COMMITTEE ON JUDICIARY:

Prepared by:

Staff Director:

L. Michael Billmeier, J.D.

P.K. Jameson, J.D.