

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 479 Commercial Parasailing
SPONSOR(S): Rice and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Water & Natural Resources Committee</u>	<u></u>	<u>Winker</u>	<u>Lotspeich</u>
2) <u>Agriculture & Environment Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
3) <u>State Resources Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 479 provides for the regulation of commercial parasailing activities. The bill provides for an annual license from the Fish and Wildlife Conservation Commission for vessels engaged in commercial parasailing. The bill requires the owner of a vessel engaged in commercial parasailing activities to carry liability insurance and specifies requirements for persons conducting commercial parasailing activities. The bill provides for a criminal penalty for violations of the commercial parasailing provisions in the bill. The bill creates s. 327.375, F.S.

In addition to insignificant annual revenues of about \$7,000, there may be decreased costs and expenses for medical and litigation due to any reduced injuries and deaths resulting from enhanced regulation and the enforcement of commercial parasailing safety requirements.

The bill will become effective on October 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – the bill will regulate a commercial industry by the state which is currently not regulated to the extent required by the bill. The bill requires FWCC to promulgate rules related to licensing and liability insurance for a commercial industry which is currently self-regulated. The bill also provides a criminal penalty for failure to comply with the newly created regulations affecting commercial parasailing operations.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Parasail Safety Council

“Parasailing” is defined in the Merriam-Webster Dictionary as the recreational sport of soaring in a parachute while being towed usually by a motorboat. According to a Florida-based (Orlando) organization called the Parasail Safety Council (Council), the most common form of parasailing is called “winchboat parasailing.”

“Winchboat parasailing” is a method of parasailing where the launch and recovery of the parasailor and canopy (parachute) takes place directly from a boat. The boat is equipped with a parasail inflation system and a hydraulic winch powered by an engine which launches and retrieves the parasailor from the flight deck, which is usually located in the rear of the boat. The world’s first working prototype winchboat was designed and tested in 1974 by Mark McCulloh, who also founded the Parasail Safety Council in 1998.

The mission of the Council is to raise safety standards in the parasailing industry with a focus upon education, certification, and regulation and to support professional parasailing operators who “choose safety over profit and who promote parasailing in a responsible safe manner.”

Some of the activities of the Council include:

- The development of safe operating practices, policies, and procedures.
- Providing a database for parasail accidents and causation.
- Detailed information about parasail equipment manufactures and distributors.
- Risk management analysis.
- Ratings and recommendations for parasailing related products and services.
- Marine insurance information and support.
- Certification programs for Captains and Technicians.
- Consumer alerts and safety tips.
- Solutions to reduce preventable accidents.

In addition to founding the Council, Mr. McCulloh is the inventor of numerous parasailing equipment and methods including the winchboat parasailing device and method described above, and various seating devices for parasailing. A number of his inventions have been patented. Mr. McCulloh is also an expert witness and litigation consultant.

According to the Council’s website (www.parasail.org), the following parasailing consumer safety information is provided:

- Make sure you parasail with a fully licensed (state and local) company operating from a well established location, insured by a licenses insurance company.
- Don't be afraid to ask how long the parasail operator has been in business, if their business permits are current with the city, and if the parasail operator is a U.S. Coast Guard Licensed Captain.
- Inexperienced parasailors should avoid this activity in winds that exceed 15 knots due to an increased difficulty and complications during emergency water landings.
- Never go parasailing in rain, fog, or in an approaching storm.
- Educate yourself on the different types of parasail equipment and passenger support devices.
- Make certain you receive an adequate safety briefing prior to your flight.
- Never fly over 600 feet. This is a maximum recommended altitude for using hand signals and recovery during water landings over the ocean and 300 feet over small lakes, bays, or sounds.
- It is advisable to avoid parasailing in close proximity to the shoreline and other boats and objects.

Professional Association of Parasail Operators

A recently established organization located in San Diego, California called the Professional Association of Parasail Operators (www.teampapo.org), is comprised of commercial parasailing operators throughout the county. According to the organization's website, the following Florida-based parasail operators are members of the organization:

- Marco Island Ski and Watersports
- Destin Watersports
- Sebago Watersports
- Caribbean Watersports
- Aquatic Watersports

The organization, which according to its website is in discussion with the Florida-based Parasail Safety Council (see above) to "determine ways in which our organizations may work together in the promotion of industry safety and professionalism," has an objective of establishing parasailing industry standards and guidelines which focus upon safety through training, education, and leadership.

In an open letter to its members, the Professional Association of Parasail Operator's website states that the parasail industry is "currently undergoing a serious change, one that could potentially end our business." The letter further states that "due to the staggering number of recent industry claims, most of which were easily preventable, operators witnessed a frightening insurance carrier exodus, which for many (parasail) operators resulted in the sudden loss of liability coverage and/or a substantial premium increase." According to the association, there are a shrinking number of insurance companies willing to write insurance coverage for parasail operations and that "the insurance industry will no longer tolerate an independent, fragmented, and non-regulated industry." The association recommends that a "safety-first system of self-regulation, utilizing a basic 'common sense' set of safe operational standards and guidelines" be developed and implemented.

The association has developed a set of Operating Standards and Guidelines (OSAG) for parasail operator members of the association. Although there is no formal enforcement mechanism, failure to comply with the standards and guidelines may result in "immediate suspension or cancellation of your membership" in the association.

The association's standards are broken down into general rules and regulations (e.g., local government regulations, assumption of risk release, towline inspection and maintenance, minimum age requirements, flight altitude, etc.), operating conditions (e.g., boat traffic right of way, pre-flight weather evaluation, and wind and sea conditions, etc.), commercial vessels (e.g., recognized winchboats and vessel requirements), parasailing equipment (canopies and towline types and guides), safety

equipment requirements (USCG approved safety equipment, communications, and emergency flight and passenger rescue systems), and minimal flight crew requirements.

Current Florida Statutes Related to Parasailing

Section 327.37(1)(b), F.S., provides that a person may not operate a vessel on any water 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. A wide-angle rear view mirror is not acceptable for this purpose.

Subsection (2) of s. 327.37, F.S., states that a person may not engage in water skiing, parasailing, aquaplaning, or any similar activity at any time between the hours from one-half hour after sunset to one-half hour before sunrise. Further, a person may not engage in these activities unless that person is wearing a non-inflatable type I, type II, type III, or type V personal flotation device approved by the U.S. Coast Guard.

Subsection (4) of s. 327.37, F.S., provides that the tow rope or other device which controls the direction of the water skis, parasail, aquaplane, inner tube, sled, or other such device, cannot be manipulated so as to strike or collide with 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.

Further, subsection (5) of s. 327.37, F.S., provides 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.

Pursuant to s. 327.73, F.S., violations of s. 327.37, F.S., are non-criminal infractions and the civil penalty for such infractions is a \$50 fine.

Effect of Proposed Changes

HB 479 creates s. 327.375, F.S., providing for the regulation of commercial parasailing by the Florida Fish and Wildlife Conservation Commission (FWCC). The bill defines "commercial parasailing" to mean any activity involving the towing of a person by a motorboat for consideration when one or more persons are tethered to the towing vessel and such person or persons ascend above the water and remain suspended above the water while the vessel is underway.

The bill requires that each person who provides commercial parasailing to another person be licensed by the FWCC and maintain the minimum liability insurance necessary for commercial parasailing. The bill authorizes FWCC to promulgate rules regarding the issuance of a commercial parasailing license with a license fee of up to \$100 and a registration fee of \$10 for each county in which the licensee intends to engage in commercial parasailing.

The bill requires the FWCC to promulgate a rule establishing requirements for minimum liability insurance, including the maximum deductible amounts for commercial parasailing operators.

The bill requires that any person engaged in commercial parasailing operations must meet the following operation requirements:

- Vessels used in commercial parasailing must be designed for towing a parasail rider and must be equipped with a rear launch platform and powered winches used to release and retrieve the tow line.
- All commercial parasail operators must have a valid license for carrying passengers issued by the U.S. Coast Guard (USCG).
- All commercial parasailing operations must have an observer 18 years of age or older on the vessel at all times to monitor the progress of each parasail rider and the parachute.

- All commercial parasail riders must wear a USCG approved type I, type II, or type III flotation device of the proper size and must be connected to the tow line and secured in a seat harness attached to an ascending type of parachute.
- Commercial parasailing conducted in the Atlantic Ocean and the Gulf of Mexico shall be restricted to not less than three-eighths of a nautical mile from the shore.
- No commercial parasailing shall be permitted within 600 feet of any anchored vessel, person in the water, shore or seawall, or any structure, bridge, power line, wharf, pier, dock, buoy, platform, piling, channel marker, or other similar object.
- Commercial parasailing shall not be permitted on bodies of water less than 1,200 feet in width from shore to shore.
- All commercial parasailing vessels must be equipped with a functional VHF radio.
- Commercial parasailing can only be conducted from one-half hour before sunrise to one-half hour after sunset and at no time when visibility is restricted.
- Commercial parasailing is prohibited when there are sustained winds of 20 knots or seas five feet or higher.
- Parasail towlines may not exceed 800 feet in length.
- A commercial parasail rider may only be launched from the flight deck of the vessels.
- No more than two persons may be tethered to the towing vessel and ascend above the water at any time.

The bill provides that any person who violates any part of newly created s. 327.375, F.S., commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or 775.083, F.S.

The bill would take effect on October 1, 2005.

C. SECTION DIRECTORY:

Section 1: Creates s. 327.375, F.S., defining commercial parasailing and requiring licensing of commercial parasailing operators by FWCC; requiring liability insurance for such operators; requiring FWCC to establish rules for licensing and liability insurance requirements; establishing requirements for conducting commercial parasailing operations; and providing a penalty for non-compliance.

Section 2: The bill takes effect on October 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

FWCC estimates that there are currently over 70 commercial parasail operators in Florida. If each operator were assessed the maximum fee of \$100, revenues would be \$7,000 annually. No estimate can be made of which counties each operator would register nor are there any estimates of the growth or decline of the commercial parasailing industry.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Commercial parasailing operators in Florida will incur additional insurance and operating costs which cannot be estimated since they will vary depending on each operator's claims experience.

D. FISCAL COMMENTS:

In addition to insignificant annual revenues of about \$7,000, there may be decreased costs and expenses for medical and litigation due to any reduced injuries and deaths resulting from enhanced regulation and the enforcement of commercial parasailing safety requirements.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require cities or counties to spend funds or take an action requiring the expenditure of funds, reduce the authority of cities or counties have to raise revenues in the aggregate, or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires FWCC to promulgate rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

FWCC has provided an extensive re-write of HB 479 based upon staff's review. Suggested revisions expand and clarify provisions of HB 479. These revisions have been incorporated and refined in the Senate companion to HB 479 which is SB 2076. Committee staff recommends that revisions suggested by FWCC and the language from the SB 2076 be incorporated into HB 479.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES