

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 493 Boating Safety

SPONSOR(S): Agriculture & Natural Resources Appropriations Subcommittee, Environment, Agriculture & Flooding Subcommittee, Botana and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 606

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Environment, Agriculture & Flooding Subcommittee	16 Y, 0 N, As CS	Mamontoff	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee	13 Y, 0 N, As CS	White	Pigott
3) State Affairs Committee			

SUMMARY ANALYSIS

The Fish and Wildlife Conservation Commission (FWC) is responsible for regulating, managing, protecting, and conserving the state's fish and wildlife resources. FWC is also the agency responsible for regulating boating in the state. Through its Division of Law Enforcement, FWC manages the state's waterways to ensure boating safety for state residents and visitors. This responsibility includes enforcing boating rules and regulations, coordinating boating safety campaigns and education, managing public waters and access to the waters, conducting boating accident investigations, identifying and removing derelict vessels, and investigating vessel theft and title fraud.

A livery vessel is a vessel that is leased, rented, or chartered to another for consideration. A facility that rents and leases such vessels is called a livery. Current law imposes certain requirements on liveries and prohibits them from renting or leasing vessels under certain circumstances.

Beginning January 1, 2023, the bill prohibits a livery from offering a vessel for lease or rent without first being issued a no-cost livery permit by FWC, which must be renewed annually. The bill also requires liveries to implement certain safety requirements and establishes penalties for violations of livery requirements.

The bill authorizes a court to order a person who is convicted of a violation related to boating collisions and accidents to pay an additional fine of up to \$1,000 per violation.

The bill increases or establishes maximum penalties for certain noncriminal infractions of vessel safety laws. The bill also increases the default civil penalty for noncriminal infractions of vessel laws from \$50 to \$100, which applies when a different maximum penalty is not specified for a particular infraction.

The bill requires a person who is subject to mandatory education requirements as a result of certain violations of vessel laws to pay a fine of \$500. The bill also requires FWC to maintain a program to ensure violators are in compliance with mandatory boating safety education requirements.

The bill requires a physical residential or business address for vessel registration applicants, with a limited exception for live-aboard vessel owners.

The bill may have an indeterminate negative fiscal impact on the state that can be absorbed within existing resources and no fiscal impact on local governments.

The bill provides an effect date of July 1, 2022, except as otherwise provided.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Fish and Wildlife Conservation Commission

The Fish and Wildlife Conservation Commission (FWC), created by Article IV, section 9, of the Florida Constitution, is responsible for regulating, managing, protecting, and conserving the state's fish and wildlife resources. FWC is governed by a board of seven members who are appointed by the Governor and confirmed by the Senate.¹ Pursuant to its constitutional authority, FWC exercises the regulatory and executive powers of the state with respect to wild animal life, freshwater aquatic life, and marine life.

FWC is also the agency responsible for regulating boating in the state. Through its Division of Law Enforcement, FWC manages the state's waterways to ensure boating safety for state residents and visitors.² This responsibility includes enforcing boating rules and regulations, coordinating boating safety campaigns and education, managing public waters and access to the waters, conducting boating accident investigations, identifying and removing derelict vessels, and investigating vessel theft and title fraud.³

Boating Collisions, Accidents, and Casualties

In 2020, there were 836 boating accidents in the state,⁴ which was 113 more accidents than in 2019, a 16 percent increase.⁵ In addition, 79 people lost their lives in boating accidents in 2020, which was 14 more than the previous year. According to FWC, 69 percent of operators involved in fatal boating accidents in 2020 had no formal boater education.⁶

In the event of a boating collision, accident, or other casualty, current law imposes a duty on a vessel operator involved in the incident to provide assistance to others affected by the incident to the extent practicable and necessary.⁷ The operator must also give notice of the accident, by the quickest means available, to one of the following agencies: FWC's Division of Law Enforcement; the sheriff of the county within which the accident occurred; or the police chief of the municipality within which the accident occurred.⁸

A vessel operator involved in an accident or injury is prohibited by law from leaving the scene of an accident without rendering all possible aid to all persons involved and without notifying the appropriate law enforcement official. A person who violates this prohibition with respect to an accident that results in personal injury commits a third degree felony.⁹ A person who violates this prohibition with respect to an accident resulting in property damage commits a second degree misdemeanor.¹⁰

¹ Article IV, s. 9, FLA. CONST.

² Fish and Wildlife Conservation Commission (FWC), *Boating*, <https://myfwc.com/boating/> (last visited Jan. 29, 2022).

³ FWC, *Law Enforcement*, <https://myfwc.com/about/inside-fwc/le/> (last visited Jan. 29, 2022). See s. 327.70(1) and (4), F.S.

⁴ FWC, *2020 Boating Accident Statistical Report, 2020*, <https://myfwc.com/media/26462/2020-basr-booklet.pdf> (last visited Jan. 28, 2022).

⁵ FWC, *FWC Releases 2020 Boating Accident Statistical Report*, <https://myfwc.com/news/all-news/boating-stats-521/> (last visited Jan. 28, 2022).

⁶ *Id.*

⁷ Section 327.30(1), F.S.

⁸ Section 327.30(2), F.S.

⁹ A third degree felony is punishable by a term of imprisonment up to five years and a fine of up to \$5,000. Sections 775.082(3)(e) and 775.083(1)(c), F.S.

¹⁰ Section 327.30(5), F.S.; A second degree felony is punishable by a term of imprisonment up to 60 days and a fine of up to \$500. Sections 775.082(4)(b) and 775.083(1)(e), F.S.

A law enforcement officer investigating a boating collision or accident may arrest or cite the vessel operator involved in the accident or collision when the officer has probable cause to believe that the operator has committed an offense in connection with the accident or collision.¹¹

Regulation of Liveries

A livery vessel is a vessel that is leased, rented, or chartered to another for consideration.¹² A facility that rents and leases such vessels is called a livery. A livery may not knowingly lease, hire, or rent a vessel to any person if any one of the following circumstances exists:

- The number of persons intending to use the vessel exceeds a maximum safety load for the vessel as specified on the authorized persons capacity plate of the vessel;
- The horsepower of the motor exceeds the capacity of the vessel;
- The vessel does not contain the statutorily required safety equipment;
- The vessel is not seaworthy;
- The vessel is equipped with a motor of 10 horsepower or greater, unless the livery provides required pre-rental or pre-ride instruction by a person who has successfully completed a National Association of State Boating Law Administrators (NASBLA) and state-approved boater safety course; or
- The livery does not display boating safety information in a place visible to the renting public.¹³

Additionally, a livery may not knowingly lease, hire, or rent:

- A vessel powered by a motor of 10 horsepower or greater to any person who is required to comply with boater safety education requirements, unless such person presents to the livery photographic identification and a valid boater safety identification card or meets the boating education certificate exemption;
- A personal watercraft to any person who is under 18 years of age; or
- A personal watercraft to any person who has not received instruction in the safe handling of personal watercraft.¹⁴

If a vessel is unnecessarily overdue, the livery is required to notify the proper authorities.¹⁵ A violation of a livery regulation constitutes a second degree misdemeanor.¹⁶

Noncriminal Boating Infraction

Current law sets forth the maximum fines for noncriminal infractions of Florida's boating laws. Unless otherwise specified in statute, the civil penalty for a noncriminal infraction is \$50.¹⁷ Some examples of noncriminal violations are operating with an expired registration, operating without a registration, and failing to display the appropriate registration information.

Several noncriminal violations are subject to increased penalties for additional offenses. For example, for a violation of navigation rules that does not result in an accident or that results in an accident without serious bodily injury or death, there is a maximum penalty of:

- \$250 for a first offense;
- \$750 for a second offense; and
- \$1,000 for a third or subsequent offense.¹⁸

For a violation related to a springs protection zone, or operating a vessel in a careless manner that causes seagrass scarring within an aquatic preserve, except the Lake Jackson, Ocklawaha River, Wekiva River, and Rainbow Springs aquatic preserves, the penalty is:

- \$50 for a first offense;

¹¹ Section 327.30(6), F.S.

¹² Section 327.02(24), F.S.

¹³ Section 327.54(1), F.S.

¹⁴ Section 327.54(4), F.S.

¹⁵ Section 327.54(3), F.S.

¹⁶ Section 327.54(6), F.S.

¹⁷ Section 327.73, F.S.

¹⁸ Section 327.73(1)(o), F.S.

- \$250 for a second offense occurring within 12 months of a prior conviction;
- \$500 for a third offense occurring within 36 months of a prior conviction; and
- \$1,000 for a fourth or subsequent offense occurring within 72 months of a prior conviction.¹⁹

For anchoring in an anchoring limitation area or anchoring or mooring in a prohibited area, the penalty is:

- A maximum of \$50 for a first offense;
- A maximum of \$100 for a second offense; and
- A maximum of \$250 for a third or subsequent offense.²⁰

For a violating speed restrictions in an area where vessels creating special hazards are operating, the penalty is:

- \$50 for a first offense;
- \$100 for a second offense occurring within 12 months of a prior offense; and
- \$250 for a third offense occurring within 36 months of a prior offense.²¹

All fees and civil penalties assessed and collected for noncriminal violations must be deposited into the Marine Resources Conservation Trust Fund for boating safety education purposes.²²

Mandatory Education for Violators

A person who is convicted of a criminal violation, a noncriminal infraction resulting in a reportable boating accident, or two noncriminal infractions within a 12-month period must enroll in, attend, and successfully complete, at his or her own expense, a classroom or online boating safety course approved by the minimum standards established by FWC rule.²³ He or she must then file with the FWC within 90 days proof of successful completion of the course and refrain from operating a vessel until proof of successful completion of the course has been filed with FWC.²⁴

Marine Resources Conservation Trust Fund

The Marine Resources Conservation Trust Fund (MRCTF) within FWC serves as a broad-based depository for funds from various marine-related and boating-related activities. FWC must administer the MRCTF for a variety of purposes, including marine research, fishery enhancement, marine law enforcement, administration of licensing programs, and FWC operations.²⁵

Vessel Titling and Registration

All motorized vessels operating on Florida's public waterways must be titled and registered pursuant to ch. 328, F.S.²⁶ The Department of Highway Safety and Motor Vehicles (DHSMV) is responsible for issuing vessel registrations and titles.²⁷ Registration and title applications must be filed at a county tax collector or license plate agent office,²⁸ but DHSMV is responsible for issuing vessel registrations.²⁹

A purchaser of a new or used vessel has 30 days to title and register the vessel.³⁰ The required information for a vessel registration application includes: the owner's name and address; residency status; personal or business identification; a complete description of the vessel; payment of the

¹⁹ Section 327.73(1)(x) and (y), F.S.

²⁰ Section 327.73(1)(z) and (bb), F.S.

²¹ Section 327.73(1)(cc), F.S.

²² Section 327.73(8), F.S.

²³ Section 327.731(1)(a)

²⁴ Section 327.731(1)(b), F.S.

²⁵ Section 379.208(1), F.S.

²⁶ See s. 328.03, F.S.

²⁷ Section 328.40, F.S.

²⁸ Section 328.48(1)(a), F.S.

²⁹ Section 328.48(3), F.S.

³⁰ Section 328.46(1), F.S.

applicable fee; and proof of ownership of the vessel.³¹ During the 30-day period before registration, the owner must carry proof of the date of purchase aboard the vessel.³²

Each vessel operated, used, or stored on state waters must be titled, unless it is:

- A vessel operated, used, or stored exclusively on private lakes and ponds;
- A vessel owned by the United States government;
- A non-motor-powered vessel less than 16 feet in length;
- A federally documented vessel;
- A vessel already covered by a registration number awarded to it by another state or by the U.S. Coast Guard, if the vessel is not located in the state for more than 90 consecutive days;
- A vessel from a country other than the U.S., if the vessel is not located in the state for more than 90 days;
- An amphibious vessel for which a vehicle title is issued by the DHSMV;
- A vessel used solely for demonstration, testing, or sales promotional purposes by the manufacturer or dealer; or
- A vessel owned and operated by the state or a political subdivision thereof.³³

A person may not sell, assign, or transfer their vessel without providing to the purchaser or transferee a valid certificate of title with an assignment on it showing transfer of title to the purchaser or transferee.³⁴ The purchaser or transferee must file an application for a title transfer with the county tax collector within 30 days of the change in vessel ownership.³⁵

The owner of a vessel is required to pay a registration fee, secure an identification number, and file an application with the county tax collector.³⁶ Registration is required for any vessel that is operated, used, or stored on state waters, unless it is:

- A vessel operated, used, and stored exclusively on private lakes and ponds;
- A vessel owned by the U.S. government;
- A vessel used exclusively as a ship's lifeboat; or
- A non-motor-powered vessel less than 16 feet in length or a non-motor-powered canoe, kayak, racing shell, or rowing scull, regardless of length.³⁷

Each issued certificate of registration must state the numbers awarded to the vessel, the hull identification number, the name and address of the owner, and a description of the vessel.³⁸

Effect of the Bill

Boating Collisions, Accidents, and Casualties

The bill authorizes a court to order a person who is convicted of a violation related to boating collisions and accidents to pay an additional fine of up to \$1,000 per violation, which must be deposited into the MRCTF to be used to enhance state and local law enforcement activities related to boating infractions.

Regulation of Liveries

The bill defines the term "livery" to mean a person who offers a vessel for use by another in exchange for any type of consideration when such person does not also provide the lessee or renter with a captain, a crew, or any type of staff or personnel to operate, oversee, maintain, or manage the vessel.

Beginning January 1, 2023, the bill prohibits a livery from offering a vessel³⁹ for lease or rent without first being issued a no-cost livery permit by FWC, which must be renewed annually. To qualify for issuance or renewal of the no-cost permit, the bill requires an applicant to:

³¹ Section 328.48(1), F.S.

³² Section 328.46(1), F.S.

³³ Section 328.03(1), F.S.

³⁴ Section 328.03(3), F.S.

³⁵ *Id.*

³⁶ Section 328.48(1)(a), F.S.

³⁷ Section 328.48(2), F.S.

³⁸ Section 328.48(4), F.S.

- Provide FWC with a list of all livery vessels offered for lease or rent;
- Have valid insurance;
- Have an amount of personal floatation devices on site sufficient to accommodate the capacity of all vessels offered for rent or lease;
- Have all required safety equipment required on site sufficient to equip all vessels offered for rent or lease; and
- Display boating safety information in a place visible to the renting public.

The bill authorizes FWC to adopt rules to implement the permitting requirements and specifies that a person who violates such requirements commits a first degree misdemeanor.⁴⁰

The bill prohibits a livery from knowingly leasing or renting a vessel to any person under the following circumstances:

- The vessel is a derelict vessel or is at risk of becoming derelict.
- The livery has not provided pre-rental or pre-ride instructions in compliance with FWC rules.
- There is no signed written agreement with the renter or lessee that includes a list of the names, addresses, and dates of birth for all persons who will be aboard the vessel, as well as the time the vessel is required to be returned to the livery or another specified location and an emergency contact name, address, and telephone number. The livery must maintain each agreement for no less than one year and make it available for inspection if requested by law enforcement.
- A person does not have the required photographic identification and boating safety card (unless the person is exempt from the requirement).

The bill requires pre-ride or pre-rental instructions to include local characteristics of the waterway where the vessel will be operated, such as navigational hazards, boating-restricted areas, and water depths. In addition, such instruction must include emergency procedures such as appropriate responses to capsizing, falling overboard, taking on water, and vessel accidents. The bill requires pre-ride instructions to be provided for all livery vessels rather than limiting this requirement to vessels equipped with a motor of 10 horsepower or more.

The bill expands the application of the following prohibitions and requirements, which currently only apply to personal watercraft,⁴¹ to all livery vessels, including human-powered vessels:

- A livery may not knowingly lease or rent a vessel to any person who is under 18 years of age.
- A livery may not knowingly lease or rent a vessel to any person unless the livery carries a policy from a licensed insurance carrier that insures the livery against any accident, loss, injury, property damage, or other casualty caused by or resulting from the operation of the vessel. Coverage of at least \$500,000 per person and \$1 million per event must be provided. Proof of insurance must be available for inspection at the location where the livery's vessels are being leased or rented. Each renter must be provided with the insurance carrier's name, address, and policy number.
- A person who receives instruction regarding the safe operation of vessels or pre-rental or pre-ride instruction must provide the livery with a signed form attesting to each component of the instruction. FWC must establish the form's content by rule. The form must be signed by the individual providing the instruction and be maintained by the livery for no less than 90 days and make the form available for inspection by law enforcement upon request.

The bill requires any person delivering the required boating safety instruction to have successfully completed a boating safety education course approved by NASBLA and the state.

³⁹ The term "vessel" 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. Section 327.02(47), F.S.

⁴⁰ A first degree misdemeanor is punishable by a term of imprisonment up to 1 year and a fine of up to \$1,000. Sections 775.082(4)(a) and 775.083(1)(d), F.S.

⁴¹ The term "personal watercraft" is a vessel 16 feet in length that uses an inboard motor powering a water jet pump as its primary source of power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel. Section 327.02(36), F.S.

If a vessel rented or leased by a livery is unnecessarily overdue more than one hour after the contracted vessel rental time expires, the bill requires the livery to notify law enforcement and the U.S. Coast Guard.

The bill requires a livery to report an accident resulting in bodily injury, death, or disappearance of any person, or damage to any vessel or other property in an apparent aggregate amount of at least \$2,000 when the operator involved in the accident is incapable of making a report.

The bill requires a livery to make its facilities and records available for inspection no later than 24 hours after requested by law enforcement.

The bill establishes the following penalties for violations of the livery requirements:

- A person who violates one or more statutory requirements for liveries, except for the livery permit requirement, and who has not been convicted of a violation of the livery requirements in the past three years, commits a second degree misdemeanor.⁴²
- If the violation has occurred within three years after a previous conviction, the person commits a first degree misdemeanor. There is an additional minimum mandatory fine of \$500.
- If the person commits another violation within five years after two previous convictions for violations of the livery requirements, the person commits a first degree misdemeanor. There is an additional minimum mandatory fine of \$1,000.
- A person who commits more than one violation of the livery requirements, except for the livery permit requirement, within a three-year period may not act as a livery during a 90-day period immediately after being charged.

Effective January 1, 2023, FWC may revoke or refuse to issue a livery permit based on repeated violations of the livery requirements.

Noncriminal Infractions

The bill increases the maximum penalty for certain noncriminal infractions as follows:

- For a first or subsequent offense relating to the operation of a vessel with an expired registration of six months or less, the penalty is increased from \$50 to \$100.
- For a first offense relating to a violation of navigation rules that does not result in an accident or that results in an accident not causing serious bodily injury or death, the penalty is increased from \$250 to \$500. For a second offense, the penalty is increased from \$750 to \$1,000. For a third or subsequent offense, the penalty is increased from \$1,000 to \$1,500.
- For a first offense relating to carelessly causing seagrass scarring, the penalty is increased from \$50 to \$100.
- For a first offense relating to protection zones for springs, the penalty is increased from \$50 to \$100.
- For a first offense relating to the anchoring of vessels in anchoring limitation areas, the penalty is increased from \$50 to \$100. For a second offense, the penalty is increased from \$100 to \$250. For a third or subsequent offense, the penalty is increased from \$250 to \$500.
- For a first offense relating to anchoring or mooring in a prohibited area, the penalty is increased from \$50 to \$100. For a second offense, the penalty is increased from \$100 to \$250. For a third or subsequent offense, the penalty is increased from \$250 to \$500.
- For a first offense relating to vessels creating special hazards, the penalty is increased from \$50 to \$100. For a second offense occurring within 12 months after a prior offense, the penalty is increased from \$100 to \$250. For a third offense occurring within 36 months after a prior offense, the penalty is increased from \$250 to \$500.

The bill also increases the default civil penalty for noncriminal infractions of vessel laws from \$50 to \$100, which applies when a different maximum penalty is not specified for a particular infraction.

The bill establishes new penalties of up to a maximum of \$500 for an improper transfer of title or the failure to update vessel registration information.

⁴² A second degree misdemeanor is punishable by a term of imprisonment up to 60 days and a fine of up to \$500.

Sections 775.082(4)(b) and 775.083(1)(e), F.S.

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The bill specifies that fees and civil penalties assessed and collected for noncriminal violations and deposited into the MRCTF must be used for law enforcement purposes in addition to boating safety education purposes.

Mandatory Education for Violators

The bill requires a person who is subject to mandatory education requirements as a result of certain violations of vessel laws to pay a fine of \$500. The bill requires the fines to be deposited into the MRCTF to support law enforcement activities.

The bill requires FWC to maintain a program to ensure violators are in compliance with mandatory boating safety education requirements. The program must track any citations resulting in a conviction and the disposition of such citations and send specific notices to each person subject to the requirement for mandatory boating safety education.

Vessel Registration

This bill requires an applicant for a vessel registration to provide a physical residential or business address on the application. The bill specifies that upon receipt of an application from a live-aboard vessel owner, FWC authorize such owner to provide a post office box address in lieu of a physical residential or business address so long as he or she has not been convicted of a criminal offense under ch. 328, F.S., relating to vessel titles and registration, or ch. 327, F.S., relating to vessel safety.

The bill requires each certificate of registration issued to state the physical residential or business address of the owner.

The bill specifies that a person who does not update his or her vessel registration information with the county tax collector within six months after a change to the information is subject to a maximum penalty of \$500.

B. SECTION DIRECTORY:

- Section 1. Provides a short title.
- Section 2. Amends s. 327.30, F.S., relating to collisions, accidents, and casualties.
- Section 3. Amends s. 327.54, F.S., relating to liveries.
- Section 4. Amends s. 327.73, F.S., relating to noncriminal infractions.
- Section 5. Amends s. 327.731, F.S., relating to mandatory education for violators.
- Section 6. Amends s. 328.03, F.S., relating to certificates of title.
- Section 7. Amends s. 328.03, F.S., relating to certificates of title.
- Section 8. Amends s. 328.48, F.S., relating to vessel registration.
- Section 9. Provides an effective date of July 1, 2022, except as otherwise expressly provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have a positive fiscal impact on state revenues as a result of increasing the maximum penalties that may be imposed for certain noncriminal infractions.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on FWC related to ensuring compliance with mandatory boating safety education requirements and implementing the bill's livery permitting requirements. It is anticipated that the fiscal impact can be absorbed within FWC's existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes FWC to adopt rules to implement livery permitting requirements.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 3, 2022, the Environment, Agriculture & Flooding Subcommittee adopted a PCS and reported the bill favorably as a committee substitute. The amendment removed provisions from the bill that created an Illegal Boating Strike Team and appropriated funds for the team.

On February 14, 2022, the Agriculture & Natural Resources Appropriations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed the appropriations from the bill.

This analysis is drafted to the committee substitute as approved by the Agriculture & Natural Resources Appropriations Subcommittee.