

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1211 Airboat Regulation
SPONSOR(S): Abruzzo
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1612

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee		Willson	Anstead
2) Natural Resources & Public Lands Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The bill creates "Ellie's Law," which, beginning December 31, 2018, prohibits 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 an airboat:

- A photographic identification card.
- Proof of compliance with the boating safety education course requirements, as provided in s. 327.395, F.S.
- 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.
- A certificate 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 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

Airboats¹

Airboats are primarily used to navigate shallow waters and wetlands, 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.² This design creates a high center of gravity and relatively poor flotation, making airboats susceptible to capsizing or sinking. Unlike conventional vessels which use water for propulsion, airboats cannot go in reverse.

Airboats are considered vessels³ and are subject to vessel safety and operation regulations pursuant to state and federal law. According to recent news reports, “Though 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

All vessels, with the exception of non-motor-powered vessels less than 16 feet in length, non-motor-powered canoes, kayaks, racing shells or rowing sculls, regardless of length, must be registered in the state of Florida through the local Tax Collector's Office. Florida leads the nation in the number of vessels registered in any state with close to one million vessels.⁵ 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.⁶ 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.⁷

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 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).

² 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.

³ 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.”

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

⁶ FWC, *Boating in Florida*, <http://myfwc.com/boating/> (last visited Jan. 8, 2018).

⁷ 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.⁸

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. All operators are 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 \$50.⁹

Safety Equipment

All vessels are 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, airboats 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 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 8-hour instruction requirement established by the National Association of State Boating Law Administrators;
- Passed a course equivalency examination approved by the FWC; or
- Passed a temporary certificate examination developed or approved by the FWC.¹⁶

⁸ 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...”

⁹ s. 327.73, F.S.

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 s. 327.391(3), F.S.

¹² *Id.*

¹³ s. 327.391, F.S.

¹⁴ *Id.*

¹⁵ s. 327.395(1), F.S.

¹⁶ *Id.*

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

Vessels and Passengers for Hire

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 6 passengers or less, an operator of uninspected vessels (OUPV) license is required. When carrying more than 6 passengers, a Master license is required and the vessel itself must be built in accordance with strict

¹⁷ s. 327.395(4), F.S.

¹⁸ *Id.*

¹⁹ s. 327.395(5), F.S.

²⁰ *Id.*

²¹ s. 327.395(6), F.S.

²² s. 327.73(1)(s), F.S.

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.*

inspection standards.²⁵ All USCG issued licenses must be renewed every 5 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 6 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 3 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

Currently, to operate an airboat for hire that offer tours to passengers in state waters, only a boating safety identification card would be required. A charter boat captain or a USCG issued license would not be required.

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

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."³⁴ 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."³⁵ According to one newspapers' 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."³⁶

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.

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.

³⁴ 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>.

³⁵ *Id.*

³⁶ *Id.*

2016 Uniform Boating Citation Summary³⁷

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.³⁸

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:

- A photographic identification card;
- Proof of compliance with the boating safety education course requirements, as provided in s. 327.395, F.S.;
- 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; and
- A certificate 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 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 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.

³⁷ *Id.* at 35.

³⁸ 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).

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 will have a negative, indeterminate impact on FWC as the bill 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 will have a negative, indeterminate impact on airboat operators who do not already have a United States Coast Guard Captains' License and who will, therefore, have to complete a FWC-approved airboat operator course to continue carrying passengers for hire.

The bill may have an indeterminate positive impact on the private sector by reducing the amount of injuries sustained in airboats and assuring tourists that airboat operators in Florida are sufficiently trained to ensure their safety.

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 FWC to establish minimum standards for airboat operator courses. There is sufficient existing rulemaking authority for FWC to promulgate these rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES