

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Community Affairs Committee

BILL: CS/CS/SB 1958

INTRODUCER: Community Affairs Committee, Environmental Preservation Committee, Senator Aronberg and others

SUBJECT: Airboats

DATE: April 4, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Branning</u>	<u>Kiger</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Herrin</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute for committee substitute (CS) provides for the regulation of airboats. It provides definitions for “airboat” and “muffler.” This CS requires airboats to be equipped with mufflers and to display a certain flag when the airboat is in operation. Effective July 1, 2006, a local law or ordinance may not discriminate against airboats except by super majority vote of the governing body. Also, the CS provides penalties for operating an airboat without a muffler and failure to display the required flag. It amends cross references and makes other conforming changes.

This committee substitute amends the following sections of the Florida Statutes: 327.02, 327.60, 327.73, 327.731, 320.08, 328.17, 342.07, 616.242, 713.78, and 715.07. It also creates section 327.391 of the Florida Statutes.

II. Present Situation:

One definition of noise is a sound that is loud, unpleasant, unexpected, or undesired. Experts have indicated that continued exposure to noise above 85 dBA¹ over time, will cause hearing loss. In general, the louder the noise, the less time required before hearing loss will occur. Once permanent hearing damage has occurred, it is not possible to restore hearing.²

The Legislature has addressed the issue of noise in the statutes as it pertains to motor vehicles and vessels. Section 403.415, F.S., is known as the “Florida Motor Vehicle Noise Prevention and

¹ The term “decibel” means a unit used to express relative difference in power in relation to acoustic or electric signals.

² See Noise Center of the League, League for the Hard of Hearing, <http://www.lhh.org/noise/facts/hearing.htm>.

Control Act of 1974.” In this section, the Legislature prescribes maximum sound levels for motor vehicles measured at a distance of 50 feet from the center of the lane of travel under certain prescribed test procedures.

Muffling Devices for Vessels - Section 327.65, F.S., provides that the exhaust of every internal combustion engine used on any vessel operated on the waters of this state shall be effectively muffled by equipment so constructed and used as to muffle the noise of the exhaust in a reasonable manner. The use of cutouts is prohibited, except for vessels competing in a regatta or official boat race, and for such vessels while on trial runs. Subsection (2) of this section also provides that any county wishing to impose additional noise pollution and exhaust regulations on vessels may adopt an ordinance with the following restriction:

No person shall operate or give permission for the operation of any vessel on the waters of any county or on a specified portion of the water of any county, including the Florida Intracoastal Waterway, which has adopted the provisions of this section in such a manner as to exceed the following sound levels at a distance of 50 feet from the vessel: for all vessels, a maximum sound level of 90 dBA.

The common types of muffling devices in use for airboats are mufflers or straight pipes. The muffling of noise is particularly problematic for airboats. Airboats can produce sound pressure levels exceeding 120 dBA, which is roughly equivalent to the noise generated by a rock concert and approaches the human threshold of pain.³ Propellers and exhaust are not the only source of noise on an airboat – other sources include engine noise and vibrations. The aircraft industry which experiences similar noise reduction challenges is experimenting with the use of noise cancellation devices to reduce noise levels and this technology may be useful for the airboat industry.⁴

The Fish and Wildlife Conservation Commission has been working with the airboat industry and other interested parties to explore effective methods of reducing the sounds generated by airboats. The commission held a series of public workshops on the issue. This led to an airboat sound research project at the Florida Atlantic University College of Engineering. Scientific research concluded that flex-pipe alone, as commonly used in the airboat industry, is insufficient to meet the muffling requirements set forth in s. 327.65, F.S. There was overwhelming support from both the airboat owners and other interested parties for requiring automotive-type mufflers in the exhaust of airboats used in Florida.⁵ The commission did not pass a rule, but instead directed staff to implement an enforcement protocol that would require automotive-type mufflers on airboats. The commission began an educational effort to inform airboat operators of the muffler requirements. The educational period runs through June 30, 2006. After that date, the commission will issue warnings and citations for violations of this requirement.⁶ Since this requirement has not been adopted by either rule or statute, enforcement by the commission is questionable.

³ *Is a “Quiet” Airboat Possible?*, Robert Maglievaz, Environmental Specialist II, Volusia County Health Department, [Aquatics](#), Summer 2001.

⁴ *See id.*

⁵ *See* Florida Fish and Wildlife Conservation Commission Bill Analysis for SB 1958, 2006 Session.

⁶ *See* <http://myfwc.com/Boating/AirboatMufflingRequirements.htm>.

In the commission's rules relating to wildlife management areas, the commission requires that for the following wildlife management areas, no person shall operate any vessel outside of water management district canals unless equipped with an orange flag at least 10 inches wide and 12 inches long and displayed at a minimum height of 10 feet above the bottom of the vessel:

- Holey Land Wildlife Management Area;
- Everglades and Francis S. Taylor Wildlife Management Area; and
- Rotenberger Wildlife Management Area.⁷

Local Regulations – Section 327.60, F.S., authorizes local governments to adopt any ordinance or local law relating to the operation and equipment of vessels that do not conflict with chapter 327, but these ordinances or local laws do not apply to the Florida Intracoastal Waterway. This section also prohibits any local law or ordinance that discriminates against personal watercraft as defined in s. 327.02, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 327.02, F.S., to define “airboat” and “muffler.” “Airboat” means a vessel that is designed for use in shallow waters and powered by an internal combustion engine with an airplane-type propeller mounted above the stern and used to push air across a set of rudders. “Muffler” means an automotive-style sound-suppression device or system designed to effectively abate the sound of exhaust gases emitted from an internal combustion engine and prevent excessive sound when installed on such engine.

Section 2 creates s. 327.391, F.S., to provide for the regulation of airboats. The exhaust of every internal combustion engine used on any airboat operated on the waters of this state shall be provided with an automotive-style factory muffler, underwater exhaust, or other manufactured device capable of adequately muffling the sound of the exhaust of the engine. The use of cutouts or flex pipe as the sole source of muffling is prohibited, except when a performer engaged in a professional exhibition or a person preparing to participate in or participating in a regatta, race, marine parade, tournament, or exhibition held in compliance with s. 327.48, F.S.

Any person who violates the muffler requirement commits a noncriminal infraction punishable as provided in s. 327.73 (1), F.S. An airboat operator cited for an infraction of the muffler requirement may not operate the airboat until a muffler is installed.

An airboat may not operate on the waters of the state unless it is equipped with a mast or flagpole bearing a flag at a height of at least 10 feet above the lowest portion of the vessel. The flag must be square or rectangular, at least 10 inches by 12 inches in size, international orange in color, and displayed so that the visibility of the flag is not obscured in any direction. Any person who violates this provision commits a noncriminal infraction punishable as provided in s. 327.73(1), F.S.

⁷ Rule 68A-15.064, F.A.C.

Section 3 amends s. 327.60, F.S., to provide that a local law or ordinance may not discriminate against airboats except by super majority vote of the governing body. This provision takes effect July 1, 2006.

Section 4 amends s. 327.73, F.S., to provide that a failure to display a flag on an airboat and failure to have an adequate muffling device on an airboat are noncriminal infractions.⁸

Section 5 amends s. 327.731, F.S., to include failure to have an adequate muffling device or to display the required flag on an airboat in a list of noncriminal infractions that may result in mandatory boater safety education for a person convicted of two of the infractions on the list within a 12-month period.

Section 6 amends s. 320.08(5), F.S., to conform cross-references.

Section 7 amends s. 328.17(4), F.S., to conform a cross-reference.

Section 8 amends s. 342.07(2), F.S., to conform a cross-reference.

Section 9 amends s. 616.242(10), F.S., to make a technical change.

Section 10 amends s. 713.78(1), F.S., to make a technical change and to conform a cross-reference.

Section 11 amends s. 715.07(1), F.S., to correct a cross-reference.

Section 12 provides the act shall take effect October 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁸ The penalty provided in s. 327.73, F.S., is a civil penalty of \$50, unless otherwise specified. Failure to appear or otherwise properly respond to a uniform boating citation shall, in addition to the charge relating to the violation of the boating laws, be charged with failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or 775.083, F.S. *See* section 327.73(1), F.S.

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

None.

B. Private Sector Impact:

The committee substitute would require airboats operated in Florida to be equipped with an automotive-style muffler, underwater exhaust, or other manufactured device capable of adequately muffling the sound of the exhaust of the engine. Many airboats may already be equipped with such devices. The number of airboats that would have to be retrofitted is not known at this time. Further, the cost to install such devices is not known at this time.

Once cited for not having a muffler, the airboat operator may not operate the airboat until a proper muffler is installed. The committee substitute also requires airboats to display an orange flag. The violation for failure to have a proper muffler or to display the required flag is a noncriminal infraction that carries a civil penalty of \$50. However, if a person fails to pay the penalty or otherwise respond to the citation, that person could be found guilty of second degree misdemeanor.

C. Government Sector Impact:

Since no airboat may be operated in Florida without a specified muffling device, the Fish and Wildlife Conservation Commission and other law enforcement entities would have to enforce this requirement.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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