

WEEKS 6-7 REPORT

// 2021 LEGISLATIVE SESSION

+ MARINE INDUSTRIES ASSOCIATION OF FLORIDA

APRIL 5 - 16, 2020



// WEEKS 6-7 REPORT

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Anchoring Limitation Areas

In all my years representing Marine Industries, I have never endured a Legislative Session like this regarding boating issues. This Session is difficult because of the pandemic but has been made even more difficult due to the number of bad proposed boating related issues filed this Session. This has been a long seven weeks and I am sure the final two will have a few surprises. We are watching closely to try and catch any and all amendments as it is that time of year.

I am happy to report, MIAPB, NMMA, and MIAF have worked very closely together on many of the issues in many of the proposed bills. Whether it be the Racketeering bill to the Anchoring bill, these organizations participated in numerous conference calls, Zoom meetings, conversations with legislators, etc. to try and make changes to any and all boating bills we tagged as unfriendly or needing amendments. This coalition has been wonderful to work with and I cannot thank them for all their time and resources. It honestly is taking all of us this year!

The good news is we were able to make some changes. The bad news is we did not get everything we requested, especially on the Anchoring bill. We did get the requested Racketeering amendment in the Senate and finally the House this week. We have made changes to the all encompassing FWC "Boating" bill as well. These are just a few of the bills we have been working on. Don't forget Marina Evacuations, Budget and Boating Safety Education and Vessel Safety Equipment.

As of the writing of this report it does not appear the Boater Safety Education bill or the Vessel Safety Equipment bill will pass, but we will watch as they could easily be amended on other bills.

Below is a brief rundown of the bills listed above plus some budget highlights for the House and Senate budget bills. The House and Senate have started the Budget Conference process.

Anchoring

SB/CS1946 and CS/HB1515

The Anchoring is ready for the Senate floor for passage. The bill know contains some language for the Keys as well. This bill has consumed a lot of time this Session and numerous conference calls, emails, Zoom conferences and meetings with legislators and

staff. It appears the Keys language has Senate leadership support.

MIAPB, NMMA and MIAF worked tirelessly to try and improve on a bill that Boat US worked with the House sponsor over the interim period. We were not included in this process. We have worked tirelessly since we learned of this bill to try and make improvements to the proposal as it has the backing of Boat US and has fractured the Boating coalition and our ability to work together on this and other boating related issues.

Improvements were made to the original bill as filed. Unfortunately, MIAPB and MIAF asked for 60 days and Senator Polsky would only agree to 45. She did accept a definition change we requested this last committee hearing.

Unfortunately, the boating caucus is fractured this Session. Boat US has chosen to support this bill but oppose the FWC bill openly in committees.

The House Bill, CS/HB 1515 is ready to be heard on the House floor for final passage. The bill is on Special Order April 20th. We anticipate the House bill to mirror the language that passed in the Senate. I have attached the bills and staff analysis for your information.

At this time we believe the bills will pass, especially with the addition of the Keys language.

We will keep you posted as these bills move forward this Session.

Racketeering

SB776 and HB 783

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 is now in messages in the House. We anticipate the House taking up SB 776 with Albritton language and passing it on the House floor. The bill will then be enrolled and sent to the Governor for approval.

A copy of the House Bill is attached for your information and a copy of the staff analysis. Also, the engrossed version of SB 776 is also included for your information.

Yet again, another 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 is on the Senate Special Order "If Received" on April 21st. This bill is improved from the originally filed version.

The House Bill received four committee references and has passed through three committees with amendments. The bill still has one committee left and as of the writing of this report that committee had not set its agenda yet. We would expect it to be on the agenda as the Senate bill is poised for passage on the Senate floor.

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. MIAF prefers the Senate Bill in its present form.

Marina Evacuation

SB578 and HB 223

As expected, the House sent over their Marina Evacuation bill and the Senate took up their version on the Senate floor and passed it. House Bill 223 is now enrolled. The enrolled version of the bill is attached for your information along with the last House committee staff analysis. The net stop for this bill will be the Governor’s desk for approval.

Budget

The Florida Senate is the host for the Budget Conference process this year. The final Appropriations Conference Report will have 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.

Attached for your review are a list of budget conferees for the House of Representatives and the Florida Senate. Also, attached is a memorandum outlining the protocols for the budget process and timelines we can anticipate. Again, COVID has changed how we conference, but we are monitoring via Florida Channel and reading budget offers on the websites. Again, we can adjust and we can continue to watch out for your interests. We will update you on the tax package once the House and Senate agree to terms..

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

1768 FIXED CAPITAL OUTLAY DERELICT VESSEL REMOVAL PROGRAM
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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.



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 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.

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: SB 1658 (as filed); CS/HB 271 + Staff Analysis

// 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: CS/SB 1668 + Staff Analysis; HB 1335 (as filed) + Staff Analysis

// ANCHORING LIMITATION AREAS

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

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

HOUSE/SENATE BILL RELATIONSHIP: *SIMILAR*

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

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

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

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

Attached documents: 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: Placed on Special Order Calendar, 04/21/21 - If Received;
Favorable with CS by Rules; 17 Yeas, 0 Nay

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: Favorable with CS by State Affairs Committee; 21 Yeas, 0 Nays; Placed on Special Order Calendar, 04/20/21

Attached documents: CS/CS/CS/SB 1946 + Staff Analysis; CS/CS/HB 1515 + 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: Favorable with CS by Appropriations; 20 Yeas, 0 Nays; Placed on Special Order Calendar, 04/21/21 - If Received

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: On Committee agenda - State Affairs Committee, 04/19/21, 2:30 pm

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

// RACKETEERING

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

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

HOUSE/SENATE BILL RELATIONSHIP: *SIMILAR*

Senate Bill 776: CS/SB 776 amends the definition of "racketeering activity" in the Florida RICO (Racketeer Influenced and Corrupt Organization) Act to include violations of ch. 379, F.S., and Title 68, F.A.C., relating to the illegal sale, purchase, take, or possession of wild animal life,

freshwater aquatic life, or marine life, and related crimes. Chapter 379, F.S., and Title 68, F.A.C., are implemented by the Florida Fish and Wildlife Conservation Commission (FWC). The effect of this change is that it will allow such unlawful acts to be prosecuted as racketeering if the commission of the acts constitutes racketeering. A criminal violation of the Florida RICO Act is a first degree felony. The Act also provides for civil remedies.

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

Most Recent Action: Read Second Time; Amendments Adopted (931580, 594970); Read Third Time; Passed (Vote: 40 Yeas / 0 Nays); Immediately certified; In Messages

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: Favorable with CS by Judiciary Committee; 19 Yeas, 0 Nays;
Placed on Calendar, on 2nd reading

Attached documents: SB 776 (1st Engrossed) + Staff Analysis; CS/CS/HB 783 + Staff Analysis

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We appreciate the opportunity to be your voice in Tallahassee!



THE FLORIDA SENATE
SENATOR WILTON SIMPSON
President

MEMORANDUM

TO: All Senate and Senate Professional Staff
FROM: Wilton Simpson
SUBJECT: Budget Conference Appointees, Joint Allocations, Protocols and Schedule
DATE: April 16, 2021

Appointments to Conference Committees and Joint Allocations are attached, and updated COVID-19 Protocols specific to the budget conference are explained below. There are significant changes to the traditional flow of the budget conference, so it is very important that you read this memo in its entirety.

Scheduling

Conference Chairs, Senator Stargel and Representative Trumbull, will hold an organizational meeting today at 7:30 p.m. in 412 Knott.

Conference committees are authorized to begin meeting tomorrow morning at 10:00 a.m. All unresolved issues will bump to Chairs Stargel and Trumbull no later than the close of business on Monday, April 19.

Conference committees are asked to begin the final meeting each day no later than 8:00 p.m. (noticed no later than 7:00 p.m., for an 8:00 p.m. meeting).

No more than two committees will meet at one time. To maximize safety as well as the opportunity for public participation, all conference committees will meet in either 212 Knott or 412 Knott, our two largest rooms.

Committee Room Entrances and Admittance

There will be an opportunity for in-person public testimony at each conference committee meeting; however, there is limited seating in each committee room due to social distancing guidelines. The Senate continues to encourage remotely viewing committee meetings via the Florida Channel.

- Senators will continue to enter 412 Knott and 212 Knott through the back entrance reserved for legislators.

April 16, 2021

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- Members of the media and members of the public are asked to enter through the main (first floor) entrance of the Knott Building and the front door of each committee room. Public access to other areas of the Senate, including Senator and Staff offices will remain closed.
- Staff of the Committee on Appropriations, Appropriations Subcommittees, Sergeant's Office, Secretary's Office, President's Office, and one designee from each of the Republican and Democratic Offices are authorized to attend any budget conference committee. All other members of the Senate professional staff are asked to remain in their offices and to view the conference committee meetings via the Florida Channel.

Committee Meetings Notices and Materials

All conference committee meetings are subject to a one hour notice requirement. Meeting materials will be distributed with the meeting notice and posted to the Senate website.

- Printed copies of meeting materials will be provided at the conference committee meeting for each Senator on the conference committee as well as at-large appointees.
- In addition to prompt posting of notices and offers on the Senate website, the Senate will continue to work to ensure ample printed copies are made available in a timely manner for members of the media and the public. Due to COVID-19, in lieu of providing copies at the 3rd Floor Senate Services Center, printed copies will be available on a first-come, first-served basis on tables outside each conference committee meeting. As time permits, copies will also be available at the entrance to the Knott Building. Members of the media and the public are also encouraged to view materials online, or to print in advance of each meeting.

Required Testing

Senators and all Senate Professional Staff, as well as Professional District Staff based in or traveling to Tallahassee, and members of the media, are required to test for COVID-19 weekly.

If you are fully vaccinated in accordance with the [CDC standards](#) you may voluntarily request an exemption from the weekly COVID-19 testing by submitting a short form at: [Senate COVID-19 Testing Exemption](#). Fully vaccinated individuals should continue to practice COVID-19 preventative measures and monitor their health for symptoms of COVID-19, particularly if they have been around someone who is infected. Fully vaccinated members of the media who have applied through the Florida House for a testing exemption do not need to reapply through the Senate.

Masks

In keeping with CDC guidelines, there is a mask requirement in the Senate, regardless of vaccine status. Speakers in a committee meeting may temporarily remove their mask while addressing a committee.

April 16, 2021
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Guests

Senators are asked not to bring outside visitors, including lobbyists, into the Capitol or the Senate Building.

In consultation with infectious disease control experts at Tampa General Hospital, based on the current status of the COVID-19 Pandemic, these updated protocols reflect the collective efforts of the Florida Senate to continue to operate in a safe manner that provides significant opportunities for everyone to participate in the legislative process.

**CONFERENCE COMMITTEE ASSIGNMENTS
SENATE PRESIDENT WILTON SIMPSON
2021 Regular Session**

President Pro Tempore: Aaron Bean

**Majority Leader: Debbie Mayfield
Democratic Leader: Gary Farmer**

Appropriations Conference Committee

Kelli Stargel, Chair

Aaron Bean, At Large
Lauren Book, At Large
Gary Farmer, At Large
Audrey Gibson, At Large
Debbie Mayfield, At Large
Kathleen Passidomo, At Large
Keith Perry, At Large
Darryl Rouson, At Large

**Appropriations Conference Committee on Agriculture, Environment, and
General Government**

Ben Albritton, Chair
Loranne Ausley
Lori Berman
Jim Boyd
Jennifer Bradley
Jason Brodeur

Ileana Garcia
Debbie Mayfield
Ray Rodrigues
Linda Stewart
Perry Thurston

Appropriations Conference Committee on Criminal and Civil Justice

Keith Perry, Chair
Dennis Baxley
Randolph Bracy

George Gainer
Ana Maria Rodriguez
Victor Torres

Appropriations Conference Committee on Education

Doug Broxson, Chair
Janet Cruz
Manny Diaz
Audrey Gibson

Joe Gruters
Travis Hutson
Tina Polsky
Tom Wright

**CONFERENCE COMMITTEE ASSIGNMENTS
SENATE PRESIDENT WILTON SIMPSON
2021 Regular Session**

President Pro Tempore: Aaron Bean

**Majority Leader: Debbie Mayfield
Democratic Leader: Gary Farmer**

Appropriations Conference Committee on Health and Human Services

Aaron Bean, Chair
Lauren Book
Jason Brodeur
Danny Burgess
Manny Diaz
Gary Farmer

Gayle Harrell
Shev Jones
Ray Rodrigues
Ana Maria Rodriguez
Darryl Rouson

**Appropriations Conference Committee on Transportation, Tourism, and
Economic Development**

George Gainer, Chair
Loranne Ausley
Jim Boyd
Janet Cruz
Ileana Garcia
Audrey Gibson

Ed Hooper
Debbie Mayfield
Keith Perry
Annette Taddeo
Tom Wright



The Florida House of Representatives

Office of the Speaker

MEMORANDUM

To: Members of the Florida House of Representatives
From: Chris Sprowls, Speaker
Date: April 16, 2021
Re: Assignment of House Budget Conferees for the 2021 Session

In accordance with House Rule 7.22, the following house conferees are appointed:

House Chair: Representative Jay Trumbull

Conference Managers At-Large

Representative Ramon Alexander	Representative Tom Leek
Representative Bryan Avila	Representative Ralph Massullo
Representative Colleen Burton	Representative Lawrence McClure
Representative James Bush	Representative Anika Omphroy
Representative Ben Diamond	Representative Bobby Payne
Representative Brad Drake	Representative Daniel Perez
Representative Bobby DuBose	Representative Scott Plakon
Representative Nicholas Duran	Representative Rene Plasencia
Representative Anna Eskamani	Representative Paul Renner
Representative Randy Fine	Representative Rick Roth
Representative Joe Geller	Representative Emily Slosberg
Representative Erin Grall	Representative Cyndi Stevenson
Representative Michael Grant	Representative Josie Tomkow
Representative Blaise Ingoglia	Representative Matt Willhite
Representative Evan Jenne	Representative Patricia Williams
Representative Chris Latvala	Representative Jayer Williamson

SB 2500 – Appropriations

SB 2502 – Implementing the 2021-2022 General Appropriations Act

Conforming Bills:

SB 2504 – State Employees

SB 7018 – Employer Contributions to Fund Retiree Benefits

HB 5011 – Termination of the Lawton Chiles Endowment Fund

SB 2506 – State Group Insurance Program

House Agriculture & Natural Resources / Senate Agriculture, Environment & General Government

Representative Josie Tomkow, House Chair
Representative Adam Botana
Representative Chuck Brannan
Representative James Buchanan
Representative Demi Busatta Cabrera
Representative Kevin Chambliss
Representative Chuck Clemons
Representative Tom Fabricio
Representative Omari Hardy
Representative Lawrence McClure
Representative Daisy Morales
Representative Anika Omphroy
Representative Rick Roth
Representative Cyndi Stevenson
Representative Allison Tant

Conforming Bills:

SB 2516 – Water Storage North of Lake Okeechobee

House State Administration & Technology / Senate Agriculture, Environment & General Government

Representative Cyndi Stevenson, House Chair
Representative David Borrero
Representative Wyman Duggan
Representative Jason Fischer
Representative Mike Giallombardo
Representative Joy Goff-Marcil
Representative Yvonne Hinson
Representative Christine Hunschofsky
Representative Sam Killebrew
Representative Traci Koster
Representative Randy Maggard
Representative Toby Overdorf
Representative Felicia Robinson
Representative Jackie Toledo
Representative Marie Woodson

House Higher Education / Senate Education

Representative Rene Plasencia, House Chair
Representative Michael Grieco
Representative Fred Hawkins
Representative Dotie Joseph
Representative Patt Maney
Representative Amber Mariano
Representative Travaris McCurdy
Representative Angie Nixon
Representative Alex Rizo
Representative Anthony Rodriguez
Representative Bob Rommel
Representative Jason Shoaf
Representative Geraldine Thompson
Representative Kaylee Tuck
Representative Ardian Zika

Conforming Bills:

SB 2508 – Employee Compensation

HB 5601 – Higher Education

House PreK-12 / Senate Education

Representative Randy Fine, House Chair
Representative Vance Aloupis
Representative Alex Andrade
Representative Robin Bartleman
Representative Melony Bell
Representative James Bush
Representative Elizabeth Fetterhoff
Representative Brett Hage
Representative Stan McClain
Representative Spencer Roach
Representative David Smith
Representative Keith Truenow
Representative Susan Valdés
Representative Matt Willhite
Representative Patricia Williams

Conforming Bills:

HB 5101 – Education Funding

House Justice / Senate Criminal and Civil Justice

Representative Scott Plakon, House Chair
Representative Mike Beltran
Representative Christopher Benjamin
Representative Cord Byrd
Representative Michael Caruso
Representative Tracie Davis
Representative Nick DiCeglie
Representative Juan Fernandez-Barquin
Representative Sam Garrison
Representative Michael Gottlieb
Representative Tommy Gregory
Representative Andrew Learned
Representative Lauren Melo
Representative Michele Rayner
Representative Anthony Sabatini

Conforming Bills:

HB 5301 – Judges

House Health Care / Senate Health & Human Services

Representative Bryan Avila, House Chair
Representative Clay Yarborough, Alternate House Chair
Representative Thad Altman
Representative Webster Barnaby
Representative Kamia Brown
Representative Fentrice Driskell
Representative Nicholas Duran
Representative Joe Harding
Representative Will Robinson
Representative Michelle Salzman
Representative Tyler Sirois
Representative Kelly Skidmore
Representative Carlos Smith
Representative John Snyder
Representative Dana Trubulsky

Conforming Bills:

SB 2518 – Health Care

House Infrastructure & Tourism / Senate Transportation, Tourism & Economic Development

Representative Jay Williamson, House Chair

Representative Kristen Arrington

Representative Melony Bell

Representative Joseph Casello

Representative Linda Chaney

Representative Dan Daley

Representative Brad Drake

Representative Dianne Hart

Representative Chip LaMarca

Representative Fiona McFarland

Representative Jim Mooney

Representative Jenna Persons-Mulicka

Representative Rene Plasencia

Representative Bob Rommel

Representative David Silvers

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

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

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

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

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

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

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

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

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

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59 surgeries and other procedures, and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

168 (e) "Health care provider" means:

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

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

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

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

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

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

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

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

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

190 10. A pharmacy permitted under chapter 465.

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

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

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

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

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

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

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204 court must dismiss the action without prejudice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

268
269 The term does not include a claim alleging that an act or
270 omission by a health care provider caused a person to contract
271 COVID-19 or a derivative claim to such claim unless the person
272 was a resident or patient of the health care provider or a
273 person seeking care or treatment from the health care provider.

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

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

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

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

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

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

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291 waiver.

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

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

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

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

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

300 10. A pharmacy permitted under chapter 465.

301 (2) PRELIMINARY PROCEDURES.—

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

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

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

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

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

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

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

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

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

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

340 (5) LIMITATIONS PERIOD.—

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

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

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

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

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

359 (7) INTERACTION WITH OTHER LAWS.—

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

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

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

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 72

INTRODUCER: Rules Committee; Senator Brandes and others

SUBJECT: Civil Liability for Damages Relating to COVID-19

DATE: March 15, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Favorable
2.	Harmsen	McKay	CM	Favorable
3.	Davis	Phelps	RC	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

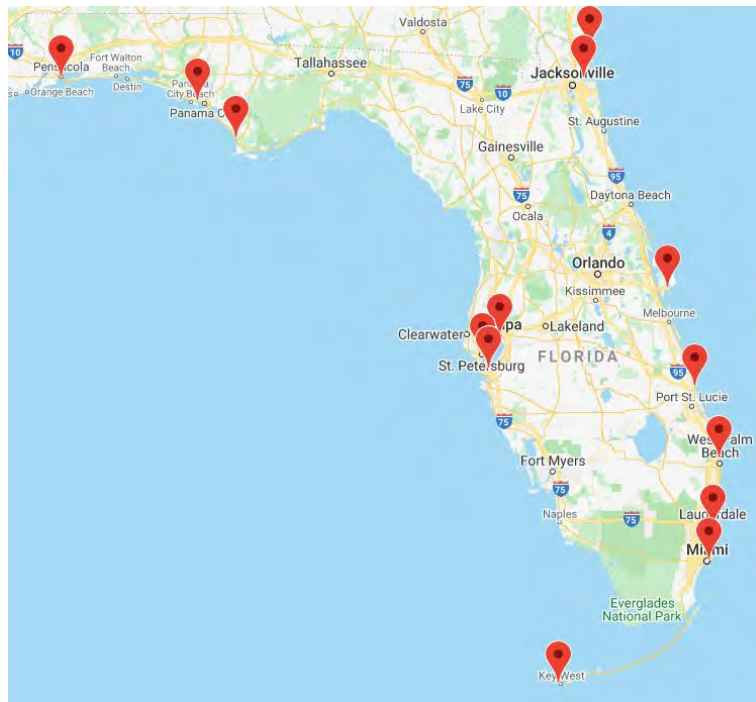
A. EFFECT OF PROPOSED CHANGES:

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/miamidade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-\(2\).pdf](https://sfyl.ifas.ufl.edu/media/sfylifasufledu/miamidade/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/miamidade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-\(2\).pdf](https://sfyl.ifas.ufl.edu/media/sfylifasufledu/miamidade/documents/disaster-preparation/hurricane-and-disaster/HurricaneManual1-(2).pdf) (last visited Mar. 5, 2021).

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

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

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

Hurricane Season Port Conditions and Categories

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

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

Effect of the Bill

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

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

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

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

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

¹⁸ Section 327.59(4), F.S.

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

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

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

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

B. SECTION DIRECTORY:

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

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

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

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

By Senator Bradley

5-01601-21

20211658__

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

13
14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. This act may be cited as the "Limb Preservation
17 Act."

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

20 327.396 Power-driven vessel safety requirements.-

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

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

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

5-01601-21

20211658__

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

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

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

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

38 327.73 Noncriminal infractions.—

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

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

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

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

1 A bill to be entitled
 2 An act relating to boating safety education; amending
 3 s. 327.395, F.S.; requiring boating safety education
 4 courses and temporary certificate examinations to
 5 include specified information; directing the Fish and
 6 Wildlife Conservation Commission to include specified
 7 information in boating safety campaigns and education
 8 materials; providing an effective date.

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

11
 12 Section 1. Subsection (3) of section 327.395, Florida
 13 Statutes, is amended to read:

14 327.395 Boating safety education.—

15 (3) Any commission-approved boating safety education
 16 course or temporary certificate examination developed or
 17 approved by the commission must include a component regarding:

18 (a) Diving vessels, awareness of divers in the water,
 19 divers-down warning devices, and the requirements of s. 327.331.

20 (b) The risks associated with a passenger placing any
 21 portion of his or her appendage outside of a vessel while the
 22 vessel is underway.

23 (c) The proper use of an engine cutoff switch, as
 24 appropriate for certain vessels.

25

CS/HB 271

2021

26 | The commission must also include the components under this
27 | subsection in boating safety campaigns and education materials
28 | produced by the commission, as appropriate.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 271 Power-driven Vessel Safety Requirements
SPONSOR(S): Tourism, Infrastructure & Energy Subcommittee, Botana and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1658, SB 1562

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	16 Y, 0 N, As CS	Willson	Keating
2) Criminal Justice & Public Safety Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

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.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current 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 Chapter 327, F.S., concerning vessel safety, is enforced by FWC's Division of Law Enforcement and its officers, county sheriffs and deputies, municipal police officers, and any other law enforcement officer.² The Division of Law Enforcement manages the state's waterways to ensure boating safety for residents of and visitors to the state.³ 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.⁴

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.⁵ To obtain a card, a person must complete an approved boating safety course.⁶ There are several courses available at various price points ranging from free up to \$50.⁷ The course must meet the 8-hour instruction requirement established by the National Association of State Boating Law Administrators and must include a component regarding diving vessels.⁸ 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.⁹

Current law requires that any boating safety education course or temporary certificate examination developed or approved by FWC must include a component regarding diving vessels, awareness of divers in the water, divers-down warning devices, and other diver-related requirements provided in current law.¹⁰

Certain persons are exempt from the requirement to obtain a boating safety identification card. A person is exempt if he or she:

- Is licensed by the United States Coast Guard (Coast Guard) to serve as master of a vessel.
- Operates a vessel only on a private lake or pond.
- Is accompanied in the vessel by a person who is exempt from this section or who holds an identification card in compliance with this section, is 18 years of age or older, and is attendant to the operation of the vessel and responsible for the safe operation of the vessel and for any violation that occurs during the operation of the vessel.
- Is a nonresident who has in his or her possession proof that he or she has completed a boater education course or equivalency examination in another state which meets or exceeds the requirements in Florida.
- Is operating a vessel within 90 days after the purchase of that vessel and has available for inspection aboard that vessel a bill of sale.

¹ FLA. CONST. art. IV, s. 9.

² Section 327.70(1), F.S.

³ Fish and Wildlife Conservation Commission (FWC), *Boating*, <https://myfwc.com/boating/> (last visited Mar. 25, 2021).

⁴ FWC, *Law Enforcement*, <https://myfwc.com/about/inside-fwc/le/> (last visited Feb. 15, 2021). *See* s. 327.70(1) and (4), F.S.

⁵ S. 327.395(1), F.S.

⁶ FWC, *Boater Education Identification Card*, <https://myfwc.com/boating/safety-education/id/> (last visited Mar. 25, 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.

⁷ FWC, *Boating Safety Courses*, <https://myfwc.com/boating/safety-education/courses/> (last visited Mar. 25, 2021).

⁸ S. 327.395(1), F.S.

⁹ S. 327.395(5), F.S.

¹⁰ *See* s. 327.331, F.S.

- 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.¹¹

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.¹²

A livery may not knowingly lease, hire, or rent vessels under certain conditions meant to ensure boater safety.¹³ Additionally, a livery may 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.¹⁴

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.¹⁵ Operating a vessel in excess of a posted speed limit is a civil infraction, for which the penalty is \$50.¹⁶

Vessel owners and operators must carry, store, maintain, and use safety equipment in accordance with current Coast Guard safety equipment requirements, unless expressly exempted.¹⁷ Vessel owners and operators are also subject to additional safety requirements relating to appropriate equipment and the use of personal flotation devices.¹⁸

Engine Cut-off Switch

Effective April 1, 2021, federal law¹⁹ requires boaters to use the engine cut-off switch (ECOS), if such a device is installed, on any motorized boat with 3 or more horsepower that is less than 26 feet in length. Typically, the ECOS link is a coiled bungee cord lanyard clipped onto the operator's person, personal flotation device, or clothing, with the other end attached to the cut-off switch. However many variations exist, including electronic wireless devices. When an operator is wearing a link while underway, the engine will cut-off if the operator is separated from the operating area, which can happen if the operator is ejected from the vessel or falls within the vessel.²⁰

According to the Coast Guard's Boating Safety Division, an ECOS is an important tool to prevent unnecessary accidents, injuries, and deaths caused by a recreational vessel operator being unexpectedly displaced from the helm, including situations where the operator is ejected from the vessel, which typically leads to a runaway vessel. In these scenarios anyone in the water is a potential propeller-strike victim, all other vessels on the water face a collision hazard, and maritime law

¹¹ S. 327.395(6), F.S.

¹² S. 327.73(1)(s), F.S.

¹³ S. 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.

¹⁴ S. 327.54(2), F.S.

¹⁵ S. 327.33, F.S.

¹⁶ S. 327.73(h), F.S.

¹⁷ S. 327.50, F.S.

¹⁸ *Id.*

¹⁹ 46 U.S.C. § 4312

²⁰ United States Coast Guard, *Engine Cut-Off Switches*, <https://uscgboating.org/recreational-boaters/engine-cut-off-devices.php> (last visited Mar. 25, 2021).

enforcement officers face additional risk in trying to bring the runaway vessel to a stop. Additionally, the use of an ECOS may aid the operator in safely returning to the drifting vessel.²¹

In 2018, Congress required vessel manufactures to install an ECOS. However, most U.S. boat manufacturers have voluntarily installed an ECOS on their boats for decades.²²

Florida law requires that operators of personal watercraft²³ equipped by the manufacturer with a lanyard type engine cutoff switch must attach the lanyard to his or her person, clothing, or personal flotation device, as appropriate for the specific vessel.²⁴

Effect of the Bill

The bill requires that an FWC-approved boating safety education course or temporary certificate examination developed or approved by the commission 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 the components described above into boating safety campaigns and education materials, as appropriate.

B. SECTION DIRECTORY:

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

Section 2 Provides an effective date.

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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

²¹ United States Coast Guard, *Engine/Propulsion Cut-Off Devices FAQ*, <https://uscgboating.org/recreational-boaters/engine-cut-off-switch-faq.php> (last visited Mar. 25, 2021).

²² USCG, *Engine Cut-Off Switches*, *supra*.

²³ Section 327.02(36), F.S. defines “Personal watercraft” as “a vessel less than 16 feet in length which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel.”

²⁴ S. 327.39(2), F.S.

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 1, 2021, the Tourism, Infrastructure & Energy Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed in that the committee substitute removes the noncriminal infraction penalty and 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 committee substitute also requires FWC to incorporate the components described above into boating safety campaigns and education materials, as appropriate.

The analysis is drafted to the committee substitute as passed by the Tourism, Infrastructure & Energy Subcommittee.

By the Committee on Environment and Natural Resources; and
Senator Rodriguez

592-03543-21

20211668c1

1 A bill to be entitled
2 An act relating to seagrass mitigation banks; amending
3 s. 253.03, F.S.; authorizing the Board of Trustees of
4 the Internal Improvement Trust Fund to authorize
5 leases for seagrass mitigation banks under certain
6 conditions; providing construction; requiring the
7 Department of Environmental Protection to modify
8 specified mitigation banking rules for specified
9 purposes; providing an effective date.

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

12
13 Section 1. Subsection (17) is added to section 253.03,
14 Florida Statutes, to read:

15 253.03 Board of trustees to administer state lands; lands
16 enumerated.—

17 (17) The board of trustees may authorize leases for
18 seagrass mitigation banks under s. 373.4136 to ensure the
19 preservation and regeneration of seagrass, as defined in s.
20 253.04(3)(a), and to offset the unavoidable impacts of projects
21 when seagrass banks meet the public interest criteria under
22 chapters 253 and 258. This subsection does not prohibit
23 mitigation for impacts to seagrass or other habitats on
24 sovereignty submerged lands, upon approval of the board of
25 trustees.

26 Section 2. The Department of Environmental Protection shall
27 modify rules adopted pursuant to s. 373.4136, Florida Statutes,
28 to remove any duplicative financial assurance requirements and
29 to ensure that permitted seagrass mitigation banks comply with

592-03543-21

20211668c1

30 the federal mitigation banking rules.

31 Section 3. This act shall take effect July 1, 2021.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Environment and Natural Resources

BILL: CS/SB 1668

INTRODUCER: Environment and Natural Resources Committee and Senator Rodriguez

SUBJECT: Seagrass Mitigation Banks

DATE: March 29, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schreiber	Rogers	EN	Fav/CS
2.			CA	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

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.

II. Present Situation:

Seagrasses

Seagrasses are grass-like flowering plants that live completely submerged in marine and estuarine waters.¹ Seagrasses occur in protected bays and lagoons as well as in deeper waters

¹ DEP, *Florida Seagrasses*, <https://floridadep.gov/rcp/seagrass> (last visited Mar. 24, 2021).

along the continental shelf in the Gulf of Mexico.² The depth at which seagrasses occur is limited by water clarity because most species require high levels of light.³ Florida's approximately 2.2 million acres of seagrasses perform many significant functions, including maintaining water clarity, stabilizing the bottom, sheltering marine life, and providing food for many marine animals and water birds.⁴

The Board of Trustees of the Internal Improvement Trust Fund (Board),⁵ comprised of the Governor and Cabinet, generally owns and administers all state-owned lands in Florida, unless otherwise specified.⁶ The Board has a duty to conserve and improve state-owned land, which includes the preservation and regeneration of seagrass, deemed by the Legislature to be essential to the oceans, gulfs, estuaries, and shorelines of the state.⁷ The term “seagrass” is defined in statute to mean any of seven specified species of seagrass.⁸

Sovereign Submerged Lands

Sovereign submerged lands are owned by the state and they include, but are not limited to, tidal lands, islands, sandbars, shallow banks, and lands waterward of the ordinary or mean high water line,⁹ beneath navigable fresh water or tidally-influenced waters.¹⁰ Under the State Constitution, the title to all sovereign submerged lands is held by the state in trust for the people.¹¹ The sale of such lands may be authorized by law when in the public interest, and the private use of portions of such lands may be authorized by law when not contrary to the public interest.¹²

The Board generally holds title to all sovereign submerged lands in the state.¹³ The Board is authorized to sell and convey sovereign submerged lands if determined by the Board to be in the public interest.¹⁴ Before conveying sovereign submerged lands, the Board must determine to what extent such conveyance would interfere with the conservation of wildlife, natural resources,

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ The Governor and Cabinet, *Structure of the Florida Cabinet*, <http://www.myflorida.com/myflorida/cabinet/structurehistory.html> (last visited Mar. 9, 2021).

⁶ *See* s. 253.03, F.S.

⁷ Section 253.04(3), F.S.

⁸ Section 253.04(3)(a)1., F.S. These species are: “Cuban shoal grass (*Halodule wrightii*), turtle grass (*Thalassia testudinum*), manatee grass (*Syringodium filiforme*), star grass (*Halophila engelmannii*), paddle grass (*Halophila decipiens*), Johnson's seagrass (*Halophila johnsonii*), or widgeon grass (*Ruppia maritima*).”

⁹ *See* ss. 177.27(15), (16) and 177.28, F.S. The mean high water line is the point on the shore marking the average height of the high waters over a 19-year period, and it is the boundary between the state-owned foreshore (land alternately covered and uncovered by the tide) and the dry area above the mean high water line that is subject to private ownership.

¹⁰ Fla. Admin. Code R. 18-21.003(65). “Sovereignty submerged lands” are defined as “those lands including but not limited to, tidal lands, islands, sand bars, shallow banks, and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally-influenced waters, to which the State of Florida acquired title on March 3, 1845, by virtue of statehood, and which have not been heretofore conveyed or alienated. For the purposes of this chapter sovereignty submerged lands shall include all submerged lands title to which is held by the Board.”

¹¹ FLA. CON., art. X, s. 11.

¹² *Id.*

¹³ Section 253.03, F.S.

¹⁴ Section 253.12, F.S.; *see* s. 258.42, F.S.

and marine ecosystems.¹⁵ Florida law authorizes the Board to adopt rules to administer sovereign submerged lands.¹⁶

Chapter 18-21 of the Florida Administrative Code, Sovereign Submerged Lands Management, lists the various forms of authorization necessary for specified activities on sovereign submerged lands.¹⁷ The Department of Environmental Protection (DEP) and the Department of Agriculture and Consumer Services (DACS) generally act as staff to the Board in the review of proposed uses of sovereign submerged lands.¹⁸ DEP is responsible for environmental permitting of activities and water quality protection on sovereign submerged lands, while DACS is responsible for managing aquacultural activities on sovereignty submerged lands.¹⁹

Mitigation Banking

A mitigation bank is a wetland, stream, or other aquatic resource area that has been restored, established, or preserved for the purpose of providing compensation for unavoidable impacts to aquatic resources permitted under certain federal, state, or local programs.²⁰ In Florida, mitigation banking is part of separate permitting programs at the federal and state levels.

At the federal level, the U.S. Army Corps of Engineers (USACE) administers permitting under section 404 of the Clean Water Act, which establishes a program to regulate the discharge of dredged or fill material in waters of the United States, including wetlands.²¹ In 2020, DEP assumed permitting authority under the State 404 Program for certain “assumed waters,” but USACE will retain such permitting authority for all other waters in the state.²²

The U.S. Environmental Protection Agency and USACE promulgate federal regulations establishing environmental criteria, and mechanisms for compensatory mitigation, under section 404.²³ The regulations require a permit applicant to take all appropriate and practicable steps to avoid and minimize adverse impacts to waters of the United States.²⁴ For unavoidable impacts, as the last step in a sequence after avoidance and minimization, compensatory mitigation may be required to replace the loss of wetland and aquatic resource functions in the watershed.²⁵ The

¹⁵ Section 253.12(2)(a), F.S.

¹⁶ Sections 253.03(7) and 253.73, F.S.

¹⁷ Fla. Admin. Code R. 18-21.005.

¹⁸ DEP, *Sovereign Submerged Lands (SSL) - Proprietary Authority versus Regulatory Authority in Chapter 18-21, F.A.C.*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/sovereign-submerged-lands-ssl> (last visited Mar. 24, 2021); DACS, *Aquaculture Submerged Land Leasing*, <https://www.fdacs.gov/Agriculture-Industry/Aquaculture/Aquaculture-Submerged-Land-Leasing> (last visited Mar. 24, 2021).

¹⁹ Fla. Admin. Code R. 18-21.002.

²⁰ U.S. EPA, *Mitigation Banks under CWA Section 404*, <https://www.epa.gov/cwa-404/mitigation-banks-under-cwa-section-404> (last visited Mar. 25, 2021).

²¹ 33 U.S.C. s. 1344; U.S. EPA, *Wetland Regulatory Authority*, https://www.epa.gov/sites/production/files/2015-03/documents/404_reg_authority_fact_sheet.pdf (last visited Mar. 24, 2021).

²² DEP, *State 404 Program*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/state-404-program> (last visited Mar. 24, 2021); see DEP, *State 404 Program Applicant's Handbook*, <https://www.flrules.org/gateway/reference.asp?No=Ref-12064> (last visited Mar. 24, 2021).

²³ 40 C.F.R. pt. 230 and 33 C.F.R. pt. 322.

²⁴ 40 C.F.R. s. 230.91(c) and 33 C.F.R. s. 322.1(c).

²⁵ U.S. EPA, *Wetlands Compensatory Mitigation*, available at https://www.epa.gov/sites/production/files/2015-08/documents/compensatory_mitigation_factsheet.pdf (last visited Mar. 24, 2021).

federal regulations establish requirements and create mechanisms for mitigation approved by an interagency review team, including mitigation banks allowing permittees to purchase credits to meet federal requirements for compensatory mitigation.²⁶

At the state level, DEP regulates activities in, on, or over surface waters, as well as any activity that alters surface water flows, through environmental resource permits (ERPs).²⁷ ERPs are required for certain development or construction activities, typically involving the dredging or filling of wetlands or surface waters, construction of flood protection facilities, building dams or reservoirs, or any other activities that affect state waters.²⁸ ERP applications are processed by either DEP or one of the water management districts in accordance with the division of responsibilities specified in operating agreements between DEP and the water management districts.²⁹

Florida's ERP criteria generally require that, for proposed activities that will result in adverse impacts to wetland or surface water functions, applicants must implement practicable design modifications to reduce or eliminate such adverse impacts.³⁰ After such requirements have been completed, mitigation is required to offset the adverse impacts.³¹ Mitigation under the ERP program is evaluated in light of the programmatic goal of no net loss of wetland and other surface water functions.³² Florida law authorizes DEP and the water management districts to require permits authorizing the establishment and use of mitigation banks.³³ DEP has adopted rules that serve as the basis for mitigation bank permitting done by DEP and the water management districts.³⁴

Creation of a mitigation bank in Florida requires both a permit from DEP or a water management district, and federal authorization from several agencies led by USACE, in a joint state/federal interagency review team.³⁵ Through this process, depending on agency approval, mitigation banks may provide mitigation for permittees under both the federal and state permitting programs.

Generally, 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

²⁶ *Id.* In addition to mitigation banking, mechanisms for mitigation include permittee-responsible mitigation and in-lieu fee mitigation; 33 C.F.R. pt. 322.

²⁷ DEP, *Submerged Lands and Environmental Resources Coordination Program*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination> (last visited Mar. 24, 2021).

²⁸ South Florida Water Management District, *Environmental Resource Permits*, <https://www.sfwmd.gov/doing-business-with-us/permits/environmental-resource-permits> (last visited Mar. 24, 2021).

²⁹ DEP, *Submerged Lands and Environmental Resources Coordination Program*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination> (last visited Mar. 24, 2021).

³⁰ DEP, *ERP Applicant's Handbook Volume I*, 10-2, 10-24–10-33 (2020), available at <https://www.flrules.org/gateway/reference.asp?No=Ref-12078> (last visited Mar. 24, 2021).

³¹ *Id.*

³² *Id.* at 10-1, 10-24.

³³ Sections 373.4135 and 373.4136, F.S.

³⁴ Fla. Admin. Code Ch. 62-342.

³⁵ DEP, *Mitigation Banking Rule and Procedure Synopsis*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation-banking-rule-and> (last visited Mar. 25, 2021).

mitigation for unavoidable wetland impacts within a defined region (mitigation service area).³⁶ The bank is the site itself, and the currency sold by the banker to the impact permittee is a credit, representing the wetland ecological value equivalent to the complete restoration of one acre.³⁷ The number of potential credits permitted for the bank, and the credit debits required for impact permits, are determined by the permitting agencies.³⁸

Mitigation usually consists of restoration, enhancement, creation, and/or preservation, and may include onsite mitigation, offsite mitigation, regional offsite mitigation areas, or purchasing mitigation credits from permitted mitigation banks.³⁹ Generally, mitigation preferably involves enhancing or preserving ecological communities or types of resources that are similar to those being impacted by the permitted activities; however different types of communities or resources may be found environmentally acceptable.⁴⁰ During the permitting of a mitigation bank, the permitting agencies and interagency review team will determine the mitigation service area: the geographic region within which the bank could reasonably be expected to offset impacts.⁴¹ Determining the boundaries of a mitigation services area generally starts with the regional watershed in which the bank lies. The service area may be larger or smaller depending upon the ecological and hydrological location and value.⁴² The impact permitting agency determines whether a particular mitigation bank has sufficient credits and appropriate types of mitigation.⁴³

The Uniform Mitigation Assessment Method (UMAM)⁴⁴ provides a standardized procedure for assessing the ecological functions provided by surface waters, the amount that those functions are reduced by a proposed impact, and the amount of mitigation necessary to offset that loss.⁴⁵ The UMAM evaluates functions by considering an ecological community's current condition, hydrologic connection, uniqueness, location, fish and wildlife utilization, time lag, and mitigation risk.⁴⁶ The UMAM is also used to determine the degree of improvement in ecological value of proposed mitigation bank activities.⁴⁷

Under Florida law, to obtain a mitigation bank permit, the applicant must provide reasonable assurance that the mitigation bank will:

- Improve ecological conditions of the regional watershed;
- Provide viable and sustainable ecological and hydrological functions for the proposed mitigation service area;

³⁶ DEP, *Mitigation and Mitigation Banking*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation-and-mitigation-banking> (last visited Mar. 25, 2021).

³⁷ *Id.*

³⁸ *Id.*

³⁹ DEP, *Mitigation*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation> (last visited Mar. 25, 2021).

⁴⁰ DEP, *ERP Applicant's Handbook Volume I*, 10-25 (2020), available at <https://www.flrules.org/gateway/reference.asp?No=Ref-12078> (last visited Mar. 24, 2021); 33 C.F.R. s. 332.3(e).

⁴¹ DEP, *Mitigation Banking Rule and Procedure Synopsis*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation-banking-rule-and> (last visited Mar. 25, 2021).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Fla. Admin. Code Ch. 62-345.

⁴⁵ DEP, *The Uniform Mitigation Assessment Method (UMAM)*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/uniform-mitigation-assessment> (last visited Mar. 25, 2021).

⁴⁶ *Id.*

⁴⁷ *Id.*

- Be effectively managed in perpetuity;
- Not destroy areas with high ecological value;
- Achieve mitigation success; and
- Be adjacent to lands that will not adversely affect the long-term viability of the mitigation bank due to unsuitable land uses or conditions.⁴⁸

The applicant must also provide reasonable assurance that:

- Any surface water management system that will be constructed, altered, operated, maintained, abandoned, or removed within a mitigation bank will meet the requirements of part IV of ch. 373, F.S., which regulates management and storage of surface waters, and rules adopted thereunder;
- The applicant has sufficient legal or equitable interest in the property to ensure perpetual protection and management of the land within a mitigation bank; and
- The applicant can meet the financial responsibility requirements prescribed for mitigation banks.⁴⁹

Four distinct types of mitigation banks have developed.⁵⁰ Single user banks are typically started by large entities, such as utility companies, to offset their own development activities.⁵¹ For-profit banks are where private investors provide the necessary capital to preserve and restore wetlands (e.g., plug old drainage ditches and remove exotic species) and then credits are awarded to the bank investors, who then sell the credits to developers to mitigate for unavoidable impacts.⁵² Public banks are operated by the government on public lands.⁵³ Finally, in-lieu or fee-based banks are a widely used form of public mitigation bank funded by impact fees collected by a permitting agency for the purpose of acquiring or restoring large-scale wetlands.⁵⁴

III. Effect of Proposed Changes:

Section 1 amends s. 253.03, F.S., which generally vests the title to state lands in the Board of Trustees of the Internal Improvement Trust Fund (Board) and authorizes the Board to administer state-owned lands and adopt rules accordingly.

The bill authorizes the Board to authorize leases for seagrass mitigation banks⁵⁵ to ensure the preservation and regeneration of seagrass,⁵⁶ and to offset the unavoidable impacts of projects

⁴⁸ Section 373.4136(1), F.S.

⁴⁹ *Id.*; Fla. Admin. Code R. 62-342.400.

⁵⁰ Florida House of Representatives Resource & Land Management Council, *Issues Pertaining to the Office of Program Policy Analysis and Government Accountability's Study on Wetlands Mitigation Options*, 7 (Nov. 1999), http://www.leg.state.fl.us/data/Publications/2000/House/reports/interim_reports/pdf/wetlnds.pdf (last visited Mar. 17, 2021).

⁵¹ *Id.*

⁵² *Id.* at 7-8.

⁵³ *Id.* at 8.

⁵⁴ *Id.*

⁵⁵ Section 373.4136, F.S. The bill authorizes the seagrass mitigation banks under this statute, which provides the Department of Environmental Protection and water managements districts permitting authority for the establishment and use of mitigation banks.

⁵⁶ Section 253.04(3)(a), F.S. The bill defines “seagrass” using this paragraph.

when seagrass banks meet the public interest criteria under chapters of the Florida Statutes related to state-owned lands and state parks and preserves.⁵⁷ 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.

Section 2 requires the Department of Environmental Protection to modify rules on mitigation banking,⁵⁸ in order to remove any duplicative financial assurance requirements and to ensure permitted seagrass mitigation banks comply with the federal mitigation banking rules.

Section 3 provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may result in a positive, indeterminate fiscal impact for private entities that acquire leases to create and operate seagrass mitigation banks.

⁵⁷ Chapters 253 and 258, F.S. The bill references the public interest criteria under these chapters, which pertain to state lands, and state parks and preserves, respectively.

⁵⁸ Section 373.4136, F.S. The bill requires DEP to modify rules adopted pursuant to this section of law.

C. Government Sector Impact:

The bill may result in increased costs for the Board of Trustees of the Internal Improvement Trust Fund and the Department of Environmental Protection. Rulemaking, and potentially establishment of a new program, may be necessary to implement the requirements contained in the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Environmental Protection's (DEP) bill analysis on SB 1668 discusses how traditional public uses of sovereign submerged lands may not be consistent with mitigation banks.⁵⁹ DEP also discusses concerns that offsetting the loss or degradation of seagrass resources with existing protected seagrasses may lead to a net loss of seagrass resources.⁶⁰

VIII. Statutes Affected:

This bill substantially amends section 253.03 of the Florida Statutes.

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

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

CS by Environment and Natural Resources Committee on March 29, 2021:

- Authorizes the Board of Trustees of the Internal Improvement Trust Fund to authorize leases for seagrass mitigation banks, instead of authorizing the Board to establish seagrass mitigation banks.
- Removes nonsovereignty submerged lands from the areas of seagrass or other habitats impacts to which are not prohibited by the bill.
- Requires the Department of Environmental Protection to modify rules on mitigation banking, in order to remove any duplicative financial assurance requirements and ensure permitted seagrass mitigation banks comply with the federal mitigation banking rules.

B. Amendments:

None.

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

⁵⁹ DEP, *2021 Legislative Session, Bill #: SB 1668*, 1-2 (2021)(on file with the Florida Senate Environment and Natural Resources Committee).

⁶⁰ *Id.* at 2.

1 A bill to be entitled
 2 An act relating to seagrass mitigation banks; amending
 3 s. 253.03, F.S.; authorizing the Board of Trustees of
 4 the Internal Improvement Trust Fund to establish
 5 seagrass mitigation banks under certain conditions;
 6 providing construction; providing an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Subsection (17) is added to section 253.03,
 11 Florida Statutes, to read:

12 253.03 Board of trustees to administer state lands; lands
 13 enumerated.—

14 (17) The board of trustees may establish seagrass
 15 mitigation banks under s. 373.4136 to ensure the preservation
 16 and regeneration of seagrass, as defined in s. 253.04(3)(a), and
 17 to offset the unavoidable impacts of projects when seagrass
 18 banks meet the public interest criteria under chapters 253 and
 19 258. This subsection does not prohibit mitigation for impacts to
 20 seagrass or other habitats on sovereignty or nonsovereignty
 21 submerged lands, upon approval of the board of trustees.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1335 Seagrass Mitigation Banks

SPONSOR(S): Sirois

TIED BILLS: **IDEN./SIM. BILLS:** SB 1668

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Environment, Agriculture & Flooding Subcommittee	13 Y, 3 N	Gawin	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

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

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

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

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Seagrasses

Seagrasses are grass-like flowering plants that live completely submerged in marine and estuarine waters.¹ Seagrasses occur in protected bays and lagoons as well as in deeper waters along the continental shelf in the Gulf of Mexico.² The depth at which seagrasses occur is limited by water clarity because most species require high levels of light.³ Florida's approximately 2.2 million acres of seagrasses perform many significant functions, including maintenance of water clarity, stabilization of the ocean bottom, shelter for marine life, and food for many marine animals and water birds.⁴

The Board of Trustees of the Internal Improvement Trust Fund (Board) is vested and charged with the duty to acquire, administer, manage, control, supervise, conserve, protect, and dispose of lands owned by the state.⁵ This duty extends to the preservation and regeneration of seagrass as an essential ecosystem for Florida's oceans, estuaries, and shorelines.⁶ Current law requires the Board to manage state-owned lands in a manner that serves the public interest.⁷

Environmental Impact Mitigation

Mitigation Regulations

The Department of Environmental Protection (DEP) regulates activities in, on, or over surface waters, as well as any activity that alters surface water flows, through environmental resource permits (ERPs). ERPs are required for development or construction activities typically involving the dredging or filling of surface waters, construction of flood protection facilities, building dams or reservoirs, or any other activities that affect state waters.⁸ ERP applications are processed by either DEP or one of the state's water management districts (WMDs) in accordance with the division of responsibilities specified in operating agreements between DEP and the WMDs.⁹

Mitigation serves as the third step in a sequence of permitting actions,¹⁰ which must be followed to offset the adverse impacts to surface waters resulting from the construction activities allowed by an ERP. When evaluating a proposed project for permitting, the Clean Water Act first requires DEP, as the permitting agency, to determine if the project would have an adverse impact. If the project has an adverse impact and there is a practicable alternative, the project must avoid the adverse impacts altogether and be reconfigured using the alternative. If impacts cannot be avoided, appropriate and practicable steps must be taken to minimize the impact. If any unavoidable impacts remain, they require appropriate and practicable mitigation.¹¹

Mitigation usually consists of restoration, enhancement, creation, preservation, or a combination thereof and is accomplished by providing onsite mitigation, offsite mitigation, or purchasing mitigation credits

¹ DEP, *Florida Seagrasses*, <https://floridadep.gov/rcp/seagrass> (last visited Mar. 8, 2021).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Section 253.03, F.S.

⁶ Section 253.04(3)(a), F.S.

⁷ Section 253.034, F.S.

⁸ South Florida Water Management District, *Environmental Resource Permits*, <https://www.sfwmd.gov/doing-business-with-us/permits/environmental-resource-permits> (last visited Mar. 9, 2021).

⁹ DEP, *Submerged Lands and Environmental Resources Coordination Program*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination> (last visited Mar. 9, 2021).

¹⁰ 40 C.F.R. § 230.

¹¹ EPA, *Wetlands Compensatory Mitigation*, available at https://www.epa.gov/sites/production/files/2015-08/documents/compensatory_mitigation_factsheet.pdf (last visited Dec. 10, 2020).

from permitted mitigation banks. The ecological benefits of mitigation compensate for the functional loss resulting from the ERP impact.¹² The Uniform Mitigation Assessment Method (UMAM) provides a standardized procedure for assessing the ecological functions provided by surface waters, the amount that those functions are reduced by a proposed impact, and the amount of mitigation necessary to offset that loss. The UMAM evaluates functions by considering an ecological community's current condition, hydrologic connection, uniqueness, location, fish and wildlife utilization, time lag, and mitigation risk. The UMAM is also used to determine the degree of improvement in ecological value of proposed mitigation bank activities.¹³

Mitigation Banking

Mitigation banking is a practice in which an environmental enhancement and preservation project is conducted by a public agency or private entity (banker) to provide mitigation for unavoidable environmental impacts within a defined region referred to as a mitigation service area. The bank is the site itself, and the currency sold by the banker to the ERP applicant is a credit. The number of potential credits permitted for the bank and the credit required for ERPs are determined by DEP or a WMD. Mitigation banks are authorized by a state permit, which is issued by either a WMD or DEP depending on the location of the bank and the activity it mitigates, and by the United States Army Corps of Engineers.¹⁴

To obtain a mitigation bank permit, the applicant must provide reasonable assurance that the mitigation bank will:

- Improve ecological conditions of the regional watershed;
- Provide viable and sustainable ecological and hydrological functions for the proposed mitigation service area;
- Be effectively managed in perpetuity;
- Not destroy areas with high ecological value;
- Achieve mitigation success; and
- Be adjacent to lands that will not adversely affect the long-term viability of the mitigation bank due to unsuitable land uses or conditions.¹⁵

The applicant must also provide reasonable assurances that:

- Any surface water management system that will be constructed, altered, operated, maintained, abandoned, or removed within a mitigation bank will meet the requirements of part IV of ch. 373, F.S., which regulates management and storage of surface waters, and adopted rules;
- The applicant has sufficient legal or equitable interest in the property to ensure perpetual protection and management of the land within a mitigation bank; and
- The applicant can meet the financial responsibility requirements prescribed for mitigation banks.¹⁶

Four distinct types of mitigation banks have developed. Single user banks are typically started by large entities, such as utility companies, to offset their own development activities. In for-profit banks, private investors provide the necessary capital to preserve and restore wetlands (e.g., plug old drainage ditches and remove exotic species) and if done properly, the WMD awards credits to the bank investors, who then sell the credits to developers to mitigate for unavoidable impacts. Public banks are used to generate credits for sale that are operated by the government on public lands. Finally, in-lieu, or

¹² DEP, *Mitigation*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation> (last visited Dec. 10, 2020).

¹³ DEP, *The Uniform Mitigation Assessment Method (UMAM)*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/uniform-mitigation-assessment> (last visited Dec. 10, 2020).

¹⁴ DEP, *Mitigation and Mitigation Banking*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation-and-mitigation-banking> (last visited Dec. 10, 2020).

¹⁵ Section 373.4136(1), F.S.; r. 62-342.400, F.A.C.

¹⁶ *Id.*; see also r. 62-340.700, F.A.C.

fee-based banks, are a widely used form of public mitigation bank funded by impact fees collected by a permitting agency for the purpose of acquiring or restoring large-scale wetlands.¹⁷

Sovereign Submerged Lands

Sovereign submerged lands include, but are not limited to, tidal lands, islands, sandbars, shallow banks, and lands waterward of the ordinary or mean high water line, beneath navigable fresh water, or beneath tidally-influenced waters.¹⁸ Pursuant to Article X, section 11 of the Florida Constitution the state holds title to land under navigable waters, including beaches below mean high water lines, in trust for all the people. Sale of such lands may be authorized by law, but only when in the public interest.¹⁹ Additionally, the private use of portions of such lands may be authorized by law, but only when not contrary to the public interest.²⁰ The Board is responsible for determining whether a sale of sovereign submerged lands or a permit related to an activity conducted on sovereign submerged lands is within the public interest on a case by case basis.²¹ Before conveying sovereign submerged lands, the Board must consider the extent such conveyance would interfere with the conservation of fish, marine life and other wildlife, or other natural resources.²²

Effect of the Bill

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

The bill specifies that it does not prohibit mitigation for impacts to seagrass or other habitats on sovereignty or non-sovereignty submerged lands, upon the approval of the Board.

B. SECTION DIRECTORY:

Section 1. Amends s. 253.03, F.S., to authorize the Board to establish seagrass mitigation banks.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate positive fiscal impact on state revenue associated with the ability to establish seagrass mitigation banks for which credits can be sold.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on the Board and DEP associated with the costs of creating and maintaining a seagrass mitigation bank.

¹⁷ Florida House of Representatives Resource & Land Management Council, *Issues Pertaining to the Office of Program Policy Analysis and Government Accountability's Study on Wetlands Mitigation Options* (Nov. 1999), http://www.leg.state.fl.us/data/Publications/2000/House/reports/interim_reports/pdf/wetlnds.pdf (last visited Mar. 17, 2021).

¹⁸ DEP, *Sovereign Submerged Lands (SSL) - Proprietary Authority versus Regulatory Authority in Chapter 18-21, F.A.C.*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/sovereign-submerged-lands-ssl> (last visited Mar. 9, 2021).

¹⁹ Art. X Sec. 11, Fla. Const.

²⁰ Art. X Sec. 11, Fla. Const.

²¹ Section 253.12, F.S.

²² Section 253.12(2)(a), F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate fiscal impact on the private sector by allowing private entities to purchase mitigation credits from the state to offset their projects' unavoidable impacts to seagrasses.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

By the Committees on Rules; Community Affairs; and Environment and Natural Resources; and Senators Polsky and Bean

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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 counties to establish anchoring limitation
6 areas that meet certain requirements; defining the
7 term "navigable-in-fact waterways"; specifying size
8 requirements for the anchoring limitation areas;
9 requiring the anchoring limitation areas to be marked
10 with signs and buoys that meet certain requirements;
11 prohibiting vessels from anchoring in such areas for
12 longer than a specified time; requiring counties to
13 provide notice to the Fish and Wildlife Conservation
14 Commission within a specified timeframe before
15 establishing an anchoring limitation area; requiring
16 the commission to publish notice of the proposed
17 ordinance on its website and distribute an e-mail
18 notice; prohibiting Monroe County from establishing an
19 anchoring limitation area until the county meets
20 certain requirements; requiring the commission to
21 designate a specified area as a priority for the
22 investigation and removal of derelict vessels until
23 certain conditions are met; requiring owners or
24 operators in certain anchoring limitation areas to be
25 allowed to provide specified proof of compliance with
26 certain provisions; authorizing law enforcement
27 officers or agencies to issue citations for violations
28 under certain circumstances; providing that vessels
29 with a specified number of repeat offenses within a

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30 specified timeframe shall be declared public nuisances
31 and subject to certain provisions; removing
32 applicability provisions relating to the commission's
33 recommendations; reenacting s. 327.73(1)(z), F.S.,
34 relating to noncriminal infractions, to incorporate
35 the amendment made to s. 327.4108, F.S., in a
36 reference thereto; providing an effective date.
37

38 Be It Enacted by the Legislature of the State of Florida:
39

40 Section 1. Section 327.4108, Florida Statutes, is amended
41 to read:

42 327.4108 Anchoring of vessels in anchoring limitation
43 areas.—

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

49 1.(a) The section of Middle River lying between Northeast
50 21st Court and the Intracoastal Waterway in Broward County.

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

52 3.(c) The sections of Biscayne Bay in Miami-Dade County
53 lying between:

54 a.1- Rivo Alto Island and Di Lido Island.

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

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

57 (b)(2) To promote the public's use and enjoyment of the
58 designated waterway, except as provided in subsections (3) and

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59 (4), a person may not anchor a vessel at any time during the
60 period between one-half hour after sunset and one-half hour
61 before sunrise in an anchoring limitation area designated under
62 this subsection.

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

81 1. Be less than 100 acres in size. For purposes of this
82 subsection, the calculated size of the anchoring limitation area
83 does not include any portion of the marked channel of the
84 Florida Intracoastal Waterway contiguous to the anchoring
85 limitation area;

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

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

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88 a. Signs that provide reasonable notice to boaters
89 identifying the duration of time beyond which anchoring is
90 limited and identifying the county ordinance by which the
91 anchoring limitation area was created.

92 b. Buoys. The county that has created an anchoring
93 limitation area shall install and maintain buoys marking the
94 boundary of the anchoring limitation area.

95

96 The signs and buoys must be permitted and installed in
97 accordance with ss. 327.40 and 327.41 and commission rule.

98 (b) Except as provided in subsections (3) and (4), a person
99 may not anchor a vessel for more than 45 consecutive days in any
100 6-month period in an anchoring limitation area established
101 pursuant to this subsection.

102 (c) A county proposing establishment of an anchoring
103 limitation area in accordance with this subsection shall provide
104 notice to the commission 30 days before final adoption of an
105 ordinance establishing such anchoring limitation area. The
106 commission shall publish notice of the proposed ordinance on its
107 website and distribute such notice through the commission's
108 Boating and Waterways Section e-mail distribution list for
109 ordinances.

110 (d) Monroe County may not establish an anchoring limitation
111 area under this subsection until the county approves, permits,
112 and opens new moorings for public use, including at least 250
113 moorings within 1 mile of the Key West Bight City Dock and at
114 least 50 moorings within the Key West Garrison Bight Mooring
115 Field. Until such time, the commission shall designate the area
116 within 1 mile of the Key West Bight City Dock as a priority for

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117 the investigation and removal of derelict vessels.

118 (3) Notwithstanding subsections (1) and ~~subsection~~ (2), a
119 person may anchor a vessel in an anchoring limitation area:

120 (a) If the vessel suffers a mechanical failure that poses
121 an unreasonable risk of harm to the vessel or the persons
122 onboard unless the vessel anchors. The vessel may anchor for 3
123 business days or until the vessel is repaired, whichever occurs
124 first.

125 (b) If imminent or existing weather conditions in the
126 vicinity of the vessel pose an unreasonable risk of harm to the
127 vessel or the persons onboard unless the vessel anchors. The
128 vessel may anchor until weather conditions no longer pose such
129 risk. During a hurricane or tropical storm, weather conditions
130 are deemed to no longer pose an unreasonable risk of harm when
131 the hurricane or tropical storm warning affecting the area has
132 expired.

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

138 (4) This section does not apply to:

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

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

142 (c) Vessels actively engaged in commercial fishing.

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

145 (5)(a) As used in this subsection, the term "law

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146 enforcement officer or agency" means an officer or agency
147 authorized to enforce this section pursuant to s. 327.70.

148 (b)1. For a vessel in an anchoring limitation area
149 established pursuant to subsection (2), upon an inquiry by a law
150 enforcement officer or agency, a vessel owner or operator must
151 be given an opportunity to provide proof that the vessel has not
152 exceeded the limitations described in subsection (2). Such proof
153 may include any of the following:

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

157 b. Electronic evidence, including, but not limited to,
158 navigational devices or tracking devices that show the vessel
159 was in another location at least 1 mile away within a period of
160 less than 45 days before the inquiry.

161 2. If a vessel owner or operator fails or refuses to
162 provide proof that the vessel has not exceeded the limitations
163 described in subsection (2), the law enforcement officer or
164 agency may issue a citation for a violation of this section.

165 (c)(b) A law enforcement officer or agency may remove a
166 vessel from an anchoring limitation area designated under
167 subsection (1) or established pursuant to subsection (2) and
168 impound the vessel for up to 48 hours, or cause such removal and
169 impoundment, if the vessel operator, after being issued a
170 citation for a violation of this section:

171 1. Anchors the vessel in violation of this section within
172 12 hours after being issued the citation; or

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

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

180 (e)~~(e)~~ A law enforcement officer or agency acting under
181 this subsection to remove or impound a vessel, or to cause such
182 removal or impoundment, shall be held harmless for any damage to
183 the vessel resulting from such removal or impoundment unless the
184 damage results from gross negligence or willful misconduct.

185 (f)~~(d)~~ A contractor performing removal or impoundment
186 services at the direction of a law enforcement officer or agency
187 pursuant to this subsection must:

188 1. Be licensed in accordance with United States Coast Guard
189 regulations, as applicable.

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

194 3. Be properly equipped to perform such services.

195 (g)~~(e)~~ In addition to the civil penalty imposed under s.
196 327.73(1)(z), the operator of a vessel that is removed and
197 impounded pursuant to paragraph (c) ~~(b)~~ must pay all removal and
198 storage fees before the vessel is released. A vessel removed
199 pursuant to paragraph (c) ~~(b)~~ may not be impounded for longer
200 than 48 hours.

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

203 ~~(7) This section shall remain in effect notwithstanding the~~

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204 ~~Legislature's adoption of the commission's recommendations for~~
205 ~~the regulation of mooring vessels outside of public mooring~~
206 ~~fields pursuant to s. 327.4105.~~

207 Section 2. For the purpose of incorporating the amendment
208 made by this act to section 327.4108, Florida Statutes, in a
209 reference thereto, paragraph (z) of subsection (1) of section
210 327.73, Florida Statutes, is reenacted to read:

211 327.73 Noncriminal infractions.—

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

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

- 216 1. For a first offense, up to a maximum of \$50.
- 217 2. For a second offense, up to a maximum of \$100.
- 218 3. For a third or subsequent offense, up to a maximum of
219 \$250.

220

221 Any person cited for a violation of any provision of this
222 subsection shall be deemed to be charged with a noncriminal
223 infraction, shall be cited for such an infraction, and shall be
224 cited to appear before the county court. The civil penalty for
225 any such infraction is \$50, except as otherwise provided in this
226 section. Any person who fails to appear or otherwise properly
227 respond to a uniform boating citation shall, in addition to the
228 charge relating to the violation of the boating laws of this
229 state, be charged with the offense of failing to respond to such
230 citation and, upon conviction, be guilty of a misdemeanor of the
231 second degree, punishable as provided in s. 775.082 or s.
232 775.083. A written warning to this effect shall be provided at

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233 the time such uniform boating citation is issued.

234 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.

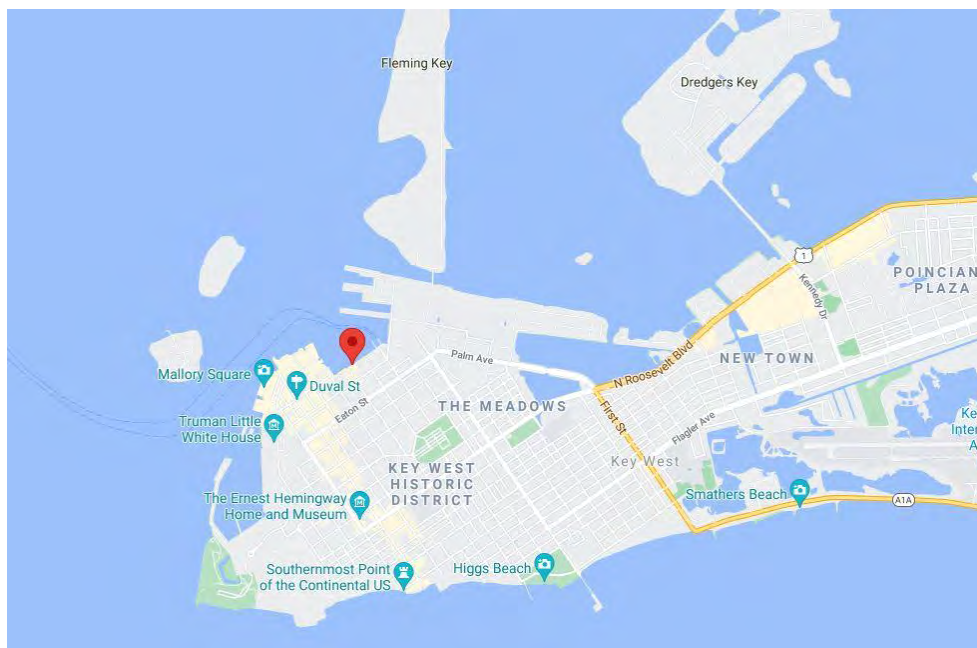
³⁰ *Id.*

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.



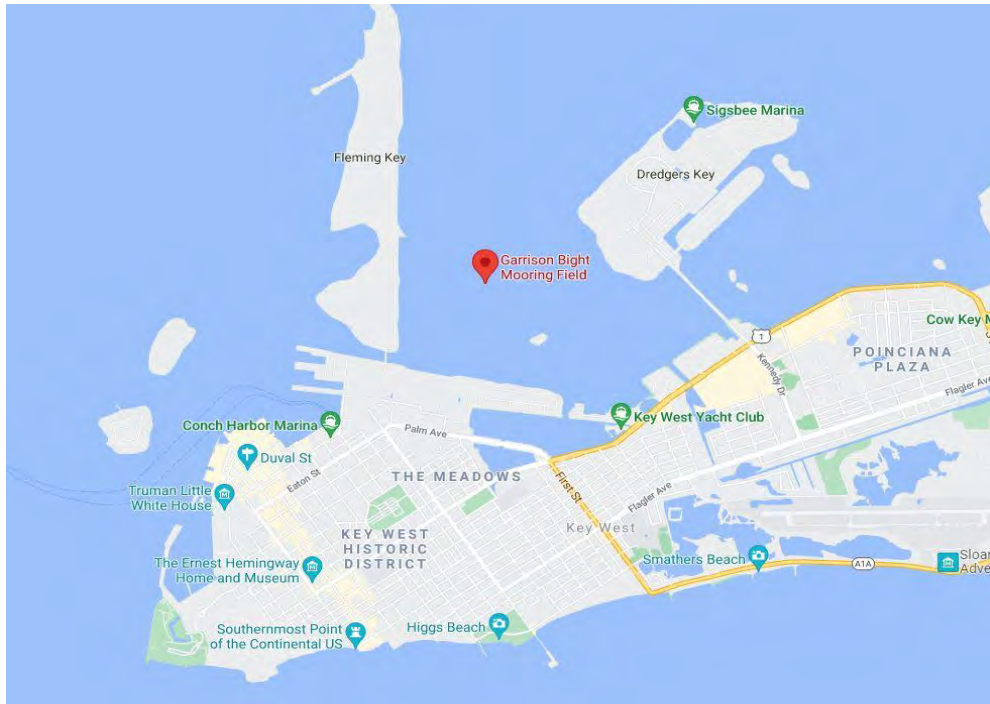
Key West Garrison Bight Mooring Field

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.

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 counties to establish anchoring limitation
6 areas that meet certain requirements; providing that
7 specified established anchoring limitation areas are
8 exempt from specified provisions; specifying size
9 requirements for the anchoring limitation areas;
10 requiring the anchoring limitation areas to be marked
11 with signs and buoys that meet certain requirements;
12 prohibiting vessels from anchoring in such areas for
13 longer than a specified time; requiring vessel owners
14 or operators to be allowed to provide specified proof
15 of compliance with certain provisions; providing that
16 vessels with repeat offenses within a specified
17 timeframe shall be declared public nuisances and
18 subject to certain provisions; requiring the Fish and
19 Wildlife Conservation Commission to initiate
20 rulemaking by a certain date; providing requirements
21 for such rulemaking; removing applicability provisions
22 relating to the commission's recommendations;
23 reenacting s. 327.73(1)(z), F.S., relating to
24 noncriminal infractions, to incorporate the amendment
25 made to s. 327.4108, F.S., in a reference thereto;

26 | providing an effective date.

27 |

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

29 |

30 | Section 1. Section 327.4108, Florida Statutes, is amended
31 | to read:

32 | 327.4108 Anchoring of vessels in anchoring limitation
33 | areas.—

34 | (1) (a) The following densely populated urban areas, which
35 | have narrow state waterways, residential docking facilities, and
36 | significant recreational boating traffic, are designated as and
37 | shall be considered to be grandfathered-in anchoring limitation
38 | areas:

39 | 1.(a) The section of Middle River lying between Northeast
40 | 21st Court and the Intracoastal Waterway in Broward County.

41 | 2.(b) Sunset Lake in Miami-Dade County.

42 | 3.(c) The sections of Biscayne Bay in Miami-Dade County
43 | lying between:

44 | a.1. Rivo Alto Island and Di Lido Island.

45 | b.2. San Marino Island and San Marco Island.

46 | c.3. San Marco Island and Biscayne Island.

47 | (b)(2) To promote the public's use and enjoyment of the
48 | designated waterway, except as provided in subsections (3) and
49 | (4), a person may not anchor a vessel at any time during the
50 | period between one-half hour after sunset and one-half hour

51 before sunrise in an anchoring limitation area under this
52 subsection.

53 (2) (a) Notwithstanding s. 327.60(2) (f), a county may
54 establish, in accordance with this subsection, an anchoring
55 limitation area within densely populated urban areas, which have
56 narrow state waterways, residential docking facilities, and
57 significant recreational boating traffic. The aggregate total of
58 anchoring limitation areas in a county may not exceed 10 percent
59 of the county's navigable waterways. Each anchoring limitation
60 area must meet all of the following requirements:

61 1. Be less than 100 acres in size. For purposes of this
62 subsection, the calculated size of the anchoring limitation area
63 does not include any portion of the marked channel of the
64 Florida Intracoastal Waterway contiguous to the anchoring
65 limitation area;

66 2. Not include any mooring fields; and

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

68 a. Signs that provide reasonable notice to boaters
69 identifying the duration of time beyond which anchoring is
70 limited and identifying the county ordinance with its enacting
71 date by which the anchoring limitation area was created. Any
72 ordinance adopted pursuant to this section may not take effect
73 until reviewed and approved as consistent with this section by
74 the commission.

75 b. Buoys. The county that has created an anchoring
76 limitation area shall install and maintain buoys marking the
77 boundary of the anchoring limitation area.

78 (b) Except as provided in subsections (3) and (4), a
79 person may not anchor a vessel for more than 30 consecutive days
80 in any 6-month period in an anchoring limitation area under this
81 subsection.

82 (3) Notwithstanding subsections (1) and ~~subsection~~ (2), a
83 person may anchor a vessel in an anchoring limitation area:

84 (a) If the vessel suffers a mechanical failure that poses
85 an unreasonable risk of harm to the vessel or the persons
86 onboard unless the vessel anchors. The vessel may anchor for 3
87 business days or until the vessel is repaired, whichever occurs
88 first.

89 (b) If imminent or existing weather conditions in the
90 vicinity of the vessel pose an unreasonable risk of harm to the
91 vessel or the persons onboard unless the vessel anchors. The
92 vessel may anchor until weather conditions no longer pose such
93 risk. During a hurricane or tropical storm, weather conditions
94 are deemed to no longer pose an unreasonable risk of harm when
95 the hurricane or tropical storm warning affecting the area has
96 expired.

97 (c) During events described in s. 327.48 or other special
98 events, including, but not limited to, public music
99 performances, local government waterfront activities, or

100 fireworks displays. A vessel may anchor for the lesser of the
 101 duration of the special event or 3 days.

102 (4) This section does not apply to:

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

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

107 (c) Vessels actively engaged in commercial fishing.

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

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

113 (b)1. For a vessel in an anchoring limitation area under
 114 subsection (2), upon an inquiry by a law enforcement officer or
 115 agency, a vessel owner or operator must be given an opportunity
 116 to provide proof that the vessel has not exceeded the
 117 limitations described in subsection (2). Such proof may include
 118 any of the following:

119 a. Documentation showing that the vessel was in another
 120 location at least 1 mile away within a period of less than 30
 121 days before the inquiry.

122 b. Electronic evidence, including, but not limited to,
 123 navigational devices or tracking devices that show the vessel

124 was in another location at least 1 mile away within a period of
125 less than 30 days before the inquiry.

126 2. If a vessel owner or operator fails or refuses to
127 provide proof that the vessel has not exceeded the limitations
128 described in subsection (2), the law enforcement officer or
129 agency may issue a citation for a violation of this section.

130 (c) ~~(b)~~ A law enforcement officer or agency may remove a
131 vessel from an anchoring limitation area under subsection (1) or
132 subsection (2) and impound the vessel for up to 48 hours, or
133 cause such removal and impoundment, if the vessel operator,
134 after being issued a citation for a violation of this section:

135 1. Anchors the vessel in violation of this section within
136 12 hours after being issued the citation; or

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

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

144 (e) ~~(e)~~ A law enforcement officer or agency acting under
145 this subsection to remove or impound a vessel, or to cause such
146 removal or impoundment, shall be held harmless for any damage to
147 the vessel resulting from such removal or impoundment unless the
148 damage results from gross negligence or willful misconduct.

149 ~~(f)-(d)~~ A contractor performing removal or impoundment
 150 services at the direction of a law enforcement officer or agency
 151 pursuant to this subsection must:

152 1. Be licensed in accordance with United States Coast
 153 Guard regulations, as applicable.

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

158 3. Be properly equipped to perform such services.

159 ~~(g)-(e)~~ In addition to the civil penalty imposed under s.
 160 327.73(1)(z), the operator of a vessel that is removed and
 161 impounded pursuant to paragraph ~~(c)-(b)~~ must pay all removal and
 162 storage fees before the vessel is released. A vessel removed
 163 pursuant to paragraph ~~(c)-(b)~~ may not be impounded for longer
 164 than 48 hours.

165 (6) The commission shall initiate rulemaking by July 1,
 166 2021, to provide criteria and procedures for reviewing
 167 applications to establish an anchoring limitation area under
 168 subsection (2) and procedures for public notice and
 169 participation pursuant to this subsection. The rulemaking must
 170 include, at a minimum, all of the following:

171 (a) Notice to the public. The Boating and Waterways
 172 Section of the Fish and Wildlife Conservation Commission shall
 173 provide notice of completed applications received, public

174 meetings or hearings concerning applications, and denial or
 175 approval of applications on the section's web page and to all
 176 parties listed in the Boating and Waterways Section's public
 177 distribution list for ordinances, which any member of the public
 178 may join.

179 (b) An opportunity for public participation. Members of
 180 the public may provide written comments, recommendations,
 181 requests, inquiries, or other correspondence to the Boating and
 182 Waterways Section. If a public hearing or a review by the agency
 183 head is requested, members of the public may testify at the
 184 hearing or commission meeting and may submit relevant and
 185 material exhibits to the record of the proceeding.

186 (7)-(6) A violation of this section is punishable as
 187 provided in s. 327.73(1)(z).

188 ~~(7) This section shall remain in effect notwithstanding~~
 189 ~~the Legislature's adoption of the commission's recommendations~~
 190 ~~for the regulation of mooring vessels outside of public mooring~~
 191 ~~fields pursuant to s. 327.4105.~~

192 Section 2. For the purpose of incorporating the amendment
 193 made by this act to section 327.4108, Florida Statutes, in a
 194 reference thereto, paragraph (z) of subsection (1) of section
 195 327.73, Florida Statutes, is reenacted to read:

196 327.73 Noncriminal infractions.—

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

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

- 201 1. For a first offense, up to a maximum of \$50.
- 202 2. For a second offense, up to a maximum of \$100.
- 203 3. For a third or subsequent offense, up to a maximum of
 204 \$250.

205
 206 Any person cited for a violation of any provision of this
 207 subsection shall be deemed to be charged with a noncriminal
 208 infraction, shall be cited for such an infraction, and shall be
 209 cited to appear before the county court. The civil penalty for
 210 any such infraction is \$50, except as otherwise provided in this
 211 section. Any person who fails to appear or otherwise properly
 212 respond to a uniform boating citation shall, in addition to the
 213 charge relating to the violation of the boating laws of this
 214 state, be charged with the offense of failing to respond to such
 215 citation and, upon conviction, be guilty of a misdemeanor of the
 216 second degree, punishable as provided in s. 775.082 or s.
 217 775.083. A written warning to this effect shall be provided at
 218 the time such uniform boating citation is issued.

219 Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1515 Anchoring Limitation Areas

SPONSOR(S): State Affairs Committee, Environment, Agriculture & Flooding Subcommittee, Duggan and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1946

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Environment, Agriculture & Flooding Subcommittee	16 Y, 0 N, As CS	Gawin	Moore
2) State Affairs Committee	21 Y, 0 N, As CS	Gawin	Williamson

SUMMARY ANALYSIS

Current law designates certain densely populated urban areas that have narrow state waterways, residential docking facilities, and significant boating traffic as anchoring limitation areas. In an anchoring limitation area, a person is prohibited from anchoring a vessel at any time during the period between one half-hour after sunset and one half-hour before sunrise. Anchoring limitation areas are typically enforced by the Division of Law Enforcement of the Fish and Wildlife Conservation Commission (FWC) and its officers, county sheriffs and deputies, and municipal police officers.

The bill 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.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Anchoring or Mooring

Anchoring or mooring refers to a boater's practice of seeking and using a safe harbor on the public waterway system for an undefined duration. Anchoring is accomplished using an anchor carried on the vessel, while mooring uses fixtures, known as moorings, permanently affixed to the bottom of the water body.¹ Anchorages are areas that boaters regularly use for anchoring or mooring, whether designated or managed for that purpose or not. Mooring fields are areas designated and used for a system of properly spaced moorings.²

State Regulation of the Anchoring or Mooring of Vessels

The Legislature has delegated the responsibility of managing sovereign submerged lands to the Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund (Board).³ Pursuant to this responsibility, the Board is authorized to adopt rules governing anchoring, mooring, or otherwise attaching vessels, floating homes, or any other watercraft to the bottom of sovereign submerged lands.⁴ The Board has adopted rules regulating the construction of mooring and docking structures on such lands,⁵ but has not exercised its authority to adopt rules regulating anchoring.

Florida law prohibits a person from anchoring a vessel, except in case of emergency, in a manner that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel.⁶ Anchoring under bridges or in or adjacent to heavily traveled channels constitutes interference, if unreasonable under the prevailing circumstances.⁷ Interference with navigation is a noncriminal infraction and punishable by a fine of \$50.⁸

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

- Within 150 feet of any marina, boat ramp, boatyard, or vessel launching or loading facility;
- Within 300 feet of a superyacht repair facility; or
- Within 100 feet outward from the marked boundary of a public mooring field or a lesser distance if approved by the local government within which the mooring field is located.⁹

Additionally, the owner or operator of a vessel or floating structure may not anchor or moor within the marked boundary of a public mooring field unless the owner or operator has a lawful right to do so by contractual agreement or other business arrangement.¹⁰

An owner or operator of a vessel may anchor or moor within 150 feet of any marina, boat ramp, boatyard, or other vessel launching or loading facility; within 300 feet of a superyacht repair facility; or within 100 feet outward from the marked boundary of a public mooring field if:

¹ Ankersen, Hamann, & Flagg, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, 2

(March 2011), available at

https://www.cityofmarcoisland.com/sites/default/files/fileattachments/administration/page/7491/anchoring_away_03_09_11_full_web_3.pdf (last visited Mar. 12, 2021).

² *Id.*

³ Section 253.03(1), F.S.

⁴ Section 253.03(7), F.S.

⁵ See ch. 18-21, F.A.C.

⁶ Section 327.44(2), F.S.

⁷ *Id.*

⁸ Section 327.73(j), F.S.

⁹ Section 327.4109(1), F.S.

¹⁰ Section 327.4109(3), F.S.

- The vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard the vessel. The owner or operator of the vessel may anchor or moor for five business days or until the vessel is repaired, whichever occurs first.
- Imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard the vessel. The owner or operator of the vessel may anchor or moor until weather conditions no longer pose such risk.¹¹

A vessel or floating structure may not be anchored, moored, or affixed to an unpermitted, unauthorized, or otherwise unlawful object that is on or affixed to the bottom of state waters. This does not apply to a mooring owned by a private individual or entity who owns submerged lands.¹²

Local Regulation of the Anchoring or Mooring of Vessels

Local governments are authorized by general permit to construct, operate, and maintain public mooring fields, each for up to 100 vessels.¹³ Mooring fields must be located in areas where navigational access already exists between the mooring field and the nearest customarily used access channel or navigable waters that the mooring field is designed to serve. Each mooring field must be associated with a land-based support facility that provides amenities and conveniences, such as parking, bathrooms, showers, and laundry facilities. Major boat repairs and maintenance, fueling activities other than from the land-based support facility, and boat hull scraping and painting are not authorized within mooring fields.¹⁴

Local governments are further authorized to enact and enforce ordinances that prohibit or restrict the mooring or anchoring of floating structures¹⁵ or live-aboard vessels¹⁶ within their jurisdictions and vessels that are within the marked boundaries of permitted mooring fields.¹⁷ However, they are prohibited from enacting, continuing in effect, or enforcing any ordinance or local regulation that regulates the anchoring of vessels, other than live-aboard vessels, outside the marked boundaries of permitted mooring fields.¹⁸

Anchoring Limitation Areas

Current law designates certain densely populated urban areas that have narrow state waterways, residential docking facilities, and significant recreational boating traffic as anchoring limitation areas.¹⁹ The following areas are designated in statute as anchoring limitation areas:

- The section of Middle River lying between Northeast 21st Court and the Intracoastal Waterway in Broward County.
- Sunset Lake in Miami-Dade County.
- The sections of Biscayne Bay in Miami-Dade County lying between Rivo Alto Island and Di Lido Island, San Marino Island and San Marco Island, and San Marco Island and Biscayne Island.²⁰

In an anchoring limitation area, a person is prohibited from anchoring a vessel at any time during the period between one half-hour after sunset and one half-hour before sunrise.²¹ However, a person may anchor in an anchoring limitation area if:

¹¹ Section 327.4109(2), F.S.

¹² Section 327.4019(4), F.S.

¹³ Section 373.118, F.S.; r. 62-330.420(1), F.A.C.

¹⁴ Rule 62-330.420, F.A.C.

¹⁵ Section 327.02(14), F.S., defines “floating structure” as a floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term includes an entity used as a residence, place of business, or office with public access; a hotel or motel; a restaurant or lounge; a clubhouse; a meeting facility; a storage or parking facility; or a mining platform, dredge, dragline, or similar facility or entity represented as such.

¹⁶ Section 327.02(22), F.S., defines “live-aboard vessel” as a vessel used solely as a residence and not for navigation; a vessel represented as a place of business or a professional or other commercial enterprise; or a vessel for which a declaration of domicile has been filed. The definition expressly excludes commercial fishing boats.

¹⁷ Section 327.60(2)(f), F.S.

¹⁸ Section 327.60(3), F.S.

¹⁹ Section 327.4108, F.S.

²⁰ Section 327.4108(1), F.S.

²¹ Section 327.4108(2), F.S.

- The vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the people onboard unless the vessel anchors;
- Imminent or existing weather conditions in the vicinity pose an unreasonable risk of harm to the vessel or the people onboard unless the vessel anchors; or
- The vessel is attending a regatta, race, marine parade, tournament, exhibition,²² or other special event, including, but not limited to, public music performances, local government waterfront activities, or a fireworks display.²³

Anchoring limitation areas are typically enforced by the Division of Law Enforcement of the Fish and Wildlife Conservation Commission (FWC) and its officers, county sheriffs and deputies, and municipal police officers.²⁴ Such law enforcement officers are authorized to remove and impound a vessel that, after being issued a citation for violation of the anchoring limitation area, anchors the vessel in the anchoring limitation area within 12 hours after being issued the citation or refuses to leave the anchoring limitation area after being directed to do so by law enforcement.²⁵

Anchoring limitation areas do not apply to vessels owned or operated by a governmental entity for law enforcement, firefighting, military, or rescue purposes; construction or dredging vessels on an active job site; vessels actively engaged in commercial fishing; or vessels engaged in recreational fishing if the individuals on board are actively tending hook and line fishing gear or nets.²⁶

Florida Intracoastal Waterway

The Intracoastal Waterway is a navigable toll-free shipping route, extending for about 3,000 miles along the Atlantic Ocean and Gulf of Mexico coasts in the southern and eastern U.S. It utilizes sounds, bays, lagoons, rivers, and canals and is usable in many portions by deep-draft vessels. The route is federally maintained and is connected to inland waterways in many places. It was originally planned to form a continuous channel from New York City to Brownsville, Texas, but the necessary canal link through northern Florida was never completed; hence, it is now in two separate sections—the Atlantic and the Gulf.²⁷

The Florida Intracoastal Waterway means the Atlantic Intracoastal Waterway, the Georgia state line north of Fernandina to Miami; the Port Canaveral lock and canal to the Atlantic Intracoastal Waterway; the Atlantic Intracoastal Waterway, Miami to Key West; the Okeechobee Waterway, Stuart to Fort Myers; the St. Johns River, Jacksonville to Sanford; the Gulf Intracoastal Waterway, Anclote to Fort Myers; the Gulf Intracoastal Waterway, Carrabelle to Tampa Bay; Carrabelle to Anclote open bay section, using the Gulf of Mexico; the Gulf Intracoastal Waterway, Carrabelle to the Alabama state line west of Pensacola; and the Apalachicola, Chattahoochee, and Flint Rivers in Florida.²⁸

Effect of the Bill

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 established by a county to be less than 100 acres in size. The bill specifies that the calculated size of the anchoring limitation area does not include any

²² Section 327.48, F.S.

²³ Section 327.4108(3), F.S.

²⁴ Section 327.70(1), F.S.

²⁵ Section 327.4108(5)(b), F.S.

²⁶ Section 327.4108(4), F.S.

²⁷ Encyclopedia Britannica, *Intracoastal Waterway*, available at <https://www.britannica.com/topic/Intracoastal-Waterway> (last visited Mar. 22, 2021).

²⁸ Section 327.02(15), F.S.

portion of the marked channel of the Florida Intracoastal Waterway contiguous to the anchoring limitation area. Additionally, the bill prohibits each anchoring limitation area from including any mooring fields and requires them to be clearly marked with:

- Signs that provide reasonable notice to boaters, identifying the duration of time beyond which anchoring is limited and identifying the county ordinance that created the anchoring limitation area.
- Buoys installed and maintained by the county that mark the boundary of the anchoring limitation area.

The bill prohibits a person from anchoring a vessel for more than 30 consecutive days in any six-month period in an anchoring limitation area, unless an exception applies. In addition, the bill specifies that any ordinance adopted by a county to establish an anchoring limitation area may not take effect until reviewed and approved by FWC.

Upon an inquiry by a law enforcement or agency, the bill requires a vessel owner or operator to be given an opportunity to provide proof that the vessel has not exceeded the 30-day limit on anchoring in an anchoring limitation area. The bill specifies that such proof may include:

- Documentation showing that the vessel was in another location at least one mile away within a period of less than 30 days before the inquiry.
- Electronic evidence, including, but not limited to, navigational devices or tracking devices that show the vessel was in another location at least one mile away within a period of less than 30 days before the inquiry.

The bill specifies that a vessel that is the subject of more than three violations within 12 months that resulted in dispositions other than acquittal or dismissal must be declared a public nuisance.

The bill requires FWC to initiate rulemaking by July 1, 2021, to provide criteria and procedures for reviewing applications and procedures for public notice and participation. The bill specifies the rulemaking must include, at a minimum:

- Notice to the public. The Boating and Waterways Section of FWC must provide notice of completed applications received, public meetings or hearings concerning applications, and denial or approval of applications on the section's website and to all parties listed in the Boating and Waterways Section's public distribution list for ordinances, which any member of the public may join.
- An opportunity for public participation. The bill authorizes members of the public to provide written comments, recommendations, requests, inquiries, or other correspondence to the Boating and Waterways Section. If a public hearing is requested or a review by the agency head is requested, members of the public may testify at the hearing or commission meeting and may submit relevant and material exhibits to the record of the proceeding.

The bill does not impact the anchoring limitation areas that are currently designated in statute. However, the exemptions that currently exist to allow vessels to be anchored in the statutorily designated anchoring limitation areas when necessary due to mechanical failure or weather or for certain special events also apply to anchoring limitation areas designated by counties. In addition, certain vessels that are currently exempt from restrictions related to the anchoring limitation areas designated in statute are also exempt from restrictions related to anchoring limitation areas designated by counties.

B. SECTION DIRECTORY:

Section 1. Amends s. 327.4108, F.S., relating to anchoring of vessels in anchoring limitation areas.

Section 2. Reenacts s. 327.73, F.S., relating to noncriminal infractions.

Section 3. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate positive fiscal impact on state revenue associated with the collection of penalties for violating restrictions related to anchoring limitation areas if counties establish such areas and receive approval from FWC.

2. Expenditures:

The bill may have an indeterminate insignificant negative fiscal impact on FWC related to the costs associated with the rulemaking requirements of the bill. These costs can be absorbed through current resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on counties that choose to establish anchoring limitation areas associated with the cost of erecting signs and maintaining buoys to designate the anchoring limitation areas.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires FWC to adopt rules to provide criteria and procedures for reviewing applications and procedures for public notice and participation, which must be initiated by July 1, 2021.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 23, 2021, the Environment, Agriculture & Flooding Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Revised the requirements for newly established anchoring limitation areas to include that the area must be less than 100 acres in size and may not include certain areas of the Florida Intracoastal Waterway or any mooring fields;
- Clarified that the bill does not expand or alter existing anchoring limitation areas;
- Reverted the definition of “law enforcement officer or agency” to existing law; and
- Clarified that a vessel owner must receive a citation before a vessel may be removed or impounded.

On April 6, 2021, the State Affairs Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment specified that the existing anchoring limitation areas in statute are grandfathered-in.

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

By the Committees on Appropriations; and Environment and Natural Resources; and Senator Hutson

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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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88 vessel faster than slow speed, minimum wake within a
89 certain distance from other specified vessels;
90 providing requirements for construction vessel or
91 barge flags; exempting a person from being cited for a
92 violation under certain circumstances; providing civil
93 penalties; providing applicability; amending s.
94 327.50, F.S.; authorizing the commission to exempt
95 vessel owners and operators from certain safety
96 equipment requirements; amending s. 327.53, F.S.;
97 requiring the owner or operator of a live-aboard
98 vessel or houseboat equipped with a marine sanitation
99 device to maintain a record of the date and location
100 of each pumpout of the device for a certain period;
101 providing an exception; conforming a cross-reference;
102 making technical changes; amending s. 327.54, F.S.;
103 prohibiting a livery from leasing, hiring, or renting
104 a vessel to a person required to complete a
105 commission-approved boating safety education course
106 unless such person presents certain documentation
107 indicating compliance; amending s. 327.60, F.S.;
108 authorizing a local government to enact and enforce
109 regulations allowing the local law enforcement agency
110 to remove an abandoned or lost vessel affixed to a
111 public mooring; amending s. 327.73, F.S.; providing
112 additional violations that qualify as noncriminal
113 infractions; providing civil penalties; prohibiting
114 conviction of a person cited for a violation relating
115 to possessing proof of boating safety education under
116 certain circumstances; increasing certain civil

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117 penalties; providing that certain vessels shall be
118 declared a public nuisance subject to certain
119 statutory provisions; authorizing the commission or
120 certain officers to relocate or remove public nuisance
121 vessels from the waters of this state; providing that
122 the commission or officers are not liable for damages
123 to such vessels; providing an exception; amending s.
124 328.09, F.S.; prohibiting the Department of Highway
125 Safety and Motor Vehicles from issuing a certificate
126 of title to an applicant for a vessel that has been
127 deemed derelict pursuant to certain provisions;
128 authorizing the department, at a later date, to reject
129 an application for a certificate of title for such a
130 vessel; amending s. 376.15, F.S.; revising unlawful
131 acts relating to derelict vessels; defining the term
132 "leave"; prohibiting an owner or operator whose vessel
133 becomes derelict due to specified accidents or events
134 from being charged with a violation under certain
135 circumstances; providing applicability; conforming
136 provisions to changes made by the act; authorizing a
137 governmental subdivision that has received
138 authorization from a law enforcement officer or agency
139 to direct a contractor to perform vessel storage,
140 destruction, and disposal activities; authorizing the
141 commission to provide local government grants for the
142 storage, destruction, and disposal of derelict
143 vessels; providing for funding; amending s. 705.103,
144 F.S.; providing notice procedures for when a law
145 enforcement officer ascertains that a derelict or

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146 public nuisance vessel is present on the waters of
147 this state; requiring a mailed notice to the owner or
148 party responsible for the vessel to inform him or her
149 of the right to a hearing; providing hearing
150 requirements; authorizing a law enforcement agency to
151 take certain actions if a hearing is not requested or
152 a vessel is determined to be derelict or otherwise in
153 violation of law; revising provisions relating to
154 liability for vessel removal costs and notification of
155 the amount owed; providing criminal penalties for a
156 person who is issued a registration for a vessel or
157 motor vehicle before such costs are paid; requiring
158 persons whose vessel registration and motor vehicle
159 privileges have been revoked for failure to pay
160 certain costs to be reported to the department;
161 prohibiting issuance of a certificate of registration
162 to such persons until such costs are paid; amending s.
163 823.11, F.S.; revising application of definitions;
164 revising the definition of the term "derelict vessel";
165 specifying requirements for a vessel to be considered
166 wrecked, junked, or substantially dismantled;
167 providing construction; revising unlawful acts
168 relating to derelict vessels; defining the term
169 "leave"; prohibiting an owner or operator whose vessel
170 becomes derelict due to specified accidents or events
171 from being charged with a violation under certain
172 circumstances; providing applicability; providing that
173 relocation or removal costs incurred by a governmental
174 subdivision are recoverable against the vessel owner

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175 or the party determined to be legally responsible for
176 the vessel being derelict; providing criminal
177 penalties for a person who is issued a registration
178 for a vessel or motor vehicle before such costs are
179 paid; authorizing a governmental subdivision that has
180 received authorization from a law enforcement officer
181 or agency to direct a contractor to perform vessel
182 relocation or removal activities; providing effective
183 dates.

184

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

186

187 Section 1. Effective October 1, 2021, paragraphs (a) and
188 (c) of subsection (1) of section 316.1932, Florida Statutes, are
189 amended to read:

190 316.1932 Tests for alcohol, chemical substances, or
191 controlled substances; implied consent; refusal.—

192 (1)(a)1.a. A ~~Any~~ person who accepts the privilege extended
193 by the laws of this state of operating a motor vehicle within
194 this state is, by ~~so~~ operating such vehicle, deemed to have
195 given his or her consent to submit to an approved chemical test
196 or physical test including, but not limited to, an infrared
197 light test of his or her breath for the purpose of determining
198 the alcoholic content of his or her blood or breath if the
199 person is lawfully arrested for any offense allegedly committed
200 while the person was driving or was in actual physical control
201 of a motor vehicle while under the influence of alcoholic
202 beverages. The chemical or physical breath test must be
203 incidental to a lawful arrest and administered at the request of

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204 a law enforcement officer who has reasonable cause to believe
205 such person was driving or was in actual physical control of the
206 motor vehicle within this state while under the influence of
207 alcoholic beverages. The administration of a breath test does
208 not preclude the administration of another type of test. The
209 person shall be told that his or her failure to submit to any
210 lawful test of his or her breath will result in the suspension
211 of the person's privilege to operate a motor vehicle for a
212 period of 1 year for a first refusal, or for a period of 18
213 months if the driving privilege of such person has been
214 previously suspended or if he or she has previously been fined
215 under s. 327.35215 as a result of a refusal to submit to ~~such~~ a
216 test or tests required under this chapter or chapter 327, and
217 shall also be told that if he or she refuses to submit to a
218 lawful test of his or her breath and his or her driving
219 privilege has been previously suspended or if he or she has
220 previously been fined under s. 327.35215 for a prior refusal to
221 submit to a lawful test of his or her breath, urine, or blood as
222 required under this chapter or chapter 327, he or she commits a
223 misdemeanor of the first degree, punishable as provided in s.
224 775.082 or s. 775.083, in addition to any other penalties
225 provided by law. The refusal to submit to a chemical or physical
226 breath test upon the request of a law enforcement officer as
227 provided in this section is admissible into evidence in any
228 criminal proceeding.

229 b. A ~~Any~~ person who accepts the privilege extended by the
230 laws of this state of operating a motor vehicle within this
231 state is, by ~~se~~ operating such vehicle, deemed to have given his
232 or her consent to submit to a urine test for the purpose of

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233 detecting the presence of chemical substances as set forth in s.
234 877.111 or controlled substances if the person is lawfully
235 arrested for any offense allegedly committed while the person
236 was driving or was in actual physical control of a motor vehicle
237 while under the influence of chemical substances or controlled
238 substances. The urine test must be incidental to a lawful arrest
239 and administered at a detention facility or any other facility,
240 mobile or otherwise, which is equipped to administer such tests
241 at the request of a law enforcement officer who has reasonable
242 cause to believe such person was driving or was in actual
243 physical control of a motor vehicle within this state while
244 under the influence of chemical substances or controlled
245 substances. The urine test shall be administered at a detention
246 facility or any other facility, mobile or otherwise, which is
247 equipped to administer such test in a reasonable manner that
248 will ensure the accuracy of the specimen and maintain the
249 privacy of the individual involved. The administration of a
250 urine test does not preclude the administration of another type
251 of test. The person shall be told that his or her failure to
252 submit to any lawful test of his or her urine will result in the
253 suspension of the person's privilege to operate a motor vehicle
254 for a period of 1 year for the first refusal, or for a period of
255 18 months if the driving privilege of such person has been
256 previously suspended or if he or she has previously been fined
257 under s. 327.35215 as a result of a refusal to submit to ~~such~~ a
258 test or tests required under this chapter or chapter 327, and
259 shall also be told that if he or she refuses to submit to a
260 lawful test of his or her urine and his or her driving privilege
261 has been previously suspended or if he or she has previously

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262 been fined under s. 327.35215 for a prior refusal to submit to a
263 lawful test of his or her breath, urine, or blood as required
264 under this chapter or chapter 327, he or she commits a
265 misdemeanor of the first degree, punishable as provided in s.
266 775.082 or s. 775.083, in addition to any other penalties
267 provided by law. The refusal to submit to a urine test upon the
268 request of a law enforcement officer as provided in this section
269 is admissible into evidence in any criminal proceeding.

270 2. The Alcohol Testing Program within the Department of Law
271 Enforcement is responsible for the regulation of the operation,
272 inspection, and registration of breath test instruments utilized
273 under the driving and boating under the influence provisions and
274 related provisions located in this chapter and chapters 322 and
275 327. The program is responsible for the regulation of the
276 individuals who operate, inspect, and instruct on the breath
277 test instruments utilized in the driving and boating under the
278 influence provisions and related provisions located in this
279 chapter and chapters 322 and 327. The program is further
280 responsible for the regulation of blood analysts who conduct
281 blood testing to be utilized under the driving and boating under
282 the influence provisions and related provisions located in this
283 chapter and chapters 322 and 327. The program shall:

284 a. Establish uniform criteria for the issuance of permits
285 to breath test operators, agency inspectors, instructors, blood
286 analysts, and instruments.

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

289 c. Have the authority to discipline and suspend, revoke, or
290 renew the permits of breath test operators, agency inspectors,

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291 instructors, blood analysts, and instruments.

292 d. Establish uniform requirements for instruction and
293 curricula for the operation and inspection of approved
294 instruments.

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

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

299 g. Have the authority to approve or disapprove breath test
300 instruments and accompanying paraphernalia for use pursuant to
301 the driving and boating under the influence provisions and
302 related provisions located in this chapter and chapters 322 and
303 327.

304 h. With the approval of the executive director of the
305 Department of Law Enforcement, make and enter into contracts and
306 agreements with other agencies, organizations, associations,
307 corporations, individuals, or federal agencies as are necessary,
308 expedient, or incidental to the performance of duties.

309 i. Issue final orders which include findings of fact and
310 conclusions of law and which constitute final agency action for
311 the purpose of chapter 120.

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

314 k. Make recommendations concerning any matter within the
315 purview of this section, this chapter, chapter 322, or chapter
316 327.

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

319 m. Consult and cooperate with other entities for the

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320 purpose of implementing the mandates of this section.

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

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

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

332

333 Nothing in this section shall be construed to supersede
334 provisions in this chapter and chapters 322 and 327. The
335 specifications in this section are derived from the power and
336 authority previously and currently possessed by the Department
337 of Law Enforcement and are enumerated to conform with the
338 mandates of chapter 99-379, Laws of Florida.

339 (c) A ~~Any~~ person who accepts the privilege extended by the
340 laws of this state of operating a motor vehicle within this
341 state is, by operating such vehicle, deemed to have given his or
342 her consent to submit to an approved blood test for the purpose
343 of determining the alcoholic content of the blood or a blood
344 test for the purpose of determining the presence of chemical
345 substances or controlled substances as provided in this section
346 if there is reasonable cause to believe the person was driving
347 or in actual physical control of a motor vehicle while under the
348 influence of alcoholic beverages or chemical or controlled

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349 substances and the person appears for treatment at a hospital,
350 clinic, or other medical facility and the administration of a
351 breath or urine test is impractical or impossible. As used in
352 this paragraph, the term "other medical facility" includes an
353 ambulance or other medical emergency vehicle. The blood test
354 shall be performed in a reasonable manner. A ~~Any~~ person who is
355 incapable of refusal by reason of unconsciousness or other
356 mental or physical condition is deemed not to have withdrawn his
357 or her consent to such test. A blood test may be administered
358 whether or not the person is told that his or her failure to
359 submit to such a blood test will result in the suspension of the
360 person's privilege to operate a motor vehicle upon the public
361 highways of this state and that a refusal to submit to a lawful
362 test of his or her blood, if his or her driving privilege has
363 been previously suspended for refusal to submit to a lawful test
364 of his or her breath, urine, or blood, is a misdemeanor. A ~~Any~~
365 person who is capable of refusal shall be told that his or her
366 failure to submit to such a blood test will result in the
367 suspension of the person's privilege to operate a motor vehicle
368 for a period of 1 year for a first refusal, or for a period of
369 18 months if the driving privilege of the person has been
370 suspended previously or if he or she has previously been fined
371 under s. 327.35215 as a result of a refusal to submit to ~~such a~~
372 ~~test or tests~~ required under this chapter or chapter 327, ~~and~~
373 ~~that a refusal to submit to a lawful test of his or her blood,~~
374 ~~if his or her driving privilege has been previously suspended~~
375 ~~for a prior refusal to submit to a lawful test of his or her~~
376 ~~breath, urine, or blood, is a misdemeanor.~~ The refusal to submit
377 to a blood test upon the request of a law enforcement officer is

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378 admissible in evidence in any criminal proceeding.

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

381 316.1939 Refusal to submit to testing; penalties.—

382 (1) A ~~Any~~ person who has refused to submit to a chemical or
383 physical test of his or her breath, ~~blood~~, or urine, as
384 described in s. 316.1932, and whose driving privilege was
385 previously suspended or who was previously fined under s.
386 327.35215 for a prior refusal to submit to a lawful test of his
387 or her breath, urine, or blood required under this chapter or
388 chapter 327, and:

389 (a) Who the arresting law enforcement officer had probable
390 cause to believe was driving or in actual physical control of a
391 motor vehicle in this state while under the influence of
392 alcoholic beverages, chemical substances, or controlled
393 substances;

394 (b) Who was placed under lawful arrest for a violation of
395 s. 316.193 unless such test was requested pursuant to s.
396 316.1932(1)(c);

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

401 (d) Who was informed that a refusal to submit to a lawful
402 test of his or her breath or, urine, ~~or blood~~, if his or her
403 driving privilege has been previously suspended or if he or she
404 has previously been fined under s. 327.35215 for a prior refusal
405 to submit to a lawful test of his or her breath, urine, or blood
406 as required under this chapter or chapter 327, is a misdemeanor

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407 of the first degree, punishable as provided in s. 775.082 or s.
408 775.083, in addition to any other penalties provided by law; and

409 (e) Who, after having been so informed, refused to submit
410 to any such test when requested to do so by a law enforcement
411 officer or correctional officer commits a misdemeanor of the
412 first degree and is subject to punishment as provided in s.
413 775.082 or s. 775.083.

414 Section 3. Present subsections (18) through (47) of section
415 327.02, Florida Statutes, are redesignated as subsections (19)
416 through (48), respectively, a new subsection (18) is added to
417 that section, and present subsection (31) of that section is
418 amended, to read:

419 327.02 Definitions.—As used in this chapter and in chapter
420 328, unless the context clearly requires a different meaning,
421 the term:

422 (18) "Human-powered vessel" means a vessel powered only by
423 its occupant or occupants, including, but not limited to, a
424 vessel powered only by the occupants' hands or feet, oars, or
425 paddles.

426 (32)(31) "Navigation rules" means, for vessels on:

427 (a) Waters outside established navigational lines of
428 demarcation as specified in 33 C.F.R. part 80, the International
429 Navigational Rules Act of 1977, 33 U.S.C. s. 1602, as amended,
430 including the appendix and annexes thereto, through December 31,
431 2020 ~~October 1, 2012~~.

432 (b) All waters not outside of such established lines of
433 demarcation, the Inland Navigational Rules Act of 1980, 33
434 C.F.R. parts 83-90, as amended, through December 31, 2020
435 ~~October 1, 2012~~.

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436 Section 4. Section 327.04, Florida Statutes, is amended to
437 read:

438 327.04 Rules.—The commission may ~~has authority to~~ adopt
439 rules pursuant to ss. 120.536(1) and 120.54 to implement ~~the~~
440 ~~provisions of this chapter,~~ the provisions of chapter 705
441 relating to vessels, and ss. 376.15 and 823.11 conferring powers
442 or duties upon it.

443 Section 5. Section 327.462, Florida Statutes, is created to
444 read:

445 327.462 Temporary protection zones for spaceflight launches
446 and recovery of spaceflight assets.—

447 (1) As used in this section, the term:

448 (a) "Launch services" means the conduct of a launch and
449 activities involved in the preparation of a launch vehicle,
450 payload, government astronaut, commercial astronaut, or
451 spaceflight participant for such launch.

452 (b) "Reentry services" means the conduct of a reentry and
453 activities involved in the preparation of a reentry vehicle,
454 payload, government astronaut, commercial astronaut, or
455 spaceflight participant for such reentry.

456 (c) "Spaceflight assets" means any item, or any part of an
457 item, owned by a spaceflight entity which is used in launch
458 services or reentry services, including crewed and uncrewed
459 spacecraft, launch vehicles, parachutes and other landing aids,
460 and any spacecraft or ancillary equipment that was attached to
461 the launch vehicle during launch, orbit, or reentry.

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

464 (2) The head of a law enforcement agency or entity

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465 identified in s. 327.70(1), or his or her designee, may, upon
466 waters of this state within the law enforcement agency's or
467 entity's jurisdiction, when necessary for preparations in
468 advance of a launch service or reentry service or for the
469 recovery of spaceflight assets before or after a launch service
470 or reentry service, temporarily establish a protection zone
471 requiring vessels to leave, or prohibiting vessels from
472 entering, water bodies within:

473 (a) Five hundred yards of where launch services, reentry
474 services, or spaceflight asset recovery operations are being
475 conducted; or

476 (b) A distance greater than provided in paragraph (a) if
477 the head of such law enforcement agency or entity, or his or her
478 designee, determines such greater distance is in the best
479 interest of public safety.

480 (3) A protection zone established under subsection (2) may
481 remain in effect only as long as necessary to ensure security
482 around the launch and recovery areas and to recover spaceflight
483 assets and any personnel being transported within a spacecraft
484 following the launch or reentry activity. Such protection zone
485 may not be in place more than 72 hours before or 72 hours after
486 the launch. The head of a law enforcement agency or entity
487 identified in s. 327.70, or his or her designee:

488 (a) May also restrict vessels from operating within up to
489 500 yards of any vessel transporting recovered spaceflight
490 assets following a spaceflight launch or reentry while such
491 vessel is continuously underway transporting such assets to a
492 location for removal from the waters of this state; and

493 (b) May not restrict vessel movement within the Florida

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494 Intracoastal Waterway, except as necessary during the transport
495 of spaceflight assets to or from port or during exigent
496 circumstances.

497 (4) The head of a law enforcement agency or entity
498 establishing a protection zone under this section, or his or her
499 designee, must report the establishment of such protection zone
500 via e-mail to the commission's Division of Law Enforcement,
501 Boating and Waterways Section, and to the appropriate United
502 States Coast Guard Sector Command having responsibility over the
503 water body, at least 72 hours before establishment of the
504 protection zone. Such report must include the reasons for the
505 protection zone, the portion of the water body or water bodies
506 which will be included in the protection zone, and the duration
507 of the protection zone. No later than 72 hours after the end of
508 the protection zone period, the head of the law enforcement
509 agency or entity, or his or her designee, must report via e-mail
510 to the commission's Division of Law Enforcement, Boating and
511 Waterways Section, the details of all citations issued for
512 violating the protection zone.

513 (5) This section applies only to launch services, reentry
514 services, or the recovery of spaceflight assets occurring or
515 originating within spaceport territory, as defined in s.
516 331.304, and to federally licensed or federally authorized
517 launches and reentries occurring or transiting to an end
518 destination upon waters of this state.

519 (6) A person who violates this section or any directive
520 given by a law enforcement officer relating to the establishment
521 of a protection zone under this section after being advised of
522 the establishment of the protection zone commits a misdemeanor

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523 of the second degree, punishable as provided in s. 775.082 or s.
524 775.083.

525 Section 6. Effective October 1, 2021, paragraphs (a) and
526 (c) of subsection (1) of section 327.352, Florida Statutes, are
527 amended to read:

528 327.352 Tests for alcohol, chemical substances, or
529 controlled substances; implied consent; refusal.-

530 (1)(a)1. The Legislature declares that the operation of a
531 vessel is a privilege that must be exercised in a reasonable
532 manner. In order to protect the public health and safety, it is
533 essential that a lawful and effective means of reducing the
534 incidence of boating while impaired or intoxicated be
535 established. Therefore, a ~~any~~ person who accepts the privilege
536 extended by the laws of this state of operating a vessel within
537 this state is, by ~~so~~ operating such vessel, deemed to have given
538 his or her consent to submit to an approved chemical test or
539 physical test including, but not limited to, an infrared light
540 test of his or her breath for the purpose of determining the
541 alcoholic content of his or her blood or breath if the person is
542 lawfully arrested for any offense allegedly committed while the
543 person was operating a vessel while under the influence of
544 alcoholic beverages. The chemical or physical breath test must
545 be incidental to a lawful arrest and administered at the request
546 of a law enforcement officer who has reasonable cause to believe
547 such person was operating the vessel within this state while
548 under the influence of alcoholic beverages. The administration
549 of a breath test does not preclude the administration of another
550 type of test. The person shall be told that his or her failure
551 to submit to any lawful test of his or her breath under this

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552 chapter will result in a civil penalty of \$500, and shall also
553 be told that if he or she refuses to submit to a lawful test of
554 his or her breath and he or she has been previously fined under
555 s. 327.35215 or has previously had his or her driver license
556 suspended for refusal to submit to any lawful test of his or her
557 breath, urine, or blood, he or she commits a misdemeanor of the
558 first degree, punishable as provided in s. 775.082 or s.
559 775.083, in addition to any other penalties provided by law. The
560 refusal to submit to a chemical or physical breath test upon the
561 request of a law enforcement officer as provided in this section
562 is admissible into evidence in any criminal proceeding.

563 2. A ~~Any~~ person who accepts the privilege extended by the
564 laws of this state of operating a vessel within this state is,
565 by ~~se~~ operating such vessel, deemed to have given his or her
566 consent to submit to a urine test for the purpose of detecting
567 the presence of chemical substances as set forth in s. 877.111
568 or controlled substances if the person is lawfully arrested for
569 any offense allegedly committed while the person was operating a
570 vessel while under the influence of chemical substances or
571 controlled substances. The urine test must be incidental to a
572 lawful arrest and administered at a detention facility or any
573 other facility, mobile or otherwise, which is equipped to
574 administer such tests at the request of a law enforcement
575 officer who has reasonable cause to believe such person was
576 operating a vessel within this state while under the influence
577 of chemical substances or controlled substances. The urine test
578 shall be administered at a detention facility or any other
579 facility, mobile or otherwise, which is equipped to administer
580 such test in a reasonable manner that will ensure the accuracy

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581 of the specimen and maintain the privacy of the individual
582 involved. The administration of a urine test does not preclude
583 the administration of another type of test. The person shall be
584 told that his or her failure to submit to any lawful test of his
585 or her urine under this chapter will result in a civil penalty
586 of \$500, and shall also be told that if he or she refuses to
587 submit to a lawful test of his or her urine and he or she has
588 been previously fined under s. 327.35215 or has previously had
589 his or her driver license suspended for refusal to submit to any
590 lawful test of his or her breath, urine, or blood, he or she
591 commits a misdemeanor of the first degree, punishable as
592 provided in s. 775.082 or s. 775.083, in addition to any other
593 penalties provided by law. The refusal to submit to a urine test
594 upon the request of a law enforcement officer as provided in
595 this section is admissible into evidence in any criminal
596 proceeding.

597 (c) A ~~Any~~ person who accepts the privilege extended by the
598 laws of this state of operating a vessel within this state is,
599 by operating such vessel, deemed to have given his or her
600 consent to submit to an approved blood test for the purpose of
601 determining the alcoholic content of the blood or a blood test
602 for the purpose of determining the presence of chemical
603 substances or controlled substances as provided in this section
604 if there is reasonable cause to believe the person was operating
605 a vessel while under the influence of alcoholic beverages or
606 chemical or controlled substances and the person appears for
607 treatment at a hospital, clinic, or other medical facility and
608 the administration of a breath or urine test is impractical or
609 impossible. As used in this paragraph, the term "other medical

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610 facility" includes an ambulance or other medical emergency
611 vehicle. The blood test shall be performed in a reasonable
612 manner. A ~~Any~~ person who is incapable of refusal by reason of
613 unconsciousness or other mental or physical condition is deemed
614 not to have withdrawn his or her consent to such test. A ~~Any~~
615 person who is capable of refusal shall be told that his or her
616 failure to submit to such a blood test will result in a civil
617 penalty of \$500 ~~and that a refusal to submit to a lawful test of~~
618 ~~his or her blood, if he or she has previously been fined for~~
619 ~~refusal to submit to any lawful test of his or her breath,~~
620 ~~urine, or blood, is a misdemeanor.~~ The refusal to submit to a
621 blood test upon the request of a law enforcement officer shall
622 be admissible in evidence in any criminal proceeding.

623 Section 7. Subsection (3) of section 327.35215, Florida
624 Statutes, is amended to read:

625 327.35215 Penalty for failure to submit to test.—

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

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

641 327.359 Refusal to submit to testing; penalties.—~~A~~ Any
642 person who has refused to submit to a chemical or physical test
643 of his or her breath, ~~blood,~~ or urine, as described in s.
644 327.352, and who has been previously fined under s. 327.35215 or
645 has previously had his or her driver license suspended for
646 refusal to submit to a lawful test of his or her breath, urine,
647 or blood, and:

648 (1) Who the arresting law enforcement officer had probable
649 cause to believe was operating or in actual physical control of
650 a vessel in this state while under the influence of alcoholic
651 beverages, chemical substances, or controlled substances;

652 (2) Who was placed under lawful arrest for a violation of
653 s. 327.35 unless such test was requested pursuant to s.
654 327.352(1)(c);

655 (3) Who was informed that if he or she refused to submit to
656 such test, he or she is subject to a fine of \$500;

657 (4) Who was informed that a refusal to submit to a lawful
658 test of his or her breath or, ~~urine, or blood,~~ if he or she has
659 been previously fined under s. 327.35215 or has previously had
660 his or her driver license suspended for refusal to submit to a
661 lawful test of his or her breath, urine, or blood, is a
662 misdemeanor of the first degree, punishable as provided in s.
663 775.082 or s. 775.083; and

664 (5) Who, after having been so informed, refused to submit
665 to any such test when requested to do so by a law enforcement
666 officer or correctional officer commits a misdemeanor of the
667 first degree, punishable ~~and is subject to punishment~~ as

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668 provided in s. 775.082 or s. 775.083.

669 Section 9. Section 327.371, Florida Statutes, is created to
670 read:

671 327.371 Human-powered vessels regulated.—

672 (1) A person may operate a human-powered vessel within the
673 boundaries of the marked channel of the Florida Intracoastal
674 Waterway as defined in s. 327.02:

675 (a) When the marked channel is the only navigable portion
676 of the waterway available due to vessel congestion or
677 obstructions on the water. The operator of the human-powered
678 vessel shall proceed with diligence to a location where he or
679 she may safely operate the vessel outside the marked channel of
680 the Florida Intracoastal Waterway.

681 (b) When crossing the marked channel, provided that the
682 crossing is done in the most direct, continuous, and expeditious
683 manner possible and does not interfere with other vessel traffic
684 in the channel.

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

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

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

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

694 327.391 Airboats regulated.—

695 (1) The exhaust of every internal combustion engine used on
696 any airboat operated on the waters of this state shall be

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697 provided with an automotive-style factory muffler, underwater
698 exhaust, or other manufactured device capable of adequately
699 muffling the sound of the exhaust of the engine as described in
700 s. 327.02(31) ~~s. 327.02(30)~~. The use of cutouts or flex pipe as
701 the sole source of muffling is prohibited, except as provided in
702 subsection (4). A ~~Any~~ person who violates this subsection
703 commits a noncriminal infraction, punishable as provided in s.
704 327.73(1).

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

709 1. A photographic identification card.

710 2. Proof of completion of a boater education course that
711 complies with s. 327.395(2)(a) ~~s. 327.395(1)(a)~~. Except as
712 provided in paragraph (b), no operator is exempt from this
713 requirement, regardless of age or the exemptions provided under
714 s. 327.395.

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

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

720 (b) A person issued a captain's license by the United
721 States Coast Guard is not required to complete a boating safety
722 education course that complies with s. 327.395(2)(a) ~~s.~~
723 ~~327.395(1)(a)~~. Proof of the captain's license must be onboard
724 the airboat when carrying one or more passengers for hire on
725 waters of this ~~the~~ state.

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

728 327.395 Boating safety education.—

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

733 (2) While operating a vessel, a person identified under
734 subsection (1) must have in his or her possession aboard the
735 vessel photographic identification and a Florida boating safety
736 identification card issued by the commission; ~~or~~ a state-issued
737 identification card or driver license indicating possession of
738 the Florida boating safety identification card; ~~or~~ or photographic
739 identification and a temporary certificate issued or approved by
740 the commission, an International Certificate of Competency, a
741 boating safety card or certificate from another state or United
742 States territory, or a Canadian Pleasure Craft Operator Card,
743 which shows that he or she has:

744 (a) Completed a commission-approved boating safety
745 education course that meets the minimum requirements established
746 by the National Association of State Boating Law Administrators;
747 ~~or~~

748 (b) Passed a temporary certificate examination developed or
749 approved by the commission;

750 (c) A valid International Certificate of Competency; or

751 (d) Completed a boating safety education course or
752 equivalency examination in another state, a United States
753 territory, or Canada which meets or exceeds the minimum
754 requirements established by the National Association of State

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755 Boating Law Administrators.

756 (3)(a)(2)(a) A person may obtain a Florida boating safety
757 identification card by successfully completing a boating safety
758 education course that meets the requirements of this section and
759 rules adopted by the commission pursuant to this section.

760 (b) A person may obtain a temporary certificate by passing
761 a temporary certificate examination that meets the requirements
762 of this section and rules adopted by the commission pursuant to
763 this section.

764 (4)(3) ~~A~~ Any commission-approved boating safety education
765 course or temporary certificate examination developed or
766 approved by the commission must include a component regarding
767 diving vessels, awareness of divers in the water, divers-down
768 warning devices, and the requirements of s. 327.331.

769 ~~(4) The commission may appoint liveries, marinas, or other~~
770 ~~persons as its agents to administer the course or temporary~~
771 ~~certificate examination and issue identification cards or~~
772 ~~temporary certificates in digital, electronic, or paper format~~
773 ~~under guidelines established by the commission. An agent must~~
774 ~~charge the \$2 examination fee, which must be forwarded to the~~
775 ~~commission with proof of passage of the examination and may~~
776 ~~charge and keep a \$1 service fee.~~

777 (5) A Florida boating safety identification card issued to
778 a person who has completed a boating safety education course is
779 valid for life. A temporary certificate issued to a person who
780 has passed a temporary certification examination is valid for 90
781 days after the date of issuance. The commission may issue either
782 the boating safety identification card or the temporary
783 certificate in a digital, electronic, or paper format.

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- 784 (6) A person is exempt from subsection (1) if he or she:
- 785 (a)1. Is licensed by the United States Coast Guard to serve
- 786 as master of a vessel; or
- 787 2. Has been previously licensed by the United States Coast
- 788 Guard to serve as master of a vessel, provides proof of such
- 789 licensure to the commission, and requests that a boating safety
- 790 identification card be issued in his or her name.
- 791 (b) Operates a vessel only on a private lake or pond.
- 792 (c) Is accompanied in the vessel by a person who is exempt
- 793 from this section or who holds a boating safety identification
- 794 card in compliance with this section, who is 18 years of age or
- 795 older, and who is attendant to the operation of the vessel and
- 796 responsible for the safe operation of the vessel and for any
- 797 violation that occurs during the operation of the vessel.
- 798 (d) Is a nonresident who has in his or her possession
- 799 photographic identification and proof that he or she has
- 800 completed a boating safety education course or equivalency
- 801 examination in another state or a United States territory which
- 802 meets or exceeds the minimum requirements established by the
- 803 National Association of State Boating Law Administrators.
- 804 (e) Is operating a vessel within 90 days after the purchase
- 805 of that vessel and has available for inspection aboard that
- 806 vessel a bill of sale meeting the requirements of s. 328.46(1).
- 807 (f) Is operating a vessel within 90 days after completing a
- 808 boating safety education course in accordance with paragraph
- 809 (2)(a) the requirements of paragraph (1)(a) and has a
- 810 photographic identification card and a boating safety education
- 811 certificate available for inspection as proof of having
- 812 completed a boating safety education course. The boating safety

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813 education certificate must provide, at a minimum, the student's
814 first and last name, the student's date of birth, and the date
815 that he or she passed the course examination.

816 (g) Is exempted by rule of the commission.

817 (7) A person who operates a vessel in violation of this
818 section ~~subsection (1)~~ commits a noncriminal infraction,
819 punishable as provided in s. 327.73.

820 (8) The commission shall institute and coordinate a
821 statewide program of boating safety instruction and
822 certification to ensure that boating safety courses and
823 examinations are available in each county of this ~~the~~ state. The
824 commission may appoint agents to administer the boating safety
825 education course or temporary certificate examination and may
826 authorize the agents to issue temporary certificates in digital,
827 electronic, or paper format. An agent ~~The agents~~ shall charge
828 and collect the \$2 fee required in subsection (9) for each
829 temporary certificate requested of the commission by that agent,
830 which must be forwarded to the commission. The agent may charge
831 and keep a ~~\$1~~ service fee.

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

835 (10) The commission shall design forms and adopt rules
836 pursuant to chapter 120 to implement ~~the provisions of~~ this
837 section.

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

840 Section 12. Present subsection (5) of section 327.4107,
841 Florida Statutes, is redesignated as subsection (6), a new

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842 subsection (5) and subsection (7) are added to that section, and
843 paragraphs (d) and (e) of subsection (2) of that section are
844 amended, to read:

845 327.4107 Vessels at risk of becoming derelict on waters of
846 this state.—

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

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

854 (e) The vessel does not have an effective means of
855 propulsion for safe navigation within 72 hours after the vessel
856 owner or operator receives telephonic notice, in-person notice
857 recorded on an agency-approved body camera, or written notice,
858 which may be provided by facsimile, electronic mail, or other
859 electronic means, stating such from an officer, and the vessel
860 owner or operator is unable to provide a receipt, proof of
861 purchase, or other documentation of having ordered necessary
862 parts for vessel repair. The commission may adopt rules to
863 implement this paragraph.

864 (5) The commission, an officer of the commission, or a law
865 enforcement agency or officer specified in s. 327.70 may
866 relocate or cause to be relocated an at-risk vessel found to be
867 in violation of this section to a distance greater than 20 feet
868 from a mangrove or upland vegetation. The commission, an officer
869 of the commission, or a law enforcement agency or officer acting
870 pursuant to this subsection upon waters of this state shall be

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871 held harmless for all damages to the at-risk vessel resulting
872 from such relocation unless the damage results from gross
873 negligence or willful misconduct as these terms are defined in
874 s. 823.11.

875 (7) The commission may establish a derelict vessel
876 prevention program to address vessels at risk of becoming
877 derelict. Such program may, but is not required to, include:

878 (a) Removal, relocation, and destruction of vessels
879 declared a public nuisance, derelict or at risk of becoming
880 derelict, or lost or abandoned in accordance with s. 327.53(7),
881 s. 327.73(1)(aa), s. 705.103(2) and (4), or s. 823.11(3).

882 (b) Creation of a vessel turn-in program allowing the owner
883 of a vessel determined by law enforcement to be at risk of
884 becoming derelict in accordance with this section to turn his or
885 her vessel and vessel title over to the commission to be
886 destroyed without penalty.

887 (c) Providing for removal and destruction of an abandoned
888 vessel for which an owner cannot be identified or the owner of
889 which is deceased and no heir is interested in acquiring the
890 vessel.

891 (d) Purchase of anchor line, anchors, and other equipment
892 necessary for securing vessels at risk of becoming derelict.

893 (e) Creating or acquiring moorings designated for securing
894 vessels at risk of becoming derelict.

895

896 The commission may adopt rules to implement this subsection.
897 Implementation of the derelict vessel prevention program shall
898 be subject to appropriation by the Legislature and shall be
899 funded by the Marine Resources Conservation Trust Fund or the

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900 Florida Coastal Protection Trust Fund.

901 Section 13. Section 327.4108, Florida Statutes, is amended
902 to read:

903 327.4108 Anchoring of vessels in anchoring limitation
904 areas.—

905 (1) The following densely populated urban areas, which have
906 narrow state waterways, residential docking facilities, and
907 significant recreational boating traffic, are designated as
908 anchoring limitation areas, within which a person may not anchor
909 a vessel at any time during the period between one-half hour
910 after sunset and one-half hour before sunrise, except as
911 provided in subsections (3) and (4):

912 (a) The section of Middle River lying between Northeast
913 21st Court and the Intracoastal Waterway in Broward County.

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

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

917 1. Rivo Alto Island and Di Lido Island.

918 2. San Marino Island and San Marco Island.

919 3. San Marco Island and Biscayne Island.

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

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

926 (c) Notwithstanding the commission rules adopted pursuant
927 to this section, this section is not effective for Monroe County
928 until the county approves, permits, and opens new moorings for

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929 public use, including at least 250 moorings within 1 mile of the
930 Key West Bight City Dock and at least 50 moorings within the Key
931 West Garrison Bight Mooring Field. Until such time, the
932 commission shall designate the area within 1 mile of the Key
933 West Bight City Dock as a priority for the investigation and
934 removal of derelict vessels.

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

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

943 (a) If the vessel suffers a mechanical failure that poses
944 an unreasonable risk of harm to the vessel or the persons
945 onboard unless the vessel anchors. The vessel may anchor for 3
946 business days or until the vessel is repaired, whichever occurs
947 first.

948 (b) If imminent or existing weather conditions in the
949 vicinity of the vessel pose an unreasonable risk of harm to the
950 vessel or the persons onboard unless the vessel anchors. The
951 vessel may anchor until weather conditions no longer pose such
952 risk. During a hurricane or tropical storm, weather conditions
953 are deemed to no longer pose an unreasonable risk of harm when
954 the hurricane or tropical storm warning affecting the area has
955 expired.

956 (c) During events described in s. 327.48 or other special
957 events, including, but not limited to, public music

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958 performances, local government waterfront activities, or
959 fireworks displays. A vessel may anchor for the lesser of the
960 duration of the special event or 3 days.

961 (4) This section does not apply to:

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

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

965 (c) Vessels actively engaged in commercial fishing.

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

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

971 (b) A law enforcement officer or agency may remove a vessel
972 from an anchoring limitation area and impound the vessel for up
973 to 48 hours, or cause such removal and impoundment, if the
974 vessel operator, after being issued a citation for a violation
975 of this section:

976 1. Anchors the vessel in violation of this section within
977 12 hours after being issued the citation; or

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

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

985 (d) A contractor performing removal or impoundment services
986 at the direction of a law enforcement officer or agency pursuant

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987 to this subsection must:

988 1. Be licensed in accordance with United States Coast Guard
989 regulations, as applicable.

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

994 3. Be properly equipped to perform such services.

995 (e) In addition to the civil penalty imposed under s.
996 327.73(1)(z), the operator of a vessel that is removed and
997 impounded pursuant to paragraph (b) must pay all removal and
998 storage fees before the vessel is released. A vessel removed
999 pursuant to paragraph (b) may not be impounded for longer than
1000 48 hours.

1001 (6) A violation of this section is punishable as provided
1002 in s. 327.73(1)(z).

1003 ~~(7) This section shall remain in effect notwithstanding the~~
1004 ~~Legislature's adoption of the commission's recommendations for~~
1005 ~~the regulation of mooring vessels outside of public mooring~~
1006 ~~fields pursuant to s. 327.4105.~~

1007 Section 14. Paragraph (a) of subsection (1) and subsection
1008 (2) of section 327.4109, Florida Statutes, are amended to read:

1009 327.4109 Anchoring or mooring prohibited; exceptions;
1010 penalties.—

1011 (1)(a) The owner or operator of a vessel or floating
1012 structure may not anchor or moor such that the nearest approach
1013 of the anchored or moored vessel or floating structure is:

1014 1. Within 150 feet of any public or private marina, boat
1015 ramp, boatyard, or other public vessel launching or loading

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1016 facility;

1017 2. Within 500 ~~300~~ feet of a superyacht repair facility. For
1018 purposes of this subparagraph, the term "superyacht repair
1019 facility" means a facility that services or repairs a yacht with
1020 a water line of 120 feet or more in length; or

1021 3. Within 100 feet outward from the marked boundary of a
1022 public mooring field or a lesser distance if approved by the
1023 commission upon request of a local government within which the
1024 mooring field is located. The commission may adopt rules to
1025 implement this subparagraph.

1026 (2) Notwithstanding subsection (1), an owner or operator of
1027 a vessel may anchor or moor within 150 feet of any public or
1028 private marina, boat ramp, boatyard, or other public vessel
1029 launching or loading facility; within 500 ~~300~~ feet of a
1030 superyacht repair facility; or within 100 feet outward from the
1031 marked boundary of a public mooring field if:

1032 (a) The vessel suffers a mechanical failure that poses an
1033 unreasonable risk of harm to the vessel or the persons onboard
1034 such vessel. The owner or operator of the vessel may anchor or
1035 moor for 5 business days or until the vessel is repaired,
1036 whichever occurs first.

1037 (b) Imminent or existing weather conditions in the vicinity
1038 of the vessel pose an unreasonable risk of harm to the vessel or
1039 the persons onboard such vessel. The owner or operator of the
1040 vessel may anchor or moor until weather conditions no longer
1041 pose such risk. During a hurricane or tropical storm, weather
1042 conditions are deemed to no longer pose an unreasonable risk of
1043 harm when the hurricane or tropical storm warning affecting the
1044 area has expired.

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1045 Section 15. Subsection (2) of section 327.45, Florida
1046 Statutes, is amended to read:

1047 327.45 Protection zones for springs.—

1048 (2) The commission may establish by rule protection zones
1049 that restrict the speed and operation of vessels, or that
1050 prohibit the anchoring, mooring, beaching, or grounding of
1051 vessels, to protect and prevent harm to first, second, and third
1052 magnitude springs and springs groups, including their associated
1053 spring runs, as determined by the commission using the most
1054 recent Florida Geological Survey springs bulletin. This harm
1055 includes negative impacts to water quality, water quantity,
1056 hydrology, wetlands, and aquatic and wetland-dependent species.

1057 Section 16. Paragraph (b) of subsection (1) of section
1058 327.46, Florida Statutes, is amended to read:

1059 327.46 Boating-restricted areas.—

1060 (1) Boating-restricted areas, including, but not limited
1061 to, restrictions of vessel speeds and vessel traffic, may be
1062 established on the waters of this state for any purpose
1063 necessary to protect the safety of the public if such
1064 restrictions are necessary based on boating accidents,
1065 visibility, hazardous currents or water levels, vessel traffic
1066 congestion, or other navigational hazards or to protect
1067 seagrasses on privately owned submerged lands.

1068 (b) Municipalities and counties may have the authority to
1069 establish the following boating-restricted areas by ordinance,
1070 including, notwithstanding the prohibition in s. 327.60(2)(c),
1071 within the portion of the Florida Intracoastal Waterway within
1072 their jurisdiction:

1073 1. An ordinance establishing an idle speed, no wake

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1074 boating-restricted area, if the area is:

1075 a. Within 500 feet of any boat ramp, hoist, marine railway,
1076 or other launching or landing facility available for use by the
1077 general boating public on waterways more than 300 feet in width
1078 or within 300 feet of any boat ramp, hoist, marine railway, or
1079 other launching or landing facility available for use by the
1080 general boating public on waterways not exceeding 300 feet in
1081 width.

1082 b. Within 500 feet of fuel pumps or dispensers at any
1083 marine fueling facility that sells motor fuel to the general
1084 boating public on waterways more than 300 feet in width or
1085 within 300 feet of the fuel pumps or dispensers at any licensed
1086 terminal facility that sells motor fuel to the general boating
1087 public on waterways not exceeding 300 feet in width.

1088 c. Inside or within 300 feet of any lock structure.

1089 2. An ordinance establishing a slow speed, minimum wake
1090 boating-restricted area if the area is:

1091 a. Within 300 feet of any bridge fender system.

1092 b. Within 300 feet of any bridge span presenting a vertical
1093 clearance of less than 25 feet or a horizontal clearance of less
1094 than 100 feet.

1095 c. On a creek, stream, canal, or similar linear waterway if
1096 the waterway is less than 75 feet in width from shoreline to
1097 shoreline.

1098 d. On a lake or pond of less than 10 acres in total surface
1099 area.

1100 e. Within the boundaries of a permitted public mooring
1101 field and a buffer around the mooring field of up to 100 feet.

1102 3. An ordinance establishing a vessel-exclusion zone if the

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1103 area is:

1104 a. Accessible by land, open to the general public, and
 1105 designated as a public bathing beach or swim area, except that
 1106 such areas may not be established within the Florida
 1107 Intracoastal Waterway.

1108 b. Within 300 feet of a dam, spillway, or flood control
 1109 structure.

1110 Section 17. Section 327.463, Florida Statutes, is created
 1111 to read:

1112 327.463 Special hazards.—

1113 (1) For purposes of this section, a vessel:

1114 (a) Is operating at slow speed, minimum wake only if it is:

1115 1. Fully off plane and completely settled into the water;

1116 and

1117 2. Proceeding without wake or with minimum wake.

1118
 1119 A vessel that is required to operate at slow speed, minimum wake
 1120 may not proceed at a speed greater than a speed that is
 1121 reasonable and prudent to avoid the creation of an excessive
 1122 wake or other hazardous condition under the existing
 1123 circumstances.

1124 (b) Is not proceeding at slow speed, minimum wake if it is:

1125 1. Operating on plane;

1126 2. In the process of coming off plane and settling into the
 1127 water or getting on plane; or

1128 3. Operating at a speed that creates a wake that
 1129 unreasonably or unnecessarily endangers other vessels.

1130 (2) A person may not operate a vessel faster than slow
 1131 speed, minimum wake within 300 feet of any emergency vessel,

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1132 including, but not limited to, a law enforcement vessel, United
1133 States Coast Guard vessel, or firefighting vessel, when such
1134 emergency vessel's emergency lights are activated.

1135 (3)(a) A person may not operate a vessel faster than slow
1136 speed, minimum wake within 300 feet of any construction vessel
1137 or barge when the vessel or barge is displaying an orange flag
1138 from a pole extending:

1139 1. At least 10 feet above the tallest portion of the vessel
1140 or barge, indicating that the vessel or barge is actively
1141 engaged in construction operations; or

1142 2. At least 5 feet above any superstructure permanently
1143 installed upon the vessel or barge, indicating that the vessel
1144 or barge is actively engaged in construction operations.

1145 (b) A flag displayed on a construction vessel or barge
1146 pursuant to this subsection must:

1147 1. Be at least 2 feet by 3 feet in size.

1148 2. Have a wire or other stiffener or be otherwise
1149 constructed to ensure that the flag remains fully unfurled and
1150 extended in the absence of a wind or breeze.

1151 3. Be displayed so that the visibility of the flag is not
1152 obscured in any direction.

1153 (c) In periods of low visibility, including any time
1154 between 30 minutes after sunset and 30 minutes before sunrise, a
1155 person may not be cited for a violation of this subsection
1156 unless the orange flag is illuminated and visible from a
1157 distance of at least 2 nautical miles. Such illumination does
1158 not relieve the construction vessel or barge from complying with
1159 all navigation rules.

1160 (4)(a) A person operating a vessel in violation of this

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1161 section commits a noncriminal infraction, punishable as provided
1162 in s. 327.73.

1163 (b) The owner of, or party who is responsible for, a
1164 construction vessel or barge who displays an orange flag on the
1165 vessel or barge when it is not actively engaged in construction
1166 operations commits a noncriminal infraction, punishable as
1167 provided in s. 327.73.

1168 (5) The speed and penalty provisions of this section do not
1169 apply to a law enforcement, firefighting, or rescue vessel that
1170 is owned or operated by a governmental entity.

1171 Section 18. Paragraph (a) of subsection (1) of section
1172 327.50, Florida Statutes, is amended to read:

1173 327.50 Vessel safety regulations; equipment and lighting
1174 requirements.-

1175 (1)(a) The owner and operator of every vessel on the waters
1176 of this state shall carry, store, maintain, and use safety
1177 equipment in accordance with current United States Coast Guard
1178 safety equipment requirements as specified in the Code of
1179 Federal Regulations, unless expressly exempted by the commission
1180 department.

1181 Section 19. Paragraph (a) of subsection (6) and subsection
1182 (7) of section 327.53, Florida Statutes, are amended, and
1183 subsection (8) is added to that section, to read:

1184 327.53 Marine sanitation.-

1185 (6)(a) A violation of this section is a noncriminal
1186 infraction, punishable as provided in s. 327.73. Each violation
1187 shall be a separate offense. The owner and operator of any
1188 vessel shall be jointly and severally liable for the civil
1189 penalty imposed pursuant to this section.

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1190 (7) ~~A Any~~ vessel or floating structure operated or occupied
1191 on the waters of this ~~the~~ state in violation of this section is
1192 declared a nuisance and a hazard to public safety and health.
1193 The owner or operator of a any vessel or floating structure
1194 cited for violating this section shall, within 30 days following
1195 the issuance of the citation, correct the violation for which
1196 the citation was issued or remove the vessel or floating
1197 structure from the waters of this ~~the~~ state. If the violation is
1198 not corrected within the 30 days and the vessel or floating
1199 structure remains on the waters of this ~~the~~ state in violation
1200 of this section, law enforcement officers charged with the
1201 enforcement of this chapter under s. 327.70 shall apply to the
1202 appropriate court in the county in which the vessel or floating
1203 structure is located, ~~to order or otherwise cause the removal of~~
1204 such vessel or floating structure from the waters of this ~~the~~
1205 state at the owner's expense. If the owner cannot be found or
1206 otherwise fails to pay the removal costs, the provisions of s.
1207 328.17 shall apply. If the proceeds under s. 328.17 are not
1208 sufficient to pay all removal costs, funds appropriated from the
1209 Marine Resources Conservation Trust Fund pursuant to paragraph
1210 (6)(b) or s. 328.72(15)(c) ~~s. 328.72(16)~~ may be used.

1211 (8) The owner or operator of a live-aboard vessel as
1212 defined in s. 327.02(23), or a houseboat as defined in s.
1213 327.02(17), that is equipped with a marine sanitation device
1214 must maintain a record of the date of each pumpout of the marine
1215 sanitation device and the location of the pumpout station or
1216 waste reception facility. Each record must be maintained for 1
1217 year after the date of the pumpout. This subsection does not
1218 apply to marine compost toilets that process and manage human

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1219 waste using marine compost toilet technologies that comply with
1220 United States Coast Guard requirements.

1221 Section 20. Subsection (2) of section 327.54, Florida
1222 Statutes, is amended to read:

1223 327.54 Liveries; safety regulations; penalty.—

1224 (2) A livery may not knowingly lease, hire, or rent a any
1225 vessel ~~powered by a motor of 10 horsepower or greater to a any~~
1226 ~~person who is required to comply with s. 327.395,~~ unless such
1227 person presents to the livery the documentation required by s.
1228 327.395(2) for the operation of a vessel ~~photographic~~
1229 ~~identification and a valid boater safety identification card as~~
1230 ~~required under s. 327.395(1),~~ or meets the exemption provided
1231 under s. 327.395(6)(f).

1232 Section 21. Subsection (5) of section 327.60, Florida
1233 Statutes, is amended to read:

1234 327.60 Local regulations; limitations.—

1235 (5) A local government may enact and enforce regulations to
1236 implement the procedures for abandoned or lost property that
1237 allow the local law enforcement agency to remove a vessel
1238 affixed to a public dock or mooring within its jurisdiction that
1239 is abandoned or lost property pursuant to s. 705.103(1). Such
1240 regulation must require the local law enforcement agency to post
1241 a written notice at least 24 hours before removing the vessel.

1242 Section 22. Paragraphs (q), (s), and (aa) of subsection (1)
1243 of section 327.73, Florida Statutes, are amended, and paragraphs
1244 (cc) and (dd) are added to that subsection, to read:

1245 327.73 Noncriminal infractions.—

1246 (1) Violations of the following provisions of the vessel
1247 laws of this state are noncriminal infractions:

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1248 (q) Section 327.53(1), (2), ~~and~~ (3), and (8), relating to
1249 marine sanitation.

1250 (s) Section 327.395, relating to boater safety education.
1251 However, a person cited for violating the requirements of s.
1252 327.395 relating to failure to have required proof of boating
1253 safety education in his or her possession may not be convicted
1254 if, before or at the time of a county court hearing, the person
1255 produces proof of the boating safety education identification
1256 card or temporary certificate for verification by the hearing
1257 officer or the court clerk and the identification card or
1258 temporary certificate was valid at the time the person was
1259 cited.

1260 (aa) Section 327.4107, relating to vessels at risk of
1261 becoming derelict on waters of this state, for which the civil
1262 penalty is:

- 1263 1. For a first offense, \$100 ~~\$50~~.
- 1264 2. For a second offense occurring 30 days or more after a
1265 first offense, \$250 ~~\$100~~.
- 1266 3. For a third or subsequent offense occurring 30 days or
1267 more after a previous offense, \$500 ~~\$250~~.

1268
1269 A vessel that is the subject of three or more violations issued
1270 pursuant to the same paragraph of s. 327.4107(2) within an 18-
1271 month period which result in dispositions other than acquittal
1272 or dismissal shall be declared to be a public nuisance and
1273 subject to ss. 705.103(2) and (4) and 823.11(3). The commission,
1274 an officer of the commission, or a law enforcement agency or
1275 officer specified in s. 327.70 may relocate, remove, or cause to
1276 be relocated or removed such public nuisance vessels from waters

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1277 of this state. The commission, an officer of the commission, or
1278 a law enforcement agency or officer acting pursuant to this
1279 paragraph upon waters of this state shall be held harmless for
1280 all damages to the vessel resulting from such relocation or
1281 removal unless the damage results from gross negligence or
1282 willful misconduct as these terms are defined in s. 823.11.

1283 (cc) Section 327.463(4)(a) and (b), relating to vessels
1284 creating special hazards, for which the penalty is:

1285 1. For a first offense, \$50.

1286 2. For a second offense occurring within 12 months after a
1287 prior offense, \$100.

1288 3. For a third offense occurring within 36 months after a
1289 prior offense, \$250.

1290 (dd) Section 327.371, relating to the regulation of human-
1291 powered vessels.

1292
1293 Any person cited for a violation of any provision of this
1294 subsection shall be deemed to be charged with a noncriminal
1295 infraction, shall be cited for such an infraction, and shall be
1296 cited to appear before the county court. The civil penalty for
1297 any such infraction is \$50, except as otherwise provided in this
1298 section. Any person who fails to appear or otherwise properly
1299 respond to a uniform boating citation shall, in addition to the
1300 charge relating to the violation of the boating laws of this
1301 state, be charged with the offense of failing to respond to such
1302 citation and, upon conviction, be guilty of a misdemeanor of the
1303 second degree, punishable as provided in s. 775.082 or s.
1304 775.083. A written warning to this effect shall be provided at
1305 the time such uniform boating citation is issued.

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1306 Section 23. Subsection (4) of section 328.09, Florida
1307 Statutes, is amended to read:

1308 328.09 Refusal to issue and authority to cancel a
1309 certificate of title or registration.-

1310 (4) The department may not issue a certificate of title to
1311 an ~~any~~ applicant for a ~~any~~ vessel that has been deemed derelict
1312 by a law enforcement officer under s. 376.15 or s. 823.11. A law
1313 enforcement officer must inform the department in writing, which
1314 may be provided by facsimile, electronic mail, or other
1315 electronic means, of the vessel's derelict status and supply the
1316 department with the vessel title number or vessel identification
1317 number. The department may issue a certificate of title once a
1318 law enforcement officer has verified in writing, which may be
1319 provided by facsimile, electronic mail, or other electronic
1320 means, that the vessel is no longer a derelict vessel.

1321 Section 24. Effective July 1, 2023, paragraph (e) of
1322 subsection (3) of section 328.09, Florida Statutes, as amended
1323 by section 12 of chapter 2019-76, Laws of Florida, is amended to
1324 read:

1325 328.09 Refusal to issue and authority to cancel a
1326 certificate of title or registration.-

1327 (3) Except as otherwise provided in subsection (4), the
1328 department may reject an application for a certificate of title
1329 only if:

1330 (e) The application is for a vessel that has been deemed
1331 derelict by a law enforcement officer under s. 376.15 or s.
1332 823.11. In such case, a law enforcement officer must inform the
1333 department in writing, which may be provided by facsimile, e-
1334 mail, or other electronic means, of the vessel's derelict status

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1335 and supply the department with the vessel title number or vessel
1336 identification number. The department may issue a certificate of
1337 title once a law enforcement officer has verified in writing,
1338 which may be provided by facsimile, e-mail, or other electronic
1339 means, that the vessel is no longer a derelict vessel.

1340 Section 25. Section 376.15, Florida Statutes, is amended to
1341 read:

1342 376.15 Derelict vessels; relocation or removal from ~~public~~
1343 waters of this state.—

1344 (1) As used in this section, the term:

1345 (a) "Commission" means the Fish and Wildlife Conservation
1346 Commission.

1347 (b) "Gross negligence" means conduct so reckless or wanting
1348 in care that it constitutes a conscious disregard or
1349 indifference to the safety of the property exposed to such
1350 conduct.

1351 (c) "Willful misconduct" means conduct evidencing
1352 carelessness or negligence of such a degree or recurrence as to
1353 manifest culpability, wrongful intent, or evil design or to show
1354 an intentional and substantial disregard of the interests of the
1355 vessel owner.

1356 (2)(a) It is unlawful for any person, firm, or corporation
1357 to ~~store, leave, or abandon~~ any derelict vessel as defined in s.
1358 823.11 upon the waters of in this state. For purposes of this
1359 paragraph, the term "leave" means to allow a vessel to remain
1360 occupied or unoccupied on the waters of this state for more than
1361 24 hours.

1362 (b) Notwithstanding paragraph (a), a person who owns or
1363 operates a vessel that becomes derelict upon the waters of this

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1364 state solely as a result of a boating accident that is reported
1365 to law enforcement in accordance with s. 327.301 or otherwise
1366 reported to law enforcement; a hurricane; or another sudden
1367 event outside of his or her control may not be charged with a
1368 violation if:

1369 1. The individual documents for law enforcement the
1370 specific event that led to the vessel being derelict upon the
1371 waters of this state; and

1372 2. The vessel has been removed from the waters of this
1373 state or has been repaired or addressed such that it is no
1374 longer derelict upon the waters of this state:

1375 a. For a vessel that has become derelict as a result of a
1376 boating accident or other sudden event outside of his or her
1377 control, within 7 days after such accident or event; or

1378 b. Within 45 days after the hurricane has passed over this
1379 state.

1380 (c) This subsection does not apply to a vessel that was
1381 derelict upon the waters of this state before the stated
1382 accident or event.

1383 (3)(a) The commission, an officer ~~officers~~ of the
1384 commission, or a ~~and any~~ law enforcement agency or officer
1385 specified in s. 327.70 ~~may are authorized and empowered to~~
1386 relocate, remove, store, destroy, or dispose of or cause to be
1387 relocated, ~~or~~ removed, stored, destroyed, or disposed of a ~~any~~
1388 derelict vessel as defined in s. 823.11 from public waters of
1389 this state as defined in s. 327.02. All costs, including costs
1390 owed to a third party, incurred by the commission or other law
1391 enforcement agency in the relocation, ~~or~~ removal, storage,
1392 destruction, or disposal of any abandoned or derelict vessel are

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1393 recoverable against the owner of the vessel or the party
1394 determined to be legally responsible for the vessel being upon
1395 the waters of this state in a derelict condition. The Department
1396 of Legal Affairs shall represent the commission in actions to
1397 recover such costs.

1398 (b) The commission, an officer ~~officers~~ of the commission,
1399 or a ~~and any other~~ law enforcement agency or officer specified
1400 in s. 327.70 acting pursuant to ~~under~~ this section to relocate,
1401 remove, store, destroy, or dispose of or cause to be relocated,
1402 ~~or removed, stored, destroyed, or disposed of~~ a derelict vessel
1403 from ~~public~~ waters of this state as defined in s. 327.02 shall
1404 be held harmless for all damages to the derelict vessel
1405 resulting from such action ~~relocation or removal~~ unless the
1406 damage results from gross negligence or willful misconduct as
1407 these terms are defined in s. 823.11.

1408 (c) A contractor performing relocation or removal
1409 activities at the direction of the commission, an officer
1410 ~~officers~~ of the commission, ~~or~~ a law enforcement agency or
1411 officer, or a governmental subdivision, when the governmental
1412 subdivision has received authorization for the relocation or
1413 removal from a law enforcement officer or agency pursuant to
1414 this section, must be licensed in accordance with applicable
1415 United States Coast Guard regulations where required; obtain and
1416 carry in full force and effect a policy from a licensed
1417 insurance carrier in this state to insure against any accident,
1418 loss, injury, property damage, or other casualty caused by or
1419 resulting from the contractor's actions; and be properly
1420 equipped to perform the services to be provided.

1421 (d) The commission may establish a program to provide

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1422 grants to local governments for the removal, storage,
1423 destruction, and disposal of derelict vessels from the ~~public~~
1424 waters of this the state as defined in s. 327.02. The program
1425 shall be funded from the Marine Resources Conservation Trust
1426 Fund or the Florida Coastal Protection Trust Fund.
1427 Notwithstanding ~~the provisions in~~ s. 216.181(11), funds
1428 available for grants may only be authorized by appropriations
1429 acts of the Legislature. In a given fiscal year, if all funds
1430 appropriated pursuant to this paragraph are not requested by and
1431 granted to local governments for the removal, storage,
1432 destruction, and disposal of derelict vessels by the end of the
1433 third quarter, the Fish and Wildlife Conservation Commission may
1434 use the remainder of the funds to remove, store, destroy, and
1435 dispose of, or to pay private contractors to remove, store,
1436 destroy, and dispose of, derelict vessels.

1437 (e) The commission shall adopt by rule procedures for
1438 submitting a grant application and criteria for allocating
1439 available funds. Such criteria shall include, but not be limited
1440 to, the following:

1441 1. The number of derelict vessels within the jurisdiction
1442 of the applicant.

1443 2. The threat posed by such vessels to public health or
1444 safety, the environment, navigation, or the aesthetic condition
1445 of the general vicinity.

1446 3. The degree of commitment of the local government to
1447 maintain waters free of abandoned and derelict vessels and to
1448 seek legal action against those who abandon vessels in the
1449 waters of this the state as defined in s. 327.02.

1450 (f) This section constitutes the authority for such removal

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1451 but is not intended to be in contravention of any applicable
1452 federal act.

1453 Section 26. Subsections (2) and (4) of section 705.103,
1454 Florida Statutes, are amended to read:

1455 705.103 Procedure for abandoned or lost property.—

1456 (2)(a)1. Whenever a law enforcement officer ascertains
1457 that:

1458 a. An article of lost or abandoned property other than a
1459 derelict vessel or a vessel declared a public nuisance pursuant
1460 to s. 327.73(1)(aa) is present on public property and is of such
1461 nature that it cannot be easily removed, the officer shall cause
1462 a notice to be placed upon such article in substantially the
1463 following form:

1464

1465 NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED
1466 PROPERTY. This property, to wit: ...(setting forth brief
1467 description)... is unlawfully upon public property known as
1468 ...(setting forth brief description of location)... and must be
1469 removed within 5 days; otherwise, it will be removed and
1470 disposed of pursuant to chapter 705, Florida Statutes. The owner
1471 will be liable for the costs of removal, storage, and
1472 publication of notice. Dated this: ...(setting forth the date of
1473 posting of notice)..., signed: ...(setting forth name, title,
1474 address, and telephone number of law enforcement officer)....

1475

1476 b. A derelict vessel or a vessel declared a public nuisance
1477 pursuant to s. 327.73(1)(aa) is present on the waters of this
1478 state, the officer shall cause a notice to be placed upon such
1479 vessel in substantially the following form:

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1480
1481 NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED
1482 VESSEL. This vessel, to wit: ...(setting forth brief
1483 description)... has been determined to be (derelict or a public
1484 nuisance) and is unlawfully upon waters of this state
1485 ...(setting forth brief description of location)... and must be
1486 removed within 21 days; otherwise, it will be removed and
1487 disposed of pursuant to chapter 705, Florida Statutes. The owner
1488 and other interested parties have the right to a hearing to
1489 challenge the determination that this vessel is derelict or
1490 otherwise in violation of the law. Please contact ...(contact
1491 information for person who can arrange for a hearing in
1492 accordance with this section).... The owner or the party
1493 determined to be legally responsible for the vessel being upon
1494 the waters of this state in a derelict condition will be liable
1495 for the costs of removal, destruction, and disposal if this
1496 vessel is not removed by the owner. Dated this: ...(setting
1497 forth the date of posting of notice)...., signed: ...(setting
1498 forth name, title, address, and telephone number of law
1499 enforcement officer)....

1500 2. The notices required under subparagraph 1. may Such
1501 ~~notice shall be~~ not be less than 8 inches by 10 inches and shall
1502 be sufficiently weatherproof to withstand normal exposure to the
1503 elements. In addition to posting, the law enforcement officer
1504 shall make a reasonable effort to ascertain the name and address
1505 of the owner. If such is reasonably available to the officer,
1506 she or he shall mail a copy of such notice to the owner on or
1507 before the date of posting. If the property is a motor vehicle
1508 as defined in s. 320.01(1) or a vessel as defined in s. 327.02,

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1509 the law enforcement agency shall contact the Department of
1510 Highway Safety and Motor Vehicles in order to determine the name
1511 and address of the owner and any person who has filed a lien on
1512 the vehicle or vessel as provided in s. 319.27(2) or (3) or s.
1513 328.15(1). On receipt of this information, the law enforcement
1514 agency shall mail a copy of the notice by certified mail, return
1515 receipt requested, to the owner and to the lienholder, if any,
1516 except that a law enforcement officer who has issued a citation
1517 for a violation of s. 376.15 or s. 823.11 to the owner of a
1518 derelict vessel is not required to mail a copy of the notice by
1519 certified mail, return receipt requested, to the owner. For a
1520 derelict vessel or a vessel declared a public nuisance pursuant
1521 to s. 327.73(1)(aa), the mailed notice must inform the owner or
1522 responsible party that he or she has a right to a hearing to
1523 dispute the determination that the vessel is derelict or
1524 otherwise in violation of the law. If a request for a hearing is
1525 made, a state agency shall follow the processes set forth in s.
1526 120.569. Local governmental entities shall follow the processes
1527 set forth in s. 120.569, except that a local judge, magistrate,
1528 or code enforcement officer may be designated to conduct such a
1529 hearing. If, at the end of 5 days after posting the notice in
1530 sub-subparagraph 1.a., or at the end of 21 days after posting
1531 the notice in sub-subparagraph 1.b., and mailing such notice, if
1532 required, the owner or any person interested in the lost or
1533 abandoned article or articles described has not removed the
1534 article or articles from public property or shown reasonable
1535 cause for failure to do so, and, in the case of a derelict
1536 vessel or a vessel declared a public nuisance pursuant to s.
1537 327.73(1)(aa), has not requested a hearing in accordance with

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1538 this section, the following shall apply:

1539 a.~~(a)~~ For abandoned property other than a derelict vessel
1540 or a vessel declared a public nuisance pursuant to s.
1541 327.73(1)(aa), the law enforcement agency may retain any or all
1542 of the property for its own use or for use by the state or unit
1543 of local government, trade such property to another unit of
1544 local government or state agency, donate the property to a
1545 charitable organization, sell the property, or notify the
1546 appropriate refuse removal service.

1547 b. For a derelict vessel or a vessel declared a public
1548 nuisance pursuant to s. 327.73(1)(aa), the law enforcement
1549 agency or its designee may:

1550 (I) Remove the vessel from the waters of this state and
1551 destroy and dispose of the vessel or authorize another
1552 governmental entity or its designee to do so; or

1553 (II) Authorize the vessel's use as an artificial reef in
1554 accordance with s. 379.249 if all necessary federal, state, and
1555 local authorizations are received.

1556
1557 A law enforcement agency or its designee may also take action as
1558 described in this sub-subparagraph if, following a hearing
1559 pursuant to this section, the judge, magistrate, administrative
1560 law judge, or hearing officer has determined the vessel to be
1561 derelict as provided in s. 823.11 or otherwise in violation of
1562 the law in accordance with s. 327.73(1)(aa) and a final order
1563 has been entered or the case is otherwise closed.

1564 (b) For lost property, the officer shall take custody and
1565 the agency shall retain custody of the property for 90 days. The
1566 agency shall publish notice of the intended disposition of the

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1567 property, as provided in this section, during the first 45 days
1568 of this time period.

1569 1. If the agency elects to retain the property for use by
1570 the unit of government, donate the property to a charitable
1571 organization, surrender such property to the finder, sell the
1572 property, or trade the property to another unit of local
1573 government or state agency, notice of such election shall be
1574 given by an advertisement published once a week for 2
1575 consecutive weeks in a newspaper of general circulation in the
1576 county where the property was found if the value of the property
1577 is more than \$100. If the value of the property is \$100 or less,
1578 notice shall be given by posting a description of the property
1579 at the law enforcement agency where the property was turned in.
1580 The notice must be posted for not less than 2 consecutive weeks
1581 in a public place designated by the law enforcement agency. The
1582 notice must describe the property in a manner reasonably
1583 adequate to permit the rightful owner of the property to claim
1584 it.

1585 2. If the agency elects to sell the property, it must do so
1586 at public sale by competitive bidding. Notice of the time and
1587 place of the sale shall be given by an advertisement of the sale
1588 published once a week for 2 consecutive weeks in a newspaper of
1589 general circulation in the county where the sale is to be held.
1590 The notice shall include a statement that the sale shall be
1591 subject to any and all liens. The sale must be held at the
1592 nearest suitable place to that where the lost or abandoned
1593 property is held or stored. The advertisement must include a
1594 description of the goods and the time and place of the sale. The
1595 sale may take place no earlier than 10 days after the final

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1596 publication. If there is no newspaper of general circulation in
1597 the county where the sale is to be held, the advertisement shall
1598 be posted at the door of the courthouse and at three other
1599 public places in the county at least 10 days prior to sale.
1600 Notice of the agency's intended disposition shall describe the
1601 property in a manner reasonably adequate to permit the rightful
1602 owner of the property to identify it.

1603 (4) The owner of any abandoned or lost property, or in the
1604 case of a derelict vessel, the owner or other party determined
1605 to be legally responsible for the vessel being upon the waters
1606 of this state in a derelict condition, who, after notice as
1607 provided in this section, does not remove such property within
1608 the specified period shall be liable to the law enforcement
1609 agency, other governmental entity, or the agency's or entity's
1610 designee for all costs of removal, storage, and destruction of
1611 such property, less any salvage value obtained by disposal of
1612 the property. Upon final disposition of the property, the law
1613 enforcement officer or representative of the law enforcement
1614 agency or other governmental entity shall notify the owner, if
1615 known, of the amount owed. In the case of an abandoned vessel or
1616 motor vehicle, any person who neglects or refuses to pay such
1617 amount is not entitled to be issued a certificate of
1618 registration for such vessel or motor vehicle, or any other
1619 vessel or motor vehicle, until such costs have been paid. A
1620 person who has neglected or refused to pay all costs of removal,
1621 storage, disposal, and destruction of a vessel or motor vehicle
1622 as provided in this section, after having been provided written
1623 notice via certified mail that such costs are owed, and who
1624 applies for and is issued a registration for a vessel or motor

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1625 vehicle before such costs have been paid in full commits a
 1626 misdemeanor of the first degree, punishable as provided in s.
 1627 775.082 or s. 775.083. The law enforcement officer or
 1628 representative of the law enforcement agency or other
 1629 governmental entity shall supply the Department of Highway
 1630 Safety and Motor Vehicles with a list of persons whose vessel
 1631 registration privileges and ~~or whose~~ motor vehicle privileges
 1632 have been revoked under this subsection. ~~Neither~~ The department
 1633 or a nor any other person acting as an agent of the department
 1634 may not thereof shall issue a certificate of registration to a
 1635 person whose vessel and ~~or~~ motor vehicle registration privileges
 1636 have been revoked, as provided by this subsection, until such
 1637 costs have been paid.

1638 Section 27. Effective July 1, 2023, subsection (2) of
 1639 section 705.103, Florida Statutes, as amended by section 29 of
 1640 chapter 2019-76, Laws of Florida, is amended to read:

1641 705.103 Procedure for abandoned or lost property.—

1642 (2)(a)1. Whenever a law enforcement officer ascertains
 1643 that:

1644 a. An article of lost or abandoned property other than a
 1645 derelict vessel or a vessel declared a public nuisance pursuant
 1646 to s. 327.73(1)(aa) is present on public property and is of such
 1647 nature that it cannot be easily removed, the officer shall cause
 1648 a notice to be placed upon such article in substantially the
 1649 following form:

1650
 1651 NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED
 1652 PROPERTY. This property, to wit: ...(setting forth brief
 1653 description)... is unlawfully upon public property known as

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1654 ... (setting forth brief description of location)... and must be
1655 removed within 5 days; otherwise, it will be removed and
1656 disposed of pursuant to chapter 705, Florida Statutes. The owner
1657 will be liable for the costs of removal, storage, and
1658 publication of notice. Dated this: ... (setting forth the date of
1659 posting of notice)..., signed: ... (setting forth name, title,
1660 address, and telephone number of law enforcement officer)....
1661

1662 b. A derelict vessel or a vessel declared a public nuisance
1663 pursuant to s. 327.73(1)(aa) is present on the waters of this
1664 state, the officer shall cause a notice to be placed upon such
1665 vessel in substantially the following form:
1666

1667 NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED
1668 VESSEL. This vessel, to wit: ... (setting forth brief description
1669 of location)... has been determined to be (derelict or a public
1670 nuisance) and is unlawfully upon the waters of this state
1671 ... (setting forth brief description of location)... and must be
1672 removed within 21 days; otherwise, it will be removed and
1673 disposed of pursuant to chapter 705, Florida Statutes. The owner
1674 and other interested parties have the right to a hearing to
1675 challenge the determination that this vessel is derelict or
1676 otherwise in violation of the law. Please contact ... (contact
1677 information for person who can arrange for a hearing in
1678 accordance with this section)... The owner or the party
1679 determined to be legally responsible for the vessel being upon
1680 the waters of this state in a derelict condition will be liable
1681 for the costs of removal, destruction, and disposal if this
1682 vessel is not removed by the owner. Dated this: ... (setting

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1683 forth the date of posting of notice)..., signed: ...(setting
1684 forth name, title, address, and telephone number of law
1685 enforcement officer)....

1686
1687 2. The notices required under subparagraph 1. may ~~Such~~
1688 ~~notice shall be~~ not be less than 8 inches by 10 inches and shall
1689 be sufficiently weatherproof to withstand normal exposure to the
1690 elements. In addition to posting, the law enforcement officer
1691 shall make a reasonable effort to ascertain the name and address
1692 of the owner. If such is reasonably available to the officer,
1693 she or he shall mail a copy of such notice to the owner on or
1694 before the date of posting. If the property is a motor vehicle
1695 as defined in s. 320.01(1) or a vessel as defined in s. 327.02,
1696 the law enforcement agency shall contact the Department of
1697 Highway Safety and Motor Vehicles in order to determine the name
1698 and address of the owner and any person who has filed a lien on
1699 the vehicle or vessel as provided in s. 319.27(2) or (3) or s.
1700 328.15. On receipt of this information, the law enforcement
1701 agency shall mail a copy of the notice by certified mail, return
1702 receipt requested, to the owner and to the lienholder, if any,
1703 except that a law enforcement officer who has issued a citation
1704 for a violation of s. 376.15 or s. 823.11 to the owner of a
1705 derelict vessel is not required to mail a copy of the notice by
1706 certified mail, return receipt requested, to the owner. For a
1707 derelict vessel or a vessel declared a public nuisance pursuant
1708 to s. 327.73(1)(aa), the mailed notice must inform the owner or
1709 responsible party that he or she has a right to a hearing to
1710 dispute the determination that the vessel is derelict or
1711 otherwise in violation of the law. If a request for a hearing is

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1712 made, a state agency shall follow the processes as set forth in
1713 s. 120.569. Local governmental entities shall follow the
1714 processes set forth in s. 120.569, except that a local judge,
1715 magistrate, or code enforcement officer may be designated to
1716 conduct such a hearing. If, at the end of 5 days after posting
1717 the notice in sub-subparagraph 1.a., or at the end of 21 days
1718 after posting the notice in sub-subparagraph 1.b., and mailing
1719 such notice, if required, the owner or any person interested in
1720 the lost or abandoned article or articles described has not
1721 removed the article or articles from public property or shown
1722 reasonable cause for failure to do so, and, in the case of a
1723 derelict vessel or a vessel declared a public nuisance pursuant
1724 to s. 327.73(1)(aa), has not requested a hearing in accordance
1725 with this section, the following shall apply:

1726 a. ~~(a)~~ For abandoned property other than a derelict vessel
1727 or a vessel declared a public nuisance pursuant to s.
1728 327.73(1)(aa), the law enforcement agency may retain any or all
1729 of the property for its own use or for use by the state or unit
1730 of local government, trade such property to another unit of
1731 local government or state agency, donate the property to a
1732 charitable organization, sell the property, or notify the
1733 appropriate refuse removal service.

1734 b. For a derelict vessel or a vessel declared a public
1735 nuisance pursuant to s. 327.73(1)(aa), the law enforcement
1736 agency or its designee may:

1737 (I) Remove the vessel from the waters of this state and
1738 destroy and dispose of the vessel or authorize another
1739 governmental entity or its designee to do so; or

1740 (II) Authorize the vessel's use as an artificial reef in

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1741 accordance with s. 379.249 if all necessary federal, state, and
1742 local authorizations are received.

1743

1744 A law enforcement agency or its designee may also take action as
1745 described in this sub-subparagraph if, following a hearing
1746 pursuant to this section, the judge, magistrate, administrative
1747 law judge, or hearing officer has determined the vessel to be
1748 derelict as provided in s. 823.11 or otherwise in violation of
1749 the law in accordance with s. 327.73(1)(aa) and a final order
1750 has been entered or the case is otherwise closed.

1751 (b) For lost property, the officer shall take custody and
1752 the agency shall retain custody of the property for 90 days. The
1753 agency shall publish notice of the intended disposition of the
1754 property, as provided in this section, during the first 45 days
1755 of this time period.

1756 1. If the agency elects to retain the property for use by
1757 the unit of government, donate the property to a charitable
1758 organization, surrender such property to the finder, sell the
1759 property, or trade the property to another unit of local
1760 government or state agency, notice of such election shall be
1761 given by an advertisement published once a week for 2
1762 consecutive weeks in a newspaper of general circulation in the
1763 county where the property was found if the value of the property
1764 is more than \$100. If the value of the property is \$100 or less,
1765 notice shall be given by posting a description of the property
1766 at the law enforcement agency where the property was turned in.
1767 The notice must be posted for not less than 2 consecutive weeks
1768 in a public place designated by the law enforcement agency. The
1769 notice must describe the property in a manner reasonably

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1770 adequate to permit the rightful owner of the property to claim
1771 it.

1772 2. If the agency elects to sell the property, it must do so
1773 at public sale by competitive bidding. Notice of the time and
1774 place of the sale shall be given by an advertisement of the sale
1775 published once a week for 2 consecutive weeks in a newspaper of
1776 general circulation in the county where the sale is to be held.
1777 The notice shall include a statement that the sale shall be
1778 subject to any and all liens. The sale must be held at the
1779 nearest suitable place to that where the lost or abandoned
1780 property is held or stored. The advertisement must include a
1781 description of the goods and the time and place of the sale. The
1782 sale may take place no earlier than 10 days after the final
1783 publication. If there is no newspaper of general circulation in
1784 the county where the sale is to be held, the advertisement shall
1785 be posted at the door of the courthouse and at three other
1786 public places in the county at least 10 days prior to sale.
1787 Notice of the agency's intended disposition shall describe the
1788 property in a manner reasonably adequate to permit the rightful
1789 owner of the property to identify it.

1790 Section 28. Subsections (1), (2), and (3) of section
1791 823.11, Florida Statutes, are amended to read:

1792 823.11 Derelict vessels; relocation or removal; penalty.—

1793 (1) As used in this section and s. 376.15, the term:

1794 (a) "Commission" means the Fish and Wildlife Conservation
1795 Commission.

1796 (b) "Derelict vessel" means a vessel, as defined in s.
1797 327.02, that is ~~left, stored, or abandoned~~:

1798 1. In a wrecked, junked, or substantially dismantled

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1799 condition upon any ~~public~~ waters of this state.

1800 a. A vessel is wrecked if it is sunken or sinking; aground
1801 without the ability to extricate itself absent mechanical
1802 assistance; or remaining after a marine casualty, including, but
1803 not limited to, a boating accident, extreme weather, or a fire.

1804 b. A vessel is junked if it has been substantially stripped
1805 of vessel components, if vessel components have substantially
1806 degraded or been destroyed, or if the vessel has been discarded
1807 by the owner or operator. Attaching an outboard motor to a
1808 vessel that is otherwise junked will not cause the vessel to no
1809 longer be junked if such motor is not an effective means of
1810 propulsion as required by s. 327.4107(2)(e) and associated
1811 rules.

1812 c. A vessel is substantially dismantled if at least two of
1813 the three following vessel systems or components are missing,
1814 compromised, incomplete, inoperable, or broken:

1815 (I) The steering system;

1816 (II) The propulsion system; or

1817 (III) The exterior hull integrity.

1818
1819 Attaching an outboard motor to a vessel that is otherwise
1820 substantially dismantled will not cause the vessel to no longer
1821 be substantially dismantled if such motor is not an effective
1822 means of propulsion as required by s. 327.4107(2)(e) and
1823 associated rules.

1824 2. At a port in this state without the consent of the
1825 agency having jurisdiction thereof.

1826 3. Docked, grounded, or beached upon the property of
1827 another without the consent of the owner of the property.

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1828 (c) "Gross negligence" means conduct so reckless or wanting
1829 in care that it constitutes a conscious disregard or
1830 indifference to the safety of the property exposed to such
1831 conduct.

1832 (d) "Willful misconduct" means conduct evidencing
1833 carelessness or negligence of such a degree or recurrence as to
1834 manifest culpability, wrongful intent, or evil design or to show
1835 an intentional and substantial disregard of the interests of the
1836 vessel owner.

1837 (2)(a) ~~It is unlawful for~~ A person, firm, or corporation
1838 may not to store, leave, or abandon any derelict vessel upon
1839 waters of in this state. For purposes of this paragraph, the
1840 term "leave" means to allow a vessel to remain occupied or
1841 unoccupied on the waters of this state for more than 24 hours.

1842 (b) Notwithstanding paragraph (a), a person who owns or
1843 operates a vessel that becomes derelict upon the waters of this
1844 state solely as a result of a boating accident that is reported
1845 to law enforcement in accordance with s. 327.301 or otherwise
1846 reported to law enforcement; a hurricane; or another sudden
1847 event outside of his or her control may not be charged with a
1848 violation if:

1849 1. The individual documents for law enforcement the
1850 specific event that led to the vessel being derelict upon the
1851 waters of this state; and

1852 2. The vessel has been removed from the waters of this
1853 state or has been repaired or addressed such that it is no
1854 longer derelict upon the waters of this state:

1855 a. For a vessel that has become derelict as a result of a
1856 boating accident or other sudden event outside of his or her

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1857 control, within 7 days after such accident or event; or

1858 b. Within 45 days after the hurricane has passed over the
1859 state.

1860 (c) This subsection does not apply to a vessel that was
1861 derelict upon the waters of this state before the stated
1862 accident or event.

1863 (3) The commission, an officer ~~officers~~ of the commission,
1864 or a ~~and any~~ law enforcement agency or officer specified in s.
1865 327.70 may ~~are authorized and empowered to~~ relocate, remove,
1866 store, destroy, or dispose of or cause to be relocated, ~~or~~
1867 removed, stored, destroyed, or disposed of a derelict vessel
1868 from ~~public~~ waters of this state as defined in s. 327.02 if the
1869 derelict vessel obstructs or threatens to obstruct navigation or
1870 in any way constitutes a danger to the environment, property, or
1871 persons. The commission, an officer ~~officers~~ of the commission,
1872 or any other law enforcement agency or officer acting pursuant
1873 to ~~under~~ this subsection to relocate, remove, store, destroy,
1874 dispose of or cause to be relocated, ~~or~~ removed, stored,
1875 destroyed, or disposed of a derelict vessel from ~~public~~ waters
1876 of this state shall be held harmless for all damages to the
1877 derelict vessel resulting from such action ~~relocation or removal~~
1878 unless the damage results from gross negligence or willful
1879 misconduct.

1880 (a) Removal of derelict vessels under this subsection may
1881 be funded by grants provided in ss. 206.606 and 376.15. The
1882 commission shall implement a plan for the procurement of any
1883 available federal disaster funds and use such funds for the
1884 removal of derelict vessels.

1885 (b) All costs, including costs owed to a third party,

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1886 incurred by the commission, another ~~or other~~ law enforcement
1887 agency, or a governmental subdivision, when the governmental
1888 subdivision has received authorization from a law enforcement
1889 officer or agency, in the relocation, ~~or~~ removal, storage,
1890 destruction, or disposal of a derelict vessel are recoverable
1891 against the vessel owner or the party determined to be legally
1892 responsible for the vessel being upon the waters of this state
1893 in a derelict condition. The Department of Legal Affairs shall
1894 represent the commission in actions to recover such costs. As
1895 provided in s. 705.103(4), a person who neglects or refuses to
1896 pay such costs may not be issued a certificate of registration
1897 for such vessel or for any other vessel or motor vehicle until
1898 such costs have been paid. A person who has neglected or refused
1899 to pay all costs of removal, storage, destruction, or disposal
1900 of a derelict vessel as provided in this section, after having
1901 been provided written notice via certified mail that such costs
1902 are owed, and who applies for and is issued a registration for a
1903 vessel or motor vehicle before such costs have been paid in full
1904 commits a misdemeanor of the first degree, punishable as
1905 provided in s. 775.082 or s. 775.083.

1906 (c) A contractor performing such ~~relocation or removal~~
1907 activities at the direction of the commission, an officer
1908 ~~officers~~ of the commission, ~~or~~ a law enforcement agency or
1909 officer, or a governmental subdivision, when the governmental
1910 subdivision has received authorization for the relocation or
1911 removal from a law enforcement officer or agency, pursuant to
1912 this section must be licensed in accordance with applicable
1913 United States Coast Guard regulations where required; obtain and
1914 carry in full force and effect a policy from a licensed

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1915 insurance carrier in this state to insure against any accident,
1916 loss, injury, property damage, or other casualty caused by or
1917 resulting from the contractor's actions; and be properly
1918 equipped to perform the services to be provided.

1919 Section 29. Except as otherwise expressly provided in this
1920 act, this act shall take effect July 1, 2021.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on 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.

1 A bill to be entitled
2 An act relating to operation and safety of motor
3 vehicles and vessels; amending ss. 316.1932 and
4 316.1939, F.S.; revising conditions under which a
5 person's driving privilege is suspended and under
6 which the person commits a misdemeanor relating to
7 tests for alcohol, chemical substances, or controlled
8 substances; specifying such misdemeanor as a
9 misdemeanor of the first degree; amending s. 327.02,
10 F.S.; defining the term "human-powered vessel";
11 revising the definition of the term "navigation
12 rules"; amending s. 327.04, F.S.; providing additional
13 rulemaking authority to the Fish and Wildlife
14 Conservation Commission; creating s. 327.462, F.S.;
15 providing definitions; authorizing heads of certain
16 entities to establish temporary protection zones in
17 certain water bodies for certain purposes; providing
18 protection zone requirements; requiring the heads of
19 certain entities to report the establishment of such
20 protection zones to the commission and to the
21 appropriate United States Coast Guard Sector Command;
22 providing requirements for such report; providing
23 applicability; providing penalties; amending ss.
24 327.352 and 327.359, F.S.; revising conditions under
25 which a person commits a misdemeanor of the first

26 degree; creating s. 327.371, F.S.; providing
27 circumstances under which a person may operate a
28 human-powered vessel within the boundaries of the
29 marked channel of the Florida Intracoastal Waterway;
30 providing a penalty; amending s. 327.391, F.S.;
31 conforming cross-references; amending s. 327.395,
32 F.S.; prohibiting all persons, beginning on a
33 specified date, from operating a vessel powered by a
34 motor of 10 horsepower or greater unless the person
35 has certain documents in his or her possession aboard
36 the vessel; removing authority of the commission to
37 appoint certain entities to administer a boating
38 safety education course or temporary certificate
39 examination and issue certain credentials; exempting
40 certain persons from the requirement to possess
41 certain documents aboard a vessel; revising the
42 service fee amount certain entities that issue boating
43 safety identification cards and temporary certificates
44 are authorized to charge and keep; amending s.
45 327.4107, F.S.; authorizing certain officers to
46 provide notice that a vessel is at risk of becoming
47 derelict via body camera recordings; authorizing the
48 commission or certain officers to relocate at-risk
49 vessels to a certain distance from mangroves or
50 vegetation; providing that the commission or officers

51 are not liable for damages to such vessels; providing
52 an exception; authorizing the commission to establish
53 a derelict vessel prevention program consisting of
54 certain components; authorizing the commission to
55 adopt rules; providing that such program is subject to
56 appropriation by the Legislature; providing for
57 funding; amending s. 327.4108, F.S.; designating
58 Monroe County as an anchoring limitation area subject
59 to certain requirements; requiring the commission to
60 adopt rules; providing applicability; deleting
61 obsolete language; amending s. 327.4109, F.S.;

62 prohibiting the anchoring or mooring of a vessel or
63 floating structure within a certain distance of
64 certain facilities; providing exceptions; amending s.
65 327.45, F.S.; including specified spring groups and
66 runs in spring protection zones; authorizing the
67 commission to establish by rule spring protection
68 zones that prohibit the anchoring, mooring, beaching,
69 or grounding of vessels; amending s. 327.46, F.S.;

70 authorizing a county or municipality to establish a
71 boating-restricted area within and around a public
72 mooring field; creating s. 327.463, F.S.; specifying
73 conditions under which a vessel is and is not
74 operating at slow speed, minimum wake; prohibiting a
75 person from operating a vessel faster than slow speed,

76 | minimum wake within a certain distance from other
77 | specified vessels; exempting a person from being cited
78 | for a violation under certain circumstances; providing
79 | penalties; providing applicability; amending s.
80 | 327.50, F.S.; authorizing the commission to exempt
81 | vessel owners and operators from certain safety
82 | equipment requirements; amending s. 327.53, F.S.;
83 | requiring the owner or operator of a live-aboard
84 | vessel or houseboat equipped with certain sanitation
85 | devices to maintain a record of the date and location
86 | of each pumpout of the device for a certain period;
87 | providing applicability; amending s. 327.54, F.S.;
88 | prohibiting a livery from leasing, hiring, or renting
89 | a vessel to a person required to complete a
90 | commission-approved boating safety education course
91 | unless such person presents certain documentation
92 | indicating compliance; amending s. 327.60, F.S.;
93 | authorizing a local government to enact and enforce
94 | regulations allowing the local law enforcement agency
95 | to remove an abandoned or lost vessel affixed to a
96 | public mooring; amending s. 327.73, F.S.; providing
97 | additional violations that qualify as noncriminal
98 | infractions; providing civil penalties; prohibiting
99 | conviction of a person cited for a violation relating
100 | to possessing proof of boating safety education under

101 certain circumstances; increasing certain civil
102 penalties; providing that certain vessels shall be
103 declared a public nuisance subject to certain
104 statutory provisions; authorizing the commission or
105 certain officers to relocate or remove public nuisance
106 vessels from the waters of this state; providing that
107 the commission or officers are not liable for damages
108 to such vessels; providing an exception; amending s.
109 328.09, F.S.; prohibiting the Department of Highway
110 Safety and Motor Vehicles from issuing a certificate
111 of title to an applicant for a vessel that has been
112 deemed derelict pursuant to certain provisions;
113 authorizing the department, at a later date, to reject
114 an application for a certificate of title for such a
115 vessel; amending s. 376.15, F.S.; revising unlawful
116 acts relating to derelict vessels; defining the term
117 "leave"; prohibiting an owner or operator whose vessel
118 becomes derelict due to specified accidents or events
119 from being charged with a violation under certain
120 circumstances; providing applicability; conforming
121 provisions to changes made by the act; authorizing a
122 governmental subdivision that has received
123 authorization from a law enforcement officer or agency
124 to direct a contractor to perform vessel storage,
125 destruction, and disposal activities; authorizing the

126 | commission to provide local government grants for the
127 | storage, destruction, and disposal of derelict
128 | vessels; providing for funding; amending s. 705.103,
129 | F.S.; providing notice procedures for when a law
130 | enforcement officer ascertains that a derelict or
131 | public nuisance vessel is present on the waters of
132 | this state; requiring a mailed notice to the owner or
133 | party responsible for the vessel to inform him or her
134 | of the right to a hearing; providing hearing
135 | requirements; authorizing a law enforcement agency to
136 | take certain actions if a hearing is not requested or
137 | a vessel is determined to be derelict or otherwise in
138 | violation of law; revising provisions relating to
139 | liability for vessel removal costs and notification of
140 | the amount owed; providing penalties for a person who
141 | is issued a registration for a vessel or motor vehicle
142 | before such costs are paid; requiring persons whose
143 | vessel registration and motor vehicle privileges have
144 | been revoked for failure to pay certain costs to be
145 | reported to the department; prohibiting issuance of a
146 | certificate of registration to such persons until such
147 | costs are paid; amending s. 823.11, F.S.; revising
148 | application of definitions; revising the definition of
149 | the term "derelict vessel"; specifying requirements
150 | for a vessel to be considered wrecked, junked, or

151 substantially dismantled; providing construction;
 152 revising unlawful acts relating to derelict vessels;
 153 defining the term "leave"; prohibiting an owner or
 154 operator whose vessel becomes derelict due to
 155 specified accidents or events from being charged with
 156 a violation under certain circumstances; providing
 157 applicability; providing that relocation or removal
 158 costs incurred by a governmental subdivision are
 159 recoverable against the vessel owner or the party
 160 determined to be legally responsible for the vessel
 161 being derelict; providing penalties for a person who
 162 is issued a registration for a vessel or motor vehicle
 163 before such costs are paid; authorizing a governmental
 164 subdivision that has received authorization from a law
 165 enforcement officer or agency to direct a contractor
 166 to perform vessel relocation or removal activities;
 167 providing effective dates.

168
 169 Be It Enacted by the Legislature of the State of Florida:

170
 171 Section 1. Paragraphs (a) and (c) of subsection (1) of
 172 section 316.1932, Florida Statutes, are amended to read:

173 316.1932 Tests for alcohol, chemical substances, or
 174 controlled substances; implied consent; refusal.-

175 (1) (a) 1.a. A ~~Any~~ person who accepts the privilege extended
176 by the laws of this state of operating a motor vehicle within
177 this state is, by ~~so~~ operating such vehicle, deemed to have
178 given his or her consent to submit to an approved chemical test
179 or physical test including, but not limited to, an infrared
180 light test of his or her breath for the purpose of determining
181 the alcoholic content of his or her blood or breath if the
182 person is lawfully arrested for any offense allegedly committed
183 while the person was driving or was in actual physical control
184 of a motor vehicle while under the influence of alcoholic
185 beverages. The chemical or physical breath test must be
186 incidental to a lawful arrest and administered at the request of
187 a law enforcement officer who has reasonable cause to believe
188 such person was driving or was in actual physical control of the
189 motor vehicle within this state while under the influence of
190 alcoholic beverages. The administration of a breath test does
191 not preclude the administration of another type of test. The
192 person shall be told that his or her failure to submit to any
193 lawful test of his or her breath will result in the suspension
194 of the person's privilege to operate a motor vehicle for a
195 period of 1 year for a first refusal, or for a period of 18
196 months if the driving privilege of such person has been
197 previously suspended or if he or she has previously been fined
198 under s. 327.35215 as a result of a refusal to submit to ~~such~~ a
199 test or tests required under this chapter or chapter 327, and

200 shall also be told that if he or she refuses to submit to a
201 lawful test of his or her breath and his or her driving
202 privilege has been previously suspended or if he or she has
203 previously been fined under s. 327.35215 for a prior refusal to
204 submit to a lawful test of his or her breath, urine, or blood as
205 required under this chapter or chapter 327, he or she commits a
206 misdemeanor of the first degree, punishable as provided in s.
207 775.082 or s. 775.083, in addition to any other penalties
208 provided by law. The refusal to submit to a chemical or physical
209 breath test upon the request of a law enforcement officer as
210 provided in this section is admissible into evidence in any
211 criminal proceeding.

212 b. A ~~Any~~ person who accepts the privilege extended by the
213 laws of this state of operating a motor vehicle within this
214 state is, by ~~se~~ operating such vehicle, deemed to have given his
215 or her consent to submit to a urine test for the purpose of
216 detecting the presence of chemical substances as set forth in s.
217 877.111 or controlled substances if the person is lawfully
218 arrested for any offense allegedly committed while the person
219 was driving or was in actual physical control of a motor vehicle
220 while under the influence of chemical substances or controlled
221 substances. The urine test must be incidental to a lawful arrest
222 and administered at a detention facility or any other facility,
223 mobile or otherwise, which is equipped to administer such tests
224 at the request of a law enforcement officer who has reasonable

225 | cause to believe such person was driving or was in actual
226 | physical control of a motor vehicle within this state while
227 | under the influence of chemical substances or controlled
228 | substances. The urine test shall be administered at a detention
229 | facility or any other facility, mobile or otherwise, which is
230 | equipped to administer such test in a reasonable manner that
231 | will ensure the accuracy of the specimen and maintain the
232 | privacy of the individual involved. The administration of a
233 | urine test does not preclude the administration of another type
234 | of test. The person shall be told that his or her failure to
235 | submit to any lawful test of his or her urine will result in the
236 | suspension of the person's privilege to operate a motor vehicle
237 | for a period of 1 year for the first refusal, or for a period of
238 | 18 months if the driving privilege of such person has been
239 | previously suspended or if he or she has previously been fined
240 | under s. 327.35215 as a result of a refusal to submit to ~~such~~ a
241 | test or tests required under this chapter or chapter 327, and
242 | shall also be told that if he or she refuses to submit to a
243 | lawful test of his or her urine and his or her driving privilege
244 | has been previously suspended or if he or she has previously
245 | been fined under s. 327.35215 for a prior refusal to submit to a
246 | lawful test of his or her breath, urine, or blood as required
247 | under this chapter or chapter 327, he or she commits a
248 | misdemeanor of the first degree, punishable as provided in s.
249 | 775.082 or s. 775.083, in addition to any other penalties

250 provided by law. The refusal to submit to a urine test upon the
251 request of a law enforcement officer as provided in this section
252 is admissible into evidence in any criminal proceeding.

253 2. The Alcohol Testing Program within the Department of
254 Law Enforcement is responsible for the regulation of the
255 operation, inspection, and registration of breath test
256 instruments utilized under the driving and boating under the
257 influence provisions and related provisions located in this
258 chapter and chapters 322 and 327. The program is responsible for
259 the regulation of the individuals who operate, inspect, and
260 instruct on the breath test instruments utilized in the driving
261 and boating under the influence provisions and related
262 provisions located in this chapter and chapters 322 and 327. The
263 program is further responsible for the regulation of blood
264 analysts who conduct blood testing to be utilized under the
265 driving and boating under the influence provisions and related
266 provisions located in this chapter and chapters 322 and 327. The
267 program shall:

268 a. Establish uniform criteria for the issuance of permits
269 to breath test operators, agency inspectors, instructors, blood
270 analysts, and instruments.

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

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

276 d. Establish uniform requirements for instruction and
 277 curricula for the operation and inspection of approved
 278 instruments.

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

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

283 g. Have the authority to approve or disapprove breath test
 284 instruments and accompanying paraphernalia for use pursuant to
 285 the driving and boating under the influence provisions and
 286 related provisions located in this chapter and chapters 322 and
 287 327.

288 h. With the approval of the executive director of the
 289 Department of Law Enforcement, make and enter into contracts and
 290 agreements with other agencies, organizations, associations,
 291 corporations, individuals, or federal agencies as are necessary,
 292 expedient, or incidental to the performance of duties.

293 i. Issue final orders which include findings of fact and
 294 conclusions of law and which constitute final agency action for
 295 the purpose of chapter 120.

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

298 k. Make recommendations concerning any matter within the
299 purview of this section, this chapter, chapter 322, or chapter
300 327.

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

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

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

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

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

316
317 Nothing in this section shall be construed to supersede
318 provisions in this chapter and chapters 322 and 327. The
319 specifications in this section are derived from the power and
320 authority previously and currently possessed by the Department
321 of Law Enforcement and are enumerated to conform with the
322 mandates of chapter 99-379, Laws of Florida.

323 (c) A ~~Any~~ person who accepts the privilege extended by the
324 laws of this state of operating a motor vehicle within this
325 state is, by operating such vehicle, deemed to have given his or
326 her consent to submit to an approved blood test for the purpose
327 of determining the alcoholic content of the blood or a blood
328 test for the purpose of determining the presence of chemical
329 substances or controlled substances as provided in this section
330 if there is reasonable cause to believe the person was driving
331 or in actual physical control of a motor vehicle while under the
332 influence of alcoholic beverages or chemical or controlled
333 substances and the person appears for treatment at a hospital,
334 clinic, or other medical facility and the administration of a
335 breath or urine test is impractical or impossible. As used in
336 this paragraph, the term "other medical facility" includes an
337 ambulance or other medical emergency vehicle. The blood test
338 shall be performed in a reasonable manner. A ~~Any~~ person who is
339 incapable of refusal by reason of unconsciousness or other
340 mental or physical condition is deemed not to have withdrawn his
341 or her consent to such test. A blood test may be administered
342 whether or not the person is told that his or her failure to
343 submit to such a blood test will result in the suspension of the
344 person's privilege to operate a motor vehicle upon the public
345 highways of this state and that a refusal to submit to a lawful
346 test of his or her blood, if his or her driving privilege has
347 been previously suspended for refusal to submit to a lawful test

348 of his or her breath, urine, or blood, is a misdemeanor. ~~A~~ Any
349 person who is capable of refusal shall be told that his or her
350 failure to submit to such a blood test will result in the
351 suspension of the person's privilege to operate a motor vehicle
352 for a period of 1 year for a first refusal, or for a period of
353 18 months if the driving privilege of the person has been
354 suspended previously or if he or she has previously been fined
355 under s. 327.35215 as a result of a refusal to submit to ~~such a~~
356 test or tests required under this chapter or chapter 327, ~~and~~
357 ~~that a refusal to submit to a lawful test of his or her blood,~~
358 ~~if his or her driving privilege has been previously suspended~~
359 ~~for a prior refusal to submit to a lawful test of his or her~~
360 ~~breath, urine, or blood, is a misdemeanor.~~ The refusal to submit
361 to a blood test upon the request of a law enforcement officer is
362 admissible in evidence in any criminal proceeding.

363 Section 2. Subsection (1) of section 316.1939, Florida
364 Statutes, is amended to read:

365 316.1939 Refusal to submit to testing; penalties.—

366 (1) ~~A~~ Any person who has refused to submit to a chemical
367 or physical test of his or her breath, ~~blood,~~ or urine, as
368 described in s. 316.1932, and whose driving privilege was
369 previously suspended or who was previously fined under s.
370 327.35215 for a prior refusal to submit to a lawful test of his
371 or her breath, urine, or blood required under this chapter or
372 chapter 327, and:

373 (a) Who the arresting law enforcement officer had probable
 374 cause to believe was driving or in actual physical control of a
 375 motor vehicle in this state while under the influence of
 376 alcoholic beverages, chemical substances, or controlled
 377 substances;

378 (b) Who was placed under lawful arrest for a violation of
 379 s. 316.193 unless such test was requested pursuant to s.
 380 316.1932(1)(c);

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

385 (d) Who was informed that a refusal to submit to a lawful
 386 test of his or her breath ~~or~~ urine, ~~or blood~~, if his or her
 387 driving privilege has been previously suspended or if he or she
 388 has previously been fined under s. 327.35215 for a prior refusal
 389 to submit to a lawful test of his or her breath, urine, or blood
 390 as required under this chapter or chapter 327, is a misdemeanor
 391 of the first degree, punishable as provided in s. 775.082 or s.
 392 775.083, in addition to any other penalties provided by law; and

393 (e) Who, after having been so informed, refused to submit
 394 to any such test when requested to do so by a law enforcement
 395 officer or correctional officer
 396
 397 commits a misdemeanor of the first degree and is subject to

398 | punishment as provided in s. 775.082 or s. 775.083.

399 | Section 3. Subsections (18) through (47) of section
 400 | 327.02, Florida Statutes, are renumbered as subsections (19)
 401 | through (48), respectively, present subsection (31) of that
 402 | section is amended, and a new subsection (18) is added to that
 403 | section, to read:

404 | 327.02 Definitions.—As used in this chapter and in chapter
 405 | 328, unless the context clearly requires a different meaning,
 406 | the term:

407 | (18) "Human-powered vessel" means a vessel powered only by
 408 | its occupant or occupants, including, but not limited to, a
 409 | vessel powered only by the occupants' hands or feet, oars, or
 410 | paddles.

411 | ~~(32)~~~~(31)~~ "Navigation rules" means, for vessels on:

412 | (a) Waters outside established navigational lines of
 413 | demarcation as specified in 33 C.F.R. part 80, the International
 414 | Navigational Rules Act of 1977, 33 U.S.C. s. 1602, as amended,
 415 | including the appendix and annexes thereto, through December 31,
 416 | 2020 ~~October 1, 2012.~~

417 | (b) All waters not outside of such established lines of
 418 | demarcation, the Inland Navigational Rules Act of 1980, 33
 419 | C.F.R. parts 83-90, as amended, through December 31, 2020
 420 | ~~October 1, 2012.~~

421 | Section 4. Section 327.04, Florida Statutes, is amended to
 422 | read:

423 327.04 Rules.—The commission may ~~has authority to~~ adopt
424 rules pursuant to ss. 120.536(1) and 120.54 to implement ~~the~~
425 ~~provisions of this chapter,~~ the provisions of chapter 705
426 relating to vessels, and ss. 376.15 and 823.11 conferring powers
427 or duties upon it.

428 Section 5. Section 327.462, Florida Statutes, is created
429 to read:

430 327.462 Temporary protection zones for spaceflight
431 launches and recovery of spaceflight assets.—

432 (1) As used in this section, the term:

433 (a) "Launch services" means the conduct of a launch and
434 activities involved in the preparation of a launch vehicle,
435 payload, government astronaut, commercial astronaut, or
436 spaceflight participant for such launch.

437 (b) "Reentry services" means the conduct of a reentry and
438 activities involved in the preparation of a reentry vehicle,
439 payload, government astronaut, commercial astronaut, or
440 spaceflight participant for such reentry.

441 (c) "Spaceflight assets" means any item, or any part of an
442 item, owned by a spaceflight entity which is used in launch
443 services or reentry services, including crewed and uncrewed
444 spacecraft, launch vehicles, parachutes and other landing aids,
445 and any spacecraft or ancillary equipment that was attached to
446 the launch vehicle during launch, orbit, or reentry.

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

449 (2) The head of a law enforcement agency or entity
450 identified in s. 327.70(1), or his or her designee, may, upon
451 waters of this state within the law enforcement agency's or
452 entity's jurisdiction, when necessary for preparations in
453 advance of a launch service or reentry service or for the
454 recovery of spaceflight assets before or after a launch service
455 or reentry service, temporarily establish a protection zone
456 requiring vessels to leave, or prohibiting vessels from
457 entering, water bodies within:

458 (a) Five hundred yards of where launch services, reentry
459 services, or spaceflight asset recovery operations are being
460 conducted; or

461 (b) A distance greater than provided in paragraph (a) if
462 the head of such law enforcement agency or entity, or his or her
463 designee, determines such greater distance is in the best
464 interest of public safety.

465 (3) A protection zone established under subsection (2) may
466 remain in effect only as long as necessary to ensure security
467 around the launch and recovery areas and to recover spaceflight
468 assets and any personnel being transported within a spacecraft
469 following the launch or reentry activity. Such protection zone
470 may not be in place more than 72 hours before or 72 hours after
471 the launch. The head of a law enforcement agency or entity

472 identified in s. 327.70(1), or his or her designee, may also
473 restrict vessels from operating within up to 500 yards of any
474 vessel transporting recovered spaceflight assets following a
475 spaceflight launch or reentry while such vessel is continuously
476 underway transporting such assets to a location for removal from
477 the waters of this state.

478 (4) The head of a law enforcement agency or entity
479 establishing a protection zone under this section, or his or her
480 designee, must report the establishment of such protection zone
481 via e-mail to the commission's Division of Law Enforcement,
482 Boating and Waterways Section, and to the appropriate United
483 States Coast Guard Sector Command having responsibility over the
484 water body, at least 72 hours before establishment of the
485 protection zone. Such report must include the reasons for the
486 protection zone, the portion of the water body or water bodies
487 that will be included in the protection zone, and the duration
488 of the protection zone. No later than 72 hours after the end of
489 the protection zone period, the head of the law enforcement
490 agency or entity, or his or her designee, must report via e-mail
491 to the commission's Division of Law Enforcement, Boating and
492 Waterways Section, the details of all citations issued for
493 violating the protection zone.

494 (5) This section applies only to launch services, reentry
495 services, or the recovery of spaceflight assets occurring or
496 originating within spaceport territory, as defined in s.

497 331.304, and to federally licensed or federally authorized
 498 launches and reentries occurring or transiting to an end
 499 destination upon waters of this state.

500 (6) A person who violates this section or any directive
 501 given by a law enforcement officer relating to the establishment
 502 of a protection zone under this section after being advised of
 503 the establishment of the protection zone commits a misdemeanor
 504 of the second degree, punishable as provided in s. 775.082 or s.
 505 775.083.

506 Section 6. Paragraphs (a) and (c) of subsection (1) of
 507 section 327.352, Florida Statutes, are amended to read:

508 327.352 Tests for alcohol, chemical substances, or
 509 controlled substances; implied consent; refusal.-

510 (1)(a)1. The Legislature declares that the operation of a
 511 vessel is a privilege that must be exercised in a reasonable
 512 manner. In order to protect the public health and safety, it is
 513 essential that a lawful and effective means of reducing the
 514 incidence of boating while impaired or intoxicated be
 515 established. Therefore, a ~~any~~ person who accepts the privilege
 516 extended by the laws of this state of operating a vessel within
 517 this state is, by ~~so~~ operating such vessel, deemed to have given
 518 his or her consent to submit to an approved chemical test or
 519 physical test including, but not limited to, an infrared light
 520 test of his or her breath for the purpose of determining the
 521 alcoholic content of his or her blood or breath if the person is

522 lawfully arrested for any offense allegedly committed while the
523 person was operating a vessel while under the influence of
524 alcoholic beverages. The chemical or physical breath test must
525 be incidental to a lawful arrest and administered at the request
526 of a law enforcement officer who has reasonable cause to believe
527 such person was operating the vessel within this state while
528 under the influence of alcoholic beverages. The administration
529 of a breath test does not preclude the administration of another
530 type of test. The person shall be told that his or her failure
531 to submit to any lawful test of his or her breath under this
532 chapter will result in a civil penalty of \$500, and shall also
533 be told that if he or she refuses to submit to a lawful test of
534 his or her breath and he or she has been previously fined under
535 s. 327.35215 or has previously had his or her driver license
536 suspended under s. 322.2615 for refusal to submit to any lawful
537 test of his or her breath, urine, or blood, he or she commits a
538 misdemeanor of the first degree, punishable as provided in s.
539 775.082 or s. 775.083, in addition to any other penalties
540 provided by law. The refusal to submit to a chemical or physical
541 breath test upon the request of a law enforcement officer as
542 provided in this section is admissible into evidence in any
543 criminal proceeding.

544 2. A ~~Any~~ person who accepts the privilege extended by the
545 laws of this state of operating a vessel within this state is,
546 by ~~se~~ operating such vessel, deemed to have given his or her

547 consent to submit to a urine test for the purpose of detecting
548 the presence of chemical substances as set forth in s. 877.111
549 or controlled substances if the person is lawfully arrested for
550 any offense allegedly committed while the person was operating a
551 vessel while under the influence of chemical substances or
552 controlled substances. The urine test must be incidental to a
553 lawful arrest and administered at a detention facility or any
554 other facility, mobile or otherwise, which is equipped to
555 administer such tests at the request of a law enforcement
556 officer who has reasonable cause to believe such person was
557 operating a vessel within this state while under the influence
558 of chemical substances or controlled substances. The urine test
559 shall be administered at a detention facility or any other
560 facility, mobile or otherwise, which is equipped to administer
561 such test in a reasonable manner that will ensure the accuracy
562 of the specimen and maintain the privacy of the individual
563 involved. The administration of a urine test does not preclude
564 the administration of another type of test. The person shall be
565 told that his or her failure to submit to any lawful test of his
566 or her urine under this chapter will result in a civil penalty
567 of \$500, and shall also be told that if he or she refuses to
568 submit to a lawful test of his or her urine and he or she has
569 been previously fined under s. 327.35215 or has previously had
570 his or her driver license suspended under s. 322.2615 for
571 refusal to submit to any lawful test of his or her breath,

572 urine, or blood, he or she commits a misdemeanor of the first
573 degree, punishable as provided in s. 775.082 or s. 775.083, in
574 addition to any other penalties provided by law. The refusal to
575 submit to a urine test upon the request of a law enforcement
576 officer as provided in this section is admissible into evidence
577 in any criminal proceeding.

578 (c) A ~~Any~~ person who accepts the privilege extended by the
579 laws of this state of operating a vessel within this state is,
580 by operating such vessel, deemed to have given his or her
581 consent to submit to an approved blood test for the purpose of
582 determining the alcoholic content of the blood or a blood test
583 for the purpose of determining the presence of chemical
584 substances or controlled substances as provided in this section
585 if there is reasonable cause to believe the person was operating
586 a vessel while under the influence of alcoholic beverages or
587 chemical or controlled substances and the person appears for
588 treatment at a hospital, clinic, or other medical facility and
589 the administration of a breath or urine test is impractical or
590 impossible. As used in this paragraph, the term "other medical
591 facility" includes an ambulance or other medical emergency
592 vehicle. The blood test shall be performed in a reasonable
593 manner. A ~~Any~~ person who is incapable of refusal by reason of
594 unconsciousness or other mental or physical condition is deemed
595 not to have withdrawn his or her consent to such test. A ~~Any~~
596 person who is capable of refusal shall be told that his or her

597 failure to submit to such a blood test will result in a civil
 598 penalty of \$500 ~~and that a refusal to submit to a lawful test of~~
 599 ~~his or her blood, if he or she has previously been fined for~~
 600 ~~refusal to submit to any lawful test of his or her breath,~~
 601 ~~urine, or blood, is a misdemeanor.~~ The refusal to submit to a
 602 blood test upon the request of a law enforcement officer shall
 603 be admissible in evidence in any criminal proceeding.

604 Section 7. Section 327.359, Florida Statutes, is amended
 605 to read:

606 327.359 Refusal to submit to testing; penalties.—A ~~Any~~
 607 person who has refused to submit to a chemical or physical test
 608 of his or her breath, ~~blood,~~ or urine, as described in s.
 609 327.352, and who has been previously fined under s. 327.35215 or
 610 has previously had his or her driver license suspended under s.
 611 322.2615 for refusal to submit to a lawful test of his or her
 612 breath, urine, or blood, and:

613 (1) Who the arresting law enforcement officer had probable
 614 cause to believe was operating or in actual physical control of
 615 a vessel in this state while under the influence of alcoholic
 616 beverages, chemical substances, or controlled substances;

617 (2) Who was placed under lawful arrest for a violation of
 618 s. 327.35 unless such test was requested pursuant to s.
 619 327.352 (1) (c);

620 (3) Who was informed that if he or she refused to submit
 621 to such test, he or she is subject to a fine of \$500;

622 (4) Who was informed that a refusal to submit to a lawful
 623 test of his or her breath or, ~~urine, or blood~~, if he or she has
 624 been previously fined under s. 327.35215 or has previously had
 625 his or her driver license suspended under s. 322.2615 for
 626 refusal to submit to a lawful test of his or her breath, urine,
 627 or blood, is a misdemeanor of the first degree, punishable as
 628 provided in s. 775.082 or s. 775.083; and

629 (5) Who, after having been so informed, refused to submit
 630 to any such test when requested to do so by a law enforcement
 631 officer or correctional officer

632
 633 commits a misdemeanor of the first degree, punishable ~~and is~~
 634 ~~subject to punishment~~ as provided in s. 775.082 or s. 775.083.

635 Section 8. Section 327.371, Florida Statutes, is created
 636 to read:

637 327.371 Human-powered vessels regulated.-

638 (1) A person may operate a human-powered vessel within the
 639 boundaries of the marked channel of the Florida Intracoastal
 640 Waterway as defined in s. 327.02:

641 (a) When the marked channel is the only navigable portion
 642 of the waterway available due to vessel congestion or
 643 obstructions on the water. The operator of the human-powered
 644 vessel shall proceed with diligence to a location where he or
 645 she may safely operate the vessel outside the marked channel of
 646 the Florida Intracoastal Waterway.

647 (b) When crossing the marked channel, provided that the
 648 crossing is done in the most direct, continuous, and expeditious
 649 manner possible and does not interfere with other vessel traffic
 650 in the channel.

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

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

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

657 Section 9. Subsection (1) and paragraphs (a) and (b) of
 658 subsection (5) of section 327.391, Florida Statutes, are amended
 659 to read:

660 327.391 Airboats regulated.—

661 (1) The exhaust of every internal combustion engine used
 662 on any airboat operated on the waters of this state shall be
 663 provided with an automotive-style factory muffler, underwater
 664 exhaust, or other manufactured device capable of adequately
 665 muffling the sound of the exhaust of the engine as described in
 666 s. 327.02 ~~s. 327.02(30)~~. The use of cutouts or flex pipe as the
 667 sole source of muffling is prohibited, except as provided in
 668 subsection (4). A ~~Any~~ person who violates this subsection
 669 commits a noncriminal infraction, punishable as provided in s.
 670 327.73(1).

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

675 1. A photographic identification card.

676 2. Proof of completion of a boater education course that
677 complies with s. 327.395(2) (a) ~~s. 327.395(1) (a)~~. Except as
678 provided in paragraph (b), no operator is exempt from this
679 requirement, regardless of age or the exemptions provided under
680 s. 327.395.

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

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

686 (b) A person issued a captain's license by the United
687 States Coast Guard is not required to complete a boating safety
688 education course that complies with s. 327.395(2) (a) ~~s.~~
689 ~~327.395(1) (a)~~. Proof of the captain's license must be onboard
690 the airboat when carrying one or more passengers for hire on
691 waters of this ~~the~~ state.

692 Section 10. Section 327.395, Florida Statutes, is amended
693 to read:

694 327.395 Boating safety education.—

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

699 (b) Beginning January 1, 2023, a person, regardless of his
 700 or her date of birth, may not operate a vessel powered by a
 701 motor of 10 horsepower or greater unless such person has in his
 702 or her possession aboard the vessel the documents required by
 703 subsection (2).

704 (2) While operating a vessel, a person must have in his or
 705 her possession aboard the vessel photographic identification and
 706 a boating safety identification card issued by the commission, a
 707 state-issued identification card or driver license indicating
 708 possession of the boating safety identification card, or
 709 photographic identification and a temporary certificate issued
 710 or approved by the commission, which shows that he or she has:

711 (a) Completed a commission-approved boating safety
 712 education course that meets the minimum requirements established
 713 by the National Association of State Boating Law Administrators;
 714 ~~or~~

715 (b) Passed a temporary certificate examination developed
 716 or approved by the commission;

717 (c) A valid International Certificate of Competency; or

718 (d) Completed a boating safety education course or
 719 equivalency examination in another state or a United States

720 territory that meets or exceeds the minimum requirements
721 established by the National Association of State Boating Law
722 Administrators.

723 (3) (a) (2) (a) A person may obtain a boating safety
724 identification card by successfully completing a boating safety
725 education course that meets the requirements of this section and
726 rules adopted by the commission pursuant to this section.

727 (b) A person may obtain a temporary certificate by passing
728 a temporary certificate examination that meets the requirements
729 of this section and rules adopted by the commission pursuant to
730 this section.

731 (4) (3) A Any commission-approved boating safety education
732 course or temporary certificate examination developed or
733 approved by the commission must include a component regarding
734 diving vessels, awareness of divers in the water, divers-down
735 warning devices, and the requirements of s. 327.331.

736 ~~(4) The commission may appoint liveries, marinas, or other~~
737 ~~persons as its agents to administer the course or temporary~~
738 ~~certificate examination and issue identification cards or~~
739 ~~temporary certificates in digital, electronic, or paper format~~
740 ~~under guidelines established by the commission. An agent must~~
741 ~~charge the \$2 examination fee, which must be forwarded to the~~
742 ~~commission with proof of passage of the examination and may~~
743 ~~charge and keep a \$1 service fee.~~

744 (5) A boating safety identification card issued to a
745 person who has completed a boating safety education course is
746 valid for life. A temporary certificate issued to a person who
747 has passed a temporary certification examination is valid for 90
748 days after the date of issuance. The commission may issue either
749 the boating safety identification card or the temporary
750 certificate in a digital, electronic, or paper format.

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

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

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

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

759 (c) Is accompanied in the vessel by a person who is exempt
760 from this section or who holds a boating safety identification
761 card in compliance with this section, who is 18 years of age or
762 older, and who is attendant to the operation of the vessel and
763 responsible for the safe operation of the vessel and for any
764 violation that occurs during the operation of the vessel.

765 (d) Is a nonresident who has in his or her possession
766 photographic identification and proof that he or she has
767 completed a boating safety education course or equivalency
768 examination in another state or a United States territory that

769 ~~which~~ meets or exceeds the minimum requirements established by
770 the National Association of State Boating Law Administrators.

771 (e) Is operating a vessel within 90 days after the
772 purchase of that vessel and has available for inspection aboard
773 that vessel a bill of sale meeting the requirements of s.
774 328.46(1).

775 (f) Is operating a vessel within 90 days after completing
776 a boating safety education course in accordance with paragraph
777 (2) (a) ~~the requirements of paragraph (1) (a)~~ and has a
778 photographic identification card and a boating safety education
779 certificate available for inspection as proof of having
780 completed a boating safety education course. The boating safety
781 education certificate must provide, at a minimum, the student's
782 first and last name, the student's date of birth, and the date
783 that he or she passed the course examination.

784 (g) Is exempted by rule of the commission.

785 (7) A person who operates a vessel in violation of this
786 section ~~subsection (1)~~ commits a noncriminal infraction,
787 punishable as provided in s. 327.73.

788 (8) The commission shall institute and coordinate a
789 statewide program of boating safety instruction and
790 certification to ensure that boating safety courses and
791 examinations are available in each county of this ~~the~~ state. The
792 commission may appoint agents to administer the boating safety
793 education course or temporary certificate examination and may

794 authorize the agents to issue temporary certificates in digital,
 795 electronic, or paper format. An agent ~~The agents~~ shall charge
 796 and collect the \$2 fee required in subsection (9) for each
 797 temporary certificate requested of the commission by that agent,
 798 which must be forwarded to the commission. The agent may charge
 799 and keep a ~~\$1~~ service fee.

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

803 (10) The commission shall design forms and adopt rules
 804 pursuant to chapter 120 to implement ~~the provisions of~~ this
 805 section.

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

808 Section 11. Subsection (5) of section 327.4107, Florida
 809 Statutes, is renumbered as subsection (6), paragraph (e) of
 810 subsection (2) of that section is amended, and new subsections
 811 (5) and (7) are added to that section, to read:

812 327.4107 Vessels at risk of becoming derelict on waters of
 813 this state.—

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

818 (e) The vessel does not have an effective means of
819 propulsion for safe navigation within 72 hours after the vessel
820 owner or operator receives telephonic notice, in-person notice
821 recorded on an agency-approved body camera, or written notice,
822 which may be provided by facsimile, electronic mail, or other
823 electronic means, stating such from an officer, and the vessel
824 owner or operator is unable to provide a receipt, proof of
825 purchase, or other documentation of having ordered necessary
826 parts for vessel repair. The commission may adopt rules to
827 implement this paragraph.

828 (5) The commission, an officer of the commission, or a law
829 enforcement agency or officer specified in s. 327.70 may
830 relocate or cause to be relocated an at-risk vessel found to be
831 in violation of this section to a distance greater than 20 feet
832 from a mangrove or upland vegetation. The commission, an officer
833 of the commission, or a law enforcement agency or officer acting
834 pursuant to this subsection upon waters of this state shall be
835 held harmless for all damages to the at-risk vessel resulting
836 from such relocation unless the damage results from gross
837 negligence or willful misconduct as these terms are defined in
838 s. 823.11.

839 (7) The commission may establish a derelict vessel
840 prevention program to address vessels at risk of becoming
841 derelict. Such program may, but is not required to, include:

842 (a) Removal, relocation, and destruction of vessels
843 declared a public nuisance, derelict or at risk of becoming
844 derelict, or lost or abandoned in accordance with s. 327.53(7),
845 s. 327.73(1) (aa), s. 705.103(2) and (4), or s. 823.11(3).

846 (b) Creation of a vessel turn-in program allowing the
847 owner of a vessel determined by law enforcement to be at risk of
848 becoming derelict in accordance with this section to turn his or
849 her vessel and vessel title over to the commission to be
850 destroyed without penalty.

851 (c) Providing for removal and destruction of an abandoned
852 vessel for which an owner cannot be identified or the owner of
853 which is deceased and no heir is interested in acquiring the
854 vessel.

855 (d) Purchase of anchor line, anchors, and other equipment
856 necessary for securing vessels at risk of becoming derelict.

857 (e) Creating or acquiring moorings designated for securing
858 vessels at risk of becoming derelict.

859
860 The derelict vessel prevention program created pursuant to this
861 subsection may include other preventative efforts and methods as
862 determined appropriate and necessary by the commission. The
863 commission may adopt rules to implement this subsection.
864 Implementation of the derelict vessel prevention program shall
865 be subject to appropriation by the Legislature and shall be
866 funded by the Marine Resources Conservation Trust Fund or the

867 Florida Coastal Protection Trust Fund.

868 Section 12. Section 327.4108, Florida Statutes, is amended
869 to read:

870 327.4108 Anchoring of vessels in anchoring limitation
871 areas.—

872 (1) The following densely populated urban areas, which
873 have narrow state waterways, residential docking facilities, and
874 significant recreational boating traffic, are designated as
875 anchoring limitation areas within which a person may not anchor
876 a vessel at any time during the period between one-half hour
877 after sunset and one-half hour before sunrise, except as
878 provided in subsections (3) and (4):

879 (a) The section of Middle River lying between Northeast
880 21st Court and the Intracoastal Waterway in Broward County.

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

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

884 1. Rivo Alto Island and Di Lido Island.

885 2. San Marino Island and San Marco Island.

886 3. San Marco Island and Biscayne Island.

887 (2) (a) Monroe County is designated as an anchoring
888 limitation area within which a vessel may only be anchored in
889 the same location for a maximum of 90 days. The commission shall
890 adopt rules to implement this subsection.

891 (b) This subsection does not apply to an approved and
 892 permitted mooring field.

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

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

901 (a) If the vessel suffers a mechanical failure that poses
 902 an unreasonable risk of harm to the vessel or the persons
 903 onboard unless the vessel anchors. The vessel may anchor for 3
 904 business days or until the vessel is repaired, whichever occurs
 905 first.

906 (b) If imminent or existing weather conditions in the
 907 vicinity of the vessel pose an unreasonable risk of harm to the
 908 vessel or the persons onboard unless the vessel anchors. The
 909 vessel may anchor until weather conditions no longer pose such
 910 risk. During a hurricane or tropical storm, weather conditions
 911 are deemed to no longer pose an unreasonable risk of harm when
 912 the hurricane or tropical storm warning affecting the area has
 913 expired.

914 (c) During events described in s. 327.48 or other special
 915 events, including, but not limited to, public music

916 | performances, local government waterfront activities, or
 917 | fireworks displays. A vessel may anchor for the lesser of the
 918 | duration of the special event or 3 days.

919 | (4) This section does not apply to:

920 | (a) Vessels owned or operated by a governmental entity for
 921 | law enforcement, firefighting, military, or rescue purposes.

922 | (b) Construction or dredging vessels on an active job
 923 | site.

924 | (c) Vessels actively engaged in commercial fishing.

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

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

930 | (b) A law enforcement officer or agency may remove a
 931 | vessel from an anchoring limitation area and impound the vessel
 932 | for up to 48 hours, or cause such removal and impoundment, if
 933 | the vessel operator, after being issued a citation for a
 934 | violation of this section:

935 | 1. Anchors the vessel in violation of this section within
 936 | 12 hours after being issued the citation; or

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

939 | (c) A law enforcement officer or agency acting under this
 940 | subsection to remove or impound a vessel, or to cause such

941 removal or impoundment, shall be held harmless for any damage to
942 the vessel resulting from such removal or impoundment unless the
943 damage results from gross negligence or willful misconduct.

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

947 1. Be licensed in accordance with United States Coast
948 Guard regulations, as applicable.

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

953 3. Be properly equipped to perform such services.

954 (e) In addition to the civil penalty imposed under s.
955 327.73(1)(z), the operator of a vessel that is removed and
956 impounded pursuant to paragraph (b) must pay all removal and
957 storage fees before the vessel is released. A vessel removed
958 pursuant to paragraph (b) may not be impounded for longer than
959 48 hours.

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

962 ~~(7) This section shall remain in effect notwithstanding~~
963 ~~the Legislature's adoption of the commission's recommendations~~
964 ~~for the regulation of mooring vessels outside of public mooring~~
965 ~~fields pursuant to s. 327.4105.~~

966 Section 13. Paragraph (a) of subsection (1) and subsection
967 (2) of section 327.4109, Florida Statutes, are amended to read:
968 327.4109 Anchoring or mooring prohibited; exceptions;
969 penalties.—

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

973 1. Within 150 feet of any public or private marina, boat
974 ramp, boatyard, or other public vessel launching or loading
975 facility;

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

980 3. Within 100 feet outward from the marked boundary of a
981 public mooring field or a lesser distance if approved by the
982 commission upon request of a local government within which the
983 mooring field is located. The commission may adopt rules to
984 implement this subparagraph.

985 (2) Notwithstanding subsection (1), an owner or operator
986 of a vessel may anchor or moor within 150 feet of any public or
987 private marina, boat ramp, boatyard, or other public vessel
988 launching or loading facility; within 500 ~~300~~ feet of a
989 superyacht repair facility; or within 100 feet outward from the
990 marked boundary of a public mooring field if:

991 (a) The vessel suffers a mechanical failure that poses an
 992 unreasonable risk of harm to the vessel or the persons onboard
 993 such vessel. The owner or operator of the vessel may anchor or
 994 moor for 5 business days or until the vessel is repaired,
 995 whichever occurs first.

996 (b) Imminent or existing weather conditions in the
 997 vicinity of the vessel pose an unreasonable risk of harm to the
 998 vessel or the persons onboard such vessel. The owner or operator
 999 of the vessel may anchor or moor until weather conditions no
 1000 longer pose such risk. During a hurricane or tropical storm,
 1001 weather conditions are deemed to no longer pose an unreasonable
 1002 risk of harm when the hurricane or tropical storm warning
 1003 affecting the area has expired.

1004 Section 14. Subsection (2) of section 327.45, Florida
 1005 Statutes, is amended to read:

1006 327.45 Protection zones for springs.—

1007 (2) The commission may establish by rule protection zones
 1008 that restrict the speed and operation of vessels or prohibit the
 1009 anchoring, mooring, beaching, or grounding of vessels to protect
 1010 and prevent harm to first, second, and third magnitude springs
 1011 and spring groups, including their associated spring runs, as
 1012 determined by the commission using the most recent Florida
 1013 Geological Survey springs bulletin. This harm includes negative
 1014 impacts to water quality, water quantity, hydrology, wetlands,
 1015 and aquatic and wetland-dependent species.

1016 Section 15. Paragraph (b) of subsection (1) of section
 1017 327.46, Florida Statutes, is amended to read:

1018 327.46 Boating-restricted areas.—

1019 (1) Boating-restricted areas, including, but not limited
 1020 to, restrictions of vessel speeds and vessel traffic, may be
 1021 established on the waters of this state for any purpose
 1022 necessary to protect the safety of the public if such
 1023 restrictions are necessary based on boating accidents,
 1024 visibility, hazardous currents or water levels, vessel traffic
 1025 congestion, or other navigational hazards or to protect
 1026 seagrasses on privately owned submerged lands.

1027 (b) Municipalities and counties may ~~have the authority to~~
 1028 establish the following boating-restricted areas by ordinance:

1029 1. An ordinance establishing an idle speed, no wake
 1030 boating-restricted area, if the area is:

1031 a. Within 500 feet of any boat ramp, hoist, marine
 1032 railway, or other launching or landing facility available for
 1033 use by the general boating public on waterways more than 300
 1034 feet in width or within 300 feet of any boat ramp, hoist, marine
 1035 railway, or other launching or landing facility available for
 1036 use by the general boating public on waterways not exceeding 300
 1037 feet in width.

1038 b. Within 500 feet of fuel pumps or dispensers at any
 1039 marine fueling facility that sells motor fuel to the general
 1040 boating public on waterways more than 300 feet in width or

1041 within 300 feet of the fuel pumps or dispensers at any licensed
 1042 terminal facility that sells motor fuel to the general boating
 1043 public on waterways not exceeding 300 feet in width.

1044 c. Inside or within 300 feet of any lock structure.

1045 2. An ordinance establishing a slow speed, minimum wake
 1046 boating-restricted area if the area is:

1047 a. Within 300 feet of any bridge fender system.

1048 b. Within 300 feet of any bridge span presenting a
 1049 vertical clearance of less than 25 feet or a horizontal
 1050 clearance of less than 100 feet.

1051 c. On a creek, stream, canal, or similar linear waterway
 1052 if the waterway is less than 75 feet in width from shoreline to
 1053 shoreline.

1054 d. On a lake or pond of less than 10 acres in total
 1055 surface area.

1056 e. Within the boundaries of a permitted public mooring
 1057 field and a buffer around the mooring field of up to 100 feet.

1058 3. An ordinance establishing a vessel-exclusion zone if
 1059 the area is:

1060 a. Designated as a public bathing beach or swim area.

1061 b. Within 300 feet of a dam, spillway, or flood control
 1062 structure.

1063 4. Notwithstanding the prohibition in s. 327.60(2)(c),
 1064 within the portion of the Florida Intracoastal Waterway within
 1065 their jurisdiction, except that the municipality or county may

1066 not establish a vessel-exclusion zone for public bathing beaches
1067 or swim areas within the waterway.

1068 Section 16. Section 327.463, Florida Statutes, is created
1069 to read:

1070 327.463 Special hazards.—

1071 (1) For purposes of this section, a vessel:

1072 (a) Is operating at slow speed, minimum wake only if it
1073 is:

1074 1. Fully off plane and completely settled into the water;

1075 and

1076 2. Proceeding without wake or with minimum wake.

1077

1078 A vessel that is operating at slow speed, minimum wake may not
1079 proceed at a speed greater than a speed that is reasonable and
1080 prudent to avoid the creation of an excessive wake or other
1081 hazardous condition under the existing circumstances.

1082 (b) Is not proceeding at slow speed, minimum wake if it
1083 is:

1084 1. Operating on plane;

1085 2. In the process of coming off plane and settling into
1086 the water or getting on plane; or

1087 3. Operating at a speed that creates a wake that
1088 unreasonably or unnecessarily endangers other vessels.

1089 (2) A person may not operate a vessel faster than slow
1090 speed, minimum wake within 300 feet of any emergency vessel,

1091 including, but not limited to, a law enforcement vessel, United
 1092 States Coast Guard vessel, or firefighting vessel, when such
 1093 emergency vessel's emergency lights are activated.

1094 (3) (a) A person may not operate a vessel faster than slow
 1095 speed, minimum wake within 300 feet of any construction vessel
 1096 or barge when the vessel or barge is displaying an orange flag
 1097 from a pole extending:

1098 1. At least 10 feet above the tallest portion of the
 1099 vessel or barge, indicating that the vessel or barge is actively
 1100 engaged in construction operations; or

1101 2. At least 5 feet above any superstructure permanently
 1102 installed upon the vessel or barge, indicating that the vessel
 1103 or barge is actively engaged in construction operations.

1104 (b) A flag displayed on a construction vessel or barge
 1105 pursuant to this subsection must:

1106 1. Be at least 2 feet by 3 feet in size.

1107 2. Have a wire or other stiffener or be otherwise
 1108 constructed to ensure that the flag remains fully unfurled and
 1109 extended in the absence of a wind or breeze.

1110 3. Be displayed so that the visibility of the flag is not
 1111 obscured in any direction.

1112 (c) In periods of low visibility, including any time
 1113 between 30 minutes after sunset and 30 minutes before sunrise, a
 1114 person may not be cited for a violation of this subsection
 1115 unless the orange flag is illuminated and visible from a

1116 distance of at least 2 nautical miles. Such illumination does
1117 not relieve the construction vessel or barge from complying with
1118 all navigation rules.

1119 (4) (a) A person operating a vessel in violation of this
1120 section commits a noncriminal infraction, punishable as provided
1121 in s. 327.73.

1122 (b) The owner of, or party who is responsible for, a
1123 construction vessel or barge who displays an orange flag on the
1124 vessel or barge when it is not actively engaged in construction
1125 operations commits a noncriminal infraction, punishable as
1126 provided in s. 327.73.

1127 (5) The speed and penalty provisions of this section do
1128 not apply to a law enforcement, firefighting, or rescue vessel
1129 that is owned or operated by a governmental entity.

1130 Section 17. Paragraph (a) of subsection (1) of section
1131 327.50, Florida Statutes, is amended to read:

1132 327.50 Vessel safety regulations; equipment and lighting
1133 requirements.—

1134 (1) (a) The owner and operator of every vessel on the
1135 waters of this state shall carry, store, maintain, and use
1136 safety equipment in accordance with current United States Coast
1137 Guard safety equipment requirements as specified in the Code of
1138 Federal Regulations, unless expressly exempted by the commission
1139 ~~department~~.

1140 Section 18. Paragraph (a) of subsection (6) and subsection

1141 (7) of section 327.53, Florida Statutes, are amended, and
 1142 subsection (8) is added to that section, to read:

1143 327.53 Marine sanitation.—

1144 (6) (a) A violation of this section is a noncriminal
 1145 infraction, punishable as provided in s. 327.73. Each violation
 1146 shall be a separate offense. The owner and operator of any
 1147 vessel shall be jointly and severally liable for the civil
 1148 penalty imposed pursuant to this section.

1149 (7) A ~~Any~~ vessel or floating structure operated or
 1150 occupied on the waters of this ~~the~~ state in violation of this
 1151 section is declared a nuisance and a hazard to public safety and
 1152 health. The owner or operator of a ~~any~~ vessel or floating
 1153 structure cited for violating this section shall, within 30 days
 1154 following the issuance of the citation, correct the violation
 1155 for which the citation was issued or remove the vessel or
 1156 floating structure from the waters of this ~~the~~ state. If the
 1157 violation is not corrected within the 30 days and the vessel or
 1158 floating structure remains on the waters of this ~~the~~ state in
 1159 violation of this section, law enforcement officers charged with
 1160 the enforcement of this chapter under s. 327.70 shall apply to
 1161 the appropriate court in the county in which the vessel or
 1162 floating structure is located, ~~to order or otherwise cause the~~
 1163 removal of such vessel or floating structure from the waters of
 1164 this ~~the~~ state at the owner's expense. If the owner cannot be
 1165 found or otherwise fails to pay the removal costs, the

1166 provisions of s. 328.17 shall apply. If the proceeds under s.
 1167 328.17 are not sufficient to pay all removal costs, funds
 1168 appropriated from the Marine Resources Conservation Trust Fund
 1169 pursuant to paragraph (6) (b) or s. 328.72(15) (c) ~~s. 328.72(16)~~
 1170 may be used.

1171 (8) The owner or operator of a live-aboard vessel as
 1172 defined in s. 327.02(23) (a) or (c), or a houseboat as defined in
 1173 s. 327.02, that is equipped with a marine sanitation device
 1174 certified by the United States Coast Guard must maintain a
 1175 record of the date of each pumpout of the device and the
 1176 location of the pumpout station or waste reception facility.
 1177 Each record must be maintained for 1 year after the date of the
 1178 pumpout. This subsection does not apply to marine compost
 1179 toilets that process and manage human waste using currently
 1180 accepted marine compost toilet technologies that comply with
 1181 United States Coast Guard requirements.

1182 Section 19. Subsection (2) of section 327.54, Florida
 1183 Statutes, is amended to read:

1184 327.54 Liveries; safety regulations; penalty.—

1185 (2) A livery may not knowingly lease, hire, or rent a ~~any~~
 1186 ~~vessel powered by a motor of 10 horsepower or greater~~ to a ~~any~~
 1187 ~~person who is required to comply with s. 327.395,~~ unless such
 1188 person presents to the livery photographic identification and a
 1189 valid boater safety identification card issued by the
 1190 commission, a state-issued identification card or driver license

1191 indicating possession of the boating safety identification card,
 1192 or photographic identification and a valid temporary certificate
 1193 issued or approved by the commission as required under s.
 1194 327.395(2) ~~s. 327.395(1)~~, or meets the exemption provided under
 1195 s. 327.395(6)(f).

1196 Section 20. Subsection (5) of section 327.60, Florida
 1197 Statutes, is amended to read:

1198 327.60 Local regulations; limitations.—

1199 (5) A local government may enact and enforce regulations
 1200 to implement the procedures for abandoned or lost property that
 1201 allow the local law enforcement agency to remove a vessel
 1202 affixed to a public dock or mooring within its jurisdiction that
 1203 is abandoned or lost property pursuant to s. 705.103(1). Such
 1204 regulation must require the local law enforcement agency to post
 1205 a written notice at least 24 hours before removing the vessel.

1206 Section 21. Paragraphs (q), (s), and (aa) of subsection
 1207 (1) of section 327.73, Florida Statutes, are amended, and
 1208 paragraphs (cc) and (dd) are added to that subsection, to read:

1209 327.73 Noncriminal infractions.—

1210 (1) Violations of the following provisions of the vessel
 1211 laws of this state are noncriminal infractions:

1212 (q) Section 327.53(1), (2), ~~and (3)~~, and (8), relating to
 1213 marine sanitation.

1214 (s) Section 327.395, relating to boater safety education.
 1215 However, a person cited for violating the requirements of s.

1216 327.395 relating to failure to have required proof of boating
 1217 safety education in his or her possession may not be convicted
 1218 if, before or at the time of a county court hearing, the person
 1219 produces proof of the boating safety education identification
 1220 card or temporary certificate for verification by the hearing
 1221 officer or the court clerk and the identification card or
 1222 temporary certificate was valid at the time the person was
 1223 cited.

1224 (aa) Section 327.4107, relating to vessels at risk of
 1225 becoming derelict on waters of this state, for which the civil
 1226 penalty is:

- 1227 1. For a first offense, \$100 ~~\$50~~.
- 1228 2. For a second offense occurring 30 days or more after a
 1229 first offense, \$250 ~~\$100~~.
- 1230 3. For a third or subsequent offense occurring 30 days or
 1231 more after a previous offense, \$500 ~~\$250~~.

1232
 1233 A vessel that is the subject of three or more violations issued
 1234 pursuant to the same paragraph of s. 327.4107(2) within an 18-
 1235 month period which result in dispositions other than acquittal
 1236 or dismissal shall be declared to be a public nuisance and
 1237 subject to ss. 705.103(2) and (4) and 823.11(3). The commission,
 1238 an officer of the commission, or a law enforcement agency or
 1239 officer specified in s. 327.70 may relocate, remove, or cause to
 1240 be relocated or removed such public nuisance vessels from waters

1241 of this state. The commission, an officer of the commission, or
1242 a law enforcement agency or officer acting pursuant to this
1243 paragraph upon waters of this state shall be held harmless for
1244 all damages to the vessel resulting from such relocation or
1245 removal unless the damage results from gross negligence or
1246 willful misconduct as these terms are defined in s. 823.11.

1247 (cc) Section 327.463(4)(a) and (b), relating to vessels
1248 creating special hazards, for which the penalty is:

1249 1. For a first offense, \$50.

1250 2. For a second offense occurring within 12 months after a
1251 prior offense, \$100.

1252 3. For a third offense occurring within 36 months after a
1253 prior offense, \$250.

1254 (dd) Section 327.371, relating to the regulation of human-
1255 powered vessels.

1256
1257 Any person cited for a violation of any provision of this
1258 subsection shall be deemed to be charged with a noncriminal
1259 infraction, shall be cited for such an infraction, and shall be
1260 cited to appear before the county court. The civil penalty for
1261 any such infraction is \$50, except as otherwise provided in this
1262 section. Any person who fails to appear or otherwise properly
1263 respond to a uniform boating citation shall, in addition to the
1264 charge relating to the violation of the boating laws of this
1265 state, be charged with the offense of failing to respond to such

1266 citation and, upon conviction, be guilty of a misdemeanor of the
 1267 second degree, punishable as provided in s. 775.082 or s.
 1268 775.083. A written warning to this effect shall be provided at
 1269 the time such uniform boating citation is issued.

1270 Section 22. Subsection (4) of section 328.09, Florida
 1271 Statutes, is amended to read:

1272 328.09 Refusal to issue and authority to cancel a
 1273 certificate of title or registration.—

1274 (4) The department may not issue a certificate of title to
 1275 an ~~any~~ applicant for a ~~any~~ vessel that has been deemed derelict
 1276 by a law enforcement officer under s. 376.15 or s. 823.11. A law
 1277 enforcement officer must inform the department in writing, which
 1278 may be provided by facsimile, electronic mail, or other
 1279 electronic means, of the vessel's derelict status and supply the
 1280 department with the vessel title number or vessel identification
 1281 number. The department may issue a certificate of title once a
 1282 law enforcement officer has verified in writing, which may be
 1283 provided by facsimile, electronic mail, or other electronic
 1284 means, that the vessel is no longer a derelict vessel.

1285 Section 23. Effective July 1, 2023, paragraph (e) of
 1286 subsection (3) of section 328.09, Florida Statutes, as amended
 1287 by section 12 of chapter 2019-76, Laws of Florida, is amended to
 1288 read:

1289 328.09 Refusal to issue and authority to cancel a
 1290 certificate of title or registration.—

1291 (3) Except as otherwise provided in subsection (4), the
 1292 department may reject an application for a certificate of title
 1293 only if:

1294 (e) The application is for a vessel that has been deemed
 1295 derelict by a law enforcement officer under s. 376.15 or s.
 1296 823.11. In such case, a law enforcement officer must inform the
 1297 department in writing, which may be provided by facsimile, e-
 1298 mail, or other electronic means, of the vessel's derelict status
 1299 and supply the department with the vessel title number or vessel
 1300 identification number. The department may issue a certificate of
 1301 title once a law enforcement officer has verified in writing,
 1302 which may be provided by facsimile, e-mail, or other electronic
 1303 means, that the vessel is no longer a derelict vessel.

1304 Section 24. Section 376.15, Florida Statutes, is amended
 1305 to read:

1306 376.15 Derelict vessels; relocation or removal from ~~public~~
 1307 waters of this state.-

1308 (1) As used in this section, the term:

1309 (a) "Commission" means the Fish and Wildlife Conservation
 1310 Commission.

1311 (b) "Gross negligence" means conduct so reckless or
 1312 wanting in care that it constitutes a conscious disregard or
 1313 indifference to the safety of the property exposed to such
 1314 conduct.

1315 (c) "Willful misconduct" means conduct evidencing
1316 carelessness or negligence of such a degree or recurrence as to
1317 manifest culpability, wrongful intent, or evil design or to show
1318 an intentional and substantial disregard of the interests of the
1319 vessel owner.

1320 (2) (a) It is unlawful for any person, firm, or corporation
1321 to ~~store, leave, or abandon~~ any derelict vessel as defined in s.
1322 823.11 upon the waters of in this state. For purposes of this
1323 paragraph, the term "leave" means to allow a vessel to remain
1324 occupied or unoccupied on the waters of this state for more than
1325 24 hours.

1326 (b) Notwithstanding paragraph (a), a person who owns or
1327 operates a vessel that becomes derelict upon the waters of this
1328 state solely as a result of a boating accident that is reported
1329 to law enforcement in accordance with s. 327.301 or otherwise
1330 reported to law enforcement; a hurricane; or another sudden
1331 event outside of his or her control may not be charged with a
1332 violation if:

1333 1. The person documents for law enforcement the specific
1334 event that led to the vessel being derelict upon the waters of
1335 this state; and

1336 2. The vessel has been removed from the waters of this
1337 state or has been repaired or addressed and is no longer
1338 derelict upon the waters of this state:

1339 a. Within 7 days after a boating accident or other sudden
 1340 event outside of his or her control; or

1341 b. Within 45 days after a hurricane has passed over this
 1342 state.

1343 (c) This subsection does not apply to a vessel that was
 1344 derelict upon the waters of this state before the stated
 1345 accident or event.

1346 (3) (a) The commission, an officer ~~officers~~ of the
 1347 commission, or a ~~and any~~ law enforcement agency or officer
 1348 specified in s. 327.70 may ~~are authorized and empowered to~~
 1349 relocate, remove, store, destroy, or dispose of or cause to be
 1350 relocated, ~~or~~ removed, stored, destroyed, or disposed of a ~~any~~
 1351 derelict vessel as defined in s. 823.11 from ~~public~~ waters of
 1352 this state as defined in s. 327.02. All costs, including costs
 1353 owed to a third party, incurred by the commission or other law
 1354 enforcement agency in the relocation, ~~or~~ removal, storage,
 1355 destruction, or disposal of any abandoned or derelict vessel are
 1356 recoverable against the owner of the vessel or the party
 1357 determined to be legally responsible for the vessel being upon
 1358 the waters of this state in a derelict condition. The Department
 1359 of Legal Affairs shall represent the commission in actions to
 1360 recover such costs.

1361 (b) The commission, an officer ~~officers~~ of the commission,
 1362 or a ~~and any other~~ law enforcement agency or officer specified
 1363 in s. 327.70 acting pursuant to ~~under~~ this section to relocate,

1364 remove, store, destroy, or dispose of, or cause to be relocated,
1365 ~~or removed, stored, destroyed, or disposed of,~~ a derelict vessel
1366 from ~~public~~ waters of this state as defined in s. 327.02 shall
1367 be held harmless for all damages to the derelict vessel
1368 resulting from such action ~~relocation or removal~~ unless the
1369 damage results from gross negligence or willful misconduct as
1370 these terms are defined in s. 823.11.

1371 (c) A contractor performing relocation, ~~or removal,~~
1372 storage, destruction, or disposal activities at the direction of
1373 the commission, an officer ~~officers~~ of the commission, ~~or~~ a law
1374 enforcement agency or officer, or a governmental subdivision,
1375 when the governmental subdivision has received authorization
1376 from a law enforcement officer or agency, pursuant to this
1377 section must be licensed in accordance with applicable United
1378 States Coast Guard regulations where required; obtain and carry
1379 in full force and effect a policy from a licensed insurance
1380 carrier in this state to insure against any accident, loss,
1381 injury, property damage, or other casualty caused by or
1382 resulting from the contractor's actions; and be properly
1383 equipped to perform the services to be provided.

1384 (d) The commission may establish a program to provide
1385 grants to local governments for the removal, storage,
1386 destruction, and disposal of derelict vessels from the ~~public~~
1387 waters of this ~~the~~ state as defined in s. 327.02. The program
1388 shall be funded from the Marine Resources Conservation Trust

1389 Fund or the Florida Coastal Protection Trust Fund.
 1390 Notwithstanding ~~the provisions in~~ s. 216.181(11), funds
 1391 available for grants may only be authorized by appropriations
 1392 acts of the Legislature. In a given fiscal year, if all funds
 1393 appropriated pursuant to this paragraph are not requested by and
 1394 granted to local governments for the removal, storage,
 1395 destruction, and disposal of derelict vessels by the end of the
 1396 third quarter, the Fish and Wildlife Conservation Commission may
 1397 use the remainder of the funds to remove, store, destroy, and
 1398 dispose of, or to pay private contractors to remove, store,
 1399 destroy, and dispose of, derelict vessels.

1400 (e) The commission shall adopt by rule procedures for
 1401 submitting a grant application and criteria for allocating
 1402 available funds. Such criteria shall include, but not be limited
 1403 to, the following:

1404 1. The number of derelict vessels within the jurisdiction
 1405 of the applicant.

1406 2. The threat posed by such vessels to public health or
 1407 safety, the environment, navigation, or the aesthetic condition
 1408 of the general vicinity.

1409 3. The degree of commitment of the local government to
 1410 maintain waters free of abandoned and derelict vessels and to
 1411 seek legal action against those who abandon vessels in the
 1412 waters of this ~~the~~ state as defined in s. 327.02.

1413 (f) This section constitutes the authority for such

1414 removal but is not intended to be in contravention of any
 1415 applicable federal act.

1416 Section 25. Subsections (2) and (4) of section 705.103,
 1417 Florida Statutes, are amended to read:

1418 705.103 Procedure for abandoned or lost property.—

1419 (2) (a)1. Whenever a law enforcement officer ascertains
 1420 that:

1421 a. An article of lost or abandoned property other than a
 1422 derelict vessel or a vessel declared a public nuisance pursuant
 1423 to s. 327.73(1)(aa) is present on public property and is of such
 1424 nature that it cannot be easily removed, the officer shall cause
 1425 a notice to be placed upon such article in substantially the
 1426 following form:

1427
 1428 NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED
 1429 PROPERTY. This property, to wit: ...(setting forth brief
 1430 description)... is unlawfully upon public property known as
 1431 ...(setting forth brief description of location)... and must be
 1432 removed within 5 days; otherwise, it will be removed and
 1433 disposed of pursuant to chapter 705, Florida Statutes. The owner
 1434 will be liable for the costs of removal, storage, and
 1435 publication of notice. Dated this: ...(setting forth the date of
 1436 posting of notice)..., signed: ...(setting forth name, title,
 1437 address, and telephone number of law enforcement officer)....

1438

1439 b. A derelict vessel or a vessel declared a public
 1440 nuisance pursuant to s. 327.73(1)(aa) is present on the waters
 1441 of this state, the officer shall cause a notice to be placed
 1442 upon such vessel in substantially the following form:
 1443
 1444 NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED
 1445 VESSEL. This vessel, to wit: ...(setting forth brief
 1446 description)... has been determined to be (derelict or a public
 1447 nuisance) and is unlawfully upon the waters of this state
 1448 ...(setting forth brief description of location)... and must be
 1449 removed within 21 days; otherwise, it will be removed and
 1450 disposed of pursuant to chapter 705, Florida Statutes. The owner
 1451 and other interested parties have the right to a hearing to
 1452 challenge the determination that this vessel is derelict or
 1453 otherwise in violation of the law. Please contact ...(contact
 1454 information for person who can arrange for a hearing in
 1455 accordance with this section).... The owner or the party
 1456 determined to be legally responsible for the vessel being upon
 1457 the waters of this state in a derelict condition will be liable
 1458 for the costs of removal, destruction, and disposal if this
 1459 vessel is not removed by the owner. Dated this: ...(setting
 1460 forth the date of posting of notice)...., signed: ...(setting
 1461 forth name, title, address, and telephone number of law
 1462 enforcement officer)....

1463 2. A ~~Such~~ notice required under subparagraph 1. may ~~shall~~
1464 ~~be~~ not be less than 8 inches by 10 inches and shall be
1465 sufficiently weatherproof to withstand normal exposure to the
1466 elements. In addition to posting, the law enforcement officer
1467 shall make a reasonable effort to ascertain the name and address
1468 of the owner. If such is reasonably available to the officer,
1469 she or he shall mail a copy of such notice to the owner on or
1470 before the date of posting. If the property is a motor vehicle
1471 as defined in s. 320.01(1) or a vessel as defined in s. 327.02,
1472 the law enforcement agency shall contact the Department of
1473 Highway Safety and Motor Vehicles in order to determine the name
1474 and address of the owner and any person who has filed a lien on
1475 the vehicle or vessel as provided in s. 319.27(2) or (3) or s.
1476 328.15(1). On receipt of this information, the law enforcement
1477 agency shall mail a copy of the notice by certified mail, return
1478 receipt requested, to the owner and to the lienholder, if any,
1479 except that a law enforcement officer who has issued a citation
1480 for a violation of s. 376.15 or s. 823.11 to the owner of a
1481 derelict vessel is not required to mail a copy of the notice by
1482 certified mail, return receipt requested, to the owner. For a
1483 derelict vessel or a vessel declared a public nuisance pursuant
1484 to s. 327.73(1)(aa), the mailed notice must inform the owner or
1485 responsible party that he or she has a right to a hearing to
1486 dispute the determination that the vessel is derelict or
1487 otherwise in violation of the law. If a request for a hearing is

1488 made, a state agency shall follow the processes set forth in s.
1489 120.569. Local governmental entities shall follow the processes
1490 set forth in s. 120.569, except that a local judge, magistrate,
1491 or code enforcement officer may be designated to conduct such a
1492 hearing. If, at the end of 5 days after posting the notice in
1493 sub-subparagraph 1.a., or at the end of 21 days after posting
1494 the notice in sub-subparagraph 1.b., and mailing such notice, if
1495 required, the owner or any person interested in the lost or
1496 abandoned article or articles described has not removed the
1497 article or articles from public property or shown reasonable
1498 cause for failure to do so, and, in the case of a derelict
1499 vessel or a vessel declared a public nuisance pursuant to s.
1500 327.73(1)(aa), has not requested a hearing in accordance with
1501 this section, the following shall apply:

1502 a.~~(a)~~ For abandoned property other than a derelict vessel
1503 or a vessel declared a public nuisance pursuant to s.
1504 327.73(1)(aa), the law enforcement agency may retain any or all
1505 of the property for its own use or for use by the state or unit
1506 of local government, trade such property to another unit of
1507 local government or state agency, donate the property to a
1508 charitable organization, sell the property, or notify the
1509 appropriate refuse removal service.

1510 b. For a derelict vessel or a vessel declared a public
1511 nuisance pursuant to s. 327.73(1)(aa), the law enforcement
1512 agency or its designee may:

1513 (I) Remove the vessel from the waters of this state and
1514 destroy and dispose of the vessel or authorize another
1515 governmental entity or its designee to do so; or

1516 (II) Authorize the vessel's use as an artificial reef in
1517 accordance with s. 379.249 if all necessary federal, state, and
1518 local authorizations are received.

1519
1520 A law enforcement agency or its designee may also take action as
1521 described in this sub-subparagraph if, following a hearing
1522 pursuant to this section, the judge, magistrate, administrative
1523 law judge, or hearing officer has determined the vessel to be
1524 derelict as provided in s. 823.11 or otherwise in violation of
1525 the law in accordance with s. 327.73(1)(aa) and a final order
1526 has been entered or the case is otherwise closed.

1527 (b) For lost property, the officer shall take custody and
1528 the agency shall retain custody of the property for 90 days. The
1529 agency shall publish notice of the intended disposition of the
1530 property, as provided in this section, during the first 45 days
1531 of this time period.

1532 1. If the agency elects to retain the property for use by
1533 the unit of government, donate the property to a charitable
1534 organization, surrender such property to the finder, sell the
1535 property, or trade the property to another unit of local
1536 government or state agency, notice of such election shall be
1537 given by an advertisement published once a week for 2

1538 consecutive weeks in a newspaper of general circulation in the
1539 county where the property was found if the value of the property
1540 is more than \$100. If the value of the property is \$100 or less,
1541 notice shall be given by posting a description of the property
1542 at the law enforcement agency where the property was turned in.
1543 The notice must be posted for not less than 2 consecutive weeks
1544 in a public place designated by the law enforcement agency. The
1545 notice must describe the property in a manner reasonably
1546 adequate to permit the rightful owner of the property to claim
1547 it.

1548 2. If the agency elects to sell the property, it must do
1549 so at public sale by competitive bidding. Notice of the time and
1550 place of the sale shall be given by an advertisement of the sale
1551 published once a week for 2 consecutive weeks in a newspaper of
1552 general circulation in the county where the sale is to be held.
1553 The notice shall include a statement that the sale shall be
1554 subject to any and all liens. The sale must be held at the
1555 nearest suitable place to that where the lost or abandoned
1556 property is held or stored. The advertisement must include a
1557 description of the goods and the time and place of the sale. The
1558 sale may take place no earlier than 10 days after the final
1559 publication. If there is no newspaper of general circulation in
1560 the county where the sale is to be held, the advertisement shall
1561 be posted at the door of the courthouse and at three other
1562 public places in the county at least 10 days prior to sale.

1563 Notice of the agency's intended disposition shall describe the
1564 property in a manner reasonably adequate to permit the rightful
1565 owner of the property to identify it.

1566 (4) The owner of any abandoned or lost property, or in the
1567 case of a derelict vessel, the owner or other party determined
1568 to be legally responsible for the vessel being upon the waters
1569 of this state in a derelict condition, who, after notice as
1570 provided in this section, does not remove such property within
1571 the specified period shall be liable to the law enforcement
1572 agency, other governmental entity, or the agency's or entity's
1573 designee for all costs of removal, storage, and destruction of
1574 such property, less any salvage value obtained by disposal of
1575 the property. Upon final disposition of the property, the law
1576 enforcement officer or representative of the law enforcement
1577 agency or other governmental entity shall notify the owner, if
1578 known, of the amount owed. In the case of an abandoned vessel or
1579 motor vehicle, any person who neglects or refuses to pay such
1580 amount is not entitled to be issued a certificate of
1581 registration for such vessel or motor vehicle, or any other
1582 vessel or motor vehicle, until such costs have been paid. A
1583 person who has neglected or refused to pay all costs of removal,
1584 storage, disposal, and destruction of a vessel or motor vehicle
1585 as provided in this section, after having been provided written
1586 notice via certified mail that such costs are owed, and who
1587 applies for and is issued a registration for a vessel or motor

1588 | vehicle before such costs have been paid in full commits a
 1589 | misdemeanor of the first degree, punishable as provided in s.
 1590 | 775.082 or s. 775.083. The law enforcement officer or
 1591 | representative of the law enforcement agency or other
 1592 | governmental entity shall supply the Department of Highway
 1593 | Safety and Motor Vehicles with a list of persons whose vessel
 1594 | registration privileges and ~~or whose~~ motor vehicle privileges
 1595 | have been revoked under this subsection. ~~Neither~~ The department
 1596 | or a ~~nor any other~~ person acting as an agent of the department
 1597 | may not ~~thereof shall~~ issue a certificate of registration to a
 1598 | person whose vessel and ~~or~~ motor vehicle registration privileges
 1599 | have been revoked, as provided by this subsection, until such
 1600 | costs have been paid.

1601 | Section 26. Effective July 1, 2023, subsection (2) of
 1602 | section 705.103, Florida Statutes, as amended by section 29 of
 1603 | chapter 2019-76, Laws of Florida, is amended to read:

1604 | 705.103 Procedure for abandoned or lost property.—

1605 | (2) (a)1. Whenever a law enforcement officer ascertains
 1606 | that:

1607 | a. An article of lost or abandoned property other than a
 1608 | derelict vessel or a vessel declared a public nuisance pursuant
 1609 | to s. 327.73(1)(aa) is present on public property and is of such
 1610 | nature that it cannot be easily removed, the officer shall cause
 1611 | a notice to be placed upon such article in substantially the
 1612 | following form:

1613
 1614 NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED
 1615 PROPERTY. This property, to wit: ...(setting forth brief
 1616 description)... is unlawfully upon public property known as
 1617 ...(setting forth brief description of location)... and must be
 1618 removed within 5 days; otherwise, it will be removed and
 1619 disposed of pursuant to chapter 705, Florida Statutes. The owner
 1620 will be liable for the costs of removal, storage, and
 1621 publication of notice. Dated this: ...(setting forth the date of
 1622 posting of notice)..., signed: ...(setting forth name, title,
 1623 address, and telephone number of law enforcement officer)....

1624
 1625 b. A derelict vessel or a vessel declared a public
 1626 nuisance pursuant to s. 327.73(1)(aa) is present on the waters
 1627 of this state, the officer shall cause a notice to be placed
 1628 upon such vessel in substantially the following form:

1629
 1630 NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED
 1631 VESSEL. This vessel, to wit: ...(setting forth brief description
 1632 of location)... has been determined to be (derelict or a public
 1633 nuisance) and is unlawfully upon the waters of this state
 1634 ...(setting forth brief description of location)... and must be
 1635 removed within 21 days; otherwise, it will be removed and
 1636 disposed of pursuant to chapter 705, Florida Statutes. The owner
 1637 and other interested parties have the right to a hearing to

1638 challenge the determination that this vessel is derelict or
 1639 otherwise in violation of the law. Please contact ... (contact
 1640 information for person who can arrange for a hearing in
 1641 accordance with this section).... The owner or the party
 1642 determined to be legally responsible for the vessel being upon
 1643 the waters of this state in a derelict condition will be liable
 1644 for the costs of removal, destruction, and disposal if this
 1645 vessel is not removed by the owner. Dated this: ... (setting
 1646 forth the date of posting of notice)...., signed: ... (setting
 1647 forth name, title, address, and telephone number of law
 1648 enforcement officer)....

1649
 1650 2. A ~~Such~~ notice required under subparagraph 1. may shall
 1651 be not be less than 8 inches by 10 inches and shall be
 1652 sufficiently weatherproof to withstand normal exposure to the
 1653 elements. In addition to posting, the law enforcement officer
 1654 shall make a reasonable effort to ascertain the name and address
 1655 of the owner. If such is reasonably available to the officer,
 1656 she or he shall mail a copy of such notice to the owner on or
 1657 before the date of posting. If the property is a motor vehicle
 1658 as defined in s. 320.01(1) or a vessel as defined in s. 327.02,
 1659 the law enforcement agency shall contact the Department of
 1660 Highway Safety and Motor Vehicles in order to determine the name
 1661 and address of the owner and any person who has filed a lien on
 1662 the vehicle or vessel as provided in s. 319.27(2) or (3) or s.

1663 328.15. On receipt of this information, the law enforcement
1664 agency shall mail a copy of the notice by certified mail, return
1665 receipt requested, to the owner and to the lienholder, if any,
1666 except that a law enforcement officer who has issued a citation
1667 for a violation of s. 376.15 or s. 823.11 to the owner of a
1668 derelict vessel is not required to mail a copy of the notice by
1669 certified mail, return receipt requested, to the owner. For a
1670 derelict vessel or a vessel declared a public nuisance pursuant
1671 to s. 327.73(1)(aa), the mailed notice must inform the owner or
1672 responsible party that he or she has a right to a hearing to
1673 dispute the determination that the vessel is derelict or
1674 otherwise in violation of the law. If a request for a hearing is
1675 made, a state agency shall follow the processes as set forth in
1676 s. 120.569. Local governmental entities shall follow the
1677 processes set forth in s. 120.569, except that a local judge,
1678 magistrate, or code enforcement officer may be designated to
1679 conduct such hearings. If, at the end of 5 days after posting
1680 the notice in sub-subparagraph 1.a., or at the end of 21 days
1681 after posting the notice in sub-subparagraph 1.b., and mailing
1682 such notice, if required, the owner or any person interested in
1683 the lost or abandoned article or articles described has not
1684 removed the article or articles from public property or shown
1685 reasonable cause for failure to do so, and, in the case of a
1686 derelict vessel or a vessel declared a public nuisance pursuant

1687 to s. 327.73(1)(aa), has not requested a hearing in accordance
1688 with this section, the following shall apply:

1689 a.~~(a)~~ For abandoned property other than a derelict vessel
1690 or a vessel declared a public nuisance pursuant to s.
1691 327.73(1)(aa), the law enforcement agency may retain any or all
1692 of the property for its own use or for use by the state or unit
1693 of local government, trade such property to another unit of
1694 local government or state agency, donate the property to a
1695 charitable organization, sell the property, or notify the
1696 appropriate refuse removal service.

1697 b. For a derelict vessel or a vessel declared a public
1698 nuisance pursuant to s. 327.73(1)(aa), the law enforcement
1699 agency or its designee may:

1700 (I) Remove the vessel from the waters of this state and
1701 destroy and dispose of the vessel or authorize another
1702 governmental entity or its designee to do so; or

1703 (II) Authorize the vessel's use as an artificial reef in
1704 accordance with s. 379.249 if all necessary federal, state, and
1705 local authorizations are received.

1706
1707 A law enforcement agency or its designee may also take action as
1708 described in this sub-subparagraph if, following a hearing
1709 pursuant to this section, the judge, magistrate, administrative
1710 law judge, or hearing officer has determined the vessel to be
1711 derelict as provided in s. 823.11 or otherwise in violation of

1712 the law in accordance with s. 327.73(1)(aa) and a final order
1713 has been entered or the case is otherwise closed.

1714 (b) For lost property, the officer shall take custody and
1715 the agency shall retain custody of the property for 90 days. The
1716 agency shall publish notice of the intended disposition of the
1717 property, as provided in this section, during the first 45 days
1718 of this time period.

1719 1. If the agency elects to retain the property for use by
1720 the unit of government, donate the property to a charitable
1721 organization, surrender such property to the finder, sell the
1722 property, or trade the property to another unit of local
1723 government or state agency, notice of such election shall be
1724 given by an advertisement published once a week for 2
1725 consecutive weeks in a newspaper of general circulation in the
1726 county where the property was found if the value of the property
1727 is more than \$100. If the value of the property is \$100 or less,
1728 notice shall be given by posting a description of the property
1729 at the law enforcement agency where the property was turned in.
1730 The notice must be posted for not less than 2 consecutive weeks
1731 in a public place designated by the law enforcement agency. The
1732 notice must describe the property in a manner reasonably
1733 adequate to permit the rightful owner of the property to claim
1734 it.

1735 2. If the agency elects to sell the property, it must do
1736 so at public sale by competitive bidding. Notice of the time and

1737 place of the sale shall be given by an advertisement of the sale
 1738 published once a week for 2 consecutive weeks in a newspaper of
 1739 general circulation in the county where the sale is to be held.
 1740 The notice shall include a statement that the sale shall be
 1741 subject to any and all liens. The sale must be held at the
 1742 nearest suitable place to that where the lost or abandoned
 1743 property is held or stored. The advertisement must include a
 1744 description of the goods and the time and place of the sale. The
 1745 sale may take place no earlier than 10 days after the final
 1746 publication. If there is no newspaper of general circulation in
 1747 the county where the sale is to be held, the advertisement shall
 1748 be posted at the door of the courthouse and at three other
 1749 public places in the county at least 10 days prior to sale.
 1750 Notice of the agency's intended disposition shall describe the
 1751 property in a manner reasonably adequate to permit the rightful
 1752 owner of the property to identify it.

1753 Section 27. Subsections (1), (2), and (3) of section
 1754 823.11, Florida Statutes, are amended to read:

1755 823.11 Derelict vessels; relocation or removal; penalty.—

1756 (1) As used in this section and s. 376.15, the term:

1757 (a) "Commission" means the Fish and Wildlife Conservation
 1758 Commission.

1759 (b) "Derelict vessel" means a vessel, as defined in s.
 1760 327.02, that is ~~left, stored, or abandoned~~:

1761 1. In a wrecked, junked, or substantially dismantled
 1762 condition upon any ~~public~~ waters of this state.

1763 a. A vessel is wrecked if it is sunken or sinking; aground
 1764 without the ability to extricate itself absent mechanical
 1765 assistance; or remaining after a marine casualty, including, but
 1766 not limited to, a boating accident, extreme weather, or a fire.

1767 b. A vessel is junked if it has been substantially
 1768 stripped of vessel components, if vessel components have
 1769 substantially degraded or been destroyed, or if the vessel has
 1770 been discarded by the owner or operator. Attaching an outboard
 1771 motor to a vessel that is otherwise junked will not cause the
 1772 vessel to no longer be junked if such motor is not an effective
 1773 means of propulsion as required by s. 327.4107(2) (e) and
 1774 associated rules.

1775 c. A vessel is substantially dismantled if at least two of
 1776 the three following vessel systems or components are missing,
 1777 compromised, incomplete, inoperable, or broken:

- 1778 (I) The steering system;
- 1779 (II) The propulsion system; or
- 1780 (III) The exterior hull integrity.

1781

1782 Attaching an outboard motor to a vessel that is otherwise
 1783 substantially dismantled will not cause the vessel to no longer
 1784 be substantially dismantled if such motor is not an effective

1785 means of propulsion as required by s. 327.4107(2) (e) and
 1786 associated rules.

1787 2. At a port in this state without the consent of the
 1788 agency having jurisdiction thereof.

1789 3. Docked, grounded, or beached upon the property of
 1790 another without the consent of the owner of the property.

1791 (c) "Gross negligence" means conduct so reckless or
 1792 wanting in care that it constitutes a conscious disregard or
 1793 indifference to the safety of the property exposed to such
 1794 conduct.

1795 (d) "Willful misconduct" means conduct evidencing
 1796 carelessness or negligence of such a degree or recurrence as to
 1797 manifest culpability, wrongful intent, or evil design or to show
 1798 an intentional and substantial disregard of the interests of the
 1799 vessel owner.

1800 (2) (a) ~~It is unlawful for~~ A person, firm, or corporation
 1801 may not ~~to store, leave, or abandon~~ any derelict vessel upon
 1802 waters of ~~in~~ this state. For purposes of this paragraph, the
 1803 term "leave" means to allow a vessel to remain occupied or
 1804 unoccupied on the waters of this state for more than 24 hours.

1805 (b) Notwithstanding paragraph (a), a person who owns or
 1806 operates a vessel that becomes derelict upon the waters of this
 1807 state solely as a result of a boating accident that is reported
 1808 to law enforcement in accordance with s. 327.301 or otherwise
 1809 reported to law enforcement; a hurricane; or another sudden

1810 event outside of his or her control may not be charged with a
1811 violation if:

1812 1. The person documents for law enforcement the specific
1813 event that led to the vessel being derelict upon the waters of
1814 this state; and

1815 2. The vessel has been removed from the waters of this
1816 state or has been repaired or addressed and is no longer
1817 derelict upon the waters of this state:

1818 a. Within 7 days after a boating accident or other sudden
1819 event outside of his or her control; or

1820 b. Within 45 days after a hurricane has passed over the
1821 state.

1822 (c) This subsection does not apply to a vessel that was
1823 derelict upon the waters of this state before the stated
1824 accident or event.

1825 (3) The commission, an officer ~~officers~~ of the commission,
1826 or a ~~and any~~ law enforcement agency or officer specified in s.
1827 327.70 may ~~are authorized and empowered to~~ relocate, remove,
1828 store, destroy, or dispose of, or cause to be relocated, ~~or~~
1829 removed, stored, destroyed, or disposed of, a derelict vessel
1830 from ~~public~~ waters of this state as defined in s. 327.02 if the
1831 derelict vessel obstructs or threatens to obstruct navigation or
1832 in any way constitutes a danger to the environment, property, or
1833 persons. The commission, an officer ~~officers~~ of the commission,
1834 or any other law enforcement agency or officer acting pursuant

1835 | to ~~under~~ this subsection to relocate, remove, store, destroy,
 1836 | dispose of, or cause to be relocated, ~~or~~ removed, stored,
 1837 | destroyed, or disposed of, a derelict vessel from ~~public~~ waters
 1838 | of this state shall be held harmless for all damages to the
 1839 | derelict vessel resulting from such action ~~relocation or removal~~
 1840 | unless the damage results from gross negligence or willful
 1841 | misconduct.

1842 | (a) Removal, storage, destruction, and disposal of
 1843 | derelict vessels under this subsection may be funded by grants
 1844 | provided in ss. 206.606 and 376.15. The commission shall
 1845 | implement a plan for the procurement of any available federal
 1846 | disaster funds and use such funds for the removal, storage,
 1847 | destruction, and disposal of derelict vessels.

1848 | (b) All costs, including costs owed to a third party,
 1849 | incurred by the commission, another ~~or other~~ law enforcement
 1850 | agency, or a governmental subdivision, when the governmental
 1851 | subdivision has received authorization from a law enforcement
 1852 | officer or agency, for ~~in~~ the relocation, ~~or~~ removal, storage,
 1853 | destruction, or disposal of a derelict vessel are recoverable
 1854 | against the vessel owner or the party determined to be legally
 1855 | responsible for the vessel being upon the waters of this state
 1856 | in a derelict condition. The Department of Legal Affairs shall
 1857 | represent the commission in actions to recover such costs. As
 1858 | provided in s. 705.103(4), a person who neglects or refuses to
 1859 | pay such costs may not be issued a certificate of registration

1860 for such vessel or for any other vessel or motor vehicle until
1861 such costs have been paid. A person who has neglected or refused
1862 to pay all costs of removal, storage, destruction, or disposal
1863 of a derelict vessel as provided in this section, after having
1864 been provided written notice via certified mail that such costs
1865 are owed, and who applies for and is issued a registration for a
1866 vessel or motor vehicle before such costs have been paid in full
1867 commits a misdemeanor of the first degree, punishable as
1868 provided in s. 775.082 or s. 775.083.

1869 (c) A contractor performing relocation, ~~or~~ removal,
1870 storage, destruction, or disposal activities at the direction of
1871 the commission, an officer ~~officers~~ of the commission, ~~or~~ a law
1872 enforcement agency or officer, or a governmental subdivision,
1873 when the governmental subdivision has received authorization
1874 from a law enforcement officer or agency, pursuant to this
1875 section must be licensed in accordance with applicable United
1876 States Coast Guard regulations where required; obtain and carry
1877 in full force and effect a policy from a licensed insurance
1878 carrier in this state to insure against any accident, loss,
1879 injury, property damage, or other casualty caused by or
1880 resulting from the contractor's actions; and be properly
1881 equipped to perform the services to be provided.

1882 Section 28. Except as otherwise expressly provided in this
1883 act, this act shall take effect July 1, 2021.

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COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: State Affairs Committee
 2 Representative Sirois offered the following:

Amendment (with title amendment)

Remove lines 171-1255 and insert:

Section 1. Effective October 1, 2021, paragraphs (a) and (c) of subsection (1) of section 316.1932, Florida Statutes, are amended to read:

316.1932 Tests for alcohol, chemical substances, or controlled substances; implied consent; refusal.-

(1) (a) 1.a. A ~~Any~~ person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by ~~se~~ 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

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17 the alcoholic content of his or her blood or breath if the
18 person is lawfully arrested for any offense allegedly committed
19 while the person was driving or was in actual physical control
20 of a motor vehicle while under the influence of alcoholic
21 beverages. The chemical or physical breath test must be
22 incidental to a lawful arrest and administered at the request of
23 a law enforcement officer who has reasonable cause to believe
24 such person was driving or was in actual physical control of the
25 motor vehicle within this state while under the influence of
26 alcoholic beverages. The administration of a breath test does
27 not preclude the administration of another type of test. The
28 person shall be told that his or her failure to submit to any
29 lawful test of his or her breath will result in the suspension
30 of the person's privilege to operate a motor vehicle for a
31 period of 1 year for a first refusal, or for a period of 18
32 months if the driving privilege of such person has been
33 previously suspended or if he or she has previously been fined
34 under s. 327.35215 as a result of a refusal to submit to ~~such~~ a
35 test or tests required under this chapter or chapter 327, and
36 shall also be told that if he or she refuses to submit to a
37 lawful test of his or her breath and his or her driving
38 privilege has been previously suspended or if he or she has
39 previously been fined under s. 327.35215 for a prior refusal to
40 submit to a lawful test of his or her breath, urine, or blood as
41 required under this chapter or chapter 327, he or she commits a

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42 | misdemeanor of the first degree, punishable as provided in s.
43 | 775.082 or s. 775.083, in addition to any other penalties
44 | provided by law. The refusal to submit to a chemical or physical
45 | breath test upon the request of a law enforcement officer as
46 | provided in this section is admissible into evidence in any
47 | criminal proceeding.

48 | b. A ~~Any~~ person who accepts the privilege extended by the
49 | laws of this state of operating a motor vehicle within this
50 | state is, by ~~se~~ operating such vehicle, deemed to have given his
51 | or her consent to submit to a urine test for the purpose of
52 | detecting the presence of chemical substances as set forth in s.
53 | 877.111 or controlled substances if the person is lawfully
54 | arrested for any offense allegedly committed while the person
55 | was driving or was in actual physical control of a motor vehicle
56 | while under the influence of chemical substances or controlled
57 | substances. The urine test must be incidental to a lawful arrest
58 | and administered at a detention facility or any other facility,
59 | mobile or otherwise, which is equipped to administer such tests
60 | at the request of a law enforcement officer who has reasonable
61 | cause to believe such person was driving or was in actual
62 | physical control of a motor vehicle within this state while
63 | under the influence of chemical substances or controlled
64 | substances. The urine test shall be administered at a detention
65 | facility or any other facility, mobile or otherwise, which is
66 | equipped to administer such test in a reasonable manner that

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67 will ensure the accuracy of the specimen and maintain the
68 privacy of the individual involved. The administration of a
69 urine test does not preclude the administration of another type
70 of test. The person shall be told that his or her failure to
71 submit to any lawful test of his or her urine will result in the
72 suspension of the person's privilege to operate a motor vehicle
73 for a period of 1 year for the first refusal, or for a period of
74 18 months if the driving privilege of such person has been
75 previously suspended or if he or she has previously been fined
76 under s. 327.35215 as a result of a refusal to submit to ~~such~~ a
77 test or tests required under this chapter or chapter 327, and
78 shall also be told that if he or she refuses to submit to a
79 lawful test of his or her urine and his or her driving privilege
80 has been previously suspended or if he or she has previously
81 been fined under s. 327.35215 for a prior refusal to submit to a
82 lawful test of his or her breath, urine, or blood as required
83 under this chapter or chapter 327, he or she commits a
84 misdemeanor of the first degree, punishable as provided in s.
85 775.082 or s. 775.083, in addition to any other penalties
86 provided by law. The refusal to submit to a urine test upon the
87 request of a law enforcement officer as provided in this section
88 is admissible into evidence in any criminal proceeding.

89 2. The Alcohol Testing Program within the Department of
90 Law Enforcement is responsible for the regulation of the
91 operation, inspection, and registration of breath test

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92 instruments utilized under the driving and boating under the
93 influence provisions and related provisions located in this
94 chapter and chapters 322 and 327. The program is responsible for
95 the regulation of the individuals who operate, inspect, and
96 instruct on the breath test instruments utilized in the driving
97 and boating under the influence provisions and related
98 provisions located in this chapter and chapters 322 and 327. The
99 program is further responsible for the regulation of blood
100 analysts who conduct blood testing to be utilized under the
101 driving and boating under the influence provisions and related
102 provisions located in this chapter and chapters 322 and 327. The
103 program shall:

104 a. Establish uniform criteria for the issuance of permits
105 to breath test operators, agency inspectors, instructors, blood
106 analysts, and instruments.

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

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

112 d. Establish uniform requirements for instruction and
113 curricula for the operation and inspection of approved
114 instruments.

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

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

119 g. Have the authority to approve or disapprove breath test
120 instruments and accompanying paraphernalia for use pursuant to
121 the driving and boating under the influence provisions and
122 related provisions located in this chapter and chapters 322 and
123 327.

124 h. With the approval of the executive director of the
125 Department of Law Enforcement, make and enter into contracts and
126 agreements with other agencies, organizations, associations,
127 corporations, individuals, or federal agencies as are necessary,
128 expedient, or incidental to the performance of duties.

129 i. Issue final orders which include findings of fact and
130 conclusions of law and which constitute final agency action for
131 the purpose of chapter 120.

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

134 k. Make recommendations concerning any matter within the
135 purview of this section, this chapter, chapter 322, or chapter
136 327.

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

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

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

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

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

152
153 Nothing in this section shall be construed to supersede
154 provisions in this chapter and chapters 322 and 327. The
155 specifications in this section are derived from the power and
156 authority previously and currently possessed by the Department
157 of Law Enforcement and are enumerated to conform with the
158 mandates of chapter 99-379, Laws of Florida.

159 (c) A ~~Any~~ person who accepts the privilege extended by the
160 laws of this state of operating a motor vehicle within this
161 state is, by operating such vehicle, deemed to have given his or
162 her consent to submit to an approved blood test for the purpose
163 of determining the alcoholic content of the blood or a blood
164 test for the purpose of determining the presence of chemical
165 substances or controlled substances as provided in this section

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166 if there is reasonable cause to believe the person was driving
167 or in actual physical control of a motor vehicle while under the
168 influence of alcoholic beverages or chemical or controlled
169 substances and the person appears for treatment at a hospital,
170 clinic, or other medical facility and the administration of a
171 breath or urine test is impractical or impossible. As used in
172 this paragraph, the term "other medical facility" includes an
173 ambulance or other medical emergency vehicle. The blood test
174 shall be performed in a reasonable manner. A ~~Any~~ person who is
175 incapable of refusal by reason of unconsciousness or other
176 mental or physical condition is deemed not to have withdrawn his
177 or her consent to such test. A blood test may be administered
178 whether or not the person is told that his or her failure to
179 submit to such a blood test will result in the suspension of the
180 person's privilege to operate a motor vehicle upon the public
181 highways of this state and that a refusal to submit to a lawful
182 test of his or her blood, if his or her driving privilege has
183 been previously suspended for refusal to submit to a lawful test
184 of his or her breath, urine, or blood, is a misdemeanor. A ~~Any~~
185 person who is capable of refusal shall be told that his or her
186 failure to submit to such a blood test will result in the
187 suspension of the person's privilege to operate a motor vehicle
188 for a period of 1 year for a first refusal, or for a period of
189 18 months if the driving privilege of the person has been
190 suspended previously or if he or she has previously been fined

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191 under s. 327.35215 as a result of a refusal to submit to ~~such a~~
192 test or tests required under this chapter or chapter 327, and
193 ~~that a refusal to submit to a lawful test of his or her blood,~~
194 ~~if his or her driving privilege has been previously suspended~~
195 ~~for a prior refusal to submit to a lawful test of his or her~~
196 ~~breath, urine, or blood, is a misdemeanor.~~ The refusal to submit
197 to a blood test upon the request of a law enforcement officer is
198 admissible in evidence in any criminal proceeding.

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

201 316.1939 Refusal to submit to testing; penalties.—

202 (1) A ~~Any~~ person who has refused to submit to a chemical
203 or physical test of his or her breath, ~~blood,~~ or urine, as
204 described in s. 316.1932, and whose driving privilege was
205 previously suspended or who was previously fined under s.
206 327.35215 for a prior refusal to submit to a lawful test of his
207 or her breath, urine, or blood required under this chapter or
208 chapter 327, and:

209 (a) Who the arresting law enforcement officer had probable
210 cause to believe was driving or in actual physical control of a
211 motor vehicle in this state while under the influence of
212 alcoholic beverages, chemical substances, or controlled
213 substances;

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214 (b) Who was placed under lawful arrest for a violation of
215 s. 316.193 unless such test was requested pursuant to s.
216 316.1932(1)(c);

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

221 (d) Who was informed that a refusal to submit to a lawful
222 test of his or her breath or urine, ~~or blood~~, if his or her
223 driving privilege has been previously suspended or if he or she
224 has previously been fined under s. 327.35215 for a prior refusal
225 to submit to a lawful test of his or her breath, urine, or blood
226 as required under this chapter or chapter 327, is a misdemeanor
227 of the first degree, punishable as provided in s. 775.082 or s.
228 775.083, in addition to any other penalties provided by law; and

229 (e) Who, after having been so informed, refused to submit
230 to any such test when requested to do so by a law enforcement
231 officer or correctional officer

232
233 commits a misdemeanor of the first degree and is subject to
234 punishment as provided in s. 775.082 or s. 775.083.

235 Section 3. Subsections (18) through (47) of section
236 327.02, Florida Statutes, are renumbered as subsections (19)
237 through (48), respectively, present subsection (31) of that
238 section is amended, and a new subsection (18) is added to that

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239 section, to read:

240 327.02 Definitions.—As used in this chapter and in chapter
241 328, unless the context clearly requires a different meaning,
242 the term:

243 (18) "Human-powered vessel" means a vessel powered only by
244 its occupant or occupants, including, but not limited to, a
245 vessel powered only by the occupants' hands or feet, oars, or
246 paddles.

247 ~~(32)(31)~~ "Navigation rules" means, for vessels on:

248 (a) Waters outside established navigational lines of
249 demarcation as specified in 33 C.F.R. part 80, the International
250 Navigational Rules Act of 1977, 33 U.S.C. s. 1602, as amended,
251 including the appendix and annexes thereto, through December 31,
252 2020 ~~October 1, 2012.~~

253 (b) All waters not outside of such established lines of
254 demarcation, the Inland Navigational Rules Act of 1980, 33
255 C.F.R. parts 83-90, as amended, through December 31, 2020
256 ~~October 1, 2012.~~

257 Section 4. Section 327.04, Florida Statutes, is amended to
258 read:

259 327.04 Rules.—The commission may ~~has authority to~~ adopt
260 rules pursuant to ss. 120.536(1) and 120.54 to implement ~~the~~
261 ~~provisions of this chapter,~~ the provisions of chapter 705
262 relating to vessels, and ss. 376.15 and 823.11 conferring powers
263 or duties upon it.

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264 Section 5. Section 327.462, Florida Statutes, is created
265 to read:

266 327.462 Temporary protection zones for spaceflight
267 launches and recovery of spaceflight assets.—

268 (1) As used in this section, the term:

269 (a) "Launch services" means the conduct of a launch and
270 activities involved in the preparation of a launch vehicle,
271 payload, government astronaut, commercial astronaut, or
272 spaceflight participant for such launch.

273 (b) "Reentry services" means the conduct of a reentry and
274 activities involved in the preparation of a reentry vehicle,
275 payload, government astronaut, commercial astronaut, or
276 spaceflight participant for such reentry.

277 (c) "Spaceflight assets" means any item, or any part of an
278 item, owned by a spaceflight entity which is used in launch
279 services or reentry services, including crewed and uncrewed
280 spacecraft, launch vehicles, parachutes and other landing aids,
281 and any spacecraft or ancillary equipment that was attached to
282 the launch vehicle during launch, orbit, or reentry.

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

285 (2) The head of a law enforcement agency or entity
286 identified in s. 327.70(1), or his or her designee, may, upon
287 waters of this state within the law enforcement agency's or
288 entity's jurisdiction, when necessary for preparations in

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289 advance of a launch service or reentry service or for the
290 recovery of spaceflight assets before or after a launch service
291 or reentry service, temporarily establish a protection zone
292 requiring vessels to leave, or prohibiting vessels from
293 entering, water bodies within:

294 (a) Five hundred yards of where launch services, reentry
295 services, or spaceflight asset recovery operations are being
296 conducted; or

297 (b) A distance greater than provided in paragraph (a) if
298 the head of such law enforcement agency or entity, or his or her
299 designee, determines such greater distance is in the best
300 interest of public safety.

301 (3) A protection zone established under subsection (2) may
302 remain in effect only as long as necessary to ensure security
303 around the launch and recovery areas and to recover spaceflight
304 assets and any personnel being transported within a spacecraft
305 following the launch or reentry activity. Such protection zone
306 may not be in place more than 72 hours before or 72 hours after
307 the launch. The head of a law enforcement agency or entity
308 identified in s. 327.70(1), or his or her designee:

309 (a) May also restrict vessels from operating within up to
310 500 yards of any vessel transporting recovered spaceflight
311 assets following a spaceflight launch or reentry while such
312 vessel is continuously underway transporting such assets to a
313 location for removal from the waters of this state.

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

318 (4) The head of a law enforcement agency or entity
319 establishing a protection zone under this section, or his or her
320 designee, must report the establishment of such protection zone
321 via e-mail to the commission's Division of Law Enforcement,
322 Boating and Waterways Section, and to the appropriate United
323 States Coast Guard Sector Command having responsibility over the
324 water body, at least 72 hours before establishment of the
325 protection zone. Such report must include the reasons for the
326 protection zone, the portion of the water body or water bodies
327 that will be included in the protection zone, and the duration
328 of the protection zone. No later than 72 hours after the end of
329 the protection zone period, the head of the law enforcement
330 agency or entity, or his or her designee, must report via e-mail
331 to the commission's Division of Law Enforcement, Boating and
332 Waterways Section, the details of all citations issued for
333 violating the protection zone.

334 (5) This section applies only to launch services, reentry
335 services, or the recovery of spaceflight assets occurring or
336 originating within spaceport territory, as defined in s.
337 331.304, and to federally licensed or federally authorized

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338 launches and reentries occurring or transiting to an end
339 destination upon waters of this state.

340 (6) A person who violates this section or any directive
341 given by a law enforcement officer relating to the establishment
342 of a protection zone under this section after being advised of
343 the establishment of the protection zone commits a misdemeanor
344 of the second degree, punishable as provided in s. 775.082 or s.
345 775.083.

346 Section 6. Effective October 1, 2021, paragraphs (a) and
347 (c) of subsection (1) of section 327.352, Florida Statutes, are
348 amended to read:

349 327.352 Tests for alcohol, chemical substances, or
350 controlled substances; implied consent; refusal.-

351 (1)(a)1. The Legislature declares that the operation of a
352 vessel is a privilege that must be exercised in a reasonable
353 manner. In order to protect the public health and safety, it is
354 essential that a lawful and effective means of reducing the
355 incidence of boating while impaired or intoxicated be
356 established. Therefore, a any person who accepts the privilege
357 extended by the laws of this state of operating a vessel within
358 this state is, by ~~so~~ operating such vessel, deemed to have given
359 his or her consent to submit to an approved chemical test or
360 physical test including, but not limited to, an infrared light
361 test of his or her breath for the purpose of determining the
362 alcoholic content of his or her blood or breath if the person is

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363 lawfully arrested for any offense allegedly committed while the
364 person was operating a vessel while under the influence of
365 alcoholic beverages. The chemical or physical breath test must
366 be incidental to a lawful arrest and administered at the request
367 of a law enforcement officer who has reasonable cause to believe
368 such person was operating the vessel within this state while
369 under the influence of alcoholic beverages. The administration
370 of a breath test does not preclude the administration of another
371 type of test. The person shall be told that his or her failure
372 to submit to any lawful test of his or her breath under this
373 chapter will result in a civil penalty of \$500, and shall also
374 be told that if he or she refuses to submit to a lawful test of
375 his or her breath and he or she has been previously fined under
376 s. 327.35215 or has previously had his or her driver license
377 suspended for refusal to submit to any lawful test of his or her
378 breath, urine, or blood, he or she commits a misdemeanor of the
379 first degree, punishable as provided in s. 775.082 or s.
380 775.083, in addition to any other penalties provided by law. The
381 refusal to submit to a chemical or physical breath test upon the
382 request of a law enforcement officer as provided in this section
383 is admissible into evidence in any criminal proceeding.

384 2. A ~~Any~~ person who accepts the privilege extended by the
385 laws of this state of operating a vessel within this state is,
386 by ~~se~~ operating such vessel, deemed to have given his or her
387 consent to submit to a urine test for the purpose of detecting

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388 the presence of chemical substances as set forth in s. 877.111
389 or controlled substances if the person is lawfully arrested for
390 any offense allegedly committed while the person was operating a
391 vessel while under the influence of chemical substances or
392 controlled substances. The urine test must be incidental to a
393 lawful arrest and administered at a detention facility or any
394 other facility, mobile or otherwise, which is equipped to
395 administer such tests at the request of a law enforcement
396 officer who has reasonable cause to believe such person was
397 operating a vessel within this state while under the influence
398 of chemical substances or controlled substances. The urine test
399 shall be administered at a detention facility or any other
400 facility, mobile or otherwise, which is equipped to administer
401 such test in a reasonable manner that will ensure the accuracy
402 of the specimen and maintain the privacy of the individual
403 involved. The administration of a urine test does not preclude
404 the administration of another type of test. The person shall be
405 told that his or her failure to submit to any lawful test of his
406 or her urine under this chapter will result in a civil penalty
407 of \$500, and shall also be told that if he or she refuses to
408 submit to a lawful test of his or her urine and he or she has
409 been previously fined under s. 327.35215 or has previously had
410 his or her driver license suspended for refusal to submit to any
411 lawful test of his or her breath, urine, or blood, he or she
412 commits a misdemeanor of the first degree, punishable as

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413 provided in s. 775.082 or s. 775.083, in addition to any other
414 penalties provided by law. The refusal to submit to a urine test
415 upon the request of a law enforcement officer as provided in
416 this section is admissible into evidence in any criminal
417 proceeding.

418 (c) A ~~Any~~ person who accepts the privilege extended by the
419 laws of this state of operating a vessel within this state is,
420 by operating such vessel, deemed to have given his or her
421 consent to submit to an approved blood test for the purpose of
422 determining the alcoholic content of the blood or a blood test
423 for the purpose of determining the presence of chemical
424 substances or controlled substances as provided in this section
425 if there is reasonable cause to believe the person was operating
426 a vessel while under the influence of alcoholic beverages or
427 chemical or controlled substances and the person appears for
428 treatment at a hospital, clinic, or other medical facility and
429 the administration of a breath or urine test is impractical or
430 impossible. As used in this paragraph, the term "other medical
431 facility" includes an ambulance or other medical emergency
432 vehicle. The blood test shall be performed in a reasonable
433 manner. A ~~Any~~ person who is incapable of refusal by reason of
434 unconsciousness or other mental or physical condition is deemed
435 not to have withdrawn his or her consent to such test. A ~~Any~~
436 person who is capable of refusal shall be told that his or her
437 failure to submit to such a blood test will result in a civil

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438 | ~~penalty of \$500 and that a refusal to submit to a lawful test of~~
439 | ~~his or her blood, if he or she has previously been fined for~~
440 | ~~refusal to submit to any lawful test of his or her breath,~~
441 | ~~urine, or blood, is a misdemeanor.~~ The refusal to submit to a
442 | blood test upon the request of a law enforcement officer shall
443 | be admissible in evidence in any criminal proceeding.

444 | Section 7. Effective October 1, 2021, subsection (3) of
445 | section 327.35215, Florida Statutes, is amended to read:

446 | 327.35215 Penalty for failure to submit to test.—

447 | (3) A person who has been advised of the penalties
448 | pursuant to subsection (2) may, within 30 days afterwards,
449 | request a hearing before a county court judge. A request for a
450 | hearing tolls the period for payment of the civil penalty, and,
451 | if assessment of the civil penalty is sustained by the hearing
452 | and any subsequent judicial review, the civil penalty must be
453 | paid within 30 days after final disposition. The clerk of the
454 | court shall notify the Department of Highway Safety and Motor
455 | Vehicles of the final disposition of all actions filed under
456 | this section by electronic transmission in a format prescribed
457 | by the department. Upon receiving a final disposition, the
458 | Department of Highway Safety and Motor Vehicles shall enter the
459 | disposition on the driving record.

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

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462 327.359 Refusal to submit to testing; penalties.—~~A~~ Any
463 person who has refused to submit to a chemical or physical test
464 of his or her breath, ~~blood,~~ or urine, as described in s.
465 327.352, and who has been previously fined under s. 327.35215 or
466 has previously had his or her driver license suspended for
467 refusal to submit to a lawful test of his or her breath, urine,
468 or blood, and:

469 (1) Who the arresting law enforcement officer had probable
470 cause to believe was operating or in actual physical control of
471 a vessel in this state while under the influence of alcoholic
472 beverages, chemical substances, or controlled substances;

473 (2) Who was placed under lawful arrest for a violation of
474 s. 327.35 unless such test was requested pursuant to s.
475 327.352(1)(c);

476 (3) Who was informed that if he or she refused to submit
477 to such test, he or she is subject to a fine of \$500;

478 (4) Who was informed that a refusal to submit to a lawful
479 test of his or her breath or, urine, ~~or blood,~~ if he or she has
480 been previously fined under s. 327.35215 or has previously had
481 his or her driver license suspended for refusal to submit to a
482 lawful test of his or her breath, urine, or blood, is a
483 misdemeanor of the first degree, punishable as provided in s.
484 775.082 or s. 775.083; and

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485 (5) Who, after having been so informed, refused to submit
486 to any such test when requested to do so by a law enforcement
487 officer or correctional officer

488
489 commits a misdemeanor of the first degree, punishable ~~and is~~
490 ~~subject to punishment~~ as provided in s. 775.082 or s. 775.083.

491 Section 9. Section 327.371, Florida Statutes, is created
492 to read:

493 327.371 Human-powered vessels regulated.-

494 (1) A person may operate a human-powered vessel within the
495 boundaries of the marked channel of the Florida Intracoastal
496 Waterway as defined in s. 327.02:

497 (a) When the marked channel is the only navigable portion
498 of the waterway available due to vessel congestion or
499 obstructions on the water. The operator of the human-powered
500 vessel shall proceed with diligence to a location where he or
501 she may safely operate the vessel outside the marked channel of
502 the Florida Intracoastal Waterway.

503 (b) When crossing the marked channel, provided that the
504 crossing is done in the most direct, continuous, and expeditious
505 manner possible and does not interfere with other vessel traffic
506 in the channel.

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

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

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

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

516 327.391 Airboats regulated.—

517 (1) The exhaust of every internal combustion engine used
518 on any airboat operated on the waters of this state shall be
519 provided with an automotive-style factory muffler, underwater
520 exhaust, or other manufactured device capable of adequately
521 muffling the sound of the exhaust of the engine as described in
522 s. 327.02 ~~s. 327.02(30)~~. The use of cutouts or flex pipe as the
523 sole source of muffling is prohibited, except as provided in
524 subsection (4). A ~~Any~~ person who violates this subsection
525 commits a noncriminal infraction, punishable as provided in s.
526 327.73(1).

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

531 1. A photographic identification card.

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532 2. Proof of completion of a boater education course that
533 complies with s. 327.395(2)(a) ~~s. 327.395(1)(a)~~. Except as
534 provided in paragraph (b), no operator is exempt from this
535 requirement, regardless of age or the exemptions provided under
536 s. 327.395.

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

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

542 (b) A person issued a captain's license by the United
543 States Coast Guard is not required to complete a boating safety
544 education course that complies with s. 327.395(2)(a) ~~s.~~
545 ~~327.395(1)(a)~~. Proof of the captain's license must be onboard
546 the airboat when carrying one or more passengers for hire on
547 waters of this ~~the~~ state.

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

550 327.395 Boating safety education.—

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

555 (2) While operating a vessel, a person identified under
556 subsection (1) must have in his or her possession aboard the

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557 vessel photographic identification and a Florida boating safety
558 identification card issued by the commission, a state-issued
559 identification card or driver license indicating possession of
560 the Florida boating safety identification card, or photographic
561 identification and a temporary certificate issued or approved by
562 the commission, an International Certificate of Competency, a
563 boating safety card or certificate from another state or United
564 States territory, or a Canadian Pleasure Craft Operator Card,
565 which shows that he or she has:

566 (a) Completed a commission-approved boating safety
567 education course that meets the minimum requirements established
568 by the National Association of State Boating Law Administrators;
569 ~~or~~

570 (b) Passed a temporary certificate examination developed
571 or approved by the commission;

572 (c) A valid International Certificate of Competency; or

573 (d) Completed a boating safety education course or
574 equivalency examination in another state, a United States
575 territory, or Canada that meets or exceeds the minimum
576 requirements established by the National Association of State
577 Boating Law Administrators.

578 (3) (a) ~~(2) (a)~~ A person may obtain a Florida boating safety
579 identification card by successfully completing a boating safety
580 education course that meets the requirements of this section and
581 rules adopted by the commission pursuant to this section.

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582 (b) A person may obtain a temporary certificate by passing
583 a temporary certificate examination that meets the requirements
584 of this section and rules adopted by the commission pursuant to
585 this section.

586 ~~(4)(3)~~ A Any commission-approved boating safety education
587 course or temporary certificate examination developed or
588 approved by the commission must include a component regarding
589 diving vessels, awareness of divers in the water, divers-down
590 warning devices, and the requirements of s. 327.331.

591 ~~(4) The commission may appoint liveries, marinas, or other~~
592 ~~persons as its agents to administer the course or temporary~~
593 ~~certificate examination and issue identification cards or~~
594 ~~temporary certificates in digital, electronic, or paper format~~
595 ~~under guidelines established by the commission. An agent must~~
596 ~~charge the \$2 examination fee, which must be forwarded to the~~
597 ~~commission with proof of passage of the examination and may~~
598 ~~charge and keep a \$1 service fee.~~

599 (5) A boating safety identification card issued to a
600 person who has completed a boating safety education course is
601 valid for life. A temporary certificate issued to a person who
602 has passed a temporary certification examination is valid for 90
603 days after the date of issuance. The commission may issue either
604 the boating safety identification card or the temporary
605 certificate in a digital, electronic, or paper format.

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

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- 607 (a)1. Is licensed by the United States Coast Guard to
608 serve as master of a vessel; or
609 2. Has been previously licensed by the United States Coast
610 Guard to serve as master of a vessel, provides proof of such
611 licensure to the commission, and requests that a boating safety
612 identification card be issued in his or her name.
- 613 (b) Operates a vessel only on a private lake or pond.
- 614 (c) Is accompanied in the vessel by a person who is exempt
615 from this section or who holds a boating safety identification
616 card in compliance with this section, who is 18 years of age or
617 older, and who is attendant to the operation of the vessel and
618 responsible for the safe operation of the vessel and for any
619 violation that occurs during the operation of the vessel.
- 620 (d) Is a nonresident who has in his or her possession
621 photographic identification and proof that he or she has
622 completed a boating safety education course or equivalency
623 examination in another state or a United States territory that
624 ~~which~~ meets or exceeds the minimum requirements established by
625 the National Association of State Boating Law Administrators.
- 626 (e) Is operating a vessel within 90 days after the
627 purchase of that vessel and has available for inspection aboard
628 that vessel a bill of sale meeting the requirements of s.
629 328.46(1).
- 630 (f) Is operating a vessel within 90 days after completing
631 a boating safety education course in accordance with paragraph

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632 (2) (a) ~~the requirements of paragraph (1) (a)~~ and has a
633 photographic identification card and a boating safety education
634 certificate available for inspection as proof of having
635 completed a boating safety education course. The boating safety
636 education certificate must provide, at a minimum, the student's
637 first and last name, the student's date of birth, and the date
638 that he or she passed the course examination.

639 (g) Is exempted by rule of the commission.

640 (7) A person who operates a vessel in violation of this
641 section ~~subsection (1)~~ commits a noncriminal infraction,
642 punishable as provided in s. 327.73.

643 (8) The commission shall institute and coordinate a
644 statewide program of boating safety instruction and
645 certification to ensure that boating safety courses and
646 examinations are available in each county of this ~~the~~ state. The
647 commission may appoint agents to administer the boating safety
648 education course or temporary certificate examination and may
649 authorize the agents to issue temporary certificates in digital,
650 electronic, or paper format. An agent ~~The agents~~ shall charge
651 and collect the \$2 fee required in subsection (9) for each
652 temporary certificate requested of the commission by that agent,
653 which must be forwarded to the commission. The agent may charge
654 and keep a \$1 service fee.

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

658 (10) The commission shall design forms and adopt rules
659 pursuant to chapter 120 to implement ~~the provisions of~~ this
660 section.

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

663 Section 12. Subsection (5) of section 327.4107, Florida
664 Statutes, is renumbered as subsection (6), paragraphs (d) and
665 (e) of subsection (2) of that section are amended, and new
666 subsections (5) and (7) are added to that section, to read:

667 327.4107 Vessels at risk of becoming derelict on waters of
668 this state.—

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

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

677 (e) The vessel does not have an effective means of
678 propulsion for safe navigation within 72 hours after the vessel
679 owner or operator receives telephonic notice, in-person notice

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680 recorded on an agency-approved body camera, or written notice,
681 which may be provided by facsimile, electronic mail, or other
682 electronic means, stating such from an officer, and the vessel
683 owner or operator is unable to provide a receipt, proof of
684 purchase, or other documentation of having ordered necessary
685 parts for vessel repair. The commission may adopt rules to
686 implement this paragraph.

687 (5) The commission, an officer of the commission, or a law
688 enforcement agency or officer specified in s. 327.70 may
689 relocate or cause to be relocated an at-risk vessel found to be
690 in violation of this section to a distance greater than 20 feet
691 from a mangrove or upland vegetation. The commission, an officer
692 of the commission, or a law enforcement agency or officer acting
693 pursuant to this subsection upon waters of this state shall be
694 held harmless for all damages to the at-risk vessel resulting
695 from such relocation unless the damage results from gross
696 negligence or willful misconduct as these terms are defined in
697 s. 823.11.

698 (7) The commission may establish a derelict vessel
699 prevention program to address vessels at risk of becoming
700 derelict. Such program may, but is not required to, include:

701 (a) Removal, relocation, and destruction of vessels
702 declared a public nuisance, derelict or at risk of becoming
703 derelict, or lost or abandoned in accordance with s. 327.53(7),
704 s. 327.73(1)(aa), s. 705.103(2) and (4), or s. 823.11(3).

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705 (b) Creation of a vessel turn-in program allowing the
706 owner of a vessel determined by law enforcement to be at risk of
707 becoming derelict in accordance with this section to turn his or
708 her vessel and vessel title over to the commission to be
709 destroyed without penalty.

710 (c) Providing for removal and destruction of an abandoned
711 vessel for which an owner cannot be identified or the owner of
712 which is deceased and no heir is interested in acquiring the
713 vessel.

714 (d) Purchase of anchor line, anchors, and other equipment
715 necessary for securing vessels at risk of becoming derelict.

716 (e) Creating or acquiring moorings designated for securing
717 vessels at risk of becoming derelict.

718
719 The derelict vessel prevention program created pursuant to this
720 subsection may include other preventative efforts and methods as
721 determined appropriate and necessary by the commission. The
722 commission may adopt rules to implement this subsection.

723 Implementation of the derelict vessel prevention program shall
724 be subject to appropriation by the Legislature and shall be
725 funded by the Marine Resources Conservation Trust Fund or the
726 Florida Coastal Protection Trust Fund.

727 Section 13. Paragraph (a) of subsection (1) and subsection
728 (2) of section 327.4109, Florida Statutes, are amended to read:

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729 327.4109 Anchoring or mooring prohibited; exceptions;
730 penalties.—

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

734 1. Within 150 feet of any public or private marina, boat
735 ramp, boatyard, or other public vessel launching or loading
736 facility;

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

741 3. Within 100 feet outward from the marked boundary of a
742 public mooring field or a lesser distance if approved by the
743 commission upon request of a local government within which the
744 mooring field is located. The commission may adopt rules to
745 implement this subparagraph.

746 (2) Notwithstanding subsection (1), an owner or operator
747 of a vessel may anchor or moor within 150 feet of any public or
748 private marina, boat ramp, boatyard, or other public vessel
749 launching or loading facility; within 500 ~~300~~ feet of a
750 superyacht repair facility; or within 100 feet outward from the
751 marked boundary of a public mooring field if:

752 (a) The vessel suffers a mechanical failure that poses an
753 unreasonable risk of harm to the vessel or the persons onboard

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754 such vessel. The owner or operator of the vessel may anchor or
755 moor for 5 business days or until the vessel is repaired,
756 whichever occurs first.

757 (b) Imminent or existing weather conditions in the
758 vicinity of the vessel pose an unreasonable risk of harm to the
759 vessel or the persons onboard such vessel. The owner or operator
760 of the vessel may anchor or moor until weather conditions no
761 longer pose such risk. During a hurricane or tropical storm,
762 weather conditions are deemed to no longer pose an unreasonable
763 risk of harm when the hurricane or tropical storm warning
764 affecting the area has expired.

765 Section 14. Subsection (2) of section 327.45, Florida
766 Statutes, is amended to read:

767 327.45 Protection zones for springs.-

768 (2) The commission may establish by rule protection zones
769 that restrict the speed and operation of vessels or prohibit the
770 anchoring, mooring, beaching, or grounding of vessels to protect
771 and prevent harm to first, second, and third magnitude springs
772 and spring groups, including their associated spring runs, as
773 determined by the commission using the most recent Florida
774 Geological Survey springs bulletin. This harm includes negative
775 impacts to water quality, water quantity, hydrology, wetlands,
776 and aquatic and wetland-dependent species.

777 Section 15. Paragraph (b) of subsection (1) of section
778 327.46, Florida Statutes, is amended to read:

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779 327.46 Boating-restricted areas.—

780 (1) Boating-restricted areas, including, but not limited
781 to, restrictions of vessel speeds and vessel traffic, may be
782 established on the waters of this state for any purpose
783 necessary to protect the safety of the public if such
784 restrictions are necessary based on boating accidents,
785 visibility, hazardous currents or water levels, vessel traffic
786 congestion, or other navigational hazards or to protect
787 seagrasses on privately owned submerged lands.

788 (b) Municipalities and counties may have the authority to
789 establish within their jurisdiction, including those portions of
790 the Florida Intracoastal Waterway, notwithstanding the
791 prohibition in s. 327.60(2)(c), the following boating-restricted
792 areas by ordinance:

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

795 a. Within 500 feet of any boat ramp, hoist, marine
796 railway, or other launching or landing facility available for
797 use by the general boating public on waterways more than 300
798 feet in width or within 300 feet of any boat ramp, hoist, marine
799 railway, or other launching or landing facility available for
800 use by the general boating public on waterways not exceeding 300
801 feet in width.

802 b. Within 500 feet of fuel pumps or dispensers at any
803 marine fueling facility that sells motor fuel to the general

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804 boating public on waterways more than 300 feet in width or
805 within 300 feet of the fuel pumps or dispensers at any licensed
806 terminal facility that sells motor fuel to the general boating
807 public on waterways not exceeding 300 feet in width.

808 c. Inside or within 300 feet of any lock structure.

809 2. An ordinance establishing a slow speed, minimum wake
810 boating-restricted area if the area is:

811 a. Within 300 feet of any bridge fender system.

812 b. Within 300 feet of any bridge span presenting a
813 vertical clearance of less than 25 feet or a horizontal
814 clearance of less than 100 feet.

815 c. On a creek, stream, canal, or similar linear waterway
816 if the waterway is less than 75 feet in width from shoreline to
817 shoreline.

818 d. On a lake or pond of less than 10 acres in total
819 surface area.

820 e. Within the boundaries of a permitted public mooring
821 field and a buffer around the mooring field of up to 100 feet.

822 3. An ordinance establishing a vessel-exclusion zone if
823 the area is:

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

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

827 Section 16. Section 327.463, Florida Statutes, is created
828 to read:

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829 327.463 Special hazards.—

830 (1) For purposes of this section, a vessel:

831 (a) Is operating at slow speed, minimum wake only if it
832 is:

833 1. Fully off plane and completely settled into the water;

834 and

835 2. Proceeding without wake or with minimum wake.

836

837 A vessel that is operating at slow speed, minimum wake may not

838 proceed at a speed greater than a speed that is reasonable and

839 prudent to avoid the creation of an excessive wake or other

840 hazardous condition under the existing circumstances.

841 (b) Is not proceeding at slow speed, minimum wake if it

842 is:

843 1. Operating on plane;

844 2. In the process of coming off plane and settling into
845 the water or getting on plane; or

846 3. Operating at a speed that creates a wake that
847 unreasonably or unnecessarily endangers other vessels.

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

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

857 1. At least 10 feet above the tallest portion of the
858 vessel or barge, indicating that the vessel or barge is actively
859 engaged in construction operations; or

860 2. At least 5 feet above any superstructure permanently
861 installed upon the vessel or barge, indicating that the vessel
862 or barge is actively engaged in construction operations.

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

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

866 2. Have a wire or other stiffener or be otherwise
867 constructed to ensure that the flag remains fully unfurled and
868 extended in the absence of a wind or breeze.

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

871 (c) In periods of low visibility, including any time
872 between 30 minutes after sunset and 30 minutes before sunrise, a
873 person may not be cited for a violation of this subsection
874 unless the orange flag is illuminated and visible from a
875 distance of at least 2 nautical miles. Such illumination does
876 not relieve the construction vessel or barge from complying with
877 all navigation rules.

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878 (4) (a) A person operating a vessel in violation of this
879 section commits a noncriminal infraction, punishable as provided
880 in s. 327.73.

881 (b) The owner of, or party who is responsible for, a
882 construction vessel or barge who displays an orange flag on the
883 vessel or barge when it is not actively engaged in construction
884 operations commits a noncriminal infraction, punishable as
885 provided in s. 327.73.

886 (5) The speed and penalty provisions of this section do
887 not apply to a law enforcement, firefighting, or rescue vessel
888 that is owned or operated by a governmental entity.

889 Section 17. Paragraph (a) of subsection (1) of section
890 327.50, Florida Statutes, is amended to read:

891 327.50 Vessel safety regulations; equipment and lighting
892 requirements.-

893 (1) (a) The owner and operator of every vessel on the
894 waters of this state shall carry, store, maintain, and use
895 safety equipment in accordance with current United States Coast
896 Guard safety equipment requirements as specified in the Code of
897 Federal Regulations, unless expressly exempted by the commission
898 department.

899 Section 18. Section 327.521, Florida Statutes, is created
900 to read:

901 327.521 No-discharge zones.-

902 (1) (a) Effective immediately upon approval by the United

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903 States Environmental Protection Agency of a no-discharge zone
904 determination for the waters of the United States within the
905 boundaries of aquatic preserves identified in s. 258.39 and
906 waters of the United States within shellfish harvesting areas
907 identified by rule of the Department of Agriculture and Consumer
908 Services, all waters of this state within such areas are
909 designated no-discharge zones.

910 (b) Effective December 31, 2022, all waters of this state
911 are designated no-discharge zones, contingent upon approval of
912 the United States Environmental Protection Agency of a no-
913 discharge zone determination for all waters of the United States
914 within the territorial limits of this state.

915 (c) Effective July 1, 2021, the commission shall
916 immediately begin the process of seeking approval of the United
917 States Environmental Protection Agency for a no-discharge zone
918 determination as described under this subsection.

919 (2) A person may not discharge sewage of any type, treated
920 or untreated, from a vessel or floating structure into waters of
921 this state within a no-discharge zone. A vessel or floating
922 structure in violation of this section is declared a nuisance
923 and a hazard to public safety and health.

924 (3) A person who violates this section commits a
925 noncriminal infraction, punishable by a civil penalty of up to
926 \$250. If any discharge prohibited by this section is ongoing or
927 continuous, the person may be assessed a penalty of up to \$250

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928 for each day the violation continues.

929 (4) (a) The owner or operator of a vessel or floating
930 structure convicted a second time for violating this section
931 shall, within 30 days after the conviction, remove the vessel or
932 floating structure from the waters of this state. For purposes
933 of this section, the term "conviction" means a disposition other
934 than acquittal or dismissal.

935 (b) If the vessel or floating structure remains on the
936 waters of this state in violation of this subsection, law
937 enforcement officers charged with the enforcement of this
938 chapter under s. 327.70 shall apply to the appropriate court in
939 the county in which the vessel or floating structure is located
940 to order or otherwise cause the removal of such vessel or
941 floating structure from the waters of this state at the owner's
942 expense.

943 (c) If the owner cannot be found or otherwise fails to pay
944 the removal costs, the provisions of s. 328.17 shall apply. If
945 the proceeds under s. 328.17 are not sufficient to pay all
946 removal costs, funds appropriated from the Marine Resources
947 Conservation Trust Fund pursuant to s. 327.53(6)(b) or s.
948 328.72(15)(c) may be used.

949 (5) The commission shall maintain a list of marine sewage
950 pump-out facilities throughout the state and make the list
951 available on its website, and provide the list with information
952 about the Department of Environmental Protection's Clean Marina

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953 Program to all counties for distribution to public and private
954 marinas.

955 Section 19. Paragraph (a) of subsection (6) and subsection
956 (7) of section 327.53, Florida Statutes, are amended, and
957 subsection (8) is added to that section, to read:

958 327.53 Marine sanitation.—

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

964 (7) A ~~Any~~ vessel or floating structure operated or
965 occupied on the waters of this ~~the~~ state in violation of this
966 section is declared a nuisance and a hazard to public safety and
967 health. The owner or operator of a ~~any~~ vessel or floating
968 structure cited for violating this section shall, within 30 days
969 following the issuance of the citation, correct the violation
970 for which the citation was issued or remove the vessel or
971 floating structure from the waters of this ~~the~~ state. If the
972 violation is not corrected within the 30 days and the vessel or
973 floating structure remains on the waters of this ~~the~~ state in
974 violation of this section, law enforcement officers charged with
975 the enforcement of this chapter under s. 327.70 shall apply to
976 the appropriate court in the county in which the vessel or
977 floating structure is located, ~~to order or otherwise cause the~~

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978 removal of such vessel or floating structure from the waters of
979 this ~~the~~ state at the owner's expense. If the owner cannot be
980 found or otherwise fails to pay the removal costs, the
981 provisions of s. 328.17 shall apply. If the proceeds under s.
982 328.17 are not sufficient to pay all removal costs, funds
983 appropriated from the Marine Resources Conservation Trust Fund
984 pursuant to paragraph (6) (b) or s. 328.72(15) (c) ~~s. 328.72(16)~~
985 may be used.

986 (8) The owner or operator of a live-aboard vessel or a
987 houseboat as defined in s. 327.02 that is equipped with a marine
988 sanitation device certified by the United States Coast Guard
989 must maintain a record of the date of each pumpout of the device
990 and the location of the pumpout station or waste reception
991 facility. Each record must be maintained for 1 year after the
992 date of the pumpout. This subsection does not apply to marine
993 compost toilets that process and manage human waste using
994 currently accepted marine compost toilet technologies that
995 comply with United States Coast Guard requirements.

996 Section 20. Subsection (2) of section 327.54, Florida
997 Statutes, is amended to read:

998 327.54 Liveries; safety regulations; penalty.-

999 (2) A livery may not knowingly lease, hire, or rent a ~~any~~
1000 vessel ~~powered by a motor of 10 horsepower or greater to~~ a ~~any~~
1001 person who is required to comply with s. 327.395~~7~~, unless such
1002 person presents to the livery the documentation ~~photographic~~

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1003 ~~identification and a valid boater safety identification card as~~
1004 ~~required under s. 327.395(2) for operation of a vessel s.~~
1005 ~~327.395(1), or meets the exemption provided under s.~~
1006 ~~327.395(6) (f).~~

1007 Section 21. Subsection (5) of section 327.60, Florida
1008 Statutes, is amended to read:

1009 327.60 Local regulations; limitations.-

1010 (5) A local government may enact and enforce regulations
1011 to implement the procedures for abandoned or lost property that
1012 allow the local law enforcement agency to remove a vessel
1013 affixed to a public dock or mooring within its jurisdiction that
1014 is abandoned or lost property pursuant to s. 705.103(1). Such
1015 regulation must require the local law enforcement agency to post
1016 a written notice at least 24 hours before removing the vessel.

1017 Section 22. Paragraphs (q), (s), and (aa) of subsection
1018 (1) of section 327.73, Florida Statutes, are amended, and
1019 paragraphs (cc), (dd), and (ee) are added to that subsection, to
1020 read:

1021 327.73 Noncriminal infractions.-

1022 (1) Violations of the following provisions of the vessel
1023 laws of this state are noncriminal infractions:

1024 (q) Section 327.53(1), (2), ~~and~~ (3), and (8), relating to
1025 marine sanitation.

1026 (s) Section 327.395, relating to boater safety education.
1027 However, a person cited for violating the requirements of s.

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1028 327.395 relating to failure to have required proof of boating
1029 safety education in his or her possession may not be convicted
1030 if, before or at the time of a county court hearing, the person
1031 produces proof of the boating safety education identification
1032 card or temporary certificate for verification by the hearing
1033 officer or the court clerk and the identification card or
1034 temporary certificate was valid at the time the person was
1035 cited.

1036 (aa) Section 327.4107, relating to vessels at risk of
1037 becoming derelict on waters of this state, for which the civil
1038 penalty is:

1039 1. For a first offense, \$100 ~~\$50~~.

1040 2. For a second offense occurring 30 days or more after a
1041 first offense, \$250 ~~\$100~~.

1042 3. For a third or subsequent offense occurring 30 days or
1043 more after a previous offense, \$500 ~~\$250~~.

1044
1045 A vessel that is the subject of three or more violations issued
1046 pursuant to the same paragraph of s. 327.4107(2) within an 18-
1047 month period which result in dispositions other than acquittal
1048 or dismissal shall be declared to be a public nuisance and
1049 subject to ss. 705.103(2) and (4) and 823.11(3). The commission,
1050 an officer of the commission, or a law enforcement agency or
1051 officer specified in s. 327.70 may relocate, remove, or cause to
1052 be relocated or removed such public nuisance vessels from waters

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1053 of this state. The commission, an officer of the commission, or
1054 a law enforcement agency or officer acting pursuant to this
1055 paragraph upon waters of this state shall be held harmless for
1056 all damages to the vessel resulting from such relocation or
1057 removal unless the damage results from gross negligence or
1058 willful misconduct as these terms are defined in s. 823.11.

1059 (cc) Section 327.463(4)(a) and (b), relating to vessels
1060 creating special hazards, for which the penalty is:

1061 1. For a first offense, \$50.

1062 2. For a second offense occurring within 12 months after a
1063 prior offense, \$100.

1064 3. For a third offense occurring within 36 months after a
1065 prior offense, \$250.

1066 (dd) Section 327.371, relating to the regulation of human-
1067 powered vessels.

1068 (ee) Section 327.521, relating to no-discharge zones, for
1069 which the penalty is up to \$250 for each offense.

1071 -----

1072 **T I T L E A M E N D M E N T**

1073 Remove lines 26-87 and insert:

1074 degree; creating s. 327.35215, F.S.; authorizing the
1075 electronic transmission of certain final dispositions;
1076 requiring the Department of Highway Safety and Motor
1077 Vehicles to enter such dispositions on driving

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1078 records; creating s. 327.371, F.S.; providing
1079 circumstances under which a person may operate a
1080 human-powered vessel within the boundaries of the
1081 marked channel of the Florida Intracoastal Waterway;
1082 providing a penalty; amending s. 327.391, F.S.;
1083 conforming cross-references; amending s. 327.395,
1084 F.S.; revising the types of documentation that a
1085 person may use to comply with certain boating safety
1086 requirements; removing authority of the commission to
1087 appoint certain entities to administer a boating
1088 safety education course or temporary certificate
1089 examination and issue certain credentials; exempting
1090 certain persons from the requirement to possess
1091 certain documents aboard a vessel; amending s.
1092 327.4107, F.S.; removing provisions authorizing
1093 certain vessels to be determined at risk of becoming
1094 derelict; authorizing certain officers to provide
1095 notice that a vessel is at risk of becoming derelict
1096 via body camera recordings; authorizing the commission
1097 or certain officers to relocate at-risk vessels to a
1098 certain distance from mangroves or vegetation;
1099 providing that the commission or officers are not
1100 liable for damages to such vessels; providing an
1101 exception; authorizing the commission to establish a
1102 derelict vessel prevention program consisting of

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 639 (2021)

Amendment No.

1103 certain components; authorizing the commission to
1104 adopt rules; providing that such program is subject to
1105 appropriation by the Legislature; providing for
1106 funding; amending s. 327.4109, F.S.; prohibiting the
1107 anchoring or mooring of a vessel or floating structure
1108 within a certain distance of certain facilities;
1109 providing exceptions; amending s. 327.45, F.S.;
1110 including specified spring groups and runs in spring
1111 protection zones; authorizing the commission to
1112 establish by rule spring protection zones that
1113 prohibit the anchoring, mooring, beaching, or
1114 grounding of vessels; amending s. 327.46, F.S.;
1115 authorizing a county or municipality to establish a
1116 boating-restricted area within and around a public
1117 mooring field and within certain portions of the
1118 Florida Intracoastal Waterway; prohibiting a county or
1119 municipality from establishing a vessel-exclusion zone
1120 for a public bathing beach or swim area within the
1121 Florida Intracoastal Waterway; creating s. 327.463,
1122 F.S.; specifying conditions under which a vessel is
1123 and is not operating at slow speed, minimum wake;
1124 prohibiting a person from operating a vessel faster
1125 than slow speed, minimum wake within a certain
1126 distance from other specified vessels; exempting a
1127 person from being cited for a violation under certain

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 639 (2021)

Amendment No.

1128 | circumstances; providing penalties; providing
1129 | applicability; amending s. 327.50, F.S.; authorizing
1130 | the commission to exempt vessel owners and operators
1131 | from certain safety equipment requirements; creating
1132 | s. 327.521, F.S.; providing that, upon approval by the
1133 | United States Environmental Protection Agency,
1134 | specified waters are designated as no-discharge zones;
1135 | prohibiting the discharge of sewage within no-
1136 | discharge zones; declaring vessels and floating
1137 | structures that discharge sewage within no-discharge
1138 | zones as nuisances and hazards to public safety;
1139 | providing penalties; providing a definition; providing
1140 | for the removal of certain vessels and floating
1141 | structures; directing the commission to maintain and
1142 | make available on its website a list of marine sewage
1143 | pump-out facilities and provide the list with
1144 | specified information to all counties for certain
1145 | distribution; amending s. 327.53, F.S.; requiring the
1146 | owner or operator of a live-aboard vessel or houseboat
1147 | equipped with certain sanitation devices to maintain a
1148 | record of the date and location of each pumpout of the
1149 | device for a certain period; providing applicability;
1150 | amending s. 327.54, F.S.;

1151

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 639 Operation and Safety of Motor Vehicles and Vessels

SPONSOR(S): Criminal Justice & Public Safety Subcommittee, Environment, Agriculture & Flooding Subcommittee, Sirois

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1086

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Environment, Agriculture & Flooding Subcommittee	17 Y, 0 N, As CS	Melkun	Moore
2) Criminal Justice & Public Safety Subcommittee	16 Y, 0 N, As CS	Padgett	Hall
3) Agriculture & Natural Resources Appropriations Subcommittee	15 Y, 0 N	White	Pigott
4) State Affairs Committee		Melkun	Williamson

SUMMARY ANALYSIS

The Fish and Wildlife Conservation Commission (FWC) is the agency responsible for regulating boating in the state. Through its Division of Law Enforcement, FWC works to enforce a variety of state and federal boating laws.

The bill 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 FWC to establish protection zones that prohibit certain activities to protect and prevent harm to springs.

The bill addresses derelict vessels by:

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

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

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

The bill increases and creates certain penalties.

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

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0639f.SAC

DATE: 4/18/2021

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Fish and Wildlife Conservation Commission (FWC) is the agency responsible for regulating boating in the state.¹ Through its Division of Law Enforcement, FWC works to enforce a variety of state and federal boating laws, including regulations related to boating safety, waterway management, vessel maintenance, and marine sanitation.

Boating Safety Education

Background

In order to operate a motorboat of 10 horsepower or greater, Florida law requires anyone who was born on or after January 1, 1988, to either complete an approved boating safety course and obtain a boating safety education identification card issued by FWC or pass a temporary certificate examination developed and approved by FWC.² Because Florida does not require boaters to have a boating license, the boating safety education identification card serves as proof of successful completion of the educational requirements and is valid for life.³

FWC established the temporary certificate to help nonresidents without qualifying proof of boating safety education to comply with the boater education law when visiting the state. The temporary certificate serves as a knowledge check, which satisfies the requirement for a boater to have a boating safety identification card to operate a boat in Florida.⁴

Effect of the Bill

Beginning January 1, 2023, the bill prohibits a person, regardless of his or her date of birth, from operating a vessel powered by a motor of 10 horsepower or greater unless such person has certain documentation in his or her possession aboard the vessel. Specifically, the person must possess photographic identification and a boating safety identification card issued by FWC, a state-issued identification card or driver license indicating possession of the boating safety identification card, or photographic identification and a temporary certificate issued or approved by FWC, which shows that he or she has:

- Completed a FWC-approved boating safety education course that meets the minimum requirements established by the National Association of State Boating Law Administrators (NASBLA);
- Passed a temporary certificate examination developed or approved by FWC;
- A valid International Certificate of Competency (ICC);⁵ or
- Completed a NASBLA-approved boating safety education course in another state.

The bill prohibits liveries from knowingly leasing, hiring, or renting a vessel to a person unless he or she has presented to the livery one of the forms of required documentation described above, unless an exemption applies.

The bill exempts a person previously licensed by the United States Coast Guard to serve as master of a vessel from the boating safety education requirement if the person provides proof of such licensure to FWC and requests a boating safety identification card.

¹ FWC, *Boating*, available at <https://myfwc.com/boating/> (last visited Mar. 22, 2021).

² Section 327.395, F.S.

³ FWC, *Boater Education Identification Card*, available at <https://myfwc.com/boating/safety-education/id/> (last visited Mar.22, 2021).

⁴ FWC, *Temporary Certificate*, available at <https://myfwc.com/boating/safety-education/temporary-certificate/> (last visited Mar. 22, 2021).

⁵ ICC certification is required by European countries and signatories to the United Nations Resolution 40 as the minimum requirement to operate sailboats and powerboats of up to 10 meters in such countries. EduMaritime, *Get Your ICC Sailing License*, available at <https://www.edumaritime.net/nauticed/rya-day-skipper-icc-license> (last visited Mar. 22, 2021).

The bill repeals a duplicative provision authorizing FWC to appoint liveries, marinas, or other persons as its agents to administer the boating safety education course or temporary certificate examination and issue identification cards or temporary certificates in digital, electronic, or paper format. Additionally, the bill repeals the limitation on the service fee that can be charged by boating safety instructors for issuing a temporary boating certificate.

Boating Speed Safety Regulations

Background

In Florida, a vessel⁶ must be operated in a reasonable and prudent manner, having regard for other waterborne traffic, posted speed and wake restrictions, and all other attendant circumstances so as not to endanger the life, limb, or property of another person outside the vessel or due to vessel overloading or excessive speed.⁷ A person operating a vessel in excess of a posted speed limit is guilty of a noncriminal infraction punishable by a fine of \$50.⁸

Effect of the Bill

The bill specifies that a vessel is operating at slow speed, minimum wake only if it is fully off plane and completely settled into the water and proceeding without wake or with minimum wake. A vessel that is operating at slow speed, minimum wake is prohibited from proceeding at a speed greater than a speed that is reasonable and prudent to avoid the creation of an excessive wake or other hazardous condition under the existing circumstances.

The bill specifies that a vessel is not proceeding at slow speed, minimum wake if it is operating on plane, if it is in the process of coming off plane and settling into the water or getting on plane, or if it is operating at a speed that creates a wake that unreasonably or unnecessarily endangers other vessels.

The bill prohibits a person from operating a vessel faster than slow speed, minimum wake within 300 feet of any emergency vessel, including, but not limited to, a law enforcement vessel, a U.S. Coast Guard vessel, or a firefighting vessel, when such emergency vessel's emergency lights are activated.

The bill also prohibits a person from operating a vessel faster than slow speed, minimum wake within 300 feet of any construction vessel or barge when the vessel or barge is displaying an orange flag. The flag indicates that the vessel or barge is actively engaged in construction operations and must be flown from a pole extending at least 10 feet above the tallest portion of the vessel or barge or at least five feet above any superstructure permanently installed upon the vessel or barge. The flag must be at least two feet by three feet in size, must have a wire or other stiffener or be otherwise constructed to ensure that the flag remains fully unfurled and extended in the absence of a wind or breeze, and must be displayed so that the visibility of the flag is not obscured in any direction.

The bill specifies that a person operating a vessel in violation of these slow speed, minimum wake requirements commits a noncriminal infraction. However, a person may not be cited for a violation of these requirements in periods of low visibility, including any time between 30 minutes after sunset and 30 minutes before sunrise, unless the orange flag is illuminated and visible from a distance of at least two nautical miles. The bill further specifies that such illumination does not relieve the construction vessel or barge from complying with all navigation rules.

The bill specifies that the owner of, or party who is responsible for, a construction vessel or barge who displays an orange flag on the vessel or barge when it is not actively engaged in construction operations commits a noncriminal infraction.

The bill specifies that the speed and penalty provisions described above do not apply to a law enforcement, firefighting, or rescue vessel that is owned or operated by a governmental entity.

⁶ Section 327.02, F.S., defines the term "vessel" to include every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

⁷ Section 327.33, F.S.

⁸ Section 327.73(1)(h), F.S.

Operating a Vehicle or Vessel under the Influence

Background

A person commits the offense of boating under the influence (BUI) if the person is operating a vessel within the state and:

- The person is under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, F.S., or any substance controlled under ch. 893, F.S., when affected to the extent that the person's normal faculties are impaired;
- The person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or
- The person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.⁹

The offense is punishable as follows:

Conviction	Penalty	Fine	Imprisonment
1 st conviction	Misdemeanor	Minimum: \$500 Maximum: \$1,000	No more than 6 months
2 nd conviction ¹⁰	Misdemeanor	Minimum: \$1,000 Maximum: \$2,000	No more than 9 months
3 rd conviction within 10 years after prior conviction	Third Degree Felony	Maximum: \$5,000 ¹¹	No more than 5 years ¹²
3 rd conviction more than 10 years after date of prior conviction ¹³	Misdemeanor	Minimum: \$2,000 Maximum: \$5,000	No more than 12 months
4 th or subsequent conviction	Third Degree Felony	Minimum: \$2,000 Maximum:\$5,000 ¹⁴	No more than 5 years ¹⁵

Implied Consent

Under current law, a person who accepts the privilege of operating a motor vehicle or vessel is deemed to have given consent to submit to an approved chemical, physical, or urine test for the purpose of determining the alcoholic content of his or her blood, breath, or urine if the person is lawfully arrested for any offense committed while the person was driving or operating a motor vehicle or vessel and was in actual physical control of a motor vehicle or vessel while under the influence of alcoholic beverages.¹⁶

If a person is arrested under suspicion of driving under the influence (DUI) and refuses to submit to a lawful blood, breath, or urine test, the person's driver license is suspended for one year for a first refusal, and suspended 18 months if the person's license has previously been suspended for a refusal.¹⁷ In addition, it is a first degree misdemeanor¹⁸ to refuse to submit to a breath, blood, or urine test if a person's driver license has previously been suspended for a prior refusal following an arrest for suspicion of DUI.¹⁹ Under current law, a refusal following an arrest for BUI does not count as a prior refusal for purposes of driver license suspension or criminal prosecution in DUI cases.

⁹ Section 327.35(1), F.S.

¹⁰ Section 327.35(2)(a), F.S.

¹¹ Section 775.083(1)(c), F.S.

¹² Sections 327.35(b)1. and 775.084, F.S.

¹³ Sections 327.35(2)(b)1.- 2., F.S.

¹⁴ Section 775.083(1)(c), F.S.

¹⁵ Sections 327.35(b)3. and 775.084, F.S.

¹⁶ Sections 316.1932 and 327.352, F.S.

¹⁷ Section 316.1932, F.S.

¹⁸ A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

¹⁹ Sections 316.1932(1)(a)1.a. and b., F.S.

A person who is arrested under suspicion of BUI who refuses to submit to a lawful blood, breath, or urine test is subject to a civil penalty of \$500.²⁰ In addition, it is a first degree misdemeanor to refuse to submit to such test if a person has previously been fined for a refusal to submit to a blood, breath, or urine test following an arrest for BUI. Under current law, a refusal following an arrest for DUI does not count as a prior refusal for purposes of criminal prosecution in BUI cases.

In 2016, the U.S. Supreme Court held that states cannot criminalize the refusal to take a blood test without a warrant in driving under the influence cases.²¹

Effect of the Bill

The bill provides a blood, breath, or urine test refusal in a BUI case counts as a prior refusal for purposes of driver license suspension and criminal prosecution in a subsequent DUI case, and a test refusal following an arrest for DUI counts a refusal for purposes of criminal prosecution in a subsequent BUI case. To align with current case law, the bill deletes the first degree misdemeanor penalty for refusal to submit to a blood test in both BUI and DUI cases where a person has a previous refusal.

Derelict Vessels

Background

A derelict vessel is a vessel that is left, stored, or abandoned in a wrecked, junked, or substantially dismantled condition upon any public state waters; at a port in the state without the consent of the agency that has jurisdiction of the port; or docked, grounded, or beached upon the property of another without the consent of the owner of the property.²²

It is unlawful to store, leave, or abandon a derelict vessel in Florida.²³ Violations are punishable by a term of imprisonment of no more than one year and a fine of up to \$1,000.²⁴ State law further provides that a violation of derelict vessel laws may also be subject to a civil penalty of up to \$75,000 per day.²⁵ Each day during any portion of which the violation occurs constitutes a separate offense.²⁶

Removal of Derelict Vessels

The Division of Law Enforcement within FWC and its officers, and the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officer, have the responsibility and authority to enforce vessel safety and vessel title certificates, liens, and registration.²⁷

Both state and local law enforcement are authorized and empowered to relocate or remove a derelict vessel from public waters if the derelict vessel obstructs, or threatens to obstruct, navigation or in any way constitutes a danger to the environment, property, or persons. The costs incurred for relocating or removing a derelict vessel are recoverable against the vessel owner. A vessel owner who neglects or refuses to pay the costs of removal, storage, and destruction of the vessel, less any salvage value obtained by disposal of the vessel, is not entitled to be issued a certificate of registration for such vessel, or any other vessel or motor vehicle, until the costs are paid.²⁸

²⁰ Section 327.352, F.S.

²¹ *Birchfield v. North Dakota*, 136 S.Ct. 2160 (2016).

²² Section 823.11(1)(b), F.S.

²³ Section 823.11(2), F.S.

²⁴ Sections 775.082(4)(a) and 775.083(1)(d), F.S.

²⁵ Section 376.16(1), F.S.

²⁶ *Id.*

²⁷ Section 943.10(1), F.S., defines “law enforcement officer” as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The definition also includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

²⁸ Section 705.103(4), F.S.

FWC may provide grants to local governments for the removal of derelict vessels from state waters if funds are appropriated for such grants.²⁹ Grants are awarded based on a set of criteria outlined in FWC rules.³⁰ Removal or relocation of the vessel on private property is not eligible for grant funding.³¹

At-risk vessels

In 2016, the Legislature passed House Bill 7025 to prohibit neglected vessels or those in deteriorating condition from anchoring, mooring, or occupying state waters.³² A vessel is at risk of becoming derelict if any of the following conditions exist:

- The vessel is taking on or has taken on water without an effective means to dewater.
- Spaces on the vessel that are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time.
- The vessel has broken loose or is in danger of breaking loose from its anchor.
- The vessel is left or stored aground unattended in such a state that would prevent the vessel from getting underway, or is listing due to water intrusion, or is sunk or partially sunk.
- The vessel does not have an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives telephonic or written notice, which may be provided by facsimile, electronic mail, or other electronic means, stating such from an officer, and the vessel owner or operator is unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair.³³

A violation for anchoring, mooring, or occupying a vessel at risk of becoming derelict on state waters is a noncriminal infraction, for which the civil penalty is \$50 for a first offense, \$100 for a second offense occurring 30 days or more after a first offense, and \$250 for a third or subsequent offense occurring 30 days or more after a previous offense.³⁴

Effect of the Bill

The bill grants FWC authority to adopt rules to implement the provisions of ch. 705, F.S., relating to vessels, and ss. 376.15 and 823.11, F.S., relating to derelict vessels.

The bill revises the conditions that determine when a vessel is at risk of becoming derelict by specifying that a vessel is deemed derelict if it does not have an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives in-person notice recorded on an agency-approved body camera.

The bill authorizes FWC, an officer of FWC, or a law enforcement agency or officer specified in s. 327.70, F.S., to relocate or cause to be relocated an at-risk vessel found to be in violation of s. 327.4107, F.S., to a distance greater than 20 feet from a mangrove or upland vegetation. The bill specifies that FWC, an officer of FWC, or a law enforcement agency or officer acting pursuant to this authority upon state waters is held harmless for all damages to the at-risk vessel resulting from such relocation unless the damage results from gross negligence or willful misconduct.

The bill authorizes FWC to establish a derelict vessel prevention program to address vessels at risk of becoming derelict. Such program may, but is not required to, include:

- Removal, relocation, and destruction of vessels that are declared a public nuisance, are derelict or at risk of becoming derelict, or are lost or abandoned.
- Creation of a vessel turn-in program allowing the owner of a vessel determined by law enforcement to be at risk of becoming derelict to turn his or her vessel and vessel title over to FWC to be destroyed without penalty.

²⁹ Section 376.15, F.S.

³⁰ Rule 68-1.003, F.A.C.

³¹ National Oceanic and Atmospheric Association: Marine Debris Program, *Abandoned and Derelict Vessels in Florida*, available at <https://marinedebris.noaa.gov/abandoned-and-derelict-vessels/florida> (last visited Mar. 22, 2021).

³² Chapter 2016-108, Laws of Fla.; s. 327.4107, F.S.

³³ Section 327.4107(2), F.S.

³⁴ Section 327.73(aa), F.S.

- Providing for removal and destruction of an abandoned vessel for which an owner cannot be identified or whose owner is deceased and no heir is interested in acquiring the vessel.
- Purchase of anchor line, anchors, and other equipment necessary for securing vessels at risk of becoming derelict.
- Creating or acquiring moorings designated for securing vessels at risk of becoming derelict.

The bill further authorizes the derelict vessel prevention program to include other preventative efforts and methods as determined appropriate and necessary by FWC.

The bill authorizes FWC to adopt rules to implement the derelict vessel prevention program and specifies that implementation of the program is subject to appropriation by the Legislature and must be funded by the Marine Resources Conservation Trust Fund or the Florida Coastal Protection Trust Fund.

The bill defines “leave” to mean to allow a vessel to remain occupied or unoccupied on state waters for more than 24 hours.

The bill specifies that a person who owns or operates a vessel that becomes derelict upon state waters solely as a result of a boating accident that is reported to law enforcement, a hurricane, or another sudden event outside of his or her control may not be charged with a violation if:

- The person documents for law enforcement the specific event that led to the vessel being derelict upon state waters; and
- The vessel has been removed from state waters or has been repaired or addressed and is no longer derelict upon state waters within seven days after a boating accident or other sudden event outside of his or her control or within 45 days after a hurricane has passed.

The bill specifies that this sudden accident or event exception does not apply to a vessel that was derelict upon state waters before the stated accident or event.

When a law enforcement officer determines that a derelict vessel or a vessel declared a public nuisance is present on state waters, the bill requires the officer to cause a notice to be placed upon the vessel in substantially the following form:

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

The officer must also make a reasonable effort to ascertain the name and address of the owner of the vessel and mail a copy of the notice to the owner. The mailed notice must inform the owner or responsible party that he or she has a right to a hearing to dispute the determination that the vessel is derelict or otherwise in violation of the law. If a request for a hearing is made, a state agency must follow the processes set forth in the Administrative Procedure Act. Local government entities must also follow the processes set forth in the Administrative Procedure Act, except that a local judge, magistrate, or code enforcement officer may be designated to conduct such a hearing.

If, after 21 days from the date notice was provided, the derelict vessel or vessel declared a public nuisance remains abandoned and a hearing has not been requested, the bill authorizes the law enforcement agency or its designee to:

- Remove the vessel from state waters and destroy and dispose of the vessel or authorize another governmental entity or its designee to do so; or
- Authorize the vessel's use as an artificial reef if all necessary federal, state, and local authorizations are received.

The bill also authorizes a law enforcement agency or its designee to take action if, following a hearing, the judge, magistrate, administrative law judge, or hearing officer has determined the vessel to be derelict or otherwise in violation of the law and a final order has been entered or the case is otherwise closed.

The bill specifies that a person who has neglected or refused to pay all costs of removal, storage, and destruction of an abandoned or lost vessel or motor vehicle, after having been provided written notice via certified mail that such costs are owed, and who applies for and is issued a registration for a vessel or motor vehicle before such costs have been paid in full commits a first degree misdemeanor.

The bill specifies that a vessel is wrecked if it is sunken or sinking, if it is aground without the ability to extricate itself absent mechanical assistance, or if it remains after a marine casualty, including, but not limited to, a boating accident, extreme weather, or a fire.

The bill specifies that a vessel is junked if it has been substantially stripped of vessel components, if vessel components have substantially degraded or been destroyed, or if the vessel has been discarded by the owner or operator. The bill further specifies that attaching an outboard motor to a vessel that is otherwise junked will not cause the vessel to no longer be junked if such motor is not an effective means of propulsion.

The bill specifies that a vessel is substantially dismantled if at least two of the three following vessel systems or components are missing, compromised, incomplete, inoperable, or broken: the steering system, the propulsion system, or the exterior hull integrity. The bill further specifies that attaching an outboard motor to a vessel that is otherwise substantially dismantled will not cause the vessel to no longer be substantially dismantled if such motor is not an effective means of propulsion.

Anchoring or Mooring

Background

Anchoring or mooring refers to a boater's practice of seeking and using a safe harbor on the public waterway system for an undefined duration. Anchoring is accomplished using an anchor carried on the vessel, while mooring uses fixtures, known as moorings, permanently affixed to the bottom of the water body.³⁵ Anchorages are areas that boaters regularly use for anchoring or mooring, whether designated or managed for that purpose or not. Mooring fields are areas designated and used for a system of properly spaced moorings.³⁶

State Regulation of the Anchoring or Mooring of Vessels

Florida law prohibits a person from anchoring a vessel, except in case of emergency, in a manner that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel.³⁷ Anchoring under bridges or in or adjacent to heavily traveled channels constitutes interference, if

³⁵ Ankensen, Hamann, & Flagg, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, 2

(March 2011), available at

https://www.cityofmarcoisland.com/sites/default/files/fileattachments/administration/page/7491/anchoring_away_03_09_1_1_full_web3.pdf (last visited Mar. 22, 2021).

³⁶ *Id.*

³⁷ Section 327.44(2), F.S.

unreasonable under the prevailing circumstances.³⁸ Interference with navigation is a noncriminal infraction and punishable by a fine of \$50.³⁹

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

- Within 150 feet of any marina, boat ramp, boatyard, or vessel launching or loading facility;
- Within 300 feet of a superyacht repair facility; or
- Within 100 feet outward from the marked boundary of a public mooring field or a lesser distance if approved by the local government within which the mooring field is located.⁴⁰

Additionally, the owner or operator of a vessel or floating structure may not anchor or moor within the marked boundary of a public mooring field unless the owner or operator has a lawful right to do so by contractual agreement or other business arrangement.⁴¹

An owner or operator of a vessel may anchor or moor within 150 feet of any marina, boat ramp, boatyard, or other vessel launching or loading facility; within 300 feet of a superyacht repair facility; or within 100 feet outward from the marked boundary of a public mooring field if:

- The vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor for five business days or until the vessel is repaired, whichever occurs first.
- Imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor until weather conditions no longer pose such risk.⁴²

A vessel or floating structure may not be anchored, moored, or affixed to an unpermitted, unauthorized, or otherwise unlawful object that is on or affixed to the bottom of state waters. This does not apply to a private mooring owned by the owner of privately owned submerged lands.⁴³

Local Regulation of the Anchoring or Mooring of Vessels

Local governments are authorized by general permit to construct, operate, and maintain public mooring fields, each for up to 100 vessels.⁴⁴ Mooring fields must be located where navigational access already exists between the mooring field and the nearest customarily used access channel or navigable waters that the mooring field is designed to serve. Each mooring field must be associated with a land-based support facility that provides amenities and conveniences, such as parking, bathrooms, showers, and laundry facilities. Major boat repairs and maintenance, fueling activities other than from the land-based support facility, and boat hull scraping and painting are not authorized within mooring fields.⁴⁵

Local governments are further authorized to enact and enforce ordinances that prohibit or restrict the mooring or anchoring of floating structures⁴⁶ or live-aboard vessels⁴⁷ within their jurisdictions and vessels that are within the marked boundaries of permitted mooring fields.⁴⁸ However, they are

³⁸ *Id.*

³⁹ Section 327.73(j), F.S.

⁴⁰ Section 327.4109(1), F.S.

⁴¹ Section 327.4109(3), F.S.

⁴² Section 327.4109(2), F.S.

⁴³ Section 327.4019(4), F.S.

⁴⁴ Section 373.118, F.S.; r. 62-330.420(1), F.A.C.

⁴⁵ Rule 62-330.420, F.A.C.

⁴⁶ Section 327.02(14), F.S., defines “floating structure” as a floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term includes an entity used as a residence, place of business, or office with public access; a hotel or motel; a restaurant or lounge; a clubhouse; a meeting facility; a storage or parking facility; or a mining platform, dredge, dragline, or similar facility or entity represented as such.

⁴⁷ Section 327.02(22), F.S., defines “live-aboard vessel” as a vessel used solely as a residence and not for navigation; a vessel represented as a place of business or a professional or other commercial enterprise; or a vessel for which a declaration of domicile has been filed. The definition expressly excludes commercial fishing boats.

⁴⁸ Section 327.60(2)(f), F.S.

prohibited from enacting, continuing in effect, or enforcing any ordinance or local regulation that regulates the anchoring of vessels, other than live-aboard vessels, outside the marked boundaries of permitted mooring fields.⁴⁹

Effect of the Bill

The bill specifies that the owner or operator of a vessel or floating structure may not anchor or moor such that the nearest approach of the anchored or moored vessel or floating structure is within 150 feet of any public or private marina, boat ramp, boatyard, or other public vessel launching or loading facility. In addition, an owner or operator of a vessel may anchor or moor within 150 feet of any public or private marina, boat ramp, boatyard, or other public vessel launching or loading facility under certain conditions. The bill increases the distance in which a person is prohibited from anchoring or mooring a vessel in proximity to a superyacht repair facility from 300 feet to 500 feet.

The bill designates Monroe County as an anchoring limitation area within which a vessel may only be anchored in the same location for a maximum of 90 days. The bill requires FWC to adopt rules to implement this limitation. The bill specifies that this limitation does not apply to an approved and permitted mooring field.

Florida Intracoastal Waterway

Background

The Intracoastal Waterway is a navigable toll-free shipping route, extending for about 3,000 miles along the Atlantic Ocean and Gulf of Mexico coasts in the southern and eastern U.S. It utilizes sounds, bays, lagoons, rivers, and canals and is usable in many portions by deep-draft vessels. The route is federally maintained and is connected to inland waterways in many places. It was originally planned to form a continuous channel from New York City to Brownsville, Texas, but the necessary canal link through northern Florida was never completed; hence, it is now in two separate sections—the Atlantic and the Gulf.⁵⁰

The Florida Intracoastal Waterway means the Atlantic Intracoastal Waterway, the Georgia state line north of Fernandina to Miami; the Port Canaveral lock and canal to the Atlantic Intracoastal Waterway; the Atlantic Intracoastal Waterway, Miami to Key West; the Okeechobee Waterway, Stuart to Fort Myers; the St. Johns River, Jacksonville to Sanford; the Gulf Intracoastal Waterway, Anclote to Fort Myers; the Gulf Intracoastal Waterway, Carrabelle to Tampa Bay; Carrabelle to Anclote open bay section, using the Gulf of Mexico; the Gulf Intracoastal Waterway, Carrabelle to the Alabama state line west of Pensacola; and the Apalachicola, Chattahoochee, and Flint Rivers in Florida.⁵¹

Effect of the Bill

The bill defines the term “human-powered vessel” to mean a vessel powered only by its occupant or occupants, including, but not limited to, a vessel powered only by the occupants' hands or feet, oars, or paddles.

The bill allows a person to operate a human-powered vessel within the boundaries of the marked channel of the Florida Intracoastal Waterway under the following circumstances:

- When the marked channel is the only navigable portion of the waterway available due to vessel congestion or obstructions on the water. The operator of the human-powered vessel must proceed with diligence to a location where he or she may safely operate the vessel outside the marked channel of the Florida Intracoastal Waterway.
- When crossing the marked channel, provided that the crossing is done in the most direct, continuous, and expeditious manner possible and does not interfere with other vessel traffic in the channel.
- During an emergency endangering life or limb.

⁴⁹ Section 327.60(3), F.S.

⁵⁰ Encyclopedia Britannica, *Intracoastal Waterway*, available at <https://www.britannica.com/topic/Intracoastal-Waterway> (last visited Mar. 22, 2021).

⁵¹ Section 327.02(15), F.S.

The bill otherwise prohibits a person from operating a human-powered vessel in the marked channel of the Florida Intracoastal Waterway and specifies that a person who violates this prohibition commits a noncriminal infraction.

Boating-restricted Areas

Background

Boating-restricted Areas Generally

Boating-restricted areas, including, but not limited to, restrictions of vessel speeds and vessel traffic, may be established on state waters for any purpose necessary to protect the safety of the public if such restrictions are necessary based on boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion, or other navigational hazards or to protect seagrasses on privately owned submerged lands.⁵²

FWC may establish a boating-restricted area pursuant to the Administrative Procedure Act, and municipalities and counties have the authority to establish the following boating-restricted areas by ordinance.⁵³

- An ordinance establishing an idle speed, no wake boating-restricted area, if the area is:
 - Within 500 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways more than 300 feet in width or within 300 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways not exceeding 300 feet in width.
 - Within 500 feet of fuel pumps or dispensers at any marine fueling facility that sells motor fuel to the general boating public on waterways more than 300 feet in width or within 300 feet of the fuel pumps or dispensers at any licensed terminal facility that sells motor fuel to the general boating public on waterways not exceeding 300 feet in width.
 - Inside or within 300 feet of any lock structure.
- An ordinance establishing a slow speed, minimum wake boating-restricted area if the area is:
 - Within 300 feet of any bridge fender system.
 - Within 300 feet of any bridge span presenting a vertical clearance of less than 25 feet or a horizontal clearance of less than 100 feet.
 - On a creek, stream, canal, or similar linear waterway if the waterway is less than 75 feet in width from shoreline to shoreline.
 - On a lake or pond of less than 10 acres in total surface area.
- An ordinance establishing a vessel-exclusion zone if the area is designated as a public bathing beach or swim area or within 300 feet of a dam, spillway, or flood control structure.

Protection Zones for Springs

Geologists estimate that there are more than 1,000 springs in the state of Florida, representing what may be the largest concentration of freshwater springs on Earth.⁵⁴ Springs offer many recreational opportunities, such as swimming, kayaking and diving; attract visitors from all over the world; and serve as economic drivers for Florida communities.⁵⁵

FWC is authorized to establish by rule protection zones that restrict the speed and operation of vessels to protect and prevent harm to springs. This harm includes negative impacts to water quality, water quantity, hydrology, wetlands, and aquatic and wetland-dependent species.⁵⁶ When developing a protection zone, FWC must consult and coordinate with the water management district, the Department of Environmental Protection, and the governing bodies of the county and municipality, if applicable, in

⁵² Section 327.46(1), F.S.

⁵³ Sections 327.46(1)(a) and (b), F.S.

⁵⁴ DEP, *Protect and Restore Springs*, available at <https://floridadep.gov/springs/protect-restore> (last visited Mar. 22, 2021).

⁵⁵ DEP, *Springs*, available at <https://floridadep.gov/springs> (last visited Mar. 22, 2021).

⁵⁶ Section 327.45(2), F.S.

which the zone is located. If the zone includes navigable waters of the U.S., FWC must also coordinate with the U.S. Coast Guard and the U.S. Army Corps of Engineers.⁵⁷

Effect of the Bill

The bill authorizes municipalities and counties to adopt an ordinance establishing a slow speed, minimum wake boating-restricted area if the area is within the boundaries of a permitted public mooring field and a buffer around the mooring field of up to 100 feet.

Notwithstanding the prohibition in current law against local government ordinances that regulate vessels upon the Florida Intracoastal Waterway, the bill authorizes municipalities and counties to establish a boating-restricted area by ordinance within the portion of the waterway within their jurisdiction. However, the municipality or county may not establish a vessel-exclusion zone for public bathing beaches or swim areas within the waterway.

The bill authorizes FWC to establish protection zones that prohibit the anchoring, mooring, beaching, or grounding of vessels to protect and prevent harm to first, second, and third magnitude springs and spring groups, including their associated spring runs, as determined by FWC using the most recent Florida Geological Survey springs bulletin.

Spaceflight

Background

Florida is a national leader in spaceflight activities.⁵⁸ Florida's aerospace industry helps to generate economic development initiatives and bring jobs not only to Florida's Space Coast, but throughout the state.⁵⁹ This can bring additional challenges when parts of spaceflight assemblies fall into Florida waters as well as when recovery operations are necessary. There is no existing statute in place to keep boaters away from potentially sensitive spaceflight operations.

Effect of the Bill

The bill defines the following terms:

- "Launch services" means the conduct of a launch and activities involved in the preparation of a launch vehicle, payload, government astronaut, commercial astronaut, or spaceflight participant for such launch.
- "Reentry services" means the conduct of a reentry and activities involved in the preparation of a reentry vehicle, payload, government astronaut, commercial astronaut, or spaceflight participant for such reentry.
- "Spaceflight assets" means any item, or any part of an item, owned by a spaceflight entity that is used in launch services or reentry services, including crewed and uncrewed spacecraft, launch vehicles, parachutes and other landing aids, and any spacecraft or ancillary equipment that was attached to the launch vehicle during launch, orbit, or reentry.
- "Spaceflight entity" means any public or private entity holding a U.S. Federal Aviation Administration (FAA) launch, reentry, operator, or launch site license for spaceflight activities. The term also includes any manufacturer or supplier of components, services, or vehicles that have been reviewed by the (FAA) as part of issuing such a license, permit, or authorization.

The bill authorizes the head of a law enforcement agency or entity, or his or her designee, to temporarily establish a protection zone upon state waters within the agency's or entity's jurisdiction when necessary for preparations in advance of a launch service or reentry service or for the recovery of spaceflight assets before or after a launch service or reentry service. The protection zone may require vessels to leave, or prohibit vessels from entering, waterbodies within:

⁵⁷ Section 327.45(3), F.S.

⁵⁸ Space Florida, *One Place. Infinite Possibilities.*, available at <https://www.spaceflorida.gov/> (last visited Mar. 22, 2021).

⁵⁹ Florida Chamber of Commerce, *Aviation and Aerospace*, available at http://www.flchamber.com/wp-content/uploads/2019/03/1Pager_AviationandAerospace_2019.pdf (last visited Mar. 22, 2021).

- 500 yards of where launch services, reentry services, or spaceflight asset recovery operations are being conducted; or
- A distance greater than 500 yards if the head of such law enforcement agency or entity, or his or her designee, determines such greater distance is in the best interest of public safety.

The bill specifies that a protection zone may remain in effect only as long as necessary to ensure security around the launch and recovery areas and to recover spaceflight assets and any personnel being transported within a spacecraft following the launch or reentry activity. A protection zone may not be in place more than 72 hours before or 72 hours after the launch.

The bill authorizes the head of a law enforcement agency or entity, or his or her designee, to restrict vessels from operating within up to 500 yards of any vessel transporting recovered spaceflight assets following a spaceflight launch or reentry while such vessel is continuously underway transporting such assets to a location for removal from state waters.

The bill requires the head of a law enforcement agency or entity, or his or her designee, establishing a protection zone to report the establishment of such protection zone via e-mail to FWC's Division of Law Enforcement, Boating and Waterways Section, and to the appropriate U.S. Coast Guard Sector Command with responsibility over the waterbody at least 72 hours before establishing the protection zone. The report must include the reasons for the protection zone, the portion of the waterbody or waterbodies that will be included in the protection zone, and the duration of the protection zone. In addition, the details of all citations issued for violating the protection zone must be reported in the same manner no later than 72 hours after the end of the protection zone period.

The bill specifies that the above requirements apply only to launch services, reentry services, or the recovery of spaceflight assets occurring or originating within spaceport territory, and to federally licensed or federally authorized launches and reentries occurring or transiting to an end destination upon state waters.

The bill specifies that a person who violates these requirements or any directive given by a law enforcement officer relating to the establishment of a protection zone after being advised of the establishment of the protection zone commits a second degree misdemeanor.

Penalties for Boating Infractions

Background

An owner or operator of a vessel or floating structure who violates the law by anchoring in an anchoring limitation area or anchoring or mooring in a prohibited area is subject to a uniform boating citation and the following penalties:⁶⁰

- For a first offense, up to a maximum of \$50.
- For a second offense, up to a maximum of \$100.
- For a third offense, up to a maximum of \$250.

A person who operates a vessel without the required boating safety identification card may be charged with a noncriminal infraction and is subject to a uniform boating citation and a \$50 civil penalty.⁶¹ In addition to civil penalties, current law provides that a person who fails to appear or otherwise properly respond to a uniform boating citation will be charged with a second degree misdemeanor, which is punishable by a maximum fine of \$500 and no more than 60 days imprisonment.⁶²

Effect of the Bill

The bill specifies that a person cited for failure to have the required proof of boating safety education in his or her possession may not be convicted if, before or at the time of a county court hearing, the person produces proof of the boating safety education identification card or temporary certificate for

⁶⁰ Sections 327.73(1)(z) and 327.73(1)(bb), F.S.

⁶¹ Section 327.73(1)(s), F.S.

⁶² Sections 775.082 and 775.083, F.S.

verification to the hearing officer or court clerk, and the identification card or temporary certificate was valid at the time the person was cited.

The bill increases the penalties relating to vessels at risk of becoming derelict:

- For a first offense, from \$50 to \$100.
- For a second offense occurring 30 days or more after a first offense, from \$100 to \$250.
- For a third or subsequent offense occurring 30 days or more after a previous offense, from \$250 to \$500.

The bill requires a vessel that is the subject of three or more derelict vessel violations within an 18-month period that result in dispositions other than acquittal or dismissal to be declared to be a public nuisance. The bill authorizes FWC, an officer of FWC, or another law enforcement agency or officer to relocate, remove, or cause to be relocated or removed such public nuisance vessels from state waters. The bill specifies that FWC, an officer of FWC, or another law enforcement agency or officer must be held harmless for all damages to the vessel resulting from such relocation or removal unless the damage results from gross negligence or willful misconduct.

The bill establishes the following penalties relating to vessels that create special hazards:

- For a first offense, \$50.
- For a second offense occurring within 12 months after a prior offense, \$100.
- For a third offense occurring within 36 months after a prior offense, \$250.

The bill specifies that a violation of regulations related to human-powered vessels is a noncriminal infraction subject to a civil penalty of \$50.

B. SECTION DIRECTORY:

- Section 1. Amends s. 316.1932, F.S., to specify the punishment for failure to submit to any lawful test while operating a motor vehicle under the influence.
- Section 2. Amends s. 316.1939, F.S., to specify the punishment for failure to submit to any lawful test while operating a motor vehicle under the influence.
- Section 3. Amends s. 327.02, F.S., to define “human-powered vessel” and make conforming changes.
- Section 4. Amends s. 327.04, F.S., to grant authority to FWC to adopt rules relating to vessels.
- Section 5. Creates s. 327.462, F.S., to authorize the establishment of temporary protection zones for spaceflight launches and recovery of spaceflight assets.
- Section 6. Amends s. 327.352, F.S., to specify the punishment for failure to submit to any lawful test while operating a vessel under the influence.
- Section 7. Amends s. 327.359, F.S., to specify the punishment for failure to submit to any lawful test while operating a vessel under the influence.
- Section 8. Creates s. 327.371, F.S., to specify when a person can operate a human-powered vessel in the Florida Intracoastal Waterway.
- Section 9. Amends s. 327.391, F.S., to make conforming changes.
- Section 10. Amends s. 327.395, F.S., to require boating safety education for any person, regardless of age, and provide exemptions.
- Section 11. Amends s. 327.4107, F.S., to establish a derelict vessel prevention program.

- Section 12. Amends s. 327.4108, F.S., to designate Monroe County as an anchoring limitation area.
- Section 13. Amends s. 327.4109, F.S., to specify the type of marina prohibited by an exception.
- Section 14. Amends s. 327.45, F.S., to authorize FWC to prohibit certain activities in springs.
- Section 15. Amends s. 327.46, F.S., to authorize a county and municipality to establish a certain boating restricted area.
- Section 16. Creates s. 327.463, F.S., to specify procedures for vessels operating at slow speed, minimum wake.
- Section 17. Amends s. 327.50, F.S., to make conforming changes.
- Section 18. Amends s. 327.53, F.S., to require certain vessels to maintain records of pumpouts.
- Section 19. Amends s. 327.54, F.S., to require liveries to check for boating safety identification.
- Section 20. Amends s. 327.60, F.S., to make conforming changes.
- Section 21. Amends s. 327.73, F.S., to specify penalties for certain violations.
- Section 22. Amends s. 328.09, F.S., to make conforming changes.
- Section 23. Effective July 1, 2023, amends s. 328.09, F.S., to make conforming changes.
- Section 24. Amends s. 376.15, F.S., to make conforming changes.
- Section 25. Amends s. 705.103, F.S., to establish procedures for vessels deemed a public nuisance.
- Section 26. Effective July 1, 2023, amends s. 705.103, F.S., as amended by s. 29 of ch. 2019-76, L.O.F, to establish procedures for vessels deemed a public nuisance.
- Section 27. Amends s. 823.11, F.S., to further define “derelict vessel” and provide procedures for persons who neglect to pay full costs.
- Section 28. Provides an effective date of, unless otherwise expressly provided, July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate positive fiscal impact on state revenue due to an increase in penalties associated with derelict vessels and vessels creating special hazards.

2. Expenditures:

The bill may have an insignificant negative fiscal impact on FWC that can be absorbed within existing resources for the rulemaking requirements of the bill. Implementation of the derelict vessel prevention program is subject to appropriation by the Legislature.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate positive fiscal impact on local government expenditures due to the cost savings associated with the creation and implementation of the derelict vessel prevention program.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes FWC to adopt rules to implement the provisions of ch. 705, F.S., relating to vessels, and ss. 376.15 and 823.11, F.S., relating to derelict vessels, including creating the derelict vessel prevention program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 3, 2021, the Environment, Agriculture & Flooding Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment designated Monroe County as an anchoring limitation area, authorized FWC to establish springs protection zones, and revised the types of marine sanitation devices that are required to record their pumpouts.

On March 22, 2021, the Criminal Justice & Public Safety Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Authorized a person to receive a temporary boating certificate if the person has a valid ICC or has completed a boating safety education course in another state that meets or exceeds the minimum requirements established by NASBLA.
- Increased from 300 feet to 500 feet the distance from a superyacht repair facility within which a person is prohibited from anchoring or mooring a vessel.
- Removed the limitation on the service fee that can be charged by boating safety instructors for issuing a temporary boating certificate.
- Removed a provision that prohibited a person from discharging sewage from a vessel or floating structure into any waterway in Florida, subject to approval by the U.S. Environmental Protection Agency.

This analysis is drafted to the committee substitute as approved by the Criminal Justice & Public Safety Subcommittee.

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1 A bill to be entitled
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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88 ~~34.33~~. Chapter 815, relating to computer-related crimes.
89 ~~35.34~~. Chapter 817, relating to fraudulent practices, false
90 pretenses, fraud generally, credit card crimes, and patient
91 brokering.
92 ~~36.35~~. Chapter 825, relating to abuse, neglect, or
93 exploitation of an elderly person or disabled adult.
94 ~~37.36~~. Section 827.071, relating to commercial sexual
95 exploitation of children.
96 ~~38.37~~. Section 828.122, relating to fighting or baiting
97 animals.
98 ~~39.38~~. Chapter 831, relating to forgery and counterfeiting.
99 ~~40.39~~. Chapter 832, relating to issuance of worthless
100 checks and drafts.
101 ~~41.40~~. Section 836.05, relating to extortion.
102 ~~42.41~~. Chapter 837, relating to perjury.
103 ~~43.42~~. Chapter 838, relating to bribery and misuse of
104 public office.
105 ~~44.43~~. Chapter 843, relating to obstruction of justice.
106 ~~45.44~~. Section 847.011, s. 847.012, s. 847.013, s. 847.06,
107 or s. 847.07, relating to obscene literature and profanity.
108 ~~46.45~~. Chapter 849, relating to gambling, lottery, gambling
109 or gaming devices, slot machines, or any of the provisions
110 within that chapter.
111 ~~47.46~~. Chapter 874, relating to criminal gangs.
112 ~~48.47~~. Chapter 893, relating to drug abuse prevention and
113 control.
114 ~~49.48~~. Chapter 896, relating to offenses related to
115 financial transactions.
116 ~~50.49~~. Sections 914.22 and 914.23, relating to tampering

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117 with or harassing a witness, victim, or informant, and
118 retaliation against a witness, victim, or informant.

119 ~~51.50.~~ Sections 918.12 and 918.13, relating to tampering
120 with jurors and evidence.

121 (c) Any violation of Title 68, Florida Administrative Code,
122 relating to the illegal sale, purchase, collection, harvest,
123 capture, or possession of wild animal life, freshwater aquatic
124 life, or marine life, and related crimes.

125 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.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Anderson</u>	<u>Rogers</u>	<u>EN</u>	<u>Favorable</u>
3.	<u>Erickson</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

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.*

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

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

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

14 895.02 Definitions.—As used in ss. 895.01-895.08, the
 15 term:

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

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

22 1. Section 210.18, relating to evasion of payment of
 23 cigarette taxes.

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

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

30 4. Section 403.727(3)(b), relating to environmental
31 control.

32 ~~5.4.~~ Section 409.920 or s. 409.9201, relating to Medicaid
33 fraud.

34 ~~6.5.~~ Section 414.39, relating to public assistance fraud.

35 ~~7.6.~~ Section 440.105 or s. 440.106, relating to workers'
36 compensation.

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

40 ~~9.8.~~ Section 465.0161, relating to distribution of
41 medicinal drugs without a permit as an Internet pharmacy.

42 ~~10.9.~~ Section 499.0051, relating to crimes involving
43 contraband, adulterated, or misbranded drugs.

44 ~~11.10.~~ Part IV of chapter 501, relating to telemarketing.

45 ~~12.11.~~ Chapter 517, relating to sale of securities and
46 investor protection.

47 ~~13.12.~~ Section 550.235 or s. 550.3551, relating to
48 dogracing and horseracing.

- 49 | ~~14.13.~~ Chapter 550, relating to jai alai frontons.
- 50 | ~~15.14.~~ Section 551.109, relating to slot machine gaming.
- 51 | ~~16.15.~~ Chapter 552, relating to the manufacture,
- 52 | distribution, and use of explosives.
- 53 | ~~17.16.~~ Chapter 560, relating to money transmitters, if the
- 54 | violation is punishable as a felony.
- 55 | ~~18.17.~~ Chapter 562, relating to beverage law enforcement.
- 56 | ~~19.18.~~ Section 624.401, relating to transacting insurance
- 57 | without a certificate of authority, s. 624.437(4)(c)1., relating
- 58 | to operating an unauthorized multiple-employer welfare
- 59 | arrangement, or s. 626.902(1)(b), relating to representing or
- 60 | aiding an unauthorized insurer.
- 61 | ~~20.19.~~ Section 655.50, relating to reports of currency
- 62 | transactions, when such violation is punishable as a felony.
- 63 | ~~21.20.~~ Chapter 687, relating to interest and usurious
- 64 | practices.
- 65 | ~~22.21.~~ Section 721.08, s. 721.09, or s. 721.13, relating
- 66 | to real estate timeshare plans.
- 67 | ~~23.22.~~ Section 775.13(5)(b), relating to registration of
- 68 | persons found to have committed any offense for the purpose of
- 69 | benefiting, promoting, or furthering the interests of a criminal
- 70 | gang.
- 71 | ~~24.23.~~ Section 777.03, relating to commission of crimes by
- 72 | accessories after the fact.
- 73 | ~~25.24.~~ Chapter 782, relating to homicide.

74 ~~26.25.~~ Chapter 784, relating to assault and battery.
 75 ~~27.26.~~ Chapter 787, relating to kidnapping or human
 76 trafficking.
 77 ~~28.27.~~ Chapter 790, relating to weapons and firearms.
 78 ~~29.28.~~ Chapter 794, relating to sexual battery, but only
 79 if such crime was committed with the intent to benefit, promote,
 80 or further the interests of a criminal gang, or for the purpose
 81 of increasing a criminal gang member's own standing or position
 82 within a criminal gang.
 83 ~~30.29.~~ Former s. 796.03, former s. 796.035, s. 796.04, s.
 84 796.05, or s. 796.07, relating to prostitution.
 85 ~~31.30.~~ Chapter 806, relating to arson and criminal
 86 mischief.
 87 ~~32.31.~~ Chapter 810, relating to burglary and trespass.
 88 ~~33.32.~~ Chapter 812, relating to theft, robbery, and
 89 related crimes.
 90 ~~34.33.~~ Chapter 815, relating to computer-related crimes.
 91 ~~35.34.~~ Chapter 817, relating to fraudulent practices,
 92 false pretenses, fraud generally, credit card crimes, and
 93 patient brokering.
 94 ~~36.35.~~ Chapter 825, relating to abuse, neglect, or
 95 exploitation of an elderly person or disabled adult.
 96 ~~37.36.~~ Section 827.071, relating to commercial sexual
 97 exploitation of children.

98 ~~38.37.~~ Section 828.122, relating to fighting or baiting
 99 animals.
 100 ~~39.38.~~ Chapter 831, relating to forgery and
 101 counterfeiting.
 102 ~~40.39.~~ Chapter 832, relating to issuance of worthless
 103 checks and drafts.
 104 ~~41.40.~~ Section 836.05, relating to extortion.
 105 ~~42.41.~~ Chapter 837, relating to perjury.
 106 ~~43.42.~~ Chapter 838, relating to bribery and misuse of
 107 public office.
 108 ~~44.43.~~ Chapter 843, relating to obstruction of justice.
 109 ~~45.44.~~ Section 847.011, s. 847.012, s. 847.013, s. 847.06,
 110 or s. 847.07, relating to obscene literature and profanity.
 111 ~~46.45.~~ Chapter 849, relating to gambling, lottery,
 112 gambling or gaming devices, slot machines, or any of the
 113 provisions within that chapter.
 114 ~~47.46.~~ Chapter 874, relating to criminal gangs.
 115 ~~48.47.~~ Chapter 893, relating to drug abuse prevention and
 116 control.
 117 ~~49.48.~~ Chapter 896, relating to offenses related to
 118 financial transactions.
 119 ~~50.49.~~ Sections 914.22 and 914.23, relating to tampering
 120 with or harassing a witness, victim, or informant, and
 121 retaliation against a witness, victim, or informant.

122 ~~51.50.~~ Sections 918.12 and 918.13, relating to tampering
123 with jurors and evidence.

124 (c) Any violation of Title 68, Florida Administrative
125 Code, relating to the illegal sale, purchase, collection,
126 harvest, capture, or possession of wild animal life, freshwater
127 aquatic life, or marine life, and related crimes.

128 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 783 Racketeering of Aquatic and Wild Animal Life

SPONSOR(S): Judiciary Committee, Environment, Agriculture & Flooding Subcommittee, Persons-Mulicka and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 776

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	17 Y, 0 N	Walsh	Hall
2) Environment, Agriculture & Flooding Subcommittee	15 Y, 0 N, As CS	Melkun	Moore
3) Judiciary Committee	19 Y, 0 N, As CS	Walsh	Kramer

SUMMARY ANALYSIS

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

Sections 895.01-895.06, F.S., are 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.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Florida Fish and Wildlife Commission

Article IV, section 9, of the Florida Constitution establishes the Florida Fish and Wildlife Conservation Commission (FWC) and grants FWC the regulatory and executive powers of the state concerning wild animal life, freshwater aquatic life, and marine life.¹ FWC executes ch. 379, F.S., and the rules adopted in Title 68, F.A.C. (FWC laws and rules).²

The Legislature is constitutionally prohibited from adopting statutes in conflict with rules adopted by FWC to execute such authority.³ However, the Constitution specifies that all licensing fees for taking wild animal life, freshwater aquatic life, and marine life as well as the penalties for violating FWC regulations must be prescribed by the Legislature.⁴ In addition, the Legislature must provide for FWC's exercise of executive powers in the area of planning, budgeting, personnel management, and purchasing.⁵ The Legislature may also enact laws to aid FWC that are not inconsistent with its constitutionally-conferred powers, except for special laws or general laws of local application relating to hunting and fishing.⁶

FWC Violations and Penalties

Chapter 379, F.S., contains Florida's laws pertaining to fish and wildlife conservation. Section 379.401, F.S., outlines penalties for violations of fish and wildlife conservation laws, breaking violations down into a four-level system and providing penalties based on the level of offense.⁷ The penalty and severity of each offense increases with each level of violation, beginning at Level One.⁸

Level One Violations

Examples of a Level One violation include, but are not limited to:

- Violating FWC rules or orders requiring a person who holds a license or permit to file reports or other documents;
- Violating FWC rules or orders relating to quota hunt permits, daily use permits, and hunting zone assignments;
- Failing to wear at least 500 square inches of daylight fluorescent orange material as an outer garment while deer hunting;⁹
- Failing to comply with licensure requirements; and
- Failing to comply with hunter safety course requirements.¹⁰

Under s. 379.401(1)(b), F.S., a person who commits a Level One violation commits a noncriminal infraction requiring him or her to appear before a county court, which may impose a civil penalty as

¹ Art. IV, s. 9, Fla. Const.

² "The rules of FWC have the force of a legislative act, and the Legislature is prohibited from adopting statutes that conflict with those rules." *Florida Fish and Wildlife Conservation Commission v. Daws*, 256 So. 3d 907, 917 (Fla. 1st DCA 2018) (citations omitted), review denied, 2018 WL 6605838 (Fla. 2018).

³ Art. IV, s. 9, Fla. Const.

⁴ Art. IV, s. 9, Fla. Const.

⁵ *Id.*

⁶ *Id.*

⁷ S. 379.401, F.S.

⁸ *Id.*

⁹ S. 379.3003, F.S.

¹⁰ S. 379.401(1)(a), F.S.

provided in s. 379.401(1), F.S.¹¹

Level Two Violations

Examples of a Level Two violation include, but are not limited to, violating FWC rules or orders:

- Relating to seasons or time periods for the taking of wildlife, freshwater fish, or saltwater fish;
- Relating to restricted hunting areas, critical wildlife areas, or bird sanctuaries;
- Relating to tagging requirements for wildlife and fur-bearing animals;
- Relating to the use of dogs for the taking of wildlife;
- Prohibiting the unlawful use of traps, unless otherwise provided by law; and
- Which are not otherwise classified.¹²

Under s. 379.401(2)(b), F.S., the penalties for a Level Two violation are as follows:

Level Two Violation	Degree of Offense	Penalty Requirements¹³
First offense	2nd degree misdemeanor ¹⁴	None
Second offense within 3 years of previous Level Two violation (or higher)	1st degree misdemeanor ¹⁵	\$250 minimum fine
Third offense within 5 years of two previous Level Two violations (or higher)	1st degree misdemeanor	\$500 minimum fine 1 year license or permit suspension
Fourth offense within 10 years of three previous Level Two violations (or higher)	1st degree misdemeanor	\$750 minimum fine 3 year license or permit suspension

Level Three Violations

Examples of a Level Three violation include, but are not limited to:

- Illegal sale or possession of alligators;
- Taking game, freshwater fish, or saltwater fish while a required license is suspended or revoked;
- Importing freshwater fish without a permit;
- Possessing certain finfish in excess of recreational daily bag limits;
- Possessing, moving, or transporting any black bass, bream, speckled perch, or other freshwater game fish in commercial quantities violating FWC laws or rules;¹⁶ and
- Illegal taking and possession of deer and wild turkey.¹⁷

¹¹ S. 379.401(1)(b), F.S.

¹² S. 379.401(2)(a), F.S.

¹³ While a first degree misdemeanor may include a fine up to \$1,000, some level two violations also impose a minimum fine. Such fine is not in addition to the fine for committing the misdemeanor offense.

¹⁴ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Ss. 775.082 and 775.083, F.S.

¹⁵ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

¹⁶ S. 379.406, F.S.

¹⁷ S. 379.401(3)(a), F.S.

Under s. 379.401(3)(b), F.S., the penalties for a Level Three violation are as follows:

Level Three Violation	Degree of Offense	Penalty Requirements¹⁸
First offense	1st degree misdemeanor	None
Second offense within 10 years of previous Level Three violation (or higher)	1st degree misdemeanor	\$750 minimum fine Up to 3 year license or permit suspension
Fishing, hunting, or trapping on a suspended or revoked license ¹⁹	1st degree misdemeanor	\$1,000 mandatory fine May not acquire a license or permit for 5 years

Level Four Violations

Examples of a Level Four violation include, but are not limited to:

- Making, forging, counterfeiting, or reproducing a recreational license or possessing such license without authorization from FWC;
- Selling illegally-taken deer or wild turkey;
- Unlawfully killing, injuring, possessing, or capturing alligators or other crocodilia or their eggs;
- Intentionally killing or wounding any species designated as endangered, threatened, or of special concern; and
- Killing any Florida or wild panther.²⁰

Under s. 379.401(4)(b), F.S., a person who commits a Level Four violation commits a third degree felony.²¹

Additional Violations and Penalties

Section 379.407, F.S., imposes base penalties for any violation of FWC laws and rules relating to the conservation of marine resources. This section also imposes additional penalties for:

- Commercial harvesters convicted of certain major violations;
- Possession of mullet in excess of the recreational daily bag limit and any gill or other entangling net as defined in s. 16(c), Art. X of the Florida Constitution;
- Possession of certain finfish in excess of the recreational or commercial daily bag limit;
- Unlawful possession of spiny lobster;
- Commercial wholesale dealers, retailers, or restaurant facilities that purchase, for public consumption, any saltwater product from an unlicensed person, firm, or corporation;
- Commercial wholesale dealers, retailers, or restaurant facilities that purchase, for public consumption, any saltwater product known to be taken in violation of s. 16, Art. X of the Florida Constitution, or rule or statute implementing the provisions thereof; and
- Any unlicensed person, firm, or corporation who is required to be licensed as a commercial harvester of a wholesale or retail dealer to sell or purchase any saltwater product, or harvest or attempt to harvest any saltwater product with intent to sell the saltwater product.²²

Title 68, F.A.C., also known as the Fish and Wildlife Code, contains various rules implemented by FWC. For example, Rule 68A-6.0011-6.0072, F.A.C., identifies different categories of captive wild animals, includes permit requirements for the possession of listed animals, and sets minimum

¹⁸ While a first degree misdemeanor may include a fine up to \$1,000, some level three violations impose a minimum fine. Such fine is not in addition to the fine for committing the misdemeanor offense.

¹⁹ S. 379.354(17), F.S.

²⁰ S. 379.401(4)(a), F.S.

²¹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082 and 775.083, F.S.

²² S. 379.407, F.S.

standards for the maintenance and transportation of listed animals.²³

Florida RICO Act

Sections 895.01-895.06, F.S., are known as the “Florida RICO (Racketeering Influenced and Corrupt Organization) Act.”²⁴ A person commits “racketeering activity” when he or she commits, attempts to commit, conspires to commit, or solicits, coerces, or intimidates another person to commit any offense listed in s. 895.02(8), F.S.^{25, 26}

As defined by s. 895.02(7), F.S., a “pattern of racketeering activity” means engaging in at least two incidents of racketeering conduct²⁷ having the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents.

Section 895.03, F.S., provides that it is unlawful for any person:

- With criminal intent to receive any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt²⁸ 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.²⁹
- Through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- Employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.
- To conspire or endeavor to violate any of the previously-described activity.

A person convicted of any of the activities outlined in s. 895.03, F.S., commits a first degree felony,³⁰ and may be subject to civil remedies including forfeiture to the state of all property, including money, if the property is intended for use in the course of, derived from, or realized through acts in violation of the Florida RICO Act.³¹

In *Bowden v. State*, the Florida Supreme Court considered the definition of “pattern of racketeering activity” in s. 895.02(7), F.S., construing the definition to not only require “similarity and interrelatedness of racketeering activities,” but also “proof that a continuity of a particular criminal activity exists.”³² The court in *Bowden* reasoned that requiring continuity of criminal activity ensures that RICO prosecutions are of professional or career criminals and not individuals who have committed minor crimes.³³

In cases where the defendant is charged under s. 895.03, F.S., Florida courts have analyzed the

²³ Animal Legal & Historical Center, *West's Florida Administrative Code. Title 68. Fish and Wildlife Conservation Commission. Subtitle 68A. Freshwater Fish and Wildlife. Chapter 68A-6. Wildlife as Personal Pets* <https://www.animallaw.info/administrative/florida-exotic-pets-fish-and-wildlife-code-possession-maintenance-and-use-captive> (last visited Apr. 15, 2021).

²⁴ S. 895.01, F.S.

²⁵ S. 895.02, F.S.

²⁶ The offenses listed under s. 895.02(8), F.S., include violations of specified Florida laws (e.g., Medicaid fraud, workers' compensation fraud, human trafficking, kidnapping, and drug offenses), as well as any conduct defined as “racketeering activity” in 18 U.S.C. § 1961.

²⁷ At least one of such incidents of racketeering conduct must have occurred after October 1, 1977, and the last incident of racketeering conduct must have occurred within five years after a prior incident. S. 895.02(7), F.S.

²⁸ “Unlawful debt” means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted in violation of specified Florida laws (e.g., various gambling offenses) as well as any gambling activity in violation of federal law or in the business of lending money at a rate usurious under state or federal law. S. 895.02(12), F.S.

²⁹ “Enterprise” means any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities. A criminal gang as defined in s. 874.03, F.S., constitutes an enterprise. S. 895.02(5), F.S.

³⁰ S. 895.04, F.S. A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Ss. 775.082 and 775.083, F.S.

³¹ S. 895.05(2), F.S.

³² *Bowden v. State*, 402 So. 2d 1173, 1174 (Fla. 1981).

³³ *Id.*

continuity requirement by turning to U.S. Supreme Court precedent.³⁴ When considering the elements necessary to satisfy the pattern requirement³⁵ of the federal RICO Act³⁶ in *H.J. Inc. v. Northwestern Bell Telephone Co.*, the U.S. Supreme Court held that the predicate offenses must amount to, or otherwise constitute a threat of, continuing racketeering activity in order to establish a pattern.³⁷ The Court described continuity as “both a closed- and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition.”³⁸

Wild Animal Life, Freshwater Aquatic Life, and Marine Life Trafficking

The illegal trade of plants and animals on the black-market is estimated to be the third most valuable black-market trade in the world³⁹ and is currently the fourth most profitable trans-national crime, only behind the drug trade, arms trade, and human trafficking.⁴⁰ Current consumer demand drives the illegal trade of wildlife and is not limited to one category of animal life or a type of species.⁴¹ FWC provided the following statement regarding the large number of species that are subject to exploitation by traffickers:

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).⁴²

FWC predicts that the trafficking of wildlife, freshwater aquatic life, and marine life will continue until the given species is overharvested and declines to the extent the species is difficult to acquire or the species has special protections placed on it.⁴³ In addition to its effects on biodiversity, the illegal trade of plant and animal life may affect human health, as trafficked species may not be properly sanitized, which could lead to the spread of diseases transmitted from animals to humans.⁴⁴

Wildlife, marine life, and fresh water aquatic life trafficking involves more than just the illegal taking and sale of species, as traffickers may falsify records, licenses, and documents in an effort to launder trafficked species.⁴⁵

³⁴ See *State v. Lucas*, 600 So. 2d 1093, 1094 (Fla. 1992) (reasoning that the state sufficiently alleged a threat of criminal activity to constitute open-ended continuity as described by federal precedent).

³⁵ 18 U.S.C. § 1962 discusses prohibited activities, which all require a pattern of racketeering activity or collection of an unlawful debt.

³⁶ The Racketeer Influenced and Corrupt Organizations Act is found in 18 U.S.C. §§1961-1968.

³⁷ *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 240 (1989).

³⁸ *Id.* at 241.

³⁹ Jay O'Brien, *Inside South Florida animal smuggling and what's being done to stop it*, 12 News (Nov. 30, 2019), <https://cbs12.com/news/local/inside-south-florida-animal-smuggling-and-whats-being-done-to-stop-it> (last visited Apr. 15, 2021).

⁴⁰ Florida Fish and Wildlife Conservation Commission, Agency Analysis of 2021 House Bill 783, p. 5 (Mar. 4, 2021).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Tanya Rosen, *The Evolving War on Illegal Wildlife Trade*, IISD, (Oct. 6, 2020), <https://www.iisd.org/articles/evolving-war-illegal-wildlife-trade> (last visited Apr. 15, 2021).

⁴⁵ Florida Fish and Wildlife Conservation Commission, Agency Analysis of 2021 House Bill 783, p. 5 (Mar. 4, 2021).

Prosecution of Wild Animal Life, Freshwater Aquatic Life, and Marine Life Trafficking

In October 2020, FWC announced that it had uncovered a Florida-based international flying squirrel trafficking scheme, in which as many as 3,600 flying squirrels were trafficked and exported.⁴⁶ The suspects, who were also found to be trapping and trafficking turtles and alligators, were charged with money laundering, grand theft, and dealing in stolen property, among other charges.⁴⁷

Under current law, FWC indicates that it is difficult to prosecute wild animal life, freshwater aquatic life, and marine life traffickers in a manner that will disrupt the criminal enterprise.⁴⁸ Current fish and wildlife conservation laws are primarily misdemeanors and typically only result in small fines and probation for those who are convicted.⁴⁹

Effect of Proposed Changes

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.

By adding violations of fish and wildlife conservation laws and FWC rules to the list of crimes constituting “racketeering activity,” the bill allows wild animal life, freshwater aquatic life, and marine life traffickers to be prosecuted under the Florida RICO Act. Prosecuting such violations under the Florida RICO Act will enable the state to pursue asset forfeiture, which may help to undermine profitability of the underlying criminal enterprises.

Under the bill, a wild animal life, freshwater aquatic life, or marine life trafficker convicted of a violation of the Florida RICO Act commits a first degree felony.⁵⁰ A person who violates FWC laws and rules may still be penalized in accordance with current law when the Florida RICO Act does not apply.

The bill is effective upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 895.02, F.S., relating to definitions.

Section 2: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may allow additional civil remedies under the Florida RICO Act, including forfeiture to the state of money derived from racketeering activity involving fish and wildlife.⁵¹

2. Expenditures:

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

⁴⁶ Bryan Pietsch, *Seven Charged in Flying Squirrel Trafficking Ring, Florida Officials Say*, The New York Times, (Oct. 19, 2020), <https://www.nytimes.com/2020/10/19/us/squirrel-trafficking-ring-florida.html> (last visited Apr. 15, 2021).

⁴⁷ *Id.*

⁴⁸ Florida Fish and Wildlife Conservation Commission, Agency Analysis of 2021 House Bill 783, p. 6 (Mar. 4, 2021).

⁴⁹ *Id.*

⁵⁰ S. 895.04, F.S.

⁵¹ S. 895.05(2), F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 30, 2021, the Environment, Agriculture & Flooding Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment specified that the term “racketeering activity” includes violations of FWC laws and rules related to illegal collection, harvest, and capture rather than violations related to illegal taking.

On April 15, 2021, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment revised the conduct which may qualify as “racketeering activity” under the bill by removing the killing or wounding of specified wildlife.

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

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

04/12/2021 Signed by Officers and presented to Governor (Governor must act on this bill by 04/19/21)

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

04/15/2021 HOUSE Placed on Special Order Calendar, 04/20/21

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

04/13/2021 HOUSE Temporarily Postponed on Second Reading

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

03/15/2021 HOUSE Placed on Calendar, on 2nd reading

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

04/14/2021 HOUSE In Messages

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

04/14/2021 HOUSE In Messages

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

03/25/2021 HOUSE In Messages

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

04/06/2021 HOUSE Placed on Calendar, on 2nd reading

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

04/15/2021 HOUSE Placed on Special Order Calendar, 04/20/21

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

04/15/2021 HOUSE Placed on Special Order Calendar, 04/20/21

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; Clarifying that the Department of Revenue is responsible for a certain transfer from the State Treasury to the General Revenue Fund of a portion of documentary stamp tax distributions credited to the State Transportation Trust Fund; deleting a requirement that the department provide space and video conference capability at each of the department's district offices as an alternative to physical appearance by a person requesting a hearing before the Commercial Motor Vehicle Review Board within the department; requiring the department, when proposing any project on the State Highway System which will close or modify an existing access to an abutting property owner, to provide notice to affected property owners, municipalities, and counties at least 180 days before the design phase of the project is completed, etc. Effective Date: Except as otherwise expressly provided in this act, this act shall take effect July 1, 2021

Actions

04/18/2021 SENATE Committee Substitute Text (C1) Filed

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

Digital Driver Licenses and Identification Cards; Requiring the Department of Highway Safety and Motor Vehicles to establish a secure and uniform system for issuing optional digital proofs of driver licenses and identification cards; authorizing the department to contract with one or more private entities to develop an electronic credentialing system; authorizing the department to enter into contracts with private entities for a specified purpose; prohibiting such private entities from storing, selling, or sharing personal information collected from scanning the digital proofs of driver licenses and identification cards, etc. Effective Date: 7/1/2021

Actions

04/15/2021 SENATE On Committee agenda - Rules, 04/20/21, 8:30 am, 412 K - If Received

SB 1326 Public Records/Department of Highway Safety and Motor Vehicles by Harrell

Public Records/Department of Highway Safety and Motor Vehicles; Providing exemptions from public records requirements for secure login credentials, Internet protocol addresses, and geolocation data held by the Department of Highway Safety and Motor Vehicles; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. Effective Date: On the same date that SB 1324 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law

Actions

04/15/2021 SENATE On Committee agenda - Rules, 04/20/21, 8:30 am, 412 K - If Received

HB 1335 Seagrass Mitigation Banks by Sirois

Seagrass Mitigation Banks: Authorizes Board of Trustees of Internal Improvement Trust Fund to establish seagrass mitigation banks under certain conditions. Effective Date: July 1, 2021

Actions

03/23/2021 HOUSE Now in Agriculture & Natural Resources Appropriations Subcommittee

HB 1337 Anchoring Limitation Areas by Geller

Anchoring Limitation Areas: Designates specified waterways as anchoring limitation areas. Effective Date: July 1, 2021

Actions

03/05/2021 HOUSE Now in Environment, Agriculture & Flooding Subcommittee

HB 1385 Department of Transportation by LaMarca

Department of Transportation: Revises provisions relating to transfer of moneys to & from State Transportation Trust Fund; removes requirements related to deduction of service charges; requires DOT to allow person to appear remotely before Commercial Motor Vehicle Review Board via communications media technology; requires DOT to adopt rules to implement airport zoning provisions; requires department, when proposing certain projects on State Highway System, to provide notice to affected property owners, municipalities, & counties; provides public meeting requirements; removes expiration of provisions authorizing LBC to authorize approval of work program amendments; revises date by which M.P.O. must submit list of project priorities to DOT district. Effective Date: July 1, 2021

Actions

04/15/2021 HOUSE Placed on Calendar, on 2nd reading

SB 1504 Coastal Construction and Preservation by Wright

Coastal Construction and Preservation; Defining the terms "upland structure," "vulnerable," and "wave runoff" as those terms are used in the Dennis L. Jones Beach and Shore Preservation Act; requiring, rather than authorizing, the Department of Environmental Protection to issue permits for present installations of rigid coastal armoring structures under certain circumstances; providing that the department may only order permitted public structures to be removed under certain circumstances, etc. Effective Date: 7/1/2021

Actions

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

04/15/2021 HOUSE Placed on Special Order Calendar, 04/20/21

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

04/16/2021 SENATE Committee Substitute Text (C3) Filed