

WEEK 8 REPORT

// 2021 LEGISLATIVE SESSION

+ MARINE INDUSTRIES ASSOCIATION OF FLORIDA

APRIL 19-23, 2020



// WEEK 8 REPORT

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Anchoring Limitation Areas

We have completed the eighth week of the strangest Legislative Session ever! We are happy to report it appears the 2021 Legislative will end on time April 30th.

However, Governor DeSantis and the Seminole Tribe inked a new 30 year gaming compact. This will need to be approved by the Legislature. In an effort to give everyone an appropriate amount of time to review the deal, the Legislature will come back to Tallahassee for a gambling Session May 17.

Another positive note, the budget conference report has to be on Desks by Tuesday to meet the 72 hour cooling off deadline. Florida has to have a balanced budget. We are on track to do that and complete it on time. We will continue to work on unresolved budget issues again this weekend.

Below are a few of the bills we are tracking for you. Of course, things get crazy the last week and amendments get filed all the time. We will be actively monitoring all amendments on the House and Senate floor. We will email you any alerts if we see anything of concern.

We will get you a final report in a couple of weeks once everything is finalized. We will update you in real time about issues that concern you this week.

We appreciate the opportunity to represent you in Tallahassee. Here is to a much anticipated "Sine Die" and hope the 2022 Legislative Session allows for an open Capitol and meetings like years past!

Onward! Cheers to the ninth and final week!

Anchoring

SB/CS1946 and CS/HB1515

As expected, the House bill has been laid on the table so that the House can take up Senate Bill 1946. SB 1946 is set for third reading on April 28. We expect the bill to pass with the current Senate language. A copy of the bill is attached to the report.

Racketeering

SB776 and HB 783

This is another bill that we had difficulty negotiating with FWC. The Florida Fish and Wildlife Commission did not want this bill amended. FWC even went as far as to amend the House bill differently than the Senate version, but now both bills are identical and are in the proper form.

To simplify, the House took up the Albritton language in committee and now the bills are identical. The Senate bill passed on the Senate floor and was sent to the House, where it passed unanimously. It has been ordered enrolled and will be sent to the governor for approval.

The Enrolled version of SB 776 is included for your information.

Yet again, an example of a bill that was made difficult in dealing in negotiations with FWC this Session.

FWC Bill a.k.a. and “FWC’s Boating Bill”

SB 1086 and HB639

The FWC boating bills continue to differ. Senate Bill 1086 was amended on the Senate floor and passed unanimously. This bill is improved from the originally filed version.

The Senate bill has been amended by the House and placed on third reading, which means it will head back to the Senate. The engrossed version of the bill from the Senate as well as the two House amendments are attached to the report.

The House Bill received four committee references and has passed through three committees with amendments. The bill was laid on the table once it reached the House floor on April 27.

We will keep you posted on these bills and their progress as there is still time for them to pass. Again, Marine Industries is watching these bills very closely.

Budget

The conference report on SB 2500 was officially filed and distributed to members at 12:06 p.m. on Tuesday, April 27, starting the mandatory 72-hour “cooling off” period before the report can be adopted by both chambers. This conference report is the resulting product of the budget conference process and once signed or vetoed by the governor, will become the state’s budget for the 2021-22 Fiscal Year.

The Florida Senate was the host for the Budget Conference process this year. The final Appropriations Conference Report has a Senate bill number, SB 2500. The House of Representatives will host the Budget Conference next year. The House and Senate alternate being host every year.

We will update you if any issues arise in budget negotiations that might impact boating. The House and Senate budgets did not have any issues of concern going into the conference process. As highlighted below, boating line items matched in both budgets heading into conference. This usually means those issues will be resolved quickly. We will watch as anything can happen during this process. So don’t cash the check until the budget is signed by the Governor.

Senate Bill 2500

1708 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY
CLEAN MARINA

FROM FEDERAL GRANTS TRUST FUND . . . 500,000

1767 SPECIAL CATEGORIES BOATING SAFETY EDUCATION PROGRAM

FROM MARINE RESOURCES CONSERVATION TRUST FUND 625,650

1768 FIXED CAPITAL OUTLAY DERELICT VESSEL REMOVAL PROGRAM

FROM MARINE RESOURCES CONSERVATION TRUST FUND 2,204,849

1769 FIXED CAPITAL OUTLAY BOATING INFRASTRUCTURE

FROM FEDERAL GRANTS TRUST FUND . . . 3,900,000

1769A GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY
DERELICT VESSEL REMOVAL PROGRAM

FROM MARINE RESOURCES CONSERVATION TRUST FUND 1,369,345

1770 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY
FLORIDA BOATING IMPROVEMENT PROGRAM

FROM MARINE RESOURCES CONSERVATION TRUST FUND 627,993

FROM STATE GAME TRUST FUND 1,250,000

House Bill 5001

1708 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND NONSTATE ENTITIES - FIXED CAPITAL OUTLAY
CLEAN MARINA FROM FEDERAL GRANTS TRUST FUND . . . 500,000

1767 SPECIAL CATEGORIES BOATING SAFETY EDUCATION PROGRAM

FROM MARINE RESOURCES CONSERVATION TRUST FUND 625,650

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FROM MARINE RESOURCES CONSERVATION TRUST FUND 627,993

FROM STATE GAME TRUST FUND 1,250,000

Thank you again for allowing us to represent you in Tallahassee. Things are changing rapidly so please stay tuned as we head into the final weeks of the 2021 Legislative Session.

A handwritten signature in dark blue ink, appearing to read 'Margaret Timmins', with a large, stylized flourish extending to the right.

Margaret "Missy" Timmins
President
Timmins Consulting, LLC

// 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: Read Third Time; Passed (Vote: 83 Yeas / 31 Nays); Immediately Certified; Signed by Officers and presented to Governor; Approved by Governor; Chapter No. 2021-001

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 (Enrolled) + 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: Read Second Time; Substituted for HB 0223; Laid on Table, Refer to HB 0223

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: Withdrawn from Rules; Placed on Calendar, on 2nd reading; Substituted for SB 0578; Read Second Time; Read Third Time; Passed (Vote: 40 Yeas / 0 Nays); Immediately certified; Ordered enrolled

Attached documents: HB 223 (Enrolled) + 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 Committee

HOUSE/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

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

House Bill 271: The Fish and Wildlife Conservation Commission (FWC) Division of Law Enforcement manages the state’s waterways to ensure boating safety for residents of and visitors to the state. This includes enforcing boating rules and regulations, coordinating boating safety campaigns and education, managing public waters and access to the waters, and conducting boating accident investigations.

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 outside the vessel or due to vessel overloading or excessive speed.

Florida law requires that boat operators born on or after January 1, 1988, must obtain a Florida boating safety identification card if the vessel is powered by an engine of 10 horsepower or more. To obtain a card, a person must complete an approved boating safety course.

Federal law requires boaters to use the installed engine cut-off switch on any motorized boat with 3 or more horsepower that is less than 26 feet in length.

The bill requires that an FWC-approved boating safety education course or temporary certificate examination must include a component regarding:

- The risks associated with a passenger placing any portion of an appendage over the outside edge of the vessel while the vessel is underway.
- The proper use of an engine cutoff switch, as appropriate for certain vessels.

The bill also requires FWC to incorporate these components into boating safety campaigns and education materials, as appropriate.

The bill does not have a fiscal impact on state or local governments.

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

Most Recent Action: Favorable with CS by Tourism, Infrastructure & Energy Subcommittee; 16 Yeas, 0 Nays; Reference to Criminal Justice & Public Safety Subcommittee removed; Remaining reference: Commerce Committee

Attached documents: None

// 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: None

// 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: Favorable by Criminal Justice & Public Safety Subcommittee; 17 Yeas, 0 Nays

Attached documents: None

// 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: CS/SB 1668 authorizes the Board of Trustees of the Internal Improvement Trust Fund to authorize leases for seagrass mitigation banks to:

- Ensure the preservation and regeneration of seagrass; and
- Offset the unavoidable impacts of projects when seagrass banks meet the public interest criteria related to state-owned lands and state parks and preserves.

The bill states that this authorization does not prohibit mitigation for impacts to seagrass or other habitats on sovereignty submerged lands, upon approval of the Board of Trustees.

The bill requires the Department of Environmental Protection to modify rules on mitigation banking to remove any duplicative financial assurance requirements and ensure that permitted seagrass mitigation banks comply with the federal mitigation banking rules.

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

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: Favorable by Environment, Agriculture & Flooding Subcommittee;
13 Yeas, 3 Nays

Attached documents: None

// 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: None

// 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: *SIMILAR*

Senate Bill 1946: CS/CS/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 adjacent to urban areas that have residential docking facilities and significant recreational boating traffic, 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 delineated navigable-in-fact waterways.

The bill provides that each anchoring limitation area must:

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

The bill prohibits a person from anchoring a vessel for more than 45 consecutive days in a 6-month period in an anchoring limitation area, except under existing exceptions.

The bill requires counties proposing establishment of an anchoring limitation area to provide notice to the Fish and Wildlife Conservation Commission (FWC) 30 days before final adoption of an ordinance. The bill requires FWC to publish notice of the proposed ordinance.

The bill prohibits Monroe County from establishing an anchoring limitation area until the county approves, permits, and opens a specified number of new moorings for public use within 1 mile of the Key West Bight City Dock and within the Key West Garrison Bight Mooring Field. The bill requires FWC to designate the area within 1 mile of the Key West Bight City Dock as a priority for the investigation and removal of derelict vessels until the county approves, permits, and opens the new moorings.

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 expressly grandfathers-in the geographic areas already designated anchoring limitation areas in Florida Statutes.

Most Recent Action: Read Second Time; Amendments Adopted (331560, 439588, 555226); Read Third Time; Passed (Vote: 39 Yeas / 0 Nays); In Messages; Received; Placed on Special Order Calendar, 04/27/21; Read Second Time; Placed on Third Reading, 04/28/21

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 specifies 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. The bill specifies that existing anchoring limitation areas established in statute are grandfathered-in and exempt from the requirements established in the bill.

The bill requires each anchoring limitation area to be less than 100 acres in size and to 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, unless an exception applies. 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 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 a public nuisance.

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

The bill may have an indeterminate fiscal impact on the state and local governments.

Most Recent Action: Laid on Table

Attached documents: SB 1946 (1st Engrossed) + 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 under certain conditions
- Authorizes the 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 the 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 (DHSMV) from issuing a certificate of title to an applicant for a vessel that has been deemed derelict, and beginning in 2023, authorizes the DHSMV to reject an application for a certificate of title for a vessel that has been deemed derelict.
- Authorizes the 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 pump out.

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.
- Requires the Department of Highway Safety and Motor Vehicles to enter final disposition of failure to submit to a sobriety test into a person's driving record.

Relating to spaceflight, the bill:

- Authorizes the 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.

There may be a positive fiscal impact to the FWC due to the new and increased civil penalties provided under the bill. However, the FWC may also experience increased costs due to increased enforcement.

The bill provides that except as otherwise expressly provided, the effective date is July 1, 2021.

Most Recent Action: Read Second Time; Amendments Adopted (189384, 765050); Read Third Time; Passed (Vote: 39 Yeas / 0 Nays); In Messages; Received; Referred to Calendar; Placed on Special Order Calendar, 04/27/21; Read Second Time; Amendments Adopted (608587, 253597); Placed on Third Reading, 04/28/21

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: Laid on Table

Attached documents: SB 1086 (1st Engrossed) + Amendments + 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: In Messages; Received; Referred to Calendar; Placed on Special Order Calendar, 04/26/21; Read Second Time; Amendment Withdrawn (400055); Placed on Third Reading, 04/27/21; Read Third Time; Passed (Vote: 116 Yeas / 0 Nays); Ordered enrolled

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.

CS/CS/HB 783 amends the definition of “racketeering activity” to include violations of FWC laws and rules relating to the illegal sale, purchase, collection, harvest, capture, or possession of wild animal life, freshwater aquatic life, or marine life, and related crimes. 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 bill may have an indeterminate impact on state government.

Most Recent Action: Laid on Table, Refer to CS/SB 776

Attached documents: SB 776 (Enrolled) + Staff Analysis

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1
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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WHEREAS, COVID-19, as a viral agent capable of causing extensive loss of life or serious disability, is deadly, and

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

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

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

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

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

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

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

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

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surgeries and other procedures, and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Diagnosis or treatment of, or failure to diagnose or treat, a person for COVID-19;
2. Provision of a novel or experimental COVID-19 treatment;
3. Transmission of COVID-19;
4. Delay or cancellation of a surgery or a delay or cancellation of a medical procedure, a test, or an appointment based on a health care provider's interpretation or application of government-issued health standards or authoritative guidance specifically relating to the COVID-19 emergency;
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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waiver.

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

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

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

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

9. A continuing care facility licensed under chapter 651.

10. A pharmacy permitted under chapter 465.

(2) PRELIMINARY PROCEDURES.—

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

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

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

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

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

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

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

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

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

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

(5) LIMITATIONS PERIOD.—

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

(b) An action for a COVID-19-related claim against a health 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.

ENROLLED

CS/CS/HB 223

2021 Legislature

1
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,~~

ENROLLED

CS/CS/HB 223

2021 Legislature

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

ENROLLED

CS/CS/HB 223

2021 Legislature

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

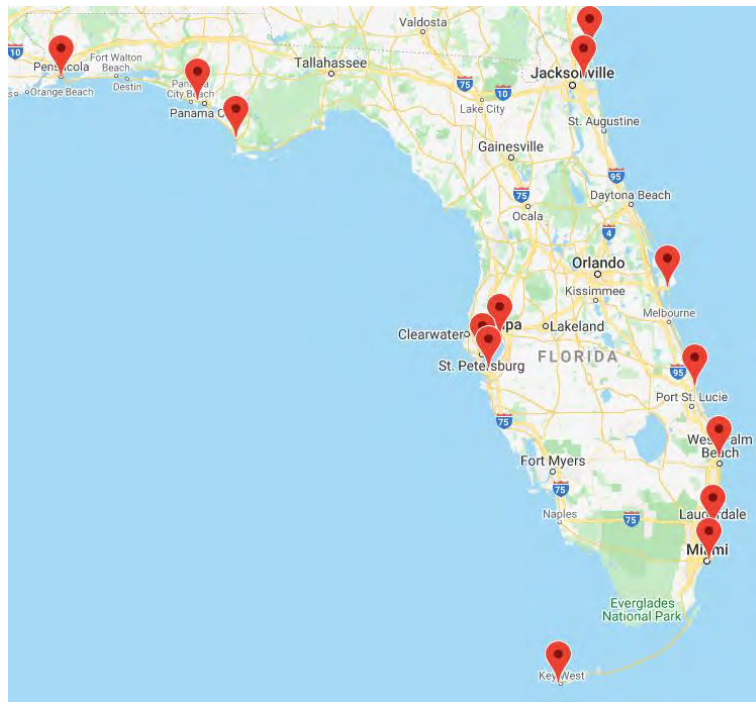
A. EFFECT OF PROPOSED CHANGES:

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.

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1 A bill to be entitled
2 An act relating to anchoring limitation areas;
3 amending s. 327.4108, F.S.; providing that certain
4 areas are grandfathered-in anchoring limitation areas;
5 authorizing certain counties to establish anchoring
6 limitation areas that meet certain requirements;
7 defining the term "navigable-in-fact waterways";
8 specifying size requirements for the anchoring
9 limitation areas; requiring the anchoring limitation
10 areas to be marked with signs and buoys that meet
11 certain requirements; prohibiting vessels from
12 anchoring in such areas for longer than a specified
13 time; requiring counties to provide notice to the Fish
14 and Wildlife Conservation Commission within a
15 specified timeframe before introducing an ordinance to
16 establish an anchoring limitation area; requiring the
17 commission to publish notice of the proposed ordinance
18 on its website and distribute an e-mail notice;
19 designating Monroe County as an anchoring limitation
20 area; providing requirements for such area; requiring
21 the commission to adopt rules; providing
22 applicability; prohibiting Monroe County from
23 establishing an anchoring limitation area until the
24 county meets certain requirements; requiring the
25 commission to designate a specified area as a priority
26 for the investigation and removal of derelict vessels
27 until certain conditions are met; requiring owners or
28 operators in certain anchoring limitation areas to be
29 allowed to provide specified proof of compliance with

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30 certain provisions; authorizing law enforcement
31 officers or agencies to issue citations for violations
32 under certain circumstances; providing that vessels
33 with a specified number of repeat offenses within a
34 specified timeframe shall be declared public nuisances
35 and subject to certain provisions; removing
36 applicability provisions relating to the commission's
37 recommendations; reenacting s. 327.73(1)(z), F.S.,
38 relating to noncriminal infractions, to incorporate
39 the amendment made to s. 327.4108, F.S., in a
40 reference thereto; providing an effective date.

41
42 Be It Enacted by the Legislature of the State of Florida:

43
44 Section 1. Section 327.4108, Florida Statutes, is amended
45 to read:

46 327.4108 Anchoring of vessels in anchoring limitation
47 areas.—

48 (1)(a) The following densely populated urban areas, which
49 have narrow state waterways, residential docking facilities, and
50 significant recreational boating traffic, are designated as and
51 shall be considered to be grandfathered-in anchoring limitation
52 areas:

53 1.~~(a)~~ The section of Middle River lying between Northeast
54 21st Court and the Intracoastal Waterway in Broward County.

55 2.~~(b)~~ Sunset Lake in Miami-Dade County.

56 3.~~(c)~~ The sections of Biscayne Bay in Miami-Dade County
57 lying between:

58 a.~~1.~~ Rivo Alto Island and Di Lido Island.

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59 b.2- San Marino Island and San Marco Island.

60 c.3- San Marco Island and Biscayne Island.

61 (b)(2) To promote the public's use and enjoyment of the
62 designated waterway, except as provided in subsections (4) ~~(3)~~
63 and (5) ~~(4)~~, a person may not anchor a vessel at any time during
64 the period between one-half hour after sunset and one-half hour
65 before sunrise in an anchoring limitation area designated under
66 this subsection.

67 (2)(a) Notwithstanding s. 327.60(2)(f), a county, except
68 for Monroe County, may establish, in accordance with this
69 subsection, an anchoring limitation area adjacent to urban areas
70 that have residential docking facilities and significant
71 recreational boating traffic. The aggregate total of anchoring
72 limitation areas in a county may not exceed 10 percent of the
73 county's delineated navigable-in-fact waterways. As used in this
74 subsection, the term "navigable-in-fact waterways" means
75 waterways that are navigable in their natural or unimproved
76 condition over which useful commerce or public recreation of a
77 substantial and permanent character is or may be conducted in
78 the customary mode of trade and travel on water. The term does
79 not include lakes or streams that are theoretically navigable;
80 have a potential for navigability; or are temporary, precarious,
81 and unprofitable, but the term does include lakes or streams
82 that have practical usefulness to the public as highways for
83 transportation. Each anchoring limitation area must meet all of
84 the following requirements:

85 1. Be less than 100 acres in size. For purposes of this
86 subsection, the calculated size of the anchoring limitation area
87 does not include any portion of the marked channel of the

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88 Florida Intracoastal Waterway contiguous to the anchoring
89 limitation area;

90 2. Not include any mooring field or marina; and

91 3. Be clearly marked with all of the following:

92 a. Signs that provide reasonable notice to boaters
93 identifying the duration of time beyond which anchoring is
94 limited and identifying the county ordinance by which the
95 anchoring limitation area was created.

96 b. Buoys. The county that has created an anchoring
97 limitation area shall install and maintain buoys marking the
98 boundary of the anchoring limitation area.

99
100 The signs and buoys must be permitted and installed in
101 accordance with ss. 327.40 and 327.41 and commission rule.

102 (b) Except as provided in subsections (4) and (5), a person
103 may not anchor a vessel for more than 45 consecutive days in any
104 6-month period in an anchoring limitation area established
105 pursuant to this subsection.

106 (c) A county proposing establishment of an anchoring
107 limitation area in accordance with this subsection shall provide
108 notice to the commission at least 30 days before introducing an
109 ordinance to establish the anchoring limitation area. The
110 commission shall publish notice of the proposed ordinance on its
111 website and distribute such notice through the commission's
112 Boating and Waterways Section e-mail distribution list for
113 ordinances.

114 (3)(a) Monroe County is designated as an anchoring
115 limitation area within which a vessel on waters of the state may
116 be anchored in the same location only for a maximum of 90 days.

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117 The commission shall adopt rules to implement this subsection.

118 (b) The anchoring limitations in this subsection do not
119 apply to approved and permitted moorings or mooring fields.

120 (c) Notwithstanding the commission rules adopted pursuant
121 to this subsection, this section is not effective for Monroe
122 County until the county approves, permits, and opens new
123 moorings for public use, including at least 250 moorings within
124 1 mile of the Key West Bight City Dock and at least 50 moorings
125 within the Key West Garrison Bight Mooring Field. Until such
126 time, the commission shall designate the area within 1 mile of
127 the Key West Bight City Dock as a priority for the investigation
128 and removal of derelict vessels.

129 (4)(3) Notwithstanding subsections (1), ~~subsection~~ (2), and
130 (3), a person may anchor a vessel in an anchoring limitation
131 area:

132 (a) If the vessel suffers a mechanical failure that poses
133 an unreasonable risk of harm to the vessel or the persons
134 onboard unless the vessel anchors. The vessel may anchor for 3
135 business days or until the vessel is repaired, whichever occurs
136 first.

137 (b) If imminent or existing weather conditions in the
138 vicinity of the vessel pose an unreasonable risk of harm to the
139 vessel or the persons onboard unless the vessel anchors. The
140 vessel may anchor until weather conditions no longer pose such
141 risk. During a hurricane or tropical storm, weather conditions
142 are deemed to no longer pose an unreasonable risk of harm when
143 the hurricane or tropical storm warning affecting the area has
144 expired.

145 (c) During events described in s. 327.48 or other special

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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.

(5)~~(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.

(6)(a)~~(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:

a. Documentation showing that the vessel was in another location at least 1 mile away within a period of less than 45 days before the inquiry.

b. 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 45 days before the inquiry.

2. If a vessel owner or operator fails or refuses to provide proof that the vessel has not exceeded the limitations

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described in subsection (2), the law enforcement officer or agency may issue a citation for a violation of this section.

(c)~~(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.

(d) A vessel that is the subject of more than three violations within 12 months which result in dispositions other than acquittal or dismissal shall be declared to be a public nuisance and subject to s. 705.103, or for a derelict vessel, subject to s. 823.11.

(e)~~(e)~~ 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 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

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204 resulting from the contractor's actions.

205 3. Be properly equipped to perform such services.

206 (g)~~(e)~~ In addition to the civil penalty imposed under s.
207 327.73(1)(z), the operator of a vessel that is removed and
208 impounded pursuant to paragraph (c) ~~(b)~~ must pay all removal and
209 storage fees before the vessel is released. A vessel removed
210 pursuant to paragraph (c) ~~(b)~~ may not be impounded for longer
211 than 48 hours.

212 (7)~~(6)~~ A violation of this section is punishable as
213 provided in s. 327.73(1)(z).

214 ~~(7) This section shall remain in effect notwithstanding the~~
215 ~~Legislature's adoption of the commission's recommendations for~~
216 ~~the regulation of mooring vessels outside of public mooring~~
217 ~~fields pursuant to s. 327.4105.~~

218 Section 2. For the purpose of incorporating the amendment
219 made by this act to section 327.4108, Florida Statutes, in a
220 reference thereto, paragraph (z) of subsection (1) of section
221 327.73, Florida Statutes, is reenacted to read:

222 327.73 Noncriminal infractions.—

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

225 (z) Section 327.4108, relating to the anchoring of vessels
226 in anchoring limitation areas, for which the penalty is:

227 1. For a first offense, up to a maximum of \$50.

228 2. For a second offense, up to a maximum of \$100.

229 3. For a third or subsequent offense, up to a maximum of
230 \$250.

231
232 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.

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/CS/CS/SB 1946

INTRODUCER: Rules Committee; Community Affairs Committee; Environment and Natural Resources Committee; and Senator Polsky and others

SUBJECT: Anchoring Limitation Areas

DATE: April 16, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Anderson</u>	<u>Rogers</u>	<u>EN</u>	<u>Fav/CS</u>
2.	<u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
3.	<u>Anderson</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/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 adjacent to urban areas that have residential docking facilities and significant recreational boating traffic, 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 delineated navigable-in-fact waterways.

The bill provides that each anchoring limitation area must:

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

The bill prohibits a person from anchoring a vessel for more than 45 consecutive days in a 6-month period in an anchoring limitation area, except under existing exceptions.

The bill requires counties proposing establishment of an anchoring limitation area to provide notice to the Fish and Wildlife Conservation Commission (FWC) 30 days before final adoption of an ordinance. The bill requires FWC to publish notice of the proposed ordinance.

The bill prohibits Monroe County from establishing an anchoring limitation area until the county approves, permits, and opens a specified number of new moorings for public use within 1 mile of the Key West Bight City Dock and within the Key West Garrison Bight Mooring Field. The bill requires FWC to designate the area within 1 mile of the Key West Bight City Dock as a priority for the investigation and removal of derelict vessels until the county approves, permits, and opens the new moorings.

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 expressly grandfathers-in the geographic areas already designated anchoring limitation areas in Florida Statutes.

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

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).

waters; conducting boating accident investigations; identifying and removing derelict vessels; and investigating vessel theft and title fraud.⁵

FWC has adopted rules to establish and govern a uniform system of regulatory markers for the waters of the state, in conformance with the United States Coast Guard in the United States Aids to Navigation System, 33 C.F.R. part 62.⁶ Counties and municipalities which have been granted a designation for a boating-restricted area by FWC are eligible to apply to FWC for permission to place regulatory markers within the boating-restricted area.⁷ Only permitted counties and municipalities may place regulatory markers on waters of the state.⁸

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.⁹ 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.¹⁰

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.¹¹ 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.¹²

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 Sections 327.40 and 327.41, F.S.

⁷ Section 327.41, F.S.

⁸ Fla. Admin. Code R. 68D-23.

⁹ 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.

¹⁰ 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. 17, 2021).

¹¹ *See* s. 373.118, F.S., and Fla. Admin. Code R. 62-330.420(1).

¹² *See* Fla. Admin. Code R. 62-330.420.

Local governments are authorized to enact and enforce ordinances that prohibit or restrict the mooring or anchoring of floating structures¹³ or live-aboard vessels¹⁴ within their jurisdictions and vessels that are within the marked boundaries of permitted mooring fields.¹⁵ 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.¹⁶

Anchoring Limitation Areas

State law designates certain densely populated urban areas as anchoring limitation areas.¹⁷ 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.¹⁸

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.¹⁹ 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.²⁰

Certain government, construction, and fishing vessels are also exempt from anchoring limitation areas.²¹

¹³ 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."

¹⁴ 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."

¹⁵ Section 327.60(3), F.S.

¹⁶ Section 327.60(2)(f), F.S.

¹⁷ Section 327.4108(1), F.S.

¹⁸ *Id.*

¹⁹ Section 327.4108(2), F.S.

²⁰ Section 327.4108(3), F.S.; *see also* s. 327.48, F.S.

²¹ Section 327.4108(4), F.S.

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.²² 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.²³

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.²⁴

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.²⁵

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 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.²⁶

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.²⁷ 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.²⁸ 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.²⁹ 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.³⁰

²² Section 327.4108(5), F.S.

²³ *Id.*

²⁴ Section 327.73(1)(z), F.S.

²⁵ Sections 775.082 and 775.083, F.S.

²⁶ Section 705.103(2), F.S.

²⁷ *Id.*

²⁸ Section 705.103(4), F.S.

²⁹ Section 705.103(3), F.S.

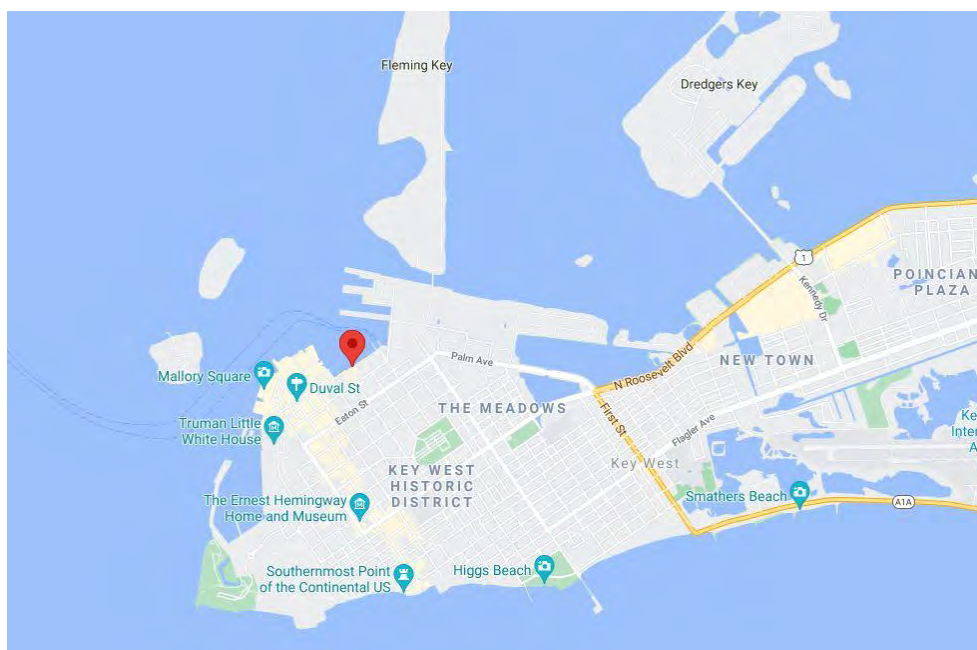
³⁰ *Id.*

Relocation or Removal of Derelict Vessels

Section 823.11, F.S., allows for the relocation or removal of a derelict vessel³¹ 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.³² 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.³³

Key West Bight City Dock

The Key West Bight City Dock is located on the Palm Avenue Causeway in Garrison Bight.



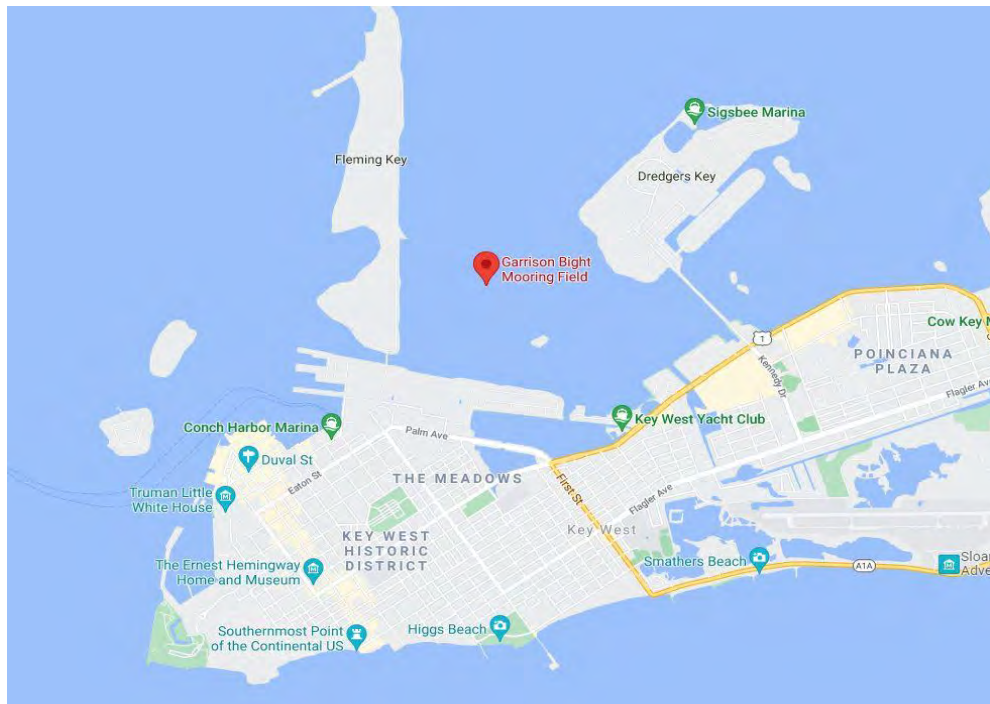
Key West Garrison Bight Mooring Field

The Key West Garrison Bight Mooring Field is located between Fleming Key and Sigsbee Park.

³¹ 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.

³² Section 823.11(3), F.S.

³³ *Id.*; see s. 705.103(4), F.S.



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 adjacent to urban areas that have 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 delineated navigable-in-fact waterways.

The bill defines “navigable-in-fact waterways” to mean:

Waterways that are navigable in their natural or unimproved condition over which useful commerce or public recreation of a substantial and permanent character is or may be conducted in the customary mode of trade and travel on water. The term does not include lakes or streams that are theoretically navigable; have a potential for navigability; or are temporary, precarious, and unprofitable, but the term does include lakes or streams that have practical usefulness to the public as highways for transportation.

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;
- Not include any mooring field or marina; 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 by which the anchoring limitation area was created.
- Buoys marking the boundary of the anchoring limitation area.

The signs and buoys required under the bill must be permitted and installed in accordance with statutory provisions for uniform waterway markers and Fish and Wildlife Conservation Commission (FWC) rules.

The bill prohibits a person from anchoring a vessel for more than 45 consecutive days in a 6-month period in an anchoring limitation area established under the bill.

The bill requires a county that proposes to establish an anchoring limitation area to provide notice to FWC 30 days before final adoption of an ordinance establishing an anchoring limitation area. The bill requires FWC to publish notice of the proposed ordinance on its website and distribute notice through FWC's Boating and Waterways Section e-mail distribution list for ordinances.

The bill prohibits Monroe County from establishing an anchoring limitation area until the county approves, permits, and opens new moorings for public use, including:

- At least 250 moorings within 1 mile of the Key West Bight City Dock; and
- At least 50 moorings within the Key West Garrison Bight Mooring Field.

The bill requires FWC to designate the area within 1 mile of the Key West Bight City Dock as a priority for the investigation and removal of derelict vessels until a county approves, permits, and opens these new moorings.

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 45 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 45 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 45 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 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 expressly grandfathers-in the geographic areas already designated anchoring limitation areas in statute.

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 identified.

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 Changes:**

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

CS/CS/CS by Rules on April 16, 2021:

- Authorizes new anchoring limitation areas adjacent to certain urban areas.
- Limits the total anchoring limitation areas in a county to a specified portion of a county's delineated navigable-in-fact waterways.
- Defines the term "navigable-in-fact waterways."
- Prohibits the inclusion of a marina in an anchoring limitation area.
- Deletes the requirement that subjects an ordinance establishing a new anchoring limitation area to review and approval by the Fish and Wildlife Conservation Commission (FWC).
- Requires that the signs and buoys required to mark an anchoring limitation area be permitted and installed in accordance with the statutory requirements for uniform waterway markers and FWC rules.
- Increases the time in which a person may anchor a vessel to 45, from 30, consecutive days within a 6-month period.
- Requires a county proposing to establish an anchoring limitation area to provide notice to FWC before final adoption of an ordinance and requires FWC to publish notice of the proposed ordinance.
- Prohibits Monroe County from establishing an anchoring limitation area until the county approves, permits, and opens a specified number of new moorings for public use within 1 mile of the Key West Bight City Dock and within the Key West Garrison Bight Mooring Field.
- Requires FWC to designate the area within 1 mile of the Key West Bight City Dock as a priority for the investigation and removal of derelict vessels until the county approves, permits, and opens the new moorings.
- Revises the acceptable proof that a vessel has not exceeded the time limitation to include documentation and electronic evidence showing that the vessel was in another

location at least 1 mile away within a period of less than 45 days, rather than 30 days, before the inquiry.

- Deletes provisions from the underlying bill that require rulemaking by FWC.

CS/CS by Community Affairs on March 30, 2021:

The committee substitute made a technical change to clarify that the geographic areas already designated as anchoring limitation areas in the statute are grandfathered-in.

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.

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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 that such misdemeanor is 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 defining terms; authorizing heads of certain entities
16 to establish temporary protection zones in certain
17 water bodies for certain purposes; providing
18 protection zone requirements; prohibiting the
19 restriction of vessel movement within the Florida
20 Intracoastal Waterway except under certain
21 circumstances; requiring the heads of certain entities
22 to report the establishment of such protection zones
23 to the commission and to the appropriate United States
24 Coast Guard Sector Command; providing requirements for
25 the report; providing applicability; providing
26 criminal penalties; amending s. 327.352, F.S.;
27 revising conditions under which a person commits a
28 misdemeanor of the first degree for refusing to submit
29 to certain tests; amending s. 327.35215, F.S.;

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30 requiring the clerk of the court to notify the
31 Department of Highway Safety and Motor Vehicles of
32 certain final dispositions by electronic transmission;
33 requiring the department to enter such disposition on
34 a person's driving record; amending s. 327.359, F.S.;
35 revising conditions under which a person commits a
36 misdemeanor of the first degree for refusing to submit
37 to certain tests; creating s. 327.371, F.S.; providing
38 circumstances under which a person may operate a
39 human-powered vessel within the boundaries of the
40 marked channel of the Florida Intracoastal Waterway;
41 providing a penalty; amending s. 327.391, F.S.;
42 conforming cross-references; amending s. 327.395,
43 F.S.; revising the types of documentation that a
44 person may use to comply with certain boating safety
45 requirements; removing the authority of the commission
46 to appoint certain entities to administer a boating
47 safety education course or temporary certificate
48 examination and issue certain credentials; exempting
49 certain persons from the requirement to possess
50 certain documents aboard a vessel; removing the
51 specified service fee amount that certain entities
52 that issue boating safety identification cards and
53 temporary certificates may charge and keep; amending
54 s. 327.4107, F.S.; revising the conditions under which
55 officers may determine a vessel is at risk of becoming
56 derelict; authorizing certain officers to provide
57 notice that a vessel is at risk of becoming derelict
58 via body camera recordings; authorizing the commission

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59 or certain officers to relocate at-risk vessels to a
60 certain distance from mangroves or vegetation;
61 providing that the commission or officers are not
62 liable for damages to such vessels; providing an
63 exception; authorizing the commission to establish a
64 derelict vessel prevention program consisting of
65 certain components; authorizing the commission to
66 adopt rules; providing that such program is subject to
67 appropriation by the Legislature; providing for
68 funding; amending s. 327.4108, F.S.; designating
69 Monroe County as an anchoring limitation area subject
70 to certain requirements; requiring the commission to
71 adopt rules; providing construction; requiring the
72 commission to designate a specified area as a priority
73 for the removal of derelict vessels until certain
74 conditions are met; deleting obsolete language;
75 amending s. 327.4109, F.S.; prohibiting the anchoring
76 or mooring of a vessel or floating structure within a
77 certain distance of certain facilities; providing
78 exceptions; amending s. 327.45, F.S.; authorizing the
79 commission to establish protection zones where certain
80 activities are prohibited in or near springs; amending
81 s. 327.46, F.S.; authorizing a county or municipality
82 to establish a boating-restricted area within and
83 around a public mooring field and within certain
84 portions of the Florida Intracoastal Waterway;
85 creating s. 327.463, F.S.; specifying conditions under
86 which a vessel is and is not operating at slow speed,
87 minimum wake; prohibiting a person from operating a

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vessel faster than slow speed, minimum wake within a certain distance from other specified vessels; providing requirements for construction vessel or barge flags; exempting a person from being cited for a violation under certain circumstances; providing civil penalties; providing applicability; amending s. 327.50, F.S.; authorizing the commission to exempt vessel owners and operators from certain safety equipment requirements; creating s. 327.521, F.S.; designating waters of this state within aquatic preserves as no-discharge zones upon approval by the United States Environmental Protection Agency; prohibiting discharge of sewage from a vessel or floating structure into such waters; providing civil penalties; providing increased penalties for each day the violation continues; requiring the owner or operator to remove such vessel or structure within a specified timeframe from the waters of this state upon a second conviction; defining the term "conviction"; providing requirements for removal and sale of such vessel or structure under certain circumstances; requiring the commission to maintain and make available to the public a list of marine sewage pumpout facilities; 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; providing an exception; conforming a cross-reference;

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117 making technical changes; amending s. 327.54, F.S.;
118 prohibiting a livery from leasing, hiring, or renting
119 a vessel to a person required to complete a
120 commission-approved boating safety education course
121 unless such person presents certain documentation
122 indicating compliance; amending s. 327.60, F.S.;
123 authorizing a local government to enact and enforce
124 regulations allowing the local law enforcement agency
125 to remove an abandoned or lost vessel affixed to a
126 public mooring; amending s. 327.73, F.S.; providing
127 additional violations that qualify as noncriminal
128 infractions; providing civil penalties; prohibiting
129 conviction of a person cited for a violation relating
130 to possessing proof of boating safety education under
131 certain circumstances; increasing certain civil
132 penalties; providing that certain vessels shall be
133 declared a public nuisance subject to certain
134 statutory provisions; authorizing the commission or
135 certain officers to relocate or remove public nuisance
136 vessels from the waters of this state; providing that
137 the commission or officers are not liable for damages
138 to such vessels; providing an exception; amending s.
139 328.09, F.S.; prohibiting the Department of Highway
140 Safety and Motor Vehicles from issuing a certificate
141 of title to an applicant for a vessel that has been
142 deemed derelict pursuant to certain provisions;
143 authorizing the department, at a later date, to reject
144 an application for a certificate of title for such a
145 vessel; amending s. 376.15, F.S.; revising unlawful

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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 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 criminal 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

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175 certain costs to be reported to the department;
176 prohibiting issuance of a certificate of registration
177 to such persons until such costs are paid; amending s.
178 823.11, F.S.; revising application of definitions;
179 revising the definition of the term "derelict vessel";
180 specifying requirements for a vessel to be considered
181 wrecked, junked, or substantially dismantled;
182 providing construction; revising unlawful acts
183 relating to derelict vessels; defining the term
184 "leave"; prohibiting an owner or operator whose vessel
185 becomes derelict due to specified accidents or events
186 from being charged with a violation under certain
187 circumstances; providing applicability; providing that
188 relocation or removal costs incurred by a governmental
189 subdivision are recoverable against the vessel owner
190 or the party determined to be legally responsible for
191 the vessel being derelict; providing criminal
192 penalties for a person who is issued a registration
193 for a vessel or motor vehicle before such costs are
194 paid; authorizing a governmental subdivision that has
195 received authorization from a law enforcement officer
196 or agency to direct a contractor to perform vessel
197 relocation or removal activities; providing effective
198 dates.

199
200 Be It Enacted by the Legislature of the State of Florida:

201
202 Section 1. Effective October 1, 2021, paragraphs (a) and
203 (c) of subsection (1) of section 316.1932, Florida Statutes, are

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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 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

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233 lawful test of his or her breath and his or her driving
234 privilege has been previously suspended or if he or she has
235 previously been fined under s. 327.35215 for a prior refusal to
236 submit to a lawful test of his or her breath, urine, or blood as
237 required under this chapter or chapter 327, he or she commits a
238 misdemeanor of the first degree, punishable as provided in s.
239 775.082 or s. 775.083, in addition to any other penalties
240 provided by law. The refusal to submit to a chemical or physical
241 breath test upon the request of a law enforcement officer as
242 provided in this section is admissible into evidence in any
243 criminal proceeding.

244 b. A ~~Any~~ person who accepts the privilege extended by the
245 laws of this state of operating a motor vehicle within this
246 state is, by ~~so~~ operating such vehicle, deemed to have given his
247 or her consent to submit to a urine test for the purpose of
248 detecting the presence of chemical substances as set forth in s.
249 877.111 or controlled substances if the person is lawfully
250 arrested for any offense allegedly committed while the person
251 was driving or was in actual physical control of a motor vehicle
252 while under the influence of chemical substances or controlled
253 substances. The urine test must be incidental to a lawful arrest
254 and administered at a detention facility or any other facility,
255 mobile or otherwise, which is equipped to administer such tests
256 at the request of a law enforcement officer who has reasonable
257 cause to believe such person was driving or was in actual
258 physical control of a motor vehicle within this state while
259 under the influence of chemical substances or controlled
260 substances. The urine test shall be administered at a detention
261 facility or any other facility, mobile or otherwise, which is

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262 equipped to administer such test in a reasonable manner that
263 will ensure the accuracy of the specimen and maintain the
264 privacy of the individual involved. The administration of a
265 urine test does not preclude the administration of another type
266 of test. The person shall be told that his or her failure to
267 submit to any lawful test of his or her urine will result in the
268 suspension of the person's privilege to operate a motor vehicle
269 for a period of 1 year for the first refusal, or for a period of
270 18 months if the driving privilege of such person has been
271 previously suspended or if he or she has previously been fined
272 under s. 327.35215 as a result of a refusal to submit to ~~such~~ a
273 test or tests required under this chapter or chapter 327, and
274 shall also be told that if he or she refuses to submit to a
275 lawful test of his or her urine and his or her driving privilege
276 has been previously suspended or if he or she has previously
277 been fined under s. 327.35215 for a prior refusal to submit to a
278 lawful test of his or her breath, urine, or blood as required
279 under this chapter or chapter 327, he or she commits a
280 misdemeanor of the first degree, punishable as provided in s.
281 775.082 or s. 775.083, in addition to any other penalties
282 provided by law. The refusal to submit to a urine test upon the
283 request of a law enforcement officer as provided in this section
284 is admissible into evidence in any criminal proceeding.

285 2. The Alcohol Testing Program within the Department of Law
286 Enforcement is responsible for the regulation of the operation,
287 inspection, and registration of breath test instruments utilized
288 under the driving and boating under the influence provisions and
289 related provisions located in this chapter and chapters 322 and
290 327. The program is responsible for the regulation of the

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291 individuals who operate, inspect, and instruct on the breath
292 test instruments utilized in the driving and boating under the
293 influence provisions and related provisions located in this
294 chapter and chapters 322 and 327. The program is further
295 responsible for the regulation of blood analysts who conduct
296 blood testing to be utilized under the driving and boating under
297 the influence provisions and related provisions located in this
298 chapter and chapters 322 and 327. The program shall:

299 a. Establish uniform criteria for the issuance of permits
300 to breath test operators, agency inspectors, instructors, blood
301 analysts, and instruments.

302 b. Have the authority to permit breath test operators,
303 agency inspectors, instructors, blood analysts, and instruments.

304 c. Have the authority to discipline and suspend, revoke, or
305 renew the permits of breath test operators, agency inspectors,
306 instructors, blood analysts, and instruments.

307 d. Establish uniform requirements for instruction and
308 curricula for the operation and inspection of approved
309 instruments.

310 e. Have the authority to specify one approved curriculum
311 for the operation and inspection of approved instruments.

312 f. Establish a procedure for the approval of breath test
313 operator and agency inspector classes.

314 g. Have the authority to approve or disapprove breath test
315 instruments and accompanying paraphernalia for use pursuant to
316 the driving and boating under the influence provisions and
317 related provisions located in this chapter and chapters 322 and
318 327.

319 h. With the approval of the executive director of the

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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.

j. Enforce compliance with ~~the provisions of~~ this section through civil or administrative proceedings.

k. Make recommendations concerning any matter within the purview of this section, this chapter, chapter 322, or chapter 327.

l. Promulgate rules for the administration and implementation of this section, including definitions of terms.

m. Consult and cooperate with other entities for the purpose of implementing the mandates of this section.

n. Have the authority to approve the type of blood test utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327.

o. Have the authority to specify techniques and methods for breath alcohol testing and blood testing utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327.

p. Have the authority to approve repair facilities for the approved breath test instruments, including the authority to set criteria for approval.

Nothing in this section shall be construed to supersede

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provisions in this chapter and chapters 322 and 327. The specifications in this section are derived from the power and authority previously and currently possessed by the Department of Law Enforcement and are enumerated to conform with the mandates of chapter 99-379, Laws of Florida.

(c) A ~~Any~~ person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this 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

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378 been previously suspended for refusal to submit to a lawful test
379 of his or her breath, urine, or blood, is a misdemeanor. A ~~Any~~
380 person who is capable of refusal shall be told that his or her
381 failure to submit to such a blood test will result in the
382 suspension of the person's privilege to operate a motor vehicle
383 for a period of 1 year for a first refusal, or for a period of
384 18 months if the driving privilege of the person has been
385 suspended previously or if he or she has previously been fined
386 under s. 327.35215 as a result of a refusal to submit to ~~such a~~
387 test or tests required under this chapter or chapter 327, ~~and~~
388 ~~that a refusal to submit to a lawful test of his or her blood,~~
389 ~~if his or her driving privilege has been previously suspended~~
390 ~~for a prior refusal to submit to a lawful test of his or her~~
391 ~~breath, urine, or blood, is a misdemeanor.~~ The refusal to submit
392 to a blood test upon the request of a law enforcement officer is
393 admissible in evidence in any criminal proceeding.

394 Section 2. Effective October 1, 2021, subsection (1) of
395 section 316.1939, Florida Statutes, is amended to read:

396 316.1939 Refusal to submit to testing; penalties.—

397 (1) A ~~Any~~ person who has refused to submit to a chemical or
398 physical test of his or her breath, ~~blood,~~ or urine, as
399 described in s. 316.1932, and whose driving privilege was
400 previously suspended or who was previously fined under s.
401 327.35215 for a prior refusal to submit to a lawful test of his
402 or her breath, urine, or blood required under this chapter or
403 chapter 327, and:

404 (a) Who the arresting law enforcement officer had probable
405 cause to believe was driving or in actual physical control of a
406 motor vehicle in this state while under the influence of

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407 alcoholic beverages, chemical substances, or controlled
408 substances;

409 (b) Who was placed under lawful arrest for a violation of
410 s. 316.193 unless such test was requested pursuant to s.
411 316.1932(1)(c);

412 (c) Who was informed that, if he or she refused to submit
413 to such test, his or her privilege to operate a motor vehicle
414 would be suspended for a period of 1 year or, in the case of a
415 second or subsequent refusal, for a period of 18 months;

416 (d) Who was informed that a refusal to submit to a lawful
417 test of his or her breath or, urine, ~~or blood~~, if his or her
418 driving privilege has been previously suspended or if he or she
419 has previously been fined under s. 327.35215 for a prior refusal
420 to submit to a lawful test of his or her breath, urine, or blood
421 as required under this chapter or chapter 327, is a misdemeanor
422 of the first degree, punishable as provided in s. 775.082 or s.
423 775.083, in addition to any other penalties provided by law; and

424 (e) Who, after having been so informed, refused to submit
425 to any such test when requested to do so by a law enforcement
426 officer or correctional officer commits a misdemeanor of the
427 first degree and is subject to punishment as provided in s.
428 775.082 or s. 775.083.

429 Section 3. Present subsections (18) through (47) of section
430 327.02, Florida Statutes, are redesignated as subsections (19)
431 through (48), respectively, a new subsection (18) is added to
432 that section, and present subsection (31) of that section is
433 amended, to read:

434 327.02 Definitions.—As used in this chapter and in chapter
435 328, unless the context clearly requires a different meaning,

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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:

(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,

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465 payload, government astronaut, commercial astronaut, or
466 spaceflight participant for such launch.

467 (b) "Reentry services" means the conduct of a reentry and
468 activities involved in the preparation of a reentry vehicle,
469 payload, government astronaut, commercial astronaut, or
470 spaceflight participant for such reentry.

471 (c) "Spaceflight assets" means any item, or any part of an
472 item, owned by a spaceflight entity which is used in launch
473 services or reentry services, including crewed and uncrewed
474 spacecraft, launch vehicles, parachutes and other landing aids,
475 and any spacecraft or ancillary equipment that was attached to
476 the launch vehicle during launch, orbit, or reentry.

477 (d) "Spaceflight entity" has the same meaning as provided
478 in s. 331.501.

479 (2) The head of a law enforcement agency or entity
480 identified in s. 327.70(1), or his or her designee, may, upon
481 waters of this state within the law enforcement agency's or
482 entity's jurisdiction, when necessary for preparations in
483 advance of a launch service or reentry service or for the
484 recovery of spaceflight assets before or after a launch service
485 or reentry service, temporarily establish a protection zone
486 requiring vessels to leave, or prohibiting vessels from
487 entering, water bodies within:

488 (a) Five hundred yards of where launch services, reentry
489 services, or spaceflight asset recovery operations are being
490 conducted; or

491 (b) A distance greater than provided in paragraph (a) if
492 the head of such law enforcement agency or entity, or his or her
493 designee, determines such greater distance is in the best

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interest of public safety.

(3) A protection zone established under subsection (2) 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. The head of a law enforcement agency or entity identified in s. 327.70, or his or her designee:

(a) May also 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 the waters of this state; and

(b) May not restrict vessel movement within the Florida Intracoastal Waterway, except as necessary during the transport of spaceflight assets to or from port or during exigent circumstances.

(4) The head of a law enforcement agency or entity establishing a protection zone under this section, or his or her designee, must report the establishment of such protection zone via e-mail to the commission's Division of Law Enforcement, Boating and Waterways Section, and to the appropriate United States Coast Guard Sector Command having responsibility over the water body, at least 72 hours before establishment of the protection zone. Such report must include the reasons for the protection zone, the portion of the water body or water bodies which will be included in the protection zone, and the duration of the protection zone. No later than 72 hours after the end of

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the protection zone period, the head of the law enforcement agency or entity, or his or her designee, must report via e-mail to the commission's Division of Law Enforcement, Boating and Waterways Section, the details of all citations issued for violating the protection zone.

(5) This section applies only to launch services, reentry services, or the recovery of spaceflight assets occurring or 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. Effective October 1, 2021, 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

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552 this state is, by ~~se~~ operating such vessel, deemed to have given
553 his or her consent to submit to an approved chemical test or
554 physical test including, but not limited to, an infrared light
555 test of his or her breath for the purpose of determining the
556 alcoholic content of his or her blood or breath if the person is
557 lawfully arrested for any offense allegedly committed while the
558 person was operating a vessel while under the influence of
559 alcoholic beverages. The chemical or physical breath test must
560 be incidental to a lawful arrest and administered at the request
561 of a law enforcement officer who has reasonable cause to believe
562 such person was operating the vessel within this state while
563 under the influence of alcoholic beverages. The administration
564 of a breath test does not preclude the administration of another
565 type of test. The person shall be told that his or her failure
566 to submit to any lawful test of his or her breath under this
567 chapter will result in a civil penalty of \$500, and shall also
568 be told that if he or she refuses to submit to a lawful test of
569 his or her breath and he or she has been previously fined under
570 s. 327.35215 or has previously had his or her driver license
571 suspended for refusal to submit to any lawful test of his or her
572 breath, urine, or blood, he or she commits a misdemeanor of the
573 first degree, punishable as provided in s. 775.082 or s.
574 775.083, in addition to any other penalties provided by law. The
575 refusal to submit to a chemical or physical breath test upon the
576 request of a law enforcement officer as provided in this section
577 is admissible into evidence in any criminal proceeding.

578 2. 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 ~~se~~ operating such vessel, deemed to have given his or her

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581 consent to submit to a urine test for the purpose of detecting
582 the presence of chemical substances as set forth in s. 877.111
583 or controlled substances if the person is lawfully arrested for
584 any offense allegedly committed while the person was operating a
585 vessel while under the influence of chemical substances or
586 controlled substances. The urine test must be incidental to a
587 lawful arrest and administered at a detention facility or any
588 other facility, mobile or otherwise, which is equipped to
589 administer such tests at the request of a law enforcement
590 officer who has reasonable cause to believe such person was
591 operating a vessel within this state while under the influence
592 of chemical substances or controlled substances. The urine test
593 shall be administered at a detention facility or any other
594 facility, mobile or otherwise, which is equipped to administer
595 such test in a reasonable manner that will ensure the accuracy
596 of the specimen and maintain the privacy of the individual
597 involved. The administration of a urine test does not preclude
598 the administration of another type of test. The person shall be
599 told that his or her failure to submit to any lawful test of his
600 or her urine under this chapter will result in a civil penalty
601 of \$500, and shall also be told that if he or she refuses to
602 submit to a lawful test of his or her urine and he or she has
603 been previously fined under s. 327.35215 or has previously had
604 his or her driver license suspended for refusal to submit to any
605 lawful test of his or her breath, urine, or blood, he or she
606 commits a misdemeanor of the first degree, punishable as
607 provided in s. 775.082 or s. 775.083, in addition to any other
608 penalties provided by law. The refusal to submit to a urine test
609 upon the request of a law enforcement officer as provided in

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610 this section is admissible into evidence in any criminal
611 proceeding.

612 (c) A ~~Any~~ person who accepts the privilege extended by the
613 laws of this state of operating a vessel within this state is,
614 by operating such vessel, deemed to have given his or her
615 consent to submit to an approved blood test for the purpose of
616 determining the alcoholic content of the blood or a blood test
617 for the purpose of determining the presence of chemical
618 substances or controlled substances as provided in this section
619 if there is reasonable cause to believe the person was operating
620 a vessel while under the influence of alcoholic beverages or
621 chemical or controlled substances and the person appears for
622 treatment at a hospital, clinic, or other medical facility and
623 the administration of a breath or urine test is impractical or
624 impossible. As used in this paragraph, the term "other medical
625 facility" includes an ambulance or other medical emergency
626 vehicle. The blood test shall be performed in a reasonable
627 manner. A ~~Any~~ person who is incapable of refusal by reason of
628 unconsciousness or other mental or physical condition is deemed
629 not to have withdrawn his or her consent to such test. A ~~Any~~
630 person who is capable of refusal shall be told that his or her
631 failure to submit to such a blood test will result in a civil
632 penalty of \$500 ~~and that a refusal to submit to a lawful test of~~
633 ~~his or her blood, if he or she has previously been fined for~~
634 ~~refusal to submit to any lawful test of his or her breath,~~
635 ~~urine, or blood, is a misdemeanor.~~ The refusal to submit to a
636 blood test upon the request of a law enforcement officer shall
637 be admissible in evidence in any criminal proceeding.

638 Section 7. Subsection (3) of section 327.35215, Florida

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Statutes, is amended to read:

327.35215 Penalty for failure to submit to test.—

(3) A person who has been advised of the penalties pursuant to subsection (2) may, within 30 days afterwards, request a hearing before a county court judge. A request for a hearing tolls the period for payment of the civil penalty, and, if assessment of the civil penalty is sustained by the hearing and any subsequent judicial review, the civil penalty must be paid within 30 days after final disposition. The clerk of the court shall notify the Department of Highway Safety and Motor Vehicles of the final disposition of all actions filed under this section by electronic transmission in a format prescribed by the department. When the department receives the final disposition, the department shall enter the disposition on the person's driving record.

Section 8. Effective October 1, 2021, section 327.359, Florida Statutes, is amended to read:

327.359 Refusal to submit to testing; penalties.—~~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. 327.352, and who has been previously fined under s. 327.35215 or has previously had his or her driver license suspended for refusal to submit to a lawful test of his or her breath, urine, or blood, and:

(1) Who the arresting law enforcement officer had probable cause to believe was operating or in actual physical control of 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

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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 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 9. 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.

(b) When crossing the marked channel, provided that the

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697 crossing is done in the most direct, continuous, and expeditious
698 manner possible and does not interfere with other vessel traffic
699 in the channel.

700 (c) During an emergency endangering life or limb.

701 (2) A person may not operate a human-powered vessel in the
702 marked channel of the Florida Intracoastal Waterway except as
703 provided in subsection (1).

704 (3) A person who violates this section commits a
705 noncriminal infraction, punishable as provided in s. 327.73.

706 Section 10. Subsection (1) and paragraphs (a) and (b) of
707 subsection (5) of section 327.391, Florida Statutes, are amended
708 to read:

709 327.391 Airboats regulated.—

710 (1) The exhaust of every internal combustion engine used on
711 any airboat operated on the waters of this state shall be
712 provided with an automotive-style factory muffler, underwater
713 exhaust, or other manufactured device capable of adequately
714 muffling the sound of the exhaust of the engine as described in
715 s. 327.02(31) ~~s. 327.02(30)~~. The use of cutouts or flex pipe as
716 the sole source of muffling is prohibited, except as provided in
717 subsection (4). A ~~Any~~ person who violates this subsection
718 commits a noncriminal infraction, punishable as provided in s.
719 327.73(1).

720 (5)(a) ~~Beginning July 1, 2019,~~ A person may not operate an
721 airboat to carry one or more passengers for hire on waters of
722 this ~~the~~ state unless he or she has all of the following onboard
723 the airboat:

724 1. A photographic identification card.

725 2. Proof of completion of a boater education course that

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complies with s. 327.395(2)(a) ~~s. 327.395(1)(a)~~. Except as provided in paragraph (b), no operator is exempt from this requirement, regardless of age or the exemptions provided under s. 327.395.

3. Proof of successful completion of a commission-approved airboat operator course that meets the minimum standards established by commission rule.

4. Proof of successful course completion in cardiopulmonary resuscitation and first aid.

(b) A person issued a captain's license by the United States Coast Guard is not required to complete a boating safety education course that complies with s. 327.395(2)(a) ~~s. 327.395(1)(a)~~. Proof of the captain's license must be onboard the airboat when carrying one or more passengers for hire on waters of this ~~the~~ state.

Section 11. Section 327.395, Florida Statutes, is amended to read:

327.395 Boating safety education.—

(1) A person born on or after January 1, 1988, may not operate a vessel powered by a motor of 10 horsepower or greater unless such person has in his or her possession aboard the vessel the documents required by subsection (2).

(2) While operating a vessel, a person identified under subsection (1) must have in his or her possession aboard the vessel photographic identification and a Florida boating safety identification card issued by the commission; ~~a~~ a state-issued identification card or driver license indicating possession of the Florida boating safety identification card; ~~or~~ or photographic identification and a temporary certificate issued or approved by

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the commission, an International Certificate of Competency, a boating safety card or certificate from another state or United States territory, or a Canadian Pleasure Craft Operator Card, 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;

(c) A valid International Certificate of Competency; or

(d) Completed a boating safety education course or equivalency examination in another state, a United States territory, or Canada which 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 Florida 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.

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784 ~~(4) The commission may appoint liveries, marinas, or other~~
785 ~~persons as its agents to administer the course or temporary~~
786 ~~certificate examination and issue identification cards or~~
787 ~~temporary certificates in digital, electronic, or paper format~~
788 ~~under guidelines established by the commission. An agent must~~
789 ~~charge the \$2 examination fee, which must be forwarded to the~~
790 ~~commission with proof of passage of the examination and may~~
791 ~~charge and keep a \$1 service fee.~~

792 (5) A Florida boating safety identification card issued to
793 a person who has completed a boating safety education course is
794 valid for life. A temporary certificate issued to a person who
795 has passed a temporary certification examination is valid for 90
796 days after the date of issuance. The commission may issue either
797 the boating safety identification card or the temporary
798 certificate in a digital, electronic, or paper format.

799 (6) A person is exempt from subsection (1) if he or she:

800 (a)1. Is licensed by the United States Coast Guard to serve
801 as master of a vessel; or

802 2. Has been previously licensed by the United States Coast
803 Guard to serve as master of a vessel, provides proof of such
804 licensure to the commission, and requests that a boating safety
805 identification card be issued in his or her name.

806 (b) Operates a vessel only on a private lake or pond.

807 (c) Is accompanied in the vessel by a person who is exempt
808 from this section or who holds a boating safety identification
809 card in compliance with this section, who is 18 years of age or
810 older, and who is attendant to the operation of the vessel and
811 responsible for the safe operation of the vessel and for any
812 violation that occurs during the operation of the vessel.

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(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 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,

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842 electronic, or paper format. An agent ~~The agents~~ shall charge
843 and collect the \$2 fee required in subsection (9) for each
844 temporary certificate requested of the commission by that agent,
845 which must be forwarded to the commission. The agent may charge
846 and keep a ~~\$1~~ service fee.

847 (9) The commission may ~~is authorized to~~ establish and ~~to~~
848 collect a \$2 fee for each card and temporary certificate issued
849 pursuant to this section.

850 (10) The commission shall design forms and adopt rules
851 pursuant to chapter 120 to implement ~~the provisions of~~ this
852 section.

853 (11) This section may be cited as the "Osmany 'Ozzie'
854 Castellanos Boating Safety Education Act."

855 Section 12. Present subsection (5) of section 327.4107,
856 Florida Statutes, is redesignated as subsection (6), a new
857 subsection (5) and subsection (7) are added to that section, and
858 paragraphs (d) and (e) of subsection (2) of that section are
859 amended, to read:

860 327.4107 Vessels at risk of becoming derelict on waters of
861 this state.—

862 (2) An officer of the commission or of a law enforcement
863 agency specified in s. 327.70 may determine that a vessel is at
864 risk of becoming derelict if any of the following conditions
865 exist:

866 (d) The vessel is ~~left or stored aground unattended in such~~
867 ~~a state that would prevent the vessel from getting underway, is~~
868 ~~listing due to water intrusion, or is sunk or partially sunk.~~

869 (e) The vessel does not have an effective means of
870 propulsion for safe navigation within 72 hours after the vessel

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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
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

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her vessel and vessel title over to the commission to be
destroyed without penalty.

(c) Providing for 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.

(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 13. 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.

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929 (b) Sunset Lake in Miami-Dade County.

930 (c) The sections of Biscayne Bay in Miami-Dade County lying
931 between:

932 1. Rivo Alto Island and Di Lido Island.

933 2. San Marino Island and San Marco Island.

934 3. San Marco Island and Biscayne Island.

935 (2)(a) Monroe County is designated as an anchoring
936 limitation area within which a vessel on waters of the state may
937 only be anchored in the same location for a maximum of 90 days.
938 The commission shall adopt rules to implement this subsection.

939 (b) The anchoring limitations in this subsection do not
940 apply to approved and permitted moorings or mooring fields.

941 (c) Notwithstanding the commission rules adopted pursuant
942 to this section, this section is not effective for Monroe County
943 until the county approves, permits, and opens new moorings for
944 public use, including at least 250 moorings within 1 mile of the
945 Key West Bight City Dock and at least 50 moorings within the Key
946 West Garrison Bight Mooring Field. Until such time, the
947 commission shall designate the area within 1 mile of the Key
948 West Bight City Dock as a priority for the investigation and
949 removal of derelict vessels.

950 ~~(2) To promote the public's use and enjoyment of the~~
951 ~~designated waterway, except as provided in subsections (3) and~~
952 ~~(4), a person may not anchor a vessel at any time during the~~
953 ~~period between one-half hour after sunset and one-half hour~~
954 ~~before sunrise in an anchoring limitation area.~~

955 (3) Notwithstanding subsections (1) and subsection (2), a
956 person may anchor a vessel in an anchoring limitation area
957 during a time that would otherwise be unlawful:

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958 (a) If the vessel suffers a mechanical failure that poses
959 an unreasonable risk of harm to the vessel or the persons
960 onboard unless the vessel anchors. The vessel may anchor for 3
961 business days or until the vessel is repaired, whichever occurs
962 first.

963 (b) If imminent or existing weather conditions in the
964 vicinity of the vessel pose an unreasonable risk of harm to the
965 vessel or the persons onboard unless the vessel anchors. The
966 vessel may anchor until weather conditions no longer pose such
967 risk. During a hurricane or tropical storm, weather conditions
968 are deemed to no longer pose an unreasonable risk of harm when
969 the hurricane or tropical storm warning affecting the area has
970 expired.

971 (c) During events described in s. 327.48 or other special
972 events, including, but not limited to, public music
973 performances, local government waterfront activities, or
974 fireworks displays. A vessel may anchor for the lesser of the
975 duration of the special event or 3 days.

976 (4) This section does not apply to:

977 (a) Vessels owned or operated by a governmental entity for
978 law enforcement, firefighting, military, or rescue purposes.

979 (b) Construction or dredging vessels on an active job site.

980 (c) Vessels actively engaged in commercial fishing.

981 (d) Vessels engaged in recreational fishing if the persons
982 onboard are actively tending hook and line fishing gear or nets.

983 (5)(a) As used in this subsection, the term "law
984 enforcement officer or agency" means an officer or agency
985 authorized to enforce this section pursuant to s. 327.70.

986 (b) A law enforcement officer or agency may remove a vessel

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987 from an anchoring limitation area and impound the vessel for up
988 to 48 hours, or cause such removal and impoundment, if the
989 vessel operator, after being issued a citation for a violation
990 of this section:

991 1. Anchors the vessel in violation of this section within
992 12 hours after being issued the citation; or

993 2. Refuses to leave the anchoring limitation area after
994 being directed to do so by a law enforcement officer or agency.

995 (c) A law enforcement officer or agency acting under this
996 subsection to remove or impound a vessel, or to cause such
997 removal or impoundment, shall be held harmless for any damage to
998 the vessel resulting from such removal or impoundment unless the
999 damage results from gross negligence or willful misconduct.

1000 (d) A contractor performing removal or impoundment services
1001 at the direction of a law enforcement officer or agency pursuant
1002 to this subsection must:

1003 1. Be licensed in accordance with United States Coast Guard
1004 regulations, as applicable.

1005 2. Obtain and carry a current policy issued by a licensed
1006 insurance carrier in this state to insure against any accident,
1007 loss, injury, property damage, or other casualty caused by or
1008 resulting from the contractor's actions.

1009 3. Be properly equipped to perform such services.

1010 (e) In addition to the civil penalty imposed under s.
1011 327.73(1)(z), the operator of a vessel that is removed and
1012 impounded pursuant to paragraph (b) must pay all removal and
1013 storage fees before the vessel is released. A vessel removed
1014 pursuant to paragraph (b) may not be impounded for longer than
1015 48 hours.

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1016 (6) A violation of this section is punishable as provided
1017 in s. 327.73(1)(z).

1018 ~~(7) This section shall remain in effect notwithstanding the~~
1019 ~~Legislature's adoption of the commission's recommendations for~~
1020 ~~the regulation of mooring vessels outside of public mooring~~
1021 ~~fields pursuant to s. 327.4105.~~

1022 Section 14. Paragraph (a) of subsection (1) and subsection
1023 (2) of section 327.4109, Florida Statutes, are amended to read:

1024 327.4109 Anchoring or mooring prohibited; exceptions;
1025 penalties.—

1026 (1)(a) The owner or operator of a vessel or floating
1027 structure may not anchor or moor such that the nearest approach
1028 of the anchored or moored vessel or floating structure is:

1029 1. Within 150 feet of any public or private marina, boat
1030 ramp, boatyard, or other public vessel launching or loading
1031 facility;

1032 2. Within 500 ~~300~~ feet of a superyacht repair facility. For
1033 purposes of this subparagraph, the term "superyacht repair
1034 facility" means a facility that services or repairs a yacht with
1035 a water line of 120 feet or more in length; or

1036 3. Within 100 feet outward from the marked boundary of a
1037 public mooring field or a lesser distance if approved by the
1038 commission upon request of a local government within which the
1039 mooring field is located. The commission may adopt rules to
1040 implement this subparagraph.

1041 (2) Notwithstanding subsection (1), an owner or operator of
1042 a vessel may anchor or moor within 150 feet of any public or
1043 private marina, boat ramp, boatyard, or other public vessel
1044 launching or loading facility; within 500 ~~300~~ feet of a

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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 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 15. 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 that 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 16. Paragraph (b) of subsection (1) of section 327.46, Florida Statutes, is amended to read:

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1074 327.46 Boating-restricted areas.—

1075 (1) Boating-restricted areas, including, but not limited
1076 to, restrictions of vessel speeds and vessel traffic, may be
1077 established on the waters of this state for any purpose
1078 necessary to protect the safety of the public if such
1079 restrictions are necessary based on boating accidents,
1080 visibility, hazardous currents or water levels, vessel traffic
1081 congestion, or other navigational hazards or to protect
1082 seagrasses on privately owned submerged lands.

1083 (b) Municipalities and counties ~~may have the authority to~~
1084 establish the following boating-restricted areas by ordinance,
1085 including, notwithstanding the prohibition in s. 327.60(2)(c),
1086 within the portion of the Florida Intracoastal Waterway within
1087 their jurisdiction:

1088 1. An ordinance establishing an idle speed, no wake
1089 boating-restricted area, if the area is:

1090 a. Within 500 feet of any boat ramp, hoist, marine railway,
1091 or other launching or landing facility available for use by the
1092 general boating public on waterways more than 300 feet in width
1093 or within 300 feet of any boat ramp, hoist, marine railway, or
1094 other launching or landing facility available for use by the
1095 general boating public on waterways not exceeding 300 feet in
1096 width.

1097 b. Within 500 feet of fuel pumps or dispensers at any
1098 marine fueling facility that sells motor fuel to the general
1099 boating public on waterways more than 300 feet in width or
1100 within 300 feet of the fuel pumps or dispensers at any licensed
1101 terminal facility that sells motor fuel to the general boating
1102 public on waterways not exceeding 300 feet in width.

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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 area is:

a. Designated as a public bathing beach or swim area.

b. Within 300 feet of a dam, spillway, or flood control structure.

Vessel exclusion zones created pursuant to this subparagraph must be marked with uniform waterway markers permitted by the commission in accordance with this chapter. Such zones may not be marked by ropes.

Section 17. 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:

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- 1132 1. Fully off plane and completely settled into the water;
1133 and
1134 2. Proceeding without wake or with minimum wake.

1135
1136 A vessel that is required to operate at slow speed, minimum wake
1137 may not proceed at a speed greater than a speed that is
1138 reasonable and prudent to avoid the creation of an excessive
1139 wake or other hazardous condition under the existing
1140 circumstances.

- 1141 (b) Is not proceeding at slow speed, minimum wake if it is:
1142 1. Operating on plane;
1143 2. In the process of coming off plane and settling into the
1144 water or getting on plane; or
1145 3. Operating at a speed that creates a wake that
1146 unreasonably or unnecessarily endangers other vessels.

1147 (2) A person may not operate a vessel faster than slow
1148 speed, minimum wake within 300 feet of any emergency vessel,
1149 including, but not limited to, a law enforcement vessel, United
1150 States Coast Guard vessel, or firefighting vessel, when such
1151 emergency vessel's emergency lights are activated.

1152 (3)(a) A person may not operate a vessel faster than slow
1153 speed, minimum wake within 300 feet of any construction vessel
1154 or barge when the vessel or barge is displaying an orange flag
1155 from a pole extending:

- 1156 1. At least 10 feet above the tallest portion of the vessel
1157 or barge, indicating that the vessel or barge is actively
1158 engaged in construction operations; or
1159 2. At least 5 feet above any superstructure permanently
1160 installed upon the vessel or barge, indicating that the vessel

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or barge is actively engaged in construction operations.

(b) A flag displayed on a construction vessel or barge pursuant to this subsection must:

1. Be at least 2 feet by 3 feet in size.

2. 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.

3. Be displayed so that the visibility of the flag is not obscured in any direction.

(c) In periods of low visibility, including any time between 30 minutes after sunset and 30 minutes before sunrise, a person may not be cited for a violation of this subsection unless the orange flag is illuminated and visible from a distance of at least 2 nautical miles. Such illumination does not relieve the construction vessel or barge from complying with 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 18. Paragraph (a) of subsection (1) of section 327.50, Florida Statutes, is amended to read:

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1190 327.50 Vessel safety regulations; equipment and lighting
1191 requirements.—

1192 (1)(a) The owner and operator of every vessel on the waters
1193 of this state shall carry, store, maintain, and use safety
1194 equipment in accordance with current United States Coast Guard
1195 safety equipment requirements as specified in the Code of
1196 Federal Regulations, unless expressly exempted by the commission
1197 department.

1198 Section 19. Section 327.521, Florida Statutes, is created
1199 to read:

1200 327.521 No-discharge zones.—

1201 (1) Effective immediately upon approval by the United
1202 States Environmental Protection Agency of a no-discharge zone
1203 determination for the waters of the United States within the
1204 boundaries of aquatic preserves identified in s. 258.39, all
1205 waters of this state within such areas are designated no-
1206 discharge zones within which a person may not discharge sewage
1207 of any type, whether treated or untreated, from any vessel or
1208 floating structure.

1209 (2) A person who violates this section commits a
1210 noncriminal infraction, punishable by a civil penalty of up to
1211 \$250. If any discharge prohibited by this section is ongoing or
1212 continuous, the person may be assessed a penalty of up to \$250
1213 for each day the violation continues.

1214 (3)(a) The owner or operator of a vessel or floating
1215 structure convicted a second time for violating this section
1216 shall, within 30 days after the conviction, remove the vessel or
1217 floating structure from the waters of this state. For purposes
1218 of this paragraph, the term "conviction" means a disposition

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1219 other than acquittal or dismissal.

1220 (b) If the vessel or floating structure remains on the
1221 waters of this state in violation of this subsection, law
1222 enforcement officers charged with the enforcement of this
1223 chapter under s. 327.70 shall apply to the appropriate court in
1224 the county in which the vessel or floating structure is located
1225 to order or otherwise cause the removal of such vessel or
1226 floating structure from the waters of this state at the owner's
1227 expense.

1228 (c) If the owner cannot be found or otherwise fails to pay
1229 the removal costs, s. 328.17 shall apply. If the proceeds under
1230 s. 328.17 are not sufficient to pay all removal costs, funds
1231 appropriated from the Marine Resources Conservation Trust Fund
1232 pursuant to s. 327.53(6)(b) or s. 328.72(15)(c) may be used.

1233 (4) The commission shall maintain a list of marine sewage
1234 pumpout facilities throughout this state, make the list
1235 available on its website, and provide the list with information
1236 about the Department of Environmental Protection's Clean Marina
1237 Program to all counties for distribution to public and private
1238 marinas.

1239 Section 20. Paragraph (a) of subsection (6) and subsection
1240 (7) of section 327.53, Florida Statutes, are amended, and
1241 subsection (8) is added to that section, to read:

1242 327.53 Marine sanitation.—

1243 (6)(a) A violation of this section is a noncriminal
1244 infraction, punishable as provided in s. 327.73. Each violation
1245 shall be a separate offense. The owner and operator of any
1246 vessel shall be jointly and severally liable for the civil
1247 penalty imposed pursuant to this section.

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1248 (7) ~~A~~ Any vessel or floating structure operated or occupied
1249 on the waters of this ~~the~~ state in violation of this section is
1250 declared a nuisance and a hazard to public safety and health.
1251 The owner or operator of ~~a~~ any vessel or floating structure
1252 cited for violating this section shall, within 30 days following
1253 the issuance of the citation, correct the violation for which
1254 the citation was issued or remove the vessel or floating
1255 structure from the waters of this ~~the~~ state. If the violation is
1256 not corrected within the 30 days and the vessel or floating
1257 structure remains on the waters of this ~~the~~ state in violation
1258 of this section, law enforcement officers charged with the
1259 enforcement of this chapter under s. 327.70 shall apply to the
1260 appropriate court in the county in which the vessel or floating
1261 structure is located, to order or otherwise cause the removal of
1262 such vessel or floating structure from the waters of this ~~the~~
1263 state at the owner's expense. If the owner cannot be found or
1264 otherwise fails to pay the removal costs, the provisions of s.
1265 328.17 shall apply. If the proceeds under s. 328.17 are not
1266 sufficient to pay all removal costs, funds appropriated from the
1267 Marine Resources Conservation Trust Fund pursuant to paragraph
1268 (6)(b) or s. 328.72(15)(c) ~~s. 328.72(16)~~ may be used.

1269 (8) The owner or operator of a live-aboard vessel as
1270 defined in s. 327.02(23), or a houseboat as defined in s.
1271 327.02(17), that is equipped with a marine sanitation device
1272 must maintain a record of the date of each pumpout of the marine
1273 sanitation device and the location of the pumpout station or
1274 waste reception facility. Each record must be maintained for 1
1275 year after the date of the pumpout. This subsection does not
1276 apply to marine compost toilets that process and manage human

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1277 waste using marine compost toilet technologies that comply with
1278 United States Coast Guard requirements.

1279 Section 21. Subsection (2) of section 327.54, Florida
1280 Statutes, is amended to read:

1281 327.54 Liveries; safety regulations; penalty.—

1282 (2) A livery may not knowingly lease, hire, or rent a ~~any~~
1283 vessel ~~powered by a motor of 10 horsepower or greater to a~~ any
1284 person who is required to comply with s. 327.395~~7~~, unless such
1285 person presents to the livery the documentation required by s.
1286 327.395(2) for the operation of a vessel ~~photographic~~
1287 ~~identification and a valid boater safety identification card as~~
1288 ~~required under s. 327.395(1)7~~, or meets the exemption provided
1289 under s. 327.395(6)(f).

1290 Section 22. Subsection (5) of section 327.60, Florida
1291 Statutes, is amended to read:

1292 327.60 Local regulations; limitations.—

1293 (5) A local government may enact and enforce regulations to
1294 implement the procedures for abandoned or lost property that
1295 allow the local law enforcement agency to remove a vessel
1296 affixed to a public dock or mooring within its jurisdiction that
1297 is abandoned or lost property pursuant to s. 705.103(1). Such
1298 regulation must require the local law enforcement agency to post
1299 a written notice at least 24 hours before removing the vessel.

1300 Section 23. Paragraphs (q), (s), and (aa) of subsection (1)
1301 of section 327.73, Florida Statutes, are amended, and paragraphs
1302 (cc) and (dd) are added to that subsection, to read:

1303 327.73 Noncriminal infractions.—

1304 (1) Violations of the following provisions of the vessel
1305 laws of this state are noncriminal infractions:

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(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 officer specified in s. 327.70 may relocate, remove, or cause to be relocated or removed such public nuisance vessels from waters

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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. 775.083. A written warning to this effect shall be provided at the time such uniform boating citation is issued.

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1364 Section 24. Subsection (4) of section 328.09, Florida
1365 Statutes, is amended to read:

1366 328.09 Refusal to issue and authority to cancel a
1367 certificate of title or registration.—

1368 (4) The department may not issue a certificate of title to
1369 an ~~any~~ applicant for a ~~any~~ vessel that has been deemed derelict
1370 by a law enforcement officer under s. 376.15 or s. 823.11. A law
1371 enforcement officer must inform the department in writing, which
1372 may be provided by facsimile, electronic mail, or other
1373 electronic means, of the vessel's derelict status and supply the
1374 department with the vessel title number or vessel identification
1375 number. The department may issue a certificate of title once a
1376 law enforcement officer has verified in writing, which may be
1377 provided by facsimile, electronic mail, or other electronic
1378 means, that the vessel is no longer a derelict vessel.

1379 Section 25. Effective July 1, 2023, paragraph (e) of
1380 subsection (3) of section 328.09, Florida Statutes, as amended
1381 by section 12 of chapter 2019-76, Laws of Florida, is amended to
1382 read:

1383 328.09 Refusal to issue and authority to cancel a
1384 certificate of title or registration.—

1385 (3) Except as otherwise provided in subsection (4), the
1386 department may reject an application for a certificate of title
1387 only if:

1388 (e) The application is for a vessel that has been deemed
1389 derelict by a law enforcement officer under s. 376.15 or s.
1390 823.11. In such case, a law enforcement officer must inform the
1391 department in writing, which may be provided by facsimile, e-
1392 mail, or other electronic means, of the vessel's derelict status

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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 26. 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.

(b) Notwithstanding paragraph (a), a person who owns or operates a vessel that becomes derelict upon the waters of this

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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~~ 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 enforcement agency in the relocation, ~~or removal,~~ storage, destruction, or disposal of any abandoned or derelict vessel are

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1451 recoverable against the owner of the vessel or the party
1452 determined to be legally responsible for the vessel being upon
1453 the waters of this state in a derelict condition. The Department
1454 of Legal Affairs shall represent the commission in actions to
1455 recover such costs.

1456 (b) The commission, an officer ~~officers~~ of the commission,
1457 or a ~~and any other~~ law enforcement agency or officer specified
1458 in s. 327.70 acting pursuant to ~~under~~ this section to relocate,
1459 remove, store, destroy, or dispose of or cause to be relocated,
1460 ~~or removed, stored, destroyed, or disposed of~~ a derelict vessel
1461 from ~~public~~ waters of this state as defined in s. 327.02 shall
1462 be held harmless for all damages to the derelict vessel
1463 resulting from such action ~~relocation or removal~~ unless the
1464 damage results from gross negligence or willful misconduct as
1465 these terms are defined in s. 823.11.

1466 (c) A contractor performing relocation or removal
1467 activities at the direction of the commission, an officer
1468 ~~officers~~ of the commission, ~~or~~ a law enforcement agency or
1469 officer, or a governmental subdivision, when the governmental
1470 subdivision has received authorization for the relocation or
1471 removal from a law enforcement officer or agency pursuant to
1472 this section, must be licensed in accordance with applicable
1473 United States Coast Guard regulations where required; obtain and
1474 carry in full force and effect a policy from a licensed
1475 insurance carrier in this state to insure against any accident,
1476 loss, injury, property damage, or other casualty caused by or
1477 resulting from the contractor's actions; and be properly
1478 equipped to perform the services to be provided.

1479 (d) The commission may establish a program to provide

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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
waters of this the state as defined in s. 327.02.

(f) This section constitutes the authority for such removal

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but is not intended to be in contravention of any applicable federal act.

Section 27. 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 state, the officer shall cause a notice to be placed upon such vessel in substantially the following form:

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1538
1539 NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED
1540 VESSEL. This vessel, to wit: ...(setting forth brief
1541 description)... has been determined to be (derelict or a public
1542 nuisance) and is unlawfully upon waters of this state
1543 ...(setting forth brief description of location)... and must be
1544 removed within 21 days; otherwise, it will be removed and
1545 disposed of pursuant to chapter 705, Florida Statutes. The owner
1546 and other interested parties have the right to a hearing to
1547 challenge the determination that this vessel is derelict or
1548 otherwise in violation of the law. Please contact ...(contact
1549 information for person who can arrange for a hearing in
1550 accordance with this section).... The owner or the party
1551 determined to be legally responsible for the vessel being upon
1552 the waters of this state in a derelict condition will be liable
1553 for the costs of removal, destruction, and disposal if this
1554 vessel is not removed by the owner. Dated this: ...(setting
1555 forth the date of posting of notice)...., signed: ...(setting
1556 forth name, title, address, and telephone number of law
1557 enforcement officer)....

1558 2. The notices required under subparagraph 1. may ~~Such~~
1559 ~~notice shall be~~ not be less than 8 inches by 10 inches and shall
1560 be sufficiently weatherproof to withstand normal exposure to the
1561 elements. In addition to posting, the law enforcement officer
1562 shall make a reasonable effort to ascertain the name and address
1563 of the owner. If such is reasonably available to the officer,
1564 she or he shall mail a copy of such notice to the owner on or
1565 before the date of posting. If the property is a motor vehicle
1566 as defined in s. 320.01(1) or a vessel as defined in s. 327.02,

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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 vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), has not requested a hearing in accordance with

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1596 this section, the following shall apply:

1597 a.~~(a)~~ For abandoned property other than a derelict vessel
1598 or a vessel declared a public nuisance pursuant to s.
1599 327.73(1)(aa), the law enforcement agency may retain any or all
1600 of the property for its own use or for use by the state or unit
1601 of local government, trade such property to another unit of
1602 local government or state agency, donate the property to a
1603 charitable organization, sell the property, or notify the
1604 appropriate refuse removal service.

1605 b. For a derelict vessel or a vessel declared a public
1606 nuisance pursuant to s. 327.73(1)(aa), the law enforcement
1607 agency or its designee may:

1608 (I) Remove the vessel from the waters of this state and
1609 destroy and dispose of the vessel or authorize another
1610 governmental entity or its designee to do so; or

1611 (II) Authorize the vessel's use as an artificial reef in
1612 accordance with s. 379.249 if all necessary federal, state, and
1613 local authorizations are received.

1614
1615 A law enforcement agency or its designee may also take action as
1616 described in this sub-subparagraph if, following a hearing
1617 pursuant to this section, the judge, magistrate, administrative
1618 law judge, or hearing officer has determined the vessel to be
1619 derelict as provided in s. 823.11 or otherwise in violation of
1620 the law in accordance with s. 327.73(1)(aa) and a final order
1621 has been entered or the case is otherwise closed.

1622 (b) For lost property, the officer shall take custody and
1623 the agency shall retain custody of the property for 90 days. The
1624 agency shall publish notice of the intended disposition of the

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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 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

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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 notice via certified mail that such costs are owed, and who applies for and is issued a registration for a vessel or motor

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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 28. 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 PROPERTY. This property, to wit: ...(setting forth brief description)... is unlawfully upon public property known as

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1712 ...(setting forth brief description of location)... and must be
1713 removed within 5 days; otherwise, it will be removed and
1714 disposed of pursuant to chapter 705, Florida Statutes. The owner
1715 will be liable for the costs of removal, storage, and
1716 publication of notice. Dated this: ...(setting forth the date of
1717 posting of notice)..., signed: ...(setting forth name, title,
1718 address, and telephone number of law enforcement officer)....
1719

1720 b. A derelict vessel or a vessel declared a public nuisance
1721 pursuant to s. 327.73(1)(aa) is present on the waters of this
1722 state, the officer shall cause a notice to be placed upon such
1723 vessel in substantially the following form:
1724

1725 NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED
1726 VESSEL. This vessel, to wit: ...(setting forth brief description
1727 of location)... has been determined to be (derelict or a public
1728 nuisance) and is unlawfully upon the waters of this state
1729 ...(setting forth brief description of location)... and must be
1730 removed within 21 days; otherwise, it will be removed and
1731 disposed of pursuant to chapter 705, Florida Statutes. The owner
1732 and other interested parties have the right to a hearing to
1733 challenge the determination that this vessel is derelict or
1734 otherwise in violation of the law. Please contact ...(contact
1735 information for person who can arrange for a hearing in
1736 accordance with this section)... The owner or the party
1737 determined to be legally responsible for the vessel being upon
1738 the waters of this state in a derelict condition will be liable
1739 for the costs of removal, destruction, and disposal if this
1740 vessel is not removed by the owner. Dated this: ...(setting

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1741 forth the date of posting of notice)...., signed: ...(setting
1742 forth name, title, address, and telephone number of law
1743 enforcement officer)....

1744
1745 2. The notices required under subparagraph 1. may ~~Such~~
1746 ~~notice shall be~~ not be less than 8 inches by 10 inches and shall
1747 be sufficiently weatherproof to withstand normal exposure to the
1748 elements. In addition to posting, the law enforcement officer
1749 shall make a reasonable effort to ascertain the name and address
1750 of the owner. If such is reasonably available to the officer,
1751 she or he shall mail a copy of such notice to the owner on or
1752 before the date of posting. If the property is a motor vehicle
1753 as defined in s. 320.01(1) or a vessel as defined in s. 327.02,
1754 the law enforcement agency shall contact the Department of
1755 Highway Safety and Motor Vehicles in order to determine the name
1756 and address of the owner and any person who has filed a lien on
1757 the vehicle or vessel as provided in s. 319.27(2) or (3) or s.
1758 328.15. On receipt of this information, the law enforcement
1759 agency shall mail a copy of the notice by certified mail, return
1760 receipt requested, to the owner and to the lienholder, if any,
1761 except that a law enforcement officer who has issued a citation
1762 for a violation of s. 376.15 or s. 823.11 to the owner of a
1763 derelict vessel is not required to mail a copy of the notice by
1764 certified mail, return receipt requested, to the owner. For a
1765 derelict vessel or a vessel declared a public nuisance pursuant
1766 to s. 327.73(1)(aa), the mailed notice must inform the owner or
1767 responsible party that he or she has a right to a hearing to
1768 dispute the determination that the vessel is derelict or
1769 otherwise in violation of the law. If a request for a hearing is

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made, a state agency shall follow the processes as 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:

(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

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1799 accordance with s. 379.249 if all necessary federal, state, and
1800 local authorizations are received.

1801
1802 A law enforcement agency or its designee may also take action as
1803 described in this sub-subparagraph if, following a hearing
1804 pursuant to this section, the judge, magistrate, administrative
1805 law judge, or hearing officer has determined the vessel to be
1806 derelict as provided in s. 823.11 or otherwise in violation of
1807 the law in accordance with s. 327.73(1)(aa) and a final order
1808 has been entered or the case is otherwise closed.

1809 (b) For lost property, the officer shall take custody and
1810 the agency shall retain custody of the property for 90 days. The
1811 agency shall publish notice of the intended disposition of the
1812 property, as provided in this section, during the first 45 days
1813 of this time period.

1814 1. If the agency elects to retain the property for use by
1815 the unit of government, donate the property to a charitable
1816 organization, surrender such property to the finder, sell the
1817 property, or trade the property to another unit of local
1818 government or state agency, notice of such election shall be
1819 given by an advertisement published once a week for 2
1820 consecutive weeks in a newspaper of general circulation in the
1821 county where the property was found if the value of the property
1822 is more than \$100. If the value of the property is \$100 or less,
1823 notice shall be given by posting a description of the property
1824 at the law enforcement agency where the property was turned in.
1825 The notice must be posted for not less than 2 consecutive weeks
1826 in a public place designated by the law enforcement agency. The
1827 notice must describe the property in a manner reasonably

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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. 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 29. 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~~:

1. In a wrecked, junked, or substantially dismantled

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condition upon any ~~public~~ waters of this state.

a. 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.

b. 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. 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 as required by s. 327.4107(2)(e) and associated rules.

c. A vessel is substantially dismantled if at least two of the three following vessel systems or components are missing, compromised, incomplete, inoperable, or broken:

(I) The steering system;

(II) The propulsion system; or

(III) 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 such motor is not an effective means of propulsion as required by s. 327.4107(2)(e) and associated rules.

2. At a port in this state without the consent of the agency having jurisdiction thereof.

3. Docked, grounded, or beached upon the property of another without the consent of the owner of the property.

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(c) "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.

(d) "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~~ A person, firm, or corporation may not to store, leave, or abandon any derelict vessel upon 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 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

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control, within 7 days after such accident or event; or

b. Within 45 days after the hurricane has passed over the 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) 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 derelict vessel from ~~public~~ public waters of this state as defined in s. 327.02 if the derelict vessel obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment, property, or persons. The commission, an officer ~~officers~~ of the commission, or any other law enforcement agency or officer acting pursuant to ~~under~~ this subsection to relocate, remove, store, destroy, dispose of or cause to be relocated, ~~or~~ removed, stored, destroyed, or disposed of a derelict vessel from ~~public~~ public waters of this state shall be held harmless for all damages to the derelict vessel resulting from such action ~~relocation or removal~~ unless the damage results from gross negligence or willful misconduct.

(a) Removal of derelict vessels under this subsection may be funded by grants provided in ss. 206.606 and 376.15. The commission shall implement a plan for the procurement of any available federal disaster funds and use such funds for the removal of derelict vessels.

(b) All costs, including costs owed to a third party,

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1944 incurred by the commission, another ~~or other~~ law enforcement
1945 agency, or a governmental subdivision, when the governmental
1946 subdivision has received authorization from a law enforcement
1947 officer or agency, in the relocation, ~~or~~ removal, storage,
1948 destruction, or disposal of a derelict vessel are recoverable
1949 against the vessel owner or the party determined to be legally
1950 responsible for the vessel being upon the waters of this state
1951 in a derelict condition. The Department of Legal Affairs shall
1952 represent the commission in actions to recover such costs. As
1953 provided in s. 705.103(4), a person who neglects or refuses to
1954 pay such costs may not be issued a certificate of registration
1955 for such vessel or for any other vessel or motor vehicle until
1956 such costs have been paid. A person who has neglected or refused
1957 to pay all costs of removal, storage, destruction, or disposal
1958 of a derelict vessel as provided in this section, after having
1959 been provided written notice via certified mail that such costs
1960 are owed, and who applies for and is issued a registration for a
1961 vessel or motor vehicle before such costs have been paid in full
1962 commits a misdemeanor of the first degree, punishable as
1963 provided in s. 775.082 or s. 775.083.

1964 (c) A contractor performing such ~~relocation or removal~~
1965 activities at the direction of the commission, an officer
1966 ~~officers~~ of the commission, ~~or~~ a law enforcement agency or
1967 officer, or a governmental subdivision, when the governmental
1968 subdivision has received authorization for the relocation or
1969 removal from a law enforcement officer or agency, pursuant to
1970 this section must be licensed in accordance with applicable
1971 United States Coast Guard regulations where required; obtain and
1972 carry in full force and effect a policy from a licensed

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1973 insurance carrier in this state to insure against any accident,
1974 loss, injury, property damage, or other casualty caused by or
1975 resulting from the contractor's actions; and be properly
1976 equipped to perform the services to be provided.

1977 Section 30. Except as otherwise expressly provided in this
1978 act, this act shall take effect July 1, 2021.

Bill No. CS/CS/SB 1086, 1st Eng. (2021)

Amendment No.

CHAMBER ACTION

Senate

House

.

Representative Sirois offered the following:

Amendment

Remove lines 1123-1126

253597

Approved For Filing: 4/26/2021 4:38:38 PM

Bill No. CS/CS/SB 1086, 1st Eng. (2021)

Amendment No.

CHAMBER ACTION

Senate

House

.

Representative Sirois offered the following:

Amendment (with title amendment)

Remove line 846 and insert:
and keep a \$1 service fee.

T I T L E A M E N D M E N T

Remove lines 50-53 and insert:
certain documents aboard a vessel; amending

608587

Approved For Filing: 4/26/2021 4:38:41 PM

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 Appropriations

BILL: CS/CS/SB 1086

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Environment and Natural Resources Committee; and Senator Hutson

SUBJECT: Operation and Safety of Motor Vehicles and Vessels

DATE: April 18, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Anderson	Rogers	EN	Fav/CS
2. Reagan	Betta	AEG	Recommend: Fav/CS
3. Reagan	Sadberry	AP	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/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 the FWC to implement provisions relating to derelict vessels.

Relating to boater safety, the bill:

- Effective October 1, 2021, 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 under certain conditions.
- Authorizes the 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 the 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 (DHSMV) from issuing a certificate of title to an applicant for a vessel that has been deemed derelict, and beginning in 2023, authorizes the DHSMV to reject an application for a certificate of title for a vessel that has been deemed derelict.
- Authorizes the 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 pump out.

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.
- Requires the Department of Highway Safety and Motor Vehicles to enter final disposition of failure to submit to a sobriety test into a person’s driving record.

Relating to spaceflight, the bill authorizes the 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.

There may be a positive fiscal impact to the FWC due to the new and increased civil penalties provided under the bill. However, the FWC may also experience increased costs due to increased enforcement.

The bill provides that except as otherwise expressly provided, the effective date is July 1, 2021.

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 The 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, the 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 the 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 the 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

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.

courses available at various price points ranging from free up to \$50.⁹ The course must meet the eight-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 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, 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 equivalent examination in another state that 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

⁹ FWC, *Boating Safety Courses*, <https://myfwc.com/boating/safety-education/courses/> (last visited Feb. 23, 2021).

¹⁰ Section 327.395(1), F.S.

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.

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 outside the vessel or due to vessel overloading or excessive speed.¹⁶ Operating a vessel in excess of a posted speed limit is a noncriminal 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:

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.

- 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; or
- 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

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.

limitation area.³⁴ 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.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

The 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 The 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, the 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. The 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

³⁴ Section 327.4108(2), F.S.

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.*

exist in several areas noted under FWC rule and statute.⁴³ In these cases, a showing of substantial competent evidence is not required.

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

The 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, the FWC consults and coordinates with the appropriate water management district, the Department of Environmental Protection, and the county and municipality, if applicable, where the zone is located.⁵⁶

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 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.

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

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

⁵⁷ Section 327.45(5), F.S.

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.

If, after five 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

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

The 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 the FWC's direction are required to be licensed, insured, and properly equipped to perform the services to be provided.⁷⁰

The costs incurred by the 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

⁶⁴ *Id.*

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.

The 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 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, the 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

⁷³ Section 376.15, F.S.

⁷⁴ Fla. Admin. Code R. 68-1.003.

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.

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:

- 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 The 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, the 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; a vessel for which a declaration of domicile has been filed; or a vessel used as a residence that does not have an effective means of propulsion for safe navigation; and specifically excludes commercial

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.

fishing vessels.⁹³ Vessel owners with Type III⁹⁴ marine sanitation devices must dispose of sewage in an approved 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

⁹³ Section 327.02(22), 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.

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.*

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 one 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 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 penalties for 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 The 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

¹⁰⁴ Section 316.1932(1)(a) and (1)(c), F.S.

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.*

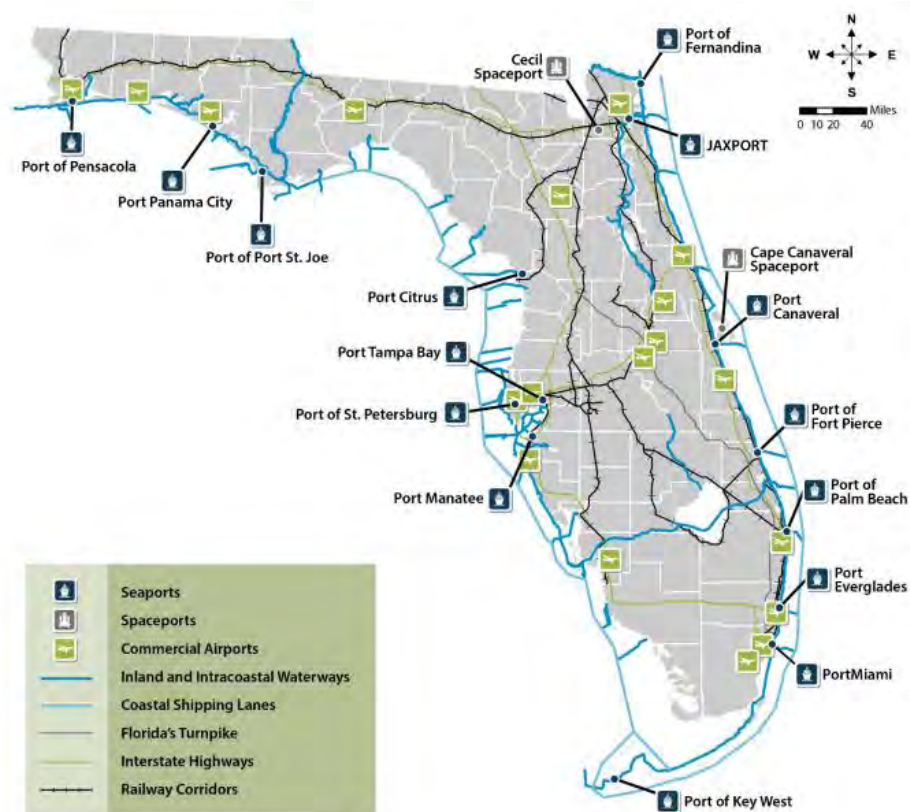
¹¹⁵ Sections 403.9321-403.9333, F.S.

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

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).

Canaveral Spaceport,¹²⁰ including the SpaceX Demo-2 mission in May 2020¹²¹ and the SpaceX 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 The National Aeronautics and Space Administration (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 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. The 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, effective October 1, 2021, amends s. 316.1932, F.S., relating to tests for alcohol, chemical substances, or controlled substances while driving a motor vehicle.

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).

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 2 of the bill, effective October 1, 2021, 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.

Section 6 of the bill, effective October 1, 2021, 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 8 of the bill, effective October 1, 2021, 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 8**, 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.

Section 7 of the bill amends s. 327.35215, F.S., to require the Department of Highway Safety and Motor Vehicles to enter final disposition of failure to submit to a blood, breath, or urine test into a person's driving record.

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 9 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 the 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 the 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

¹³⁰ The bill defines “spaceflight entity” to have the same definition as in s. 331.501, F.S.

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.
- 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 may not restrict vessel movement within the Florida Intracoastal Waterway, except as necessary during the transport of spaceflight assets to or from port or during exigent circumstances.
- Law enforcement must report the establishment of the temporary protection zone via email to The 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 the 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 11, 17, and 20

Section 11 of the bill amends s. 327.395, F.S., relating to boater safety identification.

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.

The bill clarifies what documentation and certifications persons operating a vessel must have in their possession aboard the vessel.

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 the FWC, and requested that a boating safety identification card be issued in his or her name.

The bill deletes a provision authorizing the 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.

Section 17 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, a Coast Guard vessel, or a 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 20 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 the 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 the FWC.
- These provisions do not apply to those individuals that are exempt from boating safety education requirements (Individuals born before January 1, 1988).

Boating-Restricted Areas: Sections 13, 14, 15, and 16

Section 13 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 on the waters of this state may only be anchored in the same location for a maximum of 90 days. The bill requires the 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 provides that this section is not effective until Monroe County approves, permits, and opens new moorings for public use, at least 250 moorings within one mile of the Key West Bight City Dock and at least 50 moorings within the Key West Garrison Bight Mooring Field. Until such time the FWC shall designate the area within one mile of the Key West Bight City Dock as a priority for the investigation and removal of derelict vessels, notwithstanding the FWC rules adopted pursuant to this section.

The bill deletes a provision that references an obsolete section of law.

Section 14 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 15 of the bill amends s. 327.45, F.S., relating to protection zones for springs. The bill authorizes the 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 the FWC using the most recent Florida Geological Survey springs bulletin.

Section 16 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 provides that boating restricted areas designated by a local ordinance as a public bathing beach or swim area must be accessible by land and open to the general public.

Derelict/At-Risk Vessels: Sections 12, 21, 23, 24, 25, 26, and 28

Section 12 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 the 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 the 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 negligence¹³² or willful misconduct.¹³³

The bill authorizes the 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 the 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

¹³² “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.

¹³³ “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.

- Creation or acquisition of moorings designated for securing vessels at risk of becoming derelict.

The bill authorizes the 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 21 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 23 and Section 24 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 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 the DHSMV to reject an application for a certificate of title for a vessel that has been deemed derelict.

Section 25 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 seven 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 the 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 the 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. The 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 the 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 26 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 the 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 28 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 the 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. The 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 the 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 19

Section 19 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 pump-out of the device and the location of the pump-out station or waste reception facility. The bill requires each record to be maintained for one year after the pump-out date. This subsection does not apply to vessels equipped with marine compost toilets that process and manage human waste using marine compost toilet technologies that comply with U.S. Coast Guard requirements.

Penalties: Section 21

Section 22 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 the 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 negligence¹³⁴ or willful misconduct.¹³⁵

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 10, 18, and 27

Section 10 of the bill amends s. 327.391, F.S., relating to the regulation of airboats, to make conforming and technical changes.

¹³⁴ “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.

¹³⁵ “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.

Section 18 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 the FWC may exempt vessel owners and operators from current Coast Guard safety equipment requirements.

Section 27 of the bill amends s. 705.103, F.S., relating to the procedures for abandoned or lost property, to conform to revisions from ch. 2019-76, Laws of Florida, which take effect in 2023.

Effective Date

Section 29 of the bill provides that except as otherwise expressly provided, the effective date is July 1, 2021. (Sections 1, 2, 6, and 8 of the bill take effect October 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.

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 the FWC due to the new and increased civil penalties provided under the bill. However, the FWC may also experience increased costs due to increased enforcement.

If the 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, 327.50, 327.53, 327.54, 327.60, 327.73, 328.09, 376.15, 705.103, and 823.11.

This bill creates the following sections of the Florida Statutes: 327.462, 327.371, and 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/CS by Appropriations on April 15, 2021:

The committee substitute:

- Requires the Department of Highway Safety and Motor Vehicles to enter final disposition of failure to submit to a blood, breath, or urine test into a person's driving record.
- Provides that the head of a law enforcement agency or entity, or his or her designee may not restrict vessel movement within the Florida Intracoastal Waterway, when establishing a temporary protective zone, except as necessary during transport of spaceflight assets to or from port or during exigent circumstances
- Establishes an effective date of October 1, 2021, to revise 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.
- Clarifies what documents or certifications are required for operation of a vessel.
- Provides that the designation of Monroe County as an anchoring limitation area is not effective until Monroe County approves, permits, and opens new moorings for public

use, at least 250 moorings within 1 mile of the Key West Bight City Dock and at least 50 moorings within the Key West Garrison Bight Mooring Field. Until such time the FWC shall designate the area within 1 mile of the Key West Bight City Dock as a priority for the expedited removal of derelict vessels.

- Clarifies that the area within one mile of the Key West Bight City Dock is prioritized for investigation of derelict vessels as well as vessel removal.
- Provides that boating-restricted areas designated by a local ordinance as a public bathing beach or swim area must be accessible by land and open to the general public.
- Provides that the marine sanitation device pumpout requirements in the underlying bill do not apply to certain marine compost toilets that are United States Coast Guard compliant.
- Clarifies that the documentation required to lease, hire, or rent a vessel from a livery is the same as is required under the boater safety identification requirements revised in the underlying 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 the Fish and Wildlife Conservation Commission (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 the FWC to adopt rules to implement the Monroe County anchoring limitation area.
- Authorizes the 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 the 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 the 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 the 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.

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1
2 An act relating to racketeering; amending s. 895.02,
3 F.S.; revising the definition of the term
4 "racketeering activity" to include certain actions
5 relating to wild animal life, freshwater aquatic life,
6 or marine life; providing an effective date.
7

8 Be It Enacted by the Legislature of the State of Florida:
9

10 Section 1. Paragraph (a) of subsection (8) of section
11 895.02, Florida Statutes, is amended, and a new paragraph (c) is
12 added to that subsection, to read:

13 895.02 Definitions.—As used in ss. 895.01-895.08, the term:

14 (8) "Racketeering activity" means to commit, to attempt to
15 commit, to conspire to commit, or to solicit, coerce, or
16 intimidate another person to commit:

17 (a) Any crime that is chargeable by petition, indictment,
18 or information under the following provisions of the Florida
19 Statutes:

20 1. Section 210.18, relating to evasion of payment of
21 cigarette taxes.

22 2. Section 316.1935, relating to fleeing or attempting to
23 elude a law enforcement officer and aggravated fleeing or
24 eluding.

25 3. Chapter 379, relating to the illegal sale, purchase,
26 collection, harvest, capture, or possession of wild animal life,
27 freshwater aquatic life, or marine life, and related crimes.

28 4. Section 403.727(3)(b), relating to environmental
29 control.

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30 5.4. Section 409.920 or s. 409.9201, relating to Medicaid
31 fraud.

32 6.5. Section 414.39, relating to public assistance fraud.

33 7.6. Section 440.105 or s. 440.106, relating to workers'
34 compensation.

35 8.7. Section 443.071(4), relating to creation of a
36 fictitious employer scheme to commit reemployment assistance
37 fraud.

38 9.8. Section 465.0161, relating to distribution of
39 medicinal drugs without a permit as an Internet pharmacy.

40 10.9. Section 499.0051, relating to crimes involving
41 contraband, adulterated, or misbranded drugs.

42 11.10. Part IV of chapter 501, relating to telemarketing.

43 12.11. Chapter 517, relating to sale of securities and
44 investor protection.

45 13.12. Section 550.235 or s. 550.3551, relating to
46 dogracing and horseracing.

47 14.13. Chapter 550, relating to jai alai frontons.

48 15.14. Section 551.109, relating to slot machine gaming.

49 16.15. Chapter 552, relating to the manufacture,
50 distribution, and use of explosives.

51 17.16. Chapter 560, relating to money transmitters, if the
52 violation is punishable as a felony.

53 18.17. Chapter 562, relating to beverage law enforcement.

54 19.18. Section 624.401, relating to transacting insurance
55 without a certificate of authority, s. 624.437(4)(c)1., relating
56 to operating an unauthorized multiple-employer welfare
57 arrangement, or s. 626.902(1)(b), relating to representing or
58 aiding an unauthorized insurer.

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59 ~~20.19.~~ Section 655.50, relating to reports of currency
60 transactions, when such violation is punishable as a felony.

61 ~~21.20.~~ Chapter 687, relating to interest and usurious
62 practices.

63 ~~22.21.~~ Section 721.08, s. 721.09, or s. 721.13, relating to
64 real estate timeshare plans.

65 ~~23.22.~~ Section 775.13(5)(b), relating to registration of
66 persons found to have committed any offense for the purpose of
67 benefiting, promoting, or furthering the interests of a criminal
68 gang.

69 ~~24.23.~~ Section 777.03, relating to commission of crimes by
70 accessories after the fact.

71 ~~25.24.~~ Chapter 782, relating to homicide.

72 ~~26.25.~~ Chapter 784, relating to assault and battery.

73 ~~27.26.~~ Chapter 787, relating to kidnapping or human
74 trafficking.

75 ~~28.27.~~ Chapter 790, relating to weapons and firearms.

76 ~~29.28.~~ Chapter 794, relating to sexual battery, but only if
77 such crime was committed with the intent to benefit, promote, or
78 further the interests of a criminal gang, or for the purpose of
79 increasing a criminal gang member's own standing or position
80 within a criminal gang.

81 ~~30.29.~~ Former s. 796.03, former s. 796.035, s. 796.04, s.
82 796.05, or s. 796.07, relating to prostitution.

83 ~~31.30.~~ Chapter 806, relating to arson and criminal
84 mischief.

85 ~~32.31.~~ Chapter 810, relating to burglary and trespass.

86 ~~33.32.~~ Chapter 812, relating to theft, robbery, and related
87 crimes.

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~~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

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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, collection, harvest,
capture, 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 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 Taxation by Clemons

Taxation: 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

04/07/2021 HOUSE Substituted for SB 0050; Laid on Table, Refer to SB 0050

SB 0050 Taxation by Gruters

Taxation; Citing this act as the "Park Randall 'Randy' Miller Act"; revising 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 a marketplace seller, rather than the marketplace provider, is liable for sales tax collection and remittance under certain circumstances; requiring certain amounts to be deposited into the Unemployment Compensation Trust Fund during specified periods, etc. APPROPRIATION: \$353,000 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

04/19/2021 Approved by Governor; Chapter No. 2021-002

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

04/08/2021 HOUSE Enrolled Text (ER) Filed

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

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 Motor Vehicle and Vessel Registration Data by Fernandez-Barquin

Motor Vehicle and Vessel Registration Data: Requires tax collectors or third parties contracted with tax collectors to enter into memorandum of understanding with DHSMV & make certain determinations; requires DHSMV to ensure certain technology used by tax collectors protects customer privacy & data; authorizes DHSMV to provide certain technology to tax collectors upon request in order to provide data access & uniform interface functionalities for registration renewal transactions; authorizes use of data & functionality for certain purposes; requires development of data access & uniform interface functionalities by certain date. Effective Date: July 1, 2021

Actions

04/22/2021 HOUSE Enrolled Text (ER) Filed

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

04/07/2021 HOUSE Enrolled Text (ER) Filed

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

04/14/2021 HOUSE Enrolled Text (ER) Filed

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 Boating Safety Education by Botana

Boating Safety Education: Requires boating safety education courses & temporary certificate

examinations to include specified information; directs FWCC to include specified information in boating safety campaigns & education materials. Effective Date: July 1, 2021

Actions

04/05/2021 HOUSE Now in Commerce Committee

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

04/27/2021 HOUSE Laid on Table

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

03/26/2021 SENATE Now in Appropriations

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

04/27/2021 HOUSE Laid on Table

SB 0342 Vehicle and Vessel Registration by Diaz

Vehicle and Vessel Registration; Authorizing 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

04/27/2021 SENATE Enrolled Text (ER) Filed

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 Retail Petroleum Fuel Measuring Devices by Rodriguez (A)

Retail Petroleum Fuel Measuring Devices; Revising the types of certain security measures required to be affixed to or installed onto retail petroleum fuel measuring devices; requiring owners or operators of retail petroleum fuel measuring devices to affix to or install onto the measuring devices certain security measures by a specified date; authorizing the Department of Agriculture and Consumer Services to take certain retail petroleum fuel measuring devices out of service until compliance is restored; preempting the regulation of petroleum fuel measuring devices to the state, etc. Effective Date: 7/1/2021

Actions

04/23/2021 SENATE Enrolled Text (ER) Filed

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

04/08/2021 SENATE Read Second Time; Substituted for HB 0059; Laid on Table, Refer to HB 0059

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

04/27/2021 HOUSE Read Second Time; Placed on Third Reading, 04/28/21

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

04/14/2021 SENATE Read Second Time; Substituted for HB 0223; Laid on Table, Refer to HB 0223

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

04/07/2021 SENATE Read Second Time; Substituted for HB 0217; Laid on Table, Refer to HB 0217

HB 0669

Largemouth Bass by Trabulsy

Largemouth Bass: Requires FWCC to adopt certain rules; provides for sale of Florida largemouth bass as food fish. Effective Date: July 1, 2021

Actions

04/26/2021 HOUSE Laid on Table, Refer to CS/CS/SB 1018

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 collectors to provide notice to consumers about data collection & selling practices; provides consumers right to request 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, private cause of action, enforcement, & jurisdiction. Effective Date: July 1, 2022

Actions

04/21/2021 SENATE Received; Referred to Rules

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 legislative review & repeal of exemption; provides statement of public necessity. Effective Date: on the same date that CS/CS/CS/HB 969 or similar legislation takes effect

Actions

04/21/2021 SENATE Received; Referred to Rules

SB 1018

Largemouth Bass by Boyd

Largemouth Bass; Requiring the Department of Agriculture and Consumer Services, in consultation with specified entities, to adopt a rule requiring certain facilities to maintain stock acquisition documentation or records of genetic testing related to Florida largemouth bass; authorizing the sale of Florida largemouth bass as food fish under certain circumstances, etc. Effective Date: 7/1/2021

Actions

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; Repealing a provision relating to applications for funding for technical assistance relating to areas in and around a proposed multiuse corridor interchange; 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; revising a limitation on an annual transfer from the State Transportation Trust Fund to the Right-of-Way Acquisition and Bridge Construction Trust Fund; requiring drivers to change lanes when approaching a road and bridge maintenance or construction vehicle displaying warning lights on the roadside without advance signs and channelizing devices; 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, etc. Effective Date: Except as otherwise expressly provided in this act, this act shall take effect July 1, 2021

Actions

04/27/2021 HOUSE Read Second Time; Placed on Third Reading, 04/28/21

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

03/24/2021 HOUSE Now in Justice Appropriations Subcommittee

SB 1324	Digital Driver Licenses and Identification Cards by Harrell <p>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</p> <p>Actions</p> <p>04/22/2021 SENATE Read Second Time; Substituted for HB 1313; Laid on Table, Refer to HB 1313</p>
SB 1326	Public Records/Department of Highway Safety and Motor Vehicles by Harrell <p>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</p> <p>Actions</p> <p>04/22/2021 SENATE Read Second Time; Substituted for HB 1315; Laid on Table, Refer to HB 1315</p>
HB 1335	Seagrass Mitigation Banks by Sirois <p>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</p> <p>Actions</p> <p>03/23/2021 HOUSE Now in Agriculture & Natural Resources Appropriations Subcommittee</p>
HB 1337	Anchoring Limitation Areas by Geller <p>Anchoring Limitation Areas: Designates specified waterways as anchoring limitation areas. Effective Date: July 1, 2021</p> <p>Actions</p> <p>03/05/2021 HOUSE Now in Environment, Agriculture & Flooding Subcommittee</p>
HB 1385	Department of Transportation by LaMarca <p>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</p> <p>Actions</p> <p>04/27/2021 HOUSE Laid on Table</p>
SB 1504	Coastal Construction and Preservation by Wright <p>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</p>

Actions

03/02/2021 SENATE Referred to Environment and Natural Resources; Appropriations Subcommittee on Agriculture, Environment, and General Government; Appropriations

HB 1515 Anchoring Limitation Areas by Duggan

Anchoring Limitation Areas: Grandfathers certain areas as 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

04/27/2021 HOUSE Laid on Table

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 owners of onsite sewage treatment and disposal systems to have the system periodically inspected, beginning on a specified date; requiring the Department of Health to administer the inspection program; requiring the department to implement program standards, procedures, and requirements; providing for rulemaking; requiring new or revised basin management action plans to include an identification and prioritization of certain spatially focused projects, etc. Effective Date: 7/1/2021

Actions

04/08/2021 SENATE Now in 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; Providing that certain areas are grandfathered-in anchoring limitation areas; authorizing counties to establish anchoring limitation areas that meet certain requirements; specifying size requirements for the anchoring limitation areas; prohibiting vessels from anchoring in such areas for longer than a specified time; prohibiting Monroe County from establishing an anchoring limitation area until the county meets certain requirements, etc. Effective Date: Upon becoming a law

Actions

04/27/2021 HOUSE Read Second Time; Placed on Third Reading, 04/28/21