

WEEK 3 REPORT

// 2021 LEGISLATIVE SESSION

+ MARINE INDUSTRIES ASSOCIATION OF FLORIDA

MARCH 15-19, 2020



// WEEK 3 REPORT

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Anchoring Limitation Areas

The 2021 Legislative Session is moving along. As reported earlier the pandemic has changed how we do business and the everyday interaction between clients, constituent, legislators and lobbyists. We are all trying to make the most of the situation, but some issues are easier than others.

We have completed three weeks and have six weeks left until the official end of the sixty day event. We will start the budget process this week. Remember, the budget is the only constitutionally mandated requirement of the Florida Legislature. Florida's budget is required to be a balanced budget. We will be watching closely as there could be new funding sources and federal money. MIAF watches several boating budget issues. We are strong advocates for more boating infrastructure monies, boating safety and derelict vessels.

There are numerous boating bills this Session. We are constantly negotiating language on several key pieces of legislation. Below are some of the many boating bills filed this Session. Again, many of these bills are controversial and we have been actively engaged trying to amend and provide information on these important issues. The FWC, Anchoring and Racketeering bills all continue to be works in progress. The FWC and Anchoring bill are amended or being amended this week as originally filed. The Racketeering bill needs an amendment before it passes. We will highlight that below.

Anchoring

Senate Bill 1946 sponsored by Senator Polsky. The bill has three committees of reference. The bill is being heard March 22 with a delete all amendment. The amendment is included in your packet for review. We believe the amendment is an improvement from the original bill as filed including a few of our suggestions. We appreciate the sponsors meeting with us and listening to our concerns. We have asked to continue to work with them as the bill continues thru the next two committees.

The House companion, HB 1515 by Representative Duggan is scheduled to be heard this week as well. The bill is scheduled to be heard in the House Environment Agriculture and Flooding Subcommittee on March 23rd. As of the writing of this report,

we do not have copies of any amendments as the deadline is March 22. We anticipate the House bill to have an amendment identical to the Senate amendment.

Senator Polsky and Representative Duggan are working very closely together. The Boating Caucus is split on this bill. Boat US went on record supporting the anchoring bill and apparently was negotiating with the House sponsor during the interim period.

Florida Fish and Wildlife Conservation Commission/Boating Bill

FWC refers to this bill as a "Boating Bill". In my opinion, this is a law enforcement bill and not a boating bill. The entire stakeholders process and hours of conference calls and suggested amendments to FWC were all denied. Unfortunately, we were left with no option, but to meet with the sponsors and legislators to discuss our major concerns with the bill.

Happy to report Senator Hutson amended his bill in the first committee of reference. His amendments were very favorable to marine industries. We appreciate his willingness to work with the industry. Committee Substitute for Senate Bill 1066 has two more committee stops before it hits the Senate floor.

Representative Sirois is the House sponsor. House Bill 639 is being heard in its second committee of reference March 22. There are amendments are filed and we expect more amendments as it moves through the last two committees as it has four committee references. We expect changes to boating education as it moves forward. Derelict vessels seem to be the main driver of this bill.

We will keep you posted as these bills move forward.

Racketeering

Senate Bill 776 by Senator Gainer and House Bill 783 by Overdorf. The Senate bill is ready for the Senate floor. We have met with Senate need this change as we do not want anyone who has an incidental take of a species being charged with the same law used to charge mob bosses. The House bill has two more committee stops. Please, if you feel inclined call your legislator and and them to change "take" to "collect, harvest or capture".

Marina Evacuations

Marina Evacuations bills are moving through the process. The Senate bill, SB 578, has passed all three committees with no amendments. The bill is ready for the Senate floor. The House bill has been amended several times and is now a CS/CS. This House bill is also ready to be heard on the House floor. The language is attached for your review.

Vessel Collision

House Bill 1275 is up this week by Representative Grieco. The Senate Bill has three committees left.

Again, budgets will start taking shape this week. We will keep you posted as this is a long process.

Thank you for your time and consideration.



Margaret "Missy" Timmins
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// CIVIL LIABILITY FOR DAMAGES RELATING TO COVID-19

Senate Bill 72 // Sen. Jeff Brandes // Referred to: Judiciary; Commerce and Tourism; Rules

House Bill 7 // Rep. Lawrence McClure // Referred to: Civil Justice & Property Rights Subcommittee; Pandemics & Public Emergencies Committee; Judiciary Committee

HOUSE/SENATE BILL RELATIONSHIP: *SIMILAR*

Senate Bill 72: CS/SB 72 is a combination of SB 72 and SB 74, with some additional changes. SB 72 creates civil liability protections for individuals, businesses, governmental entities, and other organizations against COVID-19-related claims. SB 74 provides lesser liability protections to health care providers, who are defined in the bill, and provides procedures for civil actions against them.

Liability Protections for COVID-19-Related Claims

The bill defines a COVID-19-related claim, against a person, business, or other entity, but generally not a health care provider, as a claim that arises from or is related to COVID-19. For claims against a person other than a health care provider, the bill establishes preliminary requirements that a plaintiff must complete before the case is allowed to proceed. A court must determine whether:

- The complaint was pled with particularity.
- A physician's affidavit was simultaneously submitted stating that, within a reasonable degree of medical certainty, the physician believed that the defendant caused, through acts or omissions, the plaintiff's damages, injury, or death. If the plaintiff did not meet these requirements, the court must dismiss the action, but the plaintiff is not barred from correcting the deficiencies and refiling the claim.
- The defendant made a good faith effort to substantially comply with authoritative or controlling health standards when the action accrued. If the court determines that the defendant made the requisite good faith effort, the defendant is immune from civil liability. If, in contrast, the court determines that the defendant did not make the requisite good faith effort, the action may proceed.

If a plaintiff meets these preliminary requirements, then he or she bears the burden of proving that the defendant did not make the good faith effort. Additionally, the plaintiff must meet the heightened standard of proving that the defendant's acts or omissions were grossly negligent by the clear and convincing evidence standard.

Liability Protections for Health Care Providers

The liability protections for COVID-19-related claims against a health care provider mainly relate to claims:

- Arising from the diagnosis or treatment of a person for COVID-19;
- The provision of a novel or experimental COVID-19 treatment;
- The transmission of COVID-19; and

- The delay or cancellation of a surgery or medical procedure.

However, a claim by a person other than a patient or resident alleging that the health care provider caused the person to contract COVID-19 may be pursued under the provisions of the bill that primarily relate to claims against persons other than a health care provider.

A COVID-19-related lawsuit against any defendant must be brought within 1 year after a cause of action accrues unless the cause of action occurred before the effective date of the bill. However, if a cause accrues before the effective date of the bill, the plaintiff has 1 year from the effective date of the act to bring the claim.

The bill takes effect upon becoming a law and applies retroactively. However, the bill does not apply in a civil action against a particular defendant if the suit is filed before the bill's effective date.

Most Recent Action: Placed on Special Order Calendar, 03/25/21

CS/House Bill 7: In the face of the COVID-19 outbreak in Florida, Governor Ron DeSantis declared a state of emergency and issued a series of executive orders directing Floridians to stay at home, with exceptions for essential services and activities. While some of the executive orders eventually expired or were modified, the Governor has continued to extend the state of emergency, with the most recent extension occurring on December 29, 2020.

As COVID-19 spread across the world, the United States, and the State of Florida, information about the virus evolved at a rapid pace. Official guidance came from multiple sources and sometimes changed on a daily basis. Business owners, schools, government leaders, religious organizations, and other entities scrambled to make the best decisions possible based on their knowledge at the time.

CS/HB 7 provides several COVID-19-related liability protections for businesses, educational institutions, government entities, religious organizations, and other entities. Under the bill, a covered entity that makes a good faith effort to substantially comply with applicable COVID-19 guidance is immune from civil liability from a COVID-19-related civil action. The bill also provides that for any COVID-19-related civil action against a covered entity, a plaintiff must:

- Plead his or her complaint with particularity.
- Submit, at the time of filing suit, a physician's affidavit confirming the physician's belief that the plaintiff's COVID-19-related injury occurred because of the defendant's conduct.
- Prove, by clear and convincing evidence, that the defendant was at least grossly negligent.

The bill's liability protections do not apply to a health care provider, such as a hospital, nursing home, assisted living facility, or other health care-related entity. The bill provides a one-year statute of limitations for COVID-19-related claims. For a plaintiff whose cause of action has already accrued, the one-year period does not begin to run until the bill becomes effective.

Most Recent Action: Read Third Time; Passed (Vote: 83 Yeas / 31 Nays); In Messages; Received; Referred to Rules

Attached documents: SB 72 (1st Engrossed) + Staff Analysis; CS/HB 7 + Staff Analysis

// MARINA EVACUATIONS

Senate Bill 578 // Sen. Tom Wright // Referred to: Environment and Natural Resources; Transportation; Rules

House Bill 223 // Rep. Rene Plasencia // Referred to: Environment, Agriculture & Flooding Subcommittee; Pandemics & Public Emergencies Committee; State Affairs Committee

RELATIONSHIP: *SIMILAR*

Senate Bill 578: SB 578 prohibits, upon the issuance of a hurricane watch that affects the waters of marinas located in a deepwater seaport, vessels under 500 gross tons from remaining in the waters of such marinas that have been deemed not suitable for refuge during a hurricane. The bill requires that vessel owners promptly remove their vessels from the waterways upon issuance of an evacuation order by the deepwater seaport.

If the Coast Guard Captain of the Port sets the port condition to “Yankee”¹ and a vessel owner has failed to remove his or her vessel from the waterway, a marina owner, operator, employee, or agent, is required to remove the vessel, if reasonable, from its slip. The marina owner may charge the vessel owner a reasonable fee for the service of removing the vessel.

The bill provides that a marina owner, operator, employee, or agent may not be held liable for any damage incurred to the vessel from a hurricane and is held harmless from removing the vessel from the waterways. However, the bill does not provide immunity to the marina owner, operator, employee, or agent for any damage caused by intentional acts or negligence when removing a vessel.

The bill provides that after a watch has been issued, if an owner or operator has not removed the vessel pursuant to an order from the seaport, the owner or operator may be subject to a fine, in an amount not exceeding three times the cost associated with removing the vessel from the waterway.

Most Recent Action: Favorable by Rules; 16 Yeas, 0 Nays; Placed on Calendar, on 2nd reading

House Bill 223: Under Florida law, the term “port” is defined as a port authority or district. Each port, in agreement with the United States Coast Guard, state pilots, and other ports in its operating port area, is required to adopt guidelines for minimum bottom clearance of each berth and channel, for the movement of vessels, and for radio communications of vessel traffic for all

commercial vessels entering and leaving its harbor channels.

There are 14 deepwater seaports in Florida.

A marina is a licensed commercial facility that provides secured public moorings or dry storage for vessels on a leased basis. Vessels that are left in a marina during hurricane and storm conditions can cause problems in the port, including the inability to secure docks, causing potential damage to infrastructure such as piers, and other harm to people or property. Vessels left in the harbor can also pose navigational issues and cause problems and delays in clearing channels.

Some marina docking contracts contain “safe haven” or “hurricane” clauses. These clauses provide that, when a hurricane watch is issued, boat owners must immediately remove their vessels and all personal property from the marina and seek safe haven somewhere else. In 1993, Florida enacted a law designed to prevent marinas from using safe haven clauses as a basis for recovering the costs of property damage from vessel owners after a hurricane.

Upon the issuance of a hurricane watch affecting the waters of marinas located in a deepwater seaport, the bill prohibits vessels under 500 gross tons from remaining in the waters of marinas that have been deemed not suitable for refuge during a hurricane. In addition, the bill requires vessel owners to promptly remove their vessels from the waterways upon issuance of an evacuation order by the deepwater seaport.

The bill specifies that if the Coast Guard captain of the port sets the port condition to “Yankee” and a vessel owner has failed to remove a vessel from the waterway, the marina owner must remove the vessel and may charge the vessel owner a reasonable fee for the removal. In addition, the bill specifies that a marina owner may not be held liable for any damage incurred to a vessel from a hurricane and is held harmless as a result of such actions to remove the vessel from the waterways, unless the damage was caused by intentional acts or negligence.

Finally, the bill authorizes the deepwater seaport to impose and collect a fine in an amount not to exceed three times the cost associated with removing a vessel from the waterway if, after the hurricane watch has been issued, the owner or operator of a vessel has not removed the vessel from the waterway of the marina pursuant to an order from the deepwater seaport. The bill specifies that a deepwater seaport is not required to issue an order to evacuate vessels or impose and collect fines for failure to remove vessels from its waterways.

Most Recent Action: Favorable with CS by State Affairs Committee; 23 Yeas, 0 Nays;
Placed on Calendar, on 2nd reading

Attached documents: SB 578 (as filed) + Staff Analysis; CS/CS/HB 223 + Staff Analysis

// POWER-DRIVEN VESSEL SAFETY REQUIREMENTS

Senate Bill 1658 // Sen. Jennifer Bradley // Referred to: Environment and Natural Resources; Community Affairs; Rules

House Bill 271 // Rep. Adam Botana // Referred to: Tourism, Infrastructure & Energy

Subcommittee; Criminal Justice & Public Safety Subcommittee; Commerce CommitteeHOUSE/SENATE BILL RELATIONSHIP: *IDENTICAL*

Senate Bill 1658: Citing this act as the “Limb Preservation Act”; prohibiting sitting in a specified manner upon the bow, transom, or gunwale of a power-driven vessel while the vessel is making way; prohibiting a power-driven vessel operator from allowing a person to sit in such a way; providing a noncriminal infraction for violations relating to power-driven vessel safety requirements, etc.

Most Recent Action: Referred to Environment and Natural Resources; Community Affairs; Rules

House Bill 271: Prohibits sitting in specified manner on bow, transom, or gunwale of power-driven vessel while vessel is making way; provides penalties.

Most Recent Action: Referred to Tourism, Infrastructure & Energy Subcommittee; Criminal Justice & Public Safety Subcommittee; Commerce Committee

Attached documents: SB 1658 (as filed); HB 271 (as filed)

// **MOTORBOAT ENGINE CUTOFF SWITCHES // VESSEL SAFETY EQUIP.**

Senate Bill 1562 // Sen. Joe Gruters // Referred to: Environment and Natural Resources; Criminal Justice; Rules

House Bill 1099 // Rep. Fiona McFarland // Referred to: Tourism, Infrastructure & Energy Subcommittee; Environment, Agriculture & Flooding Subcommittee; Commerce Committee

HOUSE/SENATE BILL RELATIONSHIP: *COMPARE*

Senate Bill 1562: Citing this act as the “Ethan’s Law”; requiring the use of an engine cutoff switch when operating certain motorboats that are making way; providing penalties, etc.

Most Recent Action: Referred to Environment and Natural Resources; Criminal Justice; Rules

House Bill 1099: Requires operators of certain motorboats to use engine cutoff switch while motorboat is making way.

Most Recent Action: Tourism, Infrastructure & Energy Subcommittee; Environment, Agriculture & Flooding Subcommittee; Commerce Committee

Attached documents: SB 1562 (as filed); SB 1099 (as filed)

// VESSEL SAFETY // VESSEL COLLISIONS, ACCIDENTS, & CASUALTIES

Senate Bill 1834 // Sen. Jason Pizzo // Referred to: Environment and Natural Resources; Criminal Justice; Rules

House Bill 1275 // Rep. Michael Grieco // Referred to: Criminal Justice & Public Safety Subcommittee; Justice Appropriations Subcommittee; Judiciary Committee

HOUSE/SENATE BILL RELATIONSHIP: *SIMILAR*

Senate Bill 1834: Revising the penalties for persons operating a vessel involved in an accident or injury who leave the scene of the accident or injury under certain circumstances; providing graduated penalties depending on the level of damage to property or person; providing a mandatory minimum sentence for a person who willfully commits such violation resulting in the death of another while boating under the influence; providing that a person commits boating under the influence manslaughter when their impaired operation of a vessel causes the death of an unborn child; revising the definition of the term “vessel homicide” to include the killing of an unborn child by causing injury to the mother by operation of a vessel in a reckless manner under certain circumstances, etc.

Most Recent Action: Referred to Environment and Natural Resources; Criminal Justice; Rules

House Bill 1275: Florida’s Fish and Wildlife Conservation Commission (FWC) is responsible for regulating vessel safety throughout the state. FWC’s Division of Law Enforcement enforces boating rules and regulations, coordinates boating safety campaigns and education, manages public waters and access to them, conducts boating accident investigations, identifies and removes derelict vessels, and investigates vessel theft and title fraud.

“Vessel” is synonymous with boat as referenced in the Florida Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, which is used or capable of being used as a means of transportation on water. Chapter 327, F.S., provides various penalties relating to vessel collisions, accidents, and casualties.

The penalties for recklessly or carelessly operating a vessel, boating under the influence (BUI), and vessel homicide are similar to the penalties applicable to recklessly or carelessly operating a motor vehicle, driving under the influence, and vehicular homicide. However, current law protects an unborn child from a person’s unlawful vehicle operation and provides greater penalties for a number of offenses committed by a person driving a motor vehicle than those committed by a person operating a vessel.

HB 1275 amends the criminal penalties and creates new crimes for several vessel operation offenses to more closely mirror the penalties for the same offenses when committed by a person while operating a motor vehicle. The bill creates new crimes for leaving the scene of a boating accident which results in damage, injury, or death. A person who commits such an offense that results in:

- Only property damage, commits a first degree misdemeanor.
- Injury to a person that is not serious bodily injury, commits a third degree felony.
- Serious bodily injury to a person, commits a second degree felony.
- A person's death, commits a first degree felony, subject to a four year minimum mandatory prison sentence if he or she was under the influence at the time of the offense.

The bill creates the new crime of reckless or careless boating causing serious bodily injury to a person, a third degree felony.

The bill amends the current crime of BUI to include causing the death of an unborn child in the offense of BUI manslaughter, and subjects a person convicted of BUI manslaughter to a four year minimum mandatory prison sentence. The bill also amends the crime of vessel homicide to include killing an unborn child in the offense.

The bill may have an indeterminate positive impact on prison and jail beds by expanding the misdemeanor and felony offenses relating to unlawfully operating a vessel to more closely mirror the penalties for unlawfully operating a vehicle.

Most Recent Action: Referred to Criminal Justice & Public Safety Subcommittee; Justice Appropriations Subcommittee; Judiciary Committee

Attached documents: SB 1834 (as filed); HB 1275 (as filed) + Staff Analysis

// SEAGRASS MITIGATION BANKS

Senate Bill 1668 // Sen. Ana Maria Rodriguez // Referred to: Environment and Natural Resources; Community Affairs; Appropriations

House Bill 1335 // Rep. Tyler Sirois // Referred to: Environment, Agriculture & Flooding Subcommittee; Agriculture & Natural Resources Appropriations Subcommittee; State Affairs Committee

HOUSE/SENATE BILL RELATIONSHIP: *IDENTICAL*

Senate Bill 1668: Authorizing the Board of Trustees of the Internal Improvement Trust Fund to establish seagrass mitigation banks under certain conditions, etc.

Most Recent Action: Referred to Environment and Natural Resources; Community Affairs; Appropriations

House Bill 1335: Seagrasses are grass-like flowering plants that live completely submerged in marine and estuarine waters. Seagrasses occur in protected bays and lagoons as well as in deeper waters along the continental shelf in the Gulf of Mexico. The depth at which seagrasses occur is limited by water clarity because most species require high levels of light. The Board of Trustees of the Internal Improvement Trust Fund (the Board) is responsible for acquiring and managing state-owned lands in a manner that serves the public interest. Among the Board's responsibilities is the duty to preserve and regenerate seagrass as an essential ecosystem for Florida's oceans, estuaries, and shorelines.

The Department of Environmental Protection (DEP) regulates activities in, on, or over surface waters, as well as any activity that alters surface water flows, through environmental resource permits (ERPs). ERPs are required for development or construction activities typically involving the dredging or filling of surface waters, construction of flood protection facilities, building dams or reservoirs, or any other activities that affect state waters. Environmental impact mitigation is required under certain circumstances to offset the adverse impacts to surface waters resulting from the construction activities allowed by an ERP.

Mitigation banking is a practice in which an environmental enhancement and preservation project is conducted by a public agency or private entity (banker) to provide mitigation for unavoidable environmental impacts within a defined region referred to as a mitigation service area. The bank is the site itself, and the currency sold by the banker to the ERP applicant is a credit. The number of potential credits permitted for the bank and the credit required for ERPs are determined by DEP or a water management district.

Sovereign submerged lands include, but are not limited to, tidal lands, islands, sandbars, shallow banks, and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally influenced waters. The Board is responsible for determining whether a sale of sovereign submerged lands or a permit related to an activity conducted on sovereign submerged lands is within the public interest on a case by case basis. Before conveying submerged lands, the Board must consider the extent such conveyance would interfere with the conservation of fish, marine life and other wildlife, or other natural resources.

The bill authorizes the Board to establish seagrass mitigation banks to ensure the preservation and regeneration of seagrass and to offset the unavoidable impacts of projects when seagrass banks meet the public interest requirements related to state-owned lands.

Most Recent Action: On Committee agenda - Environment, Agriculture & Flooding Subcommittee, 03/23/21, 4:00 pm

Attached documents: SB 1668 (as filed); HB 1335 (as filed) + Staff Analysis

// ANCHORING LIMITATION AREAS

Senate Bill 1652 // Sen. Jason Pizzo // Referred to: Environment and Natural Resources; Community Affairs; Rules

House Bill 1337 // Rep. Joe Geller // Referred to: Environment, Agriculture & Flooding Subcommittee; State Affairs Committee

HOUSE/SENATE BILL RELATIONSHIP: *SIMILAR*

Senate Bill 1652: Designating specified waterways in densely populated urban areas as anchoring limitation areas, etc.

Most Recent Action: Referred to Environment and Natural Resources; Community Affairs; Rules

CS/House Bill 1337: Designates specified waterways as anchoring limitation areas.

Most Recent Action: Referred to Environment, Agriculture & Flooding Subcommittee; State Affairs Committee

Attached documents: SB 1652 (as field); HB 1337 (as filed)

// ANCHORING LIMITATION AREAS

Senate Bill 1946 // Sen. Tina Polsky // Referred to: Environment and Natural Resources; Community Affairs; Rules

House Bill 1515 // Rep. Wyman Duggan // Referred to: Environment, Agriculture & Flooding Subcommittee; Agriculture & Natural Resources Appropriations Subcommittee; State Affairs Committee

HOUSE/SENATE BILL RELATIONSHIP: *IDENTICAL*

Senate Bill 1946: CS/SB 1946 provides that notwithstanding the existing prohibition on local regulation of anchoring of vessels outside of the marked boundaries of mooring fields, a county may establish an anchoring limitation area within densely populated urban areas, which meets certain requirements imposed under the bill. The bill provides that the aggregate total of anchoring limitation areas in a county may not exceed 10 percent of the county's navigable waterways.

The bill provides that each anchoring limitation area must:

- Be less than 100 acres in size;
- Not include any mooring fields; and
- Be clearly marked with signs and buoys.

The bill prohibits a person from anchoring a vessel for more than 30 consecutive days in a 6-month period in an anchoring limitation area, except under existing exceptions.

The bill provides an opportunity for a vessel owner or operator to provide proof that the vessel has not exceeded the time limitation on anchoring, upon an inquiry by a law enforcement officer or agency. If the vessel owner or operator fails or refuses to provide such proof, the bill authorizes a law enforcement officer or agency to issue a citation, and later remove and impound the vessel.

A vessel that is the subject of more than three violations within 12 months, which resulted in dispositions other than acquittal or dismissal, is a public nuisance and subject to existing procedures for abandoned or lost property and relocation and removal of derelict vessels.

The bill requires FWC to initiate rulemaking, including notice to the public and an opportunity for public participation.

Most Recent Action: Favorable with CS by Environment and Natural Resources; 6 Yeas, 0 Nays

House Bill 1515: Current law designates certain densely populated urban areas that have narrow state waterways, residential docking facilities, and significant boating traffic as anchoring limitation areas. 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. Anchoring limitation areas are typically enforced by the Division of Law Enforcement of the Fish and Wildlife Conservation Commission (FWC) and its officers, county sheriffs and deputies, and municipal police officers.

The bill authorizes a county to establish an anchoring limitation area within densely populated urban areas that have narrow state waterways, residential docking facilities, and significant recreational boating traffic. The bill specifies that the areas previously designated in statute as anchoring limitation areas are grandfathered-in anchoring limitation areas for which the new requirements established in the bill do not apply.

The bill requires each anchoring limitation area to be less than 200 acres in size, comprise less than 10 percent of the county's navigable waterways, and be clearly marked with buoys and signs that provide reasonable notice of the duration of time beyond which anchoring is limited to boaters. Additionally, the bill specifies that any ordinance establishing an anchoring limitation area may not take effect until reviewed and approved by FWC.

The bill prohibits a person from anchoring a vessel for more than 30 consecutive days in any six-month period in an anchoring limitation area. Upon an inquiry by a law enforcement or code enforcement officer or agency, a vessel owner or operator must be given an opportunity

to provide proof that the vessel has not exceeded the 30-day limit. A vessel that is the subject of more than three violations within 12 months that resulted in dispositions other than acquittal or dismissal must be declared to be a public nuisance.

The bill requires FWC to initiate rulemaking by July 1, 2021, to provide criteria and procedures for reviewing applications and procedures for public notice and participation.

Most Recent Action: On Committee agenda - Environment, Agriculture & Flooding Subcommittee, 03/23/21

Attached documents: CS/SB 1946 + Staff Analysis; HB 1515 (as filed) + Amendment + Staff Analysis

// OPERATION AND SAFETY OF MOTOR VEHICLES AND VESSELS

Senate Bill 1086 // Sen. Travis Hutson // Referred to: Environment and Natural Resources; Appropriations Subcommittee on Agriculture, Environment, and General Government; Appropriations

House Bill 639 // Rep. Tyler Sirois // Referred to: Environment, Agriculture & Flooding Subcommittee; Criminal Justice & Public Safety Subcommittee; Agriculture & Natural Resources Appropriations Subcommittee; State Affairs Committee

HOUSE/SENATE BILL RELATIONSHIP: *SIMILAR*

Senate Bill 1086: CS/SB 1086 contains numerous changes to existing laws administered by the Fish and Wildlife Conservation Commission (FWC) and other law enforcement entities.

Relating to rulemaking, the bill:

- Provides additional rulemaking authority to FWC to implement provisions relating to derelict vessels.

Relating to boater safety, the bill:

- Revises conditions under which a person operating a motor vehicle or vessel commits a misdemeanor by failing to submit to breath or urine testing for alcohol, chemical substances, and controlled substances.
- Deletes the provisions establishing a misdemeanor for the refusal to submit to blood testing for alcohol, chemical substances, and controlled substances.
- Defines the term “human-powered vessel” and restricts the operation of such vessels within the boundaries of the Florida Intracoastal Waterway.
- Prohibits a livery from leasing, hiring, or renting a vessel to a person required to complete a FWC-approved boating safety education course unless the person presents

certain documentation indicating compliance.

- Revises boating-restricted areas to include certain areas around public or private marinas, permitted public mooring fields, and the Florida Intracoastal Waterway.
- Designates Monroe County as an anchoring limitation area.

Most Recent Action: Favorable with CS by Environment and Natural Resources; 5 Yeas, 0 Nays

House Bill 639: CS/CS/HB 639 addresses boating safety by:

- Prohibiting a person, regardless of his or her date of birth, from operating a vessel unless such person has proof he or she has completed, or is exempt from completing, boating safety education.
- Prohibiting a vessel that is operating at slow speed, minimum wake from proceeding at a speed greater than a speed that is reasonable and prudent to avoid the creation of an excessive wake or other hazardous condition under the existing circumstances.
- Revising penalties for failure to submit to impairment tests while operating a vehicle or vessel.

The bill authorizes local governments to adopt an ordinance establishing a slow speed, minimum wake boating-restricted area if the area is within the boundaries of a permitted public mooring field and a buffer around the mooring field of up to 100 feet. The bill also authorizes the Fish and Wildlife Conservation Commission (FWC) to establish protection zones that prohibit certain activities to protect and prevent harm to springs.

The bill addresses derelict vessels by:

- Creating the derelict vessel prevention program.
- Authorizing FWC to relocate an at-risk vessel that is near a mangrove or upland vegetation.
- Requiring a law enforcement officer to provide notice to the owner of a derelict vessel in a certain form.
- Authorizing a law enforcement agency or its designee to remove, destroy, and dispose of a derelict vessel or authorize the vessel's use as an artificial reef under certain circumstances.

The bill establishes limitations on operating a human-powered vessel within the Florida Intracoastal Waterway.

The bill authorizes certain law enforcement entities, when necessary for preparations in advance of a space launch service or reentry service, or for the recovery of spaceflight assets before or after a space launch service or reentry service, to temporarily establish a protection zone requiring vessels to leave, or prohibiting vessels from entering, waterbodies within certain

parameters.

The bill increases and creates certain penalties.

Most Recent Action: Favorable with CS by Criminal Justice & Public Safety Subcommittee; 16 Yeas, 0 Nays

Attached documents: CS/SB 1086 + Staff Analysis; CS/CS/HB 639 + Staff Analysis

// RACKETEERING

Senate Bill 776 // Sen. George Gainer // Referred to: Environment and Natural Resources; Appropriations Subcommittee on Agriculture, Environment, and General Government; Appropriations

House Bill 783 // Rep. Jenna Persons-Mulicka // Referred to: Environment, Agriculture & Flooding Subcommittee; Criminal Justice & Public Safety Subcommittee; Agriculture & Natural Resources Appropriations Subcommittee; State Affairs Committee

HOUSE/SENATE BILL RELATIONSHIP: *SIMILAR*

Senate Bill 776: CS/SB 776 amends the definition of “racketeering activity” in the Florida RICO (Racketeer Influenced and Corrupt Organization) Act to include violations of ch. 379, F.S., and Title 68, F.A.C., relating to the illegal sale, purchase, take, or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes. Chapter 379, F.S., and Title 68, F.A.C., are implemented by the Florida Fish and Wildlife Conservation Commission (FWC). The effect of this change is that it will allow such unlawful acts to be prosecuted as racketeering if the commission of the acts constitutes racketeering. A criminal violation of the Florida RICO Act is a first degree felony. The Act also provides for civil remedies.

The FWC estimates the bill will have an indeterminate impact on the commission. The Legislature’s Office of Economic and Demographic Research preliminarily estimates that the bill will have a “positive insignificant” prison bed impact, meaning an increase of 10 or fewer prison beds. See Section V. Fiscal Impact.

Most Recent Action: Favorable by Rules; 16 Yeas, 0 Nays; Placed on Special Order Calendar, 03/25/21

House Bill 783: Chapter 379, F.S., outlines penalties and violations for laws relating to fish and wildlife conservation and provides the Florida Fish and Wildlife Commission (FWC) with rule-making authority. Violations of fish and wildlife laws and FWC rules are organized into a four-level system providing penalties based on the level of offense. The penalties for violating FWC laws and rules range from a noncriminal civil penalty to a third degree felony, which is punishable by up to five years in prison and a \$5,000 fine.

Sections 895.01-895.06, F.S., are also known as the “Florida RICO (Racketeering Influenced and Corrupt Organization) Act.” A person convicted under this section commits a first degree felony, which is punishable by up to 30 years in prison and a \$10,000 fine. Section 895.03, F.S., provides that it is unlawful for any person:

- To receive, with criminal intent, any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.
- Through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- Employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.
- To conspire or endeavor to violate any of the previously-described activity.

The trafficking of plant and animal life is one of the most profitable illegal trades in the world. Under current law, it is difficult to prosecute wildlife, freshwater aquatic life, and marine life traffickers in a manner that will disrupt the criminal enterprise and the activity associated therewith.

HB 783 amends the definition of “racketeering activity” to include violations of FWC laws and rules. Under the bill, any wildlife, freshwater aquatic life, or marine life trafficker convicted of a violation of the Florida RICO Act commits a first degree felony. Prosecuting such violations under the Florida RICO Act will enable the state to pursue asset forfeiture which may help to undermine profitability of the underlying criminal enterprises.

The Criminal Justice Impact Conference met on February 15, 2021, and determined that the bill may have a positive insignificant impact on prison beds by adding violations of FWC laws and rules to the list of conduct considered racketeering activity.

Most Recent Action: Favorable by Criminal Justice & Public Safety Subcommittee; 17 Yeas, 0 Nays

Attached documents: CS/SB 776 + Staff Analysis; HB 783 + Staff Analysis

=====

We appreciate the opportunity to be your voice in Tallahassee!

APPENDIX

// CIVIL LIABILITY FOR DAMAGES RELATING TO COVID-19

SB 72 (1st Engrossed) + Staff Analysis
CS/HB 7 + Staff Analysis

// MARINA EVACUATIONS

SB 578 (as filed) + Staff Analysis
CS/CS/HB 223 + Staff Analysis

// POWER-DRIVEN VESSEL SAFETY REQUIREMENTS

SB 1658 (as filed)
HB 271 (as filed)

// MOTORBOAT ENGINE CUTOFF SWITCHES

SB 1562 (as filed)
HB 1099 (as filed)

// VESSEL SAFETY

SB 1834 (as filed)
HB 1275 (as filed) + Staff Analysis

// SEAGRASS MITIGATION BANKS

SB 1668 (as filed)
HB 1335 (as filed) + Staff Analysis

// ANCHORING LIMITATION AREAS

SB 1652 (as filed)
HB 1337 (as filed)

// ANCHORING LIMITATION AREAS

CS/SB 1946 + Staff Analysis
HB 1515 (as filed) + Staff Analysis + Amendment

// CURRENT BILL TRACKING LIST

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1 A bill to be entitled
2 An act relating to civil liability for damages
3 relating to COVID-19; creating s. 768.38, F.S.;
4 providing legislative findings and intent; defining
5 terms; specifying requirements for civil actions based
6 on COVID-19-related claims; requiring the court to
7 make certain determinations in such actions; providing
8 that plaintiffs have the burden of proof in such
9 actions; requiring plaintiffs to commence COVID-19-
10 related claims within specified timeframes; creating
11 s. 768.381, F.S.; defining terms; providing
12 preliminary procedures for civil actions based on
13 COVID-19-related claims; providing the standard of
14 proof required at trial for such claims; providing
15 affirmative defenses; requiring COVID-19-related
16 claims to commence within specified timeframes;
17 providing applicability; providing construction;
18 providing severability; providing applicability and
19 for retroactive application; providing an effective
20 date.

21
22 WHEREAS, an outbreak of the disease known as COVID-19,
23 which is caused by a novel coronavirus that was not previously
24 found in humans, occurred in Hubei province, China, in late
25 2019, and has currently been detected in more than 89 countries,
26 including the United States, and

27 WHEREAS, COVID-19 is a severe respiratory disease that can
28 result in illness or death and is caused by the person-to-person
29 spread of the novel coronavirus, and

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30 WHEREAS, COVID-19, as a viral agent capable of causing
31 extensive loss of life or serious disability, is deadly, and

32 WHEREAS, the transmission of COVID-19 is a threat to human
33 health in this state, and

34 WHEREAS, the Secretary of the United States Department of
35 Health and Human Services declared on January 31, 2020, that a
36 public health emergency exists in the United States due to
37 confirmed cases of COVID-19 in this country, and

38 WHEREAS, on March 1, 2020, the State of Florida Department
39 of Health, in coordination with Governor Ron DeSantis, first
40 declared a public health emergency based on the spread of COVID-
41 19, and

42 WHEREAS, throughout the declared state of emergency, the
43 Governor's executive orders included industry-specific
44 restrictions to prevent the spread of COVID-19 based on the best
45 information available at the time, allowing and encouraging
46 certain businesses to continue to safely operate, and

47 WHEREAS, a strong and vibrant economy is essential to
48 ensure that Floridians may continue in their meaningful work and
49 ultimately return to the quality of life they enjoyed before the
50 COVID-19 outbreak, and

51 WHEREAS, Floridians must be allowed to earn a living and
52 support their families without unreasonable government
53 intrusion, and

54 WHEREAS, the United States Centers for Disease Control and
55 Prevention has issued health guidance to all state and local
56 governments and all citizens, and

57 WHEREAS, in March 2020, the Centers for Medicare and
58 Medicaid Services recommended the deferral of nonessential

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59 surgeries and other procedures, and

60 WHEREAS, the guidance from the Centers for Medicare and
61 Medicaid Services to defer medical procedures was based in part
62 on its recognition that the conservation of critical health care
63 resources is essential, and

64 WHEREAS, on March 20, 2020, the Governor issued Executive
65 Order 20-72, which prohibited health care providers "from
66 providing any medically unnecessary, non-urgent or non-emergency
67 procedure or surgery which, if delayed, does not place a
68 patient's immediate health, safety, or well-being at risk, or
69 will, if delayed, not contribute to the worsening of a serious
70 or life-threatening medical condition," and

71 WHEREAS, on April 29, 2020, the Governor issued Executive
72 Order 20-112, which allowed health care providers to perform
73 procedures prohibited by the earlier order if the health care
74 provider had adequate supplies of personal protective equipment
75 and satisfied other conditions, and

76 WHEREAS, medical experts have been racing to develop
77 vaccines and to learn how COVID-19 is transmitted and how best
78 to treat those infected with the disease, and

79 WHEREAS, the Federal Government, along with state and local
80 governments, has sought to slow the spread of COVID-19 through
81 travel bans and restrictions, quarantines, lockdowns, social
82 distancing, and the closure of businesses or limitations on
83 business activities, including limitations on the provision of
84 medical services, and

85 WHEREAS, health care providers, including hospitals,
86 doctors, nurses, and other health care facilities and workers,
87 have struggled to acquire personal protective equipment and

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88 other supplies to protect against the risk of COVID-19
89 transmission and medications used in the treatment of the
90 disease, and

91 WHEREAS, the circumstances of the COVID-19 pandemic have
92 made it difficult or impossible for health care providers to
93 maintain ideal levels of staffing, and

94 WHEREAS, health care providers are essential to the
95 residents of this state's survival of the pandemic, and health
96 care providers have continued to treat patients despite the
97 potential, and still not fully known, risks of exposure to
98 COVID-19, and

99 WHEREAS, while many actions may seem reasonable during the
100 pandemic, some may attempt to construe these actions differently
101 in hindsight when calm is restored, and

102 WHEREAS, as the pandemic continues and recovery begins,
103 health care providers must be able to remain focused on serving
104 the health care needs of their respective communities and not on
105 the potential for unfounded lawsuits, and

106 WHEREAS, the Legislature finds that it is an overpowering
107 public necessity to enact legislation that will deter unfounded
108 lawsuits against individuals, businesses, health care providers,
109 and other entities based on COVID-19-related claims, while
110 allowing meritorious claims to proceed, and

111 WHEREAS, the Legislature finds that the unprecedented and
112 rare nature of the COVID-19 pandemic, together with the
113 indefinite legal environment that has followed, requires the
114 Legislature to act swiftly and decisively, NOW, THEREFORE,

115
116 Be It Enacted by the Legislature of the State of Florida:

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117
118 Section 1. Section 768.38, Florida Statutes, is created to
119 read:

120 768.38 Liability protections for COVID-19-related claims.-

121 (1) The Legislature finds that the COVID-19 outbreak in
122 this state threatens the continued viability of certain business
123 entities, educational institutions, governmental entities, and
124 religious institutions that contribute to the overall well-being
125 of this state. The threat of unknown and potentially unbounded
126 liability to such businesses, entities, and institutions, in the
127 wake of a pandemic that has already left many of these
128 businesses, entities, and institutions vulnerable, has created
129 an overpowering public necessity to provide an immediate and
130 remedial legislative solution. Therefore, the Legislature
131 intends for certain business entities, educational institutions,
132 governmental entities, and religious institutions to enjoy
133 heightened legal protections against liability as a result of
134 the COVID-19 pandemic. The Legislature also finds that there are
135 no alternative means to meet this public necessity, especially
136 in light of the sudden, unprecedented nature of the COVID-19
137 pandemic. The Legislature finds the public interest as a whole
138 is best served by providing relief to these businesses,
139 entities, and institutions so that they may remain viable and
140 continue to contribute to this state.

141 (2) As used in this section, the term:

142 (a) "Business entity" has the same meaning as provided in
143 s. 606.03. The term also includes a charitable organization as
144 defined in s. 496.404 and a corporation not for profit as
145 defined in s. 617.01401.

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146 (b) "COVID-19-related claim" means a civil liability claim
147 against a person, including a natural person, a business entity,
148 an educational institution, a governmental entity, or a
149 religious institution, which arises from or is related to COVID-
150 19, otherwise known as the novel coronavirus. The term includes
151 any such claim for damages, injury, or death. Any such claim, no
152 matter how denominated, is a COVID-19-related claim for purposes
153 of this section. The term includes a claim against a health care
154 provider only if the claim is excluded from the definition of
155 COVID-19-related claim under s. 768.381, regardless of whether
156 the health care provider also meets one or more of the
157 definitions in this subsection.

158 (c) "Educational institution" means a school, including a
159 preschool, elementary school, middle school, junior high school,
160 secondary school, career center, or postsecondary school,
161 whether public or nonpublic.

162 (d) "Governmental entity" means the state or any political
163 subdivision thereof, including the executive, legislative, and
164 judicial branches of government; the independent establishments
165 of the state, counties, municipalities, districts, authorities,
166 boards, or commissions; or any agencies that are subject to
167 chapter 286.

168 (e) "Health care provider" means:

169 1. A provider as defined in s. 408.803.

170 2. A clinical laboratory providing services in this state
171 or services to health care providers in this state, if the
172 clinical laboratory is certified by the Centers for Medicare and
173 Medicaid Services under the federal Clinical Laboratory
174 Improvement Amendments and the federal rules adopted thereunder.

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175 3. A federally qualified health center as defined in 42
176 U.S.C. s. 1396d(1)(2)(B), as that definition exists on the
177 effective date of this act.

178 4. Any site providing health care services which was
179 established for the purpose of responding to the COVID-19
180 pandemic pursuant to any federal or state order, declaration, or
181 waiver.

182 5. A health care practitioner as defined in s. 456.001.

183 6. A health care professional licensed under part IV of
184 chapter 468.

185 7. A home health aide as defined in s. 400.462(15).

186 8. A provider licensed under chapter 394 or chapter 397 and
187 its clinical and nonclinical staff providing inpatient or
188 outpatient services.

189 9. A continuing care facility licensed under chapter 651.

190 10. A pharmacy permitted under chapter 465.

191 (f) "Religious institution" has the same meaning as
192 provided in s. 496.404.

193 (3) In a civil action based on a COVID-19-related claim:

194 (a) The complaint must be pled with particularity.

195 (b) At the same time the complaint is filed, the plaintiff
196 must submit an affidavit signed by a physician actively licensed
197 in this state which attests to the physician's belief, within a
198 reasonable degree of medical certainty, that the plaintiff's
199 COVID-19-related damages, injury, or death occurred as a result
200 of the defendant's acts or omissions.

201 (c) The court must determine, as a matter of law, whether:

202 1. The plaintiff complied with paragraphs (a) and (b). If
203 the plaintiff did not comply with paragraphs (a) and (b), the

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204 court must dismiss the action without prejudice.

205 2. The defendant made a good faith effort to substantially
206 comply with authoritative or controlling government-issued
207 health standards or guidance at the time the cause of action
208 accrued.

209 a. During this stage of the proceeding, admissible evidence
210 is limited to evidence tending to demonstrate whether the
211 defendant made such a good faith effort.

212 b. If the court determines that the defendant made such a
213 good faith effort, the defendant is immune from civil liability.
214 If more than one source or set of standards or guidance was
215 authoritative or controlling at the time the cause of action
216 accrued, the defendant's good faith effort to substantially
217 comply with any one of those sources or sets of standards or
218 guidance confers such immunity from civil liability.

219 c. If the court determines that the defendant did not make
220 such a good faith effort, the plaintiff may proceed with the
221 action. However, absent at least gross negligence proven by
222 clear and convincing evidence, the defendant is not liable for
223 any act or omission relating to a COVID-19-related claim.

224 (d) The burden of proof is upon the plaintiff to
225 demonstrate that the defendant did not make a good faith effort
226 under subparagraph (c)2.

227 (4) A plaintiff must commence a civil action for a COVID-
228 19-related claim within 1 year after the cause of action accrues
229 or within 1 year after the effective date of this act if the
230 cause of action accrued before the effective date of this act.

231 Section 2. Section 768.381, Florida Statutes, is created to
232 read:

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233 768.381 COVID-19-related claims against health care
234 providers.—

235 (1) DEFINITIONS.—As used in this section, the term:

236 (a) "Authoritative guidance" means nonbinding instructions
237 or recommendations from a federal, state, or local governmental
238 entity, a clinical professional organization, or another
239 authoritative source of clinical guidance.

240 (b) "COVID-19" means the novel coronavirus identified as
241 SARS-CoV-2; any disease caused by SARS-CoV-2, its viral
242 fragments, or a virus mutating therefrom; and all conditions
243 associated with the disease which are caused by SARS-CoV-2, its
244 viral fragments, or a virus mutating therefrom.

245 (c) "COVID-19 emergency" means a public health emergency
246 relating to COVID-19 which is declared by an emergency
247 declaration of the Federal Government or an emergency order of
248 the State Surgeon General or a state of emergency due to COVID-
249 19 declared by executive order of the Governor.

250 (d) "COVID-19-related claim" means a civil liability claim
251 against a health care provider which arises from the:

- 252 1. Diagnosis or treatment of, or failure to diagnose or
253 treat, a person for COVID-19;
254 2. Provision of a novel or experimental COVID-19 treatment;
255 3. Transmission of COVID-19;
256 4. Delay or cancellation of a surgery or a delay or
257 cancellation of a medical procedure, a test, or an appointment
258 based on a health care provider's interpretation or application
259 of government-issued health standards or authoritative guidance
260 specifically relating to the COVID-19 emergency;
261 5. An act or omission with respect to an emergency medical

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condition as defined in s. 395.002, and which act or omission was the result of a lack of resources directly caused by the COVID-19 pandemic; or

6. The provision of treatment to a patient diagnosed with COVID-19 whose injuries were directly related to an exacerbation of the patient's preexisting conditions by COVID-19.

The term does not include a claim alleging that an act or omission by a health care provider caused a person to contract COVID-19 or a derivative claim to such claim unless the person was a resident or patient of the health care provider or a person seeking care or treatment from the health care provider.

(e) "Government-issued health standards" means federal, state, or local laws, rules, regulations, or orders that describe the manner in which a health care provider must operate.

(f) "Health care provider" means any of the following:

1. A provider as defined in s. 408.803.

2. A clinical laboratory providing services in this state or services to health care providers in this state, if the clinical laboratory is certified by the Centers for Medicare and Medicaid Services under the federal Clinical Laboratory Improvement Amendments and the federal rules adopted thereunder.

3. A federally qualified health center as defined in 42 U.S.C. s. 1396d(1)(2)(B), as that definition existed on the effective date of this act.

4. Any site providing health care services which was established for the purpose of responding to the COVID-19 pandemic pursuant to any federal or state order, declaration, or

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291 waiver.

292 5. A health care practitioner as defined in s. 456.001.

293 6. A health care professional licensed under part IV of
294 chapter 468.

295 7. A home health aide as defined in s. 400.462(15).

296 8. A provider licensed under chapter 394 or chapter 397 and
297 its clinical and nonclinical staff providing inpatient or
298 outpatient services.

299 9. A continuing care facility licensed under chapter 651.

300 10. A pharmacy permitted under chapter 465.

301 (2) PRELIMINARY PROCEDURES.—

302 (a) In any civil action against a health care provider
303 based on a COVID-19-related claim, the complaint must be pled
304 with particularity by alleging facts in sufficient detail to
305 support each element of the claim. An affidavit of a physician
306 is not required as part of the pleading.

307 (b) If the complaint is not pled with particularity, the
308 court must dismiss the action.

309 (3) STANDARD OF PROOF.—A plaintiff who brings an action for
310 a COVID-19-related claim against a health care provider must
311 prove by the greater weight of the evidence that the health care
312 provider was grossly negligent or engaged in intentional
313 misconduct.

314 (4) AFFIRMATIVE DEFENSES.—If a health care provider proves
315 by the greater weight of the evidence the existence of an
316 affirmative defense that applies to a specific COVID-19-related
317 claim, the health care provider has no liability for that claim.
318 The affirmative defenses that may apply to a COVID-19-related
319 claim against a health care provider include, in addition to any

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320 other affirmative defenses recognized by law, the health care
321 provider's:

322 (a) Substantial compliance with government-issued health
323 standards specifically relating to COVID-19 or other relevant
324 standards, including standards relating to the preservation or
325 prioritization of supplies, materials, or equipment;

326 (b) Substantial compliance with government-issued health
327 standards specific to infectious diseases in the absence of
328 standards specifically applicable to COVID-19;

329 (c) Substantial compliance with government-issued health
330 standards relating to COVID-19 or other relevant standards was
331 not possible due to the widespread shortages of necessary
332 supplies, materials, equipment, or personnel;

333 (d) Substantial compliance with any applicable government-
334 issued health standards relating to COVID-19 or other relevant
335 standards if the applicable standards were in conflict; or

336 (e) Substantial compliance with government-issued health
337 standards relating to COVID-19 or other relevant standards was
338 not possible because there was insufficient time to implement
339 the standards.

340 (5) LIMITATIONS PERIOD.—

341 (a) An action for a COVID-19-related claim against a health
342 care provider which arises out of the transmission, diagnosis,
343 or treatment of COVID-19 must commence within 1 year after the
344 later of the date of death due to COVID-19, hospitalization
345 related to COVID-19, or the first diagnosis of COVID-19 which
346 forms the basis of the action.

347 (b) An action for a COVID-19-related claim against a health
348 care provider which does not arise out of the transmission,

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349 diagnosis, or treatment of COVID-19, such as a claim arising out
350 of a delayed or canceled procedure, must commence within 1 year
351 after the cause of action accrues.

352 (c) Notwithstanding paragraph (a) or paragraph (b), an
353 action for a COVID-19-related claim that accrued before the
354 effective date of this act must commence within 1 year after the
355 effective date of this act.

356 (6) APPLICATION PERIOD.—This section applies to claims that
357 have accrued before the effective date of this act and within 1
358 year after the effective date of this act.

359 (7) INTERACTION WITH OTHER LAWS.—

360 (a) This section does not create a new cause of action but
361 instead applies in addition to any other applicable provisions
362 of law, including, but not limited to, chapters 400, 429, 766,
363 and 768. This section controls over any conflicting provision of
364 law, but only to the extent of the conflict.

365 (b) This section does not apply to claims governed by
366 chapter 440.

367 Section 3. If any provision of this act or its application
368 to any person or circumstance is held invalid, the invalidity
369 does not affect other provisions or applications of the act
370 which can be given effect without the invalid provision or
371 application, and to this end the provisions of this act are
372 severable.

373 Section 4. This act applies retroactively and
374 prospectively. However, this act does not apply in a civil
375 action against a particular named defendant which is commenced
376 before the effective date of this act.

377 Section 5. This act shall take effect upon becoming a law.

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 Committee on Rules

BILL: CS/SB 72

INTRODUCER: Rules Committee; Senator Brandes and others

SUBJECT: Civil Liability for Damages Relating to COVID-19

DATE: March 15, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2. <u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	Favorable
3. <u>Davis</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 72 is a combination of SB 72 and SB 74, with some additional changes. SB 72 creates civil liability protections for individuals, businesses, governmental entities, and other organizations against COVID-19-related claims. SB 74 provides lesser liability protections to health care providers, who are defined in the bill, and provides procedures for civil actions against them.

Liability Protections for COVID-19-Related Claims

The bill defines a COVID-19-related claim, against a person, business, or other entity, but generally not a health care provider, as a claim that arises from or is related to COVID-19. For claims against a person other than a health care provider, the bill establishes preliminary requirements that a plaintiff must complete before the case is allowed to proceed. A court must determine whether:

- The complaint was pled with particularity.
- A physician's affidavit was simultaneously submitted stating that, within a reasonable degree of medical certainty, the physician believed that the defendant caused, through acts or omissions, the plaintiff's damages, injury, or death. If the plaintiff did not meet these requirements, the court must dismiss the action, but the plaintiff is not barred from correcting the deficiencies and refile the claim.
- The defendant made a good faith effort to substantially comply with authoritative or controlling health standards when the action accrued. If the court determines that the defendant made the requisite good faith effort, the defendant is immune from civil liability.

If, in contrast, the court determines that the defendant did not make the requisite good faith effort, the action may proceed.

If a plaintiff meets these preliminary requirements, then he or she bears the burden of proving that the defendant did not make the good faith effort. Additionally, the plaintiff must meet the heightened standard of proving that the defendant's acts or omissions were grossly negligent by the clear and convincing evidence standard.

Liability Protections for Health Care Providers

The liability protections for COVID-19-related claims against a health care provider mainly relate to claims:

- Arising from the diagnosis or treatment of a person for COVID-19;
- The provision of a novel or experimental COVID-19 treatment;
- The transmission of COVID-19; and
- The delay or cancellation of a surgery or medical procedure.

However, a claim by a person other than a patient or resident alleging that the health care provider caused the person to contract COVID-19 may be pursued under the provisions of the bill that primarily relate to claims against persons other than a health care provider.

A COVID-19-related lawsuit against any defendant must be brought within 1 year after a cause of action accrues unless the cause of action occurred before the effective date of the bill. However, if a cause accrues before the effective date of the bill, the plaintiff has 1 year from the effective date of the act to bring the claim.

The bill takes effect upon becoming a law and applies retroactively. However, the bill does not apply in a civil action against a particular defendant if the suit is filed before the bill's effective date.

II. Present Situation:

Background

The COVID-19 pandemic has affected the state of Florida in ways that were unimaginable one year ago. The toll on individuals, businesses, and the economy has been catastrophic. According to the Department of Health, 1,940,380 residents have tested positive for COVID-19 in the state, 82,256 residents have been hospitalized, and 32,255 residents have died of the virus.¹

As the pandemic forced businesses to close, millions of Americans lost their jobs. The U.S. economy contracted at the greatest rate since World War II. In Florida, general revenue collections for Fiscal Year 2019-20 were down nearly \$1.9 billion from the forecast projections made in January 2020. The vast majority of the loss, 84.7 percent, came from a loss of sales tax revenues, the largest component and category most affected by the pandemic. The Revenue Estimating Conference adopted a forecast for sales tax revenues in December 2020, as compared

¹ Florida Department of Health, Division of Disease Control and Health Protection, *Florida's COVID-19 Data and Surveillance Dashboard*, <https://experience.arcgis.com/experience/96dd742462124fa0b38ddedb9b25e429> (last visited March 14, 2021).

to the January 2020 forecast, that anticipates a loss to General Revenue of approximately \$2 billion in Fiscal Year 2020-21 and \$1 billion in Fiscal Year 2021-22. The sales tax losses are attributable to a substantial loss in the tourism and recreation areas, often driven by out-of-state tourism, and also by reduced sales to local residents at restaurants and venues, including leisure activities impacted by the pandemic.²

Governor DeSantis issued Executive Order No. 20-52 on March 9, 2020, declaring a state of emergency and issuing guidelines to halt, mitigate, or reduce the spread of the outbreak. The order has been extended 7 times,³ most recently by Executive Order No. 21-45, issued on February 26, 2021.

During the pandemic, government-issued health standards and guidance detailing how to best combat the virus have sometimes been in conflict. They sometimes changed rapidly, making appropriate responses difficult. Businesses and individuals often scurried to provide appropriate responses based upon the information they received at any given time.

As businesses and entities struggle to re-open or keep their doors open, a growing concern has been expressed that unfounded or opportunistic lawsuits for COVID-19-related claims could threaten their financial survival. The concern is that time, attention, and financial resources diverted to respond to the lawsuits could be the difference between individuals and entities succeeding or failing as they attempt to emerge from the pandemic. One protection that has been offered is the provision of heightened legal immunity from COVID-19 claims to fend off meritless lawsuits and preserve scant resources.

COVID-Related Lawsuits

According to the Congressional Research Service,⁴ a growing number of plaintiffs have filed tort lawsuits in hopes of being compensated for personal injuries that resulted from alleged exposure to COVID-19 or from the failure of a defendant to properly treat the virus. Some examples of the lawsuits include:

- The relatives of deceased family members, who allegedly contracted the virus in the workplace, have filed cases stating that the employers caused the decedents' deaths because they failed to implement workplace safety measures.
- Many cruise ship passengers have filed lawsuits against cruise lines alleging that the cruise line exposed them to the virus or caused them to contract the virus while on a cruise.

² *Executive Summary, Revenue Estimating Conference for the General Revenue Fund & Financial Outlook Statement*, August 14, 2020, and subsequently updated. <http://edr.state.fl.us/Content/conferences/generalrevenue/archives/200814gr.pdf> (last visited Mar. 1, 2021).

³ A state of emergency declared under the State Emergency Management Act may not last for more than 60 days unless it is renewed by the Governor. Section 252.36(2), F.S.

⁴ The Congressional Research Service works solely for the U.S. Congress and provides policy and legal analysis to both members and committees of the House and Senate. It is a legislative branch agency housed within the Library of Congress. <https://www.loc.gov/crsinfo/>.

- Plaintiffs have sued assisted living facilities and nursing homes. They allege that their relatives died because these entities negligently exposed their relatives to the virus or failed to diagnose them in a timely or appropriate manner, and then treat the symptoms.
- Businesses that folded have sued their insurance companies challenging the denial of their coverage for claims of business interruptions.
- Consumers have filed suits seeking financial reimbursement for travel, events, and season passes at recreational venues which were cancelled or closed because of the pandemic.
- Employees have sued their employers alleging that the employer unlawfully terminated them because they contracted the virus.
- Stockholders have sued public companies alleging that the companies violated federal securities laws when they did not accurately state the pandemic's toll on the companies' finances as required in mandatory disclosure statements.⁵

The Congressional Research Service states that proponents of COVID-19 liability protections assert that litigation and the cost of legal fees will cripple businesses, individuals, schools, and non-profit organizations and deter the organizations from reopening. Proponents are concerned that these entities will shape their business decision-making to avoid liability. This unwillingness to continue or reopen businesses will delay the national economic recovery. Others believe that many COVID-19-related claims “are generally meritless, and therefore serve primarily to benefit plaintiffs’ lawyers rather than vindicate injured person’s legal rights.”⁶

In contrast, opponents of liability protections disagree. They maintain that organizations would encounter only minimal legal exposure for COVID-19 liability. The opponents also contend that providing a shield for defendants would harm the public by permitting defendants to commit negligent acts with legal protections. It would also remove any incentives for businesses to take precautions against the spread of the virus.⁷

Florida Lawsuits

It is difficult to determine how many COVID-19-related lawsuits have been filed in the state. Staff contacted the Office of the State Courts Administrator to ask if it could determine how many claims have been filed in the state courts. The office did not have that data available. One database estimates that 582 complaints relating to COVID-19 have been filed in Florida, but this data does not delineate between those which are filed in state courts versus federal courts.⁸

Many of the claims that have been filed in the federal district courts of the state are suits against cruise ship lines where passengers allege that they contracted the virus while on the cruise.

⁵ Congressional Research Service, *COVID-19 Liability: Tort, Workplace Safety, and Securities Law* (Sept. 24, 2020), <https://crsreports.congress.gov/product/pdf/R/R46540> (last visited Mar. 1, 2021).

⁶ *Id.* at 2.

⁷ *Id.* at 3.

⁸ Hunton Andrews Kurth LLP, *COVID-19 Complaint Tracker*, <https://www.huntonak.com/en/covid-19-tracker.html> (last visited Mar. 1, 2021).

Legislative and Executive Responses of Other States

At least 17 states have enacted legislation to provide civil liability immunity to individuals and entities from COVID-19-related claims.⁹ At least two additional states have issued executive orders to provide liability limitations.¹⁰ These laws do not reflect separate healthcare liability protections. To date, no similar federal legislation has been enacted, although S. 4317 was introduced in the Senate on July 27, 2020, and referred to committee.¹¹

In general terms, the legislation enacted by other states provides protections if a defendant acts in good faith to substantially comply with the applicable COVID-19 standards. The immunity does not apply if the defendant's acts or omissions constitute gross negligence or willful or wanton misconduct.

Torts: Negligence, Elements, and Standards

A tort is a civil legal action to recover damages for a loss, injury, or death due to the conduct of another. Some have characterized a tort as a civil wrong, other than a claim for breach of contract, in which a remedy is provided through damages.¹² When a plaintiff files a tort claim, he or she alleges that the defendant's "negligence" caused the injury. Negligence is defined as the failure to use reasonable care. It means the care that a reasonably careful person would use under similar circumstances. According to the Florida Standard Jury Instructions, negligence means "doing something that a reasonably careful person would not do" in a similar situation or "failing to do something that a reasonably careful person would do" in a similar situation.¹³

When a plaintiff seeks to recover damages for a personal injury and alleges that the injury was caused by the defendant's negligence, the plaintiff bears the legal burden of proving that the defendant's alleged action was a breach of the duty that the defendant owed to the plaintiff.¹⁴

Negligence Pleadings

To establish a claim for relief and initiate a negligence lawsuit, a plaintiff must file a "complaint." The complaint must state a cause of action and contain: a short and plain statement establishing the court's jurisdiction, a short and plain statement of the facts showing why the plaintiff is entitled to relief, and a demand for judgment for relief that the plaintiff deems himself

⁹ The states are: Alabama, Georgia, Idaho, Iowa, Kansas, Louisiana, Michigan, Mississippi, Nevada, North Carolina, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Utah, and Wyoming. Additional, and sometimes separate, legislation has been enacted by 17 states that provides medical liability limitations for health care facilities and workers. The database was current as of December 14, 2020. National Conference of State Legislatures, *State Action on Coronavirus (COVID-19)*, <https://www.ncsl.org/research/health/state-action-on-coronavirus-covid-19.aspx#db> (last visited Mar. 1, 2021).

¹⁰ Alabama Executive Order signed by Governor Kay Ivey on May 8, 2020, and Arkansas Executive Order 20-33 signed by Governor Asa Hutchinson on June 5, 2020.

¹¹ Safe to Work Act, s. 4317 –116th Cong. (2020) <https://www.congress.gov/bill/116th-congress/senate-bill/4317/actions> (last visited Mar. 1, 2021).

¹² BLACK'S LAW DICTIONARY (11th ed. 2019).

¹³ Fla. Std. Jury Instr. Civil 401.3, *Negligence*.

¹⁴ Florida is a comparative negligence jurisdiction as provided in s. 768.81(2), F.S. In lay terms, if a plaintiff and defendant are both at fault, a plaintiff may still recover damages, but those damages are reduced proportionately by the degree that the plaintiff's negligence caused the injury.

or herself entitled. The defendant responds with an “answer,” and provides in short and plain terms the defenses to each claim asserted, admitting or denying the averments in response.¹⁵

Under the Florida Rules of Civil Procedure, there is a limited group of allegations that must be pled with “particularity.” These allegations include allegations of fraud, mistake, and a denial of performance or occurrence.¹⁶

Four Elements of a Negligence Claim

To establish liability, the plaintiff must prove four elements:

Duty – That the defendant owed a duty, or obligation, of care to the plaintiff;

Breach – That the defendant breached that duty by not conforming to the standard required;

Causation – That the breach of the duty was the legal cause of the plaintiff’s injury; and

Damages – That the plaintiff suffered actual harm or loss.

Burden or Standard of Proof

A “burden of proof” is the obligation a party bears to prove a material fact. The “standard of proof” is the level or degree to which an issue must be proved.¹⁷ The plaintiff carries the burden of proving, by a specific legal standard, that the defendant breached the duty that was owed to the plaintiff that resulted in the injury. In civil cases, two standards of proof generally apply:

- The “greater weight of the evidence” standard, which applies most often in civil cases, or
- The “clear and convincing evidence” standard, which applies less often, and is a higher standard of proof.¹⁸

However, both of these standards are lower than the “reasonable doubt” standard which is used in criminal prosecutions.”¹⁹ Whether the greater weight standard or clear and convincing standard applies is determined by case law or the statutes that govern the underlying substantive issues.²⁰

Greater Weight of the Evidence

The greater weight of the evidence standard of proof means “the more persuasive and convincing force and effect of the entire evidence in the case.”²¹ Some people explain the “greater weight of the evidence” concept to mean that, if each party’s evidence is placed on a balance scale, the side that dips down, even by the smallest amount, has met the burden of proof by the greater weight of the evidence.

Clear and Convincing

The clear and convincing standard, a higher standard of proof than a preponderance of the evidence, requires that the evidence be credible and the facts which the witness testifies to must be remembered distinctly. The witness’s testimony “must be precise and explicit and the

¹⁵ Fla. R. Civ. P. 1.110.

¹⁶ Fla. R. Civ. P. 1.120(b) and (c).

¹⁷ 5 Fla. Prac. Civil Practice s. 16.1, (2020 ed.)

¹⁸ *Id.*

¹⁹ Thomas D. Sawaya, *Florida Personal Injury Law and Practice with Wrongful Death Actions*, s. 24:4 (2020).

²⁰ 5 Fla. Prac. Civil Practice s. 16.1 (2020 ed.).

²¹ Fla. Std. Jury Instr. 401.3, *Greater Weight of the Evidence*.

witnesses must be lacking in confusion as to the facts in issue.” The evidence must be so strong that it guides the trier of fact to a firm conviction, to which there is no hesitation, that the allegations are true.²²

Standards of Care and Degrees of Negligence

Courts have developed general definitions for the degrees of negligence.

Slight Negligence

Slight negligence is generally defined to mean the failure to exercise a great amount of care.²³

Ordinary Negligence

Ordinary negligence, which is also referred to as simple negligence, is the standard of care applied to the vast majority of negligence cases. It is characterized as the conduct that a reasonable and prudent person would know could possibly cause injury to a person or property.²⁴

Gross Negligence

Gross negligence means the failure of a person to exercise slight care. Florida courts have defined gross negligence as the type of conduct that a “reasonably prudent person knows will probably and most likely result in injury to another” person.²⁵

In order for a plaintiff to succeed on a claim involving gross negligence, he or she must prove:

- Circumstances, which, when taken together, create a clear and present danger;
- Awareness that the danger exists; and
- A conscious, voluntary act or omission to act, that will likely result in an injury.^{26, 27}

Tort Laws Applicable to COVID-19 Lawsuits against Health Care Providers and Professionals

There is no established tort law specific to claims related to the COVID-19 pandemic. Absent legislative action, it will take years before the appellate courts hear and resolve the outstanding cases related to COVID-19 in order to develop common law principals applicable to COVID-19. In a case involving tuberculosis, an airborne disease, one federal trial court has found that “negligent transmission of a contagious disease is not actionable under Florida common law.”²⁸ Absent current clear directions from the courts, there are two likely theories of common law negligence that may be used by plaintiffs seeking damages from health care providers: premises liability and medical malpractice. It is also possible that a claim could be made on contract theory.

²² *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983) as discussed in the Sawaya treatise, *supra* at note 19.

²³ Sawaya, *supra* at s. 2:12.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Culpable negligence is a fourth degree of negligence but is not discussed in this analysis.

²⁸ *Quezada v. Circle K Stores, Inc.*, No. 204CV190FTM33DNF, 2005 WL 1633717, at 2 (M.D. Fla. July 7, 2005)

(convenience store patron contracted tuberculosis because store employee known to have tuberculosis was allowed to work).

Premises Liability

Premises liability refers to the duty of an individual or entity that owns or controls real property to reasonably operate and maintain such property for the safety of those who enter or remain on the property. There are different standards of negligence for premises liability based on the legal status of the injured party. However, in most cases related to health care providers, the patient or client or supplier is a legal invitee, so that standard is appropriate for consideration. As to an invitee, a landowner or possessor is liable if he/she/it:

- Negligently failed to maintain the premises in a reasonably safe condition; or
- Negligently failed to correct a dangerous condition about which the defendant either knew or should have known, by the use of reasonable care; or
- Negligently failed to warn the claimant of a dangerous condition about which the defendant had, or should have had, knowledge greater than that of claimant, and, if so, such negligence was a legal cause of loss, injury, or damage.²⁹

Medical Negligence

Negligence of a medical provider is the failure to use reasonable care. Reasonable care on the part of a physician, hospital, or health care provider is that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by similar and reasonably careful physicians, hospitals, or health care providers. Negligence on the part of a physician, hospital, or health care provider is doing something that a reasonably careful physician, hospital, or health care provider would not do under like circumstances or failing to do something that a reasonably careful physician, hospital, or health care provider would do under like circumstances.³⁰

Procedures for the filing and prosecution of a medical negligence claim are found in ch. 766, F.S. One such requirement is that the plaintiff's attorney certify that he or she has investigated the claim and found a good faith belief that grounds exist for an action against each named defendant. A lawyer may support the good faith finding by way of a reviewing physician's affidavit. The affidavit is not attached to the complaint or available in discovery.³¹

Breach of Contract

Breach of contract is not a tort claim. The cause of action is similar, in that the injured party must show duty, breach, and damages. In contract law, the parties have a relationship defined by a contract. The contract spells out the duties owed to one another and the potential damages recoverable. However, duties beyond those specifically listed in the contract may be implied based on industry custom, regulation, or mutual understanding of the parties. So, for instance, it is unlikely that a nursing home contract would say how the nursing home would deal with the unique challenges of COVID-19. Still, courts would likely find that a nursing home has the implied contractual duty to undertake commercially reasonable measures for infection control consistent with applicable laws and regulations, and a nursing home may be found to be in breach of contract for failing to do so.

²⁹ Fla. Std. Jury Instr. 401.20 *Issues On Plaintiff's Claim — Premises Liability*.

³⁰ Fla. Std. Jury Instr. 402.4 *Medical Negligence*.

³¹ Section 766.104, F.S.

Access to Courts – *Kluger v. White*

The State Constitution provides in Article 1, s. 21, the “Access to courts” section,

The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

Case law has demonstrated, however, that this provision is not absolute. In 1973, the Florida Supreme Court issued an opinion, *Kluger v. White*,³² a case which construed the access to courts provision. In broad terms, the case before the Court involved the abolition of a statute governing a tort action for property damage in an automobile accident case. When the Legislature abolished the remedy, it did not provide an alternative protection to the injured party.

The Court was confronted with the issue of whether the Legislature could abolish a right of access to the courts. The Court determined that the Legislature may not abolish a pre-1968 common law right or a statutory cause of action unless the Legislature provides a reasonable alternative to that action or unless an overpowering public necessity exists for abolishing the right of action. The Court applies a three-part test to determine whether a statute violates the access to courts provision:

- Does the change abolish a preexisting right of access?
- If so, whether a reasonable alternative exists to protect that preexisting right of access.
- If no reasonable alternative exists, whether an overwhelming public necessity exists.³³

Restrictions on the ability to bring a lawsuit have been upheld as constitutional, but the point at which a restriction becomes an unconstitutional bar is not well defined.

Statute of Limitations

A statute of limitations establishes a time limit for a plaintiff to file an action, or the case will be barred. An action for a negligence claim must be brought within 4 years after the cause of action accrues.³⁴

Statutes of limitations are created to encourage a plaintiff to initiate an action while witnesses and evidence can be found. They also serve as a shield to protect a defendant from having to defend against a claim that occurred so long ago that precise memories have grown hazy.³⁵ A statute of limitations begins to run when the cause of action accrues. A cause of action accrues when the last element constituting the cause of action occurs.³⁶ In a personal injury action based on the negligent act of another, the last element occurs when the plaintiff is injured.³⁷

³² *Kluger v. White*, 281 So. 2d 1 (Fla. 1973).

³³ *Eller v. Shova*, 630 So. 2d 537 (Fla. 1993).

³⁴ Section 95.11(3), F.S.

³⁵ 35 Fla. Jur 2d *Limitations and Laches* s. 1 (2020).

³⁶ Section 95.031(1), F.S.

³⁷ 35 Fla. Jur 2d *Limitations and Laches* s. 65 (2020).

Retroactive Application of a Statute

Under Florida law, statutes are presumed to operate prospectively, not retroactively. In other words, statutes generally apply only to actions that occur on or after the effective date of the legislation, not before the legislation becomes effective.

The Florida Supreme Court has noted that, under the rules of statutory construction, if statutes are to operate retroactively, the Legislature must clearly express that intent for the statute to be valid.³⁸ When statutes that are expressly retroactive have been litigated and appealed, the courts have been asked to determine whether the statute applies to cases that were pending at the time the statute went into effect. The conclusion often turns on whether the statute is procedural or substantive.

In a recent Florida Supreme Court case, the Court acknowledged that “[t]he distinction between substantive and procedural law is neither simple nor certain.”³⁹ The Court further acknowledged that their previous pronouncements regarding the retroactivity of procedural laws have been less than precise and have been unclear.⁴⁰

Courts, however, have invalidated the retroactive application of a statute if the statute impairs vested rights, creates new obligations, or imposes new penalties.⁴¹ Still, in other cases, the courts have permitted statutes to be applied retroactively if they do not create new, or take away, vested rights, but only operate to further a remedy or confirm rights that already exist.⁴²

In a case challenging the application of an increase in the standard of proof from a preponderance of the evidence to the clear and convincing evidence standard after the plaintiff had filed a complaint, the court concluded that the statute could apply retroactively.⁴³ The Florida Supreme Court has noted that burden of proof requirements are procedural and may be abrogated retroactively because litigants do not have a vested right in a method of procedure.⁴⁴ The Court also permitted retroactive application of a statute that altered the plaintiff’s burden of proof.⁴⁵

III. Effect of Proposed Changes:

CS/SB 72 provides heightened liability protections against COVID-19-related claims due to the threat of unknown and potentially unbounded liability claims that may arise from the pandemic. The protections are extended widely to all persons, businesses, or other entities, including healthcare providers.

³⁸ *Walker & LaBerge, Inc., v. Halligan*, 344 So. 2d 239 (Fla. 1977).

³⁹ *Love v. State*, 286 So. 3d 177, 183 (Fla. 2019) quoting *Cagle v. Tuttle’s Design-Build, Inc.*, 753 So. 2d 49, 53 (Fa. 2000).

⁴⁰ *Love* at 184.

⁴¹ *R.A.M. of South Florida, Inc. v. WCI Communities, Inc.*, 869 So. 2d 1210 (Fla 2004).

⁴² *Ziccardi v. Strother*, 570 So. 2d 1319 (Fla. 1990).

⁴³ *Stein v. Miller Industries, Inc.*, 564 So. 2d 539 (Fla. 4th DCA 1990).

⁴⁴ *Walker & LaBerge, Inc. v. Halligan*, 344 So. 2d 239, 243 (Fla. 1977).

⁴⁵ *Love*, supra.

WHEREAS Clauses

According to the “Whereas Clauses” the State continues to operate under a declared state of emergency, but one in which Floridians must be allowed to earn a living and support their families, and one in which businesses are encouraged to operate safely and contribute to the state’s success, well-being, and economic recovery. Because the Legislature recognizes the significant risks that businesses, entities, institutions, and health care providers accept to provide services to the public during the pandemic, the Legislature is willing to extend protections to alleviate liability concerns, while continuing to provide for the public health. The final clause notes that the Legislature finds that the unprecedented nature of the COVID-19 pandemic, and the indefinite legal environment that has followed, require swift and decisive action.

Legislative Findings

According to the legislative findings, the creation of heightened legal protections is necessary to reduce the threat of unlimited liability and legal exposure for businesses, educational institutions, governmental entities, and religious institutions as they seek to recover and contribute to the well-being of the state. The legislative findings conclude that there are no alternative means to meet this public necessity of providing legal protections caused by the sudden and unprecedented nature of the COVID-19 pandemic. Therefore, the public interest, as a whole, is best served by providing relief to these entities so that they may remain viable and contribute to the economic recovery of the state.

Legislative findings have a unique place in case law. The Florida Supreme Court has determined that they are to be given great weight. In the case of *University of Miami v. Echarte*, the Court stated that “legislative determinations of public purpose and facts are presumed correct and entitled to deference, unless clearly erroneous.”⁴⁶ The Court reflected on the *Kluger* decision and referred to its test. The Court also examined whether the Legislature expressly found that no alternative or less onerous method existed, thereby establishing a necessary requirement.

Section 1 - Pursuing a COVID-19-Related Claim

A COVID-19-related Claim Defined and Who is Protected Under the Bill

A COVID-19-related claim is defined as a civil liability claim for damages, injury, or death that arises from, or is related to, COVID-19.⁴⁷ The bill provides protections for any civil liability claim against a person,⁴⁸ a natural person, business entity, including certain charitable organizations and non-profits, a public or non-public educational institution, a governmental entity, or a religious institution. The bill extensively defines what or who a health care provider

⁴⁶ *University of Miami v. Echarte*, 618 So. 2d 189, 196 (Fla. 1993).

⁴⁷ A “COVID-19-related claim” is defined as “a civil liability claim against a person, including a natural person, a business entity, an educational institution, a governmental entity, or a religious institution which arises from or is related to COVID-19, otherwise known as the novel coronavirus. The term includes any such claim for damages, injury, or death. Any such claim, no matter how denominated, is a COVID-19 related claim for purposes of this section. The term does not include a claim against a healthcare provider, regardless of whether the healthcare provider meets one or more of the definitions in this subsection.”

⁴⁸ A “person” is broadly defined in the statutes to include individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations. Section 1.01(3), F.S.

is and includes healthcare providers in the liability protections established by the bill. The bill also provides definitions for an educational institution, governmental entity, and a religious institution.

Preliminary Procedures for a Plaintiff

The bill requires two preliminary steps from a plaintiff. In each civil action for a COVID-19-related claim, a plaintiff must:

- Set forth the pleadings with particularity; and
- Provide, at the same time that the complaint is filed, an affidavit signed by a physician, stating that the plaintiff's COVID-19-related claim for damages, injury, or death was caused by the defendant's acts or omissions. The physician who submits an affidavit must be actively licensed in the state. Additionally, the physician must state that it is his or her belief, within a reasonable degree of medical certainty, that the plaintiff's COVID-related damages, injury, or death occurred as a result of the defendant's acts or omissions.

These preliminary procedures are similar to the pre-suit investigation requirements for a claimant filing a medical malpractice claim. According to s. 766.104(1), F.S., the attorney filing the action must make a reasonable investigation to determine that there are grounds for a good-faith belief that negligence has occurred in the care or treatment of the claimant. The complaint or initial pleading must contain a certificate of counsel stating that a reasonable investigation supported the belief that there are grounds for an action against the defendant. Good faith may be demonstrated if the claimant or counsel has received a written opinion from an expert that there appears to be evidence of medical negligence. If the court determines that the certificate was not made in good faith and that there is no justiciable issue presented against the health care provider, the court must award attorney fees and taxable costs against the claimant's counsel and must submit the matter to The Florida Bar for disciplinary review against the attorney.

The Court's Responsibilities

Before a trial may proceed, a court must determine whether:

- The plaintiff submitted a complaint that was pled with particularity; and
- The physician's affidavit complied with the necessary requirements.

If the plaintiff did not meet these two requirements, the court must dismiss the case *without* prejudice, meaning that the plaintiff is not prohibited from correcting deficiencies and refile the claim.

The court must also determine whether a defendant made a good faith effort to substantially comply with authoritative or controlling government-issued health standards or guidance at the time that the cause of action accrued. At this stage of the proceeding, the only admissible evidence is limited to evidence pertinent to whether the defendant made a good faith effort to comply with the health standards of guidance. If more than one source or set of standards or guidance was authoritative or controlling when the cause of action accrued, a defendant's good faith effort to substantially comply with any one of those sources or sets of standards or guidance confers immunity from civil liability.

If the court decides that the defendant met the good faith compliance burden, the defendant is immune from civil liability and the proceeding ends. However, if the court determines that the defendant did not make a good faith effort, the plaintiff may proceed. In order to prevail, the plaintiff must demonstrate that the defendant acted with at least gross negligence which is proven by clear and convincing evidence. If these two burdens are not met, the defendant will not be held liable for an act or omission pertaining to a COVID-19-related claim. The plaintiff bears the burden of proving that the defendant did not make a good faith effort to substantially comply with the authoritative or controlling government-issued health standards or guidance that were in place at the time the action accrued.

The Plaintiff's Burden to Prove Gross Negligence by the Clear and Convincing Standard

As discussed above in the "Present Situation," gross negligence is defined as the type of conduct that a reasonably prudent person knows will probably and most likely result in an injury to another person. Under this standard, a plaintiff will need to prove that the defendant's conduct was grossly negligent, meaning that the likelihood of injury to another person was known by the defendant to be imminent.

The plaintiff will need to demonstrate gross negligence by the "clear and convincing" standard of evidence. This is applied less often in civil cases and is a higher standard of proof than the greater weight of the evidence standard. To meet this standard, the plaintiff must provide evidence that is credible, that is remembered distinctly by the witness, and must be so strong that the trier of fact has a firm conviction, without hesitation, that the allegations are true.

Taken together, a plaintiff has high burdens to prevail in a COVID-19-related claim.

Statute of Limitations

The bill requires a plaintiff to bring a civil action within 1 year after the cause of action accrues. Generally, a negligence action must be brought within 4 years after a cause of action accrues. Therefore, this bill reduces the amount of time that a plaintiff has to bring an action. If, however, the cause of action accrues before the effective date of the bill, which is the date it becomes law, the plaintiff has one year from the effective date of the bill to bring a claim. While this could be a reduction in the amount of time that a plaintiff has to bring a COVID-19-related claim, there is precedent for this. Court opinions have held that a reduction in the statute of limitations is not unconstitutional if the claimant is given a reasonable amount of time to file the action.⁴⁹

Section 2 – COVID-19-Related Claims Against Health Care Providers

The liability protections for health care providers in the bill are significant, but the protections are not as strong as those for other persons, businesses, and individuals.

As provided in the bill, a plaintiff generally must prove a COVID-19-related claim against a health care provider by showing by the greater weight of the evidence that the health care provider engaged in gross negligence or intentional misconduct. As defined, a COVID-19 related

⁴⁹ *Foley v. Morris*, 339 So. 2d 215 (Fla. 1976).

claim against a health care provider, to which the liability protections apply, mainly relate to claims:

- Arising from the diagnosis or treatment of a person for COVID-19,
- The provision of a novel or experimental COVID-19 treatment,
- The transmission of COVID-19, and
- The delay or cancellation of a surgery or medical procedure.

The procedures for claims against a health care provider differ from claims against other types of defendants in several ways. Claims against a health care provider need not be supported by an affidavit by a physician indicating that the defendant's actions *caused* the plaintiff's damages. There is no presuit immunity hearing. Additionally, claims need not be proven by clear and convincing evidence.

The bill also species several affirmative defenses that apply to a COVID-19-related claim against a health care provider. An affirmative defense is a defendant's assertion of facts and arguments that, if true, will defeat the plaintiff's claim. The defendant bears the burden of proving an affirmative defense. The affirmative defenses included in the bill mainly relate to a health care provider's substantial compliance with or reliance upon government issued-health standards. The affirmative defenses also relate to the impossibility of compliance with government-issued standards due to shortages of supplies, materials, equipment, and personnel and the defenses also relate to the impossibility of compliance due to the time necessary to implement new standards.

Although section 2 of the bill generally does not provide the same level of liability protections to a health care provider as those provided to others under section 1, some claims against a health care provider are subject to the heightened protections. Claims subject to the heightened protections include claims by a person who is not a patient or resident of a health care provider alleging that the health care provider caused the person to contract COVID-19.

Retroactive Application

This act takes effect upon becoming a law and applies retroactively. The bill applies retroactively to actions filed after the effective date of the bill even if the action accrued before the effective date. The bill, however, does not apply to a claim that is filed against a particularly named defendant before the effective date of the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Florida Bar submitted a brief response on the Agency Bill Analysis Request form and stated that it had not identified any fiscal impact with the proposed legislation. The response also stated that The Florida Bar would not be providing an analysis for the bill and does not have an official legislative position for the proposed legislation.⁵⁰

C. Government Sector Impact:

The Office of the State Courts Administrator states that the bill's impact on the judicial workload cannot be quantified with data that is currently available. The analysis stated, however, that the bill is not anticipated to create a significant increase to the judicial workload. The analysis did note that the Rules of Civil Procedure and jury instructions might need to be reviewed and revised to make certain that they accommodate the new procedures created in the bill. The analysis also stated that the additional requirements for plaintiffs could result in fewer COVID-19-related cases being filed, possibly reducing revenues from civil filing fees, but there is not enough information to accurately determine this.⁵¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁵⁰ The Florida Bar, *SB 72 Analysis*, (Jan. 12, 2021) (on file with the Senate Committee on Commerce and Tourism).

⁵¹ Office of the State Courts Administrator, *2021 Judicial Impact Statement, SB 72* (Jan. 21, 2021) <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=31076> (last visited Mar. 1, 2021).

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: s. 768.38 and s. 768.381.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS by Rules on March 11, 2021:

The committee substitute differs from the underlying bill by adding provisions based on SB 74 to establish liability protections and procedures for COVID-19 related claims against health care providers.

With respect to claims against a person other than a health care provider, the committee substitute provides that the defendant is immune from liability if he or she substantially complied with any source or set of standards or guidance that was authoritative or controlling at the time the cause of action accrued.

B. Amendments:

None.

1 A bill to be entitled
2 An act relating to civil liability for damages
3 relating to COVID-19; creating s. 768.38, F.S.;
4 providing legislative findings and intent; providing
5 definitions; providing requirements for a civil action
6 based on a COVID-19-related claim; providing that the
7 plaintiff has the burden of proof in such action;
8 providing a statute of limitations; providing
9 severability; providing retroactive applicability;
10 providing an effective date.

11
12 WHEREAS, on March 9, 2020, Governor Ron DeSantis issued
13 Executive Order Number 20-52 declaring a state of emergency for
14 the State of Florida due to the COVID-19 pandemic, and

15 WHEREAS, in light of the ongoing nature of the COVID-19
16 pandemic, the Governor has repeatedly extended the state of
17 emergency, including most recently on December 29, 2020, in
18 Executive Order Number 20-316, and

19 WHEREAS, the State of Florida continues under a declared
20 state of emergency, and

21 WHEREAS, throughout the declared state of emergency, the
22 Governor's executive orders included industry-specific
23 restrictions to prevent the spread of COVID-19 based on the best
24 information available at the time, allowing and encouraging
25 certain businesses to continue to safely operate, and

26 WHEREAS, a strong and vibrant economy is essential to
27 ensure that Floridians may continue in their meaningful work and
28 ultimately return to the quality of life they enjoyed before the
29 COVID-19 outbreak, and

30 WHEREAS, Floridians must be allowed to earn a living and
31 support their families without unreasonable government
32 intrusion, and

33 WHEREAS, the Governor's responsible reopening strategy
34 allowed businesses to continue to safely operate, bolstering
35 consumer confidence, while also enforcing reasonable
36 restrictions, and

37 WHEREAS, the Legislature recognizes that certain
38 businesses, entities, and institutions operating within the
39 state are essential to the state's continuing success and well-
40 being, and

41 WHEREAS, the Legislature recognizes that many businesses,
42 entities, and institutions accept significant risk in order to
43 provide their services to the public, and

44 WHEREAS, the Legislature further recognizes that the threat
45 of frivolous and potentially limitless civil liability,
46 especially in the wake of a pandemic, causes businesses,
47 entities, and institutions to react in a manner detrimental to
48 the state's economy and residents, and

49 WHEREAS, the Legislature recognizes that practical, bright-
50 line guidance protecting prudent businesses, entities, and

51 institutions significantly alleviates such liability concerns,
52 while also continuing to provide for the public health, and

53 WHEREAS, the Legislature finds that the unprecedented and
54 rare nature of the COVID-19 pandemic, together with the
55 indefinite legal environment that has followed, requires the
56 Legislature to act swiftly and decisively, NOW, THEREFORE,

57
58 Be It Enacted by the Legislature of the State of Florida:

59
60 Section 1. Section 768.38, Florida Statutes, is created to
61 read:

62 768.38 Liability protections for COVID-19-related claims.—

63 (1) The Legislature finds that the COVID-19 outbreak in
64 the state threatens the continued viability of certain business
65 entities, educational institutions, governmental entities, and
66 religious institutions that contribute to the overall well-being
67 of the state. The threat of unknown and potentially unbounded
68 liability to such businesses, entities, and institutions, in the
69 wake of a pandemic that has already left many of these
70 businesses, entities, and institutions vulnerable, has created
71 an overpowering public necessity to provide an immediate and
72 remedial legislative solution. Therefore, the Legislature
73 intends for certain business entities, educational institutions,
74 governmental entities, and religious institutions to enjoy
75 heightened legal protections against liability as a result of

76 the COVID-19 pandemic. The Legislature also finds that there are
77 no alternative means to meet this public necessity, especially
78 in light of the sudden, unprecedented nature of the COVID-19
79 pandemic. The Legislature finds the public interest as a whole
80 is best served by providing relief to these businesses,
81 entities, and institutions so that they may remain viable and
82 continue to contribute to the state.

83 (2) As used in this section, the term:

84 (a) "Business entity" has the same meaning as provided in
85 s. 606.03. The term also includes a charitable organization as
86 defined in s. 496.404 and a corporation not for profit as
87 defined in s. 617.01401.

88 (b) "COVID-19-related claim" means a civil liability claim
89 against a person, including a natural person, a business entity,
90 an educational institution, a governmental entity, or a
91 religious institution, which arises from or is related to COVID-
92 19, otherwise known as the novel coronavirus. The term includes
93 any such claim for damages, injury, or death. Any such claim, no
94 matter how denominated, is a COVID-19-related claim for purposes
95 of this section. The term does not include a claim against a
96 healthcare provider, regardless of whether the healthcare
97 provider meets one or more of the definitions in this
98 subsection.

99 (c) "Educational institution" means a school, including a
100 preschool, elementary school, middle school, junior high school,

101 secondary school, career center, or postsecondary school,
102 whether public or nonpublic.

103 (d) "Governmental entity" means the state or any political
104 subdivision thereof, including the executive, legislative, and
105 judicial branches of government; the independent establishments
106 of the state, counties, municipalities, districts, authorities,
107 boards, or commissions; or any agencies that are subject to
108 chapter 286.

109 (e) "Healthcare provider" means:

110 1. A provider as defined in s. 408.803.

111 2. A clinical laboratory providing services in the state
112 or services to health care providers in the state, if the
113 clinical laboratory is certified by the Centers for Medicare and
114 Medicaid Services under the federal Clinical Laboratory
115 Improvement Amendments and the federal rules adopted thereunder.

116 3. A federally qualified health center as defined in 42
117 U.S.C. s. 1396d(1)(2)(B), as that definition exists on the
118 effective date of this act.

119 4. Any site providing health care services which was
120 established for the purpose of responding to the COVID-19
121 pandemic pursuant to any federal or state order, declaration, or
122 waiver.

123 5. A health care practitioner as defined in s. 456.001.

124 6. A health care professional licensed under part IV of
125 chapter 468.

126 7. A home health aide as defined in s. 400.462(15).

127 8. A provider licensed under chapter 394 or chapter 397
128 and its clinical and nonclinical staff providing inpatient or
129 outpatient services.

130 9. A continuing care facility licensed under chapter 651.

131 10. A pharmacy permitted under chapter 465.

132 (f) "Religious institution" has the same meaning as
133 provided in s. 496.404.

134 (3) In a civil action based on a COVID-19-related claim:

135 (a) The complaint must be pled with particularity.

136 (b) At the same time the complaint is filed, the plaintiff
137 must submit an affidavit signed by a physician actively licensed
138 in the state which attests to the physician's belief, within a
139 reasonable degree of medical certainty, that the plaintiff's
140 COVID-19-related damages, injury, or death occurred as a result
141 of the defendant's acts or omissions.

142 (c) The court must determine, as a matter of law, whether:

143 1. The plaintiff complied with paragraphs (a) and (b). If
144 the plaintiff did not comply with paragraphs (a) and (b), the
145 court must dismiss the action without prejudice.

146 2. The defendant made a good faith effort to substantially
147 comply with authoritative or controlling government-issued
148 health standards or guidance at the time the cause of action
149 accrued.

150 a. During this stage of the proceeding, admissible

151 evidence is limited to evidence tending to demonstrate whether
152 the defendant made such a good faith effort.

153 b. If the court determines that the defendant made such a
154 good faith effort, the defendant is immune from civil liability.
155 If more than one source or set of standards or guidance was
156 authoritative or controlling at the time the cause of action
157 accrued, the defendant's good faith effort to substantially
158 comply with any one of those sources or sets of standards or
159 guidance confers such immunity from civil liability.

160 c. If the court determines that the defendant did not make
161 such a good faith effort, the plaintiff may proceed with the
162 action. However, absent at least gross negligence proven by
163 clear and convincing evidence, the defendant is not liable for
164 any act or omission relating to a COVID-19-related claim.

165 (d) The burden of proof is upon the plaintiff to
166 demonstrate that the defendant did not make a good faith effort
167 under subparagraph (c)2.

168 (4) A plaintiff must commence a civil action for a COVID-
169 19-related claim within 1 year after the cause of action accrues
170 or within 1 year after the effective date of this act if the
171 cause of action accrued before the effective date of this act.

172 Section 2. If any provision of this act or its application
173 to any person or circumstance is held invalid, the invalidity
174 does not affect other provisions or applications of the act
175 which can be given effect without the invalid provision or

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176 application, and to this end the provisions of this act are
177 severable.

178 Section 3. This act shall take effect upon becoming a law
179 and shall apply retroactively. However, the provisions of this
180 act shall not apply in a civil action against a particularly
181 named defendant which is commenced before the effective date of
182 this act.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7 Civil Liability for Damages Relating to COVID-19

SPONSOR(S): Judiciary Committee, McClure and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 72

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	11 Y, 6 N	Jones	Jones
2) Pandemics & Public Emergencies Committee	11 Y, 6 N	Nations	Jones
3) Judiciary Committee	14 Y, 7 N, As CS	Jones	Kramer

SUMMARY ANALYSIS

In the face of the COVID-19 outbreak in Florida, Governor Ron DeSantis declared a state of emergency and issued a series of executive orders directing Floridians to stay at home, with exceptions for essential services and activities. While some of the executive orders eventually expired or were modified, the Governor has continued to extend the state of emergency, with the most recent extension occurring on December 29, 2020.

As COVID-19 spread across the world, the United States, and the State of Florida, information about the virus evolved at a rapid pace. Official guidance came from multiple sources and sometimes changed on a daily basis. Business owners, schools, government leaders, religious organizations, and other entities scrambled to make the best decisions possible based on their knowledge at the time.

CS/HB 7 provides several COVID-19-related liability protections for businesses, educational institutions, government entities, religious organizations, and other entities. Under the bill, a covered entity that makes a good faith effort to substantially comply with applicable COVID-19 guidance is immune from civil liability from a COVID-19-related civil action. The bill also provides that for any COVID-19-related civil action against a covered entity, a plaintiff must:

- Plead his or her complaint with particularity.
- Submit, at the time of filing suit, a physician's affidavit confirming the physician's belief that the plaintiff's COVID-19-related injury occurred because of the defendant's conduct.
- Prove, by clear and convincing evidence, that the defendant was at least grossly negligent.

The bill's liability protections do not apply to a health care provider, such as a hospital, nursing home, assisted living facility, or other health care-related entity. The bill provides a one-year statute of limitations for COVID-19-related claims. For a plaintiff whose cause of action has already accrued, the one-year period does not begin to run until the bill becomes effective.

The bill may have a positive fiscal impact on state government.

The bill provides that it is effective upon becoming a law and applies retroactively. However, the bill's provisions do not apply in a civil action against a particular defendant if the action is filed before the bill's effective date.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background¹

COVID-19 Outbreak, Spread, & Aftermath

Initial Outbreak

On December 31, 2019, the Chinese government confirmed that health officials were treating "dozens of cases" of pneumonia of an "unknown cause." A few days later, researchers identified a new virus, which later came to be known as the novel coronavirus, or "COVID-19." It was ultimately determined that the virus had surfaced at a Chinese seafood and poultry market. On January 11, 2020, China reported its first death from a COVID-19 infection.

On January 14, 2020, the World Health Organization ("WHO") reported that preliminary investigations by Chinese authorities had found "no clear evidence of human-to-human transmission." But WHO also stated that it was "certainly possible that there is limited human-to-human transmission," and that further investigation was necessary.

Just a week later, on January 21, 2020, WHO modified its statement and said that it was very clear, based on the latest information, that there was "at least some human-to-human transmission." On January 22 and 23, 2020, WHO convened fifteen experts from around the world to determine if the virus constituted a "public health emergency of international concern," but the experts were unable to reach a consensus opinion. On January 30, 2020, the virus was labeled a public health emergency of international concern; however, by February 4, 2020, ninety-nine percent of the confirmed COVID-19 cases were still in China. As the situation developed, WHO disseminated and updated COVID-19 guidance.

Outbreak & Response in the United States, Europe, and Other Countries

Several other countries soon began confirming the spread of the virus to their own citizens. The first case in the United States was confirmed on January 21, 2020, after a man in Washington state returned home after having visited Wuhan. On January 30, 2020, WHO declared a global health emergency.

The next day, President Donald Trump suspended entry into the United States for certain foreign nationals who had travelled to China within the previous two weeks. During the month of February, the virus continued its spread to Europe, the Middle East, and Latin America. On February 29, 2020, the United States confirmed what was then believed to be its first COVID-19 related death. President Trump issued a "do not travel" warning for various parts of the world heavily affected by COVID-19. By March 26, 2020, the United States had become the world's hardest-hit country at the time.

¹ World Health Organization, *Listings of WHO's Response to COVID*, <https://www.who.int/news/item/29-06-2020-covidtimeline> (last visited Feb. 16, 2021); Derrick Bryson Taylor, *A Timeline of the Coronavirus Pandemic*, NEW YORK TIMES, <https://www.nytimes.com/article/coronavirus-timeline.html> (Aug. 6, 2020).

Evolving Guidance Regarding Social Distancing and the Use of Masks

As the virus spread across the world, the United States, and the State of Florida, information about the virus evolved at a rapid pace, with official guidance coming from multiple sources and sometimes changing on a day-to-day basis. Individuals, businesses, churches, schools, and other entities scrambled to make the best decisions possible based on their knowledge of the situation at the time.

On February 27, 2020, in the face of a mask shortage, WHO published guidance stating that "[f]or asymptomatic individuals, wearing a mask of any type is not recommended."² Two days later, WHO published additional quarantine guidelines. On March 11, 2020, WHO classified the COVID-19 outbreak as a pandemic.

On March 13, 2020, President Trump declared a national emergency due to COVID-19. On March 15, 2020, the U.S. Center for Disease Control ("CDC") recommended that people should not gather in groups of more than fifty. The next day, President Trump stated an even more cautious number, recommending that people should not gather in groups of more than ten. During the months of March and April, many states put "stay-at-home orders" into effect, requiring their citizens to quarantine, shelter in place, or otherwise limit their normal interactions with others.

On March 23, 2020, WHO launched a joint campaign with the International Federation of Association Football ("FIFA") to stop the spread of COVID-19. The campaign focused on five steps to stop the spread, including:

- Frequent handwashing;
- Containing one's sneezes and coughs;
- Avoiding touching one's face;
- Socially distancing at a distance of one meter (equivalent to a little over three feet); and
- Staying at home when not feeling well.³

Notably, the campaign letter did not include any guidance about wearing a face mask.⁴

On March 31, 2020, in response to a growing number of falsified medical products claiming to treat COVID-19, WHO issued a medical product alert. On April 2, 2020, WHO reported that a person who has not yet exhibited symptoms can spread COVID-19.

On April 6, 2020, WHO updated its guidance with respect to the use of face masks, cautioning that "[m]edical masks should be reserved for health care workers" and that "the wide use of masks by healthy people in the community setting is not supported by current evidence and carries uncertainties and critical risks."⁵

About two months later, on June 5, 2020, WHO again updated its guidance for face masks. In this guidance document, WHO acknowledged that a face mask may be used to protect a person when such person is in contact with an infected individual. The guidance ultimately recommended that a person exhibiting symptoms should wear a mask. The guidance deferred, however, on the question of whether a healthy individual should wear a mask, citing a lack of good data and the fact that "there are potential benefits and harms to consider."⁶

² World Health Organization, *Rational Use of Personal Protective Equipment for Coronavirus Disease 2019 (COVID-19): Interim Guidance* (Feb. 27, 2020), https://apps.who.int/iris/bitstream/handle/10665/331215/WHO-2019-nCov-IPCPPE_use-2020.1-eng.pdf?sequence=1&isAllowed=y.

³ World Health Organization, *Pass the Message—Five Steps to Kicking Out Coronavirus* (Mar. 23, 2020) (emphasis supplied), <https://www.who.int/news/item/23-03-2020-pass-the-message-five-steps-to-kicking-out-coronavirus>.

⁴ See *id.*

⁵ World Health Organization, *Advice on the Use of Masks in the Context of COVID-19, Interim Guidance* (Apr. 6, 2020) https://apps.who.int/iris/bitstream/handle/10665/331693/WHO-2019-nCov-IPC_Masks-2020.3-eng.pdf?sequence=1&isAllowed=y.

⁶ World Health Organization, *Advice on the Use of Masks in the Context of COVID-19, Interim Guidance* (June 5, 2020) (emphasis supplied) (https://apps.who.int/iris/bitstream/handle/10665/332293/WHO-2019-nCov-IPC_Masks-2020.4-eng.pdf?sequence=1&isAllowed=y).

On August 5, 2020, WHO launched the "#WearAMask Challenge" on social media "to help spread the word about how and when to use a mask to protect against COVID-19."⁷ On November 10, 2020, WHO launched the "#WeAreInThisTogether" campaign to "promote collaboration and adherence to five key measures to counter COVID-19: cleaning hands, wearing masks, coughing and sneezing safely, keeping distant[,], and opening windows."⁸

On December 1, 2020, WHO again updated its mask guidance, advising that wearing a mask is a good idea and should be "a normal part of being around other people."⁹

Outbreak & Response in Florida

In the face of the COVID-19 outbreak in Florida, Governor Ron DeSantis declared a state of emergency and issued a series of executive orders, including the following:

- March 1, 2020:¹⁰ Directing the State Health Officer to declare a public health emergency pursuant to the State Health Officer's authority under s. 381.00315, F.S.; and directing the Department of Health to take action pursuant to its authority under ch. 381. Accordingly, the State Health Officer immediately declared a public health emergency.¹¹
- March 9, 2020:¹² Declaring a general state of emergency in Florida under ch. 252, F.S.
- March 23-24, 2020:¹³ Directing certain individuals travelling from out of state into Florida to self-quarantine for a period of time.
- April 1, 2020:¹⁴ Directing Floridians to stay at home, with exceptions for "essential" services and activities.

While some of the Governor's executive orders eventually expired or were modified, the Governor has continued to extend the state of emergency, with the most recent extension occurring on December 29, 2020.

Economic Impacts

On April 14, 2020, the International Monetary Fund warned that the global economy was headed for its worst economic downturn since the Great Depression, and predicted that the economy would shrink by three percent. Businesses, churches, schools, and other important American entities debated how best to react to the situation. Some of these entities closed for a period of time; some began to require face coverings; some began to focus on online sales rather than storefront sales; and some closed but never reopened. Faced with the crisis of a sort not seen for the past one hundred years, many entities were forced to make important decisions with incomplete, ever-evolving information. Many of these entities, which did not staff doctors or lawyers, were not naturally equipped to make these decisions. As Americans settled into a new state of "normalcy," some entities were put into the position of choosing between continuing business operations with safeguards in place or shuttering completely.

⁷ World Health Organization, *Listings of WHO's Response to COVID*, <https://www.who.int/news/item/29-06-2020-covidtimeline> (last visited Feb. 16, 2021).

⁸ *Id.*

⁹ World Health Organization, *Coronavirus Disease (COVID-19) Advice for the Public: When and How to Use Masks* (Dec. 1, 2020), <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/when-and-how-to-use-masks>. (last visited Feb. 16, 2021).

¹⁰ Fla. Exec. Order 20-51 (Mar. 1, 2020).

¹¹ See Fla. Exec. Order 20-83 (Mar. 24, 2020) (indicating the State Health Officer's declaration of public health emergency).

¹² Fla. Exec. Order 20-52 (Mar. 9, 2020).

¹³ Fla. Exec. Order 20-80 (Mar. 23, 2020) and 20-82 (Mar. 24, 2020).

¹⁴ Fla. Exec. Order 20-91 and 20-92 (Apr. 1, 2020).

Tort Liability and Negligence

A "tort" is a wrong for which the law provides a remedy. The purpose of tort law is to fairly compensate a person harmed by another person's wrongful acts, whether intentional, reckless, or negligent, through a civil action or other comparable process. A properly-functioning tort system:

- Provides a fair and equitable forum to resolve disputes;
- Appropriately compensates legitimately harmed persons;
- Shifts the loss to responsible parties;
- Provides an incentive to prevent future harm; and
- Deters undesirable behavior.¹⁵

"Negligence" is a legal term for a type of tort action that is unintentionally committed. In a negligence action, the plaintiff is the party that brings the lawsuit, and the defendant is the party that defends against it. To prevail in a negligence lawsuit, a plaintiff must demonstrate that the:

- Defendant had a legal duty of care requiring the defendant to conform to a certain standard of conduct for the protection of others, including the plaintiff, against unreasonable risks;
- Defendant breached his or her duty of care by failing to conform to the required standard;
- Defendant's breach caused the plaintiff's injury; and
- Plaintiff suffered actual damage or loss resulting from his or her injury.¹⁶

Duty of Care

The first of the four elements a plaintiff must show to prevail in a negligence action is that the defendant owed the plaintiff a "duty of care" to do something or refrain from doing something. The existence of a legal duty is a threshold requirement that, if satisfied, "merely opens the courthouse doors."¹⁷ Whether a duty sufficient to support a negligence claim exists is a matter of law¹⁸ determined by the court.¹⁹ A duty may arise from many sources, including:

- Legislative enactments or administrative regulations;
- Judicial interpretations of such enactments or regulations;
- Other judicial precedent; and
- The general facts of the case.²⁰

In determining whether a duty arises from the general facts of the case, courts look to whether the defendant's conduct foreseeably created a broader "zone of risk" that posed a general threat of harm to others, i.e., the likelihood that the defendant's conduct would result in the type of injury suffered by the plaintiff.²¹ Such zone of risk defines the scope of the defendant's legal duty, which is typically to either lessen the risk or ensure that sufficient precautions are taken to protect others from the harm the risk poses.²² However, it is not enough that a risk merely exists or that a particular risk is foreseeable; rather, the defendant's conduct must create or control the risk before liability may be imposed.²³

¹⁵ Am. Jur. 2d Torts s. 2.

¹⁶ 6 *Florida Practice Series* s. 1.1; see *Barnett v. Dept. of Financial Services*, 303 So. 3d 508 (Fla. 2020).

¹⁷ See *Kohl v. Kohl*, 149 So. 3d 127 (Fla. 4th DCA 2014).

¹⁸ A matter of law is a matter determined by the court, unlike a matter of fact which must be determined by the jury. Matters of law include issues regarding a law's application or interpretation, issues regarding what the relevant law is, and issues of fact reserved for judges to resolve. Legal Information Institute, *Question of Law*, https://www.law.cornell.edu/wex/question_of_law (last visited Feb. 16, 2021); Legal Information Institute, *Question of Fact*, https://www.law.cornell.edu/wex/Question_of_fact (last visited Feb. 16, 2021).

¹⁹ See *Kohl*, 149 So. 3d at 135; *Goldberg v. Fla. Power & Light Co.*, 899 So. 2d 1110.

²⁰ See *Goldberg*, 899 So. 2d at 1105, citing *Clay Elec. Co-op., Inc. v. Johnson*, 873 So. 2d 1182 (Fla. 2003).

²¹ See *Kohl*, 149 So. 3d at 135, citing *McCain v. Fla. Power Corp.*, 593 So. 2d 500 (Fla. 1992); see also *Whitt v. Silverman*, 788 So. 2d 210 (Fla. 2001).

²² See *Kohl*, 149 So. 3d at 135; see also *Whitt*, 788 So. 2d at 217.

²³ See *Bongiomo v. Americorp, Inc.*, 159 So. 3d 1027 (Fla. 5th DCA 2015), citing *Demelus v. King Motor Co. of Fort Lauderdale*, 24 So. 3d 759 (Fla. 4th DCA 2009).

Breach of Duty of Care

The second element a plaintiff must prove is that the defendant "breached," or failed to discharge, the duty of care. Whether a breach occurred is generally a matter of fact for the jury to determine.²⁴

Causation

The third element is that the defendant's breach of the duty of care "proximately caused" the plaintiff's injury. Like a breach, whether or not proximate causation exists is generally a matter of fact for the jury to determine.²⁵ Florida follows the "more likely than not" standard in proving causation; thus, the inquiry is whether the negligence probably caused the plaintiff's injury.²⁶ In determining whether a defendant's conduct proximately caused a plaintiff's injury, the factfinder must analyze whether the injury was a foreseeable consequence of the danger created by the defendant's negligent act or omission.²⁷ This analysis does not require the defendant's conduct to be the exclusive or even the primary cause of the injury suffered; instead, the plaintiff must only show that the defendant's conduct was a substantial cause of the injury.²⁸

Damages

The final element a plaintiff must show to prevail in a negligence action is that the plaintiff suffered some harm, or "damages." Actual damages, also called compensatory damages, are those damages actually suffered by a plaintiff as the result of the injury alleged and proved.²⁹ Juries award actual damages to compensate an injured person for a defendant's negligent acts.³⁰ Factors considered when calculating actual damages include lost wages or income, medical bills connected to the injury, the cost of repair to damaged property, and costs for coping with an injury (such as the cost of a wheelchair or prosthetic limb).³¹

Degrees of Negligence

Courts distinguish varying degrees of civil negligence by using terms such as "slight negligence," "ordinary negligence," and "gross negligence." Slight negligence is the failure to exercise great care and often applies to injuries caused by common carriers charged with the duty to exercise the highest degree of care toward their passengers.³² Ordinary negligence is the failure to exercise that degree of care which an ordinary prudent person would exercise; or, in other words, a course of conduct which a reasonable and prudent person would know might possibly result in injury to others.³³ Gross negligence is a course of conduct which a reasonable and prudent person knows would probably and most likely result in injury to another.³⁴ To prove gross negligence, a plaintiff must usually show that the defendant had knowledge or awareness of imminent danger to another and acted or failed to act with a conscious disregard for the consequences.³⁵ Once proven, gross negligence may support a punitive³⁶ damages award.³⁷ Beyond gross negligence are several other degrees of misconduct, such as "recklessness" and "intentional actions."

²⁴ See *Wallace v. Dean*, 3 So. 3d 1035 (Fla. 2009).

²⁵ See *Sanders v. ERP Operating Ltd. Partnership*, 157 So. 3d 273 (Fla. 2015).

²⁶ See *Ruiz v. Tenent Hialeah Healthsystem, Inc.*, 260 So. 3d 977 (Fla. 2018).

²⁷ See *id.* at 981-982.

²⁸ See *id.* at 982.

²⁹ See *Birdsall v. Coolidge*, 93 U.S. 64 (1876).

³⁰ See *St. Regis Paper Co. v. Watson*, 428 So. 2d 243 (Fla. 1983).

³¹ See Legal Information Institute, *Actual Damages*, https://www.law.cornell.edu/wex/actual_damages (last visited Feb. 16, 2021).

³² See *Faircloth v. Hill*, 85 So. 2d 870 (Fla. 1956); see also, e.g., *Holland America Cruises, Inc. v. Underwood*, 470 So. 2d 19 (Fla. 2d DCA 1985); see also, e.g., *Werndli v. Greyhound Corp.*, 365 So. 2d 177 (Fla. 2d DCA 1978); 6 *Florida Practice Series* s. 1.2.

³³ See *De Wald v. Quarnstrom*, 60 So. 2d 919 (Fla. 1952); see also *Clements v. Deeb*, 88 So. 2d 505 (Fla. 1956); 6 *Florida Practice Series* s. 1.2.

³⁴ See *Clements*, 88 So. 2d 505; 6 *Florida Practice Series* s. 1.2.

³⁵ See *Carraway v. Revell*, 116 So. 2d 16 (Fla. 1959).

³⁶ Punitive damages are awarded in addition to actual damages to punish a defendant for behavior considered especially harmful. Florida generally caps punitive damage awards at \$500,000 or triple the value of compensatory damages, whichever is greater, and caps cases of intentional misconduct with a financial motivation at two million dollars or four times the amount of compensatory damages, whichever is greater. S. 768.73(1), F.S.

³⁷ See *Glaab v. Caudill*, 236 So. 2d 180 (Fla. 2d DCA 1970); 6 *Florida Practice Series* s. 1.2; s. 768.72(2), F.S.

Comparative Negligence in Florida

In Florida, before the court awards damages in a negligence action, the jury generally assigns a fault percentage to each party under the comparative negligence rule. Florida applies³⁸ a "pure" comparative negligence rule, which allows a plaintiff to recover damages proportional to his or her fault percentage.³⁹ For example, if a plaintiff is 40 percent at fault for an accident causing the plaintiff's injury and the defendant is 60 percent at fault, the plaintiff would recover 60 percent of his or her damages.

Statute of Limitations

A statute of limitations bars the filing of civil claims after the passing of a specified time period and begins to run from the date the cause of action accrues, which is usually when the last element constituting the cause of action occurs.⁴⁰ Under Florida law, a negligence action, including a COVID-19 related claim based on negligence, must be brought within four years of when the cause of action accrues.⁴¹ A cause of action generally accrues when "the last element constituting the cause of action accrues";⁴² practically speaking, in a negligence action, this is usually when the plaintiff is injured.⁴³

Pleading a Negligence Claim

The Florida Rules of Civil Procedure generally require a plaintiff in a civil action to file a complaint, and require a defendant to file an answer to the complaint.⁴⁴ A lawsuit begins when a complaint is filed, and a plaintiff may amend the complaint to add a defendant or additional claims once as a matter of course at any time before a responsive pleading, such as an answer, is served.⁴⁵ A plaintiff may otherwise only amend a complaint with the permission of the court or the defendant.⁴⁶

Florida is a "fact-pleading jurisdiction." This means that a pleading setting forth a claim for relief, including a complaint, must generally state a cause of action and contain a:

- Short and plain statement of the grounds on which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds to support it;
- Short and plain statement of the ultimate facts⁴⁷ showing that the pleader is entitled to relief; and
- Demand for the relief to which the pleader believes he or she is entitled to.⁴⁸

³⁸ The comparative negligence standard does not apply to any action brought to recover economic damages from pollution, based on an intentional tort, or to which the joint and several liability doctrine is specifically applied in chs. 403, 498, 517, 542, and 895, F.S. S. 768.81(4), F.S.

³⁹ S. 768.81(2), F.S.; see *Williams v. Davis*, 974 So. 2d 1052 (Fla. 2007).

⁴⁰ Ss. 95.011 and 95.031(1), F.S.

⁴¹ S. 95.11(3)(a), F.S.; see *R.R. v. New Life Community Church of CMA, Inc.*, 303 So. 3d 916 (Fla. 2020).

⁴² S. 95.031(1), F.S.

⁴³ See *R.R.*, 303 So. 3d at 921; see also *Am. Op. Corp. v. Spiewak*, 73 So. 3d 120, 126 (Fla. 2011) (stating generally that "[i]t is axiomatic that a cause of action for negligence . . . does not accrue until the complaining party sustains some type of damage" but acknowledging the Court's past holding that in a case for damages for exposure to an asbestos-related disease, "an action accrues when the accumulated effects of the substance manifest in a way which supplies some evidence of the causal relationship to the manufactured product").

⁴⁴ Fla. R. Civ. P. 1.100.

⁴⁵ Fla. R. Civ. P. 1.100 and 1.190.

⁴⁶ Fla. R. Civ. P. 1.190.

⁴⁷ Ultimate facts are facts that must be accepted for a claim to prevail, usually inferred from a number of supporting evidentiary facts, which themselves are facts making other facts more probable. See Legal Information Institute, *Ultimate Fact*, https://www.law.cornell.edu/wex/ultimate_fact (last visited Feb. 16, 2021); see also Legal Information Institute, *Evidentiary Facts*, https://www.law.cornell.edu/wex/evidentiary_fact (last visited Feb. 16, 2021).

⁴⁸ See *Goldschmidt v. Holman*, 571 So. 2d 422 (Fla. 1990); Fla. R. Civ. P. 1.110.

However, certain allegations⁴⁹ must be plead with "particularity," which is a heightened level of pleading requiring a statement of facts sufficient to satisfy the elements of each claim.

Burden of Proof

The burden of proof is an obligation to prove a material fact in issue.⁵⁰ Generally, the party who asserts the material fact in issue has the burden of proof.⁵¹ Thus, in a criminal proceeding, the burden is on the state to prove that the defendant committed the crime with which he or she was charged, while in a civil proceeding, the burden of proof is on the plaintiff to prove the allegations contained in his or her complaint. Further, a defendant in either a criminal or a civil proceeding has the burden to prove any affirmative defenses⁵² he or she may raise in response to the charges or allegations. However, there are certain statutory and common law presumptions⁵³ that may shift the burden of proof from the party asserting the material fact in issue to the party defending against such fact.⁵⁴ These presumptions remain in effect following the introduction of evidence rebutting the presumption, and the factfinder must decide if such evidence is strong enough to overcome the presumption.⁵⁵

Standard of Proof

A standard of proof is the level or degree of proof necessary to meet the burden of proof for a particular issue.⁵⁶ In criminal actions, the standard of proof necessary for a conviction⁵⁷ is beyond a reasonable doubt, meaning that the factfinder must be virtually certain of the defendant's guilt in order to render a guilty verdict. In most civil actions, the standard of proof is by the preponderance of the evidence, meaning the burden of proof is met when the party with the burden convinces the factfinder that there is a greater than 50 percent chance that the claim is true.⁵⁸ However, certain civil actions⁵⁹ are subject to a heightened standard of proof, requiring the plaintiff to prove the allegations by clear and convincing evidence. This standard requires the evidence to be highly and substantially more likely to be true than untrue.⁶⁰ The clear and convincing evidence standard is an intermediate-level standard. It is more rigorous than the "preponderance" standard but less rigorous than the "beyond a reasonable doubt" standard.

Evidence Admissibility

In general, not all evidence is admissible in a civil proceeding for consideration by the factfinder. Florida law provides that all relevant evidence is generally admissible, except as provided by law.⁶¹ Relevant evidence is evidence tending to prove or disprove a material fact.⁶²

⁴⁹ These allegations include fraud, mistake, condition of the mind, and denial of performance or occurrence. Fla. R. Civ. P. 1.120(b), (c).

⁵⁰ 5 *Florida Practice Series* s. 16:1.

⁵¹ *Id.*; see *Berg v. Bridle Path Homeowners Ass'n, Inc.*, 809 So. 2d 32 (Fla. 4th DCA 2002).

⁵² An affirmative defense is a defense which, if proven, negates criminal or civil liability even if it is proven that the defendant committed the acts alleged. Examples include self-defense, entrapment, insanity, necessity, and *respondeat superior*. Legal Information Institute, *Affirmative Defense*, https://www.law.cornell.edu/wex/affirmative_defense (last visited Feb. 16, 2021).

⁵³ These presumptions tend to be social policy expressions, such as the presumption that all people are sane or that all children born in wedlock are legitimate. 5 *Florida Practice Series* s. 16:1.

⁵⁴ 5 *Florida Practice Series* s. 16:1.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ The standard of proof for proving affirmative defenses raised in a criminal trial may vary.

⁵⁸ 5 *Florida Practice Series* s. 16:1.

⁵⁹ These actions typically include actions to impose a civil penalty, civil actions based on conduct amounting to a criminal law violation, and actions in which the effect of a civil ruling might be deprive a party of a protected interest. 5 *Florida Practice Series* s. 16:1.

⁶⁰ 5 *Florida Practice Series* s. 16:1; see *Colorado v. New Mexico*, 467 U.S. 310 (1984).

⁶¹ S. 90.402, F.S.

⁶² S. 90.401, F.S.

Access to Courts

The Florida Constitution broadly protects the right to access the courts, which "shall be open to every person for redress of any injury" ⁶³ However, this constitutional right is not unlimited.

In *Kluger v. White*,⁶⁴ the Florida Supreme Court evaluated to what extent the Legislature may alter a civil cause of action. The Court stated that it would not completely prohibit the Legislature from altering a cause of action, but neither would it allow the Legislature "to destroy a traditional and long-standing cause of action upon mere legislative whim" The takeaway from *Kluger* and other relevant case law is that the Legislature may:

- Reduce the right to bring a cause of action as long as the right is not entirely abolished.⁶⁵
- Abolish a cause of action that is not "traditional and long-standing"—that is, a cause of action that did not exist at common law, and that did not exist in statute before the adoption of the Florida Constitution's Declaration of Rights.⁶⁶
- Abolish a cause of action if the Legislature either:
 - Provides a reasonable commensurate benefit in exchange;⁶⁷ or
 - Shows an "overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown."⁶⁸

Retroactive Application of a Statute and Due Process

In Florida, absent an express statement of legislative intent, a statute is presumed to operate only prospectively, not retroactively.⁶⁹ Both the Florida and U.S. Constitutions explicitly forbid passage of a law criminalizing past conduct (an "*ex post facto* law");⁷⁰ but the Legislature may provide that a non-criminal law applies retroactively in certain situations. But even a non-criminal law may be held unconstitutional if its retroactive application impermissibly burdens existing constitutional rights.⁷¹

The Florida Constitution provides that "[n]o person shall be deprived of life, liberty or property without due process of law" ⁷² In turn, the Florida Supreme Court has held that in certain situations, a person whose legal cause of action has already accrued may have a due process right to bring such action.⁷³ Florida courts have sometimes invalidated the retroactive application of laws when such due process rights are implicated.⁷⁴ On other occasions, the courts have signaled that certain statutory provisions may be applied retroactively, including a statute retroactively:

⁶³ Art. I, s. 21, Fla. Const.

⁶⁴ *Kluger*, 281 So. 2d 1.

⁶⁵ See *Achord v. Osceola Farms Co.*, 52 So. 3d 699 (Fla. 2010).

⁶⁶ See *Anderson v. Gannett Comp.*, 994 So. 2d 1048 (Fla. 2008) (false light was not actionable under the common law); *McPhail v. Jenkins*, 382 So. 2d 1329 (Fla. 1980) (wrongful death was not actionable under the common law); see also *Kluger*, 281 So. 2d at 4 ("We hold, therefore, that where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State . . . the Legislature is without power to abolish such a right without providing a reasonable alternative . . . unless the Legislature can show an overpowering public necessity . . .").

⁶⁷ *Kluger*, 281 So. 2d at 4; see *Univ. of Miami v. Echarte*, 618 So. 2d 189 (Fla. 1993) (upholding statutory cap on medical malpractice damages because the Legislature provided arbitration, which is a "commensurate benefit" for a claimant); accord *Lasky v. State Farm Ins. Co.*, 296 So. 2d 9 (Fla. 1974); but see *Smith v. Dept. of Ins.*, 507 So. 2d 1080 (Fla. 1992) (striking down noneconomic cap on damages, which, although not wholly abolishing a cause of action, did not provide a commensurate benefit).

⁶⁸ *Kluger*, 281 So. 2d at 4-5 (noting that in 1945, the Legislature abolished the right to sue for several causes of action, but successfully demonstrated "the public necessity required for the total abolition of a right to sue") (citing *Rotwein v. Gersten*, 36 So. 2d 419 (Fla. 1948); see *Echarte*, 618 So. 2d at 195 ("Even if the medical malpractice arbitration statutes at issue did not provide a commensurate benefit, we would find that the statutes satisfy the second prong of *Kluger* which requires a legislative finding that an 'overpowering public necessity' exists, and further that 'no alternative method of meeting such public necessity can be shown'").

⁶⁹ *Fla. Ins. Guar. Ass'n, Inc. v. Devon Neighborhood Ass'n, Inc.*, 67 So. 3d 187, 194-95 (Fla. 2011).

⁷⁰ U.S. Const. art. I, ss. 9, 10; Art. I, s. 10, Fla. Const.

⁷¹ See *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So. 3d 873, 877 (Fla. 2010) ("[E]ven where the Legislature has expressly stated that a statute will have retroactive application, this Court will reject such an application if the statute impairs a vested right, creates a new obligation, or imposes a new penalty").

⁷² Art. I, s. 9, Fla. Const.

⁷³ See, e.g., *Spiewak*, 73 So. 3d 120 ("a cause of action constitutes an intangible property right that is grounded in tort").

⁷⁴ See, e.g., *R.A.M. of S. Fla., Inc. v. WCI Cmtys., Inc.*, 869 So. 2d 1210 (Fla. 2d DCA 2004).

- Raising the standard of proof from "preponderance of the evidence" to "clear and convincing evidence,"⁷⁵ with the statutory change becoming effective after the plaintiff had already filed a civil complaint;⁷⁶ and
- Altering the plaintiff's burden of proof.⁷⁷

The Florida Supreme Court has recently acknowledged that Florida case law on this subject is "less than precise" and that the Court has sometimes "been unclear about what it means to give retroactive application" to a law.⁷⁸

Other State Laws Relating to COVID Liability

Soon after the COVID-19 pandemic began, state governments began responding to the ever-changing landscape. Some states passed laws; other states' governor's issued executive orders. The types of protection against COVID-19-related civil liability vary from state to state.

By early January 2021, several states had enacted COVID-19 liability protection for businesses. Many of these states require either a showing of willful, reckless, or intentional misconduct or gross negligence by clear and convincing evidence before a plaintiff can prevail in a COVID-19-related claim against a covered business. For instance, in 2020, Tennessee enacted SB 8002, which requires a plaintiff bringing a COVID-19-related claim against specified entities and institutions to:

- Plead with particularity;
- Prove gross negligence or willful misconduct by clear and convincing evidence to recover damages; and
- File with the complaint a certificate of good faith stating that the plaintiff has obtained a physician's affidavit attesting that the defendant's act or omission caused the plaintiff's injury.

Effect of Proposed Changes

CS/HB 7 provides civil immunity from COVID-19 liability to business entities, educational institutions, religious institutions, governmental entities, and other covered entities that acted in good faith during the COVID-19 pandemic. The bill protects reasonably-acting covered entities and institutions so that they can predict their COVID-19-related litigation risks, remain viable, and continue to contribute to the state's well-being.

Covered Entities and Institutions

The bill provides civil COVID-19 liability protection to business entities, educational institutions, religious institutions, governmental entities, and other covered entities ("covered entities and institutions"). However, the bill specifically excepts health care providers from COVID-19 liability protection even if a health care provider otherwise meets the definition of a business entity, educational institution, religious institution, or governmental entity. For the purposes of the bill, a:

- "Business entity" means any form of corporation, partnership, association, cooperative, joint venture, business trust, or sole proprietorship that conducts business in this state. The term also includes a charitable organization as defined in s. 496.404, F.S., and a corporation not for profit as defined in s. 617.01401, F.S.
- "Educational institution" means a school, preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or private.
- "Religious institution" means a church, ecclesiastical or denominational organization, or established physical place for worship in this state at which nonprofit religious services and

⁷⁵ See *Ziccardi v. Strother*, 570 So. 2d 1319 (Fla. 2d DCA 1990); *Stuart L. Stein, P.A. v. Miller Indus., Inc.*, 564 So. 2d 539 (Fla. 4th DCA 1990).

⁷⁶ See *Stuart L. Stein, P.A.*, 564 So. 2d at 540.

⁷⁷ See *Walker & LaBerge, Inc. v. Halligan*, 344 So. 2d 239, 243 (Fla. 1977) ("Burden of proof requirements are procedural in nature" and may "be abrogated retroactively because no one has a vested right in any given mode of procedure") (internal citations and punctuation omitted).

⁷⁸ See *Love v. State*, 286 So. 3d 177, 183-84 (Fla. 2019).

activities are regularly conducted and carried on and includes those bona fide religious groups that do not maintain specific places of worship. The term also includes a separate group or corporation that forms an integral part of a religious institution that is exempt from federal income tax and that is not primarily supported by funds solicited outside its own membership or congregation.

- “Governmental entity” means the state or any political subdivision thereof, including the executive, legislative, and judicial branches of government; the independent establishments of the state, counties, municipalities, districts, authorities, boards, or commissions; or any agencies subject to ch. 286, F.S.
- “Health care provider” means:
 - Any activity, service, agency, or facility regulated by the Agency for Healthcare Administration and listed in s. 408.802, F.S., including hospitals, health care clinics, nursing homes, assisted living facilities, and home health agencies.
 - A clinical laboratory providing services in the state or services to health care providers in the state, if the clinical laboratory is certified by the Centers for Medicare and Medicaid Services under the federal Clinical Laboratory Improvement Amendments and the federal rules adopted thereunder.
 - A federally qualified health care center as defined in 42 U.S.C. s. 1396d(1)(2)(B), as that definition exists on the bill’s effective date.
 - Any site providing health care services which was established for the purpose of responding to the COVID-19 pandemic under any federal or state order, declaration, or waiver.
 - Licensed acupuncturists, medical physicians, osteopathic physicians, chiropractors, podiatrists, naturopathic physicians, optometrists, nurses, pharmacists, dentists, dental hygienists, midwives, electrologists, massage therapists, opticians, physical therapists, psychologists, clinical social workers, mental health counselors, marriage and family therapists, speech-language pathologists, nursing home administrators, occupational therapists, respiratory therapists, dietitians, nutritionists, athletic trainers, orthotists, pedorthists, prosthetists, clinical laboratory personnel, medical physicists, radiological personnel, and home health aides.
 - A provider licensed under chapter 394 (relating to mental health) or chapter 397 (relating to substance abuse services).
 - A continuing care facility.
 - A pharmacy.

Pleading, Burdens of Proof, and Standards of Proof

Instead of generally allowing COVID-19-related claims to be heard by a jury, the bill creates a bifurcated proceeding for COVID-19-related claims against covered entities and institutions. The initial stage of this proceeding is heard only by a judge. In this initial stage, a plaintiff must:

- Plead a COVID-19-related claim with particularity, instead of merely providing the short and plain statement of facts required under current law.
- Submit with the complaint an affidavit from a Florida-licensed physician attesting that, within a reasonable degree of medical certainty, the defendant caused the plaintiff’s COVID-19-related damages.
- Prove that the defendant did not make a good faith effort to substantially comply with authoritative or controlling government-issued health standards or guidance available at the time the plaintiff’s cause of action accrued.

The bill also limits the evidence admissible during the initial stage of the proceeding to evidence tending to show whether the defendant made a good faith effort as described above. If the plaintiff fails to show that the defendant did not make a good faith effort, the defendant is immune from civil immunity. Thus, under the bill, a plaintiff may only proceed to the jury stage of a COVID-19-related claim if the court determines that the defendant did not make a good faith effort as described above. The bill clarifies that if there was more than one authoritative source of government standards or guidance during the relevant time period, the defendant’s good faith effort with respect to any one of those sources is sufficient to confer immunity from liability.

In the second stage of the proceeding, the bill requires the plaintiff to prove that the defendant was at least grossly negligent, instead of at least ordinarily negligent as required under current law. The bill also raises the standard of proof from the "preponderance of the evidence" standard to the more rigorous "clear and convincing evidence" standard.

Statute of Limitations

The bill decreases the applicable statute of limitations for COVID-19-related claims against covered entities and institutions to one year running from the:

- Time the cause of action accrues for an injured person whose cause of action accrues after the bill's effective date.
- Bill's effective date for an injured person whose cause of action accrued before the bill's effective date.

This ensures that all persons with COVID-19-related claims against covered entities and institutions have a reasonable amount of time to bring their lawsuits, while also providing a measure of certainty to such entities and institutions as to the scope of their potential COVID-19 liability.

Access to Courts

The bill does not eliminate all civil liability for COVID-19-related claims, but rather provides a safe harbor for covered entities who have acted in good faith to comply with applicable health guidelines. Thus, a plaintiff may bring a COVID-19-related claim against an entity not covered by the bill. Further, the bill preserves civil COVID-19-related liability for covered entities that do not act in good faith and commit at least gross negligence, ensuring that plaintiffs harmed by truly bad actors may still recover damages. For those COVID-19-related claims the bill would bar, the bill provides a statement of overpowering public necessity to justify the restriction and explains that there is no alternative method for meeting that necessity.

Effective Date and Retroactivity

The bill provides that its effective date is upon becoming a law. The bill applies retroactively to a COVID-19-related civil action that is filed after the bill's effective date, even if the cause of action accrued before the bill's effective date, but not to a COVID-19-related civil action filed before the bill's effective date.

B. SECTION DIRECTORY:

Section 1: Creates s. 768.38, F.S., relating to civil liability for damages relating to COVID-19.

Section 2: Creates an unnumbered section of law providing for severability.

Section 3: Provides that the effective date is upon becoming a law and applies retroactively, except with respect to a civil action against a defendant which was commenced before the bill's effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill requires a trial judge to make an initial determination of whether the plaintiff in a COVID-19 related lawsuit has met certain requirements before sending the case to a jury. As such, the bill may reduce the need for jury trials and may have a positive fiscal impact on the state courts system.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides a bright-line safe harbor for businesses and other entities that contribute to the well-being of the Florida economy. In turn, this will give such entities a better way to predict their COVID-19-related litigation risks, which may have a positive economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures 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:

Access to Courts

The Florida Constitution provides that "[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."⁷⁹ In *Kluger v. White*, 281 So. 2d 1 (Fla. 1973), the Florida Supreme Court established a test to determine when the Legislature may restrict a judicial remedy. Where citizens have had a historical right of access to the courts, whether through statute or common law, the Legislature can only eliminate a judicial remedy under two circumstances. First, if it asserts a valid public purpose, the Legislature may restrict access to the courts if it provides a reasonable alternative to litigation.⁸⁰ Second, if the Legislature finds that there is an overpowering public necessity and that there is no alternative method for meeting that necessity, it may restrict access to the courts.⁸¹

CS/HB 7 makes legislative findings of an overpowering public necessity, in light of the unprecedented nature of the COVID-19 pandemic. Moreover, the bill does not eliminate all civil liability for a COVID-19-related claim, but rather provides a safe harbor for covered entities and institutions acting in good faith to comply with applicable health guidelines.

Due Process

The Florida Constitution provides that "[n]o person shall be deprived of life, liberty or property without due process of law"⁸² In turn, the Florida Supreme Court has held that in certain situations, a

⁷⁹ Art. I, s. 21, Fla. Const.

⁸⁰ See *Kluger*, 281 So. 2d at 4.

⁸¹ *Id.*

⁸² Art. I, s. 9, Fla. Const.

person whose legal cause of action has already accrued may have a due process right to bring such action.⁸³ Florida courts have sometimes invalidated the retroactive application of laws when such due process rights are implicated.⁸⁴ The Florida Supreme Court has recently acknowledged, however, that Florida case law on this subject is "less than precise" and that the Court has sometimes "been unclear about what it means to give retroactive application" to a law.⁸⁵

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 16, 2021, the Judiciary Committee adopted three amendments and reported the bill favorably as a committee substitute. The amendments:

- Add to the list of "healthcare providers" excluded from the bill:
 - A provider licensed under chapter 394 (relating to mental health) or 397 (relating to substance abuse services).
 - A continuing care facility.
 - A pharmacy.
- Clarify that a defendant making a good faith effort to substantially comply with any one source or set of government standards or guidelines is immune from liability.
- Make a technical change to the statute of limitations provision.

⁸³ See, e.g., *Spiewak*, 73 So. 3d at 123 ("a cause of action constitutes an intangible property right that is grounded in tort").

⁸⁴ See, e.g., *R.A.M.*, 869 So. 2d 1210.

⁸⁵ See *Love*, 286 So. 3d at 183-84.

By Senator Wright

14-00622-21

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1 A bill to be entitled
2 An act relating to marina evacuations; amending s.
3 327.59, F.S.; prohibiting vessels under a specified
4 weight from remaining in certain marinas that have
5 been deemed unsuitable for refuge during a hurricane
6 after the issuance of a hurricane watch; requiring a
7 marina owner, operator, employee, or agent to remove
8 specified vessels under certain circumstances;
9 providing that such owner, operator, employee, or
10 agent may charge the vessel owner a reasonable fee for
11 such removal and may not be held liable for any
12 damages as a result of such removal; providing
13 construction; providing that the owners or operators
14 of certain vessels may be subject to a fine that the
15 deepwater seaport issuing an evacuation order is
16 required to impose and collect; providing an effective
17 date.

18
19 Be It Enacted by the Legislature of the State of Florida:
20

21 Section 1. Subsection (1) of section 327.59, Florida
22 Statutes, is amended, and subsection (5) is added to that
23 section, to read:

24 327.59 Marina evacuations.—

25 (1) Except as provided in this section ~~After June 1, 1994,~~
26 marinas may not adopt, maintain, or enforce policies pertaining
27 to evacuation of vessels which require vessels to be removed
28 from marinas following the issuance of a hurricane watch or
29 warning, in order to ensure that protecting the lives and safety

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of vessel owners is placed before interests of protecting property.

(5) Upon the issuance of a hurricane watch affecting the waters of marinas located in a deepwater seaport, vessels under 500 gross tons may not remain in the waters of such marinas that have been deemed not suitable for refuge during a hurricane. Vessel owners shall promptly remove their vessels from the waterways upon issuance of an evacuation order by the deepwater seaport. If the United States Coast Guard captain of the port sets the port condition to "Yankee" and a vessel owner has failed to remove a vessel from the waterway, the marina owner, operator, employee, or agent, regardless of any existing contractual provisions between the marina owner and the vessel owner, shall remove the vessel, or cause the vessel to be removed, if reasonable, from its slip and may charge the vessel owner a reasonable fee for any such services rendered. A marina owner, operator, employee, or agent may not be held liable for any damage incurred to a vessel from a hurricane and is held harmless as a result of such actions to remove the vessel from the waterways. Nothing in this section may be construed to provide immunity to a marina owner, operator, employee, or agent for any damage caused by intentional acts or negligence when removing a vessel pursuant to this section. After the hurricane watch has been issued, the owner or operator of any vessel that has not been removed from the waterway of the marina, pursuant to an order from the deepwater seaport, may be subject to a fine, which must be imposed and collected by the deepwater seaport that issued the evacuation order if assessed, in an amount not exceeding three times the cost associated with

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59 removing the vessel from the waterway.

60 Section 2. This act shall take effect July 1, 2021.

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 Committee on Rules

BILL: SB 578

INTRODUCER: Senator Wright

SUBJECT: Marina Evacuations

DATE: March 2, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Anderson	Rogers	EN	Favorable
2. Proctor	Vickers	TR	Favorable
3. Anderson	Phelps	RC	Favorable

I. Summary:

SB 578 prohibits, upon the issuance of a hurricane watch that affects the waters of marinas located in a deepwater seaport, vessels under 500 gross tons from remaining in the waters of such marinas that have been deemed not suitable for refuge during a hurricane. The bill requires that vessel owners promptly remove their vessels from the waterways upon issuance of an evacuation order by the deepwater seaport.

If the Coast Guard Captain of the Port sets the port condition to “Yankee”¹ and a vessel owner has failed to remove his or her vessel from the waterway, a marina owner, operator, employee, or agent, is required to remove the vessel, if reasonable, from its slip. The marina owner may charge the vessel owner a reasonable fee for the service of removing the vessel.

The bill provides that a marina owner, operator, employee, or agent may not be held liable for any damage incurred to the vessel from a hurricane and is held harmless from removing the vessel from the waterways. However, the bill does not provide immunity to the marina owner, operator, employee, or agent for any damage caused by intentional acts or negligence when removing a vessel.

The bill provides that after a watch has been issued, if an owner or operator has not removed the vessel pursuant to an order from the seaport, the owner or operator may be subject to a fine, in an amount not exceeding three times the cost associated with removing the vessel from the waterway.

The bill has an effective date of July 1, 2021.

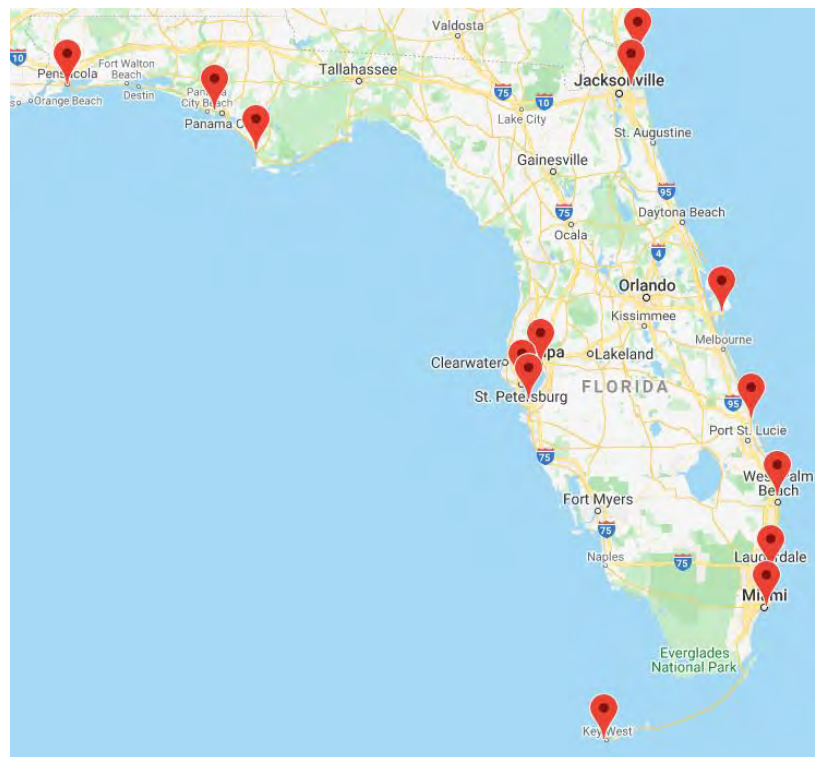
¹ Gale force winds are predicted to arrive within 24 hours, the port is closed to inbound traffic, and vessel traffic control measures are in effect on vessel movements within the port.

II. Present Situation:

Deepwater Ports in Florida

Under Florida law, a “port” means a port authority or district.² Ports are created by and given authority under general or special law. Each port, in agreement with the United States Coast Guard (Coast Guard), state pilots, and other ports in its operating port area, is required to adopt guidelines for minimum bottom clearance for each berth and channel, for the movement of vessels, and for radio communications of vessel traffic for all commercial vessels entering and leaving its harbor channels.³

There are 14 deepwater seaports in Florida, indicated in the map below:⁴



Port Canaveral

One example of a deepwater seaport impacted by the bill is Port Canaveral, which was dedicated on November 4, 1953.⁵ It is a gateway for Central Florida and the world’s second busiest cruise port.⁶ Annually, Port Canaveral moves nearly 4 million tons of cargo and sees 4 million cruise

² Section 313.21, F.S.; see also s. 315.02, F.S. “Port authority” means a port authority in Florida created by or pursuant to the provisions of any general or special law or any district or board of county commissioners acting as a port authority under or pursuant to the provisions of any general or special law. “Port district” means any district created by or pursuant to the provisions of any general or special law and authorized to own or operate any port facilities.

³ Section 313.23, F.S.

⁴ Florida Ports Council, *Seaports*, <https://flaports.org/seaports/> (last visited Jan. 22, 2021).

⁵ Port Canaveral, *History*, <https://www.portcanaveral.com/About/History> (last visited Jan. 22, 2021).

⁶ Port Canaveral, *Port and Cruise Facts*, <https://www.portcanaveral.com/Cruise/Port-Cruise-Facts> (last visited Jan. 22, 2021).

passengers.⁷ It also houses United States Army, Navy, and Air Force facilities.⁸ Port Canaveral is a key part of Florida's gasoline supply system. Gasoline and other petroleum products are primarily delivered by marine tankers and barges to the state's ports, including Port Canaveral, where the products are offloaded and later stored and distributed around the state.⁹ Additionally, 200 small businesses ranging from marinas, restaurants, retail, and charter boats currently lease and operate at Port Canaveral.¹⁰

In fiscal year 2019, Port Canaveral reported \$110 million in revenues, the highest in its history.¹¹

Canaveral Port Authority

The Canaveral Port District (Port District) was created by the Legislature by special act in 1953, as amended in 2014.¹² It is an independent special taxing district and political subdivision of the state.¹³ The Canaveral Port Authority (Port Authority) has the power to make rules and regulations for the promotion and conduct of navigation, commerce, and industry in the Port District.¹⁴ The Port Authority also has the power to make rules and regulations governing the docking, storing, mooring, and anchoring of vessels within the Port District and to remove all obstacles to navigation, commerce, and industry in the waters of the port.¹⁵

The Port Canaveral Tariff No. 16 provides the current rates, rules, and regulations governing its marine and port services.¹⁶ Anyone who uses the waterways and facilities under the jurisdiction of the Port Authority consents to the terms and conditions of the tariff.¹⁷ According to the tariff, Port Canaveral is not a suitable refuge during hurricanes or tropical storms. All Port Canaveral waterway tenants and users must comply with evacuation orders and storm preparation directives given by the Port Authority, the Coast Guard, the Brevard County Sheriff's Office, and Canaveral Fire Rescue.¹⁸

The tariff specifically states that recreational and commercial vessels under 500 gross tons are not eligible to remain in Port and must be removed from the waters of the Port, at the expense of the vessel owner or operator, before hurricane condition Zulu is set by the Coast Guard (see discussion below of Hurricane Season Port Conditions and Categories).¹⁹ The Port Authority is

⁷ *Supra* note 5.

⁸ Port Canaveral, *About Us*, <https://www.portcanaveral.com/About/> (last visited Jan. 22, 2021).

⁹ Office of Program Policy Analysis and Government Accountability, Florida Legislature, *Feasibility Analysis for Petroleum Distribution Centers*, 11 (Nov. 29, 2018), available at <https://oppaga.fl.gov/Documents/Reports/18-PETRO.pdf>.

¹⁰ *Supra* note 8.

¹¹ Florida Ports Council, *Port Canaveral*, <https://flaports.org/ports/port-canaveral/> (last visited Jan. 22, 2021).

¹² Ch. 2014-241, Laws of Fla. Each special district in existence at the time was required to submit to the Legislature a draft codified charter so that its special acts could be codified into a single act for reenactment by the Legislature.

¹³ Section 189.403(1), F.S., defines a "special district" as a confined local government unit established for a special purpose. The public policy intent of special districts is to provide private and public sectors an alternative governing method to "manage, own, operate, construct and finance basic capital infrastructure, facilities and services."

¹⁴ Art. IV, s. 9 of the Canaveral Port Authority Charter, as amended by Ch. 2014-241, Laws of Fla.

¹⁵ Art. IV, s. 10 of the Canaveral Port Authority Charter, as amended by Ch. 2014-241, Laws of Fla.

¹⁶ Canaveral Port Authority, *Tariff No. 16 – Governing Rates, Rules, & Regulations of the Marine and Port Services*, Rule 520 (Oct. 1, 2020), available at [https://www.portcanaveral.com/Cargo/Port-Tariff/CPA-Tariff-16-FY21-FINAL-\(1\).aspx](https://www.portcanaveral.com/Cargo/Port-Tariff/CPA-Tariff-16-FY21-FINAL-(1).aspx).

¹⁷ *Id.*, Rule 100.

¹⁸ *Id.*, Rule 520.

¹⁹ *Id.*

authorized to issue penalties to vessel owners or operators in accordance with statutory provisions (see discussion below of Vessel Movements and Penalties for Delay).²⁰

Vessel Movements and Penalties for Delay

Pursuant to Florida law, each port may regulate vessel movements within its jurisdiction, whether involving public or private facilities or areas, by:

- Scheduling vessels for use of berths, anchorages, or other facilities at the port.
- Ordering and enforcing a vessel, at its own expense and risk, to vacate or change position at a berth, anchorage, or facility, whether public or private, in order to facilitate navigation, commerce, protection of other vessels or property, or dredging of channels or berths.
- Designating port facilities for the loading or discharging of vessels.
- Assigning berths at wharves for arriving vessels.²¹

Ports are authorized to establish fees and compensation for the services regulating vessel movements provided by the port.²²

A port may impose and collect a penalty from a vessel that unnecessarily delays in moving under an order to vacate or change position. This penalty may not exceed \$1,000 per hour or fraction thereof, plus 150 percent of the demurrage costs incurred by a waiting vessel, until the order is complied with.²³

Marinas

A marina is a licensed commercial facility that provides secured public moorings or dry storage for vessels on a leased basis.²⁴ There are five marinas within Port Canaveral, with approximately 260 wet slips hosted on Port property for recreational vessels under 500 gross tons.²⁵ This number does not include boats in marina storage within Port property. The map below shows Port Canaveral, including its marina district.²⁶

²⁰ Section 313.22(3), F.S.

²¹ Section 313.22(1), F.S.

²² Section 313.22(2), F.S.

²³ *Supra* note 20.

²⁴ Section 327.02(25), F.S.

²⁵ Email from Caitlin Lewis, Government Relations Manager, Canaveral Port Authority, to Senate Environment and Natural Resources Committee (Jan. 22, 2020), available at http://www.flsenate.gov/Committees/Show/EN/MeetingPacket/4857/8671_MeetingPacket_4857.03.20.pdf on page 218-219 (last visited Jan. 22, 2021).

²⁶ *Supra* note 6.



Marina Evacuations

Storm Condition Effects on Vessels and Marinas

Hurricanes and storm conditions can include high winds, storm surges, wave action, and heavy rainfall.²⁷ These conditions can cause catastrophic damage to marinas and vessels. Vessels that are left in a marina during hurricane and storm conditions can lead to problems in the port, including the inability to secure docks, causing potential damage to infrastructure such as piers, and other harm to persons or property. Weather during a storm event can force a vessel into an obstruction, propel objects into the vessel, or sink or damage a boat.²⁸ A moored vessel can repeatedly collide with a stationary dock, leading to damage to both the vessel and dock. Storm surges can even lift entire floating docks above their pilings or knock boats off their cradles.²⁹

Vessels left in the harbor can also pose navigational issues and cause problems and delays in clearing channels. However, boater preparedness education and preparation can reduce the loss of property for both the vessel owner and others.³⁰ To this end, marinas and ports have an interest in requiring vessel owners to secure their vessels during a storm to prevent damage to persons or property.

Safe Haven

Some marina docking contracts contain “safe haven” or “hurricane” clauses. These clauses provide that, when a hurricane watch is issued, boat owners shall immediately remove their vessels and all personal property from the marina and seek safe haven somewhere else. Failure to comply with this requirement, according to the clauses, will result in the boat owner being liable for all damage to docks, piers, other vessels, or any other property damage directly caused by the owner's vessel or resulting from its presence in the marina.³¹

²⁷ UF/IFAS, *Hurricane Manual for Marine Interest*, available at [https://sfyl.ifas.ufl.edu/media/sfylifasufledu/miami-dade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-\(2\).pdf](https://sfyl.ifas.ufl.edu/media/sfylifasufledu/miami-dade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-(2).pdf).

²⁸ *Id.*; Florida Keys National Marine Sanctuary, *Protect your Boat in a Hurricane: Making a Plan (Part I)*, <https://floridakeys.noaa.gov/whatsnew/around/2015/boathurricane1.html> (last visited Jan. 22, 2021).

²⁹ *Id.*

³⁰ *Supra* note 27.

³¹ Mercante, James, *Hurricanes and Act of God: When the Best Defense is a Good Offense*, 18 U.S.F. MAR. L.J. (2006).

Marina Evacuation Statute

Florida enacted a law designed to prevent marinas from using safe haven clauses as a basis for recovering their property damage from vessel owners after a hurricane.³² Florida law emphasizes the protection of life over property by prohibiting marinas from requiring vessel owners to remove their vessels from a marina following the issuance of a hurricane watch or warning.³³

However, after a tropical storm or hurricane watch has been issued, a marina owner or operator, or their employee or agent, may take reasonable actions to further secure a vessel within the marina to minimize damage to the vessel and to protect marina property, private property, and the environment.³⁴ The owner or operator may charge a reasonable fee for such services.³⁵ A marina owner may include this in a contractual agreement with a vessel owner.³⁶ Marina owners are not able to be held liable for damage to a vessel from a storm or hurricane, but may be liable for damage due to intentional acts or negligence when removing or securing a vessel.³⁷

Burklow & Associates, Inc. v. Belcher is the only Florida state court decision that specifically mentions Florida's marina evacuation statute.³⁸ A marina owner sued owners of 16 stored vessels for damages allegedly caused by the vessel owners' failure to move their vessels after a hurricane warning was issued as was required by their marina contracts.³⁹ The court upheld the state statute and found that the vessel owners had no duty, contractually or otherwise, to move their vessels following the issuance of a hurricane watch or warning.⁴⁰ The court's analysis pointed to the clear legislative policy "to ensure that protecting lives and safety of vessel owners is placed before interests of protecting property" when a hurricane approaches.⁴¹

Hurricane Season Port Conditions and Categories

Port conditions are set by the Coast Guard Captain of the Port of a sector, or regulated area. Port conditions are explained in the table below.⁴² "Gale force winds" mean winds of 34 knots or 39 miles per hour.

³² Ch. 93-211, s. 22, Laws of Fla. (creating s. 327.59, F.S.).

³³ Section 327.59(1), F.S.

³⁴ Ch. 2006-309, s. 2, Laws of Fla. (creating s. 327.59(2), F.S., effective Jul. 1, 2006).

³⁵ *Id.*

³⁶ Ch. 2006-309, s. 2, Laws of Fla. (creating s. 327.59(3), F.S., effective Jul. 1, 2006).

³⁷ Ch. 2006-309, s. 2, Laws of Fla. (creating s. 327.59(4), F.S., effective Jul. 1, 2006).

³⁸ 719 So.2d 31 (Fla. Dist. Ct. App. 1998).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² 33 C.F.R. s. 165.720; 33 C.F.R. 165.781; see also Brazos Pilots Association, *Hurricane Season Port Conditions and Categories*, available at <http://www.brazospilots.com/Hurricane-Season.pdf>.

Port Condition	Storm Status	Port Status
Whiskey	Gale force winds are predicted to arrive within 72 hours	Open to all commercial and recreational traffic
X-Ray	Gale force winds are predicted to arrive within 48 hours	Open to all commercial and recreational traffic
Yankee	Gale force winds are predicted to arrive within 24 hours	Closed to inbound traffic and vessel traffic control measures in effect on vessel movements within the port
Zulu	Gale force winds are predicted to arrive within 12 hours	Closed to all inbound and outbound traffic
Recovery	The storm is no longer a threat to the area, but response and recovery operations may be in progress to address damage.	Reopened to outbound traffic at completion of port survey; vessel traffic control measures remain in effect on vessel movements within the port

III. Effect of Proposed Changes:

The bill amends s. 327.59, F.S., to prohibit, upon the issuance of a hurricane watch that affects the waters of marinas located in a deepwater seaport, vessels under 500 gross tons from remaining in the waters of such marinas that have been deemed not suitable for refuge during a hurricane.

The bill requires that vessel owners promptly remove their vessels from the waterways upon issuance of an evacuation order by the deepwater seaport. If the Coast Guard Captain of the Port sets the port condition to “Yankee” and a vessel owner has failed to remove his or her vessel from the waterway, a marina owner, operator, employee, or agent, regardless of any existing contractual provisions between the marina owner and vessel owner, is required to remove the vessel, or cause the vessel to be removed, if reasonable, from its slip. The marina owner may charge the vessel owner a reasonable fee for the service of removing the vessel.

The bill provides that a marina owner, operator, employee, or agent may not be held liable for any damage incurred to the vessel from a hurricane and is held harmless from removing the vessel from the waterways. However, the bill does not provide immunity to the marina owner, operator, employee, or agent for any damage caused by intentional acts or negligence when removing a vessel.

The bill provides that after a hurricane watch has been issued, if an owner or operator of a vessel has not removed the vessel pursuant to an order from the seaport, the owner or operator may be subject to a fine, which must be imposed and collected by the deepwater seaport that issued the evacuation order. The amount of the fine may not exceed three times the cost associated with removing the vessel from the waterway.

The bill takes effect on July 1, 2021.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Vessel owners may incur increased costs from moving their vessel pursuant to a movement order, from fees charged by a marina owner for the service of moving a vessel, or due to penalties incurred from noncompliance with a movement order.

C. Government Sector Impact:

Ports may see a positive fiscal impact due to increased collection of penalties from vessel owners that do not comply with a movement order and cost savings associated with prevention of damage to port facilities and infrastructure.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 327.59 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.

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

1 A bill to be entitled
2 An act relating to marina evacuations; amending s.
3 327.59, F.S.; prohibiting vessels under a specified
4 weight from remaining in certain marinas that have
5 been deemed unsuitable for refuge during a hurricane
6 after the issuance of a hurricane watch; requiring a
7 marina owner, operator, employee, or agent to remove
8 specified vessels under certain circumstances;
9 providing that such owner, operator, employee, or
10 agent may charge the vessel owner a reasonable fee for
11 such removal and may not be held liable for any
12 damages as a result of such removal; providing that
13 the owners or operators of certain vessels may be
14 subject to a fine that the deepwater seaport issuing
15 an evacuation order may impose and collect; providing
16 construction; providing a definition; providing an
17 effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Subsection (1) of section 327.59, Florida
22 Statutes, is amended, and subsection (5) is added to that
23 section, to read:

24 327.59 Marina evacuations.—

25 (1) Except as provided in this section ~~After June 1, 1994,~~

26 marinas may not adopt, maintain, or enforce policies pertaining
27 to evacuation of vessels which require vessels to be removed
28 from marinas following the issuance of a hurricane watch or
29 warning, in order to ensure that protecting the lives and safety
30 of vessel owners is placed before interests of protecting
31 property.

32 (5) Upon the issuance of a hurricane watch affecting the
33 waters of marinas located in a deepwater seaport, vessels under
34 500 gross tons may not remain in the waters of such marinas that
35 have been deemed not suitable for refuge during a hurricane.
36 Vessel owners shall promptly remove their vessels from the
37 waterways upon issuance of an evacuation order by the deepwater
38 seaport. If the United States Coast Guard captain of the port
39 sets the port condition to "Yankee" and a vessel owner has
40 failed to remove a vessel from the waterway, the marina owner,
41 operator, employee, or agent, regardless of any existing
42 contractual provisions between the marina owner and the vessel
43 owner, shall remove the vessel, or cause the vessel to be
44 removed, if reasonable, from its slip and may charge the vessel
45 owner a reasonable fee for any such services rendered. A marina
46 owner, operator, employee, or agent may not be held liable for
47 any damage incurred to a vessel from a hurricane and is held
48 harmless as a result of such actions to remove the vessel from
49 the waterways. After the hurricane watch has been issued, the
50 owner or operator of any vessel that has not been removed from

51 the waterway of the marina, pursuant to an order from the
52 deepwater seaport, may be subject to a fine, which may be
53 imposed and collected by the deepwater seaport that issued the
54 evacuation order if assessed, in an amount not exceeding three
55 times the cost associated with removing the vessel from the
56 waterway. This section does not provide immunity to a marina
57 owner, operator, employee, or agent for any damage caused by
58 intentional acts or negligence when removing a vessel pursuant
59 to this section; require a deepwater seaport to issue an order
60 to evacuate vessels; or require a deepwater seaport to impose
61 and collect fines for failure to remove vessels from its
62 waterways. For purposes of this subsection, the term "deepwater
63 seaport" means the port waters, dredged material management
64 sites, port harbors, navigation channels, turning basins, and
65 harbor berths used for deepwater commercial navigation.

66 Section 2. This act shall take effect July 1, 2021.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 223 Marina Evacuations

SPONSOR(S): State Affairs Committee, Pandemics & Public Emergencies Committee, Plasencia

TIED BILLS: **IDEN./SIM. BILLS:** SB 578

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Environment, Agriculture & Flooding Subcommittee	18 Y, 0 N	Melkun	Moore
2) Pandemics & Public Emergencies Committee	15 Y, 0 N, As CS	Skinner	Dearden
3) State Affairs Committee	23 Y, 0 N, As CS	Melkun	Williamson

SUMMARY ANALYSIS

Under Florida law, the term “port” is defined as a port authority or district. Each port, in agreement with the United States Coast Guard, state pilots, and other ports in its operating port area, is required to adopt guidelines for minimum bottom clearance of each berth and channel, for the movement of vessels, and for radio communications of vessel traffic for all commercial vessels entering and leaving its harbor channels. There are 14 deepwater seaports in Florida.

A marina is a licensed commercial facility that provides secured public moorings or dry storage for vessels on a leased basis. Vessels that are left in a marina during hurricane and storm conditions can cause problems in the port, including the inability to secure docks, causing potential damage to infrastructure such as piers, and other harm to people or property. Vessels left in the harbor can also pose navigational issues and cause problems and delays in clearing channels.

Some marina docking contracts contain “safe haven” or “hurricane” clauses. These clauses provide that, when a hurricane watch is issued, boat owners must immediately remove their vessels and all personal property from the marina and seek safe haven somewhere else. In 1993, Florida enacted a law designed to prevent marinas from using safe haven clauses as a basis for recovering the costs of property damage from vessel owners after a hurricane.

Upon the issuance of a hurricane watch affecting the waters of marinas located in a deepwater seaport, the bill prohibits vessels under 500 gross tons from remaining in the waters of marinas that have been deemed not suitable for refuge during a hurricane. In addition, the bill requires vessel owners to promptly remove their vessels from the waterways upon issuance of an evacuation order by the deepwater seaport.

The bill specifies that if the Coast Guard captain of the port sets the port condition to “Yankee” and a vessel owner has failed to remove a vessel from the waterway, the marina owner must remove the vessel and may charge the vessel owner a reasonable fee for the removal. In addition, the bill specifies that a marina owner may not be held liable for any damage incurred to a vessel from a hurricane and is held harmless as a result of such actions to remove the vessel from the waterways, unless the damage was caused by intentional acts or negligence.

Finally, the bill authorizes the deepwater seaport to impose and collect a fine in an amount not to exceed three times the cost associated with removing a vessel from the waterway if, after the hurricane watch has been issued, the owner or operator of a vessel has not removed the vessel from the waterway of the marina pursuant to an order from the deepwater seaport. The bill specifies that a deepwater seaport is not required to issue an order to evacuate vessels or impose and collect fines for failure to remove vessels from its waterways.

The bill may have an indeterminate positive fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

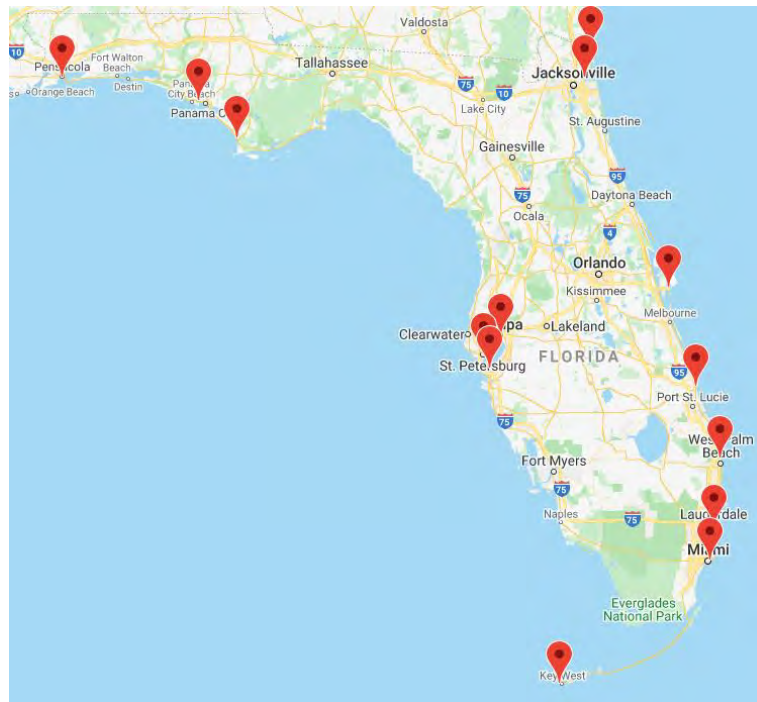
A. EFFECT OF PROPOSED CHANGES:

Background

Deepwater Seaports

Under Florida law, the term “port” is defined as a port authority or district.¹ Ports are created by and given authority under general or special law. Each port, in agreement with the United States Coast Guard (Coast Guard), state pilots, and other ports in its operating port area, is required to adopt guidelines for minimum bottom clearance of each berth and channel, for the movement of vessels, and for radio communications of vessel traffic for all commercial vessels entering and leaving its harbor channels.²

There are 14 deepwater seaports in Florida, which are depicted in the following map:³



Deepwater seaports serve as maritime facilities that consist of one or more marinas where ships can dock to load and discharge cargo, such as gasoline and other petroleum products, and cruise passengers.⁴ These seaports also serve as hubs for small businesses such as restaurants, retail facilities, and charter boats.⁵ Currently, Florida’s deepwater seaports support nearly 900,000 jobs and contribute \$117.6 billion in economic value through cargo and cruise activities.⁶

¹ Section 313.21, F.S.; *see also* s. 315.02, F.S. “Port authority” means a port authority in Florida created by or pursuant to the provisions of any general or special law or any district or board of county commissioners acting as a port authority under or pursuant to the provisions of any general or special law. “Port district” means any district created by or pursuant to the provisions of any general or special law and authorized to own or operate any port facilities.

² Section 313.23, F.S.

³ Florida Ports Council, *Seaports*, available at <https://flaports.org/seaports/> (last visited Mar. 5, 2021).

⁴ U.S. Department of Transportation, *Frequently Asked Questions*, available at <https://www.maritime.dot.gov/ports/deepwater-ports-and-licensing/frequently-asked-questions> (last visited Mar. 5, 2021).

⁵ Port Canaveral, *About Us*, available at <https://www.portcanaveral.com/About> (last visited Mar. 5, 2021).

⁶ Florida Ports Council, *Seaports*, available at <https://flaports.org/about/the-florida-system-of-seaports/> (last visited Mar. 5, 2021).

Vessel Movements and Penalties for Delay

Pursuant to s. 313.22(1), F.S., each port may regulate vessel movements within its jurisdiction, whether involving public or private facilities or areas, by:

- Scheduling vessels for use of berths, anchorages, or other facilities at the port.
- Ordering and enforcing a vessel, at its own expense and risk, to vacate or change position at a berth, anchorage, or facility, whether public or private, in order to facilitate navigation, commerce, protection of other vessels or property, or dredging of channels or berths.
- Designating port facilities for the loading or discharging of vessels.
- Assigning berths at wharves for arriving vessels.⁷

Ports are also authorized to establish fees and compensation for the services regulating vessel movements provided by the port.⁸ Additionally, a port may impose and collect a penalty from a vessel that unnecessarily delays moving under an order to vacate or change position. This penalty may not exceed \$1,000 per hour or fraction thereof, plus 150 percent of the demurrage costs incurred by a waiting vessel, until the order is complied with.⁹

Marina Evacuations

A marina is a licensed commercial facility that provides secured public moorings or dry storage for vessels on a leased basis.¹⁰ When hurricanes and storm conditions threaten the coast, marinas and vessels are vulnerable to catastrophic damage from the high winds, storm surges, wave action, and heavy rainfall these storms bring.¹¹ Vessels that are left in a marina during hurricane and storm conditions can also cause problems in the port, including the inability to secure docks, causing potential damage to infrastructure such as piers, and other harm to people or property. Storm conditions can also force a vessel into another object, propel objects into the vessel, or sink or damage a vessel.¹² Storm surges can even lift entire floating docks above their pilings or knock boats off their cradles.¹³ Vessels left in the harbor can also pose navigational issues and cause problems and delays in clearing channels.¹⁴

Safe Haven

Some marina docking contracts contain “safe haven” or “hurricane” clauses. These clauses provide that, when a hurricane watch is issued, boat owners must immediately remove their vessels and all personal property from the marina and seek safe haven somewhere else. Failure to comply with this requirement, according to the clauses, results in the boat owner’s liability for all damage to docks, piers, other vessels, or any other property damage directly caused by the owner’s vessel or resulting from its presence in the marina.¹⁵

In 1993, Florida enacted a law designed to prevent marinas from using safe haven clauses as a basis for recovering the costs of property damage from vessel owners after a hurricane, emphasizing the protection of life over property by prohibiting marinas from requiring vessel owners to remove their vessels from a marina following the issuance of a hurricane watch or warning.¹⁶

However, after a tropical storm or hurricane watch has been issued, a marina owner or operator, or their employee or agent, is authorized to take reasonable actions to further secure a vessel within the marina to minimize damage to the vessel and to protect marina property, private property, and the

⁷ Section 313.22(1), F.S.

⁸ Section 313.22(2), F.S.

⁹ Section 313.22(3), F.S.

¹⁰ Section 327.02(25), F.S.

¹¹ University of Florida (UF), *Hurricane Manual for Marine Interests*, available at [https://sfyl.ifas.ufl.edu/media/sfylifasufledu/miami-dade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-\(2\).pdf](https://sfyl.ifas.ufl.edu/media/sfylifasufledu/miami-dade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-(2).pdf) (last visited Mar. 5, 2021).

¹² *Id.*; Florida Keys National Marine Sanctuary, *Protect your Boat in a Hurricane: Making a Plan (Part I)*, available at <https://floridakeys.noaa.gov/whatsnew/around/2015/boathurricane1.html> (last visited Mar. 5, 2021).

¹³ *Id.*

¹⁴ UF, *Hurricane Manual for Marine Interests*, available at [https://sfyl.ifas.ufl.edu/media/sfylifasufledu/miami-dade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-\(2\).pdf](https://sfyl.ifas.ufl.edu/media/sfylifasufledu/miami-dade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-(2).pdf) (last visited Mar. 5, 2021).

¹⁵ Mercante, James, *Hurricanes and Act of God: When the Best Defense is a Good Offense*, 18 U.S.F. MAR. L.J. (2006).

¹⁶ Chapter 93-211, s. 22, Laws of Fla.; s. 327.59(1), F.S.

environment. The owner or operator may charge a reasonable fee for securing the vessel, which can be included in a contractual agreement with the vessel owner.¹⁷ While marina owners may not be held liable for damage to a vessel from a storm or hurricane, they may be still be held liable for damage due to intentional acts or negligence when removing or securing a vessel.¹⁸

Hurricane Season Port Conditions and Categories

Port conditions, which are set by the Coast Guard captain of the port of a particular sector, or regulated area, are indicated in the table below.¹⁹

Port Condition	Storm Status	Port Status
Whiskey	Gale force winds ²⁰ are predicted to arrive within 72 hours	Open to all commercial and recreational traffic
X-Ray	Gale force winds are predicted to arrive within 48 hours	Open to all commercial and recreational traffic
Yankee	Gale force winds are predicted to arrive within 24 hours	Closed to inbound traffic and vessel traffic control measures in effect on vessel movements within the port
Zulu	Gale force winds are predicted to arrive within 12 hours	Closed to all inbound and outbound traffic
Recovery	The storm is no longer a threat to the area, but response and recovery operations may be in progress to address damage	Reopened to outbound traffic at completion of port survey; vessel traffic control measures remain in effect on vessel movements within the port

Effect of the Bill

Upon the issuance of a hurricane watch affecting the waters of marinas located in a deepwater seaport, the bill prohibits vessels under 500 gross tons from remaining in the waters of such marinas that have been deemed not suitable for refuge during a hurricane. In addition, the bill requires vessel owners to promptly remove their vessels from the waterways upon issuance of an evacuation order by the deepwater seaport.

The bill specifies that if the Coast Guard captain of the port sets the port condition to “Yankee” and a vessel owner has failed to remove a vessel from the waterway, the marina owner, operator, employee, or agent, regardless of any existing contractual provisions between the marina owner and the vessel owner, must remove the vessel, or cause the vessel to be removed, if reasonable, from its slip and may charge the vessel owner a reasonable fee for any such services rendered.

The bill authorizes the deepwater seaport to impose and collect a fine in an amount not to exceed three times the cost associated with removing a vessel from the waterway if, after the hurricane watch has been issued, the owner or operator of a vessel has not removed the vessel from the waterway of the marina pursuant to an order from the deepwater seaport. The bill specifies that a deepwater seaport is not required to issue an order to evacuate vessels or impose and collect fines for failure to remove vessels from its waterways.

The bill specifies that a marina owner, operator, employee, or agent may not be held liable for any damage incurred to a vessel from a hurricane and is held harmless as a result of such actions to remove the vessel from the waterways. However, the bill clarifies that this provision does not provide

¹⁷ Chapter 2006-309, s. 2, Laws of Fla.; s. 327.59(2)-(3), F.S.

¹⁸ Section 327.59(4), F.S.

¹⁹ 33 C.F.R. s. 165.720; 33 C.F.R. 165.781; *See also* Brazos Pilots Association, *Hurricane Season Port Conditions and Categories*, available at <http://www.brazospilots.com/Hurricane-Season.pdf> (last visited Mar. 5, 2021).

²⁰ “Gale force winds” mean winds of 34 knots or 39 miles per hour. National Oceanic and Atmospheric Administration, *Beaufort Wind Scale*, available at <https://www.spc.noaa.gov/faq/tornado/beaufort.html> (last visited Mar. 5, 2021).

immunity to a marina owner, operator, employee, or agent for any damage caused by intentional acts or negligence when removing a vessel.

The bill defines the term “deepwater seaport” to mean the port waters, dredged material management sites, port harbors, navigation channels, turning basins, and harbor berths used for deepwater commercial navigation.

B. SECTION DIRECTORY:

Section 1. Amends s. 327.59, F.S., to prohibit certain vessels from remaining in marinas under specified conditions.

Section 2. Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate positive fiscal impact on the local governments because deepwater seaports may impose and collect fines from vessel owners that do not comply with a movement order. In addition, the seaports may have to spend less on repairing damage to seaport facilities and infrastructure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative fiscal impact on vessel owners due to the costs associated with moving their vessels pursuant to a movement order, the fees charged by a marina owner for the service of moving a vessel, or the fines incurred from noncompliance with a movement order.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 9, 2021, the Pandemics & Public Emergencies Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarified that a deepwater seaport that issues an evacuation order may impose and collect fines from vessels in violation of the order; and
- Specified that a deepwater seaport is not required to issue an order to evacuate vessels or to impose and collect fines for the failure to remove vessels from its waterways.

On March 17, 2021, the State Affairs Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment defined the term “deepwater seaport.”

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.

By Senator Bradley

5-01601-21

20211658__

A bill to be entitled
An act relating to power-driven vessel safety requirements; providing a short title; creating s. 327.396, F.S.; prohibiting sitting in a specified manner upon the bow, transom, or gunwale of a power-driven vessel while the vessel is making way; prohibiting a power-driven vessel operator from allowing a person to sit in such a way; defining terms; providing a noncriminal infraction; amending s. 327.73, F.S.; providing a noncriminal infraction for violations relating to power-driven vessel safety requirements; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the "Limb Preservation Act."

Section 2. Section 327.396, Florida Statutes, is created to read:

327.396 Power-driven vessel safety requirements.—

(1) A person may not sit upon the bow, transom, or gunwale of a power-driven vessel with any portion of his or her foot or leg over the uppermost outside edge of the vessel while the vessel is making way.

(2) The operator of a power-driven vessel may not allow a person to sit upon the bow, transom, or gunwale of the vessel with any portion of his or her foot or leg over the uppermost outside edge of the vessel while the vessel is making way.

(3) As used in this section, the term:

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30 (a) "Making way" means moving relative to the surface of
31 the water as a result of a power-driven vessel's machinery.

32 (b) "Power-driven vessel" means a vessel propelled by
33 machinery.

34 (4) A person who violates this section commits a
35 noncriminal infraction, punishable as provided in s. 327.73.

36 Section 3. Paragraph (cc) is added to subsection (1) of
37 section 327.73, Florida Statutes, to read:

38 327.73 Noncriminal infractions.—

39 (1) Violations of the following provisions of the vessel
40 laws of this state are noncriminal infractions:

41 (cc) Section 327.396, relating to power-driven vessel
42 safety requirements.

43
44 Any person cited for a violation of any provision of this
45 subsection shall be deemed to be charged with a noncriminal
46 infraction, shall be cited for such an infraction, and shall be
47 cited to appear before the county court. The civil penalty for
48 any such infraction is \$50, except as otherwise provided in this
49 section. Any person who fails to appear or otherwise properly
50 respond to a uniform boating citation shall, in addition to the
51 charge relating to the violation of the boating laws of this
52 state, be charged with the offense of failing to respond to such
53 citation and, upon conviction, be guilty of a misdemeanor of the
54 second degree, punishable as provided in s. 775.082 or s.
55 775.083. A written warning to this effect shall be provided at
56 the time such uniform boating citation is issued.

57 Section 4. This act shall take effect July 1, 2021.

HB 271

2021

1 A bill to be entitled
2 An act relating to power-driven vessel safety
3 requirements; providing a short title; creating s.
4 327.396, F.S.; prohibiting sitting in a specified
5 manner upon the bow, transom, or gunwale of a power-
6 driven vessel while the vessel is making way;
7 providing definitions; providing penalties; amending
8 s. 327.73, F.S.; providing penalties for violations
9 relating to power-driven vessel safety requirements;
10 providing an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. This act may be cited as the "Limb Preservation
15 Act."

16 Section 2. Section 327.396, Florida Statutes, is created
17 to read:

18 327.396 Power-driven vessel safety requirements.—

19 (1) A person may not sit upon the bow, transom, or gunwale
20 of a power-driven vessel with any portion of his or her foot or
21 leg over the uppermost outside edge of the vessel while the
22 vessel is making way.

23 (2) The operator of a power-driven vessel may not allow a
24 person to sit upon the bow, transom, or gunwale of the vessel
25 with any portion of his or her foot or leg over the uppermost

26 outside edge of the vessel while the vessel is making way.

27 (3) As used in this section, the term:

28 (a) "Making way" means moving relative to the surface of
29 the water as a result of a power-driven vessel's machinery.

30 (b) "Power-driven vessel" means a vessel propelled by
31 machinery.

32 (4) A person who violates this section commits a
33 noncriminal infraction, punishable as provided in s. 327.73.

34 Section 3. Paragraph (cc) is added to subsection (1) of
35 section 327.73, Florida Statutes, to read:

36 327.73 Noncriminal infractions.—

37 (1) Violations of the following provisions of the vessel
38 laws of this state are noncriminal infractions:

39 (cc) Section 327.396, relating to power-driven vessel
40 safety requirements.

41
42 Any person cited for a violation of any provision of this
43 subsection shall be deemed to be charged with a noncriminal
44 infraction, shall be cited for such an infraction, and shall be
45 cited to appear before the county court. The civil penalty for
46 any such infraction is \$50, except as otherwise provided in this
47 section. Any person who fails to appear or otherwise properly
48 respond to a uniform boating citation shall, in addition to the
49 charge relating to the violation of the boating laws of this
50 state, be charged with the offense of failing to respond to such

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51 citation and, upon conviction, be guilty of a misdemeanor of the
52 second degree, punishable as provided in s. 775.082 or s.
53 775.083. A written warning to this effect shall be provided at
54 the time such uniform boating citation is issued.

55 Section 4. This act shall take effect July 1, 2021.

By Senator Pizzo

38-01663A-21

20211652__

A bill to be entitled
An act relating to anchoring limitation areas;
amending s. 327.4108, F.S.; designating specified
waterways in densely populated urban areas as
anchoring limitation areas; providing an effective
date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) of subsection (1) of section
327.4108, Florida Statutes, is amended, and paragraphs (d) and
(e) are added to that subsection, to read:

327.4108 Anchoring of vessels in anchoring limitation
areas.—

(1) The following densely populated urban areas, which have
narrow state waterways, residential docking facilities, and
significant recreational boating traffic, are designated as
anchoring limitation areas:

(c) The sections of Biscayne Bay in Miami-Dade County, as
follows ~~lying between~~:

1. Between Rivo Alto Island and Di Lido Island.
2. Between San Marino Island and San Marco Island.
3. Between San Marco Island and Biscayne Island.
4. Surfside, south of 88th Street/Biscaya Drive and north
of Stillwater in Miami Beach.
5. Biscaya Lake in Surfside.
6. Indian Creek Lake between Indian Creek and Bay Harbor
Islands.

(d) North and South Lake areas of Hollywood in Broward

38-01663A-21

20211652__

30 County.

31 (e) Lake Sylvia in Broward County.

32 Section 2. This act shall take effect July 1, 2021.

1 A bill to be entitled
2 An act relating to vessel safety equipment; providing
3 a short title; amending s. 327.50, F.S.; providing
4 definitions; requiring operators of certain motorboats
5 to use an engine cutoff switch while the motorboat is
6 making way; providing applicability; providing
7 penalties; amending s. 327.73, F.S.; conforming
8 provisions to changes made by the act; providing an
9 effective date.

10
11 Be It Enacted by the Legislature of the State of Florida:

12
13 Section 1. This act may be cited as "Ethan's Law."

14 Section 2. Subsection (4) is added to section 327.50,
15 Florida Statutes, to read:

16 327.50 Vessel safety regulations; equipment and lighting
17 requirements.—

18 (4) (a) As used in this subsection, the term:

19 1. "Engine cutoff switch" means an emergency switch
20 installed on a motorboat or motorboat engine that is designed to
21 immediately shut off the engine if the motorboat operator falls
22 overboard, whether triggered by a physical attachment such as a
23 lanyard or wirelessly through some electronic means.

24 2. "Making way" means that a motorboat is being propelled
25 through the water by the use of mechanical machinery.

26 3. "Trolling motor" means a self-contained unit that
27 contains an electric motor, a propeller, and controls that affix
28 to the bow or stern of a motorboat and are used to move the
29 motorboat.

30 (b) A person operating a motorboat less than 26 feet in
31 length upon the waters of this state shall use an engine cutoff
32 switch while the motorboat is making way. This paragraph does
33 not apply to a motorboat making way solely by the use of a
34 trolling motor.

35 (c) A person who violates this subsection and:

36 1. Does not cause a boating accident as defined s. 327.02
37 commits a noncriminal infraction, punishable as provided in s.
38 327.73.

39 2. Causes damage to the property of another or causes an
40 injury less than serious bodily injury as defined in s.
41 327.353(1)(b) to another commits a misdemeanor of the second
42 degree, punishable as provided in s. 775.082 or s. 775.083.

43 3. Causes serious bodily injury as defined in s.
44 327.353(1)(b) to another commits a misdemeanor of the first
45 degree, punishable as provided in s. 775.082 or s. 775.083.

46 4. Causes the death of another commits vessel homicide,
47 punishable as provided in s. 782.072.

48 (d) This subsection does not apply to a vessel with a main
49 helm installed within an enclosed cabin.

50 Section 3. Paragraph (m) of subsection (1) of section

51 327.73, Florida Statutes, is amended to read:

52 327.73 Noncriminal infractions.—

53 (1) Violations of the following provisions of the vessel
54 laws of this state are noncriminal infractions:

55 (m) Section 327.50(1), and (2), and (4), relating to
56 required safety equipment, lights, and shapes.

57
58 Any person cited for a violation of any provision of this
59 subsection shall be deemed to be charged with a noncriminal
60 infraction, shall be cited for such an infraction, and shall be
61 cited to appear before the county court. The civil penalty for
62 any such infraction is \$50, except as otherwise provided in this
63 section. Any person who fails to appear or otherwise properly
64 respond to a uniform boating citation shall, in addition to the
65 charge relating to the violation of the boating laws of this
66 state, be charged with the offense of failing to respond to such
67 citation and, upon conviction, be guilty of a misdemeanor of the
68 second degree, punishable as provided in s. 775.082 or s.
69 775.083. A written warning to this effect shall be provided at
70 the time such uniform boating citation is issued.

71 Section 4. This act shall take effect July 1, 2021.

By Senator Pizzo

38-01262-21

20211834__

A bill to be entitled

An act relating to vessel safety; amending s. 327.30, F.S.; revising the penalties for persons operating a vessel involved in an accident or injury who leave the scene of the accident or injury under certain circumstances; providing graduated penalties depending on the level of damage to property or person; defining the term "serious bodily injury"; providing a mandatory minimum sentence for a person who willfully commits such violation resulting in the death of another while boating under the influence; amending s. 327.33, F.S.; providing increased criminal penalties for the reckless operation of a vessel which causes seriously bodily injury to another; defining the term "serious bodily injury"; amending s. 327.35, F.S.; providing that a person commits boating under the influence manslaughter when their impaired operation of a vessel causes the death of an unborn child; defining the term "unborn child"; providing a mandatory minimum sentence for a conviction for such a violation; amending s. 782.072, F.S.; revising the definition of the term "vessel homicide" to include the killing of an unborn child by causing injury to the mother by operation of a vessel in a reckless manner under certain circumstances; defining the term "unborn child"; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

38-01262-21

20211834__

Section 1. Subsection (5) of section 327.30, Florida Statutes, is amended to read:

327.30 Collisions, accidents, and casualties.—

(5) It is unlawful for a person operating a vessel involved in an accident or injury to leave the scene of the accident or injury without giving all possible aid to all persons involved and making a reasonable effort to locate the owner or persons affected and subsequently complying with and notifying the appropriate law enforcement official as required under this section. If a ~~Any~~ person who violates this subsection and the ~~with respect to an accident results resulting in: personal injury commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any person who violates this subsection with respect to an accident resulting in property damage only commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

(a) Property damage, the person commits a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084;

(b) Injury to a person other than serious bodily injury, the person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084;

(c) Serious bodily injury, the person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this paragraph, the term "serious bodily injury" means an injury to a person, including the operator, which consists of a physical condition that creates a substantial risk of death, serious personal

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20211834__

disfigurement, or protracted loss or impairment of the function
of a bodily member or organ; or

(d) The death of another person, the person commits a
felony of the first degree, punishable as provided in s.
775.082, s. 775.083, or s. 775.084. A person who willfully
commits such a violation of this subsection while operating a
vessel under the influence as set forth in s. 327.35 shall be
sentenced to a mandatory minimum term of imprisonment of 4
years.

Section 2. Subsection (1) of section 327.33, Florida
Statutes, is amended to read:

327.33 Reckless or careless operation of vessel.—

(1) It is unlawful to operate a vessel in a reckless
manner. A person who operates any vessel, or manipulates any
water skis, aquaplane, or similar device, in willful or wanton
disregard for the safety of persons or property at a speed or in
a manner as to endanger, or likely to endanger, life or limb, or
damage the property of, or injure a person is guilty of reckless
operation of a vessel. Reckless operation of a vessel includes,
but is not limited to, a violation of s. 327.331(6). A person
who violates this subsection:

(a) Except as provided in paragraph (b), commits a
misdemeanor of the first degree, punishable as provided in s.
775.082 or s. 775.083; or—

(b) While operating a vessel and who, by reason of such
operation causes serious bodily injury to another, commits a
felony of the third degree, punishable as provided in s.
775.082, s. 775.083, or s. 775.084. As used in this paragraph,
the term "serious bodily injury" means an injury to another

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person which consists of a physical condition that creates a serious personal disfigurement or protracted loss or impairment of the function of a bodily member or organ.

Section 3. Subsection (3) of section 327.35, Florida Statutes, is amended to read:

327.35 Boating under the influence; penalties; "designated drivers."—

(3) Any person:

(a) Who is in violation of subsection (1);

(b) Who operates a vessel; and

(c) Who, by reason of such operation, causes or contributes to causing:

1. Damage to the property or person of another commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. Serious bodily injury to another, as defined in s. 327.353, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. The death of any human being or unborn child commits BUI manslaughter, and commits:

a. A felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. A felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if:

(I) At the time of the accident, the person knew, or should have known, that the accident occurred; and

(II) The person failed to give information and render aid as required by s. 327.30.

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This sub-subparagraph does not require that the person knew that the accident resulted in injury or death.

For the purposes of this subsection, the term "unborn child" has the same meaning as in s. 775.021(5)(e). A person who is convicted of BUI manslaughter shall be sentenced to a mandatory minimum term of imprisonment of 4 years.

Section 4. Section 782.072, Florida Statutes, is amended to read:

782.072 Vessel homicide.—"Vessel homicide" is the killing of a human being, or the killing of an unborn child by causing an injury to the mother, by the operation of a vessel as defined in s. 327.02 by another in a reckless manner likely to cause the death of, or great bodily harm to, another. Vessel homicide is:

(1) A felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if:

(a) At the time of the accident, the person knew, or should have known, that the accident occurred; and

(b) The person failed to give information and render aid as required by s. 327.30(1).

This subsection does not require that the person knew that the accident resulted in injury or death.

(3) For purposes of this section, the term "unborn child" has the same meaning as in s. 775.021(5)(e).

Section 5. This act shall take effect July 1, 2021.

HB 1275

2021

1 A bill to be entitled
2 An act relating to vessel collisions, accidents, and
3 casualties; amending s. 327.30, F.S.; revising and
4 providing penalties for a vessel operator who is
5 involved in an accident that causes damage, injury, or
6 death and leaves the scene of the accident without
7 complying with certain requirements; providing
8 mandatory minimum sentencing for a specified
9 violation; amending s. 327.33, F.S.; providing
10 penalties for reckless or careless operation of a
11 vessel that causes serious bodily injury; reenacting
12 and amending s. 327.35, F.S.; relating to boating
13 under the influence to incorporate amendments made by
14 the act; providing penalties for operation of a vessel
15 while under the influence that causes the death of an
16 unborn child; providing mandatory minimum sentencing
17 for a specified violation; providing a definition;
18 amending s. 782.072, F.S.; revising and providing
19 definitions; providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Subsection (5) of section 327.30, Florida
24 Statutes, is amended to read:
25 327.30 Collisions, accidents, and casualties.—

26 (5) (a) It is unlawful for a person operating a vessel
27 involved in an accident that causes damage, or injury, or death
28 to leave the scene of the accident ~~or injury~~ without giving all
29 possible aid to all persons involved and making a reasonable
30 effort to locate the owner or persons affected and subsequently
31 complying with and notifying the appropriate law enforcement
32 official as required under this section.

33 (b) A person who violates this subsection with respect to
34 an accident that results in:

35 1. Only property damage commits a misdemeanor of the first
36 degree, punishable as provided in s. 775.082, or s. 775.083.

37 2. Injury to a person other than serious bodily injury as
38 defined in s. 327.353(1)(b) commits a felony of the third
39 degree, punishable as provided in s. 775.082, s. 775.083, or s.
40 775.084.

41 3. Serious bodily injury as defined in s. 327.353(1)(b)
42 commits a felony of the second degree, punishable as provided in
43 s. 775.082, s. 775.083, or s. 775.084.

44 4. The death of another person commits a felony of the
45 first degree, punishable as provided in s. 775.082, s. 775.083,
46 or s. 775.084. A person who willfully commits a violation of
47 this subparagraph while operating a vessel under the influence
48 as set forth in s. 327.35 shall be sentenced to a mandatory
49 minimum term of imprisonment of 4 years ~~Any person who violates~~
50 ~~this subsection with respect to an accident resulting in~~

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~~personal injury commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any person who violates this subsection with respect to an accident resulting in property damage only commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

Section 2. Subsection (1) of section 327.33, Florida Statutes, is amended to read:

327.33 Reckless or careless operation of vessel.—

(1) It is unlawful to operate a vessel in a reckless manner. A person who operates any vessel, or manipulates any water skis, aquaplane, or similar device, in willful or wanton disregard for the safety of persons or property at a speed or in a manner as to endanger, or likely to endanger, life or limb, or damage the property of, or injure a person is guilty of reckless operation of a vessel. Reckless operation of a vessel includes, but is not limited to, a violation of s. 327.331(6).

(a) A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person who violates this subsection and by reason of such operation causes serious bodily injury as defined in s. 327.353(1)(b) to another person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

76 Section 3. For the purpose of incorporating the amendment
77 made by this act to section 327.30, Florida Statutes, in a
78 reference thereto, section 327.35, Florida Statutes, is
79 reenacted, and subsection (3) of that section is amended, to
80 read:

81 327.35 Boating under the influence; penalties; "designated
82 drivers."—

83 (1) A person is guilty of the offense of boating under the
84 influence and is subject to punishment as provided in subsection

85 (2) if the person is operating a vessel within this state and:

86 (a) The person is under the influence of alcoholic
87 beverages, any chemical substance set forth in s. 877.111, or
88 any substance controlled under chapter 893, when affected to the
89 extent that the person's normal faculties are impaired;

90 (b) The person has a blood-alcohol level of 0.08 or more
91 grams of alcohol per 100 milliliters of blood; or

92 (c) The person has a breath-alcohol level of 0.08 or more
93 grams of alcohol per 210 liters of breath.

94 (2)(a) Except as provided in paragraph (b), subsection
95 (3), or subsection (4), any person who is convicted of a
96 violation of subsection (1) shall be punished:

97 1. By a fine of:

98 a. Not less than \$500 or more than \$1,000 for a first
99 conviction.

100 b. Not less than \$1,000 or more than \$2,000 for a second

conviction; and

2. By imprisonment for:

a. Not more than 6 months for a first conviction.

b. Not more than 9 months for a second conviction.

The portion of a fine imposed in excess of \$500 pursuant to sub-subparagraph 1.a. and the portion of a fine imposed in excess of \$1,000 pursuant to sub-subparagraph 1.b., shall be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund.

(b)1. Any person who is convicted of a third violation of this section for an offense that occurs within 10 years after a prior conviction for a violation of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. Any person who is convicted of a third violation of this section for an offense that occurs more than 10 years after the date of a prior conviction for a violation of this section shall be punished by a fine of not less than \$2,000 or more than \$5,000 and by imprisonment for not more than 12 months. The portion of a fine imposed in excess of \$2,500 pursuant to this subparagraph shall be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund.

3. Any person who is convicted of a fourth or subsequent violation of this section, regardless of when any prior

conviction for a violation of this section occurred, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

However, the fine imposed for such fourth or subsequent violation may not be less than \$2,000. The portion of such fine imposed in excess of \$1,000 shall be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund.

(3) Any person:

(a) Who is in violation of subsection (1);

(b) Who operates a vessel; and

(c) Who, by reason of such operation, causes or contributes to causing:

1. Damage to the property or person of another commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. Serious bodily injury to another, as defined in s. 327.353, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. The death of any human being or unborn child commits BUI manslaughter, and commits:

a. A felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. A felony of the first degree, punishable as provided in

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s. 775.082, s. 775.083, or s. 775.084, if:

(I) At the time of the accident, the person knew, or should have known, that the accident occurred; and

(II) The person failed to give information and render aid as required by s. 327.30.

As used in this subsection, the term "unborn child" has the same meaning as in s. 775.021(5)(e). ~~This~~ Sub-subparagraph 3. does not require that the person knew that the accident resulted in injury or death. A person who is convicted of BUI manslaughter shall be sentenced to a mandatory minimum term of imprisonment of 4 years.

(4) Any person who is convicted of a violation of subsection (1) and who has a blood-alcohol level or breath-alcohol level of 0.15 or higher, or any person who is convicted of a violation of subsection (1) and who at the time of the offense was accompanied in the vessel by a person under the age of 18 years, shall be punished:

(a) By a fine of:

1. Not less than \$1,000 or more than \$2,000 for a first conviction.

2. Not less than \$2,000 or more than \$4,000 for a second conviction.

3. Not less than \$4,000 for a third or subsequent conviction.

(b) By imprisonment for:

1. Not more than 9 months for a first conviction.

2. Not more than 12 months for a second conviction.

The portion of a fine imposed in excess of \$1,000 pursuant to subparagraph (a)1. and the portion of a fine imposed in excess of \$2,000 pursuant to subparagraph (a)2. or subparagraph (a)3., shall be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund. For the purposes of this subsection, only the instant offense is required to be a violation of subsection (1) by a person who has a blood-alcohol level or breath-alcohol level of 0.15 or higher.

(5) In addition to any sentence or fine, the court shall place any offender convicted of violating this section on monthly reporting probation and shall require attendance at a substance abuse course specified by the court; and the agency conducting the course may refer the offender to an authorized service provider for substance abuse evaluation and treatment, in addition to any sentence or fine imposed under this section. The offender shall assume reasonable costs for such education, evaluation, and treatment, with completion of all such education, evaluation, and treatment being a condition of reporting probation. Treatment resulting from a psychosocial evaluation may not be waived without a supporting psychosocial evaluation conducted by an agency appointed by the court and

201 with access to the original evaluation. The offender shall bear
202 the cost of this procedure. The term "substance abuse" means the
203 abuse of alcohol or any substance named or described in
204 Schedules I-V of s. 893.03.

205 (6) With respect to any person convicted of a violation of
206 subsection (1), regardless of any other penalty imposed:

207 (a) For the first conviction, the court shall place the
208 defendant on probation for a period not to exceed 1 year and, as
209 a condition of such probation, shall order the defendant to
210 participate in public service or a community work project for a
211 minimum of 50 hours. The court must also, as a condition of
212 probation, order the impoundment or immobilization of the vessel
213 that was operated by or in the actual control of the defendant
214 or any one vehicle registered in the defendant's name at the
215 time of impoundment or immobilization, for a period of 10 days
216 or for the unexpired term of any lease or rental agreement that
217 expires within 10 days. The impoundment or immobilization must
218 not occur concurrently with the incarceration of the defendant.
219 The impoundment or immobilization order may be dismissed in
220 accordance with paragraph (e) or paragraph (f). The total period
221 of probation and incarceration may not exceed 1 year.

222 (b) For the second conviction for an offense that occurs
223 within a period of 5 years after the date of a prior conviction
224 for violation of this section, the court shall order
225 imprisonment for not less than 10 days. The court must also, as

226 a condition of probation, order the impoundment or
227 immobilization of the vessel that was operated by or in the
228 actual control of the defendant or any one vehicle registered in
229 the defendant's name at the time of impoundment or
230 immobilization, for a period of 30 days or for the unexpired
231 term of any lease or rental agreement that expires within 30
232 days. The impoundment or immobilization must not occur
233 concurrently with the incarceration of the defendant. The
234 impoundment or immobilization order may be dismissed in
235 accordance with paragraph (e) or paragraph (f). At least 48
236 hours of confinement must be consecutive.

237 (c) For the third or subsequent conviction for an offense
238 that occurs within a period of 10 years after the date of a
239 prior conviction for violation of this section, the court shall
240 order imprisonment for not less than 30 days. The court must
241 also, as a condition of probation, order the impoundment or
242 immobilization of the vessel that was operated by or in the
243 actual control of the defendant or any one vehicle registered in
244 the defendant's name at the time of impoundment or
245 immobilization, for a period of 90 days or for the unexpired
246 term of any lease or rental agreement that expires within 90
247 days. The impoundment or immobilization must not occur
248 concurrently with the incarceration of the defendant. The
249 impoundment or immobilization order may be dismissed in
250 accordance with paragraph (e) or paragraph (f). At least 48

251 hours of confinement must be consecutive.

252 (d) The court must at the time of sentencing the defendant
253 issue an order for the impoundment or immobilization of a
254 vessel. Within 7 business days after the date that the court
255 issues the order of impoundment, and once again 30 business days
256 before the actual impoundment or immobilization of the vessel,
257 the clerk of the court must send notice by certified mail,
258 return receipt requested, to the registered owner of each
259 vessel, if the registered owner is a person other than the
260 defendant, and to each person of record claiming a lien against
261 the vessel.

262 (e) A person who owns but was not operating the vessel
263 when the offense occurred may submit to the court a police
264 report indicating that the vessel was stolen at the time of the
265 offense or documentation of having purchased the vessel after
266 the offense was committed from an entity other than the
267 defendant or the defendant's agent. If the court finds that the
268 vessel was stolen or that the sale was not made to circumvent
269 the order and allow the defendant continued access to the
270 vessel, the order must be dismissed and the owner of the vessel
271 will incur no costs. If the court denies the request to dismiss
272 the order of impoundment or immobilization, the petitioner may
273 request an evidentiary hearing.

274 (f) A person who owns but was not operating the vessel
275 when the offense occurred, and whose vessel was stolen or who

276 purchased the vessel after the offense was committed directly
277 from the defendant or the defendant's agent, may request an
278 evidentiary hearing to determine whether the impoundment or
279 immobilization should occur. If the court finds that either the
280 vessel was stolen or the purchase was made without knowledge of
281 the offense, that the purchaser had no relationship to the
282 defendant other than through the transaction, and that such
283 purchase would not circumvent the order and allow the defendant
284 continued access to the vessel, the order must be dismissed and
285 the owner of the vessel will incur no costs.

286 (g) All costs and fees for the impoundment or
287 immobilization, including the cost of notification, must be paid
288 by the owner of the vessel or, if the vessel is leased or
289 rented, by the person leasing or renting the vessel, unless the
290 impoundment or immobilization order is dismissed.

291 (h) The person who owns a vessel that is impounded or
292 immobilized under this paragraph, or a person who has a lien of
293 record against such a vessel and who has not requested a review
294 of the impoundment pursuant to paragraph (e) or paragraph (f),
295 may, within 10 days after the date that person has knowledge of
296 the location of the vessel, file a complaint in the county in
297 which the owner resides to determine whether the vessel was
298 wrongfully taken or withheld from the owner or lienholder. Upon
299 the filing of a complaint, the owner or lienholder may have the
300 vessel released by posting with the court a bond or other

adequate security equal to the amount of the costs and fees for impoundment or immobilization, including towing or storage, to ensure the payment of the costs and fees if the owner or lienholder does not prevail. When the bond is posted and the fee is paid as set forth in s. 28.24, the clerk of the court shall issue a certificate releasing the vessel. At the time of release, after reasonable inspection, the owner or lienholder must give a receipt to the towing or storage company indicating any loss or damage to the vessel or to the contents of the vessel.

(i) A defendant, in the court's discretion, may be required to serve all or any portion of a term of imprisonment to which the defendant has been sentenced pursuant to this section in a residential alcoholism treatment program or a residential drug abuse treatment program. Any time spent in such a program must be credited by the court toward the term of imprisonment.

For the purposes of this section, any conviction for a violation of s. 316.193, a previous conviction for the violation of former s. 316.1931, former s. 860.01, or former s. 316.028, or a previous conviction outside this state for driving under the influence, driving while intoxicated, driving with an unlawful blood-alcohol level, driving with an unlawful breath-alcohol level, or any other similar alcohol-related or drug-related

326 traffic offense, is also considered a previous conviction for
327 violation of this section.

328 (7) A conviction under this section does not bar any civil
329 suit for damages against the person so convicted.

330 (8) A person who is arrested for a violation of this
331 section may not be released from custody:

332 (a) Until the person is no longer under the influence of
333 alcoholic beverages, any chemical substance set forth in s.
334 877.111, or any substance controlled under chapter 893 and
335 affected to the extent that his or her normal faculties are
336 impaired;

337 (b) Until the person's blood-alcohol level or breath-
338 alcohol level is less than 0.05; or

339 (c) Until 8 hours have elapsed from the time the person
340 was arrested.

341 (9) Notwithstanding any other provision of this section,
342 for any person convicted of a violation of subsection (1), in
343 addition to the fines set forth in subsections (2) and (4), an
344 additional fine of \$60 shall be assessed and collected in the
345 same manner as the fines set forth in subsections (2) and (4).
346 All fines collected under this subsection shall be remitted by
347 the clerk of the court to the Department of Revenue for deposit
348 into the Brain and Spinal Cord Injury Program Trust Fund and
349 used for the purposes set forth in s. 381.79, after 5 percent is
350 deducted therefrom by the clerk of the court for administrative

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costs.

(10) It is the intent of the Legislature to encourage boaters to have a "designated driver" who does not consume alcoholic beverages.

Section 4. Section 782.072, Florida Statutes, is amended to read:

782.072 Vessel homicide.—

(1) As used in this section, the term:

(a) "Vessel homicide" means ~~is~~ the killing of a human being or an unborn child by the operation of a vessel as defined in s. 327.02 by another in a reckless manner likely to cause the death of, or great bodily harm to, another.

(b) "Unborn child" has the same meaning as in s. 775.021(5)(e).

(2) Vessel homicide is:

(a) ~~(1)~~ A felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) ~~(2)~~ A felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if:

1. ~~(a)~~ At the time of the accident, the person knew, or should have known, that the accident occurred; and

2. ~~(b)~~ The person failed to give information and render aid as required by s. 327.30(1).

Paragraph (b) ~~This subsection~~ does not require that the person

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376 | knew that the accident resulted in injury or death.

377 | Section 5. This act shall take effect July 1, 2021.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1275 Vessel Collisions, Accidents, and Casualties

SPONSOR(S): Grieco

TIED BILLS: **IDEN./SIM. BILLS:** SB 1834

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	17 Y, 0 N	Frost	Hall
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Florida's Fish and Wildlife Conservation Commission (FWC) is responsible for regulating vessel safety throughout the state. FWC's Division of Law Enforcement enforces boating rules and regulations, coordinates boating safety campaigns and education, manages public waters and access to them, conducts boating accident investigations, identifies and removes derelict vessels, and investigates vessel theft and title fraud.

"Vessel" is synonymous with boat as referenced in the Florida Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, which is used or capable of being used as a means of transportation on water. Chapter 327, F.S., provides various penalties relating to vessel collisions, accidents, and casualties.

The penalties for recklessly or carelessly operating a vessel, boating under the influence (BUI), and vessel homicide are similar to the penalties applicable to recklessly or carelessly operating a motor vehicle, driving under the influence, and vehicular homicide. However, current law protects an unborn child from a person's unlawful vehicle operation and provides greater penalties for a number of offenses committed by a person driving a motor vehicle than those committed by a person operating a vessel.

HB 1275 amends the criminal penalties and creates new crimes for several vessel operation offenses to more closely mirror the penalties for the same offenses when committed by a person while operating a motor vehicle. The bill creates new crimes for leaving the scene of a boating accident which results in damage, injury, or death. A person who commits such an offense that results in:

- Only property damage, commits a first degree misdemeanor.
- Injury to a person that is not serious bodily injury, commits a third degree felony.
- Serious bodily injury to a person, commits a second degree felony.
- A person's death, commits a first degree felony, subject to a four year minimum mandatory prison sentence if he or she was under the influence at the time of the offense.

The bill creates the new crime of reckless or careless boating causing serious bodily injury to a person, a third degree felony.

The bill amends the current crime of BUI to include causing the death of an unborn child in the offense of BUI manslaughter, and subjects a person convicted of BUI manslaughter to a four year minimum mandatory prison sentence. The bill also amends the crime of vessel homicide to include killing an unborn child in the offense.

The bill may have an indeterminate positive impact on prison and jail beds by expanding the misdemeanor and felony offenses relating to unlawfully operating a vessel to more closely mirror the penalties for unlawfully operating a vehicle.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Fish and Wildlife Conservation Commission (FWC) is responsible for regulating vessel¹ safety. FWC's Division of Law Enforcement:

- Enforces boating rules and regulations;
- Coordinates boating safety campaigns and education;
- Manages public waters and access to them;
- Conducts boating accident investigations;
- Identifies and removes derelict vessels; and
- Investigates vessel theft and title fraud.²

Vessel Collisions, Accidents, and Casualties

Under s. 327.30, F.S., a person operating a vessel that is involved in a collision, accident, or other casualty, must provide assistance as necessary and practicable to save any person affected or to minimize the damage caused and must provide, in writing, his or her name, address, and vessel identification to any person injured or to the owner of any property damaged. If a person damages an unattended vessel, he or she must make every reasonable effort to locate and notify the damaged vessel's owner or another person in charge of such vessel and provide his or her name, address, and vessel registration number.³

A vessel's operator must immediately notify law enforcement⁴ if a collision, accident, or other casualty involves a vessel capsizing, colliding with another vessel or object, sinking, an injury to a person requiring medical treatment beyond immediate first aid, a death, a person's disappearance from a vessel under circumstances indicating the possibility that he or she is injured or was killed, or damage to any vessel or other property appearing greater than \$2,000.⁵

A person operating a vessel involved in an accident or injury who leaves the scene of the accident or injury without providing all possible aid to the other persons involved and making a reasonable effort to locate the owner or other persons affected and without notifying the appropriate law enforcement official commits a third degree felony,⁶ unless the accident results in only property damage, in which case he or she commits a second degree misdemeanor.⁷ While a person who leaves the scene of a boating collision without taking appropriate actions commits either a second degree misdemeanor or a third degree felony, under s. 316.027, F.S., a person who leaves the scene of a vehicle accident commits a:

- Third degree felony, if the vehicle crash results in injury, other than serious bodily injury, to a person.
- Second degree felony,⁸ if the vehicle crash results in serious bodily injury to a person.
- First degree felony, if the vehicle crash results a person's death, and is subject to a four year minimum mandatory sentence.⁹

¹ "Vessel" is synonymous with boat as referenced in s. 1(b), Art. VII of the Florida 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. S. 327.02(46), F.S.

² FWC, *Inside the FWC: Law Enforcement*, <https://myfwc.com/about/inside-fwc/le/> (last visited Mar. 22, 2021); S. 327.70(1), F.S.

³ S. 327.30(1), F.S.

⁴ A person must notify either FWC's Division of Law Enforcement, the sheriff of the county in which the accident occurred, or the police chief of the municipality within which the accident occurred, if applicable. S. 327.30(2), F.S.

⁵ S. 327.30(2), F.S.

⁶ A third degree felony is punishable by up to five years in state prison and a \$5,000 fine. Ss. 775.082 and 775.083, F.S.

⁷ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Ss. 775.082 and 775.083, F.S.

⁸ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082 and 775.083, F.S.

⁹ A first degree felony is punishable by up to 30 years in state prison and a \$10,000 fine. Ss. 775.082 and 775.083, F.S. A person is also subject to a four year minimum mandatory sentence if he or she is under the influence when such a crash occurs.

Recklessly or Carelessly Operating a Vessel

Under s. 327.33, F.S., a person is guilty of operating a vessel in a reckless manner, if he or she operates any vessel, or manipulates any water skis, aquaplane, or similar device, in willful or wanton disregard for the safety of persons or property at a speed or in a manner as to endanger, or likely to endanger, life or limb, or damage the property of, or injure a person. Recklessly operating a vessel is a first degree misdemeanor.¹⁰

A person who operates a vessel in Florida waters must do so in a reasonable and prudent manner, with regard for other waterborne traffic, posted speed and wake restrictions, and all other attendant circumstances so as not to endanger the life, limb, or property of another person outside the vessel or to endanger the life, limb, or property of another person by speeding excessively or overloading the vessel. A person who fails to operate a vessel in a reasonable and prudent manner commits a noncriminal violation. However, a vessel's wake and shoreline wash does not constitute damage or endangerment to property as long as the vessel is being operated in a reasonable and prudent manner, and its operator is not negligent.¹¹

Every person operating a vessel in Florida waters must comply with navigation rules. Failing to comply with navigation rules is punishable as follows:

- A person who violates navigation rules without recklessly operating a vessel, commits a noncriminal violation; and
- A person who violates navigation rules without recklessly operating a vessel, but whose violation results in a boating accident causing serious bodily injury or death, commits a second degree misdemeanor.¹²

Boating Under the Influence

A person commits the offense of boating under the influence (BUI) if he or she operates a vessel while:

- Under the influence of drugs or alcohol to the extent that his or her normal faculties are impaired;
- His or her blood-alcohol content is 0.08 or more grams of alcohol per 100 milliliters of blood; or
- His or her breath-alcohol content is 0.08 or more grams of alcohol per 210 liters of breath.¹³

A BUI offense is generally punishable as follows:

Offense	Penalty	Fine	Imprisonment
1st conviction	Misdemeanor	≥ \$500 ≤ \$1,000	up to 6 months
2nd conviction ¹⁴	Misdemeanor	≥ \$1,000 ≤ \$2,000	up to 9 months
3rd conviction > 10 years after prior conviction ¹⁵	Misdemeanor	≥ \$2,000 ≤ \$5,000	up to 12 months
3rd conviction ≤ 10 years after prior conviction	3rd degree felony	≤ \$5,000 ¹⁶	up to 5 years ¹⁷
4th or subsequent conviction	3rd degree felony	≥ \$2,000 ≤ \$5,000 ¹⁸	up to 5 years ¹⁹

BUI Causing Property Damage, Injury, or Death

In addition to the general penalties assigned according to whether a person has a prior BUI conviction, BUI penalties may also be enhanced when the offense results in damage to property or injury to a

¹⁰ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

¹¹ Such noncriminal violation is punishable as provided under s. 327.73(1)(h), F.S.; S. 327.33(1), F.S.

¹² Punishable as provided under s. 327.73(1)(o), F.S.; 327.33(2), F.S.

¹³ S. 327.35(1), F.S.

¹⁴ S. 327.35(2)(a), F.S.

¹⁵ S. 327.35(2)(b)1.-2., F.S.

¹⁶ S. 775.083(1)(c), F.S.

¹⁷ Ss. 327.35(b)1. and 775.084, F.S.

¹⁸ S. 775.083(1)(c), F.S.

¹⁹ Ss. 327.35(b)3. and 775.084, F.S.

person. BUI causing property damage is a first degree misdemeanor,²⁰ BUI causing serious bodily injury to another person is a third degree felony,²¹ and BUI resulting in the death of any human being is considered BUI manslaughter. BUI manslaughter is a second degree felony, but is reclassified as a first degree felony if the offender leaves the scene without providing his or her information or rendering aid.²²

BUI penalties generally mirror the penalties for driving under the influence (DUI).²³ However, killing an unborn child²⁴ is also considered DUI manslaughter, and a person convicted of DUI manslaughter is subject to a four year minimum mandatory prison sentence.²⁵ BUI penalties do not currently include an offense for killing an unborn child or a minimum mandatory sentence.

Vessel Homicide

Under s. 782.072, F.S., a person commits vessel homicide if he or she kills a human being by operating a vessel in a reckless manner that is likely to cause death or great bodily harm to another person. Vessel homicide is generally a second degree felony. If a person commits vessel homicide and, at the time of the accident, knew or should have known that the accident occurred but he or she failed to give information and render aid,²⁶ the offense becomes a first degree felony. However, a person is not required to know that the accident resulted in injury or death.²⁷

Penalties for vessel homicide generally mirror the penalties for vehicular homicide. However, killing an unborn child is also considered vehicular homicide.²⁸ Vessel homicide does not currently include a similar crime for causing an unborn child's death.

Effect of Proposed Changes

HB 1275 amends the criminal penalties and creates new crimes for several vessel operation offenses to more closely mirror the penalties for the same offenses when committed by a person operating a motor vehicle. The bill creates new crimes for leaving the scene of a boating accident which results in damage, injury, or death, rather than just injury. A person who commits such an offense that results in:

- Only property damage, commits a first degree misdemeanor.
- Injury to a person that is not serious bodily injury,²⁹ commits a third degree felony.
- Serious bodily injury to a person, commits a second degree felony.
- A person's death, commits a first degree felony, subject to a four year minimum mandatory prison sentence if he or she was under the influence at the time of the offense.

The bill creates the new crime of reckless or careless boating causing serious bodily injury to a person, a third degree felony.

The bill amends the current crime of boating under the influence to include causing the death of an unborn child in the offense of BUI manslaughter, and subjects a person convicted of BUI manslaughter to a four year minimum mandatory prison sentence. The bill also amends the crime of vessel homicide to include killing an unborn child in the offense.

²⁰ S. 327.53(3)(c)1., F.S.

²¹ S. 327.53(3)(c)2., F.S.

²² S. 327.53(3)(c)3., F.S.

²³ See s. 316.193, F.S.

²⁴ "Unborn child" means a member of the species Homo sapiens, at any stage of development, who is carried in the womb. S. 775.021(5), F.S.

²⁵ S. 316.193(2)(c)1.b.(II), F.S.

²⁶ As required under s. 327.30, F.S.

²⁷ S. 782.072, F.S.

²⁸ See s. 782.071, F.S.

²⁹ The term "serious bodily injury" means an injury to any person, including the operator, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ. S. 327.353, F.S.

The bill may have an indeterminate positive impact on prison and jail beds by expanding the misdemeanor and felony offenses relating to unlawfully operating a vessel to more closely mirror the penalties for unlawfully operating a vehicle.

The bill provides an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1: Amends s. 327.30, F.S., relating to collisions, accidents, and casualties.

Section 2: Amends s. 327.33, F.S., relating to reckless or careless operation of vessel.

Section 3: Amends s. 327.35, F.S., relating to boating under the influence; penalties; "designated drivers."

Section 4: Amends s. 782.072, F.S., relating to vessel homicide.

Section 5: Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate positive impact on prison beds by expanding the felony offenses relating to unlawfully operating a vessel to more closely mirror penalties for unlawfully operating a vehicle.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate positive impact on jail beds by expanding the misdemeanor offenses relating to unlawfully operating a vessel to more closely mirror the penalties for unlawfully operating a vehicle.

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. The bill does not appear to affect municipal or county government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

By Senator Rodriguez

39-01124-21

20211668__

A bill to be entitled

An act relating to seagrass mitigation banks; amending
s. 253.03, F.S.; authorizing the Board of Trustees of
the Internal Improvement Trust Fund to establish
seagrass mitigation banks under certain conditions;
providing construction; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (17) is added to section 253.03,
Florida Statutes, to read:

253.03 Board of trustees to administer state lands; lands
enumerated.—

(17) The board of trustees may establish seagrass
mitigation banks under s. 373.4136 to ensure the preservation
and regeneration of seagrass, as defined in s. 253.04(3)(a), and
to offset the unavoidable impacts of projects when seagrass
banks meet the public interest criteria under chapters 253 and
258. This subsection does not prohibit mitigation for impacts to
seagrass or other habitats on sovereignty or nonsovereignty
submerged lands, upon approval of the board of trustees.

Section 2. This act shall take effect July 1, 2021.

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1 A bill to be entitled
2 An act relating to seagrass mitigation banks; amending
3 s. 253.03, F.S.; authorizing the Board of Trustees of
4 the Internal Improvement Trust Fund to establish
5 seagrass mitigation banks under certain conditions;
6 providing construction; providing an effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Subsection (17) is added to section 253.03,
11 Florida Statutes, to read:

12 253.03 Board of trustees to administer state lands; lands
13 enumerated.—

14 (17) The board of trustees may establish seagrass
15 mitigation banks under s. 373.4136 to ensure the preservation
16 and regeneration of seagrass, as defined in s. 253.04(3)(a), and
17 to offset the unavoidable impacts of projects when seagrass
18 banks meet the public interest criteria under chapters 253 and
19 258. This subsection does not prohibit mitigation for impacts to
20 seagrass or other habitats on sovereignty or nonsovereignty
21 submerged lands, upon approval of the board of trustees.

22 Section 2. This act shall take effect July 1, 2021.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1335 Seagrass Mitigation Banks
SPONSOR(S): Sirois
TIED BILLS: **IDEN./SIM. BILLS:** SB 1668

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Environment, Agriculture & Flooding Subcommittee		Gawin	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Seagrasses are grass-like flowering plants that live completely submerged in marine and estuarine waters. Seagrasses occur in protected bays and lagoons as well as in deeper waters along the continental shelf in the Gulf of Mexico. The depth at which seagrasses occur is limited by water clarity because most species require high levels of light. The Board of Trustees of the Internal Improvement Trust Fund (the Board) is responsible for acquiring and managing state-owned lands in a manner that serves the public interest. Among the Board's responsibilities is the duty to preserve and regenerate seagrass as an essential ecosystem for Florida's oceans, estuaries, and shorelines.

The Department of Environmental Protection (DEP) regulates activities in, on, or over surface waters, as well as any activity that alters surface water flows, through environmental resource permits (ERPs). ERPs are required for development or construction activities typically involving the dredging or filling of surface waters, construction of flood protection facilities, building dams or reservoirs, or any other activities that affect state waters. Environmental impact mitigation is required under certain circumstances to offset the adverse impacts to surface waters resulting from the construction activities allowed by an ERP.

Mitigation banking is a practice in which an environmental enhancement and preservation project is conducted by a public agency or private entity (banker) to provide mitigation for unavoidable environmental impacts within a defined region referred to as a mitigation service area. The bank is the site itself, and the currency sold by the banker to the ERP applicant is a credit. The number of potential credits permitted for the bank and the credit required for ERPs are determined by DEP or a water management district.

Sovereign submerged lands include, but are not limited to, tidal lands, islands, sandbars, shallow banks, and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally-influenced waters. The Board is responsible for determining whether a sale of sovereign submerged lands or a permit related to an activity conducted on sovereign submerged lands is within the public interest on a case by case basis. Before conveying submerged lands, the Board must consider the extent such conveyance would interfere with the conservation of fish, marine life and other wildlife, or other natural resources.

The bill authorizes the Board to establish seagrass mitigation banks to ensure the preservation and regeneration of seagrass and to offset the unavoidable impacts of projects when seagrass banks meet the public interest requirements related to state-owned lands.

The bill may have an indeterminate fiscal impact on the state.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Seagrasses

Seagrasses are grass-like flowering plants that live completely submerged in marine and estuarine waters.¹ Seagrasses occur in protected bays and lagoons as well as in deeper waters along the continental shelf in the Gulf of Mexico.² The depth at which seagrasses occur is limited by water clarity because most species require high levels of light.³ Florida's approximately 2.2 million acres of seagrasses perform many significant functions, including maintenance of water clarity, stabilization of the ocean bottom, shelter for marine life, and food for many marine animals and water birds.⁴

The Board of Trustees of the Internal Improvement Trust Fund (Board) is vested and charged with the duty to acquire, administer, manage, control, supervise, conserve, protect, and dispose of lands owned by the state.⁵ This duty extends to the preservation and regeneration of seagrass as an essential ecosystem for Florida's oceans, estuaries, and shorelines.⁶ Current law requires the Board to manage state-owned lands in a manner that serves the public interest.⁷

Environmental Impact Mitigation

Mitigation Regulations

The Department of Environmental Protection (DEP) regulates activities in, on, or over surface waters, as well as any activity that alters surface water flows, through environmental resource permits (ERPs). ERPs are required for development or construction activities typically involving the dredging or filling of surface waters, construction of flood protection facilities, building dams or reservoirs, or any other activities that affect state waters.⁸ ERP applications are processed by either DEP or one of the state's water management districts (WMDs) in accordance with the division of responsibilities specified in operating agreements between DEP and the WMDs.⁹

Mitigation serves as the third step in a sequence of permitting actions,¹⁰ which must be followed to offset the adverse impacts to surface waters resulting from the construction activities allowed by an ERP. When evaluating a proposed project for permitting, the Clean Water Act first requires DEP, as the permitting agency, to determine if the project would have an adverse impact. If the project has an adverse impact and there is a practicable alternative, the project must avoid the adverse impacts altogether and be reconfigured using the alternative. If impacts cannot be avoided, appropriate and practicable steps must be taken to minimize the impact. If any unavoidable impacts remain, they require appropriate and practicable mitigation.¹¹

Mitigation usually consists of restoration, enhancement, creation, preservation, or a combination thereof and is accomplished by providing onsite mitigation, offsite mitigation, or purchasing mitigation credits

¹ DEP, *Florida Seagrasses*, <https://floridadep.gov/rcp/seagrass> (last visited Mar. 8, 2021).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Section 253.03, F.S.

⁶ Section 253.04(3)(a), F.S.

⁷ Section 253.034, F.S.

⁸ South Florida Water Management District, *Environmental Resource Permits*, <https://www.sfwmd.gov/doing-business-with-us/permits/environmental-resource-permits> (last visited Mar. 9, 2021).

⁹ DEP, *Submerged Lands and Environmental Resources Coordination Program*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination> (last visited Mar. 9, 2021).

¹⁰ 40 C.F.R. § 230.

¹¹ EPA, *Wetlands Compensatory Mitigation*, available at https://www.epa.gov/sites/production/files/2015-08/documents/compensatory_mitigation_factsheet.pdf (last visited Dec. 10, 2020).

from permitted mitigation banks. The ecological benefits of mitigation compensate for the functional loss resulting from the ERP impact.¹² The Uniform Mitigation Assessment Method (UMAM) provides a standardized procedure for assessing the ecological functions provided by surface waters, the amount that those functions are reduced by a proposed impact, and the amount of mitigation necessary to offset that loss. The UMAM evaluates functions by considering an ecological community's current condition, hydrologic connection, uniqueness, location, fish and wildlife utilization, time lag, and mitigation risk. The UMAM is also used to determine the degree of improvement in ecological value of proposed mitigation bank activities.¹³

Mitigation Banking

Mitigation banking is a practice in which an environmental enhancement and preservation project is conducted by a public agency or private entity (banker) to provide mitigation for unavoidable environmental impacts within a defined region referred to as a mitigation service area. The bank is the site itself, and the currency sold by the banker to the ERP applicant is a credit. The number of potential credits permitted for the bank and the credit required for ERPs are determined by DEP or a WMD. Mitigation banks are authorized by a state permit, which is issued by either a WMD or DEP depending on the location of the bank and the activity it mitigates, and by the United States Army Corps of Engineers.¹⁴

To obtain a mitigation bank permit, the applicant must provide reasonable assurance that the mitigation bank will:

- Improve ecological conditions of the regional watershed;
- Provide viable and sustainable ecological and hydrological functions for the proposed mitigation service area;
- Be effectively managed in perpetuity;
- Not destroy areas with high ecological value;
- Achieve mitigation success; and
- Be adjacent to lands that will not adversely affect the long-term viability of the mitigation bank due to unsuitable land uses or conditions.¹⁵

The applicant must also provide reasonable assurances that:

- Any surface water management system that will be constructed, altered, operated, maintained, abandoned, or removed within a mitigation bank will meet the requirements of part IV of ch. 373, F.S., which regulates management and storage of surface waters, and adopted rules;
- The applicant has sufficient legal or equitable interest in the property to ensure perpetual protection and management of the land within a mitigation bank; and
- The applicant can meet the financial responsibility requirements prescribed for mitigation banks.¹⁶

Four distinct types of mitigation banks have developed. Single user banks are typically started by large entities, such as utility companies, to offset their own development activities. In for-profit banks, private investors provide the necessary capital to preserve and restore wetlands (e.g., plug old drainage ditches and remove exotic species) and if done properly, the WMD awards credits to the bank investors, who then sell the credits to developers to mitigate for unavoidable impacts. Public banks are used to generate credits for sale that are operated by the government on public lands. Finally, in-lieu, or

¹² DEP, *Mitigation*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation> (last visited Dec. 10, 2020).

¹³ DEP, *The Uniform Mitigation Assessment Method (UMAM)*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/uniform-mitigation-assessment> (last visited Dec. 10, 2020).

¹⁴ DEP, *Mitigation and Mitigation Banking*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation-and-mitigation-banking> (last visited Dec. 10, 2020).

¹⁵ Section 373.4136(1), F.S.; r. 62-342.400, F.A.C.

¹⁶ *Id.*; see also r. 62-340.700, F.A.C.

fee-based banks, are a widely used form of public mitigation bank funded by impact fees collected by a permitting agency for the purpose of acquiring or restoring large-scale wetlands.¹⁷

Sovereign Submerged Lands

Sovereign submerged lands include, but are not limited to, tidal lands, islands, sandbars, shallow banks, and lands waterward of the ordinary or mean high water line, beneath navigable fresh water, or beneath tidally-influenced waters.¹⁸ Pursuant to Article X, section 11 of the Florida Constitution the state holds title to land under navigable waters, including beaches below mean high water lines, in trust for all the people. Sale of such lands may be authorized by law, but only when in the public interest.¹⁹ Additionally, the private use of portions of such lands may be authorized by law, but only when not contrary to the public interest.²⁰ The Board is responsible for determining whether a sale of sovereign submerged lands or a permit related to an activity conducted on sovereign submerged lands is within the public interest on a case by case basis.²¹ Before conveying sovereign submerged lands, the Board must consider the extent such conveyance would interfere with the conservation of fish, marine life and other wildlife, or other natural resources.²²

Effect of the Bill

The bill authorizes the Board to establish seagrass mitigation banks to ensure the preservation and regeneration of seagrass and to offset the unavoidable impacts of projects when seagrass banks meet the public interest requirements related to state-owned lands.

The bill specifies that it does not prohibit mitigation for impacts to seagrass or other habitats on sovereignty or non-sovereignty submerged lands, upon the approval of the Board.

B. SECTION DIRECTORY:

Section 1. Amends s. 253.03, F.S., to authorize the Board to establish seagrass mitigation banks.

Section 2. Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate positive fiscal impact on state revenue associated with the ability to establish seagrass mitigation banks for which credits can be sold.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on the Board and DEP associated with the costs of creating and maintaining a seagrass mitigation bank.

¹⁷ Florida House of Representatives Resource & Land Management Council, *Issues Pertaining to the Office of Program Policy Analysis and Government Accountability's Study on Wetlands Mitigation Options* (Nov. 1999), http://www.leg.state.fl.us/data/Publications/2000/House/reports/interim_reports/pdf/wetlnds.pdf (last visited Mar. 17, 2021).

¹⁸ DEP, *Sovereign Submerged Lands (SSL) - Proprietary Authority versus Regulatory Authority in Chapter 18-21, F.A.C.*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/sovereign-submerged-lands-ssl> (last visited Mar. 9, 2021).

¹⁹ Art. X Sec. 11, Fla. Const.

²⁰ Art. X Sec. 11, Fla. Const.

²¹ Section 253.12, F.S.

²² Section 253.12(2)(a), F.S.

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 fiscal impact on the private sector by allowing private entities to purchase mitigation credits from the state to offset their projects' unavoidable impacts to seagrasses.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

By Senator Pizzo

38-01663A-21

20211652__

A bill to be entitled
An act relating to anchoring limitation areas;
amending s. 327.4108, F.S.; designating specified
waterways in densely populated urban areas as
anchoring limitation areas; providing an effective
date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) of subsection (1) of section
327.4108, Florida Statutes, is amended, and paragraphs (d) and
(e) are added to that subsection, to read:

327.4108 Anchoring of vessels in anchoring limitation
areas.—

(1) The following densely populated urban areas, which have
narrow state waterways, residential docking facilities, and
significant recreational boating traffic, are designated as
anchoring limitation areas:

(c) The sections of Biscayne Bay in Miami-Dade County, as
follows ~~lying between~~:

1. Between Rivo Alto Island and Di Lido Island.
2. Between San Marino Island and San Marco Island.
3. Between San Marco Island and Biscayne Island.
4. Surfside, south of 88th Street/Biscaya Drive and north
of Stillwater in Miami Beach.
5. Biscaya Lake in Surfside.
6. Indian Creek Lake between Indian Creek and Bay Harbor
Islands.

(d) North and South Lake areas of Hollywood in Broward

38-01663A-21

20211652__

30 County.

31 (e) Lake Sylvia in Broward County.

32 Section 2. This act shall take effect July 1, 2021.

HB 1337

2021

1 A bill to be entitled
2 An act relating to anchoring limitation areas;
3 amending s. 327.4108, F.S.; designating specified
4 waterways as anchoring limitation areas; providing an
5 effective date.

6
7 Be It Enacted by the Legislature of the State of Florida:
8

9 Section 1. Paragraph (c) of subsection (1) of section
10 327.4108, Florida Statutes, is amended, and paragraphs (d)
11 through (g) are added to that subsection, to read:

12 327.4108 Anchoring of vessels in anchoring limitation
13 areas.—

14 (1) The following densely populated urban areas, which
15 have narrow state waterways, residential docking facilities, and
16 significant recreational boating traffic, are designated as
17 anchoring limitation areas:

18 (c) The sections of Biscayne Bay in Miami-Dade County
19 lying between:

- 20 1. Rivo Alto Island and Di Lido Island.
21 2. San Marino Island and San Marco Island.
22 3. San Marco Island and Biscayne Island.
23 4. Surfside, south of 88th Street/Biscaya Drive and north
24 of Stillwater in Miami Beach.

25 (d) Indian Creek Lake in Miami-Dade County.

HB 1337

2021

26 (e) Biscaya Lake in Miami-Dade County.

27 (f) North Lake and South Lake in Broward County.

28 (g) Lake Sylvia in Broward County.

29 Section 2. This act shall take effect July 1, 2021.

By the Committee on Environment and Natural Resources; and
Senators Polsky and Bean

592-03179-21

20211946c1

A bill to be entitled

An act relating to anchoring limitation areas;
amending s. 327.4108, F.S.; authorizing counties to
establish anchoring limitation areas that meet certain
requirements; providing that specified established
anchoring limitation areas are exempt from specified
provisions; specifying size requirements for the
anchoring limitation areas; requiring the anchoring
limitation areas to be marked with signs and buoys
that meet certain requirements; prohibiting vessels
from anchoring in such areas for longer than a
specified time; requiring vessel owners or operators
in certain anchoring limitation areas to be allowed to
provide specified proof of compliance with certain
provisions; providing that vessels with repeat
offenses within a specified timeframe shall be
declared public nuisances and subject to certain
provisions; requiring the Fish and Wildlife
Conservation Commission to initiate rulemaking by a
certain date; providing requirements for such
rulemaking; removing applicability provisions relating
to the commission's recommendations; reenacting s.
327.73(1)(z), F.S., relating to noncriminal
infractions, to incorporate the amendment made to s.
327.4108, F.S., in a reference thereto; providing an
effective date.

Be It Enacted by the Legislature of the State of Florida:

592-03179-21

20211946c1

Section 1. Section 327.4108, Florida Statutes, is amended to read:

327.4108 Anchoring of vessels in anchoring limitation areas.—

(1)(a) The following densely populated urban areas, which have narrow state waterways, residential docking facilities, and significant recreational boating traffic, are designated as anchoring limitation areas:

1.~~(a)~~ The section of Middle River lying between Northeast 21st Court and the Intracoastal Waterway in Broward County.

2.~~(b)~~ Sunset Lake in Miami-Dade County.

3.~~(c)~~ The sections of Biscayne Bay in Miami-Dade County lying between:

a.1.~~1.~~ Rivo Alto Island and Di Lido Island.

b.2.~~2.~~ San Marino Island and San Marco Island.

c.3.~~3.~~ San Marco Island and Biscayne Island.

(b)(2) To promote the public's use and enjoyment of the designated waterway, except as provided in subsections (3) and (4), a person may not anchor a vessel at any time during the period between one-half hour after sunset and one-half hour before sunrise in an anchoring limitation area designated under this subsection.

(2)(a) Notwithstanding s. 327.60(2)(f), a county may establish, in accordance with this subsection, an anchoring limitation area within densely populated urban areas, which have narrow state waterways, residential docking facilities, and significant recreational boating traffic. The aggregate total of anchoring limitation areas in a county may not exceed 10 percent of the county's navigable waterways. Each anchoring limitation

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area must meet all of the following requirements:

1. Be less than 100 acres in size. For purposes of this subsection, the calculated size of the anchoring limitation area does not include any portion of the marked channel of the Florida Intracoastal Waterway contiguous to the anchoring limitation area;

2. Not include any mooring fields; and

3. Be clearly marked with all of the following:

a. Signs that provide reasonable notice to boaters identifying the duration of time beyond which anchoring is limited and identifying the county ordinance with its enacting date by which the anchoring limitation area was created. Any ordinance adopted pursuant to this subsection may not take effect until reviewed and approved as consistent with this subsection by the commission.

b. Buoys. The county that has created an anchoring limitation area shall install and maintain buoys marking the boundary of the anchoring limitation area.

(b) Except as provided in subsections (3) and (4), a person may not anchor a vessel for more than 30 consecutive days in any 6-month period in an anchoring limitation area established pursuant to this subsection.

(3) Notwithstanding subsections (1) and ~~subsection (2)~~, a person may anchor a vessel in an anchoring limitation area:

(a) If the vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors. The vessel may anchor for 3 business days or until the vessel is repaired, whichever occurs first.

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(b) If imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors. The vessel may anchor until weather conditions no longer pose such risk. During a hurricane or tropical storm, weather conditions are deemed to no longer pose an unreasonable risk of harm when the hurricane or tropical storm warning affecting the area has expired.

(c) During events described in s. 327.48 or other special events, including, but not limited to, public music performances, local government waterfront activities, or fireworks displays. A vessel may anchor for the lesser of the duration of the special event or 3 days.

(4) This section does not apply to:

(a) Vessels owned or operated by a governmental entity for law enforcement, firefighting, military, or rescue purposes.

(b) Construction or dredging vessels on an active job site.

(c) Vessels actively engaged in commercial fishing.

(d) Vessels engaged in recreational fishing if the persons onboard are actively tending hook and line fishing gear or nets.

(5)(a) As used in this subsection, the term "law enforcement officer or agency" means an officer or agency authorized to enforce this section pursuant to s. 327.70.

(b)1. For a vessel in an anchoring limitation area established pursuant to subsection (2), upon an inquiry by a law enforcement officer or agency, a vessel owner or operator must be given an opportunity to provide proof that the vessel has not exceeded the limitations described in subsection (2). Such proof may include any of the following:

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117 a. Documentation showing that the vessel was in another
118 location at least 1 mile away within a period of less than 30
119 days before the inquiry.

120 b. Electronic evidence, including, but not limited to,
121 navigational devices or tracking devices that show the vessel
122 was in another location at least 1 mile away within a period of
123 less than 30 days before the inquiry.

124 2. If a vessel owner or operator fails or refuses to
125 provide proof that the vessel has not exceeded the limitations
126 described in subsection (2), the law enforcement officer or
127 agency may issue a citation for a violation of this section.

128 (c)(b) A law enforcement officer or agency may remove a
129 vessel from an anchoring limitation area designated under
130 subsection (1) or established pursuant to subsection (2) and
131 impound the vessel for up to 48 hours, or cause such removal and
132 impoundment, if the vessel operator, after being issued a
133 citation for a violation of this section:

134 1. Anchors the vessel in violation of this section within
135 12 hours after being issued the citation; or

136 2. Refuses to leave the anchoring limitation area after
137 being directed to do so by a law enforcement officer or agency.

138 (d) A vessel that is the subject of more than three
139 violations within 12 months which resulted in dispositions other
140 than acquittal or dismissal shall be declared to be a public
141 nuisance and subject to s. 705.103, and for a derelict vessel,
142 subject to s. 823.11.

143 (e)(e) A law enforcement officer or agency acting under
144 this subsection to remove or impound a vessel, or to cause such
145 removal or impoundment, shall be held harmless for any damage to

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the vessel resulting from such removal or impoundment unless the damage results from gross negligence or willful misconduct.

(f)~~(d)~~ A contractor performing removal or impoundment services at the direction of a law enforcement officer or agency pursuant to this subsection must:

1. Be licensed in accordance with United States Coast Guard regulations, as applicable.

2. Obtain and carry a current policy issued by a licensed insurance carrier in this state to insure against any accident, loss, injury, property damage, or other casualty caused by or resulting from the contractor's actions.

3. Be properly equipped to perform such services.

(g)~~(e)~~ In addition to the civil penalty imposed under s. 327.73(1)(z), the operator of a vessel that is removed and impounded pursuant to paragraph (c)~~(b)~~ must pay all removal and storage fees before the vessel is released. A vessel removed pursuant to paragraph (c)~~(b)~~ may not be impounded for longer than 48 hours.

(6) The commission shall initiate rulemaking by July 1, 2021, to provide criteria and procedures for reviewing applications to establish an anchoring limitation area pursuant to subsection (2) and procedures for public notice and participation pursuant to this subsection. The rulemaking must include, at a minimum, all of the following:

(a) Notice to the public. The Boating and Waterways Section of the Fish and Wildlife Conservation Commission shall provide notice of completed applications received, public meetings or hearings concerning applications, and denial or approval of applications on the section's web page and to all parties listed

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175 in the Boating and Waterways Section's public distribution list
176 for ordinances, which any member of the public may join.

177 (b) An opportunity for public participation. Members of the
178 public may provide written comments, recommendations, requests,
179 inquiries, or other correspondence to the Boating and Waterways
180 Section. If a public hearing or a review by the agency head is
181 requested, members of the public may testify at the hearing or
182 commission meeting and may submit relevant and material exhibits
183 to the record of the proceeding.

184 (7)(6) A violation of this section is punishable as
185 provided in s. 327.73(1)(z).

186 ~~(7) This section shall remain in effect notwithstanding the~~
187 ~~Legislature's adoption of the commission's recommendations for~~
188 ~~the regulation of mooring vessels outside of public mooring~~
189 ~~fields pursuant to s. 327.4105.~~

190 Section 2. For the purpose of incorporating the amendment
191 made by this act to section 327.4108, Florida Statutes, in a
192 reference thereto, paragraph (z) of subsection (1) of section
193 327.73, Florida Statutes, is reenacted to read:

194 327.73 Noncriminal infractions.—

195 (1) Violations of the following provisions of the vessel
196 laws of this state are noncriminal infractions:

197 (z) Section 327.4108, relating to the anchoring of vessels
198 in anchoring limitation areas, for which the penalty is:

- 199 1. For a first offense, up to a maximum of \$50.
- 200 2. For a second offense, up to a maximum of \$100.
- 201 3. For a third or subsequent offense, up to a maximum of
- 202 \$250.
- 203

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Any person cited for a violation of any provision of this subsection shall be deemed to be charged with a noncriminal infraction, shall be cited for such an infraction, and shall be cited to appear before the county court. The civil penalty for any such infraction is \$50, except as otherwise provided in this section. Any person who fails to appear or otherwise properly respond to a uniform boating citation shall, in addition to the charge relating to the violation of the boating laws of this state, be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect shall be provided at the time such uniform boating citation is issued.

Section 3. This act shall take effect upon becoming a law.

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 Committee on Environment and Natural Resources

BILL: CS/SB 1946

INTRODUCER: Environment and Natural Resources Committee and Senators Polsky and Bean

SUBJECT: Anchoring Limitation Areas

DATE: March 23, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	Fav/CS
2.			CA	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1946 provides that notwithstanding the existing prohibition on local regulation of anchoring of vessels outside of the marked boundaries of mooring fields, a county may establish an anchoring limitation area within densely populated urban areas, which meets certain requirements imposed under the bill. The bill provides that the aggregate total of anchoring limitation areas in a county may not exceed 10 percent of the county's navigable waterways.

The bill provides that each anchoring limitation area must:

- Be less than 100 acres in size;
- Not include any mooring fields; and
- Be clearly marked with signs and buoys.

The bill prohibits a person from anchoring a vessel for more than 30 consecutive days in a 6-month period in an anchoring limitation area, except under existing exceptions.

The bill provides an opportunity for a vessel owner or operator to provide proof that the vessel has not exceeded the time limitation on anchoring, upon an inquiry by a law enforcement officer or agency. If the vessel owner or operator fails or refuses to provide such proof, the bill authorizes a law enforcement officer or agency to issue a citation, and later remove and impound the vessel.

A vessel that is the subject of more than three violations within 12 months, which resulted in dispositions other than acquittal or dismissal, is a public nuisance and subject to existing procedures for abandoned or lost property and relocation and removal of derelict vessels.

The bill requires FWC to initiate rulemaking, including notice to the public and an opportunity for public participation.

II. Present Situation:

Fish and Wildlife Conservation Commission

The Division of Law Enforcement Boating and Waterways Section of the Florida Fish and Wildlife Conservation Commission (FWC) oversees and coordinates statewide regulatory waterway markers to ensure compliance with uniform markers and state boating and resource protection zones for the benefit of all waterway users and fish and wildlife resources in the state.¹ The Boating and Waterways Section takes public input and provides notice of proposed local boating-restricted areas.²

FWC's boating laws are enforced by the Division of Law Enforcement and its officers, county sheriffs and deputies, municipal police officers, and any other law enforcement officer.³ The Division of Law Enforcement manages the state's waterways to ensure boating safety for residents of and visitors to the state.⁴ This 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.⁵

Anchoring or Mooring

Anchoring or mooring 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.⁶ Mooring is accomplished through the use of moorings permanently affixed to the bottom of the water body. Anchorages are areas that boaters regularly use for anchoring or mooring, whether designated or managed for that purpose or not. Mooring fields are areas designated and used for a system of properly spaced moorings.⁷

¹ FWC, *Waterway Management*, <https://myfwc.com/boating/waterway/> (last visited Mar. 16, 2021).

² *Id.*

³ Section 327.70(1), F.S.; see s. 943.10(1), F.S., which defines "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. The definition also includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

⁴ Fish and Wildlife Conservation Commission (FWC), *Boating*, <https://myfwc.com/boating/> (last visited Mar. 17, 2021).

⁵ FWC, *Law Enforcement*, <https://myfwc.com/about/inside-fwc/le/> (last visited Mar. 17, 2021). See s. 327.70(1) and (4), F.S.

⁶ Section 327.02, F.S., defines the term "vessel" to include 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.

⁷ Ankersen, Hamann, & Flag, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, 2

Local Regulation of Anchoring or Mooring of Vessels

Local governments are authorized by general permit to construct, operate, and maintain public mooring fields, each for up to 100 vessels.⁸ Mooring fields are required to be located where navigational access already exists between the mooring field and the nearest customarily used access channel or navigable waters which the mooring field is designed to serve. Each mooring field must be associated with a land-based support facility that provides amenities and conveniences, such as parking, bathrooms, showers, and laundry facilities. Major boat repairs and maintenance, fueling activities other than from the land-based support facility, and boat hull scraping and painting are not authorized within mooring fields.⁹

Local governments are authorized to enact and enforce ordinances that prohibit or restrict the mooring or anchoring of floating structures¹⁰ or live-aboard vessels¹¹ within their jurisdictions and vessels that are within the marked boundaries of permitted mooring fields.¹² However, local governments 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 and non-fishing commercial vessels, outside the marked boundaries of permitted mooring fields.¹³

Anchoring Limitation Areas

State law designates certain densely populated urban areas as anchoring limitation areas.¹⁴ These densely populated urban areas, which have narrow state waterways, residential docking facilities, and significant recreational boating traffic, include:

- The section of Middle River lying between Northeast 21st Court and the Intracoastal Waterway in Broward County;
- Sunset Lake in Miami-Dade County; and
- 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.¹⁵

(Rev. May 2012), available at https://www.flseagrant.org/wp-content/uploads/anchoring_away_5_12_update_web.pdf (last visited Mar. 17, 2021).

⁸ See s. 373.118, F.S., and Fla. Admin. Code R. 62-330.420(1).

⁹ See Fla. Admin. Code R. 62-330.420.

¹⁰ Section 327.02, F.S., defines the term “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.”

¹¹ Section 327.02, F.S., defines the term “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.”

¹² Section 327.60(3), F.S.

¹³ Section 327.60(2)(f), F.S.

¹⁴ Section 327.4108(1), F.S.

¹⁵ *Id.*

To promote the public's use and enjoyment of these waterways, anchoring a vessel is prohibited at any time between 30 minutes after sunset and 30 minutes before sunrise in an anchoring limitation area.¹⁶ However, there are some exceptions where anchoring is permitted in an anchoring limitation area:

- When a vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors;
- If imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors; or
- During certain special events.¹⁷

Certain government, construction, and fishing vessels are also exempt from anchoring limitation areas.¹⁸

Law enforcement officers or agencies may remove and impound, for up to 48 hours, vessels from anchoring limitation areas when a vessel operator who was previously issued a citation:

- Continues to anchor the vessel in an anchoring limitation area within 12 hours of being issued a citation; or
- Refuses to leave the anchoring limitation area after being directed to do so by a law enforcement officer or agency.¹⁹ In addition to the civil penalty imposed by a citation, a vessel operator whose vessel has been impounded must pay all of the applicable removal and storage fees before the vessel is released.²⁰

An owner or operator of a vessel who anchors in an anchoring limitation area commits a noncriminal infraction and is subject to a uniform boating citation and penalties. The civil penalty provided is up to a maximum of:

- \$50 for a first offense;
- \$100 for a second offense; and
- \$250 for a third or subsequent offense.²¹

Section 327.73(1) F.S., provides that any person who fails to appear or otherwise properly respond to a uniform boating citation must, in addition to the charge relating to the violation of the boating laws, be charged with a second degree misdemeanor, which is punishable by a maximum fine of \$500 and no more than 60 days imprisonment.²²

Procedures for Lost or Abandoned Property

When an article of lost or abandoned property is present on public property and is not easily removable, the law enforcement officer must place a notice of removal on the property. The law

¹⁶ Section 327.4108(2), F.S.

¹⁷ Section 327.4108(3), F.S.; *see also* s. 327.48, F.S.

¹⁸ Section 327.4108(4), F.S.

¹⁹ Section 327.4108(5), F.S.

²⁰ *Id.*

²¹ Section 327.73(1)(z), F.S.

²² Sections 775.082 and 775.083, F.S.

enforcement agency must then contact the Department of Highway Safety and Motor Vehicles to determine the name and address of the owner and must mail a copy of the notice to the owner.²³

If, after 5 days of posting the notice and mailing such notice, the owner has not removed the items from public property or shown reasonable cause for failure to do so, the law enforcement agency may retain the property for its own use, trade the property, donate the property, sell the property, or remove the property.²⁴ An owner that does not remove his or her property is liable for the costs of removal, storage, and destruction of the property, less any salvage value.²⁵ If the property is sold, the agency must deposit the balance of any proceeds, less the costs of transportation, storage, and notice, into an interest-bearing account no later than 30 days after the date of the sale.²⁶ The proceeds must be held for one year and the property owner is entitled to claim the balance of the proceeds by making application to the agency.²⁷

Relocation or Removal of Derelict Vessels

Section 823.11, F.S., allows for the relocation or removal of a derelict vessel²⁸ from public waters if the derelict vessel obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment, property, or persons. The costs incurred for relocating or removing a derelict vessel are recoverable against the vessel owner.²⁹ A vessel owner who neglects or refuses to pay the costs of removal, storage, and destruction of the vessel, less any salvage value obtained by disposal of the vessel, is not entitled to be issued a certificate of registration for such vessel, or any other vessel or motor vehicle, until the costs are paid.³⁰

III. Effect of Proposed Changes:

The bill amends s. 327.4108, F.S., to provide that notwithstanding the existing prohibition on local regulation of anchoring of vessels outside of the marked boundaries of mooring fields, a county may establish an anchoring limitation area within densely populated urban areas, which have narrow state waterways, residential docking facilities, and significant recreational boating traffic. The aggregate total of anchoring limitation areas in a county may not exceed 10 percent of the county's navigable waterways. Each anchoring limitation area must meet certain requirements imposed under the bill.

The bill provides that each anchoring limitation area must:

- Be less than 100 acres in size. The bill provides that the calculated size of the anchoring limitation area does not include any portion of the marked channel of the Florida Intracoastal Waterway contiguous to the anchoring limitation area;

²³ Section 705.103(2), F.S.

²⁴ *Id.*

²⁵ Section 705.103(4), F.S.

²⁶ Section 705.103(3), F.S.

²⁷ *Id.*

²⁸ A derelict vessel is a vessel that is left, stored, or abandoned in a wrecked, junked, or substantially dismantled condition upon any public waters of this state; at a port in the state without the consent of the agency that has jurisdiction of the port; or docked, grounded, or beached upon the property of another without the consent of the owner of the property. Section 823.11(1)(b), F.S.

²⁹ Section 823.11(3), F.S.

³⁰ *Id.*; see s. 705.103(4), F.S.

- Not include any mooring fields; and
- Be clearly marked with all of the following:
 - Signs that provide reasonable notice to boaters which identify the duration of time beyond which anchoring is limited and identify the county ordinance with its enacting date by which the anchoring limitation area was created. The bill prohibits any ordinance adopted pursuant to the provisions in the bill from taking effect until reviewed and approved as being consistent with the requirements in the bill by FWC.
 - Buoys marking the boundary of the anchoring limitation area.

The bill prohibits a person from anchoring a vessel for more than 30 consecutive days in a 6-month period in an anchoring limitation area established under the bill.

The bill provides an opportunity for a vessel owner or operator to provide proof that the vessel has not exceeded the time limitation (a maximum of 30 days in a 6-month period) on anchoring in an anchoring limitation area, upon an inquiry by a law enforcement officer or agency. Such proof may include either documentation or electronic evidence, including, but not limited to, navigational devices or tracking devices, which shows that the vessel was in another location at least one mile away from the anchoring limitation area within a period of less than 30 days before the inquiry.

If the vessel owner or operator fails or refuses to provide proof that the vessel has not exceeded the time limitation (a maximum of 30 days in a 6-month period) on anchoring, the bill authorizes a law enforcement officer or agency to issue a citation for a violation of the anchoring limitation area. The law enforcement officer or agency is authorized remove and impound the vessel for up to 48 hours, or cause such removal and impoundment, if the vessel operator has been issued a citation for anchoring and does one of the following:

- Anchors the vessel in an anchoring limitation area within 12 hours after being issued a citation; or
- Refuses to leave the anchoring limitation area after being directed to do so by a law enforcement officer or agency.

The bill declares that a vessel that is the subject of more than three violations within 12 months, which resulted in dispositions other than acquittal or dismissal, is a public nuisance and subject to the procedures for lost and abandoned property and for derelict vessels, the procedures for relocation and removal of derelict vessels.

The bill requires FWC to initiate rulemaking by July 1, 2021, to provide criteria and procedures for reviewing applications to establish a new anchoring limitation area and procedures for public notice and participation. The bill requires the rulemaking to include, at a minimum, the following:

- Notice to the public. The bill requires FWC's Boating and Waterways Section to provide notice of the completed applications received, public meetings or hearings concerning applications, and denial or approval of applications on the section's web page and to all parties listed in the Boating and Waterways Section's public distribution list for ordinances, which any member of the public may join.
- An opportunity for public participation. The bill authorizes members of the public to provide written comments, recommendations, requests, inquiries, or other correspondence to the

Boating and Waterways Section. The bill authorizes members of the public to testify at the hearing or a FWC meeting and to submit relevant and material exhibits to the record of the proceeding if a public hearing or a review by the agency head is requested.

The bill deletes an obsolete provision tied to FWC's pilot program for regulation of mooring vessels outside of public mooring fields.

The bill reenacts s. 327.73(1)(z), F.S., which provides penalties for violations of anchoring limitation areas, to incorporate the changes made by the bill to s. 327.4108, F.S.

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.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 327.4108 and 327.73 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS by Environment and Natural Resources on March 22, 2021:

- Revises the requirements for newly established anchoring limitation areas to include that the area is less than 100 acres in size, not including certain areas of the Florida Intracoastal Waterway or any mooring fields.
- Clarifies the distinction between the provisions that apply to existing anchoring limitation areas and newly established anchoring limitation areas.
- Reverts the definition of “law enforcement officer or agency” to existing law.
- Clarifies that a vessel owner must receive a citation before a vessel may be removed or impounded.

B. Amendments:

None.

1 A bill to be entitled
2 An act relating to anchoring limitation areas;
3 amending s. 327.4108, F.S.; authorizing counties to
4 establish anchoring limitation areas that meet certain
5 requirements; providing that specified established
6 anchoring limitation areas are exempt from specified
7 provisions; specifying size requirements for the
8 anchoring limitation areas; requiring the anchoring
9 limitation areas to be marked with signs and buoys
10 that meet certain requirements; prohibiting vessels
11 from anchoring in such areas for longer than a
12 specified time; defining the term "law enforcement or
13 code enforcement officer or agency"; requiring vessel
14 owners or operators to be allowed to provide specified
15 proof of compliance with certain provisions; providing
16 that vessels with repeat offenses within a specified
17 timeframe shall be declared public nuisances and
18 subject to certain provisions; providing that code
19 enforcement officers or agencies, in addition to law
20 enforcement officers or agencies, will be held
21 harmless for removal actions under certain
22 circumstances; requiring the Fish and Wildlife
23 Conservation Commission to initiate rulemaking by a
24 certain date; reenacting s. 327.73(1)(z), F.S.,
25 relating to noncriminal infractions, to incorporate

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the amendment made to s. 327.4108, F.S., in a reference thereto; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 327.4108, Florida Statutes, is amended to read:

327.4108 Anchoring of vessels in anchoring limitation areas.—

(1) Notwithstanding s. 327.60(2)(f), a county may establish, in accordance with this section, an anchoring limitation area within ~~The following~~ densely populated urban areas, which have narrow state waterways, residential docking facilities, and significant recreational boating traffic. The following areas previously designated as anchoring limitation areas are grandfathered-in anchoring limitation areas for which subsections (2), (3), (6), and (7) do not apply, ~~are designated as anchoring limitation areas:~~

(a) The section of Middle River lying between Northeast 21st Court and the Intracoastal Waterway in Broward County.

(b) Sunset Lake in Miami-Dade County.

(c) The sections of Biscayne Bay in Miami-Dade County lying between:

1. Rivo Alto Island and Di Lido Island.

2. San Marino Island and San Marco Island.

51 3. San Marco Island and Biscayne Island.

52 (2) Each anchoring limitation area must:

53 (a) Be less than 200 acres in size;

54 (b) Comprise less than 10 percent of the county's
55 navigable waterways; and

56 (c) Be clearly marked with all of the following:

57 1. Signs that provide reasonable notice to boaters which
58 identify the duration of time beyond which anchoring is limited
59 and identify the county ordinance with its enacting date by
60 which the anchoring limitation area was created. Any ordinance
61 adopted pursuant to this section may not take effect until
62 reviewed and approved as consistent with this section by the
63 commission.

64 2. Buoys. The county that has created an anchoring
65 limitation area shall install and maintain buoys marking the
66 boundary of the anchoring limitation area.

67 ~~(3)(2) To promote the public's use and enjoyment of the~~
68 ~~designated waterway,~~ Except as provided in subsections (4) ~~(3)~~
69 and (5) ~~(4)~~, a person may not anchor a vessel for more than 30
70 consecutive days in any 6-month ~~at any time during the period~~
71 ~~between one-half hour after sunset and one-half hour before~~
72 ~~sunrise~~ in an anchoring limitation area.

73 (4)(3) Notwithstanding the limitations described in
74 subsection (3) (2), a person may anchor a vessel in an anchoring
75 limitation area:

76 (a) If the vessel suffers a mechanical failure that poses
77 an unreasonable risk of harm to the vessel or the persons
78 onboard unless the vessel anchors. The vessel may anchor for 3
79 business days or until the vessel is repaired, whichever occurs
80 first.

81 (b) If imminent or existing weather conditions in the
82 vicinity of the vessel pose an unreasonable risk of harm to the
83 vessel or the persons onboard unless the vessel anchors. The
84 vessel may anchor until weather conditions no longer pose such
85 risk. During a hurricane or tropical storm, weather conditions
86 are deemed to no longer pose an unreasonable risk of harm when
87 the hurricane or tropical storm warning affecting the area has
88 expired.

89 (c) During events described in s. 327.48 or other special
90 events, including, but not limited to, public music
91 performances, local government waterfront activities, or
92 fireworks displays. A vessel may anchor for the lesser of the
93 duration of the special event or 3 days.

94 (5)~~(4)~~ This section does not apply to:

95 (a) Vessels owned or operated by a governmental entity for
96 law enforcement, firefighting, military, or rescue purposes.

97 (b) Construction or dredging vessels on an active job
98 site.

99 (c) Vessels actively engaged in commercial fishing.

100 (d) Vessels engaged in recreational fishing if the persons

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onboard are actively tending hook and line fishing gear or nets.

(6) (a) ~~(5) (a)~~ As used in this subsection, the term "law enforcement or code enforcement officer or agency" means the Fish and Wildlife Conservation Commission, the county sheriff, the United States Coast Guard, a county code compliance agency, and authorized enforcement personnel of any of the foregoing ~~an officer or agency authorized to enforce this section pursuant to s. 327.70.~~

(b) Upon an inquiry by a law enforcement or code enforcement officer or agency, a vessel owner or operator shall be given an opportunity to provide proof that the vessel has not exceeded the limitations described in subsection (3). Such proof may include any of the following:

1. Documentation showing that the vessel was in another location at least 1 mile away within a period of less than 30 days before the inquiry.

2. Electronic evidence, including, but not limited to, navigational devices or tracking devices that show the vessel was in another location at least 1 mile away within a period of less than 30 days before the inquiry.

(c) ~~(b)~~ If a vessel owner or operator fails or refuses to provide proof that the vessel has not exceeded the limitations prescribed in subsection (3), the ~~a~~ law enforcement or code enforcement officer or agency may remove a vessel from an anchoring limitation area and impound the vessel for up to 48

126 hours, or cause such removal and impoundment, if the vessel
127 operator, after being issued a citation for a violation of this
128 section:

129 1. Anchors the vessel in violation of this section within
130 12 hours after being issued the citation; or

131 2. Refuses to leave the anchoring limitation area after
132 being directed to do so by a law enforcement or code enforcement
133 officer or agency.

134 (d) A vessel that is the subject of more than three
135 violations within 12 months which resulted in dispositions other
136 than acquittal or dismissal shall be declared to be a public
137 nuisance and subject to ss. 705.103 and 823.11.

138 (e)-(e) A law enforcement or code enforcement officer or
139 agency acting under this subsection to remove or impound a
140 vessel, or to cause such removal or impoundment, shall be held
141 harmless for any damage to the vessel resulting from such
142 removal or impoundment unless the damage results from gross
143 negligence or willful misconduct.

144 (f)-(d) A contractor performing removal or impoundment
145 services at the direction of a law enforcement or code
146 enforcement officer or agency pursuant to this subsection must:

147 1. Be licensed in accordance with United States Coast
148 Guard regulations, as applicable.

149 2. Obtain and carry a current policy issued by a licensed
150 insurance carrier in this state to insure against any accident,

151 loss, injury, property damage, or other casualty caused by or
152 resulting from the contractor's actions.

153 3. Be properly equipped to perform such services.

154 (g)~~(e)~~ In addition to the civil penalty imposed under s.
155 327.73(1)(z), the operator of a vessel that is removed and
156 impounded pursuant to paragraph (c) ~~(b)~~ must pay all removal and
157 storage fees before the vessel is released. A vessel removed
158 pursuant to paragraph (c) ~~(b)~~ may not be impounded for longer
159 than 48 hours.

160 (7) The commission shall initiate rulemaking by July 1,
161 2021, to provide criteria and procedures for reviewing
162 applications and procedures for public notice and participation
163 pursuant to this subsection. The rulemaking must include, at a
164 minimum, all of the following:

165 (a) Notice to the public. The Boating and Waterways
166 Section of the Fish and Wildlife Conservation Commission shall
167 provide notice of completed applications received, public
168 meetings or hearings concerning applications, and denial or
169 approval of applications on the section's web page and to all
170 parties listed in the Boating and Waterways Section's public
171 distribution list for ordinances, which any member of the public
172 may join.

173 (b) An opportunity for public participation. Members of
174 the public may provide written comments, recommendations,
175 requests, inquiries, or other correspondence to the Boating and

176 Waterways Section. If a public hearing is requested or a review
177 by the agency head is requested, members of the public may
178 testify at the hearing or commission meeting and may submit
179 relevant and material exhibits to the record of the proceeding.

180 (8)(6) A violation of this section is punishable as
181 provided in s. 327.73(1)(z).

182 ~~(7) This section shall remain in effect notwithstanding~~
183 ~~the Legislature's adoption of the commission's recommendations~~
184 ~~for the regulation of mooring vessels outside of public mooring~~
185 ~~fields pursuant to s. 327.4105.~~

186 Section 2. For the purpose of incorporating the amendment
187 made by this act to section 327.4108, Florida Statutes, in a
188 reference thereto, paragraph (z) of subsection (1) of section
189 327.73, Florida Statutes, is reenacted to read:

190 327.73 Noncriminal infractions.—

191 (1) Violations of the following provisions of the vessel
192 laws of this state are noncriminal infractions:

193 (z) Section 327.4108, relating to the anchoring of vessels
194 in anchoring limitation areas, for which the penalty is:

- 195 1. For a first offense, up to a maximum of \$50.
- 196 2. For a second offense, up to a maximum of \$100.
- 197 3. For a third or subsequent offense, up to a maximum of
198 \$250.

199
200 Any person cited for a violation of any provision of this

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subsection shall be deemed to be charged with a noncriminal infraction, shall be cited for such an infraction, and shall be cited to appear before the county court. The civil penalty for any such infraction is \$50, except as otherwise provided in this section. Any person who fails to appear or otherwise properly respond to a uniform boating citation shall, in addition to the charge relating to the violation of the boating laws of this state, be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect shall be provided at the time such uniform boating citation is issued.

Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1515 Anchoring Limitation Areas

SPONSOR(S): Duggan

TIED BILLS: **IDEN./SIM. BILLS:** SB 1946

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Environment, Agriculture & Flooding Subcommittee		Gawin	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Current law designates certain densely populated urban areas that have narrow state waterways, residential docking facilities, and significant boating traffic as anchoring limitation areas. 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. Anchoring limitation areas are typically enforced by the Division of Law Enforcement of the Fish and Wildlife Conservation Commission (FWC) and its officers, county sheriffs and deputies, and municipal police officers.

The bill authorizes a county to establish an anchoring limitation area within densely populated urban areas that have narrow state waterways, residential docking facilities, and significant recreational boating traffic. The bill specifies that the areas previously designated in statute as anchoring limitation areas are grandfathered-in anchoring limitation areas for which the new requirements established in the bill do not apply.

The bill requires each anchoring limitation area to be less than 200 acres in size, comprise less than 10 percent of the county's navigable waterways, and be clearly marked with buoys and signs that provide reasonable notice of the duration of time beyond which anchoring is limited to boaters. Additionally, the bill specifies that any ordinance establishing an anchoring limitation area may not take effect until reviewed and approved by FWC.

The bill prohibits a person from anchoring a vessel for more than 30 consecutive days in any six-month period in an anchoring limitation area. Upon an inquiry by a law enforcement or code enforcement officer or agency, a vessel owner or operator must be given an opportunity to provide proof that the vessel has not exceeded the 30-day limit. A vessel that is the subject of more than three violations within 12 months that resulted in dispositions other than acquittal or dismissal must be declared to be a public nuisance.

The bill requires FWC to initiate rulemaking by July 1, 2021, to provide criteria and procedures for reviewing applications and procedures for public notice and participation.

The bill may have an indeterminate fiscal impact on the state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Anchoring or Mooring

Anchoring or mooring 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, while mooring uses fixtures, known as moorings, permanently affixed to the bottom of the water body.¹ Anchorages are areas that boaters regularly use for anchoring or mooring, whether designated or managed for that purpose or not. Mooring fields are areas designated and used for a system of properly spaced moorings.²

State Regulation of the Anchoring or Mooring 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 (Board).³ 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.⁴ The Board has adopted rules regulating the construction of mooring and docking structures on such lands,⁵ but 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.⁶ Anchoring under bridges or in or adjacent to heavily traveled channels constitutes interference, if unreasonable under the prevailing circumstances.⁷ Interference with navigation is a noncriminal infraction and punishable by a fine of \$50.⁸

With certain exceptions, the owner or operator of a vessel or floating structure may not anchor or moor 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.⁹

Additionally, the owner or operator of a vessel or floating structure may not anchor or moor within the marked boundary of a public mooring field unless the owner or operator has a lawful right to do so by contractual agreement or other business arrangement.¹⁰

An owner or operator of a vessel may anchor or moor within 150 feet of any marina, boat ramp, boatyard, or other 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 if:

¹ Ankersen, Hamann, & Flagg, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, 2 (March 2011), available at https://www.cityofmarcoisland.com/sites/default/files/fileattachments/administration/page/7491/anchoring_away_03_09_11_full_web_3.pdf (last visited Mar. 12, 2021).

² *Id.*

³ Section 253.03(1), F.S.

⁴ Section 253.03(7), F.S.

⁵ See ch. 18-21, F.A.C.

⁶ Section 327.44(2), F.S.

⁷ *Id.*

⁸ Section 327.73(j), F.S.

⁹ Section 327.4109(1), F.S.

¹⁰ Section 327.4109(3), F.S.

- The vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard the vessel. The owner or operator of the vessel may anchor or moor for five business days or until the vessel is repaired, whichever occurs first.
- Imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard the vessel. The owner or operator of the vessel may anchor or moor until weather conditions no longer pose such risk.¹¹

A vessel or floating structure may not be anchored, moored, or affixed to an unpermitted, unauthorized, or otherwise unlawful object that is on or affixed to the bottom of state waters. This does not apply to a mooring owned by a private individual or entity who owns submerged lands.¹²

Local Regulation of the Anchoring or Mooring of Vessels

Local governments are authorized by general permit to construct, operate, and maintain public mooring fields, each for up to 100 vessels.¹³ Mooring fields must be located in areas where navigational access already exists between the mooring field and the nearest customarily used access channel or navigable waters that the mooring field is designed to serve. Each mooring field must be associated with a land-based support facility that provides amenities and conveniences, such as parking, bathrooms, showers, and laundry facilities. Major boat repairs and maintenance, fueling activities other than from the land-based support facility, and boat hull scraping and painting are not authorized within mooring fields.¹⁴

Local governments are further authorized to enact and enforce ordinances that prohibit or restrict the mooring or anchoring of floating structures¹⁵ or live-aboard vessels¹⁶ within their jurisdictions and vessels that are within the marked boundaries of permitted mooring fields.¹⁷ 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.¹⁸

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.¹⁹ 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.²⁰

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.²¹ However, a person may anchor in an anchoring limitation area if:

¹¹ Section 327.4109(2), F.S.

¹² Section 327.4019(4), F.S.

¹³ Section 373.118, F.S.; r. 62-330.420(1), F.A.C.

¹⁴ Rule 62-330.420, F.A.C.

¹⁵ 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.

¹⁶ 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.

¹⁷ Section 327.60(2)(f), F.S.

¹⁸ Section 327.60(3), F.S.

¹⁹ Section 327.4108, F.S.

²⁰ Section 327.4108(1), F.S.

²¹ 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,²² or other special event, including, but not limited to, public music performances, local government waterfront activities, or a fireworks display.²³

Anchoring limitation areas are typically enforced by the Division of Law Enforcement of the Fish and Wildlife Conservation Commission (FWC) and its officers, county sheriffs and deputies, and municipal police officers.²⁴ 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.²⁵

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.²⁶

Effect of the Bill

The bill authorizes a county to establish an anchoring limitation area within densely populated urban areas that have narrow state waterways, residential docking facilities, and significant recreational boating traffic. The bill specifies that the areas previously designated in statute as anchoring limitation areas are grandfathered-in anchoring limitation areas for which the new requirements established in the bill do not apply.

The bill requires each anchoring limitation area established by a county to be less than 200 acres in size, comprise less than 10 percent of the county's navigable waterways, and be clearly marked with:

- Signs that provide reasonable notice to boaters, identifying the duration of time beyond which anchoring is limited and the county ordinance that created the anchoring limitation area.
- Buoys installed and maintained by the county that mark the boundary of the anchoring limitation area.

The bill prohibits a person from anchoring a vessel for more than 30 consecutive days in any six month period in an anchoring limitation area. In addition, the bill specifies that any ordinance adopted by a county to establish an anchoring limitation area may not take effect until reviewed and approved by FWC.

The bill defines the term "law enforcement or code enforcement officer or agency" to mean FWC, the county sheriff, the U.S. Coast Guard, a county code compliance agency, and authorized enforcement personnel of any of the foregoing.

Upon an inquiry by a law enforcement or code enforcement officer or agency, the bill requires a vessel owner or operator to be given an opportunity to provide proof that the vessel has not exceeded the 30-day limit on anchoring in an anchoring limitation area. The bill specifies that such proof may include:

- Documentation showing that the vessel was in another location at least one mile away within a period of less than 30 days before the inquiry.

²² Section 327.48, F.S.

²³ Section 327.4108(3), F.S.

²⁴ Section 327.70(1), F.S.

²⁵ Section 327.4108(5)(b), F.S.

²⁶ Section 327.4108(4), F.S.

- Electronic evidence, including, but not limited to, navigational devices or tracking devices that show the vessel was in another location at least one mile away within a period of less than 30 days before the inquiry.

The bill specifies that a vessel that is the subject of more than three violations within 12 months that resulted in dispositions other than acquittal or dismissal must be declared to be a public nuisance.

The bill requires FWC to initiate rulemaking by July 1, 2021, to provide criteria and procedures for reviewing applications and procedures for public notice and participation. The bill specifies the rulemaking must include, at a minimum:

- Notice to the public. The Boating and Waterways Section of FWC must provide notice of completed applications received, public meetings or hearings concerning applications, and denial or approval of applications on the section's website and to all parties listed in the Boating and Waterways Section's public distribution list for ordinances, which any member of the public may join.
- An opportunity for public participation. The bill authorizes members of the public to provide written comments, recommendations, requests, inquiries, or other correspondence to the Boating and Waterways Section. If a public hearing is requested or a review by the agency head is requested, members of the public may testify at the hearing or commission meeting and may submit relevant and material exhibits to the record of the proceeding.

The exemptions that currently exist in statute to allow vessels to be anchored in the statutorily designated anchoring limitation areas when necessary due to mechanical failure or weather or for certain special events also apply to anchoring limitation areas designated by counties. In addition, certain vessels that are currently exempt from restrictions related to the anchoring limitation areas designated in statute are also exempt from restrictions related to anchoring limitation areas designated by counties.

B. SECTION DIRECTORY:

Section 1. Amends s. 327.4108, F.S., relating to anchoring of vessels in anchoring limitation areas.

Section 2. Reenacts s. 327.73, F.S., relating to noncriminal infractions.

Section 3. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate positive fiscal impact on state revenue associated with the collection of penalties for violating restrictions related to anchoring limitation areas if counties establish such areas and receive approval from FWC.

2. Expenditures:

The bill may have an indeterminate insignificant negative fiscal impact on FWC related to the costs associated with the rulemaking requirements of the bill. These costs can be absorbed through current resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on counties that choose to establish anchoring limitation areas associated with the cost of erecting signs and maintaining buoys to designate the anchoring limitation areas.

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 expenditures 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 requires FWC to adopt rules to provide criteria and procedures for reviewing applications and procedures for public notice and participation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1515 (2021)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)

ADOPTED AS AMENDED _____ (Y/N)

ADOPTED W/O OBJECTION _____ (Y/N)

FAILED TO ADOPT _____ (Y/N)

WITHDRAWN _____ (Y/N)

OTHER _____

Committee/Subcommittee hearing bill: Environment, Agriculture &
Flooding Subcommittee

Representative Duggan offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 327.4108, Florida Statutes, is amended
to read:

327.4108 Anchoring of vessels in anchoring limitation
areas.—

(1) (a) The following densely populated urban areas, which
have narrow state waterways, residential docking facilities, and
significant recreational boating traffic, are designated as
anchoring limitation areas:

1.-(a) The section of Middle River lying between Northeast
21st Court and the Intracoastal Waterway in Broward County.

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17 ~~2.(b)~~ Sunset Lake in Miami-Dade County.

18 ~~3.(e)~~ The sections of Biscayne Bay in Miami-Dade County
19 lying between:

20 ~~a.1.~~ Rivo Alto Island and Di Lido Island.

21 ~~b.2.~~ San Marino Island and San Marco Island.

22 ~~c.3.~~ San Marco Island and Biscayne Island.

23 ~~(b)(2)~~ To promote the public's use and enjoyment of the
24 designated waterway, except as provided in subsections (3) and
25 (4), a person may not anchor a vessel at any time during the
26 period between one-half hour after sunset and one-half hour
27 before sunrise in an anchoring limitation area under this
28 subsection.

29 (2)(a) Notwithstanding s. 327.60(2)(f), a county may
30 establish, in accordance with this subsection, an anchoring
31 limitation area within densely populated urban areas, which have
32 narrow state waterways, residential docking facilities, and
33 significant recreational boating traffic. The aggregate total of
34 anchoring limitation areas in a county may not exceed 10 percent
35 of the county's navigable waterways. Each anchoring limitation
36 area must meet all of the following requirements:

37 1. Be less than 100 acres in size. For purposes of this
38 subsection, the calculated size of the anchoring limitation area
39 does not include any portion of the marked channel of the
40 Florida Intracoastal Waterway contiguous to the anchoring
41 limitation area;

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42 2. Not include any mooring fields; and

43 3. Be clearly marked with all of the following:

44 a. Signs that provide reasonable notice to boaters
45 identifying the duration of time beyond which anchoring is
46 limited and identifying the county ordinance with its enacting
47 date by which the anchoring limitation area was created. Any
48 ordinance adopted pursuant to this section may not take effect
49 until reviewed and approved as consistent with this section by
50 the commission.

51 b. Buoys. The county that has created an anchoring
52 limitation area shall install and maintain buoys marking the
53 boundary of the anchoring limitation area.

54 (b) Except as provided in subsections (3) and (4), a
55 person may not anchor a vessel for more than 30 consecutive days
56 in any 6-month period in an anchoring limitation area under this
57 subsection.

58 (3) Notwithstanding subsections (1) and ~~subsection~~ (2), a
59 person may anchor a vessel in an anchoring limitation area:

60 (a) If the vessel suffers a mechanical failure that poses
61 an unreasonable risk of harm to the vessel or the persons
62 onboard unless the vessel anchors. The vessel may anchor for 3
63 business days or until the vessel is repaired, whichever occurs
64 first.

65 (b) If imminent or existing weather conditions in the
66 vicinity of the vessel pose an unreasonable risk of harm to the

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67 vessel or the persons onboard unless the vessel anchors. The
68 vessel may anchor until weather conditions no longer pose such
69 risk. During a hurricane or tropical storm, weather conditions
70 are deemed to no longer pose an unreasonable risk of harm when
71 the hurricane or tropical storm warning affecting the area has
72 expired.

73 (c) During events described in s. 327.48 or other special
74 events, including, but not limited to, public music
75 performances, local government waterfront activities, or
76 fireworks displays. A vessel may anchor for the lesser of the
77 duration of the special event or 3 days.

78 (4) This section does not apply to:

79 (a) Vessels owned or operated by a governmental entity for
80 law enforcement, firefighting, military, or rescue purposes.

81 (b) Construction or dredging vessels on an active job
82 site.

83 (c) Vessels actively engaged in commercial fishing.

84 (d) Vessels engaged in recreational fishing if the persons
85 onboard are actively tending hook and line fishing gear or nets.

86 (5)(a) As used in this subsection, the term "law
87 enforcement officer or agency" means an officer or agency
88 authorized to enforce this section pursuant to s. 327.70.

89 (b)1. For a vessel in an anchoring limitation area under
90 subsection (2), upon an inquiry by a law enforcement officer or
91 agency, a vessel owner or operator must be given an opportunity

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92 to provide proof that the vessel has not exceeded the
93 limitations described in subsection (2). Such proof may include
94 any of the following:

95 a. Documentation showing that the vessel was in another
96 location at least 1 mile away within a period of less than 30
97 days before the inquiry.

98 b. Electronic evidence, including, but not limited to,
99 navigational devices or tracking devices that show the vessel
100 was in another location at least 1 mile away within a period of
101 less than 30 days before the inquiry.

102 2. If a vessel owner or operator fails or refuses to
103 provide proof that the vessel has not exceeded the limitations
104 described in subsection (2), the law enforcement officer or
105 agency may issue a citation for a violation of this section.

106 (c) ~~(b)~~ A law enforcement officer or agency may remove a
107 vessel from an anchoring limitation area under subsection (1) or
108 (2) and impound the vessel for up to 48 hours, or cause such
109 removal and impoundment, if the vessel operator, after being
110 issued a citation for a violation of this section:

111 1. Anchors the vessel in violation of this section within
112 12 hours after being issued the citation; or

113 2. Refuses to leave the anchoring limitation area after
114 being directed to do so by a law enforcement officer or agency.

115 (d) A vessel that is the subject of more than three
116 violations within 12 months which resulted in dispositions other

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117 than acquittal or dismissal shall be declared to be a public
118 nuisance and subject to s. 705.103, and for a derelict vessel,
119 subject to s. 823.11.

120 (e)~~(e)~~ A law enforcement officer or agency acting under
121 this subsection to remove or impound a vessel, or to cause such
122 removal or impoundment, shall be held harmless for any damage to
123 the vessel resulting from such removal or impoundment unless the
124 damage results from gross negligence or willful misconduct.

125 (f)~~(d)~~ A contractor performing removal or impoundment
126 services at the direction of a law enforcement officer or agency
127 pursuant to this subsection must:

128 1. Be licensed in accordance with United States Coast
129 Guard regulations, as applicable.

130 2. Obtain and carry a current policy issued by a licensed
131 insurance carrier in this state to insure against any accident,
132 loss, injury, property damage, or other casualty caused by or
133 resulting from the contractor's actions.

134 3. Be properly equipped to perform such services.

135 (g)~~(e)~~ In addition to the civil penalty imposed under s.
136 327.73(1)(z), the operator of a vessel that is removed and
137 impounded pursuant to paragraph (c)~~(b)~~ must pay all removal and
138 storage fees before the vessel is released. A vessel removed
139 pursuant to paragraph (c)~~(b)~~ may not be impounded for longer
140 than 48 hours.

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141 (6) The commission shall initiate rulemaking by July 1,
142 2021, to provide criteria and procedures for reviewing
143 applications to establish an anchoring limitation area under
144 subsection (2) and procedures for public notice and
145 participation pursuant to this subsection. The rulemaking must
146 include, at a minimum, all of the following:

147 (a) Notice to the public. The Boating and Waterways
148 Section of the Fish and Wildlife Conservation Commission shall
149 provide notice of completed applications received, public
150 meetings or hearings concerning applications, and denial or
151 approval of applications on the section's web page and to all
152 parties listed in the Boating and Waterways Section's public
153 distribution list for ordinances, which any member of the public
154 may join.

155 (b) An opportunity for public participation. Members of
156 the public may provide written comments, recommendations,
157 requests, inquiries, or other correspondence to the Boating and
158 Waterways Section. If a public hearing or a review by the agency
159 head is requested, members of the public may testify at the
160 hearing or commission meeting and may submit relevant and
161 material exhibits to the record of the proceeding.

162 (7)-(6) A violation of this section is punishable as
163 provided in s. 327.73(1)(z).

164 ~~(7) This section shall remain in effect notwithstanding~~
165 ~~the Legislature's adoption of the commission's recommendations~~

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~~for the regulation of mooring vessels outside of public mooring fields pursuant to s. 327.4105.~~

Section 2. For the purpose of incorporating the amendment made by this act to section 327.4108, Florida Statutes, in a reference thereto, paragraph (z) of subsection (1) of section 327.73, Florida Statutes, is reenacted to read:

327.73 Noncriminal infractions.—

(1) Violations of the following provisions of the vessel laws of this state are noncriminal infractions:

(z) Section 327.4108, relating to the anchoring of vessels in anchoring limitation areas, for which the penalty is:

1. For a first offense, up to a maximum of \$50.
2. For a second offense, up to a maximum of \$100.
3. For a third or subsequent offense, up to a maximum of \$250.

Any person cited for a violation of any provision of this subsection shall be deemed to be charged with a noncriminal infraction, shall be cited for such an infraction, and shall be cited to appear before the county court. The civil penalty for any such infraction is \$50, except as otherwise provided in this section. Any person who fails to appear or otherwise properly respond to a uniform boating citation shall, in addition to the charge relating to the violation of the boating laws of this state, be charged with the offense of failing to respond to such

Amendment No.

191 citation and, upon conviction, be guilty of a misdemeanor of the
192 second degree, punishable as provided in s. 775.082 or s.
193 775.083. A written warning to this effect shall be provided at
194 the time such uniform boating citation is issued.

195 Section 3. This act shall take effect upon becoming a law.
196

197 -----

198 **T I T L E A M E N D M E N T**

199 Remove everything before the enacting clause and insert:
200 An act relating to anchoring limitation areas; amending s.
201 327.4108, F.S.; authorizing counties to establish anchoring
202 limitation areas that meet certain requirements; providing
203 that specified established anchoring limitation areas are
204 exempt from specified provisions; specifying size
205 requirements for the anchoring limitation areas; requiring
206 the anchoring limitation areas to be marked with signs and
207 buoys that meet certain requirements; prohibiting vessels
208 from anchoring in such areas for longer than a specified
209 time; requiring vessel owners or operators to be allowed to
210 provide specified proof of compliance with certain
211 provisions; providing that vessels with repeat offenses
212 within a specified timeframe shall be declared public
213 nuisances and subject to certain provisions; requiring the
214 Fish and Wildlife Conservation Commission to initiate
215 rulemaking by a certain date; providing requirements for

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1515 (2021)

Amendment No.

216 | such rulemaking; reenacting s. 327.73(1)(z), F.S., relating
217 | to noncriminal infractions, to incorporate the amendment
218 | made to s. 327.4108, F.S., in a reference thereto;
219 | providing an effective date.

By the Committee on Environment and Natural Resources; and
Senator Hutson

592-02886-21

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A bill to be entitled
An act relating to operation and safety of motor
vehicles and vessels; amending ss. 316.1932 and
316.1939, F.S.; revising conditions under which a
person's driving privilege is suspended and under
which the person commits a misdemeanor relating to
tests for alcohol, chemical substances, or controlled
substances; specifying such misdemeanor as a
misdemeanor of the first degree; amending s. 327.02,
F.S.; defining the term "human-powered vessel";
revising the definition of the term "navigation
rules"; amending s. 327.04, F.S.; providing additional
rulemaking authority to the Fish and Wildlife
Conservation Commission; creating s. 327.462, F.S.;
defining terms; authorizing heads of certain entities
to establish temporary protection zones in certain
water bodies for certain purposes; providing
protection zone requirements; requiring reports of
establishment of such protection zones to the
commission and to the appropriate United States Coast
Guard Sector Command; providing report requirements;
providing applicability; providing penalties; amending
ss. 327.352 and 327.359, F.S.; revising conditions
under which a person commits a misdemeanor the first
degree for refusing to submit to certain tests;
creating s. 327.371, F.S.; providing circumstances
under which a person may operate a human-powered
vessel within the boundaries of the marked channel of
the Florida Intracoastal Waterway; providing a

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penalty; amending s. 327.391, F.S.; conforming cross-
references; amending s. 327.395, F.S.; removing
authority of the commission to appoint certain
entities to administer a boating safety education
course or temporary certificate examination and issue
certain credentials; exempting certain persons from
the requirement to possess certain documents aboard a
vessel; amending s. 327.4107, F.S.; revising the
conditions under which officers may determine a vessel
is at risk of becoming derelict; authorizing certain
officers to provide notice that a vessel is at risk of
becoming derelict via body camera recordings;
authorizing the commission or certain officers to
relocate at-risk vessels to a certain distance from
mangroves or vegetation; providing that the commission
or officers are not liable for damages to such
vessels; providing an exception; authorizing the
commission to establish a derelict vessel prevention
program consisting of certain components; authorizing
the commission to adopt rules; providing that such
program is subject to appropriation by the
Legislature; providing for funding; amending s.
327.4108, F.S.; designating Monroe County as an
anchoring limitation area subject to certain
requirements; requiring the commission to adopt rules;
providing applicability; deleting obsolete language;
amending s. 327.4109, F.S.; prohibiting the anchoring
or mooring of a vessel or floating structure within a
certain distance of certain facilities; providing

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exceptions; amending s. 327.45, F.S.; authorizing the commission to establish protection zones where certain activities are prohibited in or near springs; amending s. 327.46, F.S.; authorizing a county or municipality to establish a boating-restricted area within and around a public mooring field and within certain portions of the Florida Intracoastal Waterway; providing an exception with respect to a certain vessel-exclusion zone; creating s. 327.463, F.S.; specifying conditions under which a vessel is and is not operating at slow speed, minimum wake; prohibiting a person from operating a vessel faster than slow speed, minimum wake within a certain distance from other specified vessels; exempting a person from being cited for a violation under certain circumstances; providing penalties; providing applicability; amending s. 327.50, F.S.; authorizing the commission to exempt vessel owners and operators from certain safety equipment requirements; amending s. 327.53, F.S.; requiring the owner or operator of a live-aboard vessel or houseboat equipped with a marine sanitation device to maintain a record of the date and location of each pumpout of the device for a certain period; conforming a cross-reference; making technical changes; amending s. 327.54, F.S.; prohibiting a livery from leasing, hiring, or renting a vessel to a person required to complete a commission-approved boating safety education course unless such person presents certain documentation indicating compliance;

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amending s. 327.60, F.S.; authorizing a local government to enact and enforce regulations allowing the local law enforcement agency to remove an abandoned or lost vessel affixed to a public mooring; amending s. 327.73, F.S.; providing additional violations that qualify as noncriminal infractions; providing civil penalties; prohibiting conviction of a person cited for a violation relating to possessing proof of boating safety education under certain circumstances; increasing certain civil penalties; providing that certain vessels shall be declared a public nuisance subject to certain statutory provisions; authorizing the commission or certain officers to relocate or remove public nuisance vessels from the waters of this state; providing that the commission or officers are not liable for damages to such vessels; providing an exception; amending s. 328.09, F.S.; prohibiting the Department of Highway Safety and Motor Vehicles from issuing a certificate of title to an applicant for a vessel that has been deemed derelict pursuant to certain provisions; authorizing the department, at a later date, to reject an application for a certificate of title for such a vessel; amending s. 376.15, F.S.; revising unlawful acts relating to derelict vessels; defining the term "leave"; prohibiting an owner or operator whose vessel becomes derelict due to specified accidents or events from being charged with a violation under certain circumstances; providing applicability; conforming

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provisions to changes made by the act; authorizing a governmental subdivision that has received authorization from a law enforcement officer or agency to direct a contractor to perform vessel storage, destruction, and disposal activities; authorizing the commission to provide local government grants for the storage, destruction, and disposal of derelict vessels; providing for funding; amending s. 705.103, F.S.; providing notice procedures for when a law enforcement officer ascertains that a derelict or public nuisance vessel is present on the waters of this state; requiring a mailed notice to the owner or party responsible for the vessel to inform him or her of the right to a hearing; providing hearing requirements; authorizing a law enforcement agency to take certain actions if a hearing is not requested or a vessel is determined to be derelict or otherwise in violation of law; revising provisions relating to liability for vessel removal costs and notification of the amount owed; providing penalties for a person who is issued a registration for a vessel or motor vehicle before such costs are paid; requiring persons whose vessel registration and motor vehicle privileges have been revoked for failure to pay certain costs to be reported to the department; prohibiting issuance of a certificate of registration to such persons until such costs are paid; amending s. 823.11, F.S.; revising application of definitions; revising the definition of the term "derelict vessel"; specifying requirements

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for a vessel to be considered wrecked, junked, or substantially dismantled; providing construction; revising unlawful acts relating to derelict vessels; defining the term "leave"; prohibiting an owner or operator whose vessel becomes derelict due to specified accidents or events from being charged with a violation under certain circumstances; providing applicability; providing that relocation or removal costs incurred by a governmental subdivision are recoverable against the vessel owner or the party determined to be legally responsible for the vessel being derelict; providing penalties for a person who is issued a registration for a vessel or motor vehicle before such costs are paid; authorizing a governmental subdivision that has received authorization from a law enforcement officer or agency to direct a contractor to perform vessel relocation or removal activities; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (a) and (c) of subsection (1) of section 316.1932, Florida Statutes, are amended to read:

316.1932 Tests for alcohol, chemical substances, or controlled substances; implied consent; refusal.—

(1)(a)1.a. A ~~Any~~ person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by ~~so~~ operating such vehicle, deemed to have given his or her consent to submit to an approved chemical test

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or physical test including, but not limited to, an infrared light test of his or her breath for the purpose of determining the alcoholic content of his or her blood or breath if the person is lawfully arrested for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic beverages. The chemical or physical breath test must be incidental to a lawful arrest and administered at the request of a law enforcement officer who has reasonable cause to believe such person was driving or was in actual physical control of the motor vehicle within this state while under the influence of alcoholic beverages. The administration of a breath test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her breath will result in the suspension of the person's privilege to operate a motor vehicle for a period of 1 year for a first refusal, or for a period of 18 months if the driving privilege of such person has been previously suspended or if he or she has previously been fined under s. 327.35215 as a result of a refusal to submit to ~~such a~~ test or tests required under this chapter or chapter 327, and shall also be told that if he or she refuses to submit to a lawful test of his or her breath and his or her driving privilege has been previously suspended or if he or she has previously been fined under s. 327.35215 for a prior refusal to submit to a lawful test of his or her breath, urine, or blood as required under this chapter or chapter 327, he or she commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, in addition to any other penalties

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204 provided by law. The refusal to submit to a chemical or physical
205 breath test upon the request of a law enforcement officer as
206 provided in this section is admissible into evidence in any
207 criminal proceeding.

208 b. A ~~Any~~ person who accepts the privilege extended by the
209 laws of this state of operating a motor vehicle within this
210 state is, by ~~se~~ operating such vehicle, deemed to have given his
211 or her consent to submit to a urine test for the purpose of
212 detecting the presence of chemical substances as set forth in s.
213 877.111 or controlled substances if the person is lawfully
214 arrested for any offense allegedly committed while the person
215 was driving or was in actual physical control of a motor vehicle
216 while under the influence of chemical substances or controlled
217 substances. The urine test must be incidental to a lawful arrest
218 and administered at a detention facility or any other facility,
219 mobile or otherwise, which is equipped to administer such tests
220 at the request of a law enforcement officer who has reasonable
221 cause to believe such person was driving or was in actual
222 physical control of a motor vehicle within this state while
223 under the influence of chemical substances or controlled
224 substances. The urine test shall be administered at a detention
225 facility or any other facility, mobile or otherwise, which is
226 equipped to administer such test in a reasonable manner that
227 will ensure the accuracy of the specimen and maintain the
228 privacy of the individual involved. The administration of a
229 urine test does not preclude the administration of another type
230 of test. The person shall be told that his or her failure to
231 submit to any lawful test of his or her urine will result in the
232 suspension of the person's privilege to operate a motor vehicle

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for a period of 1 year for the first refusal, or for a period of 18 months if the driving privilege of such person has been previously suspended or if he or she has previously been fined under s. 327.35215 as a result of a refusal to submit to ~~such~~ a test or tests required under this chapter or chapter 327, and shall also be told that if he or she refuses to submit to a lawful test of his or her urine and his or her driving privilege has been previously suspended or if he or she has previously been fined under s. 327.35215 for a prior refusal to submit to a lawful test of his or her breath, urine, or blood as required under this chapter or chapter 327, he or she commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, in addition to any other penalties provided by law. The refusal to submit to a urine test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

2. The Alcohol Testing Program within the Department of Law Enforcement is responsible for the regulation of the operation, inspection, and registration of breath test instruments utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327. The program is responsible for the regulation of the individuals who operate, inspect, and instruct on the breath test instruments utilized in the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327. The program is further responsible for the regulation of blood analysts who conduct blood testing to be utilized under the driving and boating under the influence provisions and related provisions located in this

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chapter and chapters 322 and 327. The program shall:

a. Establish uniform criteria for the issuance of permits to breath test operators, agency inspectors, instructors, blood analysts, and instruments.

b. Have the authority to permit breath test operators, agency inspectors, instructors, blood analysts, and instruments.

c. Have the authority to discipline and suspend, revoke, or renew the permits of breath test operators, agency inspectors, instructors, blood analysts, and instruments.

d. Establish uniform requirements for instruction and curricula for the operation and inspection of approved instruments.

e. Have the authority to specify one approved curriculum for the operation and inspection of approved instruments.

f. Establish a procedure for the approval of breath test operator and agency inspector classes.

g. Have the authority to approve or disapprove breath test instruments and accompanying paraphernalia for use pursuant to the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327.

h. With the approval of the executive director of the Department of Law Enforcement, make and enter into contracts and agreements with other agencies, organizations, associations, corporations, individuals, or federal agencies as are necessary, expedient, or incidental to the performance of duties.

i. Issue final orders which include findings of fact and conclusions of law and which constitute final agency action for the purpose of chapter 120.

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291 j. Enforce compliance with ~~the provisions of~~ this section
292 through civil or administrative proceedings.

293 k. Make recommendations concerning any matter within the
294 purview of this section, this chapter, chapter 322, or chapter
295 327.

296 l. Promulgate rules for the administration and
297 implementation of this section, including definitions of terms.

298 m. Consult and cooperate with other entities for the
299 purpose of implementing the mandates of this section.

300 n. Have the authority to approve the type of blood test
301 utilized under the driving and boating under the influence
302 provisions and related provisions located in this chapter and
303 chapters 322 and 327.

304 o. Have the authority to specify techniques and methods for
305 breath alcohol testing and blood testing utilized under the
306 driving and boating under the influence provisions and related
307 provisions located in this chapter and chapters 322 and 327.

308 p. Have the authority to approve repair facilities for the
309 approved breath test instruments, including the authority to set
310 criteria for approval.

311
312 Nothing in this section shall be construed to supersede
313 provisions in this chapter and chapters 322 and 327. The
314 specifications in this section are derived from the power and
315 authority previously and currently possessed by the Department
316 of Law Enforcement and are enumerated to conform with the
317 mandates of chapter 99-379, Laws of Florida.

318 (c) A ~~Any~~ person who accepts the privilege extended by the
319 laws of this state of operating a motor vehicle within this

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state is, by operating such vehicle, deemed to have given his or her consent to submit to an approved blood test for the purpose of determining the alcoholic content of the blood or a blood test for the purpose of determining the presence of chemical substances or controlled substances as provided in this section if there is reasonable cause to believe the person was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages or chemical or controlled substances and the person appears for treatment at a hospital, clinic, or other medical facility and the administration of a breath or urine test is impractical or impossible. As used in this paragraph, the term "other medical facility" includes an ambulance or other medical emergency vehicle. The blood test shall be performed in a reasonable manner. A ~~Any~~ person who is incapable of refusal by reason of unconsciousness or other mental or physical condition is deemed not to have withdrawn his or her consent to such test. A blood test may be administered whether or not the person is told that his or her failure to submit to such a blood test will result in the suspension of the person's privilege to operate a motor vehicle upon the public highways of this state and that a refusal to submit to a lawful test of his or her blood, if his or her driving privilege has been previously suspended for refusal to submit to a lawful test of his or her breath, urine, or blood, is a misdemeanor. A ~~Any~~ person who is capable of refusal shall be told that his or her failure to submit to such a blood test will result in the suspension of the person's privilege to operate a motor vehicle for a period of 1 year for a first refusal, or for a period of 18 months if the driving privilege of the person has been

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suspended previously or if he or she has previously been fined
under s. 327.35215 as a result of a refusal to submit to ~~such a~~
test or tests required under this chapter or chapter 327, and
~~that a refusal to submit to a lawful test of his or her blood,~~
~~if his or her driving privilege has been previously suspended~~
~~for a prior refusal to submit to a lawful test of his or her~~
~~breath, urine, or blood, is a misdemeanor.~~ The refusal to submit
to a blood test upon the request of a law enforcement officer is
admissible in evidence in any criminal proceeding.

Section 2. Subsection (1) of section 316.1939, Florida
Statutes, is amended to read:

316.1939 Refusal to submit to testing; penalties.—

(1) ~~A~~ Any person who has refused to submit to a chemical or
physical test of his or her breath, ~~blood,~~ or urine, as
described in s. 316.1932, and whose driving privilege was
previously suspended or who was previously fined under s.
327.35215 for a prior refusal to submit to a lawful test of his
or her breath, urine, or blood required under this chapter or
chapter 327, and:

(a) Who the arresting law enforcement officer had probable
cause to believe was driving or in actual physical control of a
motor vehicle in this state while under the influence of
alcoholic beverages, chemical substances, or controlled
substances;

(b) Who was placed under lawful arrest for a violation of
s. 316.193 unless such test was requested pursuant to s.
316.1932(1)(c);

(c) Who was informed that, if he or she refused to submit
to such test, his or her privilege to operate a motor vehicle

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would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months;

(d) Who was informed that a refusal to submit to a lawful test of his or her breath or, urine, ~~or blood~~, if his or her driving privilege has been previously suspended or if he or she has previously been fined under s. 327.35215 for a prior refusal to submit to a lawful test of his or her breath, urine, or blood as required under this chapter or chapter 327, is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, in addition to any other penalties provided by law; and

(e) Who, after having been so informed, refused to submit to any such test when requested to do so by a law enforcement officer or correctional officer

commits a misdemeanor of the first degree and is subject to punishment as provided in s. 775.082 or s. 775.083.

Section 3. Present subsections (18) through (47) of section 327.02, Florida Statutes, are redesignated as subsections (19) through (48), respectively, a new subsection (18) is added to that section, and present subsection (31) of that section is amended, to read:

327.02 Definitions.—As used in this chapter and in chapter 328, unless the context clearly requires a different meaning, the term:

(18) "Human-powered vessel" means a vessel powered only by its occupant or occupants, including, but not limited to, a vessel powered only by the occupants' hands or feet, oars, or paddles.

(32)~~(31)~~ "Navigation rules" means, for vessels on:

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(a) Waters outside established navigational lines of demarcation as specified in 33 C.F.R. part 80, the International Navigational Rules Act of 1977, 33 U.S.C. s. 1602, as amended, including the appendix and annexes thereto, through December 31, 2020 ~~October 1, 2012~~.

(b) All waters not outside of such established lines of demarcation, the Inland Navigational Rules Act of 1980, 33 C.F.R. parts 83-90, as amended, through December 31, 2020 ~~October 1, 2012~~.

Section 4. Section 327.04, Florida Statutes, is amended to read:

327.04 Rules.—The commission may ~~has authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54 to implement ~~the provisions of this chapter,~~ the provisions of chapter 705 relating to vessels, and ss. 376.15 and 823.11 conferring powers or duties upon it.

Section 5. Section 327.462, Florida Statutes, is created to read:

327.462 Temporary protection zones for spaceflight launches and recovery of spaceflight assets.—

(1) As used in this section, the term:

(a) "Launch services" means the conduct of a launch and activities involved in the preparation of a launch vehicle, payload, government astronaut, commercial astronaut, or spaceflight participant for such launch.

(b) "Reentry services" means the conduct of a reentry and activities involved in the preparation of a reentry vehicle, payload, government astronaut, commercial astronaut, or spaceflight participant for such reentry.

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436 (c) "Spaceflight assets" means any item, or any part of an
437 item, owned by a spaceflight entity which is used in launch
438 services or reentry services, including crewed and uncrewed
439 spacecraft, launch vehicles, parachutes and other landing aids,
440 and any spacecraft or ancillary equipment that was attached to
441 the launch vehicle during launch, orbit, or reentry.

442 (d) "Spaceflight entity" has the same meaning as provided
443 in s. 331.501.

444 (2) The head of a law enforcement agency or entity
445 identified in s. 327.70(1), or his or her designee, may, upon
446 waters of this state within the law enforcement agency's or
447 entity's jurisdiction, when necessary for preparations in
448 advance of a launch service or reentry service or for the
449 recovery of spaceflight assets before or after a launch service
450 or reentry service, temporarily establish a protection zone
451 requiring vessels to leave, or prohibiting vessels from
452 entering, water bodies within:

453 (a) Five hundred yards of where launch services, reentry
454 services, or spaceflight asset recovery operations are being
455 conducted; or

456 (b) A distance greater than provided in paragraph (a) if
457 the head of such law enforcement agency or entity, or his or her
458 designee, determines such greater distance is in the best
459 interest of public safety.

460 (3) A protection zone established under subsection (2) may
461 remain in effect only as long as necessary to ensure security
462 around the launch and recovery areas and to recover spaceflight
463 assets and any personnel being transported within a spacecraft
464 following the launch or reentry activity. Such protection zone

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465 may not be in place more than 72 hours before or 72 hours after
466 the launch. The head of a law enforcement agency or entity
467 identified in s. 327.70(1), or his or her designee, may also
468 restrict vessels from operating within up to 500 yards of any
469 vessel transporting recovered spaceflight assets following a
470 spaceflight launch or reentry while such vessel is continuously
471 underway transporting such assets to a location for removal from
472 the waters of this state.

473 (4) The head of a law enforcement agency or entity
474 establishing a protection zone under this section, or his or her
475 designee, must report the establishment of such protection zone
476 via e-mail to the commission's Division of Law Enforcement,
477 Boating and Waterways Section, and to the appropriate United
478 States Coast Guard Sector Command having responsibility over the
479 water body, at least 72 hours before establishment of the
480 protection zone. Such report must include the reasons for the
481 protection zone, the portion of the water body or water bodies
482 which will be included in the protection zone, and the duration
483 of the protection zone. No later than 72 hours after the end of
484 the protection zone period, the head of the law enforcement
485 agency or entity, or his or her designee, must report via e-mail
486 to the commission's Division of Law Enforcement, Boating and
487 Waterways Section, the details of all citations issued for
488 violating the protection zone.

489 (5) This section applies only to launch services, reentry
490 services, or the recovery of spaceflight assets occurring or
491 originating within spaceport territory, as defined in s.
492 331.304, and to federally licensed or federally authorized
493 launches and reentries occurring or transiting to an end

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494 destination upon waters of this state.

495 (6) A person who violates this section or any directive
496 given by a law enforcement officer relating to the establishment
497 of a protection zone under this section after being advised of
498 the establishment of the protection zone commits a misdemeanor
499 of the second degree, punishable as provided in s. 775.082 or s.
500 775.083.

501 Section 6. Paragraphs (a) and (c) of subsection (1) of
502 section 327.352, Florida Statutes, are amended to read:

503 327.352 Tests for alcohol, chemical substances, or
504 controlled substances; implied consent; refusal.—

505 (1)(a)1. The Legislature declares that the operation of a
506 vessel is a privilege that must be exercised in a reasonable
507 manner. In order to protect the public health and safety, it is
508 essential that a lawful and effective means of reducing the
509 incidence of boating while impaired or intoxicated be
510 established. Therefore, a ~~any~~ person who accepts the privilege
511 extended by the laws of this state of operating a vessel within
512 this state is, by ~~so~~ operating such vessel, deemed to have given
513 his or her consent to submit to an approved chemical test or
514 physical test including, but not limited to, an infrared light
515 test of his or her breath for the purpose of determining the
516 alcoholic content of his or her blood or breath if the person is
517 lawfully arrested for any offense allegedly committed while the
518 person was operating a vessel while under the influence of
519 alcoholic beverages. The chemical or physical breath test must
520 be incidental to a lawful arrest and administered at the request
521 of a law enforcement officer who has reasonable cause to believe
522 such person was operating the vessel within this state while

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523 under the influence of alcoholic beverages. The administration
524 of a breath test does not preclude the administration of another
525 type of test. The person shall be told that his or her failure
526 to submit to any lawful test of his or her breath under this
527 chapter will result in a civil penalty of \$500, and shall also
528 be told that if he or she refuses to submit to a lawful test of
529 his or her breath and he or she has been previously fined under
530 s. 327.35215 or has previously had his or her driver license
531 suspended under s. 322.2615 for refusal to submit to any lawful
532 test of his or her breath, urine, or blood, he or she commits a
533 misdemeanor of the first degree, punishable as provided in s.
534 775.082 or s. 775.083, in addition to any other penalties
535 provided by law. The refusal to submit to a chemical or physical
536 breath test upon the request of a law enforcement officer as
537 provided in this section is admissible into evidence in any
538 criminal proceeding.

539 2. A ~~Any~~ person who accepts the privilege extended by the
540 laws of this state of operating a vessel within this state is,
541 by ~~so~~ operating such vessel, deemed to have given his or her
542 consent to submit to a urine test for the purpose of detecting
543 the presence of chemical substances as set forth in s. 877.111
544 or controlled substances if the person is lawfully arrested for
545 any offense allegedly committed while the person was operating a
546 vessel while under the influence of chemical substances or
547 controlled substances. The urine test must be incidental to a
548 lawful arrest and administered at a detention facility or any
549 other facility, mobile or otherwise, which is equipped to
550 administer such tests at the request of a law enforcement
551 officer who has reasonable cause to believe such person was

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operating a vessel within this state while under the influence of chemical substances or controlled substances. The urine test shall be administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such test in a reasonable manner that will ensure the accuracy of the specimen and maintain the privacy of the individual involved. The administration of a urine test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her urine under this chapter will result in a civil penalty of \$500, and shall also be told that if he or she refuses to submit to a lawful test of his or her urine and he or she has been previously fined under s. 327.35215 or has previously had his or her driver license suspended under s. 322.2615 for refusal to submit to any lawful test of his or her breath, urine, or blood, he or she commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, in addition to any other penalties provided by law. The refusal to submit to a urine test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

(c) A ~~Any~~ person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by operating such vessel, deemed to have given his or her consent to submit to an approved blood test for the purpose of determining the alcoholic content of the blood or a blood test for the purpose of determining the presence of chemical substances or controlled substances as provided in this section if there is reasonable cause to believe the person was operating

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581 a vessel while under the influence of alcoholic beverages or
582 chemical or controlled substances and the person appears for
583 treatment at a hospital, clinic, or other medical facility and
584 the administration of a breath or urine test is impractical or
585 impossible. As used in this paragraph, the term "other medical
586 facility" includes an ambulance or other medical emergency
587 vehicle. The blood test shall be performed in a reasonable
588 manner. A ~~Any~~ person who is incapable of refusal by reason of
589 unconsciousness or other mental or physical condition is deemed
590 not to have withdrawn his or her consent to such test. A ~~Any~~
591 person who is capable of refusal shall be told that his or her
592 failure to submit to such a blood test will result in a civil
593 penalty of \$500 ~~and that a refusal to submit to a lawful test of~~
594 ~~his or her blood, if he or she has previously been fined for~~
595 ~~refusal to submit to any lawful test of his or her breath,~~
596 ~~urine, or blood, is a misdemeanor.~~ The refusal to submit to a
597 blood test upon the request of a law enforcement officer shall
598 be admissible in evidence in any criminal proceeding.

599 Section 7. Section 327.359, Florida Statutes, is amended to
600 read:

601 327.359 Refusal to submit to testing; penalties.-A ~~Any~~
602 person who has refused to submit to a chemical or physical test
603 of his or her breath, ~~blood,~~ or urine, as described in s.
604 327.352, and who has been previously fined under s. 327.35215 or
605 has previously had his or her driver license suspended under s.
606 322.2615 for refusal to submit to a lawful test of his or her
607 breath, urine, or blood, and:

608 (1) Who the arresting law enforcement officer had probable
609 cause to believe was operating or in actual physical control of

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a vessel in this state while under the influence of alcoholic beverages, chemical substances, or controlled substances;

(2) Who was placed under lawful arrest for a violation of s. 327.35 unless such test was requested pursuant to s. 327.352(1)(c);

(3) Who was informed that if he or she refused to submit to such test, he or she is subject to a fine of \$500;

(4) Who was informed that a refusal to submit to a lawful test of his or her breath or, ~~urine, or blood~~, if he or she has been previously fined under s. 327.35215 or has previously had his or her driver license suspended under s. 322.2615 for refusal to submit to a lawful test of his or her breath, urine, or blood, is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; and

(5) Who, after having been so informed, refused to submit to any such test when requested to do so by a law enforcement officer or correctional officer

commits a misdemeanor of the first degree, punishable ~~and is subject to punishment~~ as provided in s. 775.082 or s. 775.083.

Section 8. Section 327.371, Florida Statutes, is created to read:

327.371 Human-powered vessels regulated.—

(1) A person may operate a human-powered vessel within the boundaries of the marked channel of the Florida Intracoastal Waterway as defined in s. 327.02:

(a) When the marked channel is the only navigable portion of the waterway available due to vessel congestion or obstructions on the water. The operator of the human-powered

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639 vessel shall proceed with diligence to a location where he or
640 she may safely operate the vessel outside the marked channel of
641 the Florida Intracoastal Waterway.

642 (b) When crossing the marked channel, provided that the
643 crossing is done in the most direct, continuous, and expeditious
644 manner possible and does not interfere with other vessel traffic
645 in the channel.

646 (c) During an emergency endangering life or limb.

647 (2) A person may not operate a human-powered vessel in the
648 marked channel of the Florida Intracoastal Waterway except as
649 provided in subsection (1).

650 (3) A person who violates this section commits a
651 noncriminal infraction, punishable as provided in s. 327.73.

652 Section 9. Subsection (1) and paragraphs (a) and (b) of
653 subsection (5) of section 327.391, Florida Statutes, are amended
654 to read:

655 327.391 Airboats regulated.—

656 (1) The exhaust of every internal combustion engine used on
657 any airboat operated on the waters of this state shall be
658 provided with an automotive-style factory muffler, underwater
659 exhaust, or other manufactured device capable of adequately
660 muffling the sound of the exhaust of the engine as described in
661 s. 327.02(31) ~~s. 327.02(30)~~. The use of cutouts or flex pipe as
662 the sole source of muffling is prohibited, except as provided in
663 subsection (4). A ~~Any~~ person who violates this subsection
664 commits a noncriminal infraction, punishable as provided in s.
665 327.73(1).

666 (5)(a) ~~Beginning July 1, 2019,~~ A person may not operate an
667 airboat to carry one or more passengers for hire on waters of

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668 ~~this the~~ state unless he or she has all of the following onboard
669 the airboat:

670 1. A photographic identification card.

671 2. Proof of completion of a boater education course that
672 complies with s. 327.395(2)(a) ~~s. 327.395(1)(a)~~. Except as
673 provided in paragraph (b), no operator is exempt from this
674 requirement, regardless of age or the exemptions provided under
675 s. 327.395.

676 3. Proof of successful completion of a commission-approved
677 airboat operator course that meets the minimum standards
678 established by commission rule.

679 4. Proof of successful course completion in cardiopulmonary
680 resuscitation and first aid.

681 (b) A person issued a captain's license by the United
682 States Coast Guard is not required to complete a boating safety
683 education course that complies with s. 327.395(2)(a) ~~s.~~
684 ~~327.395(1)(a)~~. Proof of the captain's license must be onboard
685 the airboat when carrying one or more passengers for hire on
686 waters of ~~this the~~ state.

687 Section 10. Section 327.395, Florida Statutes, is amended
688 to read:

689 327.395 Boating safety education.—

690 (1) A person born on or after January 1, 1988, may not
691 operate a vessel powered by a motor of 10 horsepower or greater
692 unless such person has in his or her possession aboard the
693 vessel the documents required by subsection (2).

694 (2) While operating a vessel, a person identified under
695 subsection (1) must have in his or her possession aboard the
696 vessel photographic identification and a boating safety

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identification card issued by the commission, a state-issued identification card or driver license indicating possession of the boating safety identification card, or photographic identification and a temporary certificate issued or approved by the commission, which shows that he or she has:

(a) Completed a commission-approved boating safety education course that meets the minimum requirements established by the National Association of State Boating Law Administrators; or

(b) Passed a temporary certificate examination developed or approved by the commission.

(3)(a)~~(2)(a)~~ A person may obtain a boating safety identification card by successfully completing a boating safety education course that meets the requirements of this section and rules adopted by the commission pursuant to this section.

(b) A person may obtain a temporary certificate by passing a temporary certificate examination that meets the requirements of this section and rules adopted by the commission pursuant to this section.

(4)~~(3)~~ A ~~Any~~ commission-approved boating safety education course or temporary certificate examination developed or approved by the commission must include a component regarding diving vessels, awareness of divers in the water, divers-down warning devices, and the requirements of s. 327.331.

~~(4) The commission may appoint liveries, marinas, or other persons as its agents to administer the course or temporary certificate examination and issue identification cards or temporary certificates in digital, electronic, or paper format under guidelines established by the commission. An agent must~~

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~~charge the \$2 examination fee, which must be forwarded to the
commission with proof of passage of the examination and may
charge and keep a \$1 service fee.~~

(5) A boating safety identification card issued to a person who has completed a boating safety education course is valid for life. A temporary certificate issued to a person who has passed a temporary certification examination is valid for 90 days after the date of issuance. The commission may issue either the boating safety identification card or the temporary certificate in a digital, electronic, or paper format.

(6) A person is exempt from subsection (1) if he or she:

(a)1. Is licensed by the United States Coast Guard to serve as master of a vessel;

2. Has been previously licensed by the United States Coast Guard to serve as master of a vessel, provides proof of such licensure to the commission, and requests that a boating safety identification card be issued in his or her name; or

3. Possesses an International Certificate of Competence in sailing.

(b) Operates a vessel only on a private lake or pond.

(c) Is accompanied in the vessel by a person who is exempt from this section or who holds a boating safety identification card in compliance with this section, who is 18 years of age or older, and who 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.

(d) Is a nonresident who has in his or her possession photographic identification and proof that he or she has completed a boating safety education course or equivalency

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examination in another state or a United States territory which meets or exceeds the minimum requirements established by the National Association of State Boating Law Administrators.

(e) Is operating a vessel within 90 days after the purchase of that vessel and has available for inspection aboard that vessel a bill of sale meeting the requirements of s. 328.46(1).

(f) Is operating a vessel within 90 days after completing a boating safety education course in accordance with paragraph (2)(a) ~~the requirements of paragraph (1)(a)~~ and has a photographic identification card and a boating safety education certificate available for inspection as proof of having completed a boating safety education course. The boating safety 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.

(g) Is exempted by rule of the commission.

(7) A person who operates a vessel in violation of this section ~~subsection (1)~~ commits a noncriminal infraction, punishable as provided in s. 327.73.

(8) The commission shall institute and coordinate a statewide program of boating safety instruction and certification to ensure that boating safety courses and examinations are available in each county of this ~~the~~ state. The commission may appoint agents to administer the boating safety education course or temporary certificate examination and may authorize the agents to issue temporary certificates in digital, electronic, or paper format. An agent ~~The agents~~ shall charge and collect the \$2 fee required in subsection (9) for each temporary certificate requested of the commission by that agent,

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which must be forwarded to the commission. The agent may charge and keep a \$1 service fee.

(9) The commission may ~~is authorized to~~ establish and ~~to~~ collect a \$2 fee for each card and temporary certificate issued pursuant to this section.

(10) The commission shall design forms and adopt rules pursuant to chapter 120 to implement ~~the provisions of~~ this section.

(11) This section may be cited as the "Osmany 'Ozzie' Castellanos Boating Safety Education Act."

Section 11. Present subsection (5) of section 327.4107, Florida Statutes, is redesignated as subsection (6), a new subsection (5) and subsection (7) are added to that section, and paragraphs (d) and (e) of subsection (2) of that section are amended, to read:

327.4107 Vessels at risk of becoming derelict on waters of this state.—

(2) An officer of the commission or of a law enforcement agency specified in s. 327.70 may determine that a vessel is at risk of becoming derelict if any of the following conditions exist:

(d) The vessel is ~~left or stored aground unattended in such a state that would prevent the vessel from getting underway, is listing due to water intrusion, or is sunk or partially sunk.~~

(e) The vessel does not have an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives telephonic notice, in-person notice recorded on an agency-approved body camera, or written notice, which may be provided by facsimile, electronic mail, or other

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electronic means, stating such from an officer, and the vessel owner or operator is unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair. The commission may adopt rules to implement this paragraph.

(5) The commission, an officer of the commission, or a law enforcement agency or officer specified in s. 327.70 may relocate or cause to be relocated an at-risk vessel found to be in violation of this section to a distance greater than 20 feet from a mangrove or upland vegetation. The commission, an officer of the commission, or a law enforcement agency or officer acting pursuant to this subsection upon waters of this state shall be held harmless for all damages to the at-risk vessel resulting from such relocation unless the damage results from gross negligence or willful misconduct as these terms are defined in s. 823.11.

(7) The commission may establish a derelict vessel prevention program to address vessels at risk of becoming derelict. Such program may, but is not required to, include:

(a) Removal, relocation, and destruction of vessels declared a public nuisance, derelict or at risk of becoming derelict, or lost or abandoned in accordance with s. 327.53(7), s. 327.73(1)(aa), s. 705.103(2) and (4), or s. 823.11(3).

(b) Creation of a vessel turn-in program allowing the owner of a vessel determined by law enforcement to be at risk of becoming derelict in accordance with this section to turn his or her vessel and vessel title over to the commission to be destroyed without penalty.

(c) Providing for removal and destruction of an abandoned

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vessel for which an owner cannot be identified or the owner of which is deceased and no heir is interested in acquiring the vessel.

(d) Purchase of anchor line, anchors, and other equipment necessary for securing vessels at risk of becoming derelict.

(e) Creating or acquiring moorings designated for securing vessels at risk of becoming derelict.

The commission may adopt rules to implement this subsection. Implementation of the derelict vessel prevention program shall be subject to appropriation by the Legislature and shall be funded by the Marine Resources Conservation Trust Fund or the Florida Coastal Protection Trust Fund.

Section 12. Section 327.4108, Florida Statutes, is amended to read:

327.4108 Anchoring of vessels in anchoring limitation areas.—

(1) The following densely populated urban areas, which have narrow state waterways, residential docking facilities, and significant recreational boating traffic, are designated as anchoring limitation areas, within which a person may not anchor a vessel at any time during the period between one-half hour after sunset and one-half hour before sunrise, except as provided in subsections (3) and (4):

(a) The section of Middle River lying between Northeast 21st Court and the Intracoastal Waterway in Broward County.

(b) Sunset Lake in Miami-Dade County.

(c) The sections of Biscayne Bay in Miami-Dade County lying between:

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1. Rivo Alto Island and Di Lido Island.

2. San Marino Island and San Marco Island.

3. San Marco Island and Biscayne Island.

(2)(a) Monroe County is designated as an anchoring limitation area within which a vessel may only be anchored in the same location for a maximum of 90 days. The commission shall adopt rules to implement this subsection.

(b) This subsection does not apply to an approved and permitted mooring field.

~~(2) To promote the public's use and enjoyment of the designated waterway, except as provided in subsections (3) and (4), a person may not anchor a vessel at any time during the period between one-half hour after sunset and one-half hour before sunrise in an anchoring limitation area.~~

(3) Notwithstanding subsections (1) and subsection (2), a person may anchor a vessel in an anchoring limitation area during a time that would otherwise be unlawful:

(a) If the vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors. The vessel may anchor for 3 business days or until the vessel is repaired, whichever occurs first.

(b) If imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors. The vessel may anchor until weather conditions no longer pose such risk. During a hurricane or tropical storm, weather conditions are deemed to no longer pose an unreasonable risk of harm when the hurricane or tropical storm warning affecting the area has

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expired.

(c) During events described in s. 327.48 or other special events, including, but not limited to, public music performances, local government waterfront activities, or fireworks displays. A vessel may anchor for the lesser of the duration of the special event or 3 days.

(4) This section does not apply to:

(a) Vessels owned or operated by a governmental entity for law enforcement, firefighting, military, or rescue purposes.

(b) Construction or dredging vessels on an active job site.

(c) Vessels actively engaged in commercial fishing.

(d) Vessels engaged in recreational fishing if the persons onboard are actively tending hook and line fishing gear or nets.

(5)(a) As used in this subsection, the term "law enforcement officer or agency" means an officer or agency authorized to enforce this section pursuant to s. 327.70.

(b) A law enforcement officer or agency may remove a vessel from an anchoring limitation area and impound the vessel for up to 48 hours, or cause such removal and impoundment, if the vessel operator, after being issued a citation for a violation of this section:

1. Anchors the vessel in violation of this section within 12 hours after being issued the citation; or

2. Refuses to leave the anchoring limitation area after being directed to do so by a law enforcement officer or agency.

(c) A law enforcement officer or agency acting under this subsection to remove or impound a vessel, or to cause such removal or impoundment, shall be held harmless for any damage to the vessel resulting from such removal or impoundment unless the

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929 damage results from gross negligence or willful misconduct.

930 (d) A contractor performing removal or impoundment services
931 at the direction of a law enforcement officer or agency pursuant
932 to this subsection must:

933 1. Be licensed in accordance with United States Coast Guard
934 regulations, as applicable.

935 2. Obtain and carry a current policy issued by a licensed
936 insurance carrier in this state to insure against any accident,
937 loss, injury, property damage, or other casualty caused by or
938 resulting from the contractor's actions.

939 3. Be properly equipped to perform such services.

940 (e) In addition to the civil penalty imposed under s.
941 327.73(1)(z), the operator of a vessel that is removed and
942 impounded pursuant to paragraph (b) must pay all removal and
943 storage fees before the vessel is released. A vessel removed
944 pursuant to paragraph (b) may not be impounded for longer than
945 48 hours.

946 (6) A violation of this section is punishable as provided
947 in s. 327.73(1)(z).

948 ~~(7) This section shall remain in effect notwithstanding the~~
949 ~~Legislature's adoption of the commission's recommendations for~~
950 ~~the regulation of mooring vessels outside of public mooring~~
951 ~~fields pursuant to s. 327.4105.~~

952 Section 13. Paragraph (a) of subsection (1) and subsection
953 (2) of section 327.4109, Florida Statutes, are amended to read:

954 327.4109 Anchoring or mooring prohibited; exceptions;
955 penalties.—

956 (1)(a) The owner or operator of a vessel or floating
957 structure may not anchor or moor such that the nearest approach

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of the anchored or moored vessel or floating structure is:

1. Within 150 feet of any public or private marina, boat ramp, boatyard, or other public vessel launching or loading facility;

2. Within 300 feet of a superyacht repair facility. For purposes of this subparagraph, the term "superyacht repair facility" means a facility that services or repairs a yacht with a water line of 120 feet or more in length; or

3. Within 100 feet outward from the marked boundary of a public mooring field or a lesser distance if approved by the commission upon request of a local government within which the mooring field is located. The commission may adopt rules to implement this subparagraph.

(2) Notwithstanding subsection (1), an owner or operator of a vessel may anchor or moor within 150 feet of any public or private marina, boat ramp, boatyard, or other public 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 if:

(a) The vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor for 5 business days or until the vessel is repaired, whichever occurs first.

(b) Imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor until weather conditions no longer pose such risk. During a hurricane or tropical storm, weather

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conditions are deemed to no longer pose an unreasonable risk of harm when the hurricane or tropical storm warning affecting the area has expired.

Section 14. Subsection (2) of section 327.45, Florida Statutes, is amended to read:

327.45 Protection zones for springs.—

(2) The commission may establish by rule protection zones that restrict the speed and operation of vessels, or which prohibit the anchoring, mooring, beaching, or grounding of vessels, to protect and prevent harm to first, second, and third magnitude springs and springs groups, including their associated spring runs, as determined by the commission using the most recent Florida Geological Survey springs bulletin. This harm includes negative impacts to water quality, water quantity, hydrology, wetlands, and aquatic and wetland-dependent species.

Section 15. Paragraph (b) of subsection (1) of section 327.46, Florida Statutes, is amended to read:

327.46 Boating-restricted areas.—

(1) Boating-restricted areas, including, but not limited to, restrictions of vessel speeds and vessel traffic, may be established on the waters of this state for any purpose necessary to protect the safety of the public if such restrictions are necessary based on boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion, or other navigational hazards or to protect seagrasses on privately owned submerged lands.

(b) Municipalities and counties may ~~have the authority to~~ establish the following boating-restricted areas by ordinance:

1. An ordinance establishing an idle speed, no wake

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boating-restricted area, if the area is:

a. Within 500 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways more than 300 feet in width or within 300 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways not exceeding 300 feet in width.

b. Within 500 feet of fuel pumps or dispensers at any marine fueling facility that sells motor fuel to the general boating public on waterways more than 300 feet in width or within 300 feet of the fuel pumps or dispensers at any licensed terminal facility that sells motor fuel to the general boating public on waterways not exceeding 300 feet in width.

c. Inside or within 300 feet of any lock structure.

2. An ordinance establishing a slow speed, minimum wake boating-restricted area if the area is:

a. Within 300 feet of any bridge fender system.

b. Within 300 feet of any bridge span presenting a vertical clearance of less than 25 feet or a horizontal clearance of less than 100 feet.

c. On a creek, stream, canal, or similar linear waterway if the waterway is less than 75 feet in width from shoreline to shoreline.

d. On a lake or pond of less than 10 acres in total surface area.

e. Within the boundaries of a permitted public mooring field and a buffer around the mooring field of up to 100 feet.

3. An ordinance establishing a vessel-exclusion zone if the

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area is:

a. Designated as a public bathing beach or swim area.

b. Within 300 feet of a dam, spillway, or flood control structure.

4. Notwithstanding the prohibition in s. 327.60(2)(c), within the portion of the Florida Intracoastal Waterway within their jurisdiction, except that the municipality or county may not establish a vessel-exclusion zone for public bathing beaches or swim areas within the waterway.

Section 16. Section 327.463, Florida Statutes, is created to read:

327.463 Special hazards.—

(1) For purposes of this section, a vessel:

(a) Is operating at slow speed, minimum wake only if it is:

1. Fully off plane and completely settled into the water;

and

2. Proceeding without wake or with minimum wake.

A vessel that is required to operate at slow speed, minimum wake may not proceed at a speed greater than a speed that is reasonable and prudent to avoid the creation of an excessive wake or other hazardous condition under the existing circumstances.

(b) Is not proceeding at slow speed, minimum wake if it is:

1. Operating on plane;

2. In the process of coming off plane and settling into the water or getting on plane; or

3. Operating at a speed that creates a wake that unreasonably or unnecessarily endangers other vessels.

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1074 (2) A person may not operate a vessel faster than slow
1075 speed, minimum wake within 300 feet of any emergency vessel,
1076 including, but not limited to, a law enforcement vessel, United
1077 States Coast Guard vessel, or firefighting vessel, when such
1078 emergency vessel's emergency lights are activated.

1079 (3)(a) A person may not operate a vessel faster than slow
1080 speed, minimum wake within 300 feet of any construction vessel
1081 or barge when the vessel or barge is displaying an orange flag
1082 from a pole extending:

1083 1. At least 10 feet above the tallest portion of the vessel
1084 or barge, indicating that the vessel or barge is actively
1085 engaged in construction operations; or

1086 2. At least 5 feet above any superstructure permanently
1087 installed upon the vessel or barge, indicating that the vessel
1088 or barge is actively engaged in construction operations.

1089 (b) A flag displayed on a construction vessel or barge
1090 pursuant to this subsection must:

1091 1. Be at least 2 feet by 3 feet in size.

1092 2. Have a wire or other stiffener or be otherwise
1093 constructed to ensure that the flag remains fully unfurled and
1094 extended in the absence of a wind or breeze.

1095 3. Be displayed so that the visibility of the flag is not
1096 obscured in any direction.

1097 (c) In periods of low visibility, including any time
1098 between 30 minutes after sunset and 30 minutes before sunrise, a
1099 person may not be cited for a violation of this subsection
1100 unless the orange flag is illuminated and visible from a
1101 distance of at least 2 nautical miles. Such illumination does
1102 not relieve the construction vessel or barge from complying with

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all navigation rules.

(4)(a) A person operating a vessel in violation of this section commits a noncriminal infraction, punishable as provided in s. 327.73.

(b) The owner of, or party who is responsible for, a construction vessel or barge who displays an orange flag on the vessel or barge when it is not actively engaged in construction operations commits a noncriminal infraction, punishable as provided in s. 327.73.

(5) The speed and penalty provisions of this section do not apply to a law enforcement, firefighting, or rescue vessel that is owned or operated by a governmental entity.

Section 17. Paragraph (a) of subsection (1) of section 327.50, Florida Statutes, is amended to read:

327.50 Vessel safety regulations; equipment and lighting requirements.—

(1)(a) The owner and operator of every vessel on the waters of this state shall carry, store, maintain, and use safety equipment in accordance with current United States Coast Guard safety equipment requirements as specified in the Code of Federal Regulations, unless expressly exempted by the commission ~~department~~.

Section 18. Paragraph (a) of subsection (6) and subsection (7) of section 327.53, Florida Statutes, are amended, and subsection (8) is added to that section, to read:

327.53 Marine sanitation.—

(6)(a) A violation of this section is a noncriminal infraction, punishable as provided in s. 327.73. Each violation shall be a separate offense. The owner and operator of any

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vessel shall be jointly and severally liable for the civil penalty imposed pursuant to this section.

(7) A ~~Any~~ vessel or floating structure operated or occupied on the waters of this ~~the~~ state in violation of this section is declared a nuisance and a hazard to public safety and health. The owner or operator of a ~~any~~ vessel or floating structure cited for violating this section shall, within 30 days following the issuance of the citation, correct the violation for which the citation was issued or remove the vessel or floating structure from the waters of this ~~the~~ state. If the violation is not corrected within the 30 days and the vessel or floating structure remains on the waters of this ~~the~~ state in violation of this section, law enforcement officers charged with the enforcement of this chapter under s. 327.70 shall apply to the appropriate court in the county in which the vessel or floating structure is located, to order or otherwise cause the removal of such vessel or floating structure from the waters of this ~~the~~ state at the owner's expense. If the owner cannot be found or otherwise fails to pay the removal costs, the provisions of s. 328.17 shall apply. If the proceeds under s. 328.17 are not sufficient to pay all removal costs, funds appropriated from the Marine Resources Conservation Trust Fund pursuant to paragraph (6)(b) or s. 328.72(15)(c) ~~s. 328.72(16)~~ may be used.

(8) The owner or operator of a live-aboard vessel as defined in s. 327.02(23)(a) or (c), or a houseboat as defined in s. 327.02(17), that is equipped with a marine sanitation device must maintain a record of the date of each pumpout of the marine sanitation device and the location of the pumpout station or waste reception facility. Each record must be maintained for 1

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1161 year after the date of the pumpout.

1162 Section 19. Subsection (2) of section 327.54, Florida
1163 Statutes, is amended to read:

1164 327.54 Liveries; safety regulations; penalty.—

1165 (2) A livery may not knowingly lease, hire, or rent a ~~any~~
1166 vessel ~~powered by a motor of 10 horsepower or greater~~ to a ~~any~~
1167 person who is required to comply with s. 327.395~~7~~, unless such
1168 person presents to the livery photographic identification and a
1169 valid boater safety identification card issued by the
1170 commission, a state-issued identification card or driver license
1171 indicating possession of the boating safety identification card,
1172 or photographic identification and a valid temporary certificate
1173 issued or approved by the commission as required under s.
1174 327.395(2) ~~s. 327.395(1)~~, or meets the exemption provided under
1175 s. 327.395(6)(f).

1176 Section 20. Subsection (5) of section 327.60, Florida
1177 Statutes, is amended to read:

1178 327.60 Local regulations; limitations.—

1179 (5) A local government may enact and enforce regulations to
1180 implement the procedures for abandoned or lost property that
1181 allow the local law enforcement agency to remove a vessel
1182 affixed to a public dock or mooring within its jurisdiction that
1183 is abandoned or lost property pursuant to s. 705.103(1). Such
1184 regulation must require the local law enforcement agency to post
1185 a written notice at least 24 hours before removing the vessel.

1186 Section 21. Paragraphs (q), (s), and (aa) of subsection (1)
1187 of section 327.73, Florida Statutes, are amended, and paragraphs
1188 (cc) and (dd) are added to that subsection, to read:

1189 327.73 Noncriminal infractions.—

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(1) Violations of the following provisions of the vessel laws of this state are noncriminal infractions:

(q) Section 327.53(1), (2), ~~and~~ (3), and (8), relating to marine sanitation.

(s) Section 327.395, relating to boater safety education. However, a person cited for violating the requirements of s. 327.395 relating to failure to have required proof of boating safety education in his or her possession may not be convicted if, before or at the time of a county court hearing, the person produces proof of the boating safety education identification card or temporary certificate for verification by the hearing officer or the court clerk and the identification card or temporary certificate was valid at the time the person was cited.

(aa) Section 327.4107, relating to vessels at risk of becoming derelict on waters of this state, for which the civil penalty is:

1. For a first offense, \$100 ~~\$50~~.

2. For a second offense occurring 30 days or more after a first offense, \$250 ~~\$100~~.

3. For a third or subsequent offense occurring 30 days or more after a previous offense, \$500 ~~\$250~~.

A vessel that is the subject of three or more violations issued pursuant to the same paragraph of s. 327.4107(2) within an 18-month period which result in dispositions other than acquittal or dismissal shall be declared to be a public nuisance and subject to ss. 705.103(2) and (4) and 823.11(3). The commission, an officer of the commission, or a law enforcement agency or

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officer specified in s. 327.70 may relocate, remove, or cause to be relocated or removed such public nuisance vessels from waters of this state. The commission, an officer of the commission, or a law enforcement agency or officer acting pursuant to this paragraph upon waters of this state shall be held harmless for all damages to the vessel resulting from such relocation or removal unless the damage results from gross negligence or willful misconduct as these terms are defined in s. 823.11.

(cc) Section 327.463(4)(a) and (b), relating to vessels creating special hazards, for which the penalty is:

1. For a first offense, \$50.

2. For a second offense occurring within 12 months after a prior offense, \$100.

3. For a third offense occurring within 36 months after a prior offense, \$250.

(dd) Section 327.371, relating to the regulation of human-powered vessels.

Any person cited for a violation of any provision of this subsection shall be deemed to be charged with a noncriminal infraction, shall be cited for such an infraction, and shall be cited to appear before the county court. The civil penalty for any such infraction is \$50, except as otherwise provided in this section. Any person who fails to appear or otherwise properly respond to a uniform boating citation shall, in addition to the charge relating to the violation of the boating laws of this state, be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s.

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1248 775.083. A written warning to this effect shall be provided at
1249 the time such uniform boating citation is issued.

1250 Section 22. Subsection (4) of section 328.09, Florida
1251 Statutes, is amended to read:

1252 328.09 Refusal to issue and authority to cancel a
1253 certificate of title or registration.—

1254 (4) The department may not issue a certificate of title to
1255 an ~~any~~ applicant for a ~~any~~ vessel that has been deemed derelict
1256 by a law enforcement officer under s. 376.15 or s. 823.11. A law
1257 enforcement officer must inform the department in writing, which
1258 may be provided by facsimile, electronic mail, or other
1259 electronic means, of the vessel's derelict status and supply the
1260 department with the vessel title number or vessel identification
1261 number. The department may issue a certificate of title once a
1262 law enforcement officer has verified in writing, which may be
1263 provided by facsimile, electronic mail, or other electronic
1264 means, that the vessel is no longer a derelict vessel.

1265 Section 23. Effective July 1, 2023, paragraph (e) of
1266 subsection (3) of section 328.09, Florida Statutes, as amended
1267 by section 12 of chapter 2019-76, Laws of Florida, is amended to
1268 read:

1269 328.09 Refusal to issue and authority to cancel a
1270 certificate of title or registration.—

1271 (3) Except as otherwise provided in subsection (4), the
1272 department may reject an application for a certificate of title
1273 only if:

1274 (e) The application is for a vessel that has been deemed
1275 derelict by a law enforcement officer under s. 376.15 or s.
1276 823.11. In such case, a law enforcement officer must inform the

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department in writing, which may be provided by facsimile, e-mail, or other electronic means, of the vessel's derelict status and supply the department with the vessel title number or vessel identification number. The department may issue a certificate of title once a law enforcement officer has verified in writing, which may be provided by facsimile, e-mail, or other electronic means, that the vessel is no longer a derelict vessel.

Section 24. Section 376.15, Florida Statutes, is amended to read:

376.15 Derelict vessels; relocation or removal from ~~public~~ waters of this state.—

(1) As used in this section, the term:

(a) "Commission" means the Fish and Wildlife Conservation Commission.

(b) "Gross negligence" means conduct so reckless or wanting in care that it constitutes a conscious disregard or indifference to the safety of the property exposed to such conduct.

(c) "Willful misconduct" means conduct evidencing carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design or to show an intentional and substantial disregard of the interests of the vessel owner.

(2)(a) It is unlawful for any person, firm, or corporation to ~~store, leave, or abandon~~ any derelict vessel as defined in s. 823.11 upon the waters of in this state. For purposes of this paragraph, the term "leave" means to allow a vessel to remain occupied or unoccupied on the waters of this state for more than 24 hours.

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(b) Notwithstanding paragraph (a), a person who owns or operates a vessel that becomes derelict upon the waters of this state solely as a result of a boating accident that is reported to law enforcement in accordance with s. 327.301 or otherwise reported to law enforcement; a hurricane; or another sudden event outside of his or her control may not be charged with a violation if:

1. The individual documents for law enforcement the specific event that led to the vessel being derelict upon the waters of this state; and

2. The vessel has been removed from the waters of this state or has been repaired or addressed such that it is no longer derelict upon the waters of this state:

a. For a vessel that has become derelict as a result of a boating accident or other sudden event outside of his or her control, within 7 days after such accident or event; or

b. Within 45 days after the hurricane has passed over this state.

(c) This subsection does not apply to a vessel that was derelict upon the waters of this state before the stated accident or event.

(3)(a) The commission, an officer ~~officers~~ of the commission, or a ~~and any~~ law enforcement agency or officer specified in s. 327.70 ~~may are authorized and empowered to~~ relocate, remove, store, destroy, or dispose of or cause to be relocated, or removed, stored, destroyed, or disposed of a ~~any~~ derelict vessel as defined in s. 823.11 from ~~public~~ public waters of this state as defined in s. 327.02. All costs, including costs owed to a third party, incurred by the commission or other law

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1335 enforcement agency in the relocation, ~~or~~ removal, storage,
1336 destruction, or disposal of any abandoned or derelict vessel are
1337 recoverable against the owner of the vessel or the party
1338 determined to be legally responsible for the vessel being upon
1339 the waters of this state in a derelict condition. The Department
1340 of Legal Affairs shall represent the commission in actions to
1341 recover such costs.

1342 (b) The commission, an officer ~~officers~~ of the commission,
1343 or a ~~and any other~~ law enforcement agency or officer specified
1344 in s. 327.70 acting pursuant to ~~under~~ this section to relocate,
1345 remove, store, destroy, or dispose of or cause to be relocated,
1346 ~~or removed, stored, destroyed, or disposed of~~ a derelict vessel
1347 from public waters of this state as defined in s. 327.02 shall
1348 be held harmless for all damages to the derelict vessel
1349 resulting from such action ~~relocation or removal~~ unless the
1350 damage results from gross negligence or willful misconduct as
1351 these terms are defined in s. 823.11.

1352 (c) A contractor performing relocation or removal
1353 activities at the direction of the commission, an officer
1354 ~~officers~~ of the commission, ~~or~~ a law enforcement agency or
1355 officer, or a governmental subdivision, when the governmental
1356 subdivision has received authorization for the relocation or
1357 removal from a law enforcement officer or agency pursuant to
1358 this section, must be licensed in accordance with applicable
1359 United States Coast Guard regulations where required; obtain and
1360 carry in full force and effect a policy from a licensed
1361 insurance carrier in this state to insure against any accident,
1362 loss, injury, property damage, or other casualty caused by or
1363 resulting from the contractor's actions; and be properly

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equipped to perform the services to be provided.

(d) The commission may establish a program to provide grants to local governments for the removal, storage, destruction, and disposal of derelict vessels from the ~~public~~ waters of ~~this~~ the state as defined in s. 327.02. The program shall be funded from the Marine Resources Conservation Trust Fund or the Florida Coastal Protection Trust Fund. Notwithstanding ~~the provisions in~~ s. 216.181(11), funds available for grants may only be authorized by appropriations acts of the Legislature. In a given fiscal year, if all funds appropriated pursuant to this paragraph are not requested by and granted to local governments for the removal, storage, destruction, and disposal of derelict vessels by the end of the third quarter, the Fish and Wildlife Conservation Commission may use the remainder of the funds to remove, store, destroy, and dispose of, or to pay private contractors to remove, store, destroy, and dispose of, derelict vessels.

(e) The commission shall adopt by rule procedures for submitting a grant application and criteria for allocating available funds. Such criteria shall include, but not be limited to, the following:

1. The number of derelict vessels within the jurisdiction of the applicant.

2. The threat posed by such vessels to public health or safety, the environment, navigation, or the aesthetic condition of the general vicinity.

3. The degree of commitment of the local government to maintain waters free of abandoned and derelict vessels and to seek legal action against those who abandon vessels in the

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waters of this ~~the~~ state as defined in s. 327.02.

(f) This section constitutes the authority for such removal but is not intended to be in contravention of any applicable federal act.

Section 25. Subsections (2) and (4) of section 705.103, Florida Statutes, are amended to read:

705.103 Procedure for abandoned or lost property.—

(2)(a)1. Whenever a law enforcement officer ascertains that:

a. An article of lost or abandoned property other than a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa) is present on public property and is of such nature that it cannot be easily removed, the officer shall cause a notice to be placed upon such article in substantially the following form:

NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED PROPERTY. This property, to wit: ...(setting forth brief description)... is unlawfully upon public property known as ...(setting forth brief description of location)... and must be removed within 5 days; otherwise, it will be removed and disposed of pursuant to chapter 705, Florida Statutes. The owner will be liable for the costs of removal, storage, and publication of notice. Dated this: ...(setting forth the date of posting of notice)...., signed: ...(setting forth name, title, address, and telephone number of law enforcement officer)....

b. A derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa) is present on the waters of this

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1422 state, the officer shall cause a notice to be placed upon such
1423 vessel in substantially the following form:

1424
1425 NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED
1426 VESSEL. This vessel, to wit: ...(setting forth brief
1427 description)... has been determined to be (derelict or a public
1428 nuisance) and is unlawfully upon waters of this state
1429 ...(setting forth brief description of location)... and must be
1430 removed within 21 days; otherwise, it will be removed and
1431 disposed of pursuant to chapter 705, Florida Statutes. The owner
1432 and other interested parties have the right to a hearing to
1433 challenge the determination that this vessel is derelict or
1434 otherwise in violation of the law. Please contact ...(contact
1435 information for person who can arrange for a hearing in
1436 accordance with this section).... The owner or the party
1437 determined to be legally responsible for the vessel being upon
1438 the waters of this state in a derelict condition will be liable
1439 for the costs of removal, destruction, and disposal if this
1440 vessel is not removed by the owner. Dated this: ...(setting
1441 forth the date of posting of notice)...., signed: ...(setting
1442 forth name, title, address, and telephone number of law
1443 enforcement officer)....

1444 2. The notices required under subparagraph 1. may ~~Such~~
1445 ~~notice shall be~~ not be less than 8 inches by 10 inches and shall
1446 be sufficiently weatherproof to withstand normal exposure to the
1447 elements. In addition to posting, the law enforcement officer
1448 shall make a reasonable effort to ascertain the name and address
1449 of the owner. If such is reasonably available to the officer,
1450 she or he shall mail a copy of such notice to the owner on or

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before the date of posting. If the property is a motor vehicle as defined in s. 320.01(1) or a vessel as defined in s. 327.02, the law enforcement agency shall contact the Department of Highway Safety and Motor Vehicles in order to determine the name and address of the owner and any person who has filed a lien on the vehicle or vessel as provided in s. 319.27(2) or (3) or s. 328.15(1). On receipt of this information, the law enforcement agency shall mail a copy of the notice by certified mail, return receipt requested, to the owner and to the lienholder, if any, except that a law enforcement officer who has issued a citation for a violation of s. 376.15 or s. 823.11 to the owner of a derelict vessel is not required to mail a copy of the notice by certified mail, return receipt requested, to the owner. For a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), the mailed notice must inform the owner or responsible party that he or she has a right to a hearing to dispute the determination that the vessel is derelict or otherwise in violation of the law. If a request for a hearing is made, a state agency shall follow the processes set forth in s. 120.569. Local governmental entities shall follow the processes set forth in s. 120.569, except that a local judge, magistrate, or code enforcement officer may be designated to conduct such a hearing. If, at the end of 5 days after posting the notice in sub-subparagraph 1.a., or at the end of 21 days after posting the notice in sub-subparagraph 1.b., and mailing such notice, if required, the owner or any person interested in the lost or abandoned article or articles described has not removed the article or articles from public property or shown reasonable cause for failure to do so, and, in the case of a derelict

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vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), has not requested a hearing in accordance with this section, the following shall apply:

a.~~(a)~~ For abandoned property other than a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), the law enforcement agency may retain any or all of the property for its own use or for use by the state or unit of local government, trade such property to another unit of local government or state agency, donate the property to a charitable organization, sell the property, or notify the appropriate refuse removal service.

b. For a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), the law enforcement agency or its designee may:

(I) Remove the vessel from the waters of this state and destroy and dispose of the vessel or authorize another governmental entity or its designee to do so; or

(II) Authorize the vessel's use as an artificial reef in accordance with s. 379.249 if all necessary federal, state, and local authorizations are received.

A law enforcement agency or its designee may also take action as described in this sub-subparagraph if, following a hearing pursuant to this section, the judge, magistrate, administrative law judge, or hearing officer has determined the vessel to be derelict as provided in s. 823.11 or otherwise in violation of the law in accordance with s. 327.73(1)(aa) and a final order has been entered or the case is otherwise closed.

(b) For lost property, the officer shall take custody and

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the agency shall retain custody of the property for 90 days. The agency shall publish notice of the intended disposition of the property, as provided in this section, during the first 45 days of this time period.

1. If the agency elects to retain the property for use by the unit of government, donate the property to a charitable organization, surrender such property to the finder, sell the property, or trade the property to another unit of local government or state agency, notice of such election shall be given by an advertisement published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the property was found if the value of the property is more than \$100. If the value of the property is \$100 or less, notice shall be given by posting a description of the property at the law enforcement agency where the property was turned in. The notice must be posted for not less than 2 consecutive weeks in a public place designated by the law enforcement agency. The notice must describe the property in a manner reasonably adequate to permit the rightful owner of the property to claim it.

2. If the agency elects to sell the property, it must do so at public sale by competitive bidding. Notice of the time and place of the sale shall be given by an advertisement of the sale published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the sale is to be held. The notice shall include a statement that the sale shall be subject to any and all liens. The sale must be held at the nearest suitable place to that where the lost or abandoned property is held or stored. The advertisement must include a

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description of the goods and the time and place of the sale. The sale may take place no earlier than 10 days after the final publication. If there is no newspaper of general circulation in the county where the sale is to be held, the advertisement shall be posted at the door of the courthouse and at three other public places in the county at least 10 days prior to sale. Notice of the agency's intended disposition shall describe the property in a manner reasonably adequate to permit the rightful owner of the property to identify it.

(4) The owner of any abandoned or lost property, or in the case of a derelict vessel, the owner or other party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition, who, after notice as provided in this section, does not remove such property within the specified period shall be liable to the law enforcement agency, other governmental entity, or the agency's or entity's designee for all costs of removal, storage, and destruction of such property, less any salvage value obtained by disposal of the property. Upon final disposition of the property, the law enforcement officer or representative of the law enforcement agency or other governmental entity shall notify the owner, if known, of the amount owed. In the case of an abandoned vessel or motor vehicle, any person who neglects or refuses to pay such amount is not entitled to be issued a certificate of registration for such vessel or motor vehicle, or any other vessel or motor vehicle, until such costs have been paid. A person who has neglected or refused to pay all costs of removal, storage, disposal, and destruction of a vessel or motor vehicle as provided in this section, after having been provided written

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notice via certified mail that such costs are owed, and who applies for and is issued a registration for a vessel or motor vehicle before such costs have been paid in full commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. The law enforcement officer or representative of the law enforcement agency or other governmental entity shall supply the Department of Highway Safety and Motor Vehicles with a list of persons whose vessel registration privileges and ~~or whose~~ motor vehicle privileges have been revoked under this subsection. ~~Neither~~ The department or a ~~nor any other~~ person acting as an agent of the department may not ~~thereof shall~~ issue a certificate of registration to a person whose vessel and ~~or~~ motor vehicle registration privileges have been revoked, as provided by this subsection, until such costs have been paid.

Section 26. Effective July 1, 2023, subsection (2) of section 705.103, Florida Statutes, as amended by section 29 of chapter 2019-76, Laws of Florida, is amended to read:

705.103 Procedure for abandoned or lost property.—

(2)(a)1. Whenever a law enforcement officer ascertains that:

a. An article of lost or abandoned property other than a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa) is present on public property and is of such nature that it cannot be easily removed, the officer shall cause a notice to be placed upon such article in substantially the following form:

NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED

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1596 PROPERTY. This property, to wit: ...(setting forth brief
1597 description)... is unlawfully upon public property known as
1598 ...(setting forth brief description of location)... and must be
1599 removed within 5 days; otherwise, it will be removed and
1600 disposed of pursuant to chapter 705, Florida Statutes. The owner
1601 will be liable for the costs of removal, storage, and
1602 publication of notice. Dated this: ...(setting forth the date of
1603 posting of notice)..., signed: ...(setting forth name, title,
1604 address, and telephone number of law enforcement officer)....
1605

1606 b. A derelict vessel or a vessel declared a public nuisance
1607 pursuant to s. 327.73(1)(aa) is present on the waters of this
1608 state, the officer shall cause a notice to be placed upon such
1609 vessel in substantially the following form:
1610

1611 NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED
1612 VESSEL. This vessel, to wit: ...(setting forth brief description
1613 of location)... has been determined to be (derelict or a public
1614 nuisance) and is unlawfully upon the waters of this state
1615 ...(setting forth brief description of location)... and must be
1616 removed within 21 days; otherwise, it will be removed and
1617 disposed of pursuant to chapter 705, Florida Statutes. The owner
1618 and other interested parties have the right to a hearing to
1619 challenge the determination that this vessel is derelict or
1620 otherwise in violation of the law. Please contact ...(contact
1621 information for person who can arrange for a hearing in
1622 accordance with this section)... The owner or the party
1623 determined to be legally responsible for the vessel being upon
1624 the waters of this state in a derelict condition will be liable

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for the costs of removal, destruction, and disposal if this vessel is not removed by the owner. Dated this: ...(setting forth the date of posting of notice)..., signed: ...(setting forth name, title, address, and telephone number of law enforcement officer)....

2. The notices required under subparagraph 1. ~~may~~ Such ~~notice shall be~~ not be less than 8 inches by 10 inches and shall be sufficiently weatherproof to withstand normal exposure to the elements. In addition to posting, the law enforcement officer shall make a reasonable effort to ascertain the name and address of the owner. If such is reasonably available to the officer, she or he shall mail a copy of such notice to the owner on or before the date of posting. If the property is a motor vehicle as defined in s. 320.01(1) or a vessel as defined in s. 327.02, the law enforcement agency shall contact the Department of Highway Safety and Motor Vehicles in order to determine the name and address of the owner and any person who has filed a lien on the vehicle or vessel as provided in s. 319.27(2) or (3) or s. 328.15. On receipt of this information, the law enforcement agency shall mail a copy of the notice by certified mail, return receipt requested, to the owner and to the lienholder, if any, except that a law enforcement officer who has issued a citation for a violation of s. 376.15 or s. 823.11 to the owner of a derelict vessel is not required to mail a copy of the notice by certified mail, return receipt requested, to the owner. For a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), the mailed notice must inform the owner or responsible party that he or she has a right to a hearing to

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1654 dispute the determination that the vessel is derelict or
1655 otherwise in violation of the law. If a request for a hearing is
1656 made, a state agency shall follow the processes as set forth in
1657 s. 120.569. Local governmental entities shall follow the
1658 processes set forth in s. 120.569, except that a local judge,
1659 magistrate, or code enforcement officer may be designated to
1660 conduct such hearings. If, at the end of 5 days after posting
1661 the notice in sub-subparagraph 1.a., or at the end of 21 days
1662 after posting the notice in sub-subparagraph 1.b., and mailing
1663 such notice, if required, the owner or any person interested in
1664 the lost or abandoned article or articles described has not
1665 removed the article or articles from public property or shown
1666 reasonable cause for failure to do so, and, in the case of a
1667 derelict vessel or a vessel declared a public nuisance pursuant
1668 to s. 327.73(1)(aa), has not requested a hearing in accordance
1669 with this section, the following shall apply:

1670 a.~~(a)~~ For abandoned property other than a derelict vessel
1671 or a vessel declared a public nuisance pursuant to s.
1672 327.73(1)(aa), the law enforcement agency may retain any or all
1673 of the property for its own use or for use by the state or unit
1674 of local government, trade such property to another unit of
1675 local government or state agency, donate the property to a
1676 charitable organization, sell the property, or notify the
1677 appropriate refuse removal service.

1678 b. For a derelict vessel or a vessel declared a public
1679 nuisance pursuant to s. 327.73(1)(aa), the law enforcement
1680 agency or its designee may:

1681 (I) Remove the vessel from the waters of this state and
1682 destroy and dispose of the vessel or authorize another

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governmental entity or its designee to do so; or

(II) Authorize the vessel's use as an artificial reef in accordance with s. 379.249 if all necessary federal, state, and local authorizations are received.

A law enforcement agency or its designee may also take action as described in this sub-subparagraph if, following a hearing pursuant to this section, the judge, magistrate, administrative law judge, or hearing officer has determined the vessel to be derelict as provided in s. 823.11 or otherwise in violation of the law in accordance with s. 327.73(1)(aa) and a final order has been entered or the case is otherwise closed.

(b) For lost property, the officer shall take custody and the agency shall retain custody of the property for 90 days. The agency shall publish notice of the intended disposition of the property, as provided in this section, during the first 45 days of this time period.

1. If the agency elects to retain the property for use by the unit of government, donate the property to a charitable organization, surrender such property to the finder, sell the property, or trade the property to another unit of local government or state agency, notice of such election shall be given by an advertisement published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the property was found if the value of the property is more than \$100. If the value of the property is \$100 or less, notice shall be given by posting a description of the property at the law enforcement agency where the property was turned in. The notice must be posted for not less than 2 consecutive weeks

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1712 in a public place designated by the law enforcement agency. The
1713 notice must describe the property in a manner reasonably
1714 adequate to permit the rightful owner of the property to claim
1715 it.

1716 2. If the agency elects to sell the property, it must do so
1717 at public sale by competitive bidding. Notice of the time and
1718 place of the sale shall be given by an advertisement of the sale
1719 published once a week for 2 consecutive weeks in a newspaper of
1720 general circulation in the county where the sale is to be held.
1721 The notice shall include a statement that the sale shall be
1722 subject to any and all liens. The sale must be held at the
1723 nearest suitable place to that where the lost or abandoned
1724 property is held or stored. The advertisement must include a
1725 description of the goods and the time and place of the sale. The
1726 sale may take place no earlier than 10 days after the final
1727 publication. If there is no newspaper of general circulation in
1728 the county where the sale is to be held, the advertisement shall
1729 be posted at the door of the courthouse and at three other
1730 public places in the county at least 10 days prior to sale.
1731 Notice of the agency's intended disposition shall describe the
1732 property in a manner reasonably adequate to permit the rightful
1733 owner of the property to identify it.

1734 Section 27. Subsections (1), (2), and (3) of section
1735 823.11, Florida Statutes, are amended to read:

1736 823.11 Derelict vessels; relocation or removal; penalty.—

1737 (1) As used in this section and s. 376.15, the term:

1738 (a) "Commission" means the Fish and Wildlife Conservation
1739 Commission.

1740 (b) "Derelict vessel" means a vessel, as defined in s.

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1741 327.02, that is ~~left, stored, or abandoned~~:

1742 1. In a wrecked, junked, or substantially dismantled
1743 condition upon any ~~public~~ waters of this state.

1744 a. A vessel is wrecked if it is sunken or sinking; aground
1745 without the ability to extricate itself absent mechanical
1746 assistance; or remaining after a marine casualty, including, but
1747 not limited to, a boating accident, extreme weather, or a fire.

1748 b. A vessel is junked if it has been substantially stripped
1749 of vessel components, if vessel components have substantially
1750 degraded or been destroyed, or if the vessel has been discarded
1751 by the owner or operator. Attaching an outboard motor to a
1752 vessel that is otherwise junked will not cause the vessel to no
1753 longer be junked if such motor is not an effective means of
1754 propulsion as required by s. 327.4107(2)(e) and associated
1755 rules.

1756 c. A vessel is substantially dismantled if at least two of
1757 the three following vessel systems or components are missing,
1758 compromised, incomplete, inoperable, or broken:

1759 (I) The steering system;

1760 (II) The propulsion system; or

1761 (III) The exterior hull integrity.

1762
1763 Attaching an outboard motor to a vessel that is otherwise
1764 substantially dismantled will not cause the vessel to no longer
1765 be substantially dismantled if such motor is not an effective
1766 means of propulsion as required by s. 327.4107(2)(e) and
1767 associated rules.

1768 2. At a port in this state without the consent of the
1769 agency having jurisdiction thereof.

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1770 3. Docked, grounded, or beached upon the property of
1771 another without the consent of the owner of the property.

1772 (c) "Gross negligence" means conduct so reckless or wanting
1773 in care that it constitutes a conscious disregard or
1774 indifference to the safety of the property exposed to such
1775 conduct.

1776 (d) "Willful misconduct" means conduct evidencing
1777 carelessness or negligence of such a degree or recurrence as to
1778 manifest culpability, wrongful intent, or evil design or to show
1779 an intentional and substantial disregard of the interests of the
1780 vessel owner.

1781 (2)(a) ~~It is unlawful for~~ A person, firm, or corporation
1782 ~~may not to store, leave, or abandon~~ any derelict vessel upon
1783 waters of in this state. For purposes of this paragraph, the
1784 term "leave" means to allow a vessel to remain occupied or
1785 unoccupied on the waters of this state for more than 24 hours.

1786 (b) Notwithstanding paragraph (a), a person who owns or
1787 operates a vessel that becomes derelict upon the waters of this
1788 state solely as a result of a boating accident that is reported
1789 to law enforcement in accordance with s. 327.301 or otherwise
1790 reported to law enforcement; a hurricane; or another sudden
1791 event outside of his or her control may not be charged with a
1792 violation if:

1793 1. The individual documents for law enforcement the
1794 specific event that led to the vessel being derelict upon the
1795 waters of this state; and

1796 2. The vessel has been removed from the waters of this
1797 state or has been repaired or addressed such that it is no
1798 longer derelict upon the waters of this state:

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1799 a. For a vessel that has become derelict as a result of a
1800 boating accident or other sudden event outside of his or her
1801 control, within 7 days after such accident or event; or

1802 b. Within 45 days after the hurricane has passed over the
1803 state.

1804 (c) This subsection does not apply to a vessel that was
1805 derelict upon the waters of this state before the stated
1806 accident or event.

1807 (3) The commission, an officer ~~officers~~ of the commission,
1808 or a ~~and any~~ law enforcement agency or officer specified in s.
1809 327.70 may ~~are authorized and empowered to~~ relocate, remove,
1810 store, destroy, or dispose of or cause to be relocated, ~~or~~
1811 removed, stored, destroyed, or disposed of a derelict vessel
1812 from ~~public~~ waters of this state as defined in s. 327.02 if the
1813 derelict vessel obstructs or threatens to obstruct navigation or
1814 in any way constitutes a danger to the environment, property, or
1815 persons. The commission, an officer ~~officers~~ of the commission,
1816 or any other law enforcement agency or officer acting pursuant
1817 to ~~under~~ this subsection to relocate, remove, store, destroy,
1818 dispose of or cause to be relocated, ~~or removed, stored,~~
1819 destroyed, or disposed of a derelict vessel from ~~public~~ waters
1820 of this state shall be held harmless for all damages to the
1821 derelict vessel resulting from such action ~~relocation or removal~~
1822 unless the damage results from gross negligence or willful
1823 misconduct.

1824 (a) Removal of derelict vessels under this subsection may
1825 be funded by grants provided in ss. 206.606 and 376.15. The
1826 commission shall implement a plan for the procurement of any
1827 available federal disaster funds and use such funds for the

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removal of derelict vessels.

(b) All costs, including costs owed to a third party, incurred by the commission, another ~~or other~~ law enforcement agency, or a governmental subdivision, when the governmental subdivision has received authorization from a law enforcement officer or agency, in the relocation, ~~or~~ removal, storage, destruction, or disposal of a derelict vessel are recoverable against the vessel owner or the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition. The Department of Legal Affairs shall represent the commission in actions to recover such costs. As provided in s. 705.103(4), a person who neglects or refuses to pay such costs may not be issued a certificate of registration for such vessel or for any other vessel or motor vehicle until such costs have been paid. A person who has neglected or refused to pay all costs of removal, storage, destruction, or disposal of a derelict vessel as provided in this section, after having been provided written notice via certified mail that such costs are owed, and who applies for and is issued a registration for a vessel or motor vehicle before such costs have been paid in full commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) A contractor performing such ~~relocation or removal~~ activities at the direction of the commission, an officer ~~officers~~ of the commission, ~~or~~ a law enforcement agency or officer, or a governmental subdivision, when the governmental subdivision has received authorization for the relocation or removal from a law enforcement officer or agency, pursuant to this section must be licensed in accordance with applicable

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1857 United States Coast Guard regulations where required; obtain and
1858 carry in full force and effect a policy from a licensed
1859 insurance carrier in this state to insure against any accident,
1860 loss, injury, property damage, or other casualty caused by or
1861 resulting from the contractor's actions; and be properly
1862 equipped to perform the services to be provided.

1863 Section 28. Except as otherwise expressly provided in this
1864 act, this act shall take effect July 1, 2021.

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 Committee on Environment and Natural Resources

BILL: CS/SB 1086

INTRODUCER: Environment and Natural Resources Committee and Senator Hutson

SUBJECT: Operation and Safety of Motor Vehicles and Vessels

DATE: March 16, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	Fav/CS
2.			AEG	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1086 contains numerous changes to existing laws administered by the Fish and Wildlife Conservation Commission (FWC) and other law enforcement entities.

Relating to rulemaking, the bill:

- Provides additional rulemaking authority to FWC to implement provisions relating to derelict vessels.

Relating to boater safety, the bill:

- Revises conditions under which a person operating a motor vehicle or vessel commits a misdemeanor by failing to submit to breath or urine testing for alcohol, chemical substances, and controlled substances.
- Deletes the provisions establishing a misdemeanor for the refusal to submit to blood testing for alcohol, chemical substances, and controlled substances.
- Defines the term “human-powered vessel” and restricts the operation of such vessels within the boundaries of the Florida Intracoastal Waterway.
- Prohibits a livery from leasing, hiring, or renting a vessel to a person required to complete a FWC-approved boating safety education course unless the person presents certain documentation indicating compliance.
- Revises boating-restricted areas to include certain areas around public or private marinas, permitted public mooring fields, and the Florida Intracoastal Waterway.
- Designates Monroe County as an anchoring limitation area.

- Authorizes FWC to establish anchoring/mooring/beaching/grounding protection zones for springs.
- Prohibits the operation of vessels faster than slow speed, minimum wake upon approaching certain hazardous conditions, including approaching an emergency or construction vessel.

Relating to derelict vessels, the bill:

- Authorizes officers to provide in-person notice that a vessel is at risk of becoming derelict if there is a body camera recording.
- Authorizes law enforcement officers to relocate at-risk vessels to a certain distance from mangroves or vegetation.
- Authorizes FWC to establish a derelict vessel prevention program.
- Authorizes local governments to enact and enforce regulations to remove an abandoned or lost vessel affixed to a public mooring.
- Authorizes law enforcement officers to relocate or remove public nuisance vessels from the waters of this state.
- Prohibits the Department of Highway Safety and Motor Vehicles from issuing a certificate of title to an applicant for a vessel that has been deemed derelict, and beginning in 2023, authorizes the department to reject an application for a certificate of title for a vessel that has been deemed derelict.
- Authorizes FWC to provide local government grants for the destruction and disposal of derelict vessels.
- Creates specific procedures for derelict vessels or vessels that have been declared a public nuisance that are present on waters of this state, including notice and hearing requirements and liability for removal costs.
- Revises the definition of the term “derelict vessel” to specify requirements for a vessel to be considered “wrecked,” “junked,” or “substantially dismantled.”
- Authorizes certain governmental subdivisions to perform relocation or removal activities and specifies requirements for licensure, insurance, and equipment.

Relating to marine sanitation devices, the bill:

- Requires the owner/operator of a live-aboard vessel or houseboat equipped with a marine sanitation device to maintain records of each pumpout.

Relating to penalties, the bill:

- Increases the civil penalties for a vessel deemed at risk of becoming derelict.
- Creates civil penalties for vessels creating special hazards as specified in the bill.
- Adds operating a human-powered vessel in the Intracoastal Waterway to the list of violations resulting in a noncriminal infraction.

Relating to spaceflight, the bill:

- Authorizes FWC to establish temporary protective zones in certain water bodies in preparation for a launch service or reentry service, or for the recovery of spaceflight assets before or after a launch service or reentry service.

II. Present Situation:

Fish and Wildlife Conservation Commission

The Fish and Wildlife Conservation Commission (FWC) is responsible for regulating, managing, protecting, and conserving the state's fish and wildlife resources.¹ FWC is governed by a board of seven members who are appointed by the Governor and confirmed by the Florida Senate to five-year terms.² Under Article IV, Section 9 of the Florida Constitution, FWC is granted the authority to exercise the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life. The Legislature may enact laws that aid FWC in its exercise of regulatory functions and executive powers in the areas of planning, budgeting, personnel management, and purchasing.³

Chapters 327 and 328, F.S., concerning vessel safety and vessel title certificates, liens, and registration, are enforced by FWC's Division of Law Enforcement and its officers, county sheriffs and deputies, municipal police officers, and any other law enforcement officer.⁴ The Division of Law Enforcement manages the state's waterways to ensure boating safety for residents of and visitors to the state.⁵ This 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.⁶

Boater Safety Education

A person born on or after January 1, 1988, who will be operating a boat in Florida waters with an engine of 10 horsepower or more, must obtain a Florida boating safety identification card.⁷ To obtain a card, a person must complete an approved boating safety course.⁸ There are several courses available at various price points ranging from free up to \$50.⁹ The course must meet the 8-hour instruction requirement established by the National Association of State Boating Law Administrators and must include a component regarding diving vessels.¹⁰ The card is valid for

¹ FLA. CONST. art. IV, s. 9.

² *Id.*; see also s. 379.102(1), F.S.

³ FLA. CONST. art. IV, s. 9.

⁴ Section 327.70(1), F.S.; see s. 943.10(1), F.S., which defines "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. The definition also includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

⁵ Fish and Wildlife Conservation Commission (FWC), *Boating*, <https://myfwc.com/boating/> (last visited Feb. 13, 2021).

⁶ FWC, *Law Enforcement*, <https://myfwc.com/about/inside-fwc/le/> (last visited Feb. 15, 2021). See s. 327.70(1) and (4), F.S.

⁷ Section 327.395(1), F.S.

⁸ FWC, *Boater Education Identification Card*, <https://myfwc.com/boating/safety-education/id/> (last visited Feb. 23, 2021).

This card is not a boating license, it is a certification that the person named on the card has successfully completed the required boating safety course.

⁹ FWC, *Boating Safety Courses*, <https://myfwc.com/boating/safety-education/courses/> (last visited Feb. 23, 2021).

¹⁰ Section 327.395(1), F.S.

life, unless it was obtained by passing a temporary certificate examination, in which case it is valid for 90 days after the date of issuance.¹¹

Certain persons are exempt from the requirement to obtain a boating safety identification card. A person is exempt if he or she:

- Is licensed by the United States Coast Guard (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 requirements in Florida.
- Is operating a vessel within 90 days after the purchase of that vessel and has available for inspection aboard that vessel a bill of sale.
- Is operating a vessel within 90 days after completing the boater education course 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.
- Is exempted by FWC rule.¹²

A person who operates a vessel without the required boating safety identification card can be charged with a noncriminal infraction and is subject to a uniform boating citation and a \$50 civil penalty.¹³

A livery may not knowingly lease, hire, or rent vessels under certain conditions meant to ensure boater safety.¹⁴ A livery may also not knowingly lease, hire, or rent any vessel powered by a motor of 10 horsepower or greater to any person who is required to comply with boater safety education requirements, unless the person presents photographic identification and a valid boater safety identification card to the livery or meets one of the listed exemptions.¹⁵

Boating Safety Regulations

An operator of a vessel in Florida must operate the vessel in a reasonable and prudent manner, having regard for other waterborne traffic, posted speed and wake restrictions, and all other attendant circumstances so as not to endanger the life, limb, or property of another person

¹¹ Section 327.395(5), F.S.

¹² Section 327.395(6), F.S.

¹³ Section 327.73(1)(s), F.S.

¹⁴ Section 327.54(1), F.S. For example, vessels must have proper safety equipment and be seaworthy and the number of vessel occupants may not exceed the maximum safety load of the vessel.

¹⁵ Section 327.54(2), F.S.

outside the vessel or due to vessel overloading or excessive speed.¹⁶ Operating a vessel in excess of a posted speed limit is a civil infraction, for which the penalty is \$50.¹⁷

Vessel owners and operators must carry, store, maintain, and use safety equipment in accordance with current Coast Guard safety equipment requirements, unless expressly exempted.¹⁸ Vessel owners and operators are also subject to additional safety requirements relating to appropriate equipment and the use of personal flotation devices.¹⁹

Anchoring or Mooring

Anchoring or mooring 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.²⁰ Mooring is accomplished through the use of moorings permanently affixed to the bottom of the water body. Anchorages are areas that boaters regularly use for anchoring or mooring, whether designated or managed for that purpose or not. Mooring fields are areas designated and used for a system of properly spaced moorings.²¹

State law prohibits a person from anchoring a vessel, except in case of emergency, in a manner which unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel.²² Interference with navigation is a noncriminal infraction and punishable by a fine of \$50.²³

The owner or operator of a vessel or floating structure may not anchor or moor 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 (a facility that services or repairs a yacht with a water line of 120 feet or more in length); 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.²⁴

However, there are exceptions if:

- The vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor for 5 business days or until the vessel is repaired, whichever occurs first; or

¹⁶ Section 327.33, F.S.

¹⁷ Section 327.73(h), F.S.

¹⁸ Section 327.50, F.S.

¹⁹ *Id.*

²⁰ Section 327.02, F.S., defines the term "vessel" to include 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.

²¹ Ankersen, Hamann, & Flagg, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, 2 (Rev. May 2012), available at https://www.flseagrant.org/wp-content/uploads/anchoring_away_5_12_update_web.pdf (last visited Mar. 10, 2021).

²² Section 327.44, F.S.

²³ Section 327.73, F.S.

²⁴ Section 327.4109(1)(a), F.S.

- Imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor until weather conditions no longer pose such risk.²⁵

Additionally, the owner or operator of a vessel or floating structure may not anchor or moor within the marked boundary of a public mooring field unless the owner or operator has a lawful right to do so by contractual agreement or other business arrangement.²⁶

Local Regulation of the Anchoring or Mooring of Vessels

Local governments are authorized by general permit to construct, operate, and maintain public mooring fields, each for up to 100 vessels.²⁷ Mooring fields are required to be located where navigational access already exists between the mooring field and the nearest customarily used access channel or navigable waters which the mooring field is designed to serve. Each mooring field must be associated with a land-based support facility that provides amenities and conveniences, such as parking, bathrooms, showers, and laundry facilities. Major boat repairs and maintenance, fueling activities other than from the land-based support facility, and boat hull scraping and painting are not authorized within mooring fields.²⁸

Local governments are authorized to enact and enforce ordinances that prohibit or restrict the mooring or anchoring of floating structures²⁹ or live-aboard vessels³⁰ within their jurisdictions and vessels that are within the marked boundaries of permitted mooring fields.³¹ However, local governments 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.³²

Anchoring Limitation Areas

State law designates certain densely populated urban areas as anchoring limitation areas.³³ To promote the public's use and enjoyment of these waterways, anchoring a vessel is prohibited at any time between 30 minutes after sunset and 30 minutes before sunrise in an anchoring limitation area.³⁴ However, there are some exceptions where anchoring is permitted in an anchoring limitation area:

²⁵ Section 327.4109(2), F.S.

²⁶ Section 327.4109(3), F.S.

²⁷ See s. 373.118, F.S. and Fla. Admin. Code R. 62-330.420(1).

²⁸ See Fla. Admin. Code R. 62-330.420.

²⁹ Section 327.02, F.S., defines the term "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."

³⁰ Section 327.02, F.S., defines the term "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."

³¹ Section 327.60(3), F.S.

³² Section 327.60(2)(f), F.S.

³³ Section 327.4108(1), F.S.

³⁴ Section 327.4108(2), F.S.

- When a vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors;
- If imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors; or
- During certain special events.³⁵

Certain types of vessels are exempt from anchoring limitation areas, including certain government, construction, and fishing vessels.³⁶ Law enforcement officers or agencies may remove and impound vessels from anchoring limitation areas when a vessel operator who was previously issued a citation continues to anchor the vessel in or refuses to leave the anchoring limitation area.³⁷

Boating-Restricted Areas

FWC may establish boating-restricted areas on the waters of this state for any purpose deemed necessary to ensure the safety of the public if the restrictions are necessary based on boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion, or other navigational hazards or to protect seagrasses on privately owned submerged lands.³⁸ FWC adopts boating-restricted areas by rule.³⁹

Each boating-restricted area must be developed in consultation and coordination with the governing body of the county or municipality in which the boating-restricted area is located. When the boating-restricted area is to be on the navigable waters of the United States, FWC must consult and coordinate with the Coast Guard and the United States Army Corps of Engineers.⁴⁰

Local governments also have authority to establish boating-restricted areas by ordinance.⁴¹ These areas include, but are not limited to:

- Idle-speed, no wake areas;
- Slow speed, minimum wake areas; and
- Vessel-exclusion zones.

Local ordinances establishing boating-restricted areas are subject to FWC review and approval. FWC must make its determination based on substantial competent evidence that the ordinance is necessary to protect public safety.⁴² However, navigational hazards are presumed to exist in several areas noted under FWC rule and statute.⁴³ In these cases, a showing of substantial competent evidence is not required.

³⁵ Section 327.4108(3), F.S.

³⁶ Section 327.4108(4), F.S.

³⁷ Section 327.4108(5), F.S.

³⁸ Section 327.46, F.S. Boating-restricted areas can include, but are not limited to, restrictions of vessel speeds and vessel traffic.

³⁹ See Fla. Admin. Code R. 68D-24, for established boating restricted areas by county.

⁴⁰ Section 327.46(3), F.S.

⁴¹ Section 327.46(1), F.S.

⁴² *Id.*

⁴³ *Id.*; Fla. Admin. Code R. 68D-21.004. Navigational hazards are presumed to exist in areas including: within certain distances of launching and landing facilities, fuel pumps, lock structures, bridge fenders; in certain small waterways or areas

Additionally, the Coast Guard can establish safety zones,⁴⁴ security zones,⁴⁵ regulated navigation areas,⁴⁶ or naval vessel protection zones⁴⁷ where persons may not knowingly operate a vessel or authorize the operation of a vessel in violation of the restrictions under the zone.⁴⁸ The restricted vessel access protects against destruction, loss, or injury from various causes.⁴⁹ Generally, the Coast Guard establishes security zones around vessels, harbors, ports, and waterfront facilities. The Coast Guard has established several safety zones, security zones, and regulated navigation areas in Florida,⁵⁰ including a security zone around the Kennedy Space Center.⁵¹

A person who knowingly operates a vessel or authorizes the operation of a vessel in violation of an established zone or area, and without authorization by the Coast Guard Captain of the Port, commits a misdemeanor of the first degree.⁵² A person who continues to do so after receiving a warning, or refusing to leave, commits a felony of the third degree.⁵³ State and local law enforcement may enforce these zones at the request of a federal authority if necessary to augment federal law enforcement efforts and if there is a compelling need to protect the residents and infrastructure of the state.⁵⁴

Protection Zones for Springs

FWC is authorized to establish protection zones that restrict the speed and operation of vessels to protect and prevent harm to springs, including negative impacts to water quality, water quantity, hydrology, wetlands, and aquatic and wetland-dependent species.⁵⁵ To develop a springs protection zone, FWC consults and coordinates with the appropriate water management district, DEP, and the county and municipality, if applicable, where the zone is located.⁵⁶

The restrictions in a springs protection zone do not apply to certain law enforcement, firefighting, or rescue personnel operating a vessel in the course of performing their official duties, or in emergency situations.⁵⁷

designated as a public bathing or swimming area; near certain bends in the waterway; areas subject to unsafe levels of vessel traffic congestion, hazardous water levels or currents; and canoe trails.

⁴⁴ 33 C.F.R. pt. 165 subpart C.

⁴⁵ 33 C.F.R. pt. 165 subpart D.

⁴⁶ 33 C.F.R. pt. 165 subpart B.

⁴⁷ 33 C.F.R. pt. 165 subpart G.

⁴⁸ Section 327.461(1)(a), F.S.

⁴⁹ 33 C.F.R. pt. 165; see United States Coast Guard, *Regulated Navigation Areas*, <https://www.dco.uscg.mil/RNA/> (last visited Feb. 17, 2021).

⁵⁰ 33 C.F.R. s. 165.T07-0794 - 165.786, providing safety and security zones and regulated navigation areas in the Seventh Coast Guard District.

⁵¹ 33 C.F.R. s. 165.701.

⁵² Section 327.461(2), (7), F.S.

⁵³ Section 327.461(3), F.S.

⁵⁴ Section 327.461(1)(a), F.S.

⁵⁵ Section 327.45(2), F.S.

⁵⁶ Section 327.45(3), F.S. If the zone includes navigable waters of the United States, FWC is required to coordinate with the United States Coast Guard and the United States Army Corps of Engineers.

⁵⁷ Section 327.45(5), F.S.

Derelict Vessels

A derelict vessel is a vessel that is left, stored, or abandoned in a wrecked, junked, or substantially dismantled condition upon any public waters of this state; at a port in the state without the consent of the agency that has jurisdiction of the port; or docked, grounded, or beached upon the property of another without the consent of the owner of the property.⁵⁸ It is unlawful for a person, firm, or corporation to store, leave, or abandon any derelict vessel in this state.⁵⁹

At-Risk Vessels

In 2016, the Legislature prohibited neglected vessels or those in deteriorating conditions from anchoring, mooring, or occupying the waters of this state.⁶⁰ A vessel is at risk of becoming derelict if any of the following conditions exist:

- The vessel is taking on or has taken on water without an effective means to dewater;
- Spaces on the vessel that are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time;
- The vessel has broken loose or is in danger of breaking loose from its anchor;
- The vessel is left or stored aground unattended in such a state that would prevent the vessel from getting underway, or is listing due to water intrusion, or is sunk or partially sunk; or
- The vessel does not have an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives telephonic or written notice from an officer, and the vessel owner or operator is unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair.⁶¹

Abandoned Vessels

“Abandoned property”⁶² means all tangible personal property that does not have an identifiable owner and that has been disposed of on public property in a wrecked, inoperative, or partially dismantled condition or has no apparent intrinsic value to the rightful owner. The term includes derelict vessels, as defined in s. 823.11, F.S.

When an article of lost or abandoned property is present on public property and is not easily removable, the law enforcement officer must place a notice of removal on the property. The law enforcement agency must then contact the Department of Highway Safety and Motor Vehicles to determine the name and address of the owner, and must mail a copy of the notice to the owner.⁶³

If, after 5 days of posting the notice and mailing such notice, the owner has not removed the items from public property or shown reasonable cause for failure to do so, the law enforcement agency may retain the property for its own use, trade the property, donate the property, sell the property, or remove the property.⁶⁴

⁵⁸ Section 823.11(1)(b), F.S.

⁵⁹ Section 376.15, F.S.; s. 823.11(2), F.S.

⁶⁰ Chapter 2016-108, Laws of Fla.; s. 327.4107, F.S.

⁶¹ Section 327.4107, F.S.

⁶² Section 705.101(3), F.S.

⁶³ Section 705.103(2), F.S.

⁶⁴ *Id.*

The owner of abandoned or lost property who does not remove the property after being noticed, is liable to the law enforcement agency for all costs of removal, storage, and destruction of the property, less any salvage value obtained by the disposal of the property.⁶⁵ Upon the final disposition of the property, the law enforcement officer is required to notify the owner of the amount owed. A person who neglects or refuses to pay the amount owed is not entitled to be issued a certificate of registration for the vessel, or any other vessel, until such costs have been paid.⁶⁶

Local governments are authorized to enact and enforce regulations to implement the procedures for abandoned or lost property that allow the local law enforcement agency, after providing written notice, to remove a vessel affixed to a public dock within its jurisdiction that is abandoned or lost property.⁶⁷

Removal of Derelict Vessels

FWC's Division of Law Enforcement and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officers have the responsibility and authority to enforce vessel safety and vessel title certificates, liens, and registration.⁶⁸

Both state and local law enforcement are authorized and empowered to relocate or remove a derelict vessel from public waters if the derelict vessel obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment, property, or persons.⁶⁹ FWC officers and other law enforcement agency officers or contractors who perform relocation or removal activities at FWC's direction are required to be licensed, insured, and properly equipped to perform the services to be provided.⁷⁰

The costs incurred by FWC or another law enforcement agency for relocating or removing a derelict vessel are recoverable against the vessel owner.⁷¹ A vessel owner who neglects or refuses to pay the costs of removal, storage, and destruction of the vessel, less any salvage value obtained by disposal of the vessel, is not entitled to be issued a certificate of registration for such vessel, or any other vessel or motor vehicle, until the costs are paid.⁷²

FWC may provide grants, funded from the Florida Coastal Protection Trust Fund, to local governments for the removal of derelict vessels from waters of this state, if funds are appropriated for the grant program.⁷³ Grants are awarded based on a set of criteria outlined in FWC rules.⁷⁴ Removal or relocation of a vessel on private property is not eligible for grant

⁶⁵ Section 705.103(4), F.S.

⁶⁶ *Id.*

⁶⁷ Section 327.60(5), F.S.

⁶⁸ Section 327.70, F.S.

⁶⁹ Section 823.11(3), F.S.; s. 376.15(3)(a), F.S.

⁷⁰ Section 823.11(3)(c), F.S.; s. 376.15(3)(c), F.S.

⁷¹ Section 823.11(3)(a), F.S.; s. 376.15(3)(a), F.S.

⁷² Section 705.103(4), F.S.

⁷³ Section 376.15, F.S.

⁷⁴ Fla. Admin. Code R. 68-1.003.

funding.⁷⁵ However, each fiscal year, if all program funds are not requested by and granted to local governments for the removal of derelict vessels by the end of the third quarter, FWC may use the remainder of the funds to remove, or to pay private contractors to remove, derelict vessels.⁷⁶

Penalties for Prohibited Acts Relating to Derelict Vessels and Anchoring and Mooring

It is a first degree misdemeanor to store, leave, or abandon a derelict vessel in Florida.⁷⁷ Violations are punishable by a term of imprisonment of no more than one year and a fine of up to \$1,000.⁷⁸ Further, such violation is punishable by a civil penalty of up to \$75,000 per violation per day.⁷⁹ Each day during any portion of which the violation occurs constitutes a separate offense.⁸⁰

Section 327.73(1)(aa), F.S., provides that an owner or operator of a vessel at risk of becoming derelict on waters of this state or who allows such vessel to occupy such waters, is subject to a uniform boating citation and civil penalty. The civil penalty provided is:

- \$50 for a first offense;
- \$100 for a second offense occurring 30 days or more after a first offense; and
- \$250 for a third offense occurring 30 days or more after a previous offense.⁸¹

Section 327.73(1)(bb), F.S., provides that an owner or operator of a vessel or floating structure who anchors or moors in a prohibited area is subject to a uniform boating citation and penalties. The civil penalty provided is up to a maximum of:

- \$50 for a first offense;
- \$100 for a second offense; and
- \$250 for a third offense.⁸²

Finally, s. 327.73(1) F.S., provides that any person who fails to appear or otherwise properly respond to a uniform boating citation must, in addition to the charge relating to the violation of the boating laws, be charged with a second degree misdemeanor, which is punishable by a maximum fine of \$500 and no more than 60 days imprisonment.⁸³

Artificial Reef Program

Artificial reefs are reef habitats using one or more objects of natural or human origin intentionally placed on the seafloor to enhance marine life for human use. Artificial reefs provide benefits including:

⁷⁵ National Oceanic and Atmospheric Association, Marine Debris Program, *Abandoned and Derelict Vessels in Florida*, <https://marinedebris.noaa.gov/abandoned-and-derelict-vessels/florida> (last visited Feb. 22, 2021).

⁷⁶ Section 376.15, F.S.

⁷⁷ Sections 376.15(2) and 823.11(2) and (5), F.S. A first degree misdemeanor is punishable by up to one year in county jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

⁷⁸ Sections 775.082(4)(a) and 775.083(1)(d), F.S.

⁷⁹ Sections 376.15(2) and 376.16(1), F.S.

⁸⁰ Section 376.16(1), F.S.

⁸¹ Section 327.73(1)(aa), F.S.

⁸² Section 327.73(1)(bb), F.S.

⁸³ Sections 775.082 and 775.083, F.S.

- Enhancing recreational and diving opportunities;
- Providing socio-economic benefits to local coastal communities;
- Increasing reef fish habitat;
- Mitigation reefs to replace hard bottom habitat lost through activities such as beach re-nourishment and damage caused by vessel groundings;
- Oyster reef regeneration; and
- Shoreline protection.⁸⁴

Florida has one of the most active artificial reef programs in the nation. Since the 1940s, more than 3,750 planned public artificial reefs have been placed in state and federal waters off of Florida's coast.⁸⁵ FWC is authorized to accept title, on behalf of the state, of vessels to use as offshore reefs in the artificial reef program.⁸⁶ Under the program, FWC provides grants and financial and technical assistance to coastal local governments, state universities, and qualified nonprofit organizations for the siting and development of artificial reefs, and for monitoring and evaluating such reefs and their recreational, economic, and biological effectiveness.⁸⁷

Marine Sanitation Devices

Certain vessels, including those that are 26 feet or longer with an enclosed cabin and berthing facilities, houseboats,⁸⁸ and floating structures with an enclosed living space with berthing facilities or work space with public access, are required to have a working toilet on board.⁸⁹ Permanently installed toilets must be properly attached to a Coast Guard certified or labeled marine sanitation device.⁹⁰ A marine sanitation device is equipment that is designed to receive, retain, treat, or discharge sewage and the process to treat such sewage.⁹¹

Florida prohibits the discharge of untreated sewage from any vessel, including houseboats, or any floating structure into state waters.⁹² This prohibition also applies to live-aboard vessels, which are defined as: a vessel used solely as a residence and not for navigation; for which a declaration of domicile has been filed; or used as a residence that does not have an effective means of propulsion for safe navigation; and specifically excludes commercial fishing vessels.⁹³ Vessel owners with Type III⁹⁴ marine sanitation devices must dispose of sewage in an approved

⁸⁴ FWC, *Artificial Reefs*, <https://myfwc.com/fishing/saltwater/artificial-reefs/> (last visited Feb. 22, 2021).

⁸⁵ *Id.*

⁸⁶ Section 379.249(1), F.S.

⁸⁷ *Id.*

⁸⁸ Section 327.02(17), F.S. defines a "houseboat" as a vessel used primarily as a residence and not moved for 21 out of 30 days in a county of this state if the residential use of the vessel is to the preclusion of its use as a means of transportation. Section 327.02(17).

⁸⁹ Section 327.53(1)-(3), F.S.

⁹⁰ *Id.*

⁹¹ DEP, *Clean Boater FAQ*, <https://floridadep.gov/rcp/cva/content/clean-boater-faq> (last visited Feb. 22, 2021).

⁹² Section 327.53(4)(a), F.S.

⁹³ Section 327.02(23), F.S.

⁹⁴ Type III marine sanitation devices hold sewage, preventing the direct overboard discharge of sewage. Type I marine sanitation devices treat sewage by chemical or thermal means before discharge. Type II marine sanitation devices treat sewage by biological means, using bacteria, before discharge.

pump-out facility.⁹⁵ Violators are subject to a noncriminal infraction, for which the penalty is \$50.⁹⁶

Nuisance Vessels

Florida law declares that vessels or floating structures that are operated or occupied on the waters of this state and violate marine sanitation device requirements are a nuisance and hazard to public safety and health.⁹⁷ If an owner or operator does not correct a violation within 30 days after a citation is issued, and their vessel or floating structure remains on the waters of this state, law enforcement officers are required to apply to the appropriate court in the county where the vessel or floating structure is located, to order or cause the removal of the vessel or floating structure from the waters of this state at the owner's expense.⁹⁸ If the owner cannot be found or fails to pay the removal costs, the vessel or floating structure will be sold at a nonjudicial sale and the proceeds will be used to pay the removal costs.⁹⁹

Testing for Alcohol, Chemical Substances, and Controlled Substances

Anyone who operates a motor vehicle or vessel in the state is, by operating such a vehicle or vessel, deemed to have given his or her consent to submit to an approved chemical or physical test of his or her breath to determine the alcoholic content of his or her blood or breath, or a urine test to detect the presence of chemical substances or controlled substances.¹⁰⁰ These tests may be performed if the person is lawfully arrested for any offense allegedly committed while the person was driving or in actual physical control of a motor vehicle, or operating a vessel, while under the influence of alcohol or chemical or controlled substances.¹⁰¹

Additionally, anyone who operates a motor vehicle or vessel in the state is deemed to have given his or her consent to submit to an approved blood test to determine the alcoholic content of his or her blood or to detect the presence of chemical substances or controlled substances.¹⁰² These tests may be performed if there is reasonable cause to believe that the person was driving or in actual physical control of a motor vehicle, or operating a vessel, while under the influence of alcohol or chemical or controlled substances and the person appears for treatment at a hospital, clinic, or emergency vehicle, and the administration of a breath or urine test is impractical or impossible.¹⁰³

A person who operates a motor vehicle and fails to submit to a breath, urine, or blood test will have his or her driver's license suspended for a period of 1 year for a first refusal, or 18 months for a repeat refusal.¹⁰⁴ A person who operates a motor vehicle who fails to submit to such test

⁹⁵ Section 327.53(4)(b), F.S.

⁹⁶ Section 327.53(6)(a), F.S.

⁹⁷ Section 327.53(7), F.S.

⁹⁸ *Id.*

⁹⁹ Section 328.17, F.S.

¹⁰⁰ Sections 316.1932(1)(a) and 327.352(1)(a), F.S.

¹⁰¹ *Id.*

¹⁰² Sections 316.1932(1)(c) and 327.352(1)(c), F.S.

¹⁰³ *Id.*

¹⁰⁴ Section 316.1932(1)(a) and (1)(c), F.S.

who has previously had his or her license suspended for a prior refusal commits a misdemeanor of the first degree and is subject to additional penalties.¹⁰⁵

A person who operates a vessel and fails to submit to a breath, urine, or blood test is subject to a civil penalty of \$500 for a first refusal.¹⁰⁶ A person who operates a vessel and fails to submit to such test who has been previously fined commits a misdemeanor and is subject to additional penalties.¹⁰⁷

However, in 2016, the United States Supreme Court issued a ruling in *Birchfield v. North Dakota* that prohibits warrantless blood tests incident to arrests for driving under the influence.¹⁰⁸ The Court held that the Fourth Amendment prohibits unreasonable searches, and the taking of a blood sample or administration of a blood test is a search.¹⁰⁹ Under the Court's ruling, refusing a blood test may not subject a person to criminal penalties.¹¹⁰ Thus, Florida's current laws relating to the refusal to submit to a blood test are unenforceable.

Mangroves

Mangroves are tropical plants that are adapted to loose, wet soils, salt water, and periodic submersion by tides.¹¹¹ They provide protected nursery areas for fishes, crustaceans, and shellfish; food, shelter, and nesting areas for a multitude of species;¹¹² protection of the shoreline from storm surge and erosion;¹¹³ and water quality protection.¹¹⁴

Currently, there are not any state regulations for anchoring or mooring near mangroves, although the trimming of mangroves is regulated under the Mangrove Trimming and Preservation Act.¹¹⁵ Through the Mangrove Trimming and Preservation Act, the Legislature intends to protect and preserve mangrove resources valuable to our environment and economy from unregulated removal, defoliation, and destruction.¹¹⁶ FWC notes that removing derelict and at-risk vessels from areas in close proximity to mangroves and other upland vegetation can be considerably more expensive than from other areas due to conservation and depth concerns.¹¹⁷

¹⁰⁵ *Id.*; s. 316.1939, F.S.

¹⁰⁶ Section 327.352(1)(a) and (1)(c), F.S.

¹⁰⁷ *Id.*; s. 327.259, F.S.

¹⁰⁸ *Birchfield v. North Dakota*, 136 U.S. 2160 (2016).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ DEP, *What is a Mangrove?*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/what-mangrove> (last visited Feb. 23, 2021).

¹¹² DEP, *Florida's Mangroves*, <https://floridadep.gov/rcp/rcp/content/floridas-mangroves> (last visited Feb. 23, 2021).

¹¹³ FWC, *Mangrove Forests*, <https://myfwc.com/research/habitat/coastal-wetlands/information/mangroves/> (last visited Feb. 23, 2021).

¹¹⁴ *Id.*

¹¹⁵ Sections 403.9321-403.9333, F.S.

¹¹⁶ Section 403.9323, F.S.

¹¹⁷ FWC, *Senate Bill 1086 Agency Bill Analysis* (February 10, 2021)(on file with the Senate Committee on Environment and Natural Resources).

Florida Intracoastal Waterway

The Florida Intracoastal Waterway is defined as the Atlantic Intracoastal Waterway, the Georgia state line north of Fernandina to Miami; the Port Canaveral lock and canal to the Atlantic Intracoastal Waterway; the Atlantic Intracoastal Waterway, Miami to Key West; the Okeechobee Waterway, Stuart to Fort Myers; the St. Johns River, Jacksonville to Sanford; the Gulf Intracoastal Waterway, Anclote to Fort Myers; the Gulf Intracoastal Waterway, Carrabelle to Tampa Bay; Carrabelle to Anclote open bay section, using the Gulf of Mexico; the Gulf Intracoastal Waterway, Carrabelle to the Alabama state line west of Pensacola; and the Apalachicola, Chattahoochee, and Flint Rivers in Florida.¹¹⁸ The Florida Intracoastal Waterway is shown in the map below.¹¹⁹



Spaceflight

With the recent resurgence of space activity, Florida is emerging as a national leader in spaceflight activities. In 2020, the space industry in Florida completed 31 launches from Cape Canaveral Spaceport,¹²⁰ including the SpaceX Demo-2 mission in May 2020¹²¹ and the SpaceX

¹¹⁸ Section 327.02(15), F.S.

¹¹⁹ Florida Department of Transportation, *Florida Waterways System Plan*, Figure 1-2 on p. 1-12 (2015), available at https://www.fdot.gov/docs/default-source/seaport/pdfs/2015-Florida-Waterways-System-Plan_Final.pdf (last visited Mar. 1, 2021).

¹²⁰ Space Florida, *Space Florida and the Future of Aerospace* (undated memo)(on file with the Senate Committee on Environment and Natural Resources).

¹²¹ National Aeronautics and Space Administration (NASA), *NASA, SpaceX Successfully Launch Demo-2 Mission*, <https://blogs.nasa.gov/kennedy/2020/05/30/nasa-spacex-successfully-launch-demo-2-mission/> (last visited Feb. 22, 2021).

Crew-1 mission in November 2020.¹²² According to Space Florida, over 50 launches are expected in 2021, and up to 100 launches are expected annually going forward.¹²³ Upon re-entry, the space capsules splashed down in waters off of Florida's coasts for the first time in 45 years.¹²⁴ NASA and SpaceX teams coordinated with the Coast Guard to ensure crew safety upon splashdown, including providing extra ships and air assets to patrol the splashdown zone to mitigate safety concerns for boaters approaching the landing area.¹²⁵

When the capsule landed in waters near Pensacola in August 2020, private boats approached the landing area too closely, according to the National Aeronautics and Space Administration (NASA).¹²⁶ This led to confusion as recovery crews tried to reach the spacecraft. There were concerns that private boats could have interfered with the emergency recovery operation and that the spacecraft's thrusters could have released toxic propellant fumes.¹²⁷ Although the Coast Guard had patrol boats in the area ahead of the splashdown, it stated that "numerous boaters ignored the Coast Guard crews' requests and decided to encroach the area, putting themselves and those involved in the operation in potential danger."¹²⁸

There are no existing state statutes in place to protect spaceflight operations and astronauts. FWC stated in its agency bill analysis that "spectator separation is necessary to prevent interference with sensitive operations, as well as for public safety reasons."¹²⁹

III. Effect of Proposed Changes:

Testing for Alcohol, Chemical Substances, or Controlled Substances: Sections 1, 2, 6, and 7

Section 1 of the bill amends s. 316.1932, F.S., relating to tests for alcohol, chemical substances, or controlled substances while driving a motor vehicle. **Section 2** of the bill amends s. 316.1939, F.S., relating to refusal to submit to testing for alcohol, chemical substances, or controlled substances.

The bill revises the conditions under which a person's driving privilege is suspended and under which a person commits a misdemeanor relating to tests for alcohol, chemical substances, or controlled substances. The bill provides that failure to submit to a lawful breath test for alcohol, chemical substances, or controlled substances if a person has previously been fined for failure to submit to such test is a misdemeanor of the first degree.

¹²² NASA, *NASA, SpaceX Officials Thrilled with Crew-1 Launch Success*, <https://blogs.nasa.gov/kennedy/2020/11/15/nasa-spacex-officials-thrilled-with-crew-1-launch-success/> (last visited Feb. 22, 2021).

¹²³ Space Florida, *Space Florida and the Future of Aerospace* (undated memo)(on file with the Senate Committee on Environment and Natural Resources).

¹²⁴ AP News, *SpaceX Capsule and NASA Crew Make 1st Splashdown in 45 Years*, <https://apnews.com/article/virus-outbreak-ap-top-news-ca-state-wire-gulf-of-mexico-pensacola-bf77af89c527340793d15a9957d30c84> (last visited Feb. 22, 2021).

¹²⁵ NASA, *NASA and SpaceX Teams Prepare for Crew-1 Mission*, <https://blogs.nasa.gov/kennedy/2020/09/30/nasa-and-spacex-teams-prepare-for-crew-1-mission/> (last visited Feb. 22, 2021).

¹²⁶ AP News, *SpaceX Capsule and NASA Crew Make 1st Splashdown in 45 Years*, <https://apnews.com/article/virus-outbreak-ap-top-news-ca-state-wire-gulf-of-mexico-pensacola-bf77af89c527340793d15a9957d30c84> (last visited Feb. 22, 2021).

¹²⁷ The Verge, *SpaceX capsule Swarmed by Boaters After Successful Splashdown*, <https://www.theverge.com/2020/8/2/21351811/spacex-capsule-boaters-splashdown-boats> (last visited Feb. 22, 2021).

¹²⁸ *Id.*

¹²⁹ FWC, *Senate Bill 1086 Agency Bill Analysis* (February 10, 2021)(on file with the Senate Committee on Environment and Natural Resources).

Section 6 of the bill amends s. 327.352, F.S., relating to tests for alcohol, chemical substances, or controlled substances while operating a vessel. The bill revises the conditions under which a person commits a misdemeanor relating to boating while impaired or intoxicated. The bill provides that failure to submit to a lawful breath or urine test for alcohol, chemical substances, or controlled substances if a person has previously been fined for failure to submit to such test, or had his or her driver's license suspended for an unlawful blood-alcohol or breath-alcohol level, is a misdemeanor of the first degree.

Section 7 of the bill amends s. 327.359, F.S., relating to refusal to submit to testing for alcohol, chemical substances, or controlled substances. The bill revises the conditions under which a person commits a misdemeanor of the first degree for failure to submit to a chemical or physical breath or urine test for alcohol, chemical substances, or controlled substances to include refusal to submit to such a test, and either a previous fine for failure to submit to a chemical or physical breath test, or a driver's license suspension for an unlawful blood-alcohol or breath-alcohol level. The bill deletes from the list of misdemeanors the refusal to submit to a lawful blood test for alcohol, chemical substances, or controlled substances.

In **Sections 1, 2, 6, and 7**, the bill deletes the provisions establishing that a person commits a misdemeanor for refusing to submit to a lawful blood test for alcohol, chemical substances, or controlled substances if the person has been previously fined for refusal to submit to a lawful breath, urine, or blood test.

Human-Powered Vessels: Sections 3 and 8

Section 3 of the bill amends s. 327.02, F.S., relating to definitions. The bill defines the term "human-powered vessel" to mean a vessel powered only by its occupant or occupants, including, but not limited to, a vessel powered only by the occupants' hands or feet, oars, or paddles.

The bill revises references to the International Navigational Rules Act of 1977 and Inland Navigational Rules Act of 1980 to the most recent versions of the Acts, as amended.

Section 8 of the bill creates a new section of law, s. 327.371, F.S., regulating human-powered vessels. The bill authorizes persons to operate a human-powered vessel within the boundaries of the marked channel of the Florida Intracoastal Waterway only under the following conditions:

- When the marked channel is the only navigable portion of the waterway available due to vessel congestion or obstructions on the water and the operator proceeds with diligence to a location where he or she may safely operate the vessel outside the marked channel;
- While crossing the marked channel in the most direct, continuous, and expeditious manner possible and not interfering with other vessel traffic in the channel; or
- During an emergency endangering life or limb.

The bill provides that a person who operates a human-powered vessel within the marked channel outside of these conditions commits a noncriminal infraction.

Rulemaking Authority: Section 4

Section 4 of the bill amends s. 327.04, F.S., related to the Fish and Wildlife Conservation Commission (FWC) rules. The bill provides additional rulemaking authority to FWC to implement the provisions of:

- Chapter 705, F.S., relating to lost or abandoned vessels;
- Section 376.15, F.S., relating to relocation or removal of derelict vessels from public waters; and
- Section 823.11, F.S., relating to criminal penalties for relocation or removal of derelict vessels.

Spaceflight: Section 5

Section 5 of the bill creates a new section of law, s. 327.462, F.S., regulating the temporary establishment of protection zones in water bodies to ensure security around the launch and recovery of spaceflight assets.

The bill defines the following terms for the new section of law:

- “Launch services” means the conduct of a launch and activities involved in the preparation of a launch vehicle, payload, government astronaut, commercial astronaut, or spaceflight participant for such launch.
- “Reentry services” means the conduct of a reentry and activities involved in the preparation of a reentry vehicle, payload, government astronaut, commercial astronaut, or spaceflight participant for such reentry.
- “Spaceflight assets” means any item, or any part of an item, owned by a spaceflight entity which is used in launch services or reentry services, including crewed and uncrewed spacecraft, launch vehicles, parachutes and other landing aids, and any spacecraft or ancillary equipment that was attached to the launch vehicle during launch, orbit, or reentry.
- “Spaceflight entity” means any public or private entity holding a United States Federal Aviation Administration (FAA) launch, reentry, operator, or launch site license for spaceflight activities. The term also includes any manufacturer or supplier of components, services, or vehicles that have been reviewed by FAA as part of issuing such a license, permit, or authorization.¹³⁰

The bill authorizes the head of a law enforcement agency or entity, or his or her designee (“law enforcement”), to, within the agency or entity’s jurisdiction, temporarily establish a protection zone requiring vessels to leave, or prohibiting vessels from entering, water bodies when necessary for preparations in advance of or for recovery of spaceflight assets before or after a launch service or reentry service.

A temporary protection zone must be established under the following conditions:

- The zone must be located within five hundred yards of where launch services, reentry services, or spaceflight asset recovery operations are being conducted. However, the protection zone may be located at a distance greater than five hundred yards if law enforcement determines that such greater distance is in the best interest of public safety.

¹³⁰ The bill defines “spaceflight entity” to have the same definition as in s. 331.501, F.S.

- The zone may remain in effect only as long as necessary to ensure security around the launch and recovery areas and to recover spaceflight assets and any personnel being transported within a spacecraft following the launch or reentry activity. Such protection zone may not be in place more than 72 hours before or 72 hours after the launch.
- Law enforcement may also restrict vessels from operating within up to 500 yards of any vessel transporting recovered spaceflight assets following a launch or reentry while the transport vessel is continuously underway transporting such assets to a location for removal.
- Law enforcement must report the establishment of the temporary protection zone via email to FWC's Division of Law Enforcement, Boating and Waterways Section, and to the appropriate Coast Guard Sector Command having responsibility over the water body, at least 72 hours before establishment of the protection zone. The report must include:
 - Reasons for the protection zone;
 - The portion of the water body or water bodies that will be included in the protection zone; and
 - The duration of the protection zone.
- Law enforcement must report via email to FWC's Division of Law Enforcement, Boating and Waterways Section, the details of all citations issued for violation of the protection zone no later than 72 hours after the end of the protection zone period.

The section of law applies only to launch services, reentry services, or the recovery of spaceflight assets occurring or originating within spaceport territory,¹³¹ and to federally licensed or federally authorized launches and reentries occurring or transiting to an end destination upon waters of this state.

The bill provides that a person who violates this section or any directive given by law enforcement relating to an established temporary protection zone after being advised of the establishment of the protection zone commits a misdemeanor of the second degree.

Boating Safety: Sections 10, 16, 15, and 19

Section 10 of the bill amends s. 327.395, F.S., relating to boater safety identification.

The bill exempts from the boater safety identification card requirement:

- Persons who have been previously licensed by the Coast Guard to serve as master of a vessel, provided proof of such licensure to FWC, and requested that a boating safety identification card be issued in his or her name; and
- Persons who possess an International Certificate of Competence in sailing.

The bill deletes a provision authorizing FWC to appoint liveries, marinas, or other persons as its agents to administer a boating safety education course or temporary certificate examination and issue identification cards or temporary certificates, and requiring the agent to charge a \$2 examination fee. However, the provision is retained in another subsection within the same section of law.

¹³¹ Section 331.304, F.S. establishes as spaceport territory specified real property in Brevard, Santa Rosa, Okaloosa, Gulf, Walton, and Duval Counties, and real property which is a spaceport licensed by the FAA, as designated by the board of directors of Space Florida.

Section 16 of the bill creates s. 327.463, F.S., relating to special hazards requiring slow speeds by vessel operators. The bill specifies conditions under which a vessel is and is not considered to be operating at slow speed, minimum wake.

A vessel is considered to be operating at slow speed, minimum wake only if it is:

- Fully off plane and completely settled into the water; and
- Proceeding without wake or with minimum wake.

A vessel is not considered to be operating at slow speed, minimum wake if it is:

- Operating on plane;
- In the process of coming off plane and settling into the water or getting on plane; or
- Operating at a speed that creates a wake which unreasonably or unnecessarily endangers other vessels.

The bill prohibits a vessel that is required to operate at slow speed, minimum wake from proceeding at a speed greater than is reasonable and prudent to avoid the creation of an excessive wake or other hazardous condition under the existing circumstances.

The bill prohibits vessel operators from operating a vessel faster than slow speed, minimum wake upon approaching certain hazardous conditions and provides that a vessel operator found in violation of this requirement is guilty of a noncriminal infraction. The hazardous conditions are:

- Approaching within 300 feet of any emergency vessel, including but not limited to, a law enforcement vessel, Coast Guard vessel, or firefighting vessel, when such emergency vessel has its emergency lights activated; and
- Approaching within 300 feet of any construction vessel or barge displaying an orange flag indicating that the vessel or barge is actively engaged in construction operations.
 - The flag must be displayed from a pole that extends at least 10 feet above the tallest portion of the vessel or barge, or at least five feet above any superstructure permanently installed upon the vessel or barge.
 - The flag must meet certain requirements, including:
 - Be a size of at least two feet by three feet;
 - Include a wire or other stiffener or be otherwise constructed to ensure that the flag remains fully unfurled and extended in the absence of a wind or breeze; and
 - Be displayed so the visibility of the flag is not obscured in any direction.

The bill specifies that a person may not be cited for a violation during periods of low visibility, including any time between the hours from 30 minutes after sunset to 30 minutes before sunrise, unless the orange flag is illuminated and visible from a distance of at least two nautical miles. Such illumination does not relieve the construction vessel or barge from complying with all navigation rules.

The bill also provides that a person operating a vessel who violates this section, or the owner of or responsible party for a construction vessel or barge that displays an orange flag when it is not actively engaged in construction operations, is guilty of a noncriminal infraction.

The bill specifies that the speed and penalty provisions of this section do not apply to law enforcement, firefighting, or rescue vessels that are owned or operated by a governmental entity.

Section 19 of the bill amends s. 327.54, F.S., relating to safety regulations of liveries. The bill prohibits liveries from knowingly leasing, hiring, or renting a vessel unless the person renting presents:

- Photographic identification and a valid boater safety identification card issued by FWC;
- A state-issued identification card or driver license indicating possession of the boating safety identification card; or
- Photographic identification and a valid temporary certificate issued or approved by FWC.

Boating-Restricted Areas: Sections 12, 13, 14, and 15

Section 12 of the bill amends s. 327.4108, F.S., relating to anchoring of vessels in anchoring limitation areas. The bill designates Monroe County as an anchoring limitation area within which a vessel may only be anchored in the same location for a maximum of 90 days. The bill requires FWC to adopt rules to implement the anchoring limitation area. The bill provides that this anchoring limitation area does not apply to an approved and permitted mooring field.

The bill deletes a provision that references an obsolete section of law.

Section 13 of the bill amends s. 327.4109, F.S., relating to prohibited anchoring and mooring. The bill revises existing anchoring and mooring restrictions to prohibit anchoring and mooring within 150 feet of a *public or private* marina or other *public* vessel launching or loading facility. However, vessels may anchor and moor within these areas under the exemptions in existing law.

Section 14 of the bill amends s. 327.45, F.S., relating to protection zones for springs. The bill authorizes FWC to establish protection zones for springs which prohibit the anchoring, mooring, beaching, or grounding of vessels, to protect and prevent harm to first, second, and third magnitude springs and springs groups, including their associated spring runs, as determined by FWC using the most recent Florida Geological Survey springs bulletin.

Section 15 of the bill amends s. 327.46, F.S., relating to boating-restricted areas. The bill authorizes municipalities and counties to establish slow speed, minimum wake boating-restricted areas by ordinance if the area is within the boundaries of a permitted public mooring field and up to a 100 foot buffer around the mooring field.

The bill also authorizes municipalities and counties to establish boating-restricted areas within the portion of the Florida Intracoastal Waterway within their jurisdiction, except that the municipality or county may not establish a vessel-exclusion zone for public bathing beaches or swim areas within the waterway. This provision is notwithstanding existing law that prohibits municipalities and counties from regulating vessels upon the Florida Intracoastal Waterway.¹³²

¹³² Section 327.60(2)(c), F.S.

Derelict/At-Risk Vessels: Sections 11, 20, 22, 23, 24, 25, and 27

Section 11 of the bill amends s. 327.4107, F.S., relating to vessels at risk of becoming derelict on waters of this state. The bill revises the conditions under which a vessel is determined to be at risk of becoming derelict to delete vessels that are left or stored aground unattended in such a state that would prevent the vessel from getting underway or are sunk or partially sunk.

The bill authorizes FWC and other law enforcement officers to provide notice to a vessel owner or operator that a vessel is at risk of becoming derelict via in-person notice recorded on an agency-approved body camera.

The bill authorizes FWC and other law enforcement officers to relocate or cause to be relocated a vessel at risk of becoming derelict to a distance greater than 20 feet from a mangrove or upland vegetation. Law enforcement agencies and officers must be held harmless for damages to an at-risk vessel that result from relocation unless the damage results from gross negligence¹³³ or willful misconduct.¹³⁴

The bill authorizes FWC to establish a derelict vessel prevention program to address vessels at risk of becoming derelict. The program may, but is not required to, include:

- Removal, relocation, and destruction of vessels declared a public nuisance, derelict or at risk of becoming derelict, or lost or abandoned in accordance with state law;
- Creation of a vessel turn-in program allowing the owner of a vessel determined by law enforcement to be at risk of becoming derelict to turn his or her vessel and vessel title over to FWC to be destroyed without penalty;
- Removal and destruction of an abandoned vessel for which an owner cannot be identified or the owner of which is deceased and no heir is interested in acquiring the vessel;
- Purchase of anchor line, anchors, and other equipment necessary for securing vessels at risk of becoming derelict; and
- Creation or acquisition of moorings designated for securing vessels at risk of becoming derelict.

The bill authorizes FWC to adopt rules to implement the program. Implementation of the program is subject to appropriation by the Legislature and is funded by the Marine Resources Conservation Trust Fund or the Florida Coastal Protection Trust Fund.

Section 20 of the bill amends s. 327.60, F.S., relating to local regulations. The bill authorizes local governments to enact and enforce regulations to implement the procedures for abandoned or lost property that allow the local law enforcement agency to remove an abandoned or lost vessel within its jurisdiction that is affixed to a public mooring.

Section 22 and Section 23 of the bill amend s. 328.09, F.S., relating to the refusal to issue and authority to cancel a certificate of title or registration. The bill prohibits the Department of

¹³³ “Gross negligence” means conduct so reckless or wanting in care that it constitutes a conscious disregard or indifference to the safety of the property exposed to such conduct. Section 823.11, F.S.

¹³⁴ “Willful misconduct” means conduct evidencing carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design or to show an intentional and substantial disregard of the interests of the vessel owner. Section 823.11, F.S.

Highway Safety and Motor Vehicles (DHSMV) from issuing a certificate of title to an applicant for a vessel that has been deemed derelict.

Section 23 of the bill takes effect on July 1, 2023. At that time, the bill authorizes DHSMV to reject an application for a certificate of title for a vessel that has been deemed derelict.

Section 24 of the bill amends s. 376.15, F.S., relating to the relocation or removal of derelict vessels from public waters. The bill deletes the prohibition in existing law against storing or abandoning a derelict vessel and provides that it is unlawful for any person, firm, or corporation to leave a derelict vessel upon the waters of this state. The bill provides that for purposes of this section, the term “leave” means to allow a vessel to remain occupied or unoccupied on the waters of this state for more than 24 hours.

The bill prohibits charging a person who owns or operates a vessel that becomes derelict upon the waters of this state solely as a result of a boating accident that is reported to law enforcement in a written report or otherwise; a hurricane; or another sudden event outside of his or her control with a violation if:

- The individual documents for law enforcement the specific event that led to the vessel being derelict upon the waters of this state; and
- The vessel has been removed from the waters of this state or has been repaired or addressed such that it is no longer derelict upon the waters of this state:
 - For a vessel that has become derelict as a result of a boating accident or other sudden event outside of his or her control, within 7 days after such accident or event; or
 - Within 45 days after the hurricane has passed over this state.

However, this provision does not apply to a vessel that was derelict upon the waters of this state before a stated accident or event.

The bill authorizes FWC or law enforcement agencies or officers to store, destroy, or dispose of derelict vessels, in addition to relocating or removing them. The bill authorizes the recovery of relocation, removal, storage, destruction, and disposal costs incurred by FWC or a law enforcement agency from the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition. FWC or law enforcement agencies or officers, are held harmless for damages to the derelict vessel resulting from these actions, unless the damage results from gross negligence or willful misconduct.

The bill requires a governmental subdivision that has received authorization from a law enforcement agency to perform vessel relocation or removal activities to be licensed, insured, and properly equipped to perform such activities.

The bill adds storage, destruction, and disposal to the list of authorized actions for which FWC may provide grants from the Marine Resources Conservation Trust Fund or Florida Coastal Protection Trust Fund to local governments under an established program for derelict vessels.

Section 25 of the bill amends s. 705.103, F.S., relating to the procedures for abandoned or lost property. The bill creates specific procedures for derelict vessels or vessels that have been declared a public nuisance that are present on waters of this state. When a law enforcement

officer ascertains that such a vessel exists, the officer must cause a notice to be placed on the vessel in substantially the following form:

NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED VESSEL. This vessel, to wit: ...(setting forth brief description)... has been determined to be (derelict or a public nuisance) and is unlawfully upon waters of this state ...(setting forth brief description of location)... and must be removed within 21 days; otherwise, it will be removed and disposed of pursuant to chapter 705, Florida Statutes. The owner and other interested parties may have the right to a hearing to challenge the determination that this vessel is derelict or otherwise in violation of the law. Please contact ... (contact information for person who can arrange for a hearing in accordance with this section) The owner or the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition will be liable for the costs of removal, destruction, and disposal if this vessel is not removed by the owner. Dated this: ... (setting forth the date of posting of notice) ..., signed: ... (setting forth name, title, address, and telephone number of law enforcement officer)

The bill requires the law enforcement agency to mail a copy of the notice and inform the owner or responsible party that he or she has a right to a hearing to dispute the determination that the vessel is derelict or otherwise in violation of the law. If a request for a hearing is made, the bill requires a state agency to follow the statutory processes for proceedings in which the substantial interests of a party are determined by an agency, except that a local judge, magistrate, or code enforcement officer may be designated to conduct a hearing.

The bill authorizes the law enforcement agency, or its designee, if the owner or responsible party for a derelict vessel or vessel that has been declared a nuisance has not requested a hearing at the end of 21 days after the notice is published, or if, following a hearing, the judge, magistrate, administrative law judge, or hearing officer has determined the vessel to be derelict or at risk of becoming derelict and a final order has been entered or the case is otherwise closed, to:

- Remove the vessel from the waters of this state and destroy and dispose of the vessel or authorize another governmental entity or its designee to do so; or
- Authorize the vessel's use as an artificial reef in accordance with FWC's artificial reef program if all necessary federal, state, and local authorizations are received.

The bill provides that the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition is liable to the law enforcement agency, governmental entity, or the agency's or entity's designee for removal, storage, and destruction costs.

The bill provides that neglecting or refusing to pay all costs of removal, storage, disposal, and destruction of a vessel or motor vehicle, after having been provided written notice via certified mail that such costs are owed, and after having applied for and been issued a registration for a vessel or motor vehicle before such costs have been paid in full, is a misdemeanor of the first degree.

Section 27 of the bill amends s. 823.11, F.S., relating to the relocation or removal of derelict vessels. The bill revises the definition of "derelict vessel" to delete that the vessel is left, stored, or abandoned. The portion of the definition of "derelict vessel" that describes the vessel as in a

wrecked, junked, or substantially dismantled condition upon any public waters of this state is also revised to delete the word “public.” The new definition provides that a vessel is:

- Wrecked if it is sunken or sinking; aground without the ability to extricate itself absent mechanical assistance; or remaining after a marine casualty, including, but not limited to, a boating accident, extreme weather, or a fire.
- Junked if it has been substantially stripped of vessel components, if vessel components have substantially degraded or been destroyed, or if the vessel has been discarded by the owner or operator. Attaching an outboard motor to a vessel that is otherwise junked will not cause the vessel to no longer be junked if such motor is not an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives telephonic or written notice of such from an officer, and the vessel owner or operator is unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair.
- Substantially dismantled if at least two of the three following vessel systems or components are missing, compromised, incomplete, inoperable, or broken: the steering system; the propulsion system; or the exterior hull integrity. Attaching an outboard motor to a vessel that is otherwise substantially dismantled will not cause the vessel to no longer be substantially dismantled if the motor is not an effective means of propulsion.

The bill deletes the prohibition against storing or abandoning a derelict vessel in existing law and prohibits a person, firm, or corporation from leaving a derelict vessel upon the waters of this state. The bill provides that for purposes of the paragraph, the term “leave” means to allow a vessel to remain occupied or unoccupied on the waters of this state for more than 24 hours.

The bill prohibits charging a person who owns or operates a vessel that becomes derelict upon the waters of this state solely as a result of a boating accident that is reported to law enforcement in a written report or otherwise; a hurricane; or another sudden event outside of his or her control with a violation if:

- The individual documents for law enforcement the specific event that led to the vessel being derelict upon the waters of this state; and
- The vessel has been removed from the waters of this state or has been repaired or addressed such that it is no longer derelict upon the waters of this state:
 - For a vessel that has become derelict as a result of a boating accident or other sudden event outside of his or her control, within 7 days after such accident or event; or
 - Within 45 days after the hurricane has passed over this state.

However, this provision does not apply to a vessel that was derelict upon the waters of this state before a stated accident or event.

The bill authorizes FWC or law enforcement agencies or officers to store, destroy, or dispose of derelict vessels, in addition to relocating or removing them, if the derelict vessel obstructs or threatens to obstruct navigation or constitutes a danger to the environment, property, or persons. FWC or law enforcement agencies or officers, are held harmless for damages to the derelict vessel resulting from these actions, unless the damage results from gross negligence or willful misconduct.

The bill allows for FWC, law enforcement agencies, or governmental subdivisions that have received authorization from a law enforcement officer or agency to recover costs for relocation,

removal, storage, destruction, and disposal of a derelict vessel from a vessel owner or the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition. The bill provides that neglecting or refusing to pay all costs of removal, storage, destruction, or disposal of a derelict vessel, after having been provided written notice via certified mail that such costs are owed, and after having applied for and been issued a registration for a vessel or motor vehicle before such costs have been paid in full, is a misdemeanor of the first degree.

The bill requires a governmental subdivision that has received authorization from a law enforcement agency to perform vessel relocation or removal activities to be licensed, insured, and properly equipped to perform such activities.

Marine Sanitation Devices: Section 18

Section 18 of the bill amends s. 327.53, F.S., relating to marine sanitation. The bill requires the owner or operator of a live-aboard vessel or houseboat that is equipped with a marine sanitation device to maintain a record of the date of each pumpout of the device and the location of the pumpout station or waste reception facility. The bill requires each record to be maintained for 1 year after the pumpout date.

Penalties: Section 21

Section 21 of the bill amends s. 327.73, F.S., relating to civil penalties for violations of specified vessel laws.

The bill amends the noncriminal infraction for a violation of s. 327.395, F.S., relating to boater safety education to provide that a person cited for failing to have the required proof of boating safety education in his or her possession may not be convicted if, before or at the time of a county court hearing, the person produces proof of the boating safety education identification card or temporary certificate for verification by the hearing officer or the court clerk and the identification card or temporary certificate was valid at the time the person was cited.

The bill increases civil penalties for a violation of s. 327.4107, F.S., relating to vessels at risk of becoming derelict on waters of this state, from:

- \$50 to \$100 for a first offense;
- \$100 to \$250 for a second offense occurring 30 days or more after a previous offense; and
- \$250 to \$500 for a third or subsequent offense occurring 30 days or more after a previous offense.

The bill declares that a vessel that is the subject of three or more violations issued within an 18-month period by a law enforcement officer for being at risk of becoming derelict, which result in a disposition other than acquittal or dismissal, is a public nuisance and is subject to relocation or removal. The bill authorizes FWC or other law enforcement to relocate or remove the vessel or cause it to be relocated or removed. Law enforcement officers who relocate or remove such a

vessel are held harmless for damages to the vessel unless the damage results from gross negligence¹³⁵ or willful misconduct.¹³⁶

The bill creates civil penalties for a violation of s. 327.463(4)(a) and (b), F.S., the new section relating to vessels creating special hazards, of:

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

The bill adds to the list of violations resulting in a noncriminal offense:

- Failing to maintain the required pump-out records of a marine sanitation device for a live-aboard vessel or houseboat; and
- Operating a human-powered vessel within the boundaries of a marked channel of the Florida Intracoastal Waterway in violation of the new statutory restrictions.

Conforming Changes: Sections 9, 17, and 26

Section 9 of the bill amends s. 327.391, F.S., relating to the regulation of airboats, to make conforming and technical changes.

Section 17 of the bill amends s. 327.50, F.S., relating to vessel safety regulations, equipment, and lighting requirements. The bill corrects an incorrect reference to clarify that FWC may exempt vessel owners and operators from current Coast Guard safety equipment requirements.

Section 26 of the bill amends s. 705.103, F.S., relating to the procedures for abandoned or lost property, to conform with revisions from ch. 2019-76 that take effect in 2023.

Effective Date: Section 28

Section 28 of the bill provides that except as otherwise expressly provided, the effective date is July 1, 2021. (*Section 23 of the bill takes effect July 1, 2023.*)

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹³⁵ “Gross negligence” means conduct so reckless or wanting in care that it constitutes a conscious disregard or indifference to the safety of the property exposed to such conduct. Section 823.11, F.S.

¹³⁶ “Willful misconduct” means conduct evidencing carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design or to show an intentional and substantial disregard of the interests of the vessel owner. Section 823.11, F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate. There may be a positive fiscal impact to FWC due to the new and increased civil penalties provided under the bill. However, FWC may also experience increased costs due to increased enforcement.

If FWC establishes a derelict vessel prevention program, the agency is likely to incur costs from implementing the program. The bill provides that establishment of the program is subject to legislative appropriation, but it is unknown what amount the appropriation would be.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.1932, 316.1939, 327.02, 327.04, 327.352, 327.359, 327.391, 327.395, 327.4107, 327.4108, 327.4109, 327.45, 327.46, 327.463, 327.50, 327.53, 327.54, 327.60, 327.73, 328.09, 376.15, 705.103, 823.11.

This bill creates the following sections of the Florida Statutes: 327.462, 327.371, 327.463.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Environment and Natural Resources on March 15, 2021:**

- Deletes the requirement from the underlying bill that persons have boating safety identification documents in his or her possession aboard a vessel beginning in 2023.
- Adds persons who possess an International Certificate of Competence in sailing to those exempt from the boating safety identification card requirement.
- Revises the conditions under which a vessel is determined to be at risk of becoming derelict to delete vessels that are left or stored aground unattended in such a state that would prevent the vessel from getting underway or are sunk or partially sunk.
- Deletes a provision authorizing the derelict vessel prevention program created under the bill to include other preventative efforts and methods as determined appropriate and necessary by FWC.
- Designates Monroe County as an anchoring limitation area within which a vessel may only be anchored in the same location for a maximum of 90 days, excluding approved and permitted mooring fields.
- Requires FWC to adopt rules to implement the Monroe County anchoring limitation area.
- Authorizes FWC to establish protection zones for first, second, and third magnitude springs and springs groups, including their associated spring runs, which prohibit the anchoring, mooring, beaching, or grounding of vessels.
- Provides that the springs, springs groups, and springs runs be determined by FWC using the most recent Florida Geological Survey springs bulletin.
- Clarifies that vessels that are required to operate at slow speed, minimum wake are prohibited from proceeding at certain speeds.
- Deletes provisions from the underlying bill designating the waters of this state as a no-discharge zone and associated penalties for violation.
- Revises provisions relating to derelict vessels to prohibit persons, firms, or corporations from leaving, rather than storing or abandoning, a derelict vessel upon the waters of this state.
- Provides that, for derelict vessels provisions, the term “leave” means to allow a vessel to remain occupied or unoccupied on the waters of this state for more than 24 hours.
- Provides that persons who own or operate a vessel that becomes derelict as a result of a reported boating accident, hurricane, or other uncontrollable event may not be charged with having a derelict vessel if the person provides documentation of the events leading to the vessel being derelict or the vessel has been removed or repaired within a specific time frame.
- Authorizes FWC and law enforcement officers to store, destroy, or dispose of derelict vessels, in addition to relocating and removing the vessels.
- Authorizes the recovery of relocation, removal, storage, destruction, and disposal costs incurred by FWC or a law enforcement agency from the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition.

B. Amendments:

None.

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

1 A bill to be entitled
2 An act relating to operation and safety of motor
3 vehicles and vessels; amending ss. 316.1932 and
4 316.1939, F.S.; revising conditions under which a
5 person's driving privilege is suspended and under
6 which the person commits a misdemeanor relating to
7 tests for alcohol, chemical substances, or controlled
8 substances; specifying such misdemeanor as a
9 misdemeanor of the first degree; amending s. 327.02,
10 F.S.; defining the term "human-powered vessel";
11 revising the definition of the term "navigation
12 rules"; amending s. 327.04, F.S.; providing additional
13 rulemaking authority to the Fish and Wildlife
14 Conservation Commission; creating s. 327.462, F.S.;
15 providing definitions; authorizing heads of certain
16 entities to establish temporary protection zones in
17 certain water bodies for certain purposes; providing
18 protection zone requirements; requiring the heads of
19 certain entities to report the establishment of such
20 protection zones to the commission and to the
21 appropriate United States Coast Guard Sector Command;
22 providing requirements for such report; providing
23 applicability; providing penalties; amending ss.
24 327.352 and 327.359, F.S.; revising conditions under
25 which a person commits a misdemeanor of the first

26 degree; creating s. 327.371, F.S.; providing
27 circumstances under which a person may operate a
28 human-powered vessel within the boundaries of the
29 marked channel of the Florida Intracoastal Waterway;
30 providing a penalty; amending s. 327.391, F.S.;
31 conforming cross-references; amending s. 327.395,
32 F.S.; prohibiting all persons, beginning on a
33 specified date, from operating a vessel powered by a
34 motor of 10 horsepower or greater unless the person
35 has certain documents in his or her possession aboard
36 the vessel; removing authority of the commission to
37 appoint certain entities to administer a boating
38 safety education course or temporary certificate
39 examination and issue certain credentials; exempting
40 certain persons from the requirement to possess
41 certain documents aboard a vessel; revising the
42 service fee amount certain entities that issue boating
43 safety identification cards and temporary certificates
44 are authorized to charge and keep; amending s.
45 327.4107, F.S.; authorizing certain officers to
46 provide notice that a vessel is at risk of becoming
47 derelict via body camera recordings; authorizing the
48 commission or certain officers to relocate at-risk
49 vessels to a certain distance from mangroves or
50 vegetation; providing that the commission or officers

51 are not liable for damages to such vessels; providing
52 an exception; authorizing the commission to establish
53 a derelict vessel prevention program consisting of
54 certain components; authorizing the commission to
55 adopt rules; providing that such program is subject to
56 appropriation by the Legislature; providing for
57 funding; amending s. 327.4108, F.S.; designating
58 Monroe County as an anchoring limitation area subject
59 to certain requirements; requiring the commission to
60 adopt rules; providing applicability; deleting
61 obsolete language; amending s. 327.4109, F.S.;
62 prohibiting the anchoring or mooring of a vessel or
63 floating structure within a certain distance of
64 certain facilities; providing exceptions; amending s.
65 327.45, F.S.; including specified spring groups and
66 runs in spring protection zones; authorizing the
67 commission to establish by rule spring protection
68 zones that prohibit the anchoring, mooring, beaching,
69 or grounding of vessels; amending s. 327.46, F.S.;
70 authorizing a county or municipality to establish a
71 boating-restricted area within and around a public
72 mooring field; creating s. 327.463, F.S.; specifying
73 conditions under which a vessel is and is not
74 operating at slow speed, minimum wake; prohibiting a
75 person from operating a vessel faster than slow speed,

76 minimum wake within a certain distance from other
77 specified vessels; exempting a person from being cited
78 for a violation under certain circumstances; providing
79 penalties; providing applicability; amending s.
80 327.50, F.S.; authorizing the commission to exempt
81 vessel owners and operators from certain safety
82 equipment requirements; amending s. 327.53, F.S.;
83 requiring the owner or operator of a live-aboard
84 vessel or houseboat equipped with certain sanitation
85 devices to maintain a record of the date and location
86 of each pumpout of the device for a certain period;
87 providing applicability; amending s. 327.54, F.S.;
88 prohibiting a livery from leasing, hiring, or renting
89 a vessel to a person required to complete a
90 commission-approved boating safety education course
91 unless such person presents certain documentation
92 indicating compliance; amending s. 327.60, F.S.;
93 authorizing a local government to enact and enforce
94 regulations allowing the local law enforcement agency
95 to remove an abandoned or lost vessel affixed to a
96 public mooring; amending s. 327.73, F.S.; providing
97 additional violations that qualify as noncriminal
98 infractions; providing civil penalties; prohibiting
99 conviction of a person cited for a violation relating
100 to possessing proof of boating safety education under

101 certain circumstances; increasing certain civil
102 penalties; providing that certain vessels shall be
103 declared a public nuisance subject to certain
104 statutory provisions; authorizing the commission or
105 certain officers to relocate or remove public nuisance
106 vessels from the waters of this state; providing that
107 the commission or officers are not liable for damages
108 to such vessels; providing an exception; amending s.
109 328.09, F.S.; prohibiting the Department of Highway
110 Safety and Motor Vehicles from issuing a certificate
111 of title to an applicant for a vessel that has been
112 deemed derelict pursuant to certain provisions;
113 authorizing the department, at a later date, to reject
114 an application for a certificate of title for such a
115 vessel; amending s. 376.15, F.S.; revising unlawful
116 acts relating to derelict vessels; defining the term
117 "leave"; prohibiting an owner or operator whose vessel
118 becomes derelict due to specified accidents or events
119 from being charged with a violation under certain
120 circumstances; providing applicability; conforming
121 provisions to changes made by the act; authorizing a
122 governmental subdivision that has received
123 authorization from a law enforcement officer or agency
124 to direct a contractor to perform vessel storage,
125 destruction, and disposal activities; authorizing the

commission to provide local government grants for the storage, destruction, and disposal of derelict vessels; providing for funding; amending s. 705.103, F.S.; providing notice procedures for when a law enforcement officer ascertains that a derelict or public nuisance vessel is present on the waters of this state; requiring a mailed notice to the owner or party responsible for the vessel to inform him or her of the right to a hearing; providing hearing requirements; authorizing a law enforcement agency to take certain actions if a hearing is not requested or a vessel is determined to be derelict or otherwise in violation of law; revising provisions relating to liability for vessel removal costs and notification of the amount owed; providing penalties for a person who is issued a registration for a vessel or motor vehicle before such costs are paid; requiring persons whose vessel registration and motor vehicle privileges have been revoked for failure to pay certain costs to be reported to the department; prohibiting issuance of a certificate of registration to such persons until such costs are paid; amending s. 823.11, F.S.; revising application of definitions; revising the definition of the term "derelict vessel"; specifying requirements for a vessel to be considered wrecked, junked, or

substantially dismantled; providing construction;
revising unlawful acts relating to derelict vessels;
defining the term "leave"; prohibiting an owner or
operator whose vessel becomes derelict due to
specified accidents or events from being charged with
a violation under certain circumstances; providing
applicability; providing that relocation or removal
costs incurred by a governmental subdivision are
recoverable against the vessel owner or the party
determined to be legally responsible for the vessel
being derelict; providing penalties for a person who
is issued a registration for a vessel or motor vehicle
before such costs are paid; authorizing a governmental
subdivision that has received authorization from a law
enforcement officer or agency to direct a contractor
to perform vessel relocation or removal activities;
providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (a) and (c) of subsection (1) of
section 316.1932, Florida Statutes, are amended to read:

316.1932 Tests for alcohol, chemical substances, or
controlled substances; implied consent; refusal.—

175 (1)(a)1.a. A ~~Any~~ person who accepts the privilege extended
176 by the laws of this state of operating a motor vehicle within
177 this state is, by ~~so~~ operating such vehicle, deemed to have
178 given his or her consent to submit to an approved chemical test
179 or physical test including, but not limited to, an infrared
180 light test of his or her breath for the purpose of determining
181 the alcoholic content of his or her blood or breath if the
182 person is lawfully arrested for any offense allegedly committed
183 while the person was driving or was in actual physical control
184 of a motor vehicle while under the influence of alcoholic
185 beverages. The chemical or physical breath test must be
186 incidental to a lawful arrest and administered at the request of
187 a law enforcement officer who has reasonable cause to believe
188 such person was driving or was in actual physical control of the
189 motor vehicle within this state while under the influence of
190 alcoholic beverages. The administration of a breath test does
191 not preclude the administration of another type of test. The
192 person shall be told that his or her failure to submit to any
193 lawful test of his or her breath will result in the suspension
194 of the person's privilege to operate a motor vehicle for a
195 period of 1 year for a first refusal, or for a period of 18
196 months if the driving privilege of such person has been
197 previously suspended or if he or she has previously been fined
198 under s. 327.35215 as a result of a refusal to submit to ~~such~~ a
199 test or tests required under this chapter or chapter 327, and

200 shall also be told that if he or she refuses to submit to a
201 lawful test of his or her breath and his or her driving
202 privilege has been previously suspended or if he or she has
203 previously been fined under s. 327.35215 for a prior refusal to
204 submit to a lawful test of his or her breath, urine, or blood as
205 required under this chapter or chapter 327, he or she commits a
206 misdemeanor of the first degree, punishable as provided in s.
207 775.082 or s. 775.083, in addition to any other penalties
208 provided by law. The refusal to submit to a chemical or physical
209 breath test upon the request of a law enforcement officer as
210 provided in this section is admissible into evidence in any
211 criminal proceeding.

212 b. A ~~Any~~ person who accepts the privilege extended by the
213 laws of this state of operating a motor vehicle within this
214 state is, by ~~so~~ operating such vehicle, deemed to have given his
215 or her consent to submit to a urine test for the purpose of
216 detecting the presence of chemical substances as set forth in s.
217 877.111 or controlled substances if the person is lawfully
218 arrested for any offense allegedly committed while the person
219 was driving or was in actual physical control of a motor vehicle
220 while under the influence of chemical substances or controlled
221 substances. The urine test must be incidental to a lawful arrest
222 and administered at a detention facility or any other facility,
223 mobile or otherwise, which is equipped to administer such tests
224 at the request of a law enforcement officer who has reasonable

225 cause to believe such person was driving or was in actual
226 physical control of a motor vehicle within this state while
227 under the influence of chemical substances or controlled
228 substances. The urine test shall be administered at a detention
229 facility or any other facility, mobile or otherwise, which is
230 equipped to administer such test in a reasonable manner that
231 will ensure the accuracy of the specimen and maintain the
232 privacy of the individual involved. The administration of a
233 urine test does not preclude the administration of another type
234 of test. The person shall be told that his or her failure to
235 submit to any lawful test of his or her urine will result in the
236 suspension of the person's privilege to operate a motor vehicle
237 for a period of 1 year for the first refusal, or for a period of
238 18 months if the driving privilege of such person has been
239 previously suspended or if he or she has previously been fined
240 under s. 327.35215 as a result of a refusal to submit to ~~such~~ a
241 test or tests required under this chapter or chapter 327, and
242 shall also be told that if he or she refuses to submit to a
243 lawful test of his or her urine and his or her driving privilege
244 has been previously suspended or if he or she has previously
245 been fined under s. 327.35215 for a prior refusal to submit to a
246 lawful test of his or her breath, urine, or blood as required
247 under this chapter or chapter 327, he or she commits a
248 misdemeanor of the first degree, punishable as provided in s.
249 775.082 or s. 775.083, in addition to any other penalties

250 provided by law. The refusal to submit to a urine test upon the
251 request of a law enforcement officer as provided in this section
252 is admissible into evidence in any criminal proceeding.

253 2. The Alcohol Testing Program within the Department of
254 Law Enforcement is responsible for the regulation of the
255 operation, inspection, and registration of breath test
256 instruments utilized under the driving and boating under the
257 influence provisions and related provisions located in this
258 chapter and chapters 322 and 327. The program is responsible for
259 the regulation of the individuals who operate, inspect, and
260 instruct on the breath test instruments utilized in the driving
261 and boating under the influence provisions and related
262 provisions located in this chapter and chapters 322 and 327. The
263 program is further responsible for the regulation of blood
264 analysts who conduct blood testing to be utilized under the
265 driving and boating under the influence provisions and related
266 provisions located in this chapter and chapters 322 and 327. The
267 program shall:

268 a. Establish uniform criteria for the issuance of permits
269 to breath test operators, agency inspectors, instructors, blood
270 analysts, and instruments.

271 b. Have the authority to permit breath test operators,
272 agency inspectors, instructors, blood analysts, and instruments.

273 c. Have the authority to discipline and suspend, revoke,
274 or renew the permits of breath test operators, agency
275 inspectors, instructors, blood analysts, and instruments.

276 d. Establish uniform requirements for instruction and
277 curricula for the operation and inspection of approved
278 instruments.

279 e. Have the authority to specify one approved curriculum
280 for the operation and inspection of approved instruments.

281 f. Establish a procedure for the approval of breath test
282 operator and agency inspector classes.

283 g. Have the authority to approve or disapprove breath test
284 instruments and accompanying paraphernalia for use pursuant to
285 the driving and boating under the influence provisions and
286 related provisions located in this chapter and chapters 322 and
287 327.

288 h. With the approval of the executive director of the
289 Department of Law Enforcement, make and enter into contracts and
290 agreements with other agencies, organizations, associations,
291 corporations, individuals, or federal agencies as are necessary,
292 expedient, or incidental to the performance of duties.

293 i. Issue final orders which include findings of fact and
294 conclusions of law and which constitute final agency action for
295 the purpose of chapter 120.

296 j. Enforce compliance with ~~the provisions of~~ this section
297 through civil or administrative proceedings.

298 k. Make recommendations concerning any matter within the
299 purview of this section, this chapter, chapter 322, or chapter
300 327.

301 l. Promulgate rules for the administration and
302 implementation of this section, including definitions of terms.

303 m. Consult and cooperate with other entities for the
304 purpose of implementing the mandates of this section.

305 n. Have the authority to approve the type of blood test
306 utilized under the driving and boating under the influence
307 provisions and related provisions located in this chapter and
308 chapters 322 and 327.

309 o. Have the authority to specify techniques and methods
310 for breath alcohol testing and blood testing utilized under the
311 driving and boating under the influence provisions and related
312 provisions located in this chapter and chapters 322 and 327.

313 p. Have the authority to approve repair facilities for the
314 approved breath test instruments, including the authority to set
315 criteria for approval.

316
317 Nothing in this section shall be construed to supersede
318 provisions in this chapter and chapters 322 and 327. The
319 specifications in this section are derived from the power and
320 authority previously and currently possessed by the Department
321 of Law Enforcement and are enumerated to conform with the
322 mandates of chapter 99-379, Laws of Florida.

323 (c) A ~~Any~~ person who accepts the privilege extended by the
324 laws of this state of operating a motor vehicle within this
325 state is, by operating such vehicle, deemed to have given his or
326 her consent to submit to an approved blood test for the purpose
327 of determining the alcoholic content of the blood or a blood
328 test for the purpose of determining the presence of chemical
329 substances or controlled substances as provided in this section
330 if there is reasonable cause to believe the person was driving
331 or in actual physical control of a motor vehicle while under the
332 influence of alcoholic beverages or chemical or controlled
333 substances and the person appears for treatment at a hospital,
334 clinic, or other medical facility and the administration of a
335 breath or urine test is impractical or impossible. As used in
336 this paragraph, the term "other medical facility" includes an
337 ambulance or other medical emergency vehicle. The blood test
338 shall be performed in a reasonable manner. A ~~Any~~ person who is
339 incapable of refusal by reason of unconsciousness or other
340 mental or physical condition is deemed not to have withdrawn his
341 or her consent to such test. A blood test may be administered
342 whether or not the person is told that his or her failure to
343 submit to such a blood test will result in the suspension of the
344 person's privilege to operate a motor vehicle upon the public
345 highways of this state and that a refusal to submit to a lawful
346 test of his or her blood, if his or her driving privilege has
347 been previously suspended for refusal to submit to a lawful test

348 of his or her breath, urine, or blood, is a misdemeanor. ~~A Any~~
349 person who is capable of refusal shall be told that his or her
350 failure to submit to such a blood test will result in the
351 suspension of the person's privilege to operate a motor vehicle
352 for a period of 1 year for a first refusal, or for a period of
353 18 months if the driving privilege of the person has been
354 suspended previously or if he or she has previously been fined
355 under s. 327.35215 as a result of a refusal to submit to ~~such a~~
356 test or tests required under this chapter or chapter 327, ~~and~~
357 ~~that a refusal to submit to a lawful test of his or her blood,~~
358 ~~if his or her driving privilege has been previously suspended~~
359 ~~for a prior refusal to submit to a lawful test of his or her~~
360 ~~breath, urine, or blood, is a misdemeanor.~~ The refusal to submit
361 to a blood test upon the request of a law enforcement officer is
362 admissible in evidence in any criminal proceeding.

363 Section 2. Subsection (1) of section 316.1939, Florida
364 Statutes, is amended to read:

365 316.1939 Refusal to submit to testing; penalties.—

366 (1) ~~A Any~~ person who has refused to submit to a chemical
367 or physical test of his or her breath, ~~blood,~~ or urine, as
368 described in s. 316.1932, and whose driving privilege was
369 previously suspended or who was previously fined under s.
370 327.35215 for a prior refusal to submit to a lawful test of his
371 or her breath, urine, or blood required under this chapter or
372 chapter 327, and:

373 (a) Who the arresting law enforcement officer had probable
374 cause to believe was driving or in actual physical control of a
375 motor vehicle in this state while under the influence of
376 alcoholic beverages, chemical substances, or controlled
377 substances;

378 (b) Who was placed under lawful arrest for a violation of
379 s. 316.193 unless such test was requested pursuant to s.
380 316.1932(1)(c);

381 (c) Who was informed that, if he or she refused to submit
382 to such test, his or her privilege to operate a motor vehicle
383 would be suspended for a period of 1 year or, in the case of a
384 second or subsequent refusal, for a period of 18 months;

385 (d) Who was informed that a refusal to submit to a lawful
386 test of his or her breath or, urine, ~~or blood~~, if his or her
387 driving privilege has been previously suspended or if he or she
388 has previously been fined under s. 327.35215 for a prior refusal
389 to submit to a lawful test of his or her breath, urine, or blood
390 as required under this chapter or chapter 327, is a misdemeanor
391 of the first degree, punishable as provided in s. 775.082 or s.
392 775.083, in addition to any other penalties provided by law; and

393 (e) Who, after having been so informed, refused to submit
394 to any such test when requested to do so by a law enforcement
395 officer or correctional officer

396
397 commits a misdemeanor of the first degree and is subject to

398 punishment as provided in s. 775.082 or s. 775.083.

399 Section 3. Subsections (18) through (47) of section
400 327.02, Florida Statutes, are renumbered as subsections (19)
401 through (48), respectively, present subsection (31) of that
402 section is amended, and a new subsection (18) is added to that
403 section, to read:

404 327.02 Definitions.—As used in this chapter and in chapter
405 328, unless the context clearly requires a different meaning,
406 the term:

407 (18) "Human-powered vessel" means a vessel powered only by
408 its occupant or occupants, including, but not limited to, a
409 vessel powered only by the occupants' hands or feet, oars, or
410 paddles.

411 (32)~~(31)~~ "Navigation rules" means, for vessels on:

412 (a) Waters outside established navigational lines of
413 demarcation as specified in 33 C.F.R. part 80, the International
414 Navigational Rules Act of 1977, 33 U.S.C. s. 1602, as amended,
415 including the appendix and annexes thereto, through December 31,
416 2020 ~~October 1, 2012~~.

417 (b) All waters not outside of such established lines of
418 demarcation, the Inland Navigational Rules Act of 1980, 33
419 C.F.R. parts 83-90, as amended, through December 31, 2020
420 ~~October 1, 2012~~.

421 Section 4. Section 327.04, Florida Statutes, is amended to
422 read:

423 327.04 Rules.—The commission may ~~has authority to~~ adopt
424 rules pursuant to ss. 120.536(1) and 120.54 to implement ~~the~~
425 ~~provisions of this chapter,~~ the provisions of chapter 705
426 relating to vessels, and ss. 376.15 and 823.11 conferring powers
427 or duties upon it.

428 Section 5. Section 327.462, Florida Statutes, is created
429 to read:

430 327.462 Temporary protection zones for spaceflight
431 launches and recovery of spaceflight assets.—

432 (1) As used in this section, the term:

433 (a) "Launch services" means the conduct of a launch and
434 activities involved in the preparation of a launch vehicle,
435 payload, government astronaut, commercial astronaut, or
436 spaceflight participant for such launch.

437 (b) "Reentry services" means the conduct of a reentry and
438 activities involved in the preparation of a reentry vehicle,
439 payload, government astronaut, commercial astronaut, or
440 spaceflight participant for such reentry.

441 (c) "Spaceflight assets" means any item, or any part of an
442 item, owned by a spaceflight entity which is used in launch
443 services or reentry services, including crewed and uncrewed
444 spacecraft, launch vehicles, parachutes and other landing aids,
445 and any spacecraft or ancillary equipment that was attached to
446 the launch vehicle during launch, orbit, or reentry.

447 (d) "Spaceflight entity" has the same meaning as provided
448 in s. 331.501.

449 (2) The head of a law enforcement agency or entity
450 identified in s. 327.70(1), or his or her designee, may, upon
451 waters of this state within the law enforcement agency's or
452 entity's jurisdiction, when necessary for preparations in
453 advance of a launch service or reentry service or for the
454 recovery of spaceflight assets before or after a launch service
455 or reentry service, temporarily establish a protection zone
456 requiring vessels to leave, or prohibiting vessels from
457 entering, water bodies within:

458 (a) Five hundred yards of where launch services, reentry
459 services, or spaceflight asset recovery operations are being
460 conducted; or

461 (b) A distance greater than provided in paragraph (a) if
462 the head of such law enforcement agency or entity, or his or her
463 designee, determines such greater distance is in the best
464 interest of public safety.

465 (3) A protection zone established under subsection (2) may
466 remain in effect only as long as necessary to ensure security
467 around the launch and recovery areas and to recover spaceflight
468 assets and any personnel being transported within a spacecraft
469 following the launch or reentry activity. Such protection zone
470 may not be in place more than 72 hours before or 72 hours after
471 the launch. The head of a law enforcement agency or entity

472 identified in s. 327.70(1), or his or her designee, may also
473 restrict vessels from operating within up to 500 yards of any
474 vessel transporting recovered spaceflight assets following a
475 spaceflight launch or reentry while such vessel is continuously
476 underway transporting such assets to a location for removal from
477 the waters of this state.

478 (4) The head of a law enforcement agency or entity
479 establishing a protection zone under this section, or his or her
480 designee, must report the establishment of such protection zone
481 via e-mail to the commission's Division of Law Enforcement,
482 Boating and Waterways Section, and to the appropriate United
483 States Coast Guard Sector Command having responsibility over the
484 water body, at least 72 hours before establishment of the
485 protection zone. Such report must include the reasons for the
486 protection zone, the portion of the water body or water bodies
487 that will be included in the protection zone, and the duration
488 of the protection zone. No later than 72 hours after the end of
489 the protection zone period, the head of the law enforcement
490 agency or entity, or his or her designee, must report via e-mail
491 to the commission's Division of Law Enforcement, Boating and
492 Waterways Section, the details of all citations issued for
493 violating the protection zone.

494 (5) This section applies only to launch services, reentry
495 services, or the recovery of spaceflight assets occurring or
496 originating within spaceport territory, as defined in s.

331.304, and to federally licensed or federally authorized launches and reentries occurring or transiting to an end destination upon waters of this state.

(6) A person who violates this section or any directive given by a law enforcement officer relating to the establishment of a protection zone under this section after being advised of the establishment of the protection zone commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 6. Paragraphs (a) and (c) of subsection (1) of section 327.352, Florida Statutes, are amended to read:

327.352 Tests for alcohol, chemical substances, or controlled substances; implied consent; refusal.—

(1)(a)1. The Legislature declares that the operation of a vessel is a privilege that must be exercised in a reasonable manner. In order to protect the public health and safety, it is essential that a lawful and effective means of reducing the incidence of boating while impaired or intoxicated be established. Therefore, a ~~any~~ person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by ~~so~~ operating such vessel, deemed to have given his or her consent to submit to an approved chemical test or physical test including, but not limited to, an infrared light test of his or her breath for the purpose of determining the alcoholic content of his or her blood or breath if the person is

lawfully arrested for any offense allegedly committed while the person was operating a vessel while under the influence of alcoholic beverages. The chemical or physical breath test must be incidental to a lawful arrest and administered at the request of a law enforcement officer who has reasonable cause to believe such person was operating the vessel within this state while under the influence of alcoholic beverages. The administration of a breath test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her breath under this chapter will result in a civil penalty of \$500, and shall also be told that if he or she refuses to submit to a lawful test of his or her breath and he or she has been previously fined under s. 327.35215 or has previously had his or her driver license suspended under s. 322.2615 for refusal to submit to any lawful test of his or her breath, urine, or blood, he or she commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, in addition to any other penalties provided by law. The refusal to submit to a chemical or physical breath test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

2. A ~~Any~~ person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by ~~so~~ operating such vessel, deemed to have given his or her

547 consent to submit to a urine test for the purpose of detecting
548 the presence of chemical substances as set forth in s. 877.111
549 or controlled substances if the person is lawfully arrested for
550 any offense allegedly committed while the person was operating a
551 vessel while under the influence of chemical substances or
552 controlled substances. The urine test must be incidental to a
553 lawful arrest and administered at a detention facility or any
554 other facility, mobile or otherwise, which is equipped to
555 administer such tests at the request of a law enforcement
556 officer who has reasonable cause to believe such person was
557 operating a vessel within this state while under the influence
558 of chemical substances or controlled substances. The urine test
559 shall be administered at a detention facility or any other
560 facility, mobile or otherwise, which is equipped to administer
561 such test in a reasonable manner that will ensure the accuracy
562 of the specimen and maintain the privacy of the individual
563 involved. The administration of a urine test does not preclude
564 the administration of another type of test. The person shall be
565 told that his or her failure to submit to any lawful test of his
566 or her urine under this chapter will result in a civil penalty
567 of \$500, and shall also be told that if he or she refuses to
568 submit to a lawful test of his or her urine and he or she has
569 been previously fined under s. 327.35215 or has previously had
570 his or her driver license suspended under s. 322.2615 for
571 refusal to submit to any lawful test of his or her breath,

572 urine, or blood, he or she commits a misdemeanor of the first
573 degree, punishable as provided in s. 775.082 or s. 775.083, in
574 addition to any other penalties provided by law. The refusal to
575 submit to a urine test upon the request of a law enforcement
576 officer as provided in this section is admissible into evidence
577 in any criminal proceeding.

578 (c) A ~~Any~~ person who accepts the privilege extended by the
579 laws of this state of operating a vessel within this state is,
580 by operating such vessel, deemed to have given his or her
581 consent to submit to an approved blood test for the purpose of
582 determining the alcoholic content of the blood or a blood test
583 for the purpose of determining the presence of chemical
584 substances or controlled substances as provided in this section
585 if there is reasonable cause to believe the person was operating
586 a vessel while under the influence of alcoholic beverages or
587 chemical or controlled substances and the person appears for
588 treatment at a hospital, clinic, or other medical facility and
589 the administration of a breath or urine test is impractical or
590 impossible. As used in this paragraph, the term "other medical
591 facility" includes an ambulance or other medical emergency
592 vehicle. The blood test shall be performed in a reasonable
593 manner. A ~~Any~~ person who is incapable of refusal by reason of
594 unconsciousness or other mental or physical condition is deemed
595 not to have withdrawn his or her consent to such test. A ~~Any~~
596 person who is capable of refusal shall be told that his or her

597 failure to submit to such a blood test will result in a civil
598 penalty of \$500 ~~and that a refusal to submit to a lawful test of~~
599 ~~his or her blood, if he or she has previously been fined for~~
600 ~~refusal to submit to any lawful test of his or her breath,~~
601 ~~urine, or blood, is a misdemeanor.~~ The refusal to submit to a
602 blood test upon the request of a law enforcement officer shall
603 be admissible in evidence in any criminal proceeding.

604 Section 7. Section 327.359, Florida Statutes, is amended
605 to read:

606 327.359 Refusal to submit to testing; penalties.—~~A~~ Any
607 person who has refused to submit to a chemical or physical test
608 of his or her breath, ~~blood,~~ or urine, as described in s.
609 327.352, and who has been previously fined under s. 327.35215 or
610 has previously had his or her driver license suspended under s.
611 322.2615 for refusal to submit to a lawful test of his or her
612 breath, urine, or blood, and:

613 (1) Who the arresting law enforcement officer had probable
614 cause to believe was operating or in actual physical control of
615 a vessel in this state while under the influence of alcoholic
616 beverages, chemical substances, or controlled substances;

617 (2) Who was placed under lawful arrest for a violation of
618 s. 327.35 unless such test was requested pursuant to s.
619 327.352(1)(c);

620 (3) Who was informed that if he or she refused to submit
621 to such test, he or she is subject to a fine of \$500;

(4) Who was informed that a refusal to submit to a lawful test of his or her breath ~~or~~, urine, ~~or blood~~, if he or she has been previously fined under s. 327.35215 or has previously had his or her driver license suspended under s. 322.2615 for refusal to submit to a lawful test of his or her breath, urine, or blood, is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; and

(5) Who, after having been so informed, refused to submit to any such test when requested to do so by a law enforcement officer or correctional officer

commits a misdemeanor of the first degree, punishable ~~and is subject to punishment~~ as provided in s. 775.082 or s. 775.083.

Section 8. Section 327.371, Florida Statutes, is created to read:

327.371 Human-powered vessels regulated.—

(1) A person may operate a human-powered vessel within the boundaries of the marked channel of the Florida Intracoastal Waterway as defined in s. 327.02:

(a) When the marked channel is the only navigable portion of the waterway available due to vessel congestion or obstructions on the water. The operator of the human-powered vessel shall proceed with diligence to a location where he or she may safely operate the vessel outside the marked channel of the Florida Intracoastal Waterway.

647 (b) When crossing the marked channel, provided that the
648 crossing is done in the most direct, continuous, and expeditious
649 manner possible and does not interfere with other vessel traffic
650 in the channel.

651 (c) During an emergency endangering life or limb.

652 (2) A person may not operate a human-powered vessel in the
653 marked channel of the Florida Intracoastal Waterway except as
654 provided in subsection (1).

655 (3) A person who violates this section commits a
656 noncriminal infraction, punishable as provided in s. 327.73.

657 Section 9. Subsection (1) and paragraphs (a) and (b) of
658 subsection (5) of section 327.391, Florida Statutes, are amended
659 to read:

660 327.391 Airboats regulated.—

661 (1) The exhaust of every internal combustion engine used
662 on any airboat operated on the waters of this state shall be
663 provided with an automotive-style factory muffler, underwater
664 exhaust, or other manufactured device capable of adequately
665 muffling the sound of the exhaust of the engine as described in
666 s. 327.02 ~~s. 327.02(30)~~. The use of cutouts or flex pipe as the
667 sole source of muffling is prohibited, except as provided in
668 subsection (4). A ~~Any~~ person who violates this subsection
669 commits a noncriminal infraction, punishable as provided in s.
670 327.73(1).

671 (5) (a) ~~Beginning July 1, 2019,~~ A person may not operate an
672 airboat to carry one or more passengers for hire on waters of
673 this ~~the~~ state unless he or she has all of the following onboard
674 the airboat:

675 1. A photographic identification card.

676 2. Proof of completion of a boater education course that
677 complies with s. 327.395(2)(a) ~~s. 327.395(1)(a)~~. Except as
678 provided in paragraph (b), no operator is exempt from this
679 requirement, regardless of age or the exemptions provided under
680 s. 327.395.

681 3. Proof of successful completion of a commission-approved
682 airboat operator course that meets the minimum standards
683 established by commission rule.

684 4. Proof of successful course completion in
685 cardiopulmonary resuscitation and first aid.

686 (b) A person issued a captain's license by the United
687 States Coast Guard is not required to complete a boating safety
688 education course that complies with s. 327.395(2)(a) ~~s.~~
689 ~~327.395(1)(a)~~. Proof of the captain's license must be onboard
690 the airboat when carrying one or more passengers for hire on
691 waters of this ~~the~~ state.

692 Section 10. Section 327.395, Florida Statutes, is amended
693 to read:

694 327.395 Boating safety education.—

695 (1) (a) A person born on or after January 1, 1988, may not
696 operate a vessel powered by a motor of 10 horsepower or greater
697 unless such person has in his or her possession aboard the
698 vessel the documents required by subsection (2).

699 (b) Beginning January 1, 2023, a person, regardless of his
700 or her date of birth, may not operate a vessel powered by a
701 motor of 10 horsepower or greater unless such person has in his
702 or her possession aboard the vessel the documents required by
703 subsection (2).

704 (2) While operating a vessel, a person must have in his or
705 her possession aboard the vessel photographic identification and
706 a boating safety identification card issued by the commission, a
707 state-issued identification card or driver license indicating
708 possession of the boating safety identification card, or
709 photographic identification and a temporary certificate issued
710 or approved by the commission, which shows that he or she has:

711 (a) Completed a commission-approved boating safety
712 education course that meets the minimum requirements established
713 by the National Association of State Boating Law Administrators;
714 ~~or~~

715 (b) Passed a temporary certificate examination developed
716 or approved by the commission;

717 (c) A valid International Certificate of Competency; or

718 (d) Completed a boating safety education course or
719 equivalency examination in another state or a United States

territory that meets or exceeds the minimum requirements
established by the National Association of State Boating Law
Administrators.

(3) (a) ~~(2) (a)~~ A person may obtain a boating safety
identification card by successfully completing a boating safety
education course that meets the requirements of this section and
rules adopted by the commission pursuant to this section.

(b) A person may obtain a temporary certificate by passing
a temporary certificate examination that meets the requirements
of this section and rules adopted by the commission pursuant to
this section.

(4) (3) ~~A~~ Any commission-approved boating safety education
course or temporary certificate examination developed or
approved by the commission must include a component regarding
diving vessels, awareness of divers in the water, divers-down
warning devices, and the requirements of s. 327.331.

~~(4) The commission may appoint liveries, marinas, or other
persons as its agents to administer the course or temporary
certificate examination and issue identification cards or
temporary certificates in digital, electronic, or paper format
under guidelines established by the commission. An agent must
charge the \$2 examination fee, which must be forwarded to the
commission with proof of passage of the examination and may
charge and keep a \$1 service fee.~~

(5) A boating safety identification card issued to a person who has completed a boating safety education course is valid for life. A temporary certificate issued to a person who has passed a temporary certification examination is valid for 90 days after the date of issuance. The commission may issue either the boating safety identification card or the temporary certificate in a digital, electronic, or paper format.

(6) A person is exempt from subsection (1) if he or she:

(a) 1. Is licensed by the United States Coast Guard to serve as master of a vessel; or

2. Has been previously licensed by the United States Coast Guard to serve as master of a vessel, provides proof of such licensure to the commission, and requests that a boating safety identification card be issued in his or her name.

(b) Operates a vessel only on a private lake or pond.

(c) Is accompanied in the vessel by a person who is exempt from this section or who holds a boating safety identification card in compliance with this section, who is 18 years of age or older, and who 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.

(d) Is a nonresident who has in his or her possession photographic identification and proof that he or she has completed a boating safety education course or equivalency examination in another state or a United States territory that

769 ~~which~~ meets or exceeds the minimum requirements established by
770 the National Association of State Boating Law Administrators.

771 (e) Is operating a vessel within 90 days after the
772 purchase of that vessel and has available for inspection aboard
773 that vessel a bill of sale meeting the requirements of s.
774 328.46(1).

775 (f) Is operating a vessel within 90 days after completing
776 a boating safety education course in accordance with paragraph
777 (2) (a) ~~the requirements of paragraph (1) (a)~~ and has a
778 photographic identification card and a boating safety education
779 certificate available for inspection as proof of having
780 completed a boating safety education course. The boating safety
781 education certificate must provide, at a minimum, the student's
782 first and last name, the student's date of birth, and the date
783 that he or she passed the course examination.

784 (g) Is exempted by rule of the commission.

785 (7) A person who operates a vessel in violation of this
786 section ~~subsection (1)~~ commits a noncriminal infraction,
787 punishable as provided in s. 327.73.

788 (8) The commission shall institute and coordinate a
789 statewide program of boating safety instruction and
790 certification to ensure that boating safety courses and
791 examinations are available in each county of this ~~the~~ state. The
792 commission may appoint agents to administer the boating safety
793 education course or temporary certificate examination and may

794 authorize the agents to issue temporary certificates in digital,
795 electronic, or paper format. An agent ~~The agents~~ shall charge
796 and collect the \$2 fee required in subsection (9) for each
797 temporary certificate requested of the commission by that agent,
798 which must be forwarded to the commission. The agent may charge
799 and keep a ~~\$1~~ service fee.

800 (9) The commission may ~~is authorized to~~ establish and ~~to~~
801 collect a \$2 fee for each card and temporary certificate issued
802 pursuant to this section.

803 (10) The commission shall design forms and adopt rules
804 pursuant to chapter 120 to implement ~~the provisions of~~ this
805 section.

806 (11) This section may be cited as the "Osmany 'Ozzie'
807 Castellanos Boating Safety Education Act."

808 Section 11. Subsection (5) of section 327.4107, Florida
809 Statutes, is renumbered as subsection (6), paragraph (e) of
810 subsection (2) of that section is amended, and new subsections
811 (5) and (7) are added to that section, to read:

812 327.4107 Vessels at risk of becoming derelict on waters of
813 this state.—

814 (2) An officer of the commission or of a law enforcement
815 agency specified in s. 327.70 may determine that a vessel is at
816 risk of becoming derelict if any of the following conditions
817 exist:

818 (e) The vessel does not have an effective means of
819 propulsion for safe navigation within 72 hours after the vessel
820 owner or operator receives telephonic notice, in-person notice
821 recorded on an agency-approved body camera, or written notice,
822 which may be provided by facsimile, electronic mail, or other
823 electronic means, stating such from an officer, and the vessel
824 owner or operator is unable to provide a receipt, proof of
825 purchase, or other documentation of having ordered necessary
826 parts for vessel repair. The commission may adopt rules to
827 implement this paragraph.

828 (5) The commission, an officer of the commission, or a law
829 enforcement agency or officer specified in s. 327.70 may
830 relocate or cause to be relocated an at-risk vessel found to be
831 in violation of this section to a distance greater than 20 feet
832 from a mangrove or upland vegetation. The commission, an officer
833 of the commission, or a law enforcement agency or officer acting
834 pursuant to this subsection upon waters of this state shall be
835 held harmless for all damages to the at-risk vessel resulting
836 from such relocation unless the damage results from gross
837 negligence or willful misconduct as these terms are defined in
838 s. 823.11.

839 (7) The commission may establish a derelict vessel
840 prevention program to address vessels at risk of becoming
841 derelict. Such program may, but is not required to, include:

842 (a) Removal, relocation, and destruction of vessels
843 declared a public nuisance, derelict or at risk of becoming
844 derelict, or lost or abandoned in accordance with s. 327.53(7),
845 s. 327.73(1)(aa), s. 705.103(2) and (4), or s. 823.11(3).

846 (b) Creation of a vessel turn-in program allowing the
847 owner of a vessel determined by law enforcement to be at risk of
848 becoming derelict in accordance with this section to turn his or
849 her vessel and vessel title over to the commission to be
850 destroyed without penalty.

851 (c) Providing for removal and destruction of an abandoned
852 vessel for which an owner cannot be identified or the owner of
853 which is deceased and no heir is interested in acquiring the
854 vessel.

855 (d) Purchase of anchor line, anchors, and other equipment
856 necessary for securing vessels at risk of becoming derelict.

857 (e) Creating or acquiring moorings designated for securing
858 vessels at risk of becoming derelict.

859
860 The derelict vessel prevention program created pursuant to this
861 subsection may include other preventative efforts and methods as
862 determined appropriate and necessary by the commission. The
863 commission may adopt rules to implement this subsection.
864 Implementation of the derelict vessel prevention program shall
865 be subject to appropriation by the Legislature and shall be
866 funded by the Marine Resources Conservation Trust Fund or the

867 Florida Coastal Protection Trust Fund.

868 Section 12. Section 327.4108, Florida Statutes, is amended
869 to read:

870 327.4108 Anchoring of vessels in anchoring limitation
871 areas.—

872 (1) The following densely populated urban areas, which
873 have narrow state waterways, residential docking facilities, and
874 significant recreational boating traffic, are designated as
875 anchoring limitation areas within which a person may not anchor
876 a vessel at any time during the period between one-half hour
877 after sunset and one-half hour before sunrise, except as
878 provided in subsections (3) and (4):

879 (a) The section of Middle River lying between Northeast
880 21st Court and the Intracoastal Waterway in Broward County.

881 (b) Sunset Lake in Miami-Dade County.

882 (c) The sections of Biscayne Bay in Miami-Dade County
883 lying between:

884 1. Rivo Alto Island and Di Lido Island.

885 2. San Marino Island and San Marco Island.

886 3. San Marco Island and Biscayne Island.

887 (2) (a) Monroe County is designated as an anchoring
888 limitation area within which a vessel may only be anchored in
889 the same location for a maximum of 90 days. The commission shall
890 adopt rules to implement this subsection.

891 (b) This subsection does not apply to an approved and
892 permitted mooring field.

893 ~~(2) To promote the public's use and enjoyment of the~~
894 ~~designated waterway, except as provided in subsections (3) and~~
895 ~~(4), a person may not anchor a vessel at any time during the~~
896 ~~period between one-half hour after sunset and one-half hour~~
897 ~~before sunrise in an anchoring limitation area.~~

898 (3) Notwithstanding subsections(1) and subsection (2), a
899 person may anchor a vessel in an anchoring limitation area
900 during a time that would otherwise be unlawful:

901 (a) If the vessel suffers a mechanical failure that poses
902 an unreasonable risk of harm to the vessel or the persons
903 onboard unless the vessel anchors. The vessel may anchor for 3
904 business days or until the vessel is repaired, whichever occurs
905 first.

906 (b) If imminent or existing weather conditions in the
907 vicinity of the vessel pose an unreasonable risk of harm to the
908 vessel or the persons onboard unless the vessel anchors. The
909 vessel may anchor until weather conditions no longer pose such
910 risk. During a hurricane or tropical storm, weather conditions
911 are deemed to no longer pose an unreasonable risk of harm when
912 the hurricane or tropical storm warning affecting the area has
913 expired.

914 (c) During events described in s. 327.48 or other special
915 events, including, but not limited to, public music

performances, local government waterfront activities, or fireworks displays. A vessel may anchor for the lesser of the duration of the special event or 3 days.

(4) This section does not apply to:

(a) Vessels owned or operated by a governmental entity for law enforcement, firefighting, military, or rescue purposes.

(b) Construction or dredging vessels on an active job site.

(c) Vessels actively engaged in commercial fishing.

(d) Vessels engaged in recreational fishing if the persons onboard are actively tending hook and line fishing gear or nets.

(5)(a) As used in this subsection, the term "law enforcement officer or agency" means an officer or agency authorized to enforce this section pursuant to s. 327.70.

(b) A law enforcement officer or agency may remove a vessel from an anchoring limitation area and impound the vessel for up to 48 hours, or cause such removal and impoundment, if the vessel operator, after being issued a citation for a violation of this section:

1. Anchors the vessel in violation of this section within 12 hours after being issued the citation; or

2. Refuses to leave the anchoring limitation area after being directed to do so by a law enforcement officer or agency.

(c) A law enforcement officer or agency acting under this subsection to remove or impound a vessel, or to cause such

941 removal or impoundment, shall be held harmless for any damage to
942 the vessel resulting from such removal or impoundment unless the
943 damage results from gross negligence or willful misconduct.

944 (d) A contractor performing removal or impoundment
945 services at the direction of a law enforcement officer or agency
946 pursuant to this subsection must:

947 1. Be licensed in accordance with United States Coast
948 Guard regulations, as applicable.

949 2. Obtain and carry a current policy issued by a licensed
950 insurance carrier in this state to insure against any accident,
951 loss, injury, property damage, or other casualty caused by or
952 resulting from the contractor's actions.

953 3. Be properly equipped to perform such services.

954 (e) In addition to the civil penalty imposed under s.
955 327.73(1)(z), the operator of a vessel that is removed and
956 impounded pursuant to paragraph (b) must pay all removal and
957 storage fees before the vessel is released. A vessel removed
958 pursuant to paragraph (b) may not be impounded for longer than
959 48 hours.

960 (6) A violation of this section is punishable as provided
961 in s. 327.73(1)(z).

962 ~~(7) This section shall remain in effect notwithstanding~~
963 ~~the Legislature's adoption of the commission's recommendations~~
964 ~~for the regulation of mooring vessels outside of public mooring~~
965 ~~fields pursuant to s. 327.4105.~~

966 Section 13. Paragraph (a) of subsection (1) and subsection
967 (2) of section 327.4109, Florida Statutes, are amended to read:
968 327.4109 Anchoring or mooring prohibited; exceptions;
969 penalties.—

970 (1)(a) The owner or operator of a vessel or floating
971 structure may not anchor or moor such that the nearest approach
972 of the anchored or moored vessel or floating structure is:

973 1. Within 150 feet of any public or private marina, boat
974 ramp, boatyard, or other public vessel launching or loading
975 facility;

976 2. Within 500 ~~300~~ feet of a superyacht repair facility.
977 For purposes of this subparagraph, the term "superyacht repair
978 facility" means a facility that services or repairs a yacht with
979 a water line of 120 feet or more in length; or

980 3. Within 100 feet outward from the marked boundary of a
981 public mooring field or a lesser distance if approved by the
982 commission upon request of a local government within which the
983 mooring field is located. The commission may adopt rules to
984 implement this subparagraph.

985 (2) Notwithstanding subsection (1), an owner or operator
986 of a vessel may anchor or moor within 150 feet of any public or
987 private marina, boat ramp, boatyard, or other public vessel
988 launching or loading facility; within 500 ~~300~~ feet of a
989 superyacht repair facility; or within 100 feet outward from the
990 marked boundary of a public mooring field if:

991 (a) The vessel suffers a mechanical failure that poses an
992 unreasonable risk of harm to the vessel or the persons onboard
993 such vessel. The owner or operator of the vessel may anchor or
994 moor for 5 business days or until the vessel is repaired,
995 whichever occurs first.

996 (b) Imminent or existing weather conditions in the
997 vicinity of the vessel pose an unreasonable risk of harm to the
998 vessel or the persons onboard such vessel. The owner or operator
999 of the vessel may anchor or moor until weather conditions no
1000 longer pose such risk. During a hurricane or tropical storm,
1001 weather conditions are deemed to no longer pose an unreasonable
1002 risk of harm when the hurricane or tropical storm warning
1003 affecting the area has expired.

1004 Section 14. Subsection (2) of section 327.45, Florida
1005 Statutes, is amended to read:

1006 327.45 Protection zones for springs.—

1007 (2) The commission may establish by rule protection zones
1008 that restrict the speed and operation of vessels or prohibit the
1009 anchoring, mooring, beaching, or grounding of vessels to protect
1010 and prevent harm to first, second, and third magnitude springs
1011 and spring groups, including their associated spring runs, as
1012 determined by the commission using the most recent Florida
1013 Geological Survey springs bulletin. This harm includes negative
1014 impacts to water quality, water quantity, hydrology, wetlands,
1015 and aquatic and wetland-dependent species.

1016 Section 15. Paragraph (b) of subsection (1) of section
1017 327.46, Florida Statutes, is amended to read:

1018 327.46 Boating-restricted areas.—

1019 (1) Boating-restricted areas, including, but not limited
1020 to, restrictions of vessel speeds and vessel traffic, may be
1021 established on the waters of this state for any purpose
1022 necessary to protect the safety of the public if such
1023 restrictions are necessary based on boating accidents,
1024 visibility, hazardous currents or water levels, vessel traffic
1025 congestion, or other navigational hazards or to protect
1026 seagrasses on privately owned submerged lands.

1027 (b) Municipalities and counties may ~~have the authority to~~
1028 establish the following boating-restricted areas by ordinance:

1029 1. An ordinance establishing an idle speed, no wake
1030 boating-restricted area, if the area is:

1031 a. Within 500 feet of any boat ramp, hoist, marine
1032 railway, or other launching or landing facility available for
1033 use by the general boating public on waterways more than 300
1034 feet in width or within 300 feet of any boat ramp, hoist, marine
1035 railway, or other launching or landing facility available for
1036 use by the general boating public on waterways not exceeding 300
1037 feet in width.

1038 b. Within 500 feet of fuel pumps or dispensers at any
1039 marine fueling facility that sells motor fuel to the general
1040 boating public on waterways more than 300 feet in width or

1041 within 300 feet of the fuel pumps or dispensers at any licensed
1042 terminal facility that sells motor fuel to the general boating
1043 public on waterways not exceeding 300 feet in width.

1044 c. Inside or within 300 feet of any lock structure.

1045 2. An ordinance establishing a slow speed, minimum wake
1046 boating-restricted area if the area is:

1047 a. Within 300 feet of any bridge fender system.

1048 b. Within 300 feet of any bridge span presenting a
1049 vertical clearance of less than 25 feet or a horizontal
1050 clearance of less than 100 feet.

1051 c. On a creek, stream, canal, or similar linear waterway
1052 if the waterway is less than 75 feet in width from shoreline to
1053 shoreline.

1054 d. On a lake or pond of less than 10 acres in total
1055 surface area.

1056 e. Within the boundaries of a permitted public mooring
1057 field and a buffer around the mooring field of up to 100 feet.

1058 3. An ordinance establishing a vessel-exclusion zone if
1059 the area is:

1060 a. Designated as a public bathing beach or swim area.

1061 b. Within 300 feet of a dam, spillway, or flood control
1062 structure.

1063 4. Notwithstanding the prohibition in s. 327.60(2)(c),
1064 within the portion of the Florida Intracoastal Waterway within
1065 their jurisdiction, except that the municipality or county may

not establish a vessel-exclusion zone for public bathing beaches
or swim areas within the waterway.

Section 16. Section 327.463, Florida Statutes, is created
to read:

327.463 Special hazards.—

(1) For purposes of this section, a vessel:

(a) Is operating at slow speed, minimum wake only if it
is:

1. Fully off plane and completely settled into the water;

and

2. Proceeding without wake or with minimum wake.

A vessel that is operating at slow speed, minimum wake may not
proceed at a speed greater than a speed that is reasonable and
prudent to avoid the creation of an excessive wake or other
hazardous condition under the existing circumstances.

(b) Is not proceeding at slow speed, minimum wake if it
is:

1. Operating on plane;

2. In the process of coming off plane and settling into
the water or getting on plane; or

3. Operating at a speed that creates a wake that
unreasonably or unnecessarily endangers other vessels.

(2) A person may not operate a vessel faster than slow
speed, minimum wake within 300 feet of any emergency vessel,

1091 including, but not limited to, a law enforcement vessel, United
1092 States Coast Guard vessel, or firefighting vessel, when such
1093 emergency vessel's emergency lights are activated.

1094 (3) (a) A person may not operate a vessel faster than slow
1095 speed, minimum wake within 300 feet of any construction vessel
1096 or barge when the vessel or barge is displaying an orange flag
1097 from a pole extending:

1098 1. At least 10 feet above the tallest portion of the
1099 vessel or barge, indicating that the vessel or barge is actively
1100 engaged in construction operations; or

1101 2. At least 5 feet above any superstructure permanently
1102 installed upon the vessel or barge, indicating that the vessel
1103 or barge is actively engaged in construction operations.

1104 (b) A flag displayed on a construction vessel or barge
1105 pursuant to this subsection must:

1106 1. Be at least 2 feet by 3 feet in size.

1107 2. Have a wire or other stiffener or be otherwise
1108 constructed to ensure that the flag remains fully unfurled and
1109 extended in the absence of a wind or breeze.

1110 3. Be displayed so that the visibility of the flag is not
1111 obscured in any direction.

1112 (c) In periods of low visibility, including any time
1113 between 30 minutes after sunset and 30 minutes before sunrise, a
1114 person may not be cited for a violation of this subsection
1115 unless the orange flag is illuminated and visible from a

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1116 distance of at least 2 nautical miles. Such illumination does
1117 not relieve the construction vessel or barge from complying with
1118 all navigation rules.

1119 (4) (a) A person operating a vessel in violation of this
1120 section commits a noncriminal infraction, punishable as provided
1121 in s. 327.73.

1122 (b) The owner of, or party who is responsible for, a
1123 construction vessel or barge who displays an orange flag on the
1124 vessel or barge when it is not actively engaged in construction
1125 operations commits a noncriminal infraction, punishable as
1126 provided in s. 327.73.

1127 (5) The speed and penalty provisions of this section do
1128 not apply to a law enforcement, firefighting, or rescue vessel
1129 that is owned or operated by a governmental entity.

1130 Section 17. Paragraph (a) of subsection (1) of section
1131 327.50, Florida Statutes, is amended to read:

1132 327.50 Vessel safety regulations; equipment and lighting
1133 requirements.—

1134 (1) (a) The owner and operator of every vessel on the
1135 waters of this state shall carry, store, maintain, and use
1136 safety equipment in accordance with current United States Coast
1137 Guard safety equipment requirements as specified in the Code of
1138 Federal Regulations, unless expressly exempted by the commission
1139 ~~department~~.

1140 Section 18. Paragraph (a) of subsection (6) and subsection

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1141 (7) of section 327.53, Florida Statutes, are amended, and
1142 subsection (8) is added to that section, to read:

1143 327.53 Marine sanitation.—

1144 (6)(a) A violation of this section is a noncriminal
1145 infraction, punishable as provided in s. 327.73. Each violation
1146 shall be a separate offense. The owner and operator of any
1147 vessel shall be jointly and severally liable for the civil
1148 penalty imposed pursuant to this section.

1149 (7) A ~~Any~~ vessel or floating structure operated or
1150 occupied on the waters of this ~~the~~ state in violation of this
1151 section is declared a nuisance and a hazard to public safety and
1152 health. The owner or operator of a ~~any~~ vessel or floating
1153 structure cited for violating this section shall, within 30 days
1154 following the issuance of the citation, correct the violation
1155 for which the citation was issued or remove the vessel or
1156 floating structure from the waters of this ~~the~~ state. If the
1157 violation is not corrected within the 30 days and the vessel or
1158 floating structure remains on the waters of this ~~the~~ state in
1159 violation of this section, law enforcement officers charged with
1160 the enforcement of this chapter under s. 327.70 shall apply to
1161 the appropriate court in the county in which the vessel or
1162 floating structure is located, ~~to~~ to order or otherwise cause the
1163 removal of such vessel or floating structure from the waters of
1164 this ~~the~~ state at the owner's expense. If the owner cannot be
1165 found or otherwise fails to pay the removal costs, the

provisions of s. 328.17 shall apply. If the proceeds under s. 328.17 are not sufficient to pay all removal costs, funds appropriated from the Marine Resources Conservation Trust Fund pursuant to paragraph (6) (b) or s. 328.72(15) (c) ~~s. 328.72(16)~~ may be used.

(8) The owner or operator of a live-aboard vessel as defined in s. 327.02(23) (a) or (c), or a houseboat as defined in s. 327.02, that is equipped with a marine sanitation device certified by the United States Coast Guard must maintain a record of the date of each pumpout of the device and the location of the pumpout station or waste reception facility. Each record must be maintained for 1 year after the date of the pumpout. This subsection does not apply to marine compost toilets that process and manage human waste using currently accepted marine compost toilet technologies that comply with United States Coast Guard requirements.

Section 19. Subsection (2) of section 327.54, Florida Statutes, is amended to read:

327.54 Liveries; safety regulations; penalty.—

(2) A livery may not knowingly lease, hire, or rent a ~~any~~ vessel ~~powered by a motor of 10 horsepower or greater~~ to a ~~any~~ person who is required to comply with s. 327.395~~7~~, unless such person presents to the livery photographic identification and a valid boater safety identification card issued by the ~~commission~~, a state-issued identification card or driver license

1191 indicating possession of the boating safety identification card,
1192 or photographic identification and a valid temporary certificate
1193 issued or approved by the commission as required under s.
1194 327.395(2) s. ~~327.395(1)~~, or meets the exemption provided under
1195 s. 327.395(6)(f).

1196 Section 20. Subsection (5) of section 327.60, Florida
1197 Statutes, is amended to read:

1198 327.60 Local regulations; limitations.—

1199 (5) A local government may enact and enforce regulations
1200 to implement the procedures for abandoned or lost property that
1201 allow the local law enforcement agency to remove a vessel
1202 affixed to a public dock or mooring within its jurisdiction that
1203 is abandoned or lost property pursuant to s. 705.103(1). Such
1204 regulation must require the local law enforcement agency to post
1205 a written notice at least 24 hours before removing the vessel.

1206 Section 21. Paragraphs (q), (s), and (aa) of subsection
1207 (1) of section 327.73, Florida Statutes, are amended, and
1208 paragraphs (cc) and (dd) are added to that subsection, to read:

1209 327.73 Noncriminal infractions.—

1210 (1) Violations of the following provisions of the vessel
1211 laws of this state are noncriminal infractions:

1212 (q) Section 327.53(1), (2), ~~and~~ (3), and (8), relating to
1213 marine sanitation.

1214 (s) Section 327.395, relating to boater safety education.
1215 However, a person cited for violating the requirements of s.

327.395 relating to failure to have required proof of boating safety education in his or her possession may not be convicted if, before or at the time of a county court hearing, the person produces proof of the boating safety education identification card or temporary certificate for verification by the hearing officer or the court clerk and the identification card or temporary certificate was valid at the time the person was cited.

(aa) Section 327.4107, relating to vessels at risk of becoming derelict on waters of this state, for which the civil penalty is:

1. For a first offense, \$100 ~~\$50~~.
2. For a second offense occurring 30 days or more after a first offense, \$250 ~~\$100~~.
3. For a third or subsequent offense occurring 30 days or more after a previous offense, \$500 ~~\$250~~.

A vessel that is the subject of three or more violations issued pursuant to the same paragraph of s. 327.4107(2) within an 18-month period which result in dispositions other than acquittal or dismissal shall be declared to be a public nuisance and subject to ss. 705.103(2) and (4) and 823.11(3). The commission, an officer of the commission, or a law enforcement agency or officer specified in s. 327.70 may relocate, remove, or cause to be relocated or removed such public nuisance vessels from waters

1241 of this state. The commission, an officer of the commission, or
1242 a law enforcement agency or officer acting pursuant to this
1243 paragraph upon waters of this state shall be held harmless for
1244 all damages to the vessel resulting from such relocation or
1245 removal unless the damage results from gross negligence or
1246 willful misconduct as these terms are defined in s. 823.11.

1247 (cc) Section 327.463(4)(a) and (b), relating to vessels
1248 creating special hazards, for which the penalty is:

1249 1. For a first offense, \$50.

1250 2. For a second offense occurring within 12 months after a
1251 prior offense, \$100.

1252 3. For a third offense occurring within 36 months after a
1253 prior offense, \$250.

1254 (dd) Section 327.371, relating to the regulation of human-
1255 powered vessels.

1256
1257 Any person cited for a violation of any provision of this
1258 subsection shall be deemed to be charged with a noncriminal
1259 infraction, shall be cited for such an infraction, and shall be
1260 cited to appear before the county court. The civil penalty for
1261 any such infraction is \$50, except as otherwise provided in this
1262 section. Any person who fails to appear or otherwise properly
1263 respond to a uniform boating citation shall, in addition to the
1264 charge relating to the violation of the boating laws of this
1265 state, be charged with the offense of failing to respond to such

1266 citation and, upon conviction, be guilty of a misdemeanor of the
1267 second degree, punishable as provided in s. 775.082 or s.
1268 775.083. A written warning to this effect shall be provided at
1269 the time such uniform boating citation is issued.

1270 Section 22. Subsection (4) of section 328.09, Florida
1271 Statutes, is amended to read:

1272 328.09 Refusal to issue and authority to cancel a
1273 certificate of title or registration.—

1274 (4) The department may not issue a certificate of title to
1275 an ~~any~~ applicant for a ~~any~~ vessel that has been deemed derelict
1276 by a law enforcement officer under s. 376.15 or s. 823.11. A law
1277 enforcement officer must inform the department in writing, which
1278 may be provided by facsimile, electronic mail, or other
1279 electronic means, of the vessel's derelict status and supply the
1280 department with the vessel title number or vessel identification
1281 number. The department may issue a certificate of title once a
1282 law enforcement officer has verified in writing, which may be
1283 provided by facsimile, electronic mail, or other electronic
1284 means, that the vessel is no longer a derelict vessel.

1285 Section 23. Effective July 1, 2023, paragraph (e) of
1286 subsection (3) of section 328.09, Florida Statutes, as amended
1287 by section 12 of chapter 2019-76, Laws of Florida, is amended to
1288 read:

1289 328.09 Refusal to issue and authority to cancel a
1290 certificate of title or registration.—

1291 (3) Except as otherwise provided in subsection (4), the
1292 department may reject an application for a certificate of title
1293 only if:

1294 (e) The application is for a vessel that has been deemed
1295 derelict by a law enforcement officer under s. 376.15 or s.
1296 823.11. In such case, a law enforcement officer must inform the
1297 department in writing, which may be provided by facsimile, e-
1298 mail, or other electronic means, of the vessel's derelict status
1299 and supply the department with the vessel title number or vessel
1300 identification number. The department may issue a certificate of
1301 title once a law enforcement officer has verified in writing,
1302 which may be provided by facsimile, e-mail, or other electronic
1303 means, that the vessel is no longer a derelict vessel.

1304 Section 24. Section 376.15, Florida Statutes, is amended
1305 to read:

1306 376.15 Derelict vessels; relocation or removal from ~~public~~
1307 waters of this state.—

1308 (1) As used in this section, the term:

1309 (a) "Commission" means the Fish and Wildlife Conservation
1310 Commission.

1311 (b) "Gross negligence" means conduct so reckless or
1312 wanting in care that it constitutes a conscious disregard or
1313 indifference to the safety of the property exposed to such
1314 conduct.

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(c) "Willful misconduct" means conduct evidencing carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design or to show an intentional and substantial disregard of the interests of the vessel owner.

(2) (a) It is unlawful for any person, firm, or corporation to ~~store, leave, or abandon~~ any derelict vessel as defined in s. 823.11 upon the waters of in this state. For purposes of this paragraph, the term "leave" means to allow a vessel to remain occupied or unoccupied on the waters of this state for more than 24 hours.

(b) Notwithstanding paragraph (a), a person who owns or operates a vessel that becomes derelict upon the waters of this state solely as a result of a boating accident that is reported to law enforcement in accordance with s. 327.301 or otherwise reported to law enforcement; a hurricane; or another sudden event outside of his or her control may not be charged with a violation if:

1. The person documents for law enforcement the specific event that led to the vessel being derelict upon the waters of this state; and

2. The vessel has been removed from the waters of this state or has been repaired or addressed and is no longer derelict upon the waters of this state:

1339 a. Within 7 days after a boating accident or other sudden
1340 event outside of his or her control; or

1341 b. Within 45 days after a hurricane has passed over this
1342 state.

1343 (c) This subsection does not apply to a vessel that was
1344 derelict upon the waters of this state before the stated
1345 accident or event.

1346 (3) (a) The commission, an officer ~~officers~~ of the
1347 commission, or a ~~and any~~ law enforcement agency or officer
1348 specified in s. 327.70 may ~~are authorized and empowered to~~
1349 relocate, remove, store, destroy, or dispose of or cause to be
1350 relocated, ~~or~~ removed, stored, destroyed, or disposed of a ~~any~~
1351 derelict vessel as defined in s. 823.11 from ~~public~~ waters of
1352 this state as defined in s. 327.02. All costs, including costs
1353 owed to a third party, incurred by the commission or other law
1354 enforcement agency in the relocation, ~~or~~ removal, storage,
1355 destruction, or disposal of any abandoned or derelict vessel are
1356 recoverable against the owner of the vessel or the party
1357 determined to be legally responsible for the vessel being upon
1358 the waters of this state in a derelict condition. The Department
1359 of Legal Affairs shall represent the commission in actions to
1360 recover such costs.

1361 (b) The commission, an officer ~~officers~~ of the commission,
1362 or a ~~and any other~~ law enforcement agency or officer specified
1363 in s. 327.70 acting pursuant to ~~under~~ this section to relocate,

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1364 remove, store, destroy, or dispose of, or cause to be relocated,
1365 ~~or removed,~~ stored, destroyed, or disposed of, a derelict vessel
1366 from ~~public~~ waters of this state as defined in s. 327.02 shall
1367 be held harmless for all damages to the derelict vessel
1368 resulting from such action ~~relocation or removal~~ unless the
1369 damage results from gross negligence or willful misconduct as
1370 these terms are defined in s. 823.11.

1371 (c) A contractor performing relocation, ~~or removal,~~
1372 storage, destruction, or disposal activities at the direction of
1373 the commission, an officer ~~officers~~ of the commission, ~~or a law~~
1374 enforcement agency or officer, or a governmental subdivision,
1375 when the governmental subdivision has received authorization
1376 from a law enforcement officer or agency, pursuant to this
1377 section must be licensed in accordance with applicable United
1378 States Coast Guard regulations where required; obtain and carry
1379 in full force and effect a policy from a licensed insurance
1380 carrier in this state to insure against any accident, loss,
1381 injury, property damage, or other casualty caused by or
1382 resulting from the contractor's actions; and be properly
1383 equipped to perform the services to be provided.

1384 (d) The commission may establish a program to provide
1385 grants to local governments for the removal, storage,
1386 destruction, and disposal of derelict vessels from the ~~public~~
1387 waters of this ~~the~~ state as defined in s. 327.02. The program
1388 shall be funded from the Marine Resources Conservation Trust

Fund or the Florida Coastal Protection Trust Fund.
Notwithstanding ~~the provisions in~~ s. 216.181(11), funds available for grants may only be authorized by appropriations acts of the Legislature. In a given fiscal year, if all funds appropriated pursuant to this paragraph are not requested by and granted to local governments for the removal, storage, destruction, and disposal of derelict vessels by the end of the third quarter, the Fish and Wildlife Conservation Commission may use the remainder of the funds to remove, store, destroy, and dispose of, or to pay private contractors to remove, store, destroy, and dispose of, derelict vessels.

(e) The commission shall adopt by rule procedures for submitting a grant application and criteria for allocating available funds. Such criteria shall include, but not be limited to, the following:

1. The number of derelict vessels within the jurisdiction of the applicant.

2. The threat posed by such vessels to public health or safety, the environment, navigation, or the aesthetic condition of the general vicinity.

3. The degree of commitment of the local government to maintain waters free of abandoned and derelict vessels and to seek legal action against those who abandon vessels in the waters of this ~~the~~ state as defined in s. 327.02.

(f) This section constitutes the authority for such

removal but is not intended to be in contravention of any applicable federal act.

Section 25. Subsections (2) and (4) of section 705.103, Florida Statutes, are amended to read:

705.103 Procedure for abandoned or lost property.—

(2) (a)1. Whenever a law enforcement officer ascertains that:

a. An article of lost or abandoned property other than a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa) is present on public property and is of such nature that it cannot be easily removed, the officer shall cause a notice to be placed upon such article in substantially the following form:

NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED PROPERTY. This property, to wit: ...(setting forth brief description)... is unlawfully upon public property known as ...(setting forth brief description of location)... and must be removed within 5 days; otherwise, it will be removed and disposed of pursuant to chapter 705, Florida Statutes. The owner will be liable for the costs of removal, storage, and publication of notice. Dated this: ...(setting forth the date of posting of notice)..., signed: ...(setting forth name, title, address, and telephone number of law enforcement officer)....

1439 b. A derelict vessel or a vessel declared a public
1440 nuisance pursuant to s. 327.73(1)(aa) is present on the waters
1441 of this state, the officer shall cause a notice to be placed
1442 upon such vessel in substantially the following form:
1443
1444 NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED
1445 VESSEL. This vessel, to wit: ...(setting forth brief
1446 description)... has been determined to be (derelict or a public
1447 nuisance) and is unlawfully upon the waters of this state
1448 ...(setting forth brief description of location)... and must be
1449 removed within 21 days; otherwise, it will be removed and
1450 disposed of pursuant to chapter 705, Florida Statutes. The owner
1451 and other interested parties have the right to a hearing to
1452 challenge the determination that this vessel is derelict or
1453 otherwise in violation of the law. Please contact ...(contact
1454 information for person who can arrange for a hearing in
1455 accordance with this section).... The owner or the party
1456 determined to be legally responsible for the vessel being upon
1457 the waters of this state in a derelict condition will be liable
1458 for the costs of removal, destruction, and disposal if this
1459 vessel is not removed by the owner. Dated this: ...(setting
1460 forth the date of posting of notice)...., signed: ...(setting
1461 forth name, title, address, and telephone number of law
1462 enforcement officer)....

1463 2. A ~~Such~~ notice required under subparagraph 1. may ~~shall~~
1464 ~~be~~ not be less than 8 inches by 10 inches and shall be
1465 sufficiently weatherproof to withstand normal exposure to the
1466 elements. In addition to posting, the law enforcement officer
1467 shall make a reasonable effort to ascertain the name and address
1468 of the owner. If such is reasonably available to the officer,
1469 she or he shall mail a copy of such notice to the owner on or
1470 before the date of posting. If the property is a motor vehicle
1471 as defined in s. 320.01(1) or a vessel as defined in s. 327.02,
1472 the law enforcement agency shall contact the Department of
1473 Highway Safety and Motor Vehicles in order to determine the name
1474 and address of the owner and any person who has filed a lien on
1475 the vehicle or vessel as provided in s. 319.27(2) or (3) or s.
1476 328.15(1). On receipt of this information, the law enforcement
1477 agency shall mail a copy of the notice by certified mail, return
1478 receipt requested, to the owner and to the lienholder, if any,
1479 except that a law enforcement officer who has issued a citation
1480 for a violation of s. 376.15 or s. 823.11 to the owner of a
1481 derelict vessel is not required to mail a copy of the notice by
1482 certified mail, return receipt requested, to the owner. For a
1483 derelict vessel or a vessel declared a public nuisance pursuant
1484 to s. 327.73(1)(aa), the mailed notice must inform the owner or
1485 responsible party that he or she has a right to a hearing to
1486 dispute the determination that the vessel is derelict or
1487 otherwise in violation of the law. If a request for a hearing is

made, a state agency shall follow the processes set forth in s. 120.569. Local governmental entities shall follow the processes set forth in s. 120.569, except that a local judge, magistrate, or code enforcement officer may be designated to conduct such a hearing. If, at the end of 5 days after posting the notice in sub-subparagraph 1.a., or at the end of 21 days after posting the notice in sub-subparagraph 1.b., and mailing such notice, if required, the owner or any person interested in the lost or abandoned article or articles described has not removed the article or articles from public property or shown reasonable cause for failure to do so, and, in the case of a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), has not requested a hearing in accordance with this section, the following shall apply:

a.~~(a)~~ For abandoned property other than a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), the law enforcement agency may retain any or all of the property for its own use or for use by the state or unit of local government, trade such property to another unit of local government or state agency, donate the property to a charitable organization, sell the property, or notify the appropriate refuse removal service.

b. For a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), the law enforcement agency or its designee may:

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1513 (I) Remove the vessel from the waters of this state and
1514 destroy and dispose of the vessel or authorize another
1515 governmental entity or its designee to do so; or

1516 (II) Authorize the vessel's use as an artificial reef in
1517 accordance with s. 379.249 if all necessary federal, state, and
1518 local authorizations are received.

1519
1520 A law enforcement agency or its designee may also take action as
1521 described in this sub-subparagraph if, following a hearing
1522 pursuant to this section, the judge, magistrate, administrative
1523 law judge, or hearing officer has determined the vessel to be
1524 derelict as provided in s. 823.11 or otherwise in violation of
1525 the law in accordance with s. 327.73(1)(aa) and a final order
1526 has been entered or the case is otherwise closed.

1527 (b) For lost property, the officer shall take custody and
1528 the agency shall retain custody of the property for 90 days. The
1529 agency shall publish notice of the intended disposition of the
1530 property, as provided in this section, during the first 45 days
1531 of this time period.

1532 1. If the agency elects to retain the property for use by
1533 the unit of government, donate the property to a charitable
1534 organization, surrender such property to the finder, sell the
1535 property, or trade the property to another unit of local
1536 government or state agency, notice of such election shall be
1537 given by an advertisement published once a week for 2

consecutive weeks in a newspaper of general circulation in the county where the property was found if the value of the property is more than \$100. If the value of the property is \$100 or less, notice shall be given by posting a description of the property at the law enforcement agency where the property was turned in. The notice must be posted for not less than 2 consecutive weeks in a public place designated by the law enforcement agency. The notice must describe the property in a manner reasonably adequate to permit the rightful owner of the property to claim it.

2. If the agency elects to sell the property, it must do so at public sale by competitive bidding. Notice of the time and place of the sale shall be given by an advertisement of the sale published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the sale is to be held. The notice shall include a statement that the sale shall be subject to any and all liens. The sale must be held at the nearest suitable place to that where the lost or abandoned property is held or stored. The advertisement must include a description of the goods and the time and place of the sale. The sale may take place no earlier than 10 days after the final publication. If there is no newspaper of general circulation in the county where the sale is to be held, the advertisement shall be posted at the door of the courthouse and at three other public places in the county at least 10 days prior to sale.

1563 Notice of the agency's intended disposition shall describe the
1564 property in a manner reasonably adequate to permit the rightful
1565 owner of the property to identify it.

1566 (4) The owner of any abandoned or lost property, or in the
1567 case of a derelict vessel, the owner or other party determined
1568 to be legally responsible for the vessel being upon the waters
1569 of this state in a derelict condition, who, after notice as
1570 provided in this section, does not remove such property within
1571 the specified period shall be liable to the law enforcement
1572 agency, other governmental entity, or the agency's or entity's
1573 designee for all costs of removal, storage, and destruction of
1574 such property, less any salvage value obtained by disposal of
1575 the property. Upon final disposition of the property, the law
1576 enforcement officer or representative of the law enforcement
1577 agency or other governmental entity shall notify the owner, if
1578 known, of the amount owed. In the case of an abandoned vessel or
1579 motor vehicle, any person who neglects or refuses to pay such
1580 amount is not entitled to be issued a certificate of
1581 registration for such vessel or motor vehicle, or any other
1582 vessel or motor vehicle, until such costs have been paid. A
1583 person who has neglected or refused to pay all costs of removal,
1584 storage, disposal, and destruction of a vessel or motor vehicle
1585 as provided in this section, after having been provided written
1586 notice via certified mail that such costs are owed, and who
1587 applies for and is issued a registration for a vessel or motor

1588 vehicle before such costs have been paid in full commits a
1589 misdemeanor of the first degree, punishable as provided in s.
1590 775.082 or s. 775.083. The law enforcement officer or
1591 representative of the law enforcement agency or other
1592 governmental entity shall supply the Department of Highway
1593 Safety and Motor Vehicles with a list of persons whose vessel
1594 registration privileges and ~~or whose~~ motor vehicle privileges
1595 have been revoked under this subsection. ~~Neither~~ The department
1596 or a ~~nor any other~~ person acting as an agent of the department
1597 may not ~~thereof shall~~ issue a certificate of registration to a
1598 person whose vessel and ~~or~~ motor vehicle registration privileges
1599 have been revoked, as provided by this subsection, until such
1600 costs have been paid.

1601 Section 26. Effective July 1, 2023, subsection (2) of
1602 section 705.103, Florida Statutes, as amended by section 29 of
1603 chapter 2019-76, Laws of Florida, is amended to read:

1604 705.103 Procedure for abandoned or lost property.—

1605 (2) (a)1. Whenever a law enforcement officer ascertains
1606 that:

1607 a. An article of lost or abandoned property other than a
1608 derelict vessel or a vessel declared a public nuisance pursuant
1609 to s. 327.73(1)(aa) is present on public property and is of such
1610 nature that it cannot be easily removed, the officer shall cause
1611 a notice to be placed upon such article in substantially the
1612 following form:

1613
1614 NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED
1615 PROPERTY. This property, to wit: ...(setting forth brief
1616 description)... is unlawfully upon public property known as
1617 ...(setting forth brief description of location)... and must be
1618 removed within 5 days; otherwise, it will be removed and
1619 disposed of pursuant to chapter 705, Florida Statutes. The owner
1620 will be liable for the costs of removal, storage, and
1621 publication of notice. Dated this: ...(setting forth the date of
1622 posting of notice)..., signed: ...(setting forth name, title,
1623 address, and telephone number of law enforcement officer)....
1624

1625 b. A derelict vessel or a vessel declared a public
1626 nuisance pursuant to s. 327.73(1)(aa) is present on the waters
1627 of this state, the officer shall cause a notice to be placed
1628 upon such vessel in substantially the following form:
1629

1630 NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED
1631 VESSEL. This vessel, to wit: ...(setting forth brief description
1632 of location)... has been determined to be (derelict or a public
1633 nuisance) and is unlawfully upon the waters of this state
1634 ...(setting forth brief description of location)... and must be
1635 removed within 21 days; otherwise, it will be removed and
1636 disposed of pursuant to chapter 705, Florida Statutes. The owner
1637 and other interested parties have the right to a hearing to

1638 challenge the determination that this vessel is derelict or
1639 otherwise in violation of the law. Please contact ...(contact
1640 information for person who can arrange for a hearing in
1641 accordance with this section).... The owner or the party
1642 determined to be legally responsible for the vessel being upon
1643 the waters of this state in a derelict condition will be liable
1644 for the costs of removal, destruction, and disposal if this
1645 vessel is not removed by the owner. Dated this: ...(setting
1646 forth the date of posting of notice)...., signed: ...(setting
1647 forth name, title, address, and telephone number of law
1648 enforcement officer)....

1650 2. A ~~Such~~ notice required under subparagraph 1. may ~~shall~~
1651 ~~be~~ not be less than 8 inches by 10 inches and shall be
1652 sufficiently weatherproof to withstand normal exposure to the
1653 elements. In addition to posting, the law enforcement officer
1654 shall make a reasonable effort to ascertain the name and address
1655 of the owner. If such is reasonably available to the officer,
1656 she or he shall mail a copy of such notice to the owner on or
1657 before the date of posting. If the property is a motor vehicle
1658 as defined in s. 320.01(1) or a vessel as defined in s. 327.02,
1659 the law enforcement agency shall contact the Department of
1660 Highway Safety and Motor Vehicles in order to determine the name
1661 and address of the owner and any person who has filed a lien on
1662 the vehicle or vessel as provided in s. 319.27(2) or (3) or s.

1663 328.15. On receipt of this information, the law enforcement
1664 agency shall mail a copy of the notice by certified mail, return
1665 receipt requested, to the owner and to the lienholder, if any,
1666 except that a law enforcement officer who has issued a citation
1667 for a violation of s. 376.15 or s. 823.11 to the owner of a
1668 derelict vessel is not required to mail a copy of the notice by
1669 certified mail, return receipt requested, to the owner. For a
1670 derelict vessel or a vessel declared a public nuisance pursuant
1671 to s. 327.73(1)(aa), the mailed notice must inform the owner or
1672 responsible party that he or she has a right to a hearing to
1673 dispute the determination that the vessel is derelict or
1674 otherwise in violation of the law. If a request for a hearing is
1675 made, a state agency shall follow the processes as set forth in
1676 s. 120.569. Local governmental entities shall follow the
1677 processes set forth in s. 120.569, except that a local judge,
1678 magistrate, or code enforcement officer may be designated to
1679 conduct such hearings. If, at the end of 5 days after posting
1680 the notice in sub-subparagraph 1.a., or at the end of 21 days
1681 after posting the notice in sub-subparagraph 1.b., and mailing
1682 such notice, if required, the owner or any person interested in
1683 the lost or abandoned article or articles described has not
1684 removed the article or articles from public property or shown
1685 reasonable cause for failure to do so, and, in the case of a
1686 derelict vessel or a vessel declared a public nuisance pursuant

1687 to s. 327.73(1)(aa), has not requested a hearing in accordance
1688 with this section, the following shall apply:

1689 a.~~(a)~~ For abandoned property other than a derelict vessel
1690 or a vessel declared a public nuisance pursuant to s.
1691 327.73(1)(aa), the law enforcement agency may retain any or all
1692 of the property for its own use or for use by the state or unit
1693 of local government, trade such property to another unit of
1694 local government or state agency, donate the property to a
1695 charitable organization, sell the property, or notify the
1696 appropriate refuse removal service.

1697 b. For a derelict vessel or a vessel declared a public
1698 nuisance pursuant to s. 327.73(1)(aa), the law enforcement
1699 agency or its designee may:

1700 (I) Remove the vessel from the waters of this state and
1701 destroy and dispose of the vessel or authorize another
1702 governmental entity or its designee to do so; or

1703 (II) Authorize the vessel's use as an artificial reef in
1704 accordance with s. 379.249 if all necessary federal, state, and
1705 local authorizations are received.

1706
1707 A law enforcement agency or its designee may also take action as
1708 described in this sub-subparagraph if, following a hearing
1709 pursuant to this section, the judge, magistrate, administrative
1710 law judge, or hearing officer has determined the vessel to be
1711 derelict as provided in s. 823.11 or otherwise in violation of

1712 the law in accordance with s. 327.73(1)(aa) and a final order
1713 has been entered or the case is otherwise closed.

1714 (b) For lost property, the officer shall take custody and
1715 the agency shall retain custody of the property for 90 days. The
1716 agency shall publish notice of the intended disposition of the
1717 property, as provided in this section, during the first 45 days
1718 of this time period.

1719 1. If the agency elects to retain the property for use by
1720 the unit of government, donate the property to a charitable
1721 organization, surrender such property to the finder, sell the
1722 property, or trade the property to another unit of local
1723 government or state agency, notice of such election shall be
1724 given by an advertisement published once a week for 2
1725 consecutive weeks in a newspaper of general circulation in the
1726 county where the property was found if the value of the property
1727 is more than \$100. If the value of the property is \$100 or less,
1728 notice shall be given by posting a description of the property
1729 at the law enforcement agency where the property was turned in.
1730 The notice must be posted for not less than 2 consecutive weeks
1731 in a public place designated by the law enforcement agency. The
1732 notice must describe the property in a manner reasonably
1733 adequate to permit the rightful owner of the property to claim
1734 it.

1735 2. If the agency elects to sell the property, it must do
1736 so at public sale by competitive bidding. Notice of the time and

place of the sale shall be given by an advertisement of the sale published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the sale is to be held. The notice shall include a statement that the sale shall be subject to any and all liens. The sale must be held at the nearest suitable place to that where the lost or abandoned property is held or stored. The advertisement must include a description of the goods and the time and place of the sale. The sale may take place no earlier than 10 days after the final publication. If there is no newspaper of general circulation in the county where the sale is to be held, the advertisement shall be posted at the door of the courthouse and at three other public places in the county at least 10 days prior to sale. Notice of the agency's intended disposition shall describe the property in a manner reasonably adequate to permit the rightful owner of the property to identify it.

Section 27. Subsections (1), (2), and (3) of section 823.11, Florida Statutes, are amended to read:

823.11 Derelict vessels; relocation or removal; penalty.—

(1) As used in this section and s. 376.15, the term:

(a) "Commission" means the Fish and Wildlife Conservation Commission.

(b) "Derelict vessel" means a vessel, as defined in s. 327.02, that is ~~left, stored, or abandoned~~:

1761 1. In a wrecked, junked, or substantially dismantled
1762 condition upon any ~~public~~ waters of this state.

1763 a. A vessel is wrecked if it is sunken or sinking; aground
1764 without the ability to extricate itself absent mechanical
1765 assistance; or remaining after a marine casualty, including, but
1766 not limited to, a boating accident, extreme weather, or a fire.

1767 b. A vessel is junked if it has been substantially
1768 stripped of vessel components, if vessel components have
1769 substantially degraded or been destroyed, or if the vessel has
1770 been discarded by the owner or operator. Attaching an outboard
1771 motor to a vessel that is otherwise junked will not cause the
1772 vessel to no longer be junked if such motor is not an effective
1773 means of propulsion as required by s. 327.4107(2) (e) and
1774 associated rules.

1775 c. A vessel is substantially dismantled if at least two of
1776 the three following vessel systems or components are missing,
1777 compromised, incomplete, inoperable, or broken:

1778 (I) The steering system;

1779 (II) The propulsion system; or

1780 (III) The exterior hull integrity.

1781
1782 Attaching an outboard motor to a vessel that is otherwise
1783 substantially dismantled will not cause the vessel to no longer
1784 be substantially dismantled if such motor is not an effective

1785 means of propulsion as required by s. 327.4107(2)(e) and
1786 associated rules.

1787 2. At a port in this state without the consent of the
1788 agency having jurisdiction thereof.

1789 3. Docked, grounded, or beached upon the property of
1790 another without the consent of the owner of the property.

1791 (c) "Gross negligence" means conduct so reckless or
1792 wanting in care that it constitutes a conscious disregard or
1793 indifference to the safety of the property exposed to such
1794 conduct.

1795 (d) "Willful misconduct" means conduct evidencing
1796 carelessness or negligence of such a degree or recurrence as to
1797 manifest culpability, wrongful intent, or evil design or to show
1798 an intentional and substantial disregard of the interests of the
1799 vessel owner.

1800 (2)(a) ~~It is unlawful for~~ A person, firm, or corporation
1801 may not to store, leave, or abandon any derelict vessel upon
1802 waters of in this state. For purposes of this paragraph, the
1803 term "leave" means to allow a vessel to remain occupied or
1804 unoccupied on the waters of this state for more than 24 hours.

1805 (b) Notwithstanding paragraph (a), a person who owns or
1806 operates a vessel that becomes derelict upon the waters of this
1807 state solely as a result of a boating accident that is reported
1808 to law enforcement in accordance with s. 327.301 or otherwise
1809 reported to law enforcement; a hurricane; or another sudden

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1810 event outside of his or her control may not be charged with a
1811 violation if:

1812 1. The person documents for law enforcement the specific
1813 event that led to the vessel being derelict upon the waters of
1814 this state; and

1815 2. The vessel has been removed from the waters of this
1816 state or has been repaired or addressed and is no longer
1817 derelict upon the waters of this state:

1818 a. Within 7 days after a boating accident or other sudden
1819 event outside of his or her control; or

1820 b. Within 45 days after a hurricane has passed over the
1821 state.

1822 (c) This subsection does not apply to a vessel that was
1823 derelict upon the waters of this state before the stated
1824 accident or event.

1825 (3) The commission, an officer ~~officers~~ of the commission,
1826 or a ~~and any~~ law enforcement agency or officer specified in s.
1827 327.70 may ~~are authorized and empowered to~~ relocate, remove,
1828 store, destroy, or dispose of, or cause to be relocated, ~~or~~
1829 removed, stored, destroyed, or disposed of, a derelict vessel
1830 ~~from public~~ waters of this state as defined in s. 327.02 if the
1831 derelict vessel obstructs or threatens to obstruct navigation or
1832 in any way constitutes a danger to the environment, property, or
1833 persons. The commission, an officer ~~officers~~ of the commission,
1834 or any other law enforcement agency or officer acting pursuant

1835 to ~~under~~ this subsection to relocate, remove, store, destroy,
1836 dispose of, or cause to be relocated, ~~or~~ removed, stored,
1837 destroyed, or disposed of, a derelict vessel from ~~public~~ waters
1838 of this state shall be held harmless for all damages to the
1839 derelict vessel resulting from such action ~~relocation or removal~~
1840 unless the damage results from gross negligence or willful
1841 misconduct.

1842 (a) Removal, storage, destruction, and disposal of
1843 derelict vessels under this subsection may be funded by grants
1844 provided in ss. 206.606 and 376.15. The commission shall
1845 implement a plan for the procurement of any available federal
1846 disaster funds and use such funds for the removal, storage,
1847 destruction, and disposal of derelict vessels.

1848 (b) All costs, including costs owed to a third party,
1849 incurred by the commission, another ~~or other~~ law enforcement
1850 agency, or a governmental subdivision, when the governmental
1851 subdivision has received authorization from a law enforcement
1852 officer or agency, for in the relocation, ~~or~~ removal, storage,
1853 destruction, or disposal of a derelict vessel are recoverable
1854 against the vessel owner or the party determined to be legally
1855 responsible for the vessel being upon the waters of this state
1856 in a derelict condition. The Department of Legal Affairs shall
1857 represent the commission in actions to recover such costs. As
1858 provided in s. 705.103(4), a person who neglects or refuses to
1859 pay such costs may not be issued a certificate of registration

1860 for such vessel or for any other vessel or motor vehicle until
1861 such costs have been paid. A person who has neglected or refused
1862 to pay all costs of removal, storage, destruction, or disposal
1863 of a derelict vessel as provided in this section, after having
1864 been provided written notice via certified mail that such costs
1865 are owed, and who applies for and is issued a registration for a
1866 vessel or motor vehicle before such costs have been paid in full
1867 commits a misdemeanor of the first degree, punishable as
1868 provided in s. 775.082 or s. 775.083.

1869 (c) A contractor performing relocation, ~~or~~ removal,
1870 storage, destruction, or disposal activities at the direction of
1871 the commission, an officer ~~officers~~ of the commission, ~~or~~ a law
1872 enforcement agency or officer, or a governmental subdivision,
1873 when the governmental subdivision has received authorization
1874 from a law enforcement officer or agency, pursuant to this
1875 section must be licensed in accordance with applicable United
1876 States Coast Guard regulations where required; obtain and carry
1877 in full force and effect a policy from a licensed insurance
1878 carrier in this state to insure against any accident, loss,
1879 injury, property damage, or other casualty caused by or
1880 resulting from the contractor's actions; and be properly
1881 equipped to perform the services to be provided.

1882 Section 28. Except as otherwise expressly provided in this
1883 act, this act shall take effect July 1, 2021.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 639 Operation and Safety of Motor Vehicles and Vessels

SPONSOR(S): Criminal Justice & Public Safety Subcommittee, Environment, Agriculture & Flooding Subcommittee, Sirois

TIED BILLS: **IDEN./SIM. BILLS:** SB 1086

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Environment, Agriculture & Flooding Subcommittee	17 Y, 0 N, As CS	Melkun	Moore
2) Criminal Justice & Public Safety Subcommittee	16 Y, 0 N, As CS	Padgett	Hall
3) Agriculture & Natural Resources Appropriations Subcommittee			
4) State Affairs Committee			

SUMMARY ANALYSIS

CS/CS/HB 639 addresses boating safety by:

- Prohibiting a person, regardless of his or her date of birth, from operating a vessel unless such person has proof he or she has completed, or is exempt from completing, boating safety education.
- Prohibiting a vessel that is operating at slow speed, minimum wake from proceeding at a speed greater than a speed that is reasonable and prudent to avoid the creation of an excessive wake or other hazardous condition under the existing circumstances.
- Revising penalties for failure to submit to impairment tests while operating a vehicle or vessel.

The bill authorizes local governments to adopt an ordinance establishing a slow speed, minimum wake boating-restricted area if the area is within the boundaries of a permitted public mooring field and a buffer around the mooring field of up to 100 feet. The bill also authorizes the Fish and Wildlife Conservation Commission (FWC) to establish protection zones that prohibit certain activities to protect and prevent harm to springs.

The bill addresses derelict vessels by:

- Creating the derelict vessel prevention program.
- Authorizing FWC to relocate an at-risk vessel that is near a mangrove or upland vegetation.
- Requiring a law enforcement officer to provide notice to the owner of a derelict vessel in a certain form.
- Authorizing a law enforcement agency or its designee to remove, destroy, and dispose of a derelict vessel or authorize the vessel's use as an artificial reef under certain circumstances.

The bill establishes limitations on operating a human-powered vessel within the Florida Intracoastal Waterway.

The bill authorizes certain law enforcement entities, when necessary for preparations in advance of a space launch service or reentry service, or for the recovery of spaceflight assets before or after a space launch service or reentry service, to temporarily establish a protection zone requiring vessels to leave, or prohibiting vessels from entering, waterbodies within certain parameters.

The bill increases and creates certain penalties.

The bill may have an indeterminate fiscal impact on the state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Fish and Wildlife Conservation Commission (FWC) is the agency responsible for regulating boating in the state.¹ Through its Division of Law Enforcement, FWC works to enforce a variety of state and federal boating laws, including regulations related to boating safety, waterway management, vessel maintenance, and marine sanitation.

Boating Safety Education

Background

In order to operate a motorboat of 10 horsepower or greater, Florida law requires anyone who was born on or after January 1, 1988, to either complete an approved boating safety course and obtain a boating safety education identification card issued by FWC or pass a temporary certificate examination developed and approved by FWC.² Because Florida does not require boaters to have a boating license, the boating safety education identification card serves as proof of successful completion of the educational requirements and is valid for life.³

FWC established the temporary certificate to help nonresidents without qualifying proof of boating safety education to comply with the boater education law when visiting the state. The temporary certificate serves as a knowledge check, which satisfies the requirement for a boater to have a boating safety identification card to operate a boat in Florida.⁴

Effect of the Bill

Beginning January 1, 2023, the bill prohibits a person, regardless of his or her date of birth, from operating a vessel powered by a motor of 10 horsepower or greater unless such person has certain documentation in his or her possession aboard the vessel. Specifically, the person must possess photographic identification and a boating safety identification card issued by FWC, a state-issued identification card or driver license indicating possession of the boating safety identification card, or photographic identification and a temporary certificate issued or approved by FWC, which shows that he or she has:

- Completed a FWC-approved boating safety education course that meets the minimum requirements established by the National Association of State Boating Law Administrators (NASBLA);
- Passed a temporary certificate examination developed or approved by FWC;
- A valid International Certificate of Competency (ICC);⁵ or
- Completed a NASBLA-approved boating safety education course in another state.

The bill prohibits liveries from knowingly leasing, hiring, or renting a vessel to a person unless he or she has presented to the livery one of the forms of required documentation described above, unless an exemption applies.

The bill exempts a person previously licensed by the United States Coast Guard to serve as master of a vessel from the boating safety education requirement if the person provides proof of such licensure to FWC and requests a boating safety identification card.

¹ FWC, *Boating*, available at <https://myfwc.com/boating/> (last visited Mar. 22, 2021).

² Section 327.395, F.S.

³ FWC, *Boater Education Identification Card*, available at <https://myfwc.com/boating/safety-education/id/> (last visited Mar. 22, 2021).

⁴ FWC, *Temporary Certificate*, available at <https://myfwc.com/boating/safety-education/temporary-certificate/> (last visited Mar. 22, 2021).

⁵ ICC certification is required by European countries and signatories to the United Nations Resolution 40 as the minimum requirement to operate sailboats and powerboats of up to 10 meters in such countries. EduMaritime, *Get Your ICC Sailing License*, <https://www.edumaritime.net/nauticed/rya-day-skipper-icc-license> (last visited Mar. 22, 2021).

The bill repeals a duplicative provision authorizing FWC to appoint liveries, marinas, or other persons as its agents to administer the boating safety education course or temporary certificate examination and issue identification cards or temporary certificates in digital, electronic, or paper format. The bill also repeals the limitation on the service fee that can be charged by boating safety instructors for issuing a temporary boating certificate.

Boating Speed Safety Regulations

Background

In Florida, a vessel⁶ must be operated in a reasonable and prudent manner, having regard for other waterborne traffic, posted speed and wake restrictions, and all other attendant circumstances so as not to endanger the life, limb, or property of another person outside the vessel or due to vessel overloading or excessive speed.⁷ A person operating a vessel in excess of a posted speed limit is guilty of a noncriminal infraction punishable by a fine of \$50.⁸

Effect of the Bill

The bill specifies that a vessel is operating at slow speed, minimum wake only if it is fully off plane and completely settled into the water and proceeding without wake or with minimum wake. A vessel that is operating at slow speed, minimum wake is prohibited from proceeding at a speed greater than a speed that is reasonable and prudent to avoid the creation of an excessive wake or other hazardous condition under the existing circumstances.

The bill specifies that a vessel is not proceeding at slow speed, minimum wake if it is operating on plane, if it is in the process of coming off plane and settling into the water or getting on plane, or if it is operating at a speed that creates a wake that unreasonably or unnecessarily endangers other vessels.

The bill prohibits a person from operating a vessel faster than slow speed, minimum wake within 300 feet of any emergency vessel, including, but not limited to, a law enforcement vessel, a U.S. Coast Guard vessel, or a firefighting vessel, when such emergency vessel's emergency lights are activated.

The bill also prohibits a person from operating a vessel faster than slow speed, minimum wake within 300 feet of any construction vessel or barge when the vessel or barge is displaying an orange flag. The flag indicates that the vessel or barge is actively engaged in construction operations and must be flown from a pole extending at least 10 feet above the tallest portion of the vessel or barge or at least 5 feet above any superstructure permanently installed upon the vessel or barge. The flag must be at least 2 feet by 3 feet in size, must have a wire or other stiffener or be otherwise constructed to ensure that the flag remains fully unfurled and extended in the absence of a wind or breeze, and must be displayed so that the visibility of the flag is not obscured in any direction.

The bill specifies that a person operating a vessel in violation of these slow speed, minimum wake requirements commits a noncriminal infraction. However, a person may not be cited for a violation of these requirements in periods of low visibility, including any time between 30 minutes after sunset and 30 minutes before sunrise, unless the orange flag is illuminated and visible from a distance of at least 2 nautical miles. The bill further specifies that such illumination does not relieve the construction vessel or barge from complying with all navigation rules.

The bill specifies that the owner of, or party who is responsible for, a construction vessel or barge who displays an orange flag on the vessel or barge when it is not actively engaged in construction operations commits a noncriminal infraction.

The bill specifies that the speed and penalty provisions described above do not apply to a law enforcement, firefighting, or rescue vessel that is owned or operated by a governmental entity.

⁶ Section 327.02, F.S., defines the term “vessel” to include 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.

⁷ Section 327.33, F.S.

⁸ Section 327.73(1)(h), F.S.

Operating a Vehicle or Vessel under the Influence

Background

A person commits the offense of boating under the influence (BUI) if the person is operating a vessel within the state and:

- The person is under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, F.S., or any substance controlled under ch. 893, F.S., when affected to the extent that the person's normal faculties are impaired;
- The person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or
- The person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.⁹

The offense is punishable as follows:

Conviction	Penalty	Fine	Imprisonment
1 st conviction	Misdemeanor	Minimum: \$500 Maximum: \$1,000	No more than 6 months
2 nd conviction ¹⁰	Misdemeanor	Minimum: \$1,000 Maximum: \$2,000	No more than 9 months
3 rd conviction within 10 years after prior conviction	Third Degree Felony	Maximum: \$5,000 ¹¹	No more than 5 years ¹²
3 rd conviction more than 10 years after date of prior conviction ¹³	Misdemeanor	Minimum: \$2,000 Maximum: \$5,000	No more than 12 months
4 th or subsequent conviction	Third Degree Felony	Minimum: \$2,000 Maximum: \$5,000 ¹⁴	No more than 5 years ¹⁵

Implied Consent

Under current law, a person who accepts the privilege of operating a motor vehicle or vessel is deemed to have given consent to submit to an approved chemical, physical, or urine test for the purpose of determining the alcoholic content of his or her blood, breath, or urine if the person is lawfully arrested for any offense committed while the person was driving or operating a motor vehicle or vessel and was in actual physical control of a motor vehicle or vessel while under the influence of alcoholic beverages.¹⁶

If a person is arrested under suspicion of driving under the influence (DUI) and refuses to submit to a lawful blood, breath, or urine test, the person's driver license is suspended for one year for a first refusal, and suspended 18 months if the person's license has previously been suspended for a refusal.¹⁷ In addition, it is a first degree misdemeanor¹⁸ to refuse to submit to a breath, blood, or urine test if a person's driver license has previously been suspended for a prior refusal following an arrest for suspicion of DUI.¹⁹ Under current law, a refusal following an arrest for BUI does not count as a prior refusal for purposes of driver license suspension or criminal prosecution in DUI cases.

⁹ Section 327.35(1), F.S.

¹⁰ Section 327.35(2)(a), F.S.

¹¹ Section 775.083(1)(c), F.S.

¹² Sections 327.35(b)1. and 775.084, F.S.

¹³ Sections 327.35(2)(b)1.- 2., F.S.

¹⁴ Section 775.083(1)(c), F.S.

¹⁵ Sections 327.35(b)3. and 775.084, F.S.

¹⁶ Sections 316.1932 and 327.352, F.S.

¹⁷ Section 316.1932, F.S.

¹⁸ A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

¹⁹ Sections 316.1932(1)(a)1.a. and b., F.S.

A person who is arrested under suspicion of BUI who refuses to submit to a lawful blood, breath, or urine test is subject to a civil penalty of \$500.²⁰ In addition, it is a first degree misdemeanor to refuse to submit to such test if a person has previously been fined for a refusal to submit to a blood, breath, or urine test following an arrest for BUI. Under current law, a refusal following an arrest for DUI does not count as a prior refusal for purposes of criminal prosecution in BUI cases.

In 2016, the U.S. Supreme Court held that states cannot criminalize the refusal to take a blood test without a warrant in driving under the influence cases.²¹

Effect of the Bill

The bill provides a blood, breath, or urine test refusal in a BUI case counts as a prior refusal for purposes of driver license suspension and criminal prosecution in a subsequent DUI case, and a test refusal following an arrest for DUI counts a refusal for purposes of criminal prosecution in a subsequent BUI case. To align with current case law, the bill deletes the first degree misdemeanor penalty for refusal to submit to a blood test in both BUI and DUI cases where a person has a previous refusal.

Derelict Vessels

Background

A derelict vessel is a vessel that is left, stored, or abandoned in a wrecked, junked, or substantially dismantled condition upon any public state waters; at a port in the state without the consent of the agency that has jurisdiction of the port; or docked, grounded, or beached upon the property of another without the consent of the owner of the property.²²

It is unlawful to store, leave, or abandon a derelict vessel in Florida.²³ Violations are punishable by a term of imprisonment of no more than one year and a fine of up to \$1,000.²⁴ State law further provides that a violation of derelict vessel laws may also be subject to a civil penalty of up to \$75,000 per day.²⁵ Each day during any portion of which the violation occurs constitutes a separate offense.²⁶

Removal of Derelict Vessels

The Division of Law Enforcement within FWC and its officers, and the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officer, have the responsibility and authority to enforce vessel safety and vessel title certificates, liens, and registration.²⁷

Both state and local law enforcement are authorized and empowered to relocate or remove a derelict vessel from public waters if the derelict vessel obstructs, or threatens to obstruct, navigation or in any way constitutes a danger to the environment, property, or persons. The costs incurred for relocating or removing a derelict vessel are recoverable against the vessel owner. A vessel owner who neglects or refuses to pay the costs of removal, storage, and destruction of the vessel, less any salvage value obtained by disposal of the vessel, is not entitled to be issued a certificate of registration for such vessel, or any other vessel or motor vehicle, until the costs are paid.²⁸

²⁰ Section 327.352, F.S.

²¹ *Birchfield v. North Dakota*, 136 S.Ct. 2160 (2016).

²² Section 823.11(1)(b), F.S.

²³ Section 823.11(2), F.S.

²⁴ Sections 775.082(4)(a) and 775.083(1)(d), F.S.

²⁵ Section 376.16(1), F.S.

²⁶ *Id.*

²⁷ Section 943.10(1), F.S., defines “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. The definition also includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

²⁸ Section 705.103(4), F.S.

FWC may provide grants to local governments for the removal of derelict vessels from state waters if funds are appropriated for such grants.²⁹ Grants are awarded based on a set of criteria outlined in FWC rules.³⁰ Removal or relocation of the vessel on private property is not eligible for grant funding.³¹

At-risk vessels

In 2016, the Legislature passed House Bill 7025 to prohibit neglected vessels or those in deteriorating condition from anchoring, mooring, or occupying state waters.³² A vessel is at risk of becoming derelict if any of the following conditions exist:

- The vessel is taking on or has taken on water without an effective means to dewater.
- Spaces on the vessel that are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time.
- The vessel has broken loose or is in danger of breaking loose from its anchor.
- The vessel is left or stored aground unattended in such a state that would prevent the vessel from getting underway, or is listing due to water intrusion, or is sunk or partially sunk.
- The vessel does not have an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives telephonic or written notice, which may be provided by facsimile, electronic mail, or other electronic means, stating such from an officer, and the vessel owner or operator is unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair.³³

A violation for anchoring, mooring, or occupying a vessel at risk of becoming derelict on state waters is a noncriminal infraction, for which the civil penalty is \$50 for a first offense, \$100 for a second offense occurring 30 days or more after a first offense, and \$250 for a third or subsequent offense occurring 30 days or more after a previous offense.³⁴

Effect of the Bill

The bill grants FWC authority to adopt rules to implement the provisions of ch. 705, F.S., relating to vessels, and ss. 376.15 and 823.11, F.S., relating to derelict vessels.

The bill revises the conditions that determine when a vessel is at risk of becoming derelict by specifying that a vessel is deemed derelict if it does not have an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives in-person notice recorded on an agency-approved body camera.

The bill authorizes FWC, an officer of FWC, or a law enforcement agency or officer specified in s. 327.70, F.S., to relocate or cause to be relocated an at-risk vessel found to be in violation of s. 327.4107, F.S., to a distance greater than 20 feet from a mangrove or upland vegetation. The bill specifies that FWC, an officer of FWC, or a law enforcement agency or officer acting pursuant to this authority upon state waters is held harmless for all damages to the at-risk vessel resulting from such relocation unless the damage results from gross negligence or willful misconduct.

The bill authorizes FWC to establish a derelict vessel prevention program to address vessels at risk of becoming derelict. Such program may, but is not required to, include:

- Removal, relocation, and destruction of vessels that are declared a public nuisance, are derelict or at risk of becoming derelict, or are lost or abandoned.
- Creation of a vessel turn-in program allowing the owner of a vessel determined by law enforcement to be at risk of becoming derelict to turn his or her vessel and vessel title over to FWC to be destroyed without penalty.

²⁹ Section 376.15, F.S.

³⁰ Rule 68-1.003, F.A.C.

³¹ National Oceanic and Atmospheric Association: Marine Debris Program, *Abandoned and Derelict Vessels in Florida*, available at <https://marinedebris.noaa.gov/abandoned-and-derelict-vessels/florida> (last visited Mar. 22, 2021).

³² Chapter 2016-108, Laws of Fla.; s. 327.4107, F.S.

³³ Section 327.4107(2), F.S.

³⁴ Section 327.73(aa), F.S.

- Providing for removal and destruction of an abandoned vessel for which an owner cannot be identified or whose owner is deceased and no heir is interested in acquiring the vessel.
- Purchase of anchor line, anchors, and other equipment necessary for securing vessels at risk of becoming derelict.
- Creating or acquiring moorings designated for securing vessels at risk of becoming derelict.

The bill further authorizes the derelict vessel prevention program to include other preventative efforts and methods as determined appropriate and necessary by FWC.

The bill authorizes FWC to adopt rules to implement the derelict vessel prevention program and specifies that implementation of the program is subject to appropriation by the Legislature and must be funded by the Marine Resources Conservation Trust Fund or the Florida Coastal Protection Trust Fund.

The bill defines “leave” to mean to allow a vessel to remain occupied or unoccupied on state waters for more than 24 hours.

The bill specifies that a person who owns or operates a vessel that becomes derelict upon state waters solely as a result of a boating accident that is reported to law enforcement, a hurricane, or another sudden event outside of his or her control may not be charged with a violation if:

- The person documents for law enforcement the specific event that led to the vessel being derelict upon state waters; and
- The vessel has been removed from state waters or has been repaired or addressed and is no longer derelict upon state waters within seven days after a boating accident or other sudden event outside of his or her control or within 45 days after a hurricane has passed.

The bill specifies that this sudden accident or event exception does not apply to a vessel that was derelict upon state waters before the stated accident or event.

When a law enforcement officer determines that a derelict vessel or a vessel declared a public nuisance is present on state waters, the bill requires the officer to cause a notice to be placed upon the vessel in substantially the following form:

NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED VESSEL. This vessel, to wit: ...(setting forth brief description)... has been determined to be (derelict or a public nuisance) and is unlawfully upon waters of this state ...(setting forth brief description of location)... and must be removed within 21 days; otherwise, it will be removed and disposed of pursuant to chapter 705, Florida Statutes. The owner and other interested parties may have the right to a hearing to challenge the determination that this vessel is derelict or otherwise in violation of the law. Please contact ...(contact information for person who can arrange for a hearing in accordance with this section).... The owner or the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition will be liable for the costs of removal, destruction, and disposal if this vessel is not removed by the owner. Dated this: ...(setting forth the date of posting of notice)..., signed: ...(setting forth name, title, address, and telephone number of law enforcement officer)....

The officer must also make a reasonable effort to ascertain the name and address of the owner of the vessel and mail a copy of the notice to the owner. The mailed notice must inform the owner or responsible party that he or she has a right to a hearing to dispute the determination that the vessel is derelict or otherwise in violation of the law. If a request for a hearing is made, a state agency must follow the processes set forth in the Administrative Procedure Act. Local government entities must also follow the processes set forth in the Administrative Procedure Act, except that a local judge, magistrate, or code enforcement officer may be designated to conduct such a hearing.

If, after 21 days from the date notice was provided, the derelict vessel or vessel declared a public nuisance remains abandoned and a hearing has not been requested, the bill authorizes the law enforcement agency or its designee to:

- Remove the vessel from state waters and destroy and dispose of the vessel or authorize another governmental entity or its designee to do so; or
- Authorize the vessel's use as an artificial reef if all necessary federal, state, and local authorizations are received.

The bill also authorizes a law enforcement agency or its designee to take action if, following a hearing, the judge, magistrate, administrative law judge, or hearing officer has determined the vessel to be derelict or otherwise in violation of the law and a final order has been entered or the case is otherwise closed.

The bill specifies that a person who has neglected or refused to pay all costs of removal, storage, and destruction of an abandoned or lost vessel or motor vehicle, after having been provided written notice via certified mail that such costs are owed, and who applies for and is issued a registration for a vessel or motor vehicle before such costs have been paid in full commits a first degree misdemeanor.

The bill specifies that a vessel is wrecked if it is sunken or sinking, if it is aground without the ability to extricate itself absent mechanical assistance, or if it remains after a marine casualty, including, but not limited to, a boating accident, extreme weather, or a fire.

The bill specifies that a vessel is junked if it has been substantially stripped of vessel components, if vessel components have substantially degraded or been destroyed, or if the vessel has been discarded by the owner or operator. The bill further specifies that attaching an outboard motor to a vessel that is otherwise junked will not cause the vessel to no longer be junked if such motor is not an effective means of propulsion.

The bill specifies that a vessel is substantially dismantled if at least two of the three following vessel systems or components are missing, compromised, incomplete, inoperable, or broken: the steering system, the propulsion system, or the exterior hull integrity. The bill further specifies that attaching an outboard motor to a vessel that is otherwise substantially dismantled will not cause the vessel to no longer be substantially dismantled if such motor is not an effective means of propulsion.

Anchoring or Mooring

Background

Anchoring or mooring 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, while mooring uses fixtures, known as moorings, permanently affixed to the bottom of the water body.³⁵ Anchorages are areas that boaters regularly use for anchoring or mooring, whether designated or managed for that purpose or not. Mooring fields are areas designated and used for a system of properly spaced moorings.³⁶

State Regulation of the Anchoring or Mooring of Vessels

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.³⁷ Anchoring under bridges or in or adjacent to heavily traveled channels constitutes interference, if

³⁵ Ankensen, Hamann, & Flagg, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, 2 (March 2011), available at https://www.cityofmarcoisland.com/sites/default/files/fileattachments/administration/page/7491/anchoring_away_03_09_11_full_web_3.pdf (last visited Mar. 22, 2021).

³⁶ *Id.*

³⁷ Section 327.44(2), F.S.

unreasonable under the prevailing circumstances.³⁸ Interference with navigation is a noncriminal infraction and punishable by a fine of \$50.³⁹

With certain exceptions, the owner or operator of a vessel or floating structure may not anchor or moor 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.⁴⁰

Additionally, the owner or operator of a vessel or floating structure may not anchor or moor within the marked boundary of a public mooring field unless the owner or operator has a lawful right to do so by contractual agreement or other business arrangement.⁴¹

An owner or operator of a vessel may anchor or moor within 150 feet of any marina, boat ramp, boatyard, or other 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 if:

- The vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor for five business days or until the vessel is repaired, whichever occurs first.
- Imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor until weather conditions no longer pose such risk.⁴²

A vessel or floating structure may not be anchored, moored, or affixed to an unpermitted, unauthorized, or otherwise unlawful object that is on or affixed to the bottom of state waters. This does not apply to a private mooring owned by the owner of privately owned submerged lands.⁴³

Local Regulation of the Anchoring or Mooring of Vessels

Local governments are authorized by general permit to construct, operate, and maintain public mooring fields, each for up to 100 vessels.⁴⁴ Mooring fields must be located where navigational access already exists between the mooring field and the nearest customarily used access channel or navigable waters that the mooring field is designed to serve. Each mooring field must be associated with a land-based support facility that provides amenities and conveniences, such as parking, bathrooms, showers, and laundry facilities. Major boat repairs and maintenance, fueling activities other than from the land-based support facility, and boat hull scraping and painting are not authorized within mooring fields.⁴⁵

Local governments are further authorized to enact and enforce ordinances that prohibit or restrict the mooring or anchoring of floating structures⁴⁶ or live-aboard vessels⁴⁷ within their jurisdictions and vessels that are within the marked boundaries of permitted mooring fields.⁴⁸ However, they are

³⁸ *Id.*

³⁹ Section 327.73(j), F.S.

⁴⁰ Section 327.4109(1), F.S.

⁴¹ Section 327.4109(3), F.S.

⁴² Section 327.4109(2), F.S.

⁴³ Section 327.4019(4), F.S.

⁴⁴ Section 373.118, F.S.; r. 62-330.420(1), F.A.C.

⁴⁵ Rule 62-330.420, F.A.C.

⁴⁶ 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.

⁴⁷ 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.

⁴⁸ Section 327.60(2)(f), F.S.

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.⁴⁹

Effect of the Bill

The bill specifies that the owner or operator of a vessel or floating structure may not anchor or moor such that the nearest approach of the anchored or moored vessel or floating structure is within 150 feet of any public or private marina, boat ramp, boatyard, or other public vessel launching or loading facility. In addition, an owner or operator of a vessel may anchor or moor within 150 feet of any public or private marina, boat ramp, boatyard, or other public vessel launching or loading facility under certain conditions. The bill increases the distance in which a person is prohibited from anchoring or mooring a vessel in proximity to a superyacht repair facility from 300 feet to 500 feet.

The bill designates Monroe County as an anchoring limitation area within which a vessel may only be anchored in the same location for a maximum of 90 days. The bill requires FWC to adopt rules to implement this limitation. The bill specifies that this limitation does not apply to an approved and permitted mooring field.

Florida Intracoastal Waterway

Background

The Intracoastal Waterway is a navigable toll-free shipping route, extending for about 3,000 miles along the Atlantic Ocean and Gulf of Mexico coasts in the southern and eastern U.S. It utilizes sounds, bays, lagoons, rivers, and canals and is usable in many portions by deep-draft vessels. The route is federally maintained and is connected to inland waterways in many places. It was originally planned to form a continuous channel from New York City to Brownsville, Texas, but the necessary canal link through northern Florida was never completed; hence, it is now in two separate sections—the Atlantic and the Gulf.⁵⁰

The Florida Intracoastal Waterway means the Atlantic Intracoastal Waterway, the Georgia state line north of Fernandina to Miami; the Port Canaveral lock and canal to the Atlantic Intracoastal Waterway; the Atlantic Intracoastal Waterway, Miami to Key West; the Okeechobee Waterway, Stuart to Fort Myers; the St. Johns River, Jacksonville to Sanford; the Gulf Intracoastal Waterway, Anclote to Fort Myers; the Gulf Intracoastal Waterway, Carrabelle to Tampa Bay; Carrabelle to Anclote open bay section, using the Gulf of Mexico; the Gulf Intracoastal Waterway, Carrabelle to the Alabama state line west of Pensacola; and the Apalachicola, Chattahoochee, and Flint Rivers in Florida.⁵¹

Effect of the Bill

The bill defines the term “human-powered vessel” to mean a vessel powered only by its occupant or occupants, including, but not limited to, a vessel powered only by the occupants' hands or feet, oars, or paddles.

The bill allows a person to operate a human-powered vessel within the boundaries of the marked channel of the Florida Intracoastal Waterway under the following circumstances:

- When the marked channel is the only navigable portion of the waterway available due to vessel congestion or obstructions on the water. The operator of the human-powered vessel shall proceed with diligence to a location where he or she may safely operate the vessel outside the marked channel of the Florida Intracoastal Waterway.
- When crossing the marked channel, provided that the crossing is done in the most direct, continuous, and expeditious manner possible and does not interfere with other vessel traffic in the channel.
- During an emergency endangering life or limb.

⁴⁹ Section 327.60(3), F.S.

⁵⁰ Encyclopedia Britannica, *Intracoastal Waterway*, available at <https://www.britannica.com/topic/Intracoastal-Waterway> (last visited Mar. 22, 2021).

⁵¹ Section 327.02(15), F.S.

The bill otherwise prohibits a person from operating a human-powered vessel in the marked channel of the Florida Intracoastal Waterway and specifies that a person who violates this prohibition commits a noncriminal infraction.

Boating-restricted Areas

Background

Boating-restricted Areas Generally

Boating-restricted areas, including, but not limited to, restrictions of vessel speeds and vessel traffic, may be established on state waters for any purpose necessary to protect the safety of the public if such restrictions are necessary based on boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion, or other navigational hazards or to protect seagrasses on privately owned submerged lands.⁵²

FWC may establish a boating-restricted area pursuant to the Administrative Procedure Act, and municipalities and counties have the authority to establish the following boating-restricted areas by ordinance.⁵³

- An ordinance establishing an idle speed, no wake boating-restricted area, if the area is:
 - Within 500 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways more than 300 feet in width or within 300 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways not exceeding 300 feet in width.
 - Within 500 feet of fuel pumps or dispensers at any marine fueling facility that sells motor fuel to the general boating public on waterways more than 300 feet in width or within 300 feet of the fuel pumps or dispensers at any licensed terminal facility that sells motor fuel to the general boating public on waterways not exceeding 300 feet in width.
 - Inside or within 300 feet of any lock structure.
- An ordinance establishing a slow speed, minimum wake boating-restricted area if the area is:
 - Within 300 feet of any bridge fender system.
 - Within 300 feet of any bridge span presenting a vertical clearance of less than 25 feet or a horizontal clearance of less than 100 feet.
 - On a creek, stream, canal, or similar linear waterway if the waterway is less than 75 feet in width from shoreline to shoreline.
 - On a lake or pond of less than 10 acres in total surface area.
- An ordinance establishing a vessel-exclusion zone if the area is designated as a public bathing beach or swim area or within 300 feet of a dam, spillway, or flood control structure.

Protection Zones for Springs

Geologists estimate that there are more than 1,000 springs in the state of Florida, representing what may be the largest concentration of freshwater springs on Earth.⁵⁴ Springs offer many recreational opportunities, such as swimming, kayaking and diving; attract visitors from all over the world; and serve as economic drivers for Florida communities.⁵⁵

FWC is authorized to establish by rule protection zones that restrict the speed and operation of vessels to protect and prevent harm to springs. This harm includes negative impacts to water quality, water quantity, hydrology, wetlands, and aquatic and wetland-dependent species.⁵⁶ When developing a protection zone, FWC must consult and coordinate with the water management district, the Department of Environmental Protection, and the governing bodies of the county and municipality, if applicable, in

⁵² Section 327.46(1), F.S.

⁵³ Sections 327.46(1)(a) and (b), F.S.

⁵⁴ DEP, *Protect and Restore Springs*, available at <https://floridadep.gov/springs/protect-restore> (last visited Mar. 22, 2021).

⁵⁵ DEP, *Springs*, available at <https://floridadep.gov/springs> (last visited Mar. 22, 2021).

⁵⁶ Section 327.45(2), F.S.

which the zone is located. If the zone includes navigable waters of the U.S., FWC must also coordinate with the U.S. Coast Guard and the U.S. Army Corps of Engineers.⁵⁷

Effect of the Bill

The bill authorizes municipalities and counties to adopt an ordinance establishing a slow speed, minimum wake boating-restricted area if the area is within the boundaries of a permitted public mooring field and a buffer around the mooring field of up to 100 feet.

Notwithstanding the prohibition in current law against local government ordinances that regulate vessels upon the Florida Intracoastal Waterway, the bill authorizes municipalities and counties to establish a boating-restricted area by ordinance within the portion of the waterway within their jurisdiction. However, the municipality or county may not establish a vessel-exclusion zone for public bathing beaches or swim areas within the waterway.

The bill authorizes FWC to establish protection zones that prohibit the anchoring, mooring, beaching, or grounding of vessels to protect and prevent harm to first, second, and third magnitude springs and spring groups, including their associated spring runs, as determined by FWC using the most recent Florida Geological Survey springs bulletin.

Spaceflight

Background

Florida is a national leader in spaceflight activities.⁵⁸ Florida's aerospace industry helps to generate economic development initiatives and bring jobs not only to Florida's Space Coast, but throughout the state.⁵⁹ This can bring additional challenges when parts of spaceflight assemblies fall into Florida waters as well as when recovery operations are necessary. There is no existing statute in place to keep boaters away from potentially sensitive spaceflight operations.

Effect of the Bill

The bill defines the following terms:

- "Launch services" means the conduct of a launch and activities involved in the preparation of a launch vehicle, payload, government astronaut, commercial astronaut, or spaceflight participant for such launch.
- "Reentry services" means the conduct of a reentry and activities involved in the preparation of a reentry vehicle, payload, government astronaut, commercial astronaut, or spaceflight participant for such reentry.
- "Spaceflight assets" means any item, or any part of an item, owned by a spaceflight entity which is used in launch services or reentry services, including crewed and uncrewed spacecraft, launch vehicles, parachutes and other landing aids, and any spacecraft or ancillary equipment that was attached to the launch vehicle during launch, orbit, or reentry.
- "Spaceflight entity" means any public or private entity holding a U.S. Federal Aviation Administration (FAA) launch, reentry, operator, or launch site license for spaceflight activities. The term also includes any manufacturer or supplier of components, services, or vehicles that have been reviewed by the (FAA) as part of issuing such a license, permit, or authorization.

The bill authorizes the head of a law enforcement agency or entity, or his or her designee, to temporarily establish a protection zone upon state waters within the agency's or entity's jurisdiction when necessary for preparations in advance of a launch service or reentry service or for the recovery of spaceflight assets before or after a launch service or reentry service. The protection zone may require vessels to leave, or prohibit vessels from entering, waterbodies within:

⁵⁷ Section 327.45(3), F.S.

⁵⁸ Space Florida, *One Place. Infinite Possibilities.*, available at <https://www.spaceflorida.gov/> (last visited Mar. 22, 2021).

⁵⁹ Florida Chamber of Commerce, *Aviation and Aerospace*, available at http://www.flchamber.com/wp-content/uploads/2019/03/1Pager_AviationandAerospace_2019.pdf (last visited Mar. 22, 2021).

- 500 yards of where launch services, reentry services, or spaceflight asset recovery operations are being conducted; or
- A distance greater than 500 yards if the head of such law enforcement agency or entity, or his or her designee, determines such greater distance is in the best interest of public safety.

The bill specifies that a protection zone may remain in effect only as long as necessary to ensure security around the launch and recovery areas and to recover spaceflight assets and any personnel being transported within a spacecraft following the launch or reentry activity. A protection zone may not be in place more than 72 hours before or 72 hours after the launch.

The bill authorizes the head of a law enforcement agency or entity, or his or her designee, to restrict vessels from operating within up to 500 yards of any vessel transporting recovered spaceflight assets following a spaceflight launch or reentry while such vessel is continuously underway transporting such assets to a location for removal from state waters.

The bill requires the head of a law enforcement agency or entity, or his or her designee, establishing a protection zone to report the establishment of such protection zone via e-mail to FWC's Division of Law Enforcement, Boating and Waterways Section, and to the appropriate U.S. Coast Guard Sector Command with responsibility over the waterbody at least 72 hours before establishing the protection zone. The report must include the reasons for the protection zone, the portion of the waterbody or waterbodies that will be included in the protection zone, and the duration of the protection zone. In addition, the details of all citations issued for violating the protection zone must be reported in the same manner no later than 72 hours after the end of the protection zone period.

The bill specifies that the above requirements apply only to launch services, reentry services, or the recovery of spaceflight assets occurring or originating within spaceport territory, and to federally licensed or federally authorized launches and reentries occurring or transiting to an end destination upon state waters.

The bill specifies that a person who violates these requirements or any directive given by a law enforcement officer relating to the establishment of a protection zone after being advised of the establishment of the protection zone commits a second degree misdemeanor.

Penalties for Boating Infractions

Background

An owner or operator of a vessel or floating structure who violates the law by anchoring in an anchoring limitation area or anchoring or mooring in a prohibited area is subject to a uniform boating citation and the following penalties:⁶⁰

- For a first offense, up to a maximum of \$50;
- For a second offense, up to a maximum of \$100; and
- For a third offense, up to a maximum of \$250.

A person who operates a vessel without the required boating safety identification card may be charged with a noncriminal infraction and is subject to a uniform boating citation and a \$50 civil penalty.⁶¹ In addition to civil penalties, current law provides that a person who fails to appear or otherwise properly respond to a uniform boating citation will be charged with a second degree misdemeanor, which is punishable by a maximum fine of \$500 and no more than 60 days imprisonment.⁶²

Effect of the Bill

The bill specifies that a person cited for failure to have the required proof of boating safety education in his or her possession may not be convicted if, before or at the time of a county court hearing, the person produces proof of the boating safety education identification card or temporary certificate for

⁶⁰ Sections 327.73(1)(z) and 327.73(1)(bb), F.S.

⁶¹ Section 327.73(1)(s), F.S.

⁶² Sections 775.082 and 775.083, F.S.

verification to the hearing officer or court clerk, and the identification card or temporary certificate was valid at the time the person was cited.

The bill increases the penalties relating to vessels at risk of becoming derelict:

- For a first offense, from \$50 to \$100.
- For a second offense occurring 30 days or more after a first offense, from \$100 to \$250.
- For a third or subsequent offense occurring 30 days or more after a previous offense, from \$250 to \$500.

The bill requires a vessel that is the subject of three or more derelict vessel violations within an 18-month period that result in dispositions other than acquittal or dismissal to be declared to be a public nuisance. The bill authorizes FWC, an officer of FWC, or another law enforcement agency or officer to relocate, remove, or cause to be relocated or removed such public nuisance vessels from state waters. The bill specifies that FWC, an officer of FWC, or another law enforcement agency or officer must be held harmless for all damages to the vessel resulting from such relocation or removal unless the damage results from gross negligence or willful misconduct.

The bill establishes the following penalties relating to vessels that create special hazards:

- For a first offense, \$50.
- For a second offense occurring within 12 months after a prior offense, \$100.
- For a third offense occurring within 36 months after a prior offense, \$250.

The bill specifies that a violation of regulations related to human-powered vessels is a noncriminal infraction subject to a civil penalty of \$50.

B. SECTION DIRECTORY:

- Section 1. Amends s. 316.1932, F.S., to specify the punishment for failure to submit to any lawful test while operating a motor vehicle under the influence.
- Section 2. Amends s. 316.1939, F.S., to specify the punishment for failure to submit to any lawful test while operating a motor vehicle under the influence.
- Section 3. Amends s. 327.02, F.S., to define “human-powered vessel” and make conforming changes.
- Section 4. Amends s. 327.04, F.S., to grant authority to FWC to adopt rules relating to vessels.
- Section 5. Creates s. 327.462, F.S., to authorize the establishment of temporary protection zones for spaceflight launches and recovery of spaceflight assets.
- Section 6. Amends s. 327.352, F.S., to specify the punishment for failure to submit to any lawful test while operating a vessel under the influence.
- Section 7. Amends s. 327.359, F.S., to specify the punishment for failure to submit to any lawful test while operating a vessel under the influence.
- Section 8. Creates s. 327.371, F.S., to specify when a person can operate a human-powered vessel in the Florida Intracoastal Waterway.
- Section 9. Amends s. 327.391, F.S., to make conforming changes.
- Section 10. Amends s. 327.395, F.S., to require boating safety education for any person, regardless of age, and provide exemptions.
- Section 11. Amends s. 327.4107, F.S., to establish a derelict vessel prevention program.

- Section 12. Amends s. 327.4108, F.S., to designate Monroe County as an anchoring limitation area.
- Section 13. Amends s. 327.4109, F.S., to specify the type of marina prohibited by an exception.
- Section 14. Amends s. 327.45, F.S., to authorize FWC to prohibit certain activities in springs.
- Section 15. Amends s. 327.46, F.S., to authorize a county and municipality to establish a certain boating restricted area.
- Section 16. Creates s. 327.463, F.S., to specify procedures for vessels operating at slow speed, minimum wake.
- Section 17. Amends s. 327.50, F.S., to make conforming changes.
- Section 18. Amends s. 327.53, F.S., to require certain vessels to maintain records of pumpouts.
- Section 19. Amends s. 327.54, F.S., to require liveries to check for boating safety identification.
- Section 20. Amends s. 327.60, F.S., to make conforming changes.
- Section 21. Amends s. 327.73, F.S., to specify penalties for certain violations.
- Section 22. Amends s. 328.09, F.S., to make conforming changes.
- Section 23. Effective July 1, 2023, amends s. 328.09, F.S., to make conforming changes.
- Section 24. Amends s. 376.15, F.S., to make conforming changes.
- Section 25. Amends s. 705.103, F.S., to establish procedures for vessels deemed a public nuisance.
- Section 26. Effective July 1, 2023, amends s. 705.103, F.S., as amended by s. 29 of ch. 2019-76, L.O.F, to establish procedures for vessels deemed a public nuisance.
- Section 27. Amends s. 823.11, F.S., to further define “derelict vessel” and provide procedures for persons who neglect to pay full costs.
- Section 28. Provides an effective date of, unless otherwise expressly provided, July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate positive fiscal impact on state revenue due to an increase in penalties associated with derelict vessels and vessels creating special hazards.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on FWC associated with the costs of implementing the derelict vessel prevention program

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate positive fiscal impact on local government expenditures due to the cost savings associated with the creation and implementation of the derelict vessel prevention program.

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 the provisions of ch. 705, F.S., relating to vessels, and ss. 376.15 and 823.11, F.S., relating to derelict vessels, including creating the derelict vessel prevention program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 3, 2021, the Environment, Agriculture & Flooding Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment designated Monroe County as an anchoring limitation area, authorized FWC to establish springs protection zones, and revised the types of marine sanitation devices that are required to record their pumpouts.

On March 22, 2021, the Criminal Justice & Public Safety Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Authorized a person to receive a temporary boating certificate if the person has a valid International Certificate of Competency or has completed a boating safety education course in another state that meets or exceeds the minimum requirements established by the National Association of State Boating Law Administrators.
- Increased the distance which a person is prohibited from anchoring or mooring a vessel in proximity to a superyacht repair facility from 300 feet to 500 feet.
- Removed the limitation on the service fee that can be charged by boating safety instructors for issuing a temporary boating certificate.
- Removed a provision that prohibited a person from discharging sewage from a vessel or floating structure into any waterway in Florida, subject to approval by the U.S. Environmental Protection Agency.
- Required a vessel with a marine compost toilet to comply with recordkeeping provisions.

This analysis is drafted to the committee substitute as approved by the Criminal Justice & Public Safety Subcommittee.

By the Committee on Criminal Justice; and Senator Gainer

591-02152-21

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A bill to be entitled
An act relating to racketeering; amending s. 895.02,
F.S.; revising the definition of the term
"racketeering activity" to include certain actions
relating to the illegal sale, purchase, take, or
possession of wild animal life, freshwater aquatic
life, or marine life, and related crimes; providing an
effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (8) of section
895.02, Florida Statutes, is amended, and a new paragraph (c) is
added to that subsection, to read:

895.02 Definitions.—As used in ss. 895.01-895.08, the term:

(8) "Racketeering activity" means to commit, to attempt to
commit, to conspire to commit, or to solicit, coerce, or
intimidate another person to commit:

(a) Any crime that is chargeable by petition, indictment,
or information under the following provisions of the Florida
Statutes:

1. Section 210.18, relating to evasion of payment of
cigarette taxes.

2. Section 316.1935, relating to fleeing or attempting to
elude a law enforcement officer and aggravated fleeing or
eluding.

3. Chapter 379, relating to the illegal sale, purchase,
take, or possession of wild animal life, freshwater aquatic
life, or marine life, and related crimes.

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30 4. Section 403.727(3)(b), relating to environmental
31 control.

32 ~~5.4.~~ Section 409.920 or s. 409.9201, relating to Medicaid
33 fraud.

34 ~~6.5.~~ Section 414.39, relating to public assistance fraud.

35 ~~7.6.~~ Section 440.105 or s. 440.106, relating to workers'
36 compensation.

37 ~~8.7.~~ Section 443.071(4), relating to creation of a
38 fictitious employer scheme to commit reemployment assistance
39 fraud.

40 ~~9.8.~~ Section 465.0161, relating to distribution of
41 medicinal drugs without a permit as an Internet pharmacy.

42 ~~10.9.~~ Section 499.0051, relating to crimes involving
43 contraband, adulterated, or misbranded drugs.

44 ~~11.10.~~ Part IV of chapter 501, relating to telemarketing.

45 ~~12.11.~~ Chapter 517, relating to sale of securities and
46 investor protection.

47 ~~13.12.~~ Section 550.235 or s. 550.3551, relating to
48 dogracing and horseracing.

49 ~~14.13.~~ Chapter 550, relating to jai alai frontons.

50 ~~15.14.~~ Section 551.109, relating to slot machine gaming.

51 ~~16.15.~~ Chapter 552, relating to the manufacture,
52 distribution, and use of explosives.

53 ~~17.16.~~ Chapter 560, relating to money transmitters, if the
54 violation is punishable as a felony.

55 ~~18.17.~~ Chapter 562, relating to beverage law enforcement.

56 ~~19.18.~~ Section 624.401, relating to transacting insurance
57 without a certificate of authority, s. 624.437(4)(c)1., relating
58 to operating an unauthorized multiple-employer welfare

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arrangement, or s. 626.902(1)(b), relating to representing or
aiding an unauthorized insurer.

~~20.19.~~ Section 655.50, relating to reports of currency
transactions, when such violation is punishable as a felony.

~~21.20.~~ Chapter 687, relating to interest and usurious
practices.

~~22.21.~~ Section 721.08, s. 721.09, or s. 721.13, relating to
real estate timeshare plans.

~~23.22.~~ Section 775.13(5)(b), relating to registration of
persons found to have committed any offense for the purpose of
benefiting, promoting, or furthering the interests of a criminal
gang.

~~24.23.~~ Section 777.03, relating to commission of crimes by
accessories after the fact.

~~25.24.~~ Chapter 782, relating to homicide.

~~26.25.~~ Chapter 784, relating to assault and battery.

~~27.26.~~ Chapter 787, relating to kidnapping or human
trafficking.

~~28.27.~~ Chapter 790, relating to weapons and firearms.

~~29.28.~~ Chapter 794, relating to sexual battery, but only if
such crime was committed with the intent to benefit, promote, or
further the interests of a criminal gang, or for the purpose of
increasing a criminal gang member's own standing or position
within a criminal gang.

~~30.29.~~ Former s. 796.03, former s. 796.035, s. 796.04, s.
796.05, or s. 796.07, relating to prostitution.

~~31.30.~~ Chapter 806, relating to arson and criminal
mischief.

~~32.31.~~ Chapter 810, relating to burglary and trespass.

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88 ~~33.32.~~ Chapter 812, relating to theft, robbery, and related
89 crimes.

90 ~~34.33.~~ Chapter 815, relating to computer-related crimes.

91 ~~35.34.~~ Chapter 817, relating to fraudulent practices, false
92 pretenses, fraud generally, credit card crimes, and patient
93 brokering.

94 ~~36.35.~~ Chapter 825, relating to abuse, neglect, or
95 exploitation of an elderly person or disabled adult.

96 ~~37.36.~~ Section 827.071, relating to commercial sexual
97 exploitation of children.

98 ~~38.37.~~ Section 828.122, relating to fighting or baiting
99 animals.

100 ~~39.38.~~ Chapter 831, relating to forgery and counterfeiting.

101 ~~40.39.~~ Chapter 832, relating to issuance of worthless
102 checks and drafts.

103 ~~41.40.~~ Section 836.05, relating to extortion.

104 ~~42.41.~~ Chapter 837, relating to perjury.

105 ~~43.42.~~ Chapter 838, relating to bribery and misuse of
106 public office.

107 ~~44.43.~~ Chapter 843, relating to obstruction of justice.

108 ~~45.44.~~ Section 847.011, s. 847.012, s. 847.013, s. 847.06,
109 or s. 847.07, relating to obscene literature and profanity.

110 ~~46.45.~~ Chapter 849, relating to gambling, lottery, gambling
111 or gaming devices, slot machines, or any of the provisions
112 within that chapter.

113 ~~47.46.~~ Chapter 874, relating to criminal gangs.

114 ~~48.47.~~ Chapter 893, relating to drug abuse prevention and
115 control.

116 ~~49.48.~~ Chapter 896, relating to offenses related to

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financial transactions.

~~50.49.~~ Sections 914.22 and 914.23, relating to tampering with or harassing a witness, victim, or informant, and retaliation against a witness, victim, or informant.

~~51.50.~~ Sections 918.12 and 918.13, relating to tampering with jurors and evidence.

(c) Any violation of Title 68, Florida Administrative Code, relating to the illegal sale, purchase, take, or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes.

Section 2. This act shall take effect upon becoming a law.

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 Committee on Rules

BILL: CS/SB 776

INTRODUCER: Criminal Justice Committee and Senator Gainer

SUBJECT: Racketeering

DATE: March 16, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Jones	CJ	Fav/CS
2. Anderson	Rogers	EN	Favorable
3. Erickson	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 776 amends the definition of “racketeering activity” in the Florida RICO (Racketeer Influenced and Corrupt Organization) Act to include violations of ch. 379, F.S., and Title 68, F.A.C., relating to the illegal sale, purchase, take, or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes. Chapter 379, F.S., and Title 68, F.A.C., are implemented by the Florida Fish and Wildlife Conservation Commission (FWC). The effect of this change is that it will allow such unlawful acts to be prosecuted as racketeering if the commission of the acts constitutes racketeering. A criminal violation of the Florida RICO Act is a first degree felony. The Act also provides for civil remedies.

The FWC estimates the bill will have an indeterminate impact on the commission. The Legislature’s Office of Economic and Demographic Research preliminarily estimates that the bill will have a “positive insignificant” prison bed impact, meaning an increase of 10 or fewer prison beds. See Section V. Fiscal Impact.

The bill takes effect upon becoming a law.

II. Present Situation:

Under Article IV, section 9, of the State Constitution, the FWC exercises the regulatory and executive powers of the state concerning wild animal life, freshwater aquatic life, and marine life.¹ The FWC implements ch. 379, F.S., and rules adopted in Title 68,² F.A.C.³

License fees for taking wild animal life, freshwater aquatic life, and marine life and penalties for violating FWC regulations are prescribed by general law.⁴ Further, the FWC's exercise of executive powers in the area of planning, budgeting, personnel management, and purchasing are provided by law.⁵ The Legislature may also enact laws in aid of the FWC that are not inconsistent with its constitutionally-conferred powers, except for special laws or general laws of local application relating to hunting or fishing.⁶

Section 379.401, F.S., details FWC's four-tier system for penalties and violations, civil penalties for noncriminal infractions, criminal penalties, and suspension and forfeiture of licenses and permits.⁷ Level One violations are considered the least serious while Level Four violations are considered the most serious.⁸

Level Two Violations

Examples of a Level Two violation include:

- Violating rules or orders of the commission relating to seasons or time periods for the taking of wildlife, freshwater fish, or saltwater fish;
- Violating rules or orders of the commission relating to restricted hunting areas, critical wildlife areas, or bird sanctuaries;
- Violating rules or orders of the commission relating to tagging requirements for wildlife and fur-bearing animals;
- Violating rules or orders of the commission relating to the use of dogs for the taking of wildlife;
- Violating rules or orders of the commission which are not otherwise classified; and
- Violating rules or orders of the commission prohibiting the unlawful use of traps, unless otherwise provided by law.⁹

¹ FLA. CONST. art. IV, s. 9.

² Title 68 is also referred to as "chapter 68."

³ "The rules of the FWC have the force of a legislative act, and the Legislature is prohibited from adopting statutes that conflict with those rules." *Florida Fish and Wildlife Conservation Commission v. Daws*, 256 So.3d 907, 917 (Fla. 1st DCA 2018) (citations omitted), review denied, 2018 WL 6605838 (Fla. 2018).

⁴ FLA. CONST. art. IV, s. 9.

⁵ *Id.*

⁶ *Id.*

⁷ Information in this analysis relating to level violations and penalties was reproduced from *Bill Analysis and Fiscal Impact Statement* (CS/CS/SB 688) (Feb. 20, 2020), Florida Senate, available at <https://www.flsenate.gov/Session/Bill/2020/688/Analyses/2020s00688.rc.PDF> (last visited Feb. 8, 2021).

⁸ Section 379.401, F.S.

⁹ Section 379.401(2)(a), F.S.

The penalties for Level Two violations are as follows:

Level Two Violation	Degree of Offense	Fine or Incarceration	License Restrictions
First offense	2 nd Degree Misdemeanor ¹⁰	Max: \$500 or Max: 60 days	None
Second offense within three years of previous Level Two violation (or higher)	1 st Degree Misdemeanor ¹¹	Min: \$250; Max: \$1,000 Max: one year	None
Third offense within five years of two previous Level Two violations (or higher)	1 st Degree Misdemeanor ¹²	Min: \$500; Max: \$1,000 Max: one year	Suspension of license for one year
Fourth offense within 10 years of three previous Level Two violations (or higher)	1 st Degree Misdemeanor ¹³	Min: \$750; Max \$1,000 or Max: one year	Suspension of license for three years

Level Three Violations

Examples of a Level Three violation include:

- The illegal sale or possession of alligators;
- The taking of game, freshwater fish, or saltwater fish while a required license is suspended or revoked; and
- The illegal taking and possession of deer and wild turkey.¹⁴

The penalties for a Level Three violation are as follows:

Level Three Violation	Degree of Offense	Fine or Incarceration	License Restrictions
First offense	1 st Degree Misdemeanor ¹⁵	Max: \$1,000 Max: one year	None
Second offense within 10 years of a previous Level Three violation (or higher)	1 st Degree Misdemeanor ¹⁶	Min: \$750; Max: \$1,000 Max: one year	Suspension of license or permit for up to three years
Fishing, hunting, or trapping on a suspended or revoked license, s. 379.354(17), F.S.	1 st Degree Misdemeanor	Mandatory \$1,000 ¹⁷ Max: one year	May not acquire license or permit for five years

¹⁰ Section 379.401(2)(b)1., F.S.

¹¹ Section 379.401(2)(b)2., F.S.

¹² Section 379.401(2)(b)3., F.S.

¹³ Section 379.401(2)(b)4., F.S.

¹⁴ Section 379.401(3), F.S.

¹⁵ Section 379.401(3)(b)1., F.S.

¹⁶ Section 379.401(3)(b)2., F.S.

¹⁷ Section 379.401(3)(b)3., F.S.

Level Four Violations

Examples of a Level Four violation include:

- The making, forging, counterfeiting, or reproduction of a recreational license or the possession of same without authorization from the commission;
- The sale of illegally-taken deer or wild turkey;
- The unlawful killing, injuring, possessing, or capturing of alligators or other crocodilia or their eggs;
- The intentional killing or wounding of any species designated as endangered, threatened, or of special concern; and
- The killing of any Florida or wild panther.¹⁸

The penalties for Level Four Violations are as follows:

Level Four Violation	Degree of Offense	Fine or Incarceration	License Restrictions
First offense ¹⁹	3 rd Degree Felony	Max: \$5,000 Max: Five Years	None

Florida RICO Act

The “Florida RICO (Racketeer Influenced and Corrupt Organization) Act” is the short title for ss. 895.01-895.06, F.S.²⁰ “Racketeering activity” means committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any of a number of offenses listed in the definition.²¹

Section 895.03, F.S., provides that it is unlawful for any person:

- Who with criminal intent has received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt²² to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.²³
- Through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.

¹⁸ Section 379.401(4)(a), F.S.

¹⁹ Section 379.401(4)(b), F.S.

²⁰ Section 895.01, F.S.

²¹ Section 895.02(1), F.S. These offenses include violations of specified Florida laws (e.g., Medicaid fraud, kidnapping, human trafficking, and drug offenses) as well as any conduct defined as “racketeering activity” under 18 U.S.C. s. 1961(1).

²² Section 895.02(2), F.S., defines an “unlawful debt” as any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted in violation of specified Florida laws (e.g., various gambling offenses) as well as any gambling activity in violation of federal law or in the business of lending money at a rate usurious under state or federal law.

²³ Section 895.02(3), F.S., defines “enterprise” as any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities. A criminal gang as defined in s. 874.03, F.S., constitutes an enterprise.

- Employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.
- To conspire or endeavor to violate any of the previously-described activity.²⁴

Section 895.04, F.S., provides that a conviction for engaging in the above activities results in a first degree felony.²⁵

In addition to criminal penalties under s. 895.04, F.S., s. 895.05, F.S., imposes civil liability for violations of the Florida RICO Act, including forfeiture to the state of all property, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of the act.²⁶

Trafficking in Wild Animal Life, Freshwater Aquatic Life, or Marine Life

The FWC describes the problem of trafficking in wild animal life, freshwater aquatic life, or marine life:

There is a significant black-market trade in Florida's wildlife, freshwater aquatic life, and marine life. This includes live wildlife and aquatic species, including captive wildlife, as well as eggs, products, and parts thereof. Trafficking in wild species is the fourth most profitable transnational crime behind the drug trade, arms trade, and human trafficking. Criminal organizations are often involved in more than one illegal trade.

Factors such as overexploitation/harvest, increased regulation, and global trends, mean that law enforcement agencies must look broadly at the variety of wildlife and aquatic life subject to exploitation and illegal commercialization. Marine life species targeted for trafficking has included corals, live rock, sea cucumbers, reef fish, shrimp, ornamental aquarium fish, and lobsters. Wildlife targeted for trafficking has included live animals such as freshwater turtles, federal Endangered Species Act (ESA) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) listed species (i.e., sharks, sea turtles [including eggs]) and parts thereof, cervids, captive wildlife (monkeys, tigers, venomous/non venomous reptiles and tegus), black bears (gall bladders, paws), and alligators (including eggs). Wildlife, freshwater aquatic life, and marine life are trafficked for many reasons; the species or parts thereof that are being trafficked are usually determined by the consumer demand at the time. For these reasons, it is important that anti-racketeering efforts are not limited to one category of animal life or type of species.

Species listed under the ESA and CITES, and Florida's listed endangered and threatened species, are of particular concern as illegal collection and trafficking are significant factors in the further decline of these species. However, less regulated species are often some of the most exploited and are harvested in large numbers. Illegal wildlife markets

²⁴ Section 895.03(4), F.S.

²⁵ A first degree felony is generally punishable by up to 30 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

²⁶ Section 895.05(2), F.S.

sometimes follow a “boom and bust” cycle. Wildlife, freshwater aquatic life, and marine life will be exploited until the species is over harvested and declines to the extent the species are difficult to acquire or special protections are placed on the species. Once one species has followed this “boom and bust” cycle, markets will shift to a new species and so on.

In addition, trafficking involves offenses beyond illegal take or sale of species. Efforts to launder trafficked wildlife and aquatic life may involve the falsification of records, licenses, and documents and concealment of sources of acquisition as related crimes that further the criminal enterprise.²⁷

Prosecution of Trafficking in Wild Animal Life, Freshwater Aquatic Life, or Marine Life

In October of 2020, the FWC announced that a group of suspects were charged with racketeering, money laundering, scheming to defraud, “and other organized criminal laws involving an elaborate organized enterprise to smuggle Florida’s wildlife to interstate and international buyers.”²⁸ The smuggling involved illegally trapping flying squirrels, but FWC investigators also learned that the “Florida suspects were dealing in multiple species of poached animals. Protected freshwater turtles and alligators were illegally taken and laundered through other seemingly legitimate licensed businesses. Documents were falsified concealing the true source of the wildlife.”²⁹

The FWC notes some of the problems arising from current prosecution of trafficking in wild animal life, freshwater aquatic life, or marine life:

Individuals associated with wildlife trafficking are difficult to deter [from] exploiting fish and wildlife without the appropriate charges. While there are a variety of laws that protect wildlife and even a few that protect against the illegal sale of wildlife in Florida, the current laws protecting against the illegal tak[ing], possession, purchase, and sale of wildlife and aquatic life are primarily misdemeanors and typically only result in small fines and probation when traffickers are convicted. These laws do little to affect the criminal organizations engaged in trafficking.

To combat organized crime, Florida’s RICO (Racketeer Influence and Corrupt Organization) Act makes it unlawful for a person to engage in a pattern of criminal activity to acquire, establish, operate, maintain, or control, or be associated with or employed by an enterprise, or conspire to do so. Currently, there are no predicate offenses under Florida’s RICO Act specifically related to the illegal trafficking of wildlife and aquatic life.³⁰

²⁷ Florida Fish and Wildlife Conservation Commission (FWC), *Senate Bill 776 Legislative Bill Analysis* (Feb. 8, 2021), available at https://www.flsenate.gov/Committees/Show/CJ/MeetingPacket/5050/9012_MeetingPacket_5050.pdf. (See p. 247).

²⁸ FWC, *FWC uncovers a transnational wildlife trafficking operation in Florida* (Oct. 19, 2020), <https://myfwc.com/news/all-news/trafficking-case-1020/> (last visited Feb. 19, 2021).

²⁹ *Id.*

³⁰ FWC, *Senate Bill 776 Legislative Bill Analysis* (Feb. 8, 2021), available at https://www.flsenate.gov/Committees/Show/CJ/MeetingPacket/5050/9012_MeetingPacket_5050.pdf. (See p. 248).

The Office of Statewide Prosecution has assisted the FWC in prosecution of theft of alligators and alligator eggs by prosecuting these acts under RICO.³¹ The RICO prosecution relies on theft, a predicate RICO offense.³² However, the office notes that defense counsel has challenged the prosecution, “arguing there could be no theft of wildlife from the State as the State did not own the wildlife. The case is currently being challenged on appeal.”³³

The FWC has provided the following reasons for adding violations of ch. 379, F.S., and Title 68, F.A.C., and related crimes, as predicate Florida RICO offenses:

The bill “does not enlarge any crimes related to wildlife or aquatic life, but makes these existing crimes prosecutable under RICO. The inclusion of crimes under Chapter 379, F.S., and Title 68, F.A.C., as predicate offenses under RICO would provide a powerful tool in the effort to combat wildlife trafficking and disrupt a highly profitable illegal trade. Prosecuting these cases under RICO would enable the State of Florida to pursue asset forfeiture which would greatly undermine the profitability of these criminal enterprises. Florida’s legitimate businesses and its citizens who rely on natural resources for a living as well as recreational experiences would see a positive impact. The disruption of wildlife trafficking would also assist with the prevention and mitigation of communicable infectious diseases that originate from wildlife. Finally, the amendment to RICO would allow Florida to address wildlife trafficking crimes that do not have a federal nexus.”³⁴

III. Effect of Proposed Changes:

The bill amends the definition of “racketeering activity” in s. 895.02(8), F.S., of the Florida RICO Act to include violations of ch. 379, F.S., and Title 68, F.A.C., relating to the illegal sale, purchase, take, or possession of wild animal life, freshwater aquatic life, or marine life,³⁵ and related crimes. Chapter 379, F.S., and Title 68, F.A.C., are implemented by the FWC. The effect of this change is that it will allow such unlawful acts to be prosecuted as racketeering if the commission of the acts constitutes racketeering. A criminal violation of the Florida RICO Act is a first degree felony. The Act also provides for civil remedies.

³¹ *RE: FWC Proposed Legislation* (undated memo), Kelly A. McKnight, Assistant Statewide Prosecutor, Office of Statewide Prosecution, Office of the Attorney General, available at https://www.flsenate.gov/Committees/Show/CJ/MeetingPacket/5050/9012_MeetingPacket_5050.pdf. (See p. 253).

Section 895.02(8)(a)32., F.S.

³² Section 895.02(8)(a)32., F.S.

³³ *RE: FWC Proposed Legislation* (undated memo), Kelly A. McKnight, Assistant Statewide Prosecutor, Office of Statewide Prosecution, Office of the Attorney General, available at https://www.flsenate.gov/Committees/Show/CJ/MeetingPacket/5050/9012_MeetingPacket_5050.pdf. (See p. 253).

³⁴ FWC, *Senate Bill 776 Legislative Bill Analysis* (Feb. 8, 2021), available at https://www.flsenate.gov/Committees/Show/CJ/MeetingPacket/5050/9012_MeetingPacket_5050.pdf. (See p. 248).

³⁵ The FWC notes that “[i]t is critical that the amendment’s language address the enumerated crimes under both Chapter 379, F.S., and Title 68, F.A.C. There are many crimes related to wildlife trafficking that are offenses under the Commission’s regulations, but that do not have a companion statutory offense under Chapter 379, F.S. Violations of these offenses have a prescribed penalty in statute, but the offense itself is articulated and charged under the regulations of Title 68, F.A.C. In addition, criminal organizations often utilize related crimes (i.e., mislabeling, falsifying documents or records, hiding sources of acquisitions, etc.) to conceal and further illegal activity. For this reason, prosecutors need the ability to pursue racketeering charges for related crimes under the laws and rules of the Commission.” *Id.*

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The FWC estimates the bill will have an indeterminate impact on the commission.³⁶

The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "positive insignificant" prison bed impact, meaning an increase of 10 or fewer prison beds.³⁷

The EDR provides the following additional information relevant to its estimate:

³⁶ *Id.*

³⁷ The EDR estimate requested by the Senate Committee on Criminal Justice is available at https://www.flsenate.gov/Committees/Show/CJ/MeetingPacket/5050/9012_MeetingPacket_5050.pdf. (See p. 256).

Per [Florida Department of Law Enforcement or] FDLE, there were 436 misdemeanor arrests in CY 2019, with 114 guilty/convicted and 61 adjudications withheld under Chapter 379, and there were 337 arrests in CY 2020, with 48 guilty/convicted and 40 adjudications withheld. For felony violations, in CY 2019, there were 37 arrests, with 28 guilty/convicted and 14 adjudications withheld. In CY 2020, there were 80 arrests, with 4 guilty/convicted and 8 adjudications withheld. Per [Department of Corrections or] DOC, there was one new commitment to prison in FY 18-19 and one new commitment to prison in FY 19-20 for felony violations associated with Chapter 379.

Per DOC, in FY 18-19, there were 82 new commitments to prison under s. 895.03, F.S. In FY 19-20, there were 58 new commitments. Given that under current statute there are a large number of offenses where these felonies could apply, including offenses that have a high volume of commitments each year, the additions of Chapter 379 and violations of Title 68 are not expected to have a significant impact on prison beds.³⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 895.02 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Criminal Justice on February 16, 2021:

The committee substitute revises the description of predicate offenses being added to the definition of “racketeering activity” in the Florida RICO Act to indicate that “racketeering activity” includes violations of ch. 379, F.S., and Title 68, F.A.C., relating to the illegal sale, purchase, take, or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes.

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 *Id.*

HB 783

2021

1 A bill to be entitled
2 An act relating to racketeering of aquatic and wild
3 animal life; amending s. 895.02, F.S.; revising the
4 definition of the term "racketeering activity" to
5 include certain actions relating to the illegal
6 taking, killing, wounding, sale, purchase, or
7 possession of wild animal life, freshwater aquatic
8 life, or marine life, and related crimes; providing an
9 effective date.

10
11 Be It Enacted by the Legislature of the State of Florida:

12
13 Section 1. Paragraph (a) of subsection (8) of section
14 895.02, Florida Statutes, is amended, and a new paragraph (c) is
15 added to that subsection, to read:

16 895.02 Definitions.—As used in ss. 895.01-895.08, the
17 term:

18 (8) "Racketeering activity" means to commit, to attempt to
19 commit, to conspire to commit, or to solicit, coerce, or
20 intimidate another person to commit:

21 (a) Any crime that is chargeable by petition, indictment,
22 or information under the following provisions of the Florida
23 Statutes:

24 1. Section 210.18, relating to evasion of payment of
25 cigarette taxes.

26 2. Section 316.1935, relating to fleeing or attempting to
27 elude a law enforcement officer and aggravated fleeing or
28 eluding.

29 3. Chapter 379, relating to the illegal taking, killing,
30 wounding, sale, purchase, or possession of wild animal life,
31 freshwater aquatic life, or marine life, and related crimes.

32 4. Section 403.727(3)(b), relating to environmental
33 control.

34 ~~5.4.~~ Section 409.920 or s. 409.9201, relating to Medicaid
35 fraud.

36 ~~6.5.~~ Section 414.39, relating to public assistance fraud.

37 ~~7.6.~~ Section 440.105 or s. 440.106, relating to workers'
38 compensation.

39 ~~8.7.~~ Section 443.071(4), relating to creation of a
40 fictitious employer scheme to commit reemployment assistance
41 fraud.

42 ~~9.8.~~ Section 465.0161, relating to distribution of
43 medicinal drugs without a permit as an Internet pharmacy.

44 ~~10.9.~~ Section 499.0051, relating to crimes involving
45 contraband, adulterated, or misbranded drugs.

46 ~~11.10.~~ Part IV of chapter 501, relating to telemarketing.

47 ~~12.11.~~ Chapter 517, relating to sale of securities and
48 investor protection.

49 ~~13.12.~~ Section 550.235 or s. 550.3551, relating to
50 dogracing and horseracing.

51 ~~14.13.~~ Chapter 550, relating to jai alai frontons.
52 ~~15.14.~~ Section 551.109, relating to slot machine gaming.
53 ~~16.15.~~ Chapter 552, relating to the manufacture,
54 distribution, and use of explosives.
55 ~~17.16.~~ Chapter 560, relating to money transmitters, if the
56 violation is punishable as a felony.
57 ~~18.17.~~ Chapter 562, relating to beverage law enforcement.
58 ~~19.18.~~ Section 624.401, relating to transacting insurance
59 without a certificate of authority, s. 624.437(4)(c)1., relating
60 to operating an unauthorized multiple-employer welfare
61 arrangement, or s. 626.902(1)(b), relating to representing or
62 aiding an unauthorized insurer.
63 ~~20.19.~~ Section 655.50, relating to reports of currency
64 transactions, when such violation is punishable as a felony.
65 ~~21.20.~~ Chapter 687, relating to interest and usurious
66 practices.
67 ~~22.21.~~ Section 721.08, s. 721.09, or s. 721.13, relating
68 to real estate timeshare plans.
69 ~~23.22.~~ Section 775.13(5)(b), relating to registration of
70 persons found to have committed any offense for the purpose of
71 benefiting, promoting, or furthering the interests of a criminal
72 gang.
73 ~~24.23.~~ Section 777.03, relating to commission of crimes by
74 accessories after the fact.
75 ~~25.24.~~ Chapter 782, relating to homicide.

~~26.25.~~ Chapter 784, relating to assault and battery.

~~27.26.~~ Chapter 787, relating to kidnapping or human trafficking.

~~28.27.~~ Chapter 790, relating to weapons and firearms.

~~29.28.~~ Chapter 794, relating to sexual battery, but only if such crime was committed with the intent to benefit, promote, or further the interests of a criminal gang, or for the purpose of increasing a criminal gang member's own standing or position within a criminal gang.

~~30.29.~~ Former s. 796.03, former s. 796.035, s. 796.04, s. 796.05, or s. 796.07, relating to prostitution.

~~31.30.~~ Chapter 806, relating to arson and criminal mischief.

~~32.31.~~ Chapter 810, relating to burglary and trespass.

~~33.32.~~ Chapter 812, relating to theft, robbery, and related crimes.

~~34.33.~~ Chapter 815, relating to computer-related crimes.

~~35.34.~~ Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, credit card crimes, and patient brokering.

~~36.35.~~ Chapter 825, relating to abuse, neglect, or exploitation of an elderly person or disabled adult.

~~37.36.~~ Section 827.071, relating to commercial sexual exploitation of children.

~~38.37.~~ Section 828.122, relating to fighting or baiting

animals.

~~39.38.~~ Chapter 831, relating to forgery and
counterfeiting.

~~40.39.~~ Chapter 832, relating to issuance of worthless
checks and drafts.

~~41.40.~~ Section 836.05, relating to extortion.

~~42.41.~~ Chapter 837, relating to perjury.

~~43.42.~~ Chapter 838, relating to bribery and misuse of
public office.

~~44.43.~~ Chapter 843, relating to obstruction of justice.

~~45.44.~~ Section 847.011, s. 847.012, s. 847.013, s. 847.06,
or s. 847.07, relating to obscene literature and profanity.

~~46.45.~~ Chapter 849, relating to gambling, lottery,
gambling or gaming devices, slot machines, or any of the
provisions within that chapter.

~~47.46.~~ Chapter 874, relating to criminal gangs.

~~48.47.~~ Chapter 893, relating to drug abuse prevention and
control.

~~49.48.~~ Chapter 896, relating to offenses related to
financial transactions.

~~50.49.~~ Sections 914.22 and 914.23, relating to tampering
with or harassing a witness, victim, or informant, and
retaliation against a witness, victim, or informant.

~~51.50.~~ Sections 918.12 and 918.13, relating to tampering
with jurors and evidence.

HB 783

2021

126 (c) Any violation of Title 68, Florida Administrative
127 Code, relating to the illegal taking, killing, wounding, sale,
128 purchase, or possession of wild animal life, freshwater aquatic
129 life, or marine life, and related crimes.

130 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 783 Racketeering of Aquatic and Wild Animal Life

SPONSOR(S): Persons-Mulicka and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 776

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	17 Y, 0 N	Walsh	Hall
2) Environment, Agriculture & Flooding Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Chapter 379, F.S., outlines penalties and violations for laws relating to fish and wildlife conservation and provides the Florida Fish and Wildlife Commission (FWC) with rule-making authority. Violations of fish and wildlife laws and FWC rules are organized into a four-level system providing penalties based on the level of offense. The penalties for violating FWC laws and rules range from a noncriminal civil penalty to a third degree felony, which is punishable by up to five years in prison and a \$5,000 fine.

Sections 895.01-895.06, F.S., are also known as the "Florida RICO (Racketeering Influenced and Corrupt Organization) Act." A person convicted under this section commits a first degree felony, which is punishable by up to 30 years in prison and a \$10,000 fine. Section 895.03, F.S., provides that it is unlawful for any person:

- To receive, with criminal intent, any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.
- Through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- Employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.
- To conspire or endeavor to violate any of the previously-described activity.

The trafficking of plant and animal life is one of the most profitable illegal trades in the world. Under current law, it is difficult to prosecute wildlife, freshwater aquatic life, and marine life traffickers in a manner that will disrupt the criminal enterprise and the activity associated therewith.

HB 783 amends the definition of "racketeering activity" to include violations of FWC laws and rules. Under the bill, any wildlife, freshwater aquatic life, or marine life trafficker convicted of a violation of the Florida RICO Act commits a first degree felony. Prosecuting such violations under the Florida RICO Act will enable the state to pursue asset forfeiture which may help to undermine profitability of the underlying criminal enterprises.

The Criminal Justice Impact Conference met on February 15, 2021, and determined that the bill may have a positive insignificant impact on prison beds by adding violations of FWC laws and rules to the list of conduct considered racketeering activity.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Florida Fish and Wildlife Commission

Article IV, section 9, of the Florida Constitution establishes the Florida Fish and Wildlife Conservation Commission (FWC), which exercises the regulatory and executive powers of the state concerning wild animal life, freshwater aquatic life, and marine life.¹ The FWC executes ch. 379, F.S., and the rules adopted in Title 68, F.A.C. (FWC laws and rules).²

Licensing fees for taking wild animal life, freshwater aquatic life, and marine life and penalties for violating FWC regulations are prescribed by general law.³ The FWC's exercise of executive powers in the area of planning, budgeting, personnel management, and purchasing are provided by law.⁴ The Legislature may also enact laws to aid the FWC that are not inconsistent with its constitutionally-conferred powers, except for special laws or general laws of local application relating to hunting and fishing.⁵

FWC Violations and Penalties

Section 379.401, F.S., outlines penalties and violations for fish and wildlife conservation laws, breaking violations down into a four-level system and providing penalties based on the level of offense.⁶ The penalty and severity of each offense increases with each level of violation, beginning at Level One.⁷

Level One Violations

Examples of a Level One violation include, but are not limited to:

- Violating FWC rules or orders requiring a person who holds a license or permit to file reports or other documents;
- Violating FWC rules or orders relating to quota hunt permits, daily use permits, and hunting zone assignments;
- Failing to wear at least 500 square inches of daylight fluorescent orange material as an outer garment while deer hunting;⁸
- Failing to comply with licensure requirements; and
- Failing to comply with hunter safety course requirements.⁹

Under s. 379.401(1)(b), F.S., a person who commits a Level One violation commits a noncriminal infraction requiring him or her to appear before a county court, which will impose the appropriate civil penalty as provided in s. 379.401(1), F.S.¹⁰

Level Two Violations

¹ Art. IV, s. 9, Fla. Const.

² "The rules of the FWC have the force of a legislative act, and the Legislature is prohibited from adopting statutes that conflict with those rules." *Florida Fish and Wildlife Conservation Commission v. Daws*, 256 So.3d 907, 917 (Fla. 1st DCA 2018) (citations omitted), review denied, 2018 WL 6605838 (Fla. 2018).

³ Art. IV, s. 9, Fla. Const.

⁴ *Id.*

⁵ *Id.*

⁶ S. 379.401, F.S.

⁷ *Id.*

⁸ S. 379.3003, F.S.

⁹ S. 379.401(1)(a), F.S.

¹⁰ S. 379.401(1)(b), F.S.

Examples of a Level Two violation include, but are not limited to, violating FWC rules or orders:

- Relating to seasons or time periods for the taking of wildlife, freshwater fish, or saltwater fish;
- Relating to restricted hunting areas, critical wildlife areas, or bird sanctuaries;
- Relating to tagging requirements for wildlife and fur-bearing animals;
- Relating to the use of dogs for the taking of wildlife;
- Prohibiting the unlawful use of traps, unless otherwise provided by law; and
- Which are not otherwise classified.¹¹

Under s. 379.401(2)(b), F.S., the penalties for a Level Two violation are as follows:

Level Two Violation	Degree of Offense	Penalty Requirements¹²
First offense	2nd degree misdemeanor ¹³	None
Second offense within 3 years of previous Level Two violation (or higher)	1st degree misdemeanor ¹⁴	\$250 minimum fine
Third offense within 5 years of two previous Level Two violations (or higher)	1st degree misdemeanor	\$500 minimum fine 1 year license or permit suspension
Fourth offense within 10 years of three previous Level Two violations (or higher)	1st degree misdemeanor	\$750 minimum fine 3 year license or permit suspension

Level Three Violations

Examples of a Level Three violation include, but are not limited to:

- Illegal sale or possession of alligators;
- Taking game, freshwater fish, or saltwater fish while a required license is suspended or revoked;
- Importing freshwater fish without a permit;
- Possessing certain finfish in excess of recreational daily bag limits;
- Possessing, moving, or transporting of any black bass, bream, speckled perch, or other freshwater game fish in commercial quantities violating FWC laws or rules;¹⁵ and
- Illegal taking and possession of deer and wild turkey.¹⁶

¹¹ S. 379.401(2)(a), F.S.

¹² While a first degree misdemeanor may include a fine up to \$1,000, some level two violations also impose a minimum fine. Such fine is not in addition to the fine for committing the misdemeanor offense.

¹³ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Ss. 775.082 and 775.083, F.S.

¹⁴ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

¹⁵ S. 379.406, F.S.

¹⁶ S. 379.401(3)(a), F.S.

Under s. 379.401(3)(b), F.S., the penalties for a Level Three violation are as follows:

Level Three Violation	Degree of Offense	Penalty Requirements ¹⁷
First offense	1st degree misdemeanor ¹⁸	None
Second offense within 10 years of previous Level Three violation (or higher)	1st degree misdemeanor	\$750 minimum fine Up to 3 year license or permit suspension
Fishing, hunting, or trapping on a suspended or revoked license ¹⁹	1st degree misdemeanor	\$1,000 mandatory fine May not acquire a license or permit for 5 years

Level Four Violations

Examples of a Level Four violation include, but are not limited to:

- Making, forging, counterfeiting, or reproduction a recreational license or the possessing such license without authorization from the commission;
- Selling illegally-taken deer or wild turkey;
- Unlawfully killing, injuring, possessing, or capturing of alligators or other crocodilian or their eggs;
- Intentionally killing or wounding any species designated as endangered, threatened, or of special concern; and
- Killing any Florida or wild panther.²⁰

Under s. 379.401(4)(b), F.S., a person who commits a level four violation commits a third degree felony.²¹

Florida RICO Act

Sections 895.01-895.06, F.S., are also known as the “Florida RICO (Racketeering Influenced and Corrupt Organization) Act.”²² A person commits “racketeering activity” when he or she commits, attempts to commit, conspires to commit, or solicits, coerces, or intimidates another person to commit any offense listed in s. 895.02(8), F.S.^{23, 24}

As defined by s. 895.02(7), F.S., a “pattern of racketeering activity” means engaging in at least two incidents of racketeering conduct²⁵ having the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents.

Section 895.03, F.S., provides that it is unlawful for any person:

- With criminal intent to receive any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt²⁶ to use or invest, whether

¹⁷ While a first degree misdemeanor may include a fine up to \$1,000, some level three violations impose a minimum fine. Such fine is not in addition to the fine for committing the misdemeanor offense.

¹⁸ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

¹⁹ S. 379.354(17), F.S.

²⁰ S. 379.401(4)(a), F.S.

²¹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082 and 775.083, F.S.

²² S. 895.01, F.S.

²³ S. 895.02, F.S.

²⁴ The offenses listed under s. 895.02(8), F.S., include violations of specified Florida laws (e.g., Medicaid fraud, workers’ compensation fraud, human trafficking, kidnapping, and drug offenses), as well as any conduct defined as “racketeering activity” in 18 U.S.C. § 1961.

²⁵ At least one of such incidents of racketeering conduct must have occurred after October 1, 1977, and the last incident of racketeering conduct must have occurred within five years after a prior incident. S. 895.02(7), F.S.

²⁶ “Unlawful debt” means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted in violation of specified Florida laws (e.g., various gambling

directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.²⁷

- Through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- Employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.
- To conspire or endeavor to violate any of the previously-described activity.

A person convicted of any of the activities outlined in s. 895.03, F.S., commits a first degree felony,²⁸ and may be subject to a number of civil remedies including forfeiture to the state of all property, including money, if the property is intended for use in the course of, derived from, or realized through acts in violation of the Florida RICO Act.²⁹

In *Bowden v. State*, the Supreme Court of Florida considered the definition of “pattern of racketeering activity” in s. 895.02(7), F.S., construing the statutory definition to not only require “similarity and interrelatedness of racketeering activities,” but also “proof that a continuity of a particular criminal activity exists.”³⁰ The court in *Bowden* reasoned that requiring continuity of criminal activity ensures that RICO prosecutions are of professional or career criminals and not individuals who have committed minor crimes.³¹

In cases where the defendant is charged under s. 895.03, F.S., Florida courts have analyzed the continuity requirement by turning to U.S. Supreme Court precedent.³² When considering the elements necessary to satisfy the pattern requirement³³ of the federal RICO Act³⁴ in *H.J. Inc. v. Northwestern Bell Telephone Co.*, the U.S. Supreme Court held that the predicate offenses must amount to, or otherwise constitute a threat of, continuing racketeering activity in order to establish a pattern.³⁵ The Court described continuity as “both a closed- and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition.”³⁶

Wild Animal Life, Freshwater Aquatic Life, and Marine Life Trafficking

The illegal trade of plants and animals on the black-market is estimated to be the third most valuable black-market trade in the world³⁷ and is currently the fourth most profitable trans-national crime, only behind the drug trade, arms trade, and human trafficking.³⁸ Current consumer demand drives the illegal trade of wildlife and is not limited to one category of animal life or a type of species.³⁹ The FWC provided the following statement regarding the large number of species that are subject to exploitation by traffickers:

offenses) as well as any gambling activity in violation of federal law or in the business of lending money at a rate usurious under state or federal law. S. 895.02(12), F.S.

²⁷ “Enterprise” means any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities. A criminal gang as defined in s. 874.03, F.S., constitutes an enterprise. S. 895.02(5), F.S.

²⁸ S. 895.04, F.S. A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Ss. 775.082 and 775.083, F.S.

²⁹ S. 895.05(2), F.S.

³⁰ *Bowden v. State*, 402 So.2d 1173, 1174 (Fla. 1981).

³¹ *Id.*

³² See *State v. Lucas*, 600 So.2d 1093, 1094 (Fla. 1992) (reasoning that the state sufficiently alleged a threat of criminal activity to constitute open-ended continuity as described by federal precedent).

³³ 18 U.S.C. § 1962 discusses prohibited activities, which all require a pattern of racketeering activity or collection of an unlawful debt.

³⁴ The Racketeer Influenced and Corrupt Organizations Act is found in 18 U.S.C. §§1961-1968.

³⁵ *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 240 (1989).

³⁶ *Id.* at 241.

³⁷ Jay O'Brien, *Inside South Florida animal smuggling and what's being done to stop it*, 12 News (Nov. 30, 2019), <https://cbs12.com/news/local/inside-south-florida-animal-smuggling-and-whats-being-done-to-stop-it> (last visited Mar. 11, 2021).

³⁸ Florida Fish and Wildlife Conservation Commission, Agency Analysis of 2021 House Bill 783, p. 5 (Mar. 4, 2021).

³⁹ *Id.*

Factors such as overexploitation/harvest, increased regulation, and global trends, mean that law enforcement agencies must look broadly at the variety of wildlife and aquatic life subject to exploitation and illegal commercialization. Marine life species targeted for trafficking has included corals, live rock, sea cucumbers, reef fish, shrimp, ornamental aquarium fish, and lobsters. Wildlife targeted for trafficking has included live animals such as freshwater turtles, federal Endangered Species Act (ESA) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) listed species (i.e., sharks, sea turtles [including eggs]) and parts thereof, cervids, captive wildlife (monkeys, tigers, venomous/non venomous reptiles and tegus), black bears (gall bladders, paws), and alligators (including eggs).⁴⁰

The FWC predicts that the trafficking of wildlife, freshwater aquatic life, and marine life will continue until the given species is overharvested and declines to the extent the species is difficult to acquire or the species has special protections placed on it.⁴¹ In addition to its effects on biodiversity, the illegal trade of plant and animal life may affect human health, as trafficked species may not be properly sanitized, which could lead to the spread of diseases transmitted from animals to humans.⁴²

Wildlife, marine life, and fresh water aquatic life trafficking involves more than just the illegal taking and sale of species, as traffickers may falsify records, licenses, and documents in an effort to launder trafficked species.⁴³

Prosecution of Wild Animal Life, Freshwater Aquatic Life, and Marine Life Trafficking

In October 2020, the FWC announced that it had uncovered a Florida-based international flying squirrel trafficking scheme, in which as many as 3,600 flying squirrels were trafficked and exported.⁴⁴ The suspects, who were also found to be trapping and trafficking turtles and alligators, were charged with money laundering, grand theft, and dealing in stolen property, among other charges.⁴⁵

Under current law, FWC indicates that it is difficult to prosecute wild animal life, freshwater aquatic life, and marine life traffickers in a manner that will disrupt the criminal enterprise.⁴⁶ Current fish and wildlife conservation laws are primarily misdemeanors and typically only result in small fines and probation for those who are convicted.⁴⁷

Effect of Proposed Changes

HB 783 amends the definition of “racketeering activity” to include violations of FWC laws and rules relating to the illegal taking, killing, wounding, sale, purchase, or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes.

By adding violations of fish and wildlife conservation laws and FWC rules to the list of crimes constituting “racketeering activity,” the bill may allow wild animal life, freshwater aquatic life, and marine life traffickers to be prosecuted under the Florida RICO Act. Prosecuting such violations under the Florida RICO Act will enable the state to pursue asset forfeiture which may help to undermine profitability of the underlying criminal enterprises.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Tanya Rosen, *The Evolving War on Illegal Wildlife Trade*, IISD, (Oct. 6, 2020), <https://www.iisd.org/articles/evolving-war-illegal-wildlife-trade> (last visited Mar. 11, 2021).

⁴³ Florida Fish and Wildlife Conservation Commission, Agency Analysis of 2021 House Bill 783, p. 5 (Mar. 4, 2021).

⁴⁴ Bryan Pietsch, *Seven Charged in Flying Squirrel Trafficking Ring, Florida Officials Say*, The New York Times, (Oct. 19, 2020), <https://www.nytimes.com/2020/10/19/us/squirrel-trafficking-ring-florida.html> (last visited Mar. 11, 2021).

⁴⁵ *Id.*

⁴⁶ Florida Fish and Wildlife Conservation Commission, Agency Analysis of 2021 House Bill 783, p. 6 (Mar. 4, 2021).

⁴⁷ *Id.*

Under the bill, a wild animal life, freshwater aquatic life, or marine life trafficker convicted of a violation of the Florida RICO Act commits a first degree felony.⁴⁸ A person who violates FWC laws and rules, may still be penalized in accordance with current law when the Florida RICO Act does not apply.

The bill is effective upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 895.02, F.S., relating to racketeering of aquatic animal and wild animal life.

Section 2: Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may allow additional civil remedies under the Florida RICO Act, including forfeiture to the state of money derived from racketeering activity involving fish and wildlife.⁴⁹

2. Expenditures:

The Criminal Justice Impact Conference met on February 15, 2021, and determined that the bill may have a positive insignificant impact on prison beds by adding violations of FWC rules and regulations to the list of conduct considered racketeering activity.

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.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

⁴⁸ S. 895.04, F.S.

⁴⁹ S. 895.05(2), F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HB 0007 Civil Liability for Damages Relating to COVID-19 by McClure

Civil Liability for Damages Relating to COVID-19: Provides requirements for civil action based on COVID-19-related claim; provides that plaintiff has burden of proof in such action; provides statute of limitations. Effective Date: upon becoming a law

Actions

03/22/2021 SENATE Received; Referred to Rules

HB 0015 Sales and Use Tax by Clemons

Sales and Use Tax; Requires marketplace providers & persons located outside FL to remit discretionary sales surtax; replaces taxation of mail order sales with taxation of remote sales; provides entities making remote sales are dealers for sales & use taxes; requires entities to collect & remit additional fees at time of sale; authorizes marketplace providers & sellers to agree for marketplace sellers to collect taxes & fees; provides relief to persons for liability for tax, penalty, & interest due on remote sales; provides alternative method to calculate unemployment contribution in specified years; provides for deposit of funds in Unemployment Compensation Trust Fund. Effective Date: July 1, 2021

Actions

03/21/2021 HOUSE Now in Commerce Committee

SB 0050 Sales and Use Tax by Gruters

Taxes and Fees on Remote Sales; Expanding the definition of the term "retail sale" to include sales facilitated through a marketplace; requiring marketplace providers and persons located outside of this state to remit discretionary sales surtax when delivering tangible personal property to a county imposing a surtax; providing that certain marketplace providers are dealers for purposes of the sales and use tax; providing that a marketplace seller, rather than the marketplace provider, is liable for sales tax collection and remittance under certain circumstances, etc. Effective Date: Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2021

Actions

03/18/2021 SENATE Retained on Special Order Calendar

HB 0059 Growth Management by McClain

Growth Management: Requires comprehensive plans & certain land development regulations of municipalities established after certain date to incorporate certain development orders; requires local governments to include property rights element in their comprehensive plans; provides statement of rights; requires local government to adopt property rights element by specified date; provides that certain property owners are not required to consent to development agreement changes; provides requirements & procedures for right of first refusal; authorizes certain developments of regional impact agreements to be amended. Effective Date: July 1, 2021

Actions

03/15/2021 HOUSE Placed on Calendar, on 2nd reading

SB 0072 Civil Liability for Damages Relating to COVID-19 by Brandes

Civil Liability for Damages Relating to COVID-19; Specifying requirements for civil actions based on COVID-19-related claims; requiring the court to make certain determinations in such actions; providing that plaintiffs have the burden of proof in such actions; providing preliminary procedures for civil actions based on COVID-19-related claims; requiring COVID-19-related claims to commence within specified timeframes, etc. Effective Date: Upon becoming a law

Actions

03/18/2021 HOUSE Placed on Special Order Calendar, 03/25/21

SB 0094**Water Storage North of Lake Okeechobee** by Brodeur

Water Storage North of Lake Okeechobee; Requiring the South Florida Water Management District to request that the United States Army Corps of Engineers seek congressional approval of a project implementation report for the Lake Okeechobee Watershed Restoration Project by a specified date; requiring the district, in partnership with the corps, to expedite the development and implementation of aquifer storage and recovery wells; requiring the district to expedite implementation of the aquifer storage and recovery science plan developed by the district and the corps, etc. Effective Date: Upon becoming a law

Actions

03/02/2021 SENATE Now in Appropriations

HB 0139**Electronic Transactions for Title Certificates and Registrations** by Fernandez-Barquin

Electronic Transactions for Title Certificates and Registrations: Authorizes tax collectors to accept applications for motor vehicle & vessel certificates of title by electronic or telephonic means, to collect electronic mail addresses for use as method of notification, & to contract with vendors to provide electronic & telephonic transactions; provides that electronic signature that meets certain requirements satisfies signature required for application for certificate of title; specifies tax collection systems for which certain fees may be used for integration with Florida Real Time Vehicle Information System; requires DHSMV to provide tax collectors & approved vendors with certain data access & interface functionality; specifies authorized uses; requires DHSMV to ensure approved vendors protect customer privacy & data collection. Effective Date: July 1, 2021

Actions

03/22/2021 HOUSE Favorable with CS by Tourism, Infrastructure & Energy Subcommittee; 15 Yeas, 0 Nays

HB 0217**Conservation Area Designations** by Hunschofsky

Conservation Area Designations: Designates Southeast Florida Coral Reef Ecosystem Conservation Area as Kristin Jacobs Coral Reef Ecosystem Conservation Area; directs DEP to erect suitable markers. Effective Date: July 1, 2021

Actions

03/18/2021 HOUSE Read Second Time; Read Third Time; Passed (Vote: 119 Yeas / 0 Nays)

HB 0223**Marina Evacuations** by Plasencia

Marina Evacuations: Prohibits vessels under specified weight from remaining in certain marinas that have been deemed unsuitable for refuge during hurricane after issuance of hurricane watch; requires marina owner, operator, employee, or agent to remove specified vessels; provides that such owner, operator, employee, or agent may charge vessel owner reasonable fee for such removal & may not be held liable for any damages as result of such removal; provides that owners or operators of certain vessels may be subject to fine that deepwater seaport issuing evacuation order may impose & collect. Effective Date: July 1, 2021

Actions

03/22/2021 HOUSE Placed on Calendar, on 2nd reading

SB 0256**Discrimination in Labor and Employment** by Stewart

Discrimination in Labor and Employment; Creating the "Senator Helen Gordon Davis Fair Pay Protection Act"; prohibiting an employer from providing less favorable employment opportunities to employees based on their sex; prohibiting an employer from engaging in certain activities relating to wages and benefits; prohibiting an employer from requiring employees to sign certain waivers and documents, etc. Effective Date: 7/1/2021

Actions

12/21/2020 SENATE Referred to Commerce and Tourism; Judiciary; Rules

HB 0271**Power-driven Vessel Safety Requirements** by Botana

Power-driven Vessel Safety Requirements: Prohibits sitting in specified manner on bow, transom, or gunwale of power-driven vessel while vessel is making way; provides penalties. Effective Date: July 1, 2021

Actions

02/03/2021 HOUSE Now in Tourism, Infrastructure & Energy Subcommittee

HB 0287

Liability of Persons Providing Areas for Public Outdoor Recreational Purposes by Shoaf

Liability of Persons Providing Areas for Public Outdoor Recreational Purposes: Limits liability for persons who enter into written agreements with state agencies to provide areas for public outdoor recreational purposes without charge. Effective Date: July 1, 2021

Actions

03/22/2021 HOUSE On Committee agenda - Judiciary Committee, 03/24/21, 12:00 pm, 404 H

SB 0302

Small Business Saturday Sales Tax Holiday by Taddeo

Small Business Saturday Sales Tax Holiday; Defining the term "small business"; providing that small businesses are not required to collect the sales and use tax on the retail sale of certain items of tangible personal property during a specified timeframe; authorizing certain dealers to opt out of participating in the tax holiday, subject to certain requirements; authorizing the Department of Revenue to adopt emergency rules, etc. Effective Date: 7/1/2021

Actions

03/22/2021 SENATE On Committee agenda - Finance and Tax, 03/25/21, 9:00 am, 110 S

SB 0304

Wage and Employment Benefits Requirements by Taddeo

Wage and Employment Benefits Requirements; Repealing provisions relating to restrictions on the establishment of minimum wage and employment benefits requirements by political subdivisions, etc. Effective Date: 7/1/2021

Actions

01/11/2021 SENATE Referred to Commerce and Tourism; Community Affairs; Rules

HB 0323

Fish and Wildlife Conservation Commission Trust Funds by Drake

Fish and Wildlife Conservation Commission Trust Funds: Revises sources & use of funds for Florida Panther Research & Management Trust Fund; authorizes FWCC to invest & reinvest funds & interest of Marine Resources Conservation Trust Fund, Nongame Wildlife Trust Fund, State Game Trust Fund, Save Manatee Trust Fund, & Invasive Plant Control Trust Fund; revises use of certain funding sources for Save Manatee Trust Fund. Effective Date: July 1, 2021

Actions

03/15/2021 HOUSE Placed on Calendar, on 2nd reading

SB 0342

Vehicle and Vessel Registration by Diaz

Vehicle and Vessel Registration; Requiring tax collectors to determine service charges collected by privately owned license plate agents for motor vehicle titles; requiring that additional service charges be itemized and disclosed to the person paying them; requiring a license plate agent to enter into a contract with the tax collector for a certain purpose; requiring tax collectors and approved license plate agents to enter into a memorandum of understanding with the department for a certain purpose, etc. Effective Date: 7/1/2021

Actions

03/19/2021 SENATE Now in Rules

SB 0364

Discrimination on the Basis of Personal Health Information by Gruters

Discrimination on the Basis of Personal Health Information; Prohibiting business and governmental entities that require individuals to present driver licenses and identification cards for specified purposes from taking certain actions on the basis of individuals' vaccination status and proof of immunity from any

virus; prohibiting public accommodations from discriminating against individuals on the basis of vaccination or immunity status, etc. Effective Date: 7/1/2021

Actions

01/11/2021 SENATE Referred to Commerce and Tourism; Governmental Oversight and Accountability; Rules

SB 0384 Unlawful Employment Practices by Rodriguez (A)

Unlawful Employment Practices; Expanding the list of unlawful employment practices to include certain actions against employees and job applicants with medical needs related to pregnancy; requiring employers to provide a written notice of certain rights relating to pregnancy to employees and to post such notice in conspicuous places on the premises; requiring the Florida Commission on Human Relations to develop certain education and outreach programs, etc. Effective Date: 7/1/2021

Actions

01/11/2021 SENATE Referred to Commerce and Tourism; Governmental Oversight and Accountability; Rules

SB 0430 Petroleum Fuel Measuring Devices by Rodriguez (A)

Petroleum Fuel Measuring Devices; Preempting the regulation of petroleum fuel measuring devices to the state and the Department of Agriculture and Consumer Services; prohibiting the department from enforcing certain provisions for violations of rules relating to petroleum fuel measuring devices; exempting department petroleum fuel measuring device rules from enforcement under specified provisions, etc. Effective Date: 7/1/2021

Actions

03/16/2021 SENATE Now in Rules

SB 0496 Growth Management by Perry

Growth Management; Specifying requirements for certain comprehensive plans effective, rather than adopted, after a specified date and for associated land development regulations; requiring local governments to include a property rights element in their comprehensive plans; prohibiting a local government's property rights element from conflicting with the statement of rights contained in the act; providing that the consent of certain property owners is not required for development agreement changes under certain circumstances, etc. Effective Date: 7/1/2021

Actions

03/22/2021 SENATE On Committee agenda - Rules, 03/25/21, 9:00 am, 412 K

SB 0524 Fish and Wildlife Conservation Commission Trust Funds by Hooper

Fish and Wildlife Conservation Commission Trust Funds; Revising the sources of funds that may be used for specified purposes for the Florida Panther Research and Management Trust Fund; authorizing the commission to invest and reinvest funds and the interest thereof of the Marine Resources Conservation Trust Fund and the Nongame Wildlife Trust Fund, respectively; revising the use of such funds for the marketing of the license plates; authorizing such funds to be used for commission administrative costs, etc. Effective Date: 7/1/2021

Actions

03/22/2021 SENATE Placed on Special Order Calendar, 03/25/21

SB 0578 Marina Evacuations by Wright

Marina Evacuations; Prohibiting vessels under a specified weight from remaining in certain marinas that have been deemed unsuitable for refuge during a hurricane after the issuance of a hurricane watch; requiring a marina owner, operator, employee, or agent to remove specified vessels under certain circumstances; providing that such owner, operator, employee, or agent may charge the vessel owner a reasonable fee for such removal and may not be held liable for any damages as a result of such removal, etc. Effective Date: 7/1/2021

Actions

03/04/2021 SENATE Placed on Calendar, on 2nd reading

SB 0588

Conservation Area Designations/Kristin Jacobs Coral Reef Ecosystem Conservation Area by Book

Conservation Area Designations/Kristin Jacobs Coral Reef Ecosystem Conservation Area; Designating the Southeast Florida Coral Reef Ecosystem Conservation Area as the Kristin Jacobs Coral Reef Ecosystem Conservation Area; directing the Department of Environmental Protection to erect suitable markers, etc. Effective Date: 7/1/2021

Actions

02/18/2021 SENATE Now in Appropriations

HB 0669

Largemouth Bass by Trabulsy

Largemouth Bass: Provides for sale of largemouth bass as food fish. Effective Date: July 1, 2021

Actions

03/19/2021 HOUSE On Committee agenda - Environment, Agriculture & Flooding Subcommittee, 03/23/21, 4:00 pm, 404 H

SB 0854

Minimum Wage Rate by Brandes

Minimum Wage Rate; Proposing an amendment to the State Constitution to authorize the Legislature to provide a reduced minimum wage rate for prisoners in the state correctional system, for employees convicted of a felony, for employees under 21 years of age, and for other hard-to-hire employees, etc.

Actions

02/04/2021 SENATE Referred to Commerce and Tourism; Appropriations; Rules

HB 0969

Consumer Data Privacy by McFarland

Consumer Data Privacy: Requires certain businesses to provide notice to consumers about data collection & selling practices; provides consumers right to request that certain data be disclosed, deleted, or corrected & to opt-in or opt-out of sale or sharing of such data; provides nondiscrimination measures, methods for requesting data & opting-in or opting-out of sale or sharing of such data, exemptions, applicability, contracts, & private cause of action, & enforcement & implementation; authorizes DLA to adopt rules. Effective Date: January 1, 2022

Actions

03/23/2021 HOUSE Favorable with CS by Civil Justice & Property Rights Subcommittee; 17 Yeas, 0 Nays

HB 0971

Pub. Rec./Consumer Data Privacy by McFarland

Pub. Rec./Consumer Data Privacy: Provides exemption from public records requirements for information relating to investigations by DLA & law enforcement agencies of certain data privacy violations; provides for future review & repeal; provides statement of public necessity. Effective Date: on the same date that HB 969 or similar legislation takes effect

Actions

03/11/2021 HOUSE Now in Government Operations Subcommittee

SB 1018

Sale of Aquaculture Products by Boyd

Sale of Aquaculture Products; Authorizing certified aquaculture producers and certain licensed dealers to sell largemouth bass without restriction under certain circumstances; making technical changes, etc. Effective Date: 7/1/2021

Actions

03/23/2021 SENATE Committee Substitute Text (C1) Filed

HB 1099

Vessel Safety Equipment by McFarland

Vessel Safety Equipment: Requires operators of certain motorboats to use engine cutoff switch while motorboat is making way. Effective Date: July 1, 2021

Actions

02/26/2021 HOUSE Now in Tourism, Infrastructure & Energy Subcommittee

SB 1126 Department of Transportation by Harrell

Department of Transportation; Clarifying that the Department of Revenue is responsible for a certain transfer from the State Treasury to the General Revenue Fund of a portion of documentary stamp tax distributions credited to the State Transportation Trust Fund; deleting a requirement that the department provide space and video conference capability at each of the department's district offices as an alternative to physical appearance by a person requesting a hearing before the Commercial Motor Vehicle Review Board within the department; requiring the department, when proposing any project on the State Highway System which will close or modify an existing access to an abutting property owner, to provide notice to affected property owners, municipalities, and counties at least 180 days before the design phase of the project is completed, etc. Effective Date: 7/1/2021

Actions

03/19/2021 SENATE On Committee agenda - Appropriations Subcommittee on Transportation, Tourism, and Economic Development, 03/24/21, 2:30 pm, 110 S

HB 1133 Coastal Construction and Preservation by Leek

Coastal Construction and Preservation: Defines terms for purposes of Dennis L. Jones Beach & Shore Preservation Act; requires DEP to issue permits for certain rigid coastal armoring structures; provides DEP may only order removal of certain public rigid coastal armoring structures. Effective Date: July 1, 2021

Actions

02/28/2021 HOUSE Now in Environment, Agriculture & Flooding Subcommittee

HB 1225 Implementation of the Recommendations of the Blue-Green Algae Task Force by Goff-Marcil

Implementation of the Recommendations of the Blue-Green Algae Task Force: Requires DEP to implement stormwater system inspection & monitoring program; requires owners of onsite sewage treatment & disposal systems to have system periodically inspected; requires department to administer inspection program pursuant to certain standards, procedures, & requirements; provides for rulemaking; provides requirements for basin management action plans; provides notices requirements for certain notices of intent to implement pollution reduction measures; provides that verification of certain programs must have been completed by specified date to be presumed to be in compliance with state water quality standards; requires DEP to provide all records promptly & in unadulterated form. Effective Date: July 1, 2021

Actions

02/28/2021 HOUSE Now in Environment, Agriculture & Flooding Subcommittee

HB 1275 Vessel Collisions, Accidents, and Casualties by Grieco

Vessel Collisions, Accidents, and Casualties: Provides penalties for vessel operators who leave scene of vessel accident that causes damage, injury, or death without complying with certain requirements, who operate vessel in reckless or careless manner & cause serious bodily injury, or who operate vessel while under influence & cause death of unborn child; provides mandatory minimum sentencing for specified violations. Effective Date: July 1, 2021

Actions

03/22/2021 HOUSE Favorable with CS by Criminal Justice & Public Safety Subcommittee; 17 Yeas, 0 Nays

SB 1324 Digital Driver Licenses and Identification Cards by Harrell

Digital Driver Licenses and Identification Cards; Requiring the Department of Highway Safety and Motor Vehicles to establish a secure and uniform system for issuing optional digital proofs of driver licenses

and identification cards; authorizing the department to contract with one or more private entities to develop an electronic credentialing system; authorizing the department to enter into contracts with private entities for a specified purpose; prohibiting such private entities from storing, selling, or sharing personal information collected from scanning the digital proofs of driver licenses and identification cards, etc. Effective Date: 7/1/2021

Actions

03/11/2021 SENATE Now in Appropriations

SB 1326 Public Records/Department of Highway Safety and Motor Vehicles by Harrell

Public Records/Department of Highway Safety and Motor Vehicles; Providing exemptions from public records requirements for secure login credentials, Internet protocol addresses, and geolocation data held by the Department of Highway Safety and Motor Vehicles; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. Effective Date: On the same date that SB 1324 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law

Actions

03/12/2021 SENATE Now in Appropriations

HB 1335 Seagrass Mitigation Banks by Sirois

Seagrass Mitigation Banks: Authorizes Board of Trustees of Internal Improvement Trust Fund to establish seagrass mitigation banks under certain conditions. Effective Date: July 1, 2021

Actions

03/19/2021 HOUSE On Committee agenda - Environment, Agriculture & Flooding Subcommittee, 03/23/21, 4:00 pm, 404 H

HB 1337 Anchoring Limitation Areas by Geller

Anchoring Limitation Areas: Designates specified waterways as anchoring limitation areas. Effective Date: July 1, 2021

Actions

03/05/2021 HOUSE Now in Environment, Agriculture & Flooding Subcommittee

HB 1385 Department of Transportation by LaMarca

Department of Transportation: Revises provisions relating to transfer of moneys to & from State Transportation Trust Fund; removes requirements related to deduction of service charges; requires DOT to allow person to appear remotely before Commercial Motor Vehicle Review Board via communications media technology; requires DOT to adopt rules to implement airport zoning provisions; requires department, when proposing certain projects on State Highway System, to provide notice to affected property owners, municipalities, & counties; provides public meeting requirements; removes expiration of provisions authorizing LBC to authorize approval of work program amendments; revises date by which M.P.O. must submit list of project priorities to DOT district. Effective Date: July 1, 2021

Actions

03/05/2021 HOUSE Now in Tourism, Infrastructure & Energy Subcommittee

SB 1504 Coastal Construction and Preservation by Wright

Coastal Construction and Preservation; Defining the terms "upland structure," "vulnerable," and "wave runoff" as those terms are used in the Dennis L. Jones Beach and Shore Preservation Act; requiring, rather than authorizing, the Department of Environmental Protection to issue permits for present installations of rigid coastal armoring structures under certain circumstances; providing that the department may only order permitted public structures to be removed under certain circumstances, etc. Effective Date: 7/1/2021

Actions

SENATE Referred to Environment and Natural Resources; Appropriations Subcommittee

HB 1515 Anchoring Limitation Areas by Duggan

Anchoring Limitation Areas: Authorizes local governments to establish anchoring limitation areas; revises provisions prohibiting & authorizing anchoring of vessels in anchoring limitation areas; provides for vessel owners & operators to present certain proof that vessel has not exceeded certain anchoring limitations; revises provisions authorizing removal & impoundment of certain vessels from anchoring limitation areas; declaring that certain vessels are public nuisance; directs FWCC to adopt specified rules. Effective Date: upon becoming a law

Actions

03/19/2021 HOUSE On Committee agenda - Environment, Agriculture & Flooding Subcommittee, 03/23/21, 4:00 pm, 404 H

SB 1522 Implementation of the Recommendations of the Blue-Green Algae Task Force by Stewart

Implementation of the Recommendations of the Blue-Green Algae Task Force; Citing this act as the "Implementation of Governor DeSantis' Blue-Green Algae Task Force Recommendations Act"; requiring the Department of Environmental Protection to implement a stormwater system inspection and monitoring program for a specified purpose by a specified date; requiring owners of onsite sewage treatment and disposal systems to have the system periodically inspected, beginning on a specified date; requiring basin management action plans to describe potential future increases in pollutant loading and provide a comprehensive analysis of options to mitigate such increases, etc. Effective Date: 7/1/2021

Actions

03/02/2021 SENATE Referred to Environment and Natural Resources; Appropriations Subcommittee on Agriculture, Environment, and General Government; Appropriations

SB 1550 Public Financing of Potentially At-risk Structures by Rodriguez (A)

Public Financing of Potentially At-risk Structures; Providing that coastal building zones are areas at risk due to sea level rise and coastal structures within those areas are potentially at-risk structures; requiring state-financed constructors to include certain flood mitigation strategies in sea level impact projection studies, etc. Effective Date: 7/1/2021

Actions

03/22/2021 SENATE Now in Community Affairs

SB 1562 Motorboat Engine Cutoff Switches by Gruters

Motorboat Engine Cutoff Switches; Citing this act as the "Ethan's Law"; requiring the use of an engine cutoff switch when operating certain motorboats that are making way; providing penalties, etc. Effective Date: 7/1/2021

Actions

03/02/2021 SENATE Referred to Environment and Natural Resources; Criminal Justice; Rules

SB 1652 Anchoring Limitation Areas by Pizzo

Anchoring Limitation Areas; Designating specified waterways in densely populated urban areas as anchoring limitation areas, etc. Effective Date: 7/1/2021

Actions

03/04/2021 SENATE Referred to Environment and Natural Resources; Community Affairs; Rules

SB 1658 Power-driven Vessel Safety Requirements by Bradley

Power-driven Vessel Safety Requirements; Citing this act as the "Limb Preservation Act"; prohibiting sitting in a specified manner upon the bow, transom, or gunwale of a power-driven vessel while the vessel is making way; prohibiting a power-driven vessel operator from allowing a person to sit in such a way; providing a noncriminal infraction for violations relating to power-driven vessel safety requirements, etc. Effective Date: 7/1/2021

Actions

03/04/2021 SENATE Referred to Environment and Natural Resources; Community Affairs; Rules

SB 1834**Vessel Safety** by Pizzo

Vessel Safety; Revising the penalties for persons operating a vessel involved in an accident or injury who leave the scene of the accident or injury under certain circumstances; providing graduated penalties depending on the level of damage to property or person; providing a mandatory minimum sentence for a person who willfully commits such violation resulting in the death of another while boating under the influence; providing that a person commits boating under the influence manslaughter when their impaired operation of a vessel causes the death of an unborn child; revising the definition of the term "vessel homicide" to include the killing of an unborn child by causing injury to the mother by operation of a vessel in a reckless manner under certain circumstances, etc. Effective Date: 7/1/2021

Actions

03/04/2021 SENATE Referred to Environment and Natural Resources; Criminal Justice; Rules

SB 1946**Anchoring Limitation Areas** by Polsky

Anchoring Limitation Areas; Authorizing counties to establish anchoring limitation areas that meet certain requirements; providing that specified established anchoring limitation areas are exempt from specified provisions; specifying size requirements for the anchoring limitation areas; prohibiting vessels from anchoring in such areas for longer than a specified time; requiring the Fish and Wildlife Conservation Commission to initiate rulemaking by a certain date, etc. Effective Date: Upon becoming a law

Actions

03/23/2021 SENATE Committee Substitute Text (C1) Filed