

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

SPONSOR(S): Infrastructure Strategies Committee, Agriculture & Natural Resources Appropriations Subcommittee, Agriculture, Conservation & Resiliency Subcommittee, Botana and Cassel

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	21 Y, 0 N, As CS	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.

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.

The bill requires FWC to develop and publish on its website an educational pamphlet relating to the importance of boating safety education and requires a person convicted of a noncriminal boating infraction to undergo mandatory boating education.

The bill requires a livery to either obtain an insurance policy that insures a renter or present the renter with an opportunity to purchase certain coverage. The bill also requires a livery to provide hands-on pre-rental and pre-ride instruction.

The bill revises statutorily designated anchoring limitation areas to designate certain areas within Biscayne Bay as anchoring limitation areas and specify that anchoring restrictions do not apply within residential docking facilities, marinas, or existing mooring fields.

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.¹ 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.² 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.³

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.⁴ According to an FWC report, in 2021, 751 boating accidents, 469 injuries, and 60 fatalities were reported.⁵ 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.⁶

Mandatory Boating Education

Currently, any person who is convicted of a criminal violation under chapter 327, F.S., convicted of a noncriminal infraction that results in a reportable boating accident, or convicted of two noncriminal infractions as specified in s. 327.73 (1) (h)-(k), (m), (o), (p), and (s)-(y), F.S., within a 12-month period is required to:⁷

- Enroll in, attend, and successfully complete a classroom or online boating safety course that is approved by and meets the minimum standards established by FWC rule;
- File proof of successful completion of the course with FWC within 90 days;
- Refrain from operating a vessel until he or she has filed proof of successful completion of the course; and
- Pay a fine of \$500.⁸

¹ Article IV, s. 9, FLA. CONST.

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

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

⁴ Section 327.30(2), F.S.

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

⁶ *Id.*

⁷ Section 327.731(1), F.S.

⁸ Section 327.731(1)(a)-(d), F.S.

The clerk of court remits all fees assessed and collected to the Department of Revenue to be deposited into the Marine Resources Conservation Trust Fund to support law enforcement activities.

Regulation of Liveries

A livery vessel is a vessel that is leased, rented, or chartered to another for consideration.⁹ A facility that rents and leases such vessels is called a livery.¹⁰ 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.¹¹

Additionally, liveries are now required to provide pre-rental or pre-ride instructions to renters, which must include:¹²

- 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.

Anchoring

Anchoring refers to a boater's practice of seeking and using a safe harbor on the public waterway system for an undefined duration. Anchoring is accomplished using an anchor carried on the vessel.¹³ Anchorages are areas that boaters regularly use for anchoring, whether designated or managed for that purpose or not.¹⁴

State Regulation of the Anchoring of Vessels

The Legislature has delegated the responsibility of managing sovereign submerged lands to the Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund

⁹ Section 327.02(24), F.S.

¹⁰ "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.

¹¹ 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).

¹² Section 327.54(3)(e), F.S.

¹³ Ankersen, Hamann, & Flagg, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, (March 2011), <https://repository.library.noaa.gov/view/noaa/36905> (last visited April 12, 2023).

¹⁴ *Id.*

(Board).¹⁵ Pursuant to this responsibility, the Board is authorized to adopt rules governing anchoring, mooring, or otherwise attaching vessels, floating homes, or any other watercraft to the bottom of sovereign submerged lands.¹⁶ The Board has not exercised its authority to adopt rules regulating anchoring.

Florida law prohibits a person from anchoring a vessel, except in case of emergency, in a manner that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel.¹⁷ Anchoring under bridges or in or adjacent to heavily traveled channels constitutes interference, if unreasonable under the prevailing circumstances.¹⁸ Interference with navigation is a noncriminal infraction and punishable by a fine of \$50.¹⁹

With certain exceptions, the owner or operator of a vessel or floating structure may not anchor such that the nearest approach of the anchored or moored vessel or floating structure is:

- Within 150 feet of any marina, boat ramp, boatyard, or vessel launching or loading facility;
- Within 300 feet of a superyacht repair facility; or
- Within 100 feet outward from the marked boundary of a public mooring field or a lesser distance if approved by the local government within which the mooring field is located.²⁰

Local Regulation of the Anchoring of Vessels

Local governments are authorized to enact and enforce ordinances that prohibit or restrict the anchoring of floating structures²¹ or live-aboard vessels²² within their jurisdictions and vessels that are within the marked boundaries of permitted mooring fields.²³ However, they are prohibited from enacting, continuing in effect, or enforcing any ordinance or local regulation that regulates the anchoring of vessels, other than live-aboard vessels, outside the marked boundaries of permitted mooring fields.²⁴

Anchoring Limitation Areas

Current law designates certain densely populated urban areas that have narrow state waterways, residential docking facilities, and significant recreational boating traffic as anchoring limitation areas.²⁵ The following areas are designated in statute as anchoring limitation areas:

- The section of Middle River lying between Northeast 21st Court and the Intracoastal Waterway in Broward County.
- Sunset Lake in Miami-Dade County.
- The sections of Biscayne Bay in Miami-Dade County lying between Rivo Alto Island and Di Lido Island, San Marino Island and San Marco Island, and San Marco Island and Biscayne Island.²⁶

In an anchoring limitation area, a person is prohibited from anchoring a vessel at any time during the period between one half-hour after sunset and one half-hour before sunrise.²⁷ However, a person may anchor in an anchoring limitation area if:

¹⁵ Section 253.03(1), F.S.

¹⁶ Section 253.03(7), F.S.

¹⁷ Section 327.44(2), F.S.

¹⁸ *Id.*

¹⁹ Section 327.73(j), F.S.

²⁰ Section 327.4109(1), F.S.

²¹ Section 327.02(14), F.S., defines "floating structure" as a floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term includes an entity used as a residence, place of business, or office with public access; a hotel or motel; a restaurant or lounge; a clubhouse; a meeting facility; a storage or parking facility; or a mining platform, dredge, dragline, or similar facility or entity represented as such.

²² Section 327.02(22), F.S., defines "live-aboard vessel" as a vessel used solely as a residence and not for navigation; a vessel represented as a place of business or a professional or other commercial enterprise; or a vessel for which a declaration of domicile has been filed. The definition expressly excludes commercial fishing boats.

²³ Section 327.60(2)(f), F.S.

²⁴ Section 327.60(3), F.S.

²⁵ Section 327.4108, F.S.

²⁶ Section 327.4108(1), F.S.

²⁷ Section 327.4108(2), F.S.

- The vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the people onboard unless the vessel anchors;
- Imminent or existing weather conditions in the vicinity pose an unreasonable risk of harm to the vessel or the people onboard unless the vessel anchors; or
- The vessel is attending a regatta, race, marine parade, tournament, exhibition,²⁸ or other special event, including, but not limited to, public music performances, local government waterfront activities, or a fireworks display.²⁹

The Division of Law Enforcement of FWC and its officers, county sheriffs and deputies, and municipal police officers typically enforce anchoring limitation areas.³⁰ Such law enforcement officers are authorized to remove and impound a vessel that, after being issued a citation for violation of the anchoring limitation area, anchors the vessel in the anchoring limitation area within 12 hours after being issued the citation or refuses to leave the anchoring limitation area after being directed to do so by law enforcement.³¹

Anchoring limitation areas do not apply to vessels owned or operated by a governmental entity for law enforcement, firefighting, military, or rescue purposes; construction or dredging vessels on an active job site; vessels actively engaged in commercial fishing; or vessels engaged in recreational fishing if the individuals on board are actively tending hook and line fishing gear or nets.³²

Effect of the Bill

The bill requires FWC to develop and publish on its website an educational pamphlet relating to the importance of boating safety education and promoting voluntary enrollment in a boating safety education course. At a minimum, the pamphlet must include:

- An overview of the importance of boating safety education and navigational rules.
- An overview of boating safety and the proper use of safety equipment.
- An overview of the dangers of careless operation of a vessel or operating overloaded vessels.
- An overview of the proper use and lifesaving benefits of an engine cutoff switch for motorboats and personal watercrafts.
- The importance of not operating vessels while under the influence of alcoholic beverages, chemical substances, or controlled substances.

The bill requires any person who is convicted of a noncriminal boating infraction as specified in s. 327.73(1)(h)-(k), (m), (o), (p), and (s)-(y), F.S., to:

- Enroll in, attend, and successfully complete a classroom or online boating safety course that is approved by and meets the minimum standards established by FWC rule;
- File proof of successful completion of the course with FWC within 90 days; and
- Refrain from operating a vessel until he or she has filed proof of successful completion of the course.

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.

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 requires a livery to either:

²⁸ Section 327.48, F.S.

²⁹ Section 327.4108(3), F.S.

³⁰ Section 327.70(1), F.S.

³¹ Section 327.4108(5)(b), F.S.

³² Section 327.4108(4), F.S.

- Obtain and carry an insurance policy which insures a renter in the same manner and amounts of the policy obtained for the livery, and to provide to each renter the insurance carrier's name and address and the policy number; or
- Present the renter with an opportunity to purchase coverage which insures the renter against any accident, loss, injury, property damage, or other casualty caused by or resulting from the operation of the livery vessel of at least \$500,000 per person and \$1 million per event. If the renter chooses to not purchase insurance, the livery must obtain a signed acknowledgment from the renter.

The bill revises requirements related to the statutorily designated anchoring limitation areas to specify that the anchoring restrictions do not apply within residential docking facilities, marinas, or existing mooring fields. The bill also revises the anchoring limitation areas within Biscayne Bay to establish the area lying between Di Lido Island and San Marino Island as well as the area lying between State Road 913 and State Road 826 as new anchoring limitation areas. In addition, the bill specifies that areas within 200 yards of the designated sections of Biscayne Bay are anchoring limitation areas.

B. SECTION DIRECTORY:

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

Section 2. Amends s. 327.4108, F.S., relating to anchoring of vessels in anchoring limitation areas.

Section 3. Amends s. 327.54, F.S., relating to liveries.

Section 4. Amends s. 327.731, F.S., relating to mandatory education for violators.

Section 5. Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

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:

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 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:

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.

On April 10, 2023, the Infrastructure Strategies Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Required FWC to develop and publish an educational pamphlet relating to the importance of boating safety education;
- Expanded anchoring limitation areas;
- Required a person convicted of a noncriminal boating infraction to undergo mandatory boating education; and
- Required a livery to either obtain an insurance policy which insures a renter or present the renter with an opportunity to purchase certain coverage.

This analysis is drafted to the committee substitute as approved by the Infrastructure Strategies Committee.