

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1211 Airboat Regulation

SPONSOR(S): Commerce Committee, Careers & Competition Subcommittee, Abruzzo and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1612

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	15 Y, 0 N, As CS	Willson	Anstead
2) Government Accountability Committee	22 Y, 0 N	Gregory	Williamson
3) Commerce Committee	25 Y, 1 N, As CS	Willson	Hamon

SUMMARY ANALYSIS

Chapter 327, F.S., titled the "Florida Vessel Safety Law," regulates the operation of vessels, and provides for minimum standards relating to safety, education, and equipment. The Fish and Wildlife Conservation Commission (FWC) is charged with coordinating and managing the waterways of the state to provide for safe and enjoyable boating. Specifically, the Division of Law Enforcement within the FWC provides protection to those who enjoy Florida's waterways, while also enforcing resource protection and boating safety laws.

Airboats are considered vessels and are subject to vessel safety and operation regulations under to state and federal law. In Florida, for-hire vessel operators on freshwater, inland waters, or other waters that are not used as highways for substantial interstate or foreign commerce are not required to take any additional training courses or possess any boating-related licenses or special endorsements.

The bill creates "Ellie's Law," providing that, beginning July 1, 2019, a person may not operate an airboat for hire on waters of the state without the following onboard:

- A photographic identification card.
- Proof of either:
 - Completion of an FWC-approved boater education course that meets the minimum eight-hour instruction requirement established by the National Association of State Boating Law Administrators, or
 - A captain's license issued by the United States Coast Guard.
- Proof of successful completion of an FWC-approved airboat operator course that meets the minimum standards established by FWC rule.
- A certificate of successful course completion in cardiopulmonary resuscitation and first aid.

The bill provides that a person who violates the airboat operating provisions commits a misdemeanor of the second degree, punishable by up to 60 days imprisonment or a \$500 fine.

The bill does not appear to have a significant fiscal impact on state or local government.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Airboats

Airboats are primarily used to navigate wetlands, marshes, and similar environments where standing water may be shallow to nonexistent, and this purpose is reflected in their design. Airboats typically have a flat-bottomed hull, little displacement, and are powered by an aircraft-like engine and propeller unit that is mounted above the stern.¹ This design creates a high center of gravity and relatively poor flotation, making airboats susceptible to capsizing or sinking.²

Airboats are considered vessels³ and are subject to vessel safety and operation regulations pursuant to state and federal law. According to recent news reports, “[t]hrough an impressive 12,164 airboats, 1,025 of which are commercial, are registered in Florida, the industry is virtually unregulated. Despite high speeds, there's no requirement to wear seat belts or life vests, and airboat pilots rarely take boating safety classes.”⁴

Florida Vessel Safety Law

Florida law generally requires that all motorized vessels operating on public waterways be titled and registered.⁵ Florida leads the nation in the number of vessels registered in any state with close to one million vessels.⁶ The Fish and Wildlife Conservation Commission (FWC) is charged with coordinating and managing the waterways of the state to provide for safe and enjoyable boating.⁷ Specifically, the Division of Law Enforcement within the FWC provides protection to those who enjoy Florida's waterways, while also enforcing resource protection and boating safety laws.⁸

Chapter 327, F.S., titled the “Florida Vessel Safety Law,” includes laws relating to vessel safety, such as boating safety education course requirements and vessel operation requirements. The Florida Vessel Safety Law, as well as vessel titling, certificate, and registration requirements, may be enforced by:

- The Division of Law Enforcement within the FWC and its officers;
- Sheriffs of the various counties and their deputies;
- Municipal police officers; and

¹ Section 327.02(1), F.S., defines “Airboat” as a vessel that is primarily 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.

² See Fish and Wildlife Conservation Commission (FWC), *The Florida Boaters Guide: A handbook of Boating Laws and Responsibilities*, 15 https://www.boat-ed.com/assets/pdf/handbook/fl_handbook_entire.pdf (last visited Jan. 16, 2018).

³ Section 327.02(46), F.S., defines the term “vessel” as being “synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution and includes every description 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.”

⁴ The Miami New Times, *Florida Airboat Accidents Have Killed Seven and Injured Dozens in Recent Years*, Dec. 12, 2017, <http://www.miaminewtimes.com/news/floridas-unregulated-airboat-industry-9903095>.

⁵ See Ch. 328, F.S.; DEPT. OF HIGHWAY SAFETY AND MOTOR VEHICLES, *Vessel Titling and Registrations*, <https://www.flhsmv.gov/motor-vehicles-tags-titles/vessels/vessel-titling-registrations/> (last visited February 25, 2018).

⁶ FWC, 2016 Boating Accident Statistical Report, *Introduction*, II (2016) available at <http://myfwc.com/media/4215167/2016BoatStatBook.pdf> (last visited Jan. 3, 2018).

⁷ FWC, *Boating in Florida*, <http://myfwc.com/boating/> (last visited Jan. 8, 2018).

⁸ FWC, 2016 Boating Accident Statistical Report, *Introduction*, I (2016) available at <http://myfwc.com/media/4215167/2016BoatStatBook.pdf> (last visited Jan. 3, 2018).

- Any other law enforcement officer described in s. 943.10, F.S.⁹

Vessel operators are required to operate in a reasonable and prudent manner with regard for other vessel traffic, posted restrictions, the presence of divers-down flags, and other circumstances so as not to endanger people or property. Failure to do so is considered careless operation, which is a noncriminal infraction punishable by a penalty of \$50.¹⁰ Additionally, individuals who operate a vessel with a willful disregard for the safety of persons or property may be cited for reckless operation of a vessel, which is a misdemeanor of the first degree punishable by a fine of up to \$1,000 or a term of imprisonment not exceeding one year.

Vessel Safety Regulations

Florida law requires vessel operators to carry, store, maintain, and use safety equipment in accordance with current United States Coast Guard safety equipment requirements. Generally, the following safety items are required to be aboard a vessel, and if found to be missing during a safety inspection, can result in a vessel citation: visible distress signals, fire extinguishers, navigation lights, personal floatation devices, and sound-producing devices.¹¹

Airboat Specific Regulations

Section 327.391, F.S., provides specific regulations relating to the operation of airboats on waters of the state:

- Airboats must adequately muffle engine noise; and
- Airboats must be equipped with a mast or flagpole bearing an orange, rectangular flag visible from all directions, and is at least 10 feet above the bottom of the vessel.

A person participating in an event for which a permit is required, or of which notice must be given,¹² is exempt from the provisions of s. 327.391, F.S., relating to the regulation of airboats.

Boating Safety Identification Cards

In order to operate a vessel of 10 horsepower or greater, Florida law requires anyone who was born on or after January 1, 1988, to carry a photographic identification and a FWC-issued boater safety identification (Boater ID) card aboard the vessel.¹³ Boater ID cards are issued to individuals who have:

- Completed a FWC-approved boater education course that meets the minimum 8-hour instruction requirement established by the National Association of State Boating Law Administrators (NASBLA);
- Passed a course equivalency examination approved by the FWC; or
- Passed a temporary certificate examination developed or approved by the FWC.¹⁴

FWC-approved boating safety courses must contain information relating to:

- Boat capacities;
- Boating equipment;

⁹ Section 327.70(1), F.S.; s. 943.10(1), F.S., defines the term “law enforcement officer” as “any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state...”

¹⁰ ss. 327.33(1) and 327.73, F.S.

¹¹ See s. 327.50, F.S., and FWC, *Boating Regulations, Equipment and Lighting Requirements*, available at <http://myfwc.com/boating/regulations/#nogo> (last visited Jan. 8, 2018) and United States Coast Guard Auxiliary, *Vessel Safety Checks*, available at <http://cgaux.org/vsc/> (last visited Jan. 8, 2018).

¹² See s. 327.48, F.S., relating to regattas, races, marine parades, tournaments, or exhibitions.

¹³ s. 327.395(1), F.S.

¹⁴ *Id.*

- Vessel safety regulations, including age, engine, and personal flotation device requirements;
- Safe boat operation;
- Emergency preparedness;
- Trip planning and preparation;
- Personal watercraft requirements;
- Water ski, parasail, and aquaplane regulations;
- Federal equipment requirements;
- State divers-down flag requirements;
- Boating restricted areas, regulatory markers, and speed restricted areas;
- Boating accidents, including requirements for reporting accidents and remaining on scene and rendering assistance; and
- Manatee and ecosystem awareness.¹⁵

The FWC may appoint liveries, marinas, or other persons as its agents to administer the course or examinations and issue Boater ID cards.¹⁶ An agent is required to charge a \$2 examination fee that the agent must forward to the FWC with proof of passage of the examination, and may charge and keep a \$1 service fee.¹⁷

A Boater ID card issued to a person who has completed a boating education course or a course equivalency examination is valid for life.¹⁸ A Boater ID card issued to a person who has passed a temporary certification examination is valid for 12 months from the date of issuance.¹⁹

A person is exempt from the Boater ID card requirement if he or she:

- Is licensed by the United States Coast Guard (USCG) to serve as master of a vessel;
- Operates a vessel only on a private lake or pond;
- Is accompanied in the vessel by a person who is exempt from this section or who holds a Boater ID 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 of the vessel;
- Is 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 that meets or exceeds the Florida requirements;
- Is operating a vessel within 90 days after the purchase of that vessel and has available for inspection aboard that vessel a valid bill of sale;
- Is operating a vessel within 90 days after completing a FWC-approved boater education course or passed a course equivalency examination approved by the FWC, and has a photographic identification card and a boater education certificate available for inspection as proof of having completed a boater education course. The boater education certificate must provide, at a minimum, the student's first and last name, the student's date of birth, and the date that he or she passed the course examination; or
- Is exempted by FWC rule.²⁰

The penalty for operating a vessel in violation of the Boater ID card requirements is a noncriminal infraction, which is punishable by a civil penalty of \$50.²¹

Currently, organizations such as NASBLA offer airboat-specific operator courses for maritime law enforcement and emergency responders who already possess proficient boating skills.²² For example,

¹⁵ Rule 68D-36.104, F.A.C. *Minimum Standards for Boating Safety Courses*

¹⁶ s. 327.395(4), F.S.

¹⁷ *Id.*

¹⁸ s. 327.395(5), F.S.

¹⁹ *Id.*

²⁰ s. 327.395(6), F.S.

²¹ s. 327.73(1)(s), F.S.

the NASBLA course is a hands-on, five day (40 hour) group course (6 to 18 students), that costs \$38,000 for the entire group and covers all administration, coordination, student materials (handbooks, practical exercises) and instructor costs including travel, per diem, and lodging.²³

Vessels and Passengers for Hire

In Florida, for-hire vessel operators on freshwater, inland waters, or other waters that are not used as highways for substantial interstate or foreign commerce are not required to take any additional training courses or possess any boating-related licenses or special endorsements.

On federal waters, a USCG issued license is required to carry legally passengers for hire.²⁴ This includes charters for fishing, sightseeing, diving, transportation, teaching, or any use that is considered a passenger for hire situation.²⁵ When carrying six passengers or less, an operator of uninspected vessels (OUPV) license, a type of USCG captain's license, is required. When carrying more than six passengers, a Master license is required and the vessel itself must be built in accordance with strict inspection standards.²⁶ All USCG issued licenses must be renewed every five years, which requires a renewal physical examination and an approved drug test.²⁷

To obtain either an OUPV license or a Master license, an individual must submit an application; have a physical examination taken within 12 months of submitting the application; have an approved drug test taken within six months of submitting the application; and have received cardiopulmonary resuscitation and first aid certification within 12 months of submitting the application. Additionally, for an OUPV license an individual must have 90 days of service in the last three years on vessels of appropriate tonnage, and have 360 days of deck service in the operation of vessels.²⁸

Additionally, an FWC-issued charter captain or boat license is required to carry passengers for hire for the purpose of taking, attempting to take, or possessing saltwater fish or organisms.²⁹ In order to purchase a charter captain or boat license, an individual must have a USCG captain's license.³⁰

Boating Accidents and Citations

In 2016, there were 714 reportable³¹ boating accidents and 67 boating related fatalities in Florida.³² Seventy percent of the operators involved in fatal accidents had no formal boater education.³³ The top

²² See NASBLA, *Airboat Operators Course* at <https://www.nasbla.org/nasblamain/training/courses/airboat>. The Airboat Operators Course Outline states that "the Airboat class is designed to provide federal, state, county, local and tribal law enforcement officers and first responders in the maritime domain the knowledge and skills to perform airboat operations in a safe and efficient manner, under a national curriculum. Students who seek this specialized training must have advanced boating skills (required) - and some basic airboat operational experience is preferred, but not a prerequisite."

²³ *Id.*

²⁴ U.S. Department of Homeland Security, United States Coast Guard Auxiliary, *Captains' License Information*, <http://www.uscgaux.info/content.php?unit=054-09&category=captains-license-info> (last visited Jan. 17, 2018).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ FWC, *Charter and Headboat Operators' and Guides'*, <http://myfwc.com/license/saltwater/commercial-fishing/charter/> (last visited Jan. 17, 2018).

³⁰ *Id.*

³¹ Boating accidents must meet at least one of the five criteria to be classified as reportable: a person dies; a person disappears under circumstances that indicate possible death or injury; a person receives an injury requiring medical treatment beyond immediate first aid; there is at least \$2,000 in aggregate property damage to the vessel or other property; or there is a total loss of a vessel.

³² FWC, 2016 Boating Accident Statistical Report, *Violation Summary*, IV (2016) available at <http://myfwc.com/media/4215167/2016BoatStatBook.pdf> (last visited Jan. 3, 2018).

³³ *Id.*

three primary causes of the accidents reported in 2016 included no proper look-out, operator inexperience, and excessive speed.³⁴

According to recent news reports, “more than 75 accidents in airboats” have taken place in the past three years in Florida. In that period, “at least seven people died” and “at least 102 airboat passengers have been seriously injured.”³⁵ Passengers have suffered severed fingers and ears, lacerated livers, ruptured spleens, fractured skulls, cracked spines, and head gashes. “Though 90 percent of those involved in accidents weren't wearing life jackets, three in ten told investigators they couldn't swim,” and “more than two-fifths of all injured passengers were ejected from their seats.”³⁶ According to one newspaper’s examination of accident records, “64 percent assigned fault to the airboat driver, citing infractions such as violation of navigation rules, improper lookout, or alcohol use, while others were cited for careless and reckless driving.”³⁷

The following chart provides a summary of the citations that were issued in 2016 relating to violations for registration and numbering requirements; safety equipment and regulations; boating safety education requirements; and the negligent operation of a vessel.

2016 Uniform Boating Citation Summary³⁸

Citation Type	Number of Citations Issued	
	FWC	Other
Registration and Numbering Operation of unregistered/unnumbered vessels Application, certificate, number or decal violation Special manufacturer and dealer numbers Violation relating to vessel titling Violation relating to Hull Identification Numbers	1,970	556
Safety Equipment and Regulations Equipment and lighting requirements	3,260	432
Boating Safety Education Boating safety education I.D. cards	455	285
Negligent Operation of a Vessel Reckless operation of a vessel Careless operation of a vessel Navigation rule violation resulting in an accident Navigation rule violation not resulting in an accident Failure to report an accident	420	173

Effect of the Bill

The bill creates “Ellie’s Law” in honor of Elizabeth “Ellie” Goldenberg who died on Saturday, May 13, 2017, from injuries she sustained after being thrown from an airboat on an Everglades airboat tour.³⁹

The bill creates s. 327.391(5), F.S., providing that, beginning July 1, 2019, a person may not operate an airboat to carry one or more passengers for hire on waters of the state without the following onboard:

- A photographic identification card;

³⁴ *Id.* at 11.

³⁵ Isabella Vi Gomes, *Florida Airboat Accidents Have Killed Seven and Injured Dozens in Recent Years*, The Miami New Times, Dec. 12, 2017, <http://www.miaminewtimes.com/news/floridas-unregulated-airboat-industry-9903095>.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 35.

³⁹ Howard Cohen, *A day after she graduated, UM student dies in Everglades boat crash*, THE MIAMI HERALD, May 15, 2017, available at <http://www.miamiherald.com/news/local/education/article150577537.html> (last visited Jan. 17, 2018).

- Proof of completion of a boater education course that complies with s. 327.395(1)(a), F.S., or a captain's license issued by the USCG;
- Proof of successful completion of a FWC-approved airboat operator course that meets the minimum standards established by FWC rule; and
- A certificate of successful course completion in cardiopulmonary resuscitation and first aid.

The bill provides that a person who violates the airboat operating provisions commits a misdemeanor of the second degree, punishable by up to 60 days imprisonment or a \$500 fine.

The bill specifies that the FWC must make and promulgate rules for the airboat operator course on or before October 1, 2018.

The bill takes effect upon becoming a law.

B. SECTION DIRECTORY:

- | | |
|-----------|---|
| Section 1 | Provides a short title. |
| Section 2 | Amends s. 327.391, F.S.; requiring a commercial airboat operator to have specified documents onboard the airboat while carrying passengers for hire; providing an exception; providing a penalty. |
| Section 3 | Provides an effective date. |

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a minimal negative fiscal impact on the FWC because it requires the FWC to adopt rules establishing minimum standards for approved airboat operator courses.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a negative indeterminate economic impact on for-hire airboat operators because they will be required to complete the FWC-approved airboat operator course created in the bill, and, unless they already have a USCG captain's license or a Boater ID card, they will also be required to have a general boater safety education course in order to continue carrying passengers for hire. It is unknown how much money airboat operators will have to pay for the airboat safety course.

The bill may have an indeterminate positive impact on the private sector by reducing the number of injuries sustained on airboats tours.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the FWC to establish minimum standards for airboat operator courses. The FWC possesses sufficient rulemaking authority to promulgate these rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not specify how many hours the airboat operator course must be or provide information on what subjects be included in the course. It is currently left up to the FWC to determine whether the airboat safety course should be 8 hours or 80 hours. The bill also does not set a maximum fee for such course. It is left up to the FWC to determine the length and cost of the course.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 30, 2018, the Careers and Competition Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute clarified the list of items that an airboat operator must have onboard when carrying passengers for hire on waters of the state.

On February 26, 2018, the Commerce Committee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute changes from "beginning December 31, 2018" to "beginning July 1, 2019," for the date after which an airboat operator must have certain items onboard when carrying passengers for hire on waters of the state. Additionally, the committee substitute specifies that the FWC must promulgate rules relating to the airboat operator course by October 1, 2018.

The bill analysis is drafted to the committee substitute as passed by the Commerce Committee.