

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on the Environment and Natural Resources

BILL: PCS/CS/SB 1612 (473282)

INTRODUCER: Appropriations Subcommittee on the Environment and Natural Resources;
Environmental Preservation and Conservation Committee; and Senator Rader and others

SUBJECT: Airboat Regulation

DATE: February 16, 2018 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Istler</u>	<u>Rogers</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Reagan</u>	<u>Betta</u>	<u>AEN</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1612 creates “Ellie’s Law” to prohibit, beginning December 31, 2018, a person from operating an airboat to carry passengers for hire on waters of the state unless he or she has all of the following onboard the airboat:

- Photographic identification.
- Proof of completion of a boating safety education course compliant with s. 327.395(1)(a), F.S., and the bill requires that all airboat operators carrying passengers for hire must complete this course, regardless of age or exemptions provided in s. 327.395, F.S., except as otherwise provided.
- Proof of successful completion of a commission-approved airboat operator course that meets the minimum standards established by the Fish and Wildlife Conservation Commission (FWC) rule.
- Proof of successful course completion in cardiopulmonary resuscitation and first aid.

A person issued a captain’s license by the United States Coast Guard is not required to complete the boating safety education course. However, proof of such captain’s license is required to be onboard the airboat when carrying passengers for hire on waters of the state.

The bill provides that a person who violates the airboat operating provisions commits a noncriminal infraction, punishable by up to a \$500 fine.

The bill requires airboat operators that carry passengers for hire to complete a FWC-approved airboat operator course if they do not have a United States Coast Guard Captain's License. This will create a negative, indeterminate fiscal impact to these airboat operators.

To implement the provisions of the bill, the FWC will incur minimal costs which can be absorbed within the FWC's existing resources.

II. Present Situation:

Airboats

Airboats are designed to operate in shallow water and marshlands.¹ An airboat is propelled by air pushed through the vessel's aircraft-like propeller to create a column of forced air that passes by the rudders.² It is best steered and controlled through acceleration, but its high center of gravity and lack of flotation make it susceptible to capsizing or sinking.³ Unlike most boats, an airboat is incapable of going in reverse. Its forward momentum is slowed only by deceleration and the friction and displacement of the water.⁴ As a vessel,⁵ an airboat is regulated generally under state and federal vessel operation and safety requirements.

Florida Vessel Safety Law

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, are authorized to be enforced by the following entities or officers:

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

¹ 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).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Section 327.02, 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."

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

Any individual who operates a vessel with a willful disregard for the safety of persons or property will be cited for reckless operation of a vessel, which is a first degree misdemeanor punishable by a fine of up to \$1,000 or a term of imprisonment not exceeding one year. Each operator is responsible for operating his or her vessel 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.

Safety Equipment

Each vessel is required to have size-specific safety equipment on board. The following safety items are required by state and federal law 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.¹⁰

Additionally, an airboat must be equipped with a mast or flagpole bearing a flag at a height of at least 10 feet above the lowest portion of the vessel.¹¹ Such flag must be orange in color and be displayed so that the visibility of the flag is not obscured in any direction.¹² An airboat is also required to have a device manufactured to effectively muffle the sound of engine exhaust.¹³ These airboat specific requirements do not apply to a person participating in an event for which a permit is required, or for which notice must be given under s. 327.48, F.S., relating to regattas, races, marine parades, tournaments, or exhibitions.¹⁴

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 have aboard the vessel photographic identification and an FWC-issued boater safety identification card.¹⁵ The card is proof that the holder has:

- Completed a commission-approved boater education course that meets the minimum eight hour instruction requirement established by the National Association of State Boating Law Administrators;

⁹ Section 327.70, F.S.; Section 943.10, 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 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 U.S. Coast Guard Auxiliary, *Vessel Safety Checks*, available at <http://cgaux.org/vsc/> (last visited Jan. 8, 2018).

¹¹ Section 327.391(3), F.S.

¹² *Id.*

¹³ 327.391, F.S.

¹⁴ *Id.*

¹⁵ Section 327.395(1), F.S.

- Passed a course equivalency examination approved by the FWC; or
- Passed a temporary certificate examination developed or approved by the FWC.¹⁶

The FWC may appoint liveries, marinas, or other persons as its agents to administer the course or examinations and issue identification cards.¹⁷ An agent is required to charge a \$2 examination fee, which must be forwarded to the FWC with proof of passage of the examination and may charge and keep a \$1 service fee.¹⁸ The boating courses include coverage related to:

- Vessel safety regulations, including personal flotation device requirements;
- State divers-down flag requirements;
- Boating restricted areas;
- Boating accidents; and
- Manatee and ecosystem awareness.

An identification card issued to a person who has completed a boating education course or a course equivalency examination is valid for life.¹⁹ A card issued to a person who has passed a temporary certification examination is valid for 12 months from the date of issuance.²⁰

A person is exempt from the boater safety identification card requirement if he or she:

- Is licensed by the United States Coast Guard 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 an identification card in compliance with this section, is 18 years of age or older, and is attendant to the operation of the vessel and responsible for the safe operation of the vessel and for any violation that occurs during the operation 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 which 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 commission-approved boater education course or passed a course equivalency examination approved by the commission 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 rule of the commission.²¹

The penalty for operating a vessel in violation of the boating safety identification card requirements is a noncriminal infraction, which is punishable by a civil penalty of \$50.²²

¹⁶ *Id.*

¹⁷ Section 327.395(4), F.S.

¹⁸ *Id.*

¹⁹ Section 327.395(5), F.S.

²⁰ *Id.*

²¹ Section 327.395(6), F.S.

²² Section 327.73(1)(s), F.S.

Passengers For Hire on Vessels

On federal waters a United States Coast Guard (USCG) issued license is required in order to legally carry passengers for hire.²³ This includes charters for fishing, sightseeing, diving, transportation, teaching or any use which is considered a passenger for hire situation.²⁴ When carrying six passengers or less, an operator of uninspected vessels (OUPV) 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.²⁵ All USCG issued licenses must be renewed every five years, which requires a renewal physical examination and an approved drug test.²⁶

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 CPR 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.²⁷

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.²⁸ In order to purchase a charter captain or boat license an individual must have a USCG captain's license.²⁹

Boating Accidents and Citations

In 2016, there were 714 reportable³⁰ boating accidents and 67 boating related fatalities in Florida.³¹ Seventy percent of the operators involved in fatal accidents had no formal boater education.³² The top three primary causes of the accidents reported in 2016 included no proper look-out, operator inexperience, and excessive speed.³³ From 2015-2017, a total of 112 airboat

²³ 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).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ FWC, *Charter and Headboat Operators' and Guides'*, <http://myfwc.com/license/saltwater/commercial-fishing/charter/> (last visited Jan. 17, 2018).

²⁹ *Id.*

³⁰ 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.

³¹ FWC, 2016 Boating Accident Statistical Report, *Violation Summary*, IV (2016) available at <http://myfwc.com/media/4215167/2016BoatStatBook.pdf> (last visited Jan. 3, 2018).

³² *Id.*

³³ *Id.* at 11.

accidents occurred in Florida, resulting in 146 injuries.³⁴ Commercial airboats represented 21 percent of the total accidents and almost 46 percent of the total injuries, including one fatality.³⁵

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 Summary³⁶

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

III. Effect of Proposed Changes:

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.³⁷

The bill prohibits, beginning December 31, 2018, a person from operating an airboat to carry passengers for hire on waters of the state unless he or she has all of the following onboard the airboat:

- Photographic identification.

³⁴ FWC, *Senate Bill 1612 Agency Analysis*, 2 (Jan. 22, 2018) (on file with the Senate Committee on Environmental Preservation and Conservation).

³⁵ *Id.*

³⁶ FWC, 2016 Boating Accident Statistical Report, *Violation Summary*, 35 (2016) available at <http://myfwc.com/media/4215167/2016BoatStatBook.pdf> (last visited Jan. 3, 2018).

³⁷ 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 boating safety education course compliant with s. 327.395(1)(a), F.S., and the bill requires that all airboat operators carrying passengers for hire must complete this course, regardless of age or exemptions provided in s. 327.395, F.S., except as otherwise provided in this section.
- Proof of successful completion of a commission-approved airboat operator course that meets the minimum standards established by the FWC rule.
- Proof of successful course completion in cardiopulmonary resuscitation and first aid.

A person issued a captain's license by the United States Coast Guard is not required to complete the boating safety education course. However, proof of such captain's license is required to be onboard the airboat when carrying passengers for hire on waters of the state.

Additionally, the airboat operator requirements do not apply to a person participating in an event for which a permit is required, or for which notice must be given under s. 327.48, F.S., relating to regattas, races, marine parades, tournaments, or exhibitions, due to an existing section wide exemption in present s. 327.391(4), F.S.

The bill amends s. 327.73, F.S., to provide that a person who violates the airboat operating provisions commits a noncriminal infraction, punishable by up to a \$500 fine.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Airboat operators who do not have a United States Coast Guard Captains' License will be required to complete a FWC-approved airboat operator course to continue carrying passengers for hire.

C. Government Sector Impact:

The FWC will have increased workload relating to the adoption of rules to establish minimum standards for an approved airboat operator course. The costs associated with this increased workload may be absorbed within the FWC's existing resources.³⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 327.391 and 327.73.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on the Environment and Natural Resources on February 14, 2018:

The CS/CS provides technical changes to clarify what requirements must be met to carry passengers for hire on an airboat.

CS by Environmental Preservation and Conservation on January 22, 2018:

The CS changes the penalty for violations relating to the airboat operation requirements from a criminal to a noncriminal infraction. The maximum value for a fine remains the same at \$500.

B. Amendments:

None.

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

³⁸ FWC, *Senate Bill 1612 Agency Analysis*, 5 (Jan. 22, 2018) (on file with the Senate Committee on Environmental Preservation and Conservation).