

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 261 Boating Safety

**SPONSOR(S):** Agriculture & Natural Resources Appropriations Subcommittee, Agriculture, Conservation & Resiliency Subcommittee, Botana

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 728

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture, Conservation & Resiliency Subcommittee	16 Y, 1 N, As CS	Mamontoff	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee	14 Y, 0 N, As CS	Byrd	Pigott
3) Infrastructure Strategies Committee		Mamontoff	Harrington

### 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 safety in the state. This responsibility includes enforcing boating rules and regulations, coordinating boating safety campaigns and education, managing public water and access to the waters, conducting boating accident investigations, identifying and removing derelict vessels, and investigating vessel theft and title fraud.

In Florida, any person born on or after January 1, 1988, must complete a boating safety education course approved by the National Association of State Boating Law Administrators in order to operate a vessel powered by a motor of 10 horsepower or greater. Any operator required by statute to complete the boating safety education course must carry a boating education ID card and a photo ID while operating any qualifying vessel.

According to an FWC report, in 2021, 751 boating accidents, 469 injuries, and 60 fatalities were reported. In 83 percent of reportable boating accidents vessel operators had no formal boater education.

During the 2022 Regular Session, the Legislature passed CS/SB 606, which created new regulations relating to boating safety and liveries. The new regulations require liveries to provide pre-rental or pre-ride instructions and to carry a policy from a licensed insurance carrier that insures both the livery and the renter.

Effective July 1, 2028, the bill expands requirements related to operating a vessel by requiring any person born on or after January 1, 1978, operating a vessel powered by a motor of 10 horsepower or greater to have in their possession a photo ID and a boating safety ID card or temporary certificate issued by FWC, rather than only a person born on or after January 1, 1988.

The bill requires a livery to provide hands-on pre-rental and pre-ride instruction that must include education on any safety, regulatory, information, or navigation markers in the geographic vicinity; the proper use of personal floatation devices; and a notice of the prohibition against boating under the influence. The bill exempts a renter, lessee, and livery from providing hands-on pre-rental or pre-ride instruction if the renter or lessee retains a professional captain who holds an active license issued by the United States Coast Guard.

The bill removes the requirement for a livery to carry a policy that insures a renter against any accident, loss, injury, property damage, or other casualty caused by or resulting from the operation of the livery vessel.

The bill may have an indeterminate positive fiscal impact on state government revenue and an indeterminate negative fiscal impact on FWC.

# 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.<sup>1</sup> Pursuant to its constitutional authority, FWC exercises the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life.

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

##### Boating Accidents

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 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.<sup>4</sup> According to an FWC report, in 2021, 751 boating accidents, 469 injuries, and 60 fatalities were reported.<sup>5</sup> Most of these boating accidents (77 percent) occurred on owner-operated vessels rather than livery vessels. In 39 percent of reportable boating accidents, the operator's age was 51 years old or older. In 27 percent of reportable accidents, the operator was between the ages of 36 and 50 years old. According to the report, 83 percent of vessel operators involved in boating accidents had no formal boater education.<sup>6</sup>

##### Boating Education

Current law requires any person born on or after January 1, 1988, to complete a boating safety education course approved by the National Association of State Boating Law Administrators (NASBLA) in order to operate a vessel powered by a motor of 10 horsepower or greater.<sup>7</sup> Any operator required by statute to complete the boating safety education course must carry a boating safety ID card and a photo ID while operating any qualifying vessel.<sup>8</sup>

NASBLA provides the minimum standards that apply to all basic boating courses in the United States and its territories. The minimum standards are reviewed every five years with the purpose of establishing a national standard for all courses across the country. Under current NASBLA standards, courses must describe state-required equipment. Courses offered in Florida that meet NASBLA's eight-hour instruction requirement range in price from free to \$50.<sup>9</sup> A boating safety education course card is

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<sup>1</sup> Article IV, s. 9, FLA. CONST.

<sup>2</sup> Fish and Wildlife Conservation Commission (FWC), *Boating*, <https://myfwc.com/boating/> (last visited Feb. 23, 2023).

<sup>3</sup> FWC, *Law Enforcement*, <https://myfwc.com/about/inside-fwc/le/> (last visited Feb. 23, 2023). See s. 327.70(1) and (4), F.S.

<sup>4</sup> Section 327.30(2), F.S.

<sup>5</sup> FWC, *Boating Accident Statistical Report*, <https://myfwc.com/boating/safety-education/accidents/> (last visited March 7, 2023).

<sup>6</sup> *Id.*

<sup>7</sup> Section 327.395(1), F.S.

<sup>8</sup> Section 327.395(2), F.S.

<sup>9</sup> FWC, *Boating Safety Courses*, <https://myfwc.com/boating/safety-education/courses/> (last visited March 7, 2023).

valid for life unless it was obtained through a temporary examination, in which case it is valid for only 90 days.<sup>10</sup>

### Regulation of Liveries

A livery vessel is a vessel that is leased, rented, or chartered to another for consideration.<sup>11</sup> A facility that rents and leases such vessels is called a livery.<sup>12</sup> During the 2022 Regular Session, the Legislature passed CS/SB 606 (ch. 2022-197, L.O.F.), which created new regulations relating to boating safety and liveries.

A livery is now required to carry a policy from a licensed insurance carrier that insures the livery and the renter of a livery vessel against any accident, loss, injury, property damage, or other casualty caused by or resulting from the operation of the vessel. Coverage for 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 livery vessels are being leased or rented. Previously, a livery was not required to carry a policy for the renter. Since the passage of these new regulations, there has been growing concern that most insurance companies do not offer the type of insurance policy for renters that is now legally required for liveries.<sup>13</sup>

Additionally, liveries are now required to provide pre-rental or pre-ride instructions to renters, which must include:<sup>14</sup>

- Operational characteristics of the vessel to be rented;
- Safe vessel operation and vessel right-of-way;
- The responsibility of the vessel operator for the safe and proper operation of the vessel;
- Local characteristics of the waterway where the vessel will be operated, such as navigational hazards, boating restricted areas, and water depths; and
- Emergency procedures, such as appropriate responses to capsizing, falling overboard, taking on water, and vessel accidents.

Any person providing the instruction must have successfully completed a boating safety education course approved by NASBLA and the state. A person who receives the 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.

### **Effect of the Bill**

Effective July 1, 2028, the bill expands requirements related to operating a vessel by requiring any person born on or after January 1, 1978, operating a vessel powered by a motor of 10 horsepower or greater to have in their possession a photo ID and a boating safety ID card or temporary certificate issued by FWC, rather than any person born on or after January 1, 1988.

The bill requires a livery to provide hands-on pre-rental and pre-ride instruction. The livery's pre-rental or pre-ride instruction must include education on any safety, regulatory, information, or navigation markers in the geographic vicinity; the proper use of personal floatation devices; and a notice of the prohibition against boating under the influence.

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<sup>10</sup> Section 327.395 (5), F.S.

<sup>11</sup> Section 327.02(24), F.S.

<sup>12</sup> "Livery" means a person who advertises and offers a livery vessel for use by another person 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. The owner of a vessel who does not advertise his or her vessel for use by another for consideration and who loans or offers his or her vessel for use to another known to him or her either for consideration or without consideration is not a livery. A public or private school or postsecondary institution located within this state is not a livery. Section 327.54(1)(c), F.S.

<sup>13</sup> WUSF Public Media, *Three words in a new law threaten Florida's rental boat industry*, <https://wusfnews.wusf.usf.edu/economy-business/2022-12-20/three-words-new-law-threaten-florida-rental-boat-industry> (Dec. 20, 2022).

<sup>14</sup> Section 327.54(3)(e), F.S.

The bill exempts a renter, lessee, and livery from providing hands-on pre-rental or pre-ride instruction if the renter or lessee retains a professional captain who holds an active license issued by the United States Coast Guard to command the vessel.

The bill removes the requirement for a livery to carry an insurance policy that insures a renter against any accident, loss, injury, property damage, or other casualty caused by or resulting from the operation of the livery vessel.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 327.395, F.S., relating to boating safety.

Section 2. Amends s. 327.54, F.S., relating to liveries.

Section 3. Provides an effective date of July 1, 2023.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

The bill may have an indeterminate positive fiscal impact on FWC related to the increase in the number of boating safety identification cards being issued.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on FWC related to an increase in workload.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may have an indeterminate positive fiscal impact on companies that teach boating safety education courses due to the increased number of individuals who will need a boating safety ID.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

None. The bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 9, 2023, the Agriculture, Conservation & Resiliency Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Expanded requirements related to operating a vessel by requiring any person born after January 1, 1960, operating a vessel powered by a motor of 10 horsepower or greater to have in their possession a photo ID and a boating safety ID card or temporary certificate issued by FWC;
- Required a livery to provide hands-on pre-rental and pre-ride instruction;
- Required a livery's pre-rental or pre-ride instruction to include education on any safety, regulatory, information, or navigation markers in the geographic vicinity; proper use of personal floatation devices; and a notice of the prohibition against boating under the influence; and
- Exempted the renter, lessee, and livery from providing hands-on pre-rental or pre-ride instruction if the renter or lessee retains a professional captain who holds an active license issued by the United States Coast Guard to command the vessel.

On March 22, 2023, the Agriculture & Natural Resources Appropriations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Changed the requirements related to operating a vessel, effective July 1, 2028, by requiring any person born after January 1, 1978, operating a vessel powered by a motor of 10 horsepower or greater to have in their possession a photo ID and a boating safety ID card or temporary certificate issued by FWC.

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