

WEEK 3 REPORT

// 2016 LEGISLATIVE SESSION

+ MARINE INDUSTRIES ASSOCIATION OF FLORIDA
JANUARY 25 - 29, 2016



// WEEK 3 (JAN 25 - 29)

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At-risk Vessels

After the completion of the third week, issues and budgets are picking up steam. As you are aware, the third week was very busy relating to boating issues, and we expect the fourth week to be just as busy.

Boating issues are a main topic this Session. This week, HB 1051 by Rep. Caldwell, also known as the "Anchoring Bill," passed the House Agriculture and Natural Resources Subcommittee 12-0. The bill had a strike-everything amendment that incorporated some of the changes requested, but not all. The next stop for this bill is the House Agriculture and Natural Resources Appropriations Subcommittee. We are hearing the Senate companion to this bill, Senate Bill 1260, by Senator Simpson, might be placed on the agenda during the fifth week in the Senate Environmental Preservation Committee.

Senate Bill 1300 by Senator Dean and House Bill 7025 by Rep. Raschein relating to At-Risk Vessels, also known to us as derelict vessels, passed their respective committees this week. SB 1300 passed the Senate Environmental Preservation and Conservation Committee 7-0. The next stop for the bill is the Appropriations Subcommittee on General Government. HB 7025 passed the House Economic Affairs Committee 14-0. The House Bill is now ready to be heard on the House floor.

SB 644 relating to Boating Safety was temporarily postponed in committee as it ran into unexpected trouble. Senator Ring was kind enough to agree to an amendment for Marine Industries Association of Florida to allow current boating safety exemption to remain in statute. The bill will likely not move the rest of Session.

As for the fourth week, as of the writing of this update, we have two bills already on the calendar. House Bill 703 by Representative Workman, relating to Vessels is scheduled to be heard February 1 in the House Highway and Waterway Safety Subcommittee. The bill has a strike everything amendment filed at this time.

Also on the schedule is House Bill 1273, relating to Manatees, by Representative Ahern. The bill is scheduled to be heard Tuesday, February 2nd in the House Agriculture and Natural Resources Subcommittee from 10:30-12:30.

Finally, the House and Senate have release their initial budgets for the upcoming year. On the next page are some of the highlights from both budgets for your review.

(continued on next page)

// BUDGET

House Budget Highlights:

1758 SPECIAL CATEGORIES
BOAT RAMP MAINTENANCE CATEGORY
FROM GENERAL REVENUE FUND 750,000
FROM FEDERAL GRANTS TRUST FUND 431,250
FROM MARINE RESOURCES CONSERVATION TRUST FUND .
. 181,878
FROM STATE GAME TRUST FUND 143,750
From the funds in Specific Appropriation 1758,
\$750,000 in nonrecurring funds from the General
Revenue Fund is allocated as follows:
Lauderdale Lakes Water Pollutant Reduction Boat
Ramp System. 250,000
Niceville Public Landing and Bayou Restoration
Access Facility 500,000

1762 SPECIAL CATEGORIES
BOATING AND WATERWAYS ACTIVITIES
FROM MARINE RESOURCES CONSERVATION TRUST FUND .
. 1,926,025

1762A SPECIAL CATEGORIES
BOATING AND WATERWAYS GRANTS
FROM MARINE RESOURCES CONSERVATION TRUST FUND .
. 50,000

1762B SPECIAL CATEGORIES
DERELICT VESSEL REMOVAL PROGRAM
FROM GENERAL REVENUE FUND 1,500,000

1766 SPECIAL CATEGORIES
BOATING SAFETY EDUCATION PROGRAM
FROM MARINE RESOURCES CONSERVATION TRUST FUND .
. 850,650

1767 FIXED CAPITAL OUTLAY
BOATING INFRASTRUCTURE
FROM FEDERAL GRANTS TRUST FUND 3,900,000

1768 GRANTS AND AIDS TO LOCAL GOVERNMENTS AND
NONSTATE ENTITIES -
FIXED CAPITAL OUTLAY FLORIDA BOATING IMPROVEMENT
PROGRAM
FROM MARINE RESOURCES CONSERVATION TRUST FUND .
. 592,600
FROM STATE GAME TRUST FUND 1,250,000

Senate Budget Highlights:

1758 SPECIAL CATEGORIES
BOAT RAMP MAINTENANCE CATEGORY
FROM FEDERAL GRANTS TRUST FUND 431,250
FROM MARINE RESOURCES CONSERVATION TRUST FUND .
. 111,878
FROM STATE GAME TRUST FUND 143,750

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PROGRAM
FROM MARINE RESOURCES CONSERVATION TRUST FUND .
. 592,600
FROM STATE GAME TRUST FUND 1,250,000

Please stay tuned as things continue to move rapidly.

Again, we thank you for your time and consideration.

In the following pages are just a few of the bills we
have highlighted for your information.



Margaret M. Timmins
President
Timmins Consulting, LLC

// ENVIRONMENTAL RESOURCES

Senate Bill 552 // Sen. Charlie Dean // Referred to: Environmental Preservation and Conservation; Appropriations

House Bill 7005 // State Affairs Committee // Referred to: Agriculture & Natural Resources Appropriations Subcommittee

CS/CS/Senate Bill 552 and CS/House Bill 7005 comprise the primary water policy legislation for 2016, and are identical. This week, SB 552 was passed by the Senate and the House, and has been sent to the Governor for his veto or approval. Specifically, SB 552:

- Creates the Florida Springs and Aquifer Protection Act to provide for the protection and restoration of Outstanding Florida Springs (OFSs);
- Codifies the Central Florida Water Initiative (CFWI) and ensures that the appropriate governmental entities continue to develop and implement uniform water supply planning, consumptive use permitting, and resource protection programs for the Central Florida Water Initiative;
- Updates and restructures the Northern Everglades and Estuaries Protection Program (NEEPP) to reflect and build upon the Department of Environmental Protection's (DEP) completion of basin management action plans (BMAPs) for Lake Okeechobee, the Caloosahatchee River and Estuary, and the St. Lucie River and Estuary, and the Department of Agriculture and Consumer Services' (DACCS) implementation of best management practices (BMPs);
- Modifies water supply and resource planning and processes to make them more stringent;
- Requires the Office of Economic and Demographic Research to conduct an annual assessment of water resources and conservation lands;
- Requires the DEP to publish an online, publicly accessible database of conservation lands on which public access is compatible with conservation and recreation purposes;
- Requires the DEP to conduct a feasibility study for creating and maintaining a web-based, interactive map of the state's waterbodies as well as regulatory information about each waterbody;
- Creates a pilot program for alternative water supply in restricted allocation areas and a pilot program for innovative nutrient and sediment reduction and conservation; and
- Revises certain considerations for water resource permits

Senate Bill 552 passed the Environmental Preservation & Conservation Committee on Nov. 4th by a vote of 9-0, and passed the Appropriations Committee on Nov. 19th by a vote of 15-0. It passed the Senate on January 13th by a vote of 37-0, and it passed the House on January 14th.

House Bill 7005 passed the Agriculture & Natural Resources Appropriations Subcommittee on Nov. 18th by a vote of 11-1. HB 7005 was laid on the table in lieu of SB 552 on the House floor.

Upcoming Consideration/Most Recent Action: SB 552ER Approved by Governor (signed into law), Chapter No. 2016-1

// VESSEL REGISTRATION

Senate Bill 746 // Sen. Joe Negron // Referred to: Transportation; Appropriations Subcommittee on Transportation, Tourism, and Economic Development; Appropriations

House Bill 427 // Rep. Mary Lynn Magar // Referred to: Highway & Waterway Safety Subcommittee; Transportation & Economic Development Appropriations Subcommittee; Economic Affairs Committee

Senate Bill 746 reduces state vessel registration fees for recreational vessels equipped with an Emergency Position Indicating Radio Beacon or whose owner owns a Personal Locator Beacon. The beacon must be registered with the National Oceanic and Atmospheric Administration in order for the owner to qualify for the reduced registration fee. Annual base vessel registration fees are reduced by a minimum of \$2.55 and a maximum of \$48.60, depending on the length of the vessel. The bill appropriates \$5 million in recurring funds from the General Revenue Fund to the Department of Highway Safety and Motor Vehicles for the 2016-2017 fiscal year to offset the reduction in the base vessel registration fees.

Upcoming Consideration: (Jan 13) Favorable by Appropriations Subcommittee on Transportation, Tourism, and Economic Development; 9 Yeas, 0 Nays

The bill reduces state vessel registration fees for recreational vessels equipped with an Emergency Position-Indicating Radio Beacon, or for a recreational vessel where the owner owns a Personal Locator Beacon. The beacon must be registered with the National Oceanic and Atmospheric Administration in order for the owner to qualify for the reduced registration fee. A person who owns a personal locator beacon and who owns more than one recreational vessel qualifies to pay the reduced fee for only one of their vessels.

As provided in the bill, an Emergency Position-Indicating Radio Beacon means a device installed on the vessel being registered that:

- Transmits distress signals at a frequency between 406.0 and 406.1 MHz;
- Is manufactured by a company approved to manufacture beacons by the International Cospas-Sarsat Programme; and
- Is registered with the United States National Oceanic and Atmospheric Administration.

A Personal Locator Beacon means a device designed to be carried by an individual that:

- Transmits distress signals at a frequency between 406.0 and 406.1 MHz;
- Is manufactured by a company approved to manufacture beacons by the International Cospas-Sarsat Programme; and
- Is registered with the United States National Oceanic and Atmospheric Administration.

Most Recent Action: (Jan 13) Favorable with CS by Highway & Waterway Safety Subcommittee; 11 Yeas, 0 Nays

// BOATING SAFETY

Senate Bill 644 // Sen. Jeremy Ring // Referred to: Environmental Preservation and Conservation; Commerce and Tourism; Rules

House Bill 863 // Rep. Richard Stark // Referred to: Criminal Justice Subcommittee; Highway & Waterway Safety Subcommittee; Agriculture & Natural Resources Appropriations Subcommittee; Economic Affairs Committee

SB 644 increases the age requirement for operating a personal watercraft on the waters of the state from 14 years of age to 16 years of age. The bill revises the requirements for boating safety identification cards by removing an exemption for a person who is accompanied in the vessel by a person who is otherwise exempt from the boating safety identification card requirements or who holds a valid identification card, is 18 years of age or older, and is attendant to the operation of the vessel and responsible for the vessel's safe operation.

Last Action: Temporarily Postponed by Environmental Preservation and Conservation

House Bill 863 provides requirements for operation of recreational vessels by persons younger than specified age; revises minimum age to operate personal watercraft; removes exemption from photographic identification & boating safety identification card requirement for person accompanied in vessel by another person who meets certain criteria.

Last Action: Referred to Criminal Justice Subcommittee; Highway & Waterway Safety Subcommittee; Agriculture & Natural Resources Appropriations Subcommittee; Economic Affairs Committee

Attached Documents: SB 644 (as filed) + 1 amendment (passed in committee before bill postponed) + staff analysis

// IMPLEMENTATION OF WATER & LAND USE CONSERVATION CONSTITUTIONAL AMENDMENT 1 (2014 BALLOT)

Senate Bill 1168 // Sen. Joe Negron // Referred to: Environmental Preservation and Conservation; Appropriations Subcommittee on General Government; Appropriations

House Bill 989 // Rep. Gayle Harrell // Referred to: Agriculture & Natural Resources Appropriations Subcommittee; Appropriations Committee

Senate Bill 1168 - Implementation of the Water and Land Conservation Constitutional Amendment; Requiring a minimum specified percentage of funds within the Land Acquisition Trust Fund to be appropriated for Everglades restoration projects; providing a preference in the use of funds to certain projects that reduce harmful discharges to the St. Lucie Estuary and the Caloosahatchee Estuary, etc.

SB 1168 Last Action: Referred to Environmental Preservation and Conservation; Appropriations Subcommittee on General Government; Appropriations

House Bill 989 - In 2014, the voters of the state of Florida approved an amendment to the Florida Constitution to create Article X, Section 28, which requires that 33 percent of documentary stamp taxes collected be deposited into the Land Acquisition Trust Fund (LATF) and prohibits funds from the LATF from being used for a purpose not specified in the constitution. In 2015, chapter 2015-229, Laws of Florida, became law and amended the relevant statutes to comply with this constitutional requirement. The bill amended section 375.041, F.S., related to the Land Acquisition Trust Fund to require that funds be used for certain debt service obligations and to require that \$32 million be distributed to the South Florida Water Management District for the Long-Term Plan. The section further provides that any remaining moneys in the Land Acquisition Trust Fund that are not distributed as provided above may be appropriated from time to time for the purposes set forth in s. 28, Art. X of the State Constitution.

HB 989 amends s. 375.041, F.S. to provide for the distribution of funds deposited into the Land Acquisition Trust Fund. Of the funds remaining after the payment of certain debt service obligations, the Legislature will be required to appropriate a minimum of the lesser of 25 percent or \$200 million for Everglades projects that implement the Comprehensive Everglades Restoration Plan (CERP), including the Central Everglades Planning Project subject to congressional authorization, the Long-Term Plan, and the Northern Everglades and Estuaries Protection Program.

The bill requires that from these funds, \$32 million will be distributed each fiscal year through the 2023-2024 fiscal year to the South Florida Water Management District (SFWMD) for the Long-Term Plan. After deducting the \$32 million, from the funds remaining, a minimum of the lesser of 76.5 percent or \$100 million will be appropriated each fiscal year through the 2025-2026 fiscal year for the planning, design, engineering and construction of the CERP.

The bill requires the Department of Environmental Protection (DEP) and the SFWMD to give

preference to projects that reduce harmful discharges from Lake Okeechobee to the St. Lucie or Caloosahatchee estuaries in a timely manner.

The House proposed Fiscal Year 2016-2017 General Appropriations Act provides \$32 million for the LongTerm Plan, \$100 million for the CERP and \$66 million for the Northern Everglades and Estuaries Protection Program.

HB 989 Last Action: Favorable by Agriculture & Natural Resources Appropriations Subcommittee; 13 Yeas, 0 Nays

Attached documents: HB 989 staff analysis

// RECREATIONAL BOATING ZONES

Senate Bill 1260 // Sen. Wilton Simpson // Referred to: Environmental Preservation and Conservation; Appropriations Subcommittee on Transportation, Tourism, and Economic Development; Fiscal Policy

House Bill 1051 // Rep. Matt Caldwell // Referred to: Agriculture & Natural Resources Subcommittee; Agriculture & Natural Resources Appropriations Subcommittee; State Affairs Committee

Senate Bill 1260 - prohibiting overnight anchoring or mooring of vessels in specified recreational boating zones, etc.

Last Action: Referred to Environmental Preservation and Conservation; Appropriations Subcommittee on Transportation, Tourism, and Economic Development; Fiscal Policy

HB 1051 - The public may use sovereignty submerged lands for navigation, commerce, fishing, bathing, and other public purposes. These rights are designed to promote the general welfare and are subject to lawful regulation by the state. The public's right to navigation entitles the public to the reasonable use of navigable waters for legitimate purposes of travel or transportation, boating or sailing for pleasure, carrying persons or property gratuitously for hire, and for uses which are consistent with other uses enjoyed in common. Anchoring is a right incidental to the public's right of navigation, which must be balanced against other public purposes. As such, the right to anchor or moor must not unreasonably obstruct others' navigation rights and does not include the right to anchor indefinitely in a manner that impairs a riparian owner's use and enjoyment of their property.

Riparian owners are entitled to the same rights to use sovereignty submerged lands as the public, but also hold riparian rights, such as the right to access the water, the right to reasonably use the water, the right to accretion and reliction, and the right to an unobstructed view of the water. Riparian rights are necessary for the use and enjoyment of the upland property, but may not be

exercised as to injure others in their lawful rights.

The bill creates s. 327.4107, F.S., providing for the anchoring or mooring of vessels in recreational boating zones. The bill prohibits a person from anchoring or mooring a vessel from one-half hour after sunset to one-half hour before sunrise in the following recreational boating zones:

- 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.
- Crab Island in Choctawhatchee Bay at the East Pass in Okaloosa County.

The bill provides certain exceptions to the prohibition on anchoring in recreational boating zones and enforcement procedures. The bill also provides for the issuance of a uniform boating citation with tiered penalties and authorizes the removal and impoundment of a vessel for violating the prohibition on anchoring in a recreational boating zone in certain circumstances.

Last Action: Favorable with CS by Agriculture & Natural Resources Subcommittee; 12 Yeas, 0 Nays

Attached Documents: CS/HB 1051 + staff analysis

// DRIVING OR BOATING UNDER THE INFLUENCE

House Bill 161 // Rep. Dave Kerner // Referred to: Highway & Waterway Safety Subcommittee; Justice Appropriations Subcommittee; Judiciary Committee

House Bill 161 designates act “Naomi Pomerance Victim Safety Act”; provides that person with specified amount of delta 9-tetrahydrocannabinol per milliliter of blood commits offense of driving under influence or boating under influence.

Last Action: Referred to Highway & Waterway Safety Subcommittee; Justice Appropriations Subcommittee; Judiciary Committee

// MANATEES

Senate Bill 1506 // Sen. Jeff Brandes // Referred to: Environmental Preservation and Conservation; Appropriations Subcommittee on General Government; Appropriations

House Bill 1273 // Rep. Larry Ahern // Referred to: Agriculture & Natural Resources Subcommittee; Agriculture & Natural Resources Appropriations Subcommittee; State Affairs Committee

Senate Bill 1506 - Exempting, until a specified date, certain revenue deposited in the Save the Manatee Trust Fund from a service charge assessed against state trust funds; requiring the Fish and Wildlife Conservation Commission to contract with an independent, qualified party to conduct a manatee speed zone effectiveness study, etc.

Last Action: Referred to Environmental Preservation and Conservation; Appropriations Subcommittee on General Government; Appropriations

House Bill 1273 - Manatees are listed as an endangered species under the Endangered Species Act. Florida's Manatee Sanctuary Act (Act) declares the state to be a refuge and sanctuary for the manatee. The Act provides that the Florida Fish and Wildlife Conservation Commission (FWC) must adopt rules regulating the operation and speed of motorboat traffic where there are manatee sightings based upon best available scientific information and allows local governments to adopt ordinances regulating the same within its jurisdiction if approved by FWC. FWC has established manatee protection rules restricting the speed and operation of vessels where necessary to protect manatees from harassment and harmful collisions with vessels. FWC also conducts aerial distribution and synoptic surveys to acquire information on manatee distribution, abundance, and use of habitat. The Save the Manatee Trust Fund (STMTF) is administered by FWC and its funds are used for a yearly impartial scientific benchmark census of the manatee population in the state and programs to protect and enhance the recovery of the manatee and other species of marine mammals.

The bill:

- Requires FWC to contract with an independent, qualified party to conduct a study evaluating the effectiveness of manatee speed zones including if, and to what extent, risks to manatees are reduced by these zones and to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2019, detailing the findings of the study;
- Requires FWC to conduct a statewide manatee distribution and abundance survey and report by July 1, 2018, that achieves a scientifically reliable population estimate, and allows FWC to repeat the survey as necessary to determine best practices until at least July 1, 2026;
- Allows funds from the STMTF to be used for the manatee speed zone effectiveness study and statewide manatee distribution and abundance survey and report to the

extent that funding is not available from other sources; and

- Exempts the STMTF from a service charge assessed against state trust funds until July 1, 2026.

The bill may have a negative fiscal impact on the state by exempting the STMTF from the requirement to contribute to the General Revenue Fund.

Last Action: On Committee agenda - Agriculture & Natural Resources Subcommittee, 02/02/16, 10:30 am

Attached Documents: HB 1273 (as filed) + staff analysis

// AT-RISK VESSELS

Senate Bill 1300 // Sen. Charlie Dean // Referred to: Environmental Preservation and Conservation; Appropriations Subcommittee on General Government; Fiscal Policy

House Bill 7025 // Highway & Waterway Safety Subcommittee & Rep. Holly Raschein // Referred to: Agriculture & Natural Resources Appropriations Subcommittee; Economic Affairs Committee

Senate Bill 1300 addresses vessels that may become derelict. The bill:

- Makes it unlawful for a vessel owner to anchor on, moor on, or occupy the waters of the state when that vessel is at risk of becoming derelict;
- Provides conditions under which a vessel may be considered at risk of becoming derelict;
- Provides civil penalties for vessel owners whose vessels are determined to be at risk of becoming derelict;
- Provides an exemption for vessels that are moored to a private dock or wet slip with the consent of the owner for the purpose of being repaired; and
- Provides that violations may be enforced by a uniform boating citation mailed to the registered owner of the vessel.

Last Action: Favorable by Environmental Preservation and Conservation; 7 Yeas, 0 Nays

House Bill 7025 - Under current law, the Fish and Wildlife Conservation Commission (FWCC) does not have the authority to require vessel owners to maintain their vessels or otherwise regulate the condition of vessels that occupy the waters of the state, unless the vessel is a hazard to navigation, discharges contaminants, is derelict (wrecked, junked, or substantially dismantled), or is in violation of other vessel safety laws. Additionally, a vessel owner has no duty to maintain their vessel, and can allow a vessel occupying waters of the state to deteriorate until it reaches a derelict condition. Once a vessel is deemed derelict FWCC can remove or relocate the vessel, but it can become much more difficult and expensive once a vessel has deteriorated to the point that it meets the definition of a derelict vessel.

The bill provides the following regulations for vessels that are at risk of becoming derelict on the waters of this state:

- Prohibits a vessel that is at risk of becoming derelict to anchor on, moor on, or occupy the waters of this state.
- Authorizes an officer of the FWCC or law enforcement agency to determine that a vessel is at risk of becoming a derelict vessel 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, is listing due to water intrusion, or is sunk or partially sunk.
- Provides that a person who anchors or moors a vessel that is at risk of becoming derelict on the waters of this state or allows such a vessel to occupy the waters of this state commits a noncriminal infraction in which civil penalties may be assessed.
- Provides that a civil penalty for a violation of a vessel that is at risk of becoming derelict is in addition to other penalties provided by law.
- Provides that the bill would not apply to a vessel that is moored to a private dock or wet slip with the consent of the owner for the purpose of receiving repairs.
- Provides that a uniform boating citation may be mailed to the registered owner of an unattended vessel that is at risk of becoming derelict, which is anchored, aground, or moored on the waters of this state.
- Provides the following civil penalties for a violation of vessel laws relating to a vessel that is at risk of becoming derelict on waters of this state:
 - For a first offense, \$50;

- For a second offense occurring 30 days or more after a first offense, \$100;
- For a third or subsequent offense occurring 30 days or more after a previous offense, \$250.

The bill may have an indeterminate positive fiscal impact on state and local government revenues by establishing a new noncriminal infraction relating to vessels at risk of becoming derelict on waters of this state, and may have a negative impact on the private sector resulting from the assessment of these new civil penalties.

Last Action: Favorable by Economic Affairs Committee; 14 Yeas, 0 Nays; Placed on House Calendar, on 2nd Reading

Attached Documents: SB 1300 (as filed) + staff analysis; HB 7025 (as filed) + staff analysis

APPENDIX

// BOATING SAFETY

SB 644 (as filed) + amendment + Staff Analysis

// IMPLEMENTATION OF WATER & LAND USE CONSERVATION AMENDMENT

HB 989 Staff Analysis

// RECREATIONAL BOATING ZONES

CS/HB 1051 + Staff Analysis

// MANATEES

HB 1273 (as filed) + Staff Analysis

// AT-RISK VESSELS

SB 1300 (as filed) + Staff Analysis
HB 7025 (as filed) + Staff Analysis

MIAF Bill Tracking

Sorted by Bill Number

SB 0006	Relating to State Minimum Wage	Bullard
	State Minimum Wage; Increasing the state minimum wage; prohibiting an employer from paying an employee at a rate less than the state minimum wage; removing the limitation restricting application of the state minimum wage only to individuals entitled to receive the federal minimum wage; deleting obsolete language, etc. Effective Date: 1/1/2017 8/19/2015 SENATE Referred to Commerce and Tourism; Community Affairs; Appropriations	
HB 0007	Relating to Employment Discrimination	Cruz
	Employment Discrimination: Designates act as "Helen Gordon Davis Fair Pay Protection Act"; provides legislative findings & intent relating to equal pay for equal work for women; recognizes importance of DEO & FHRC in ensuring fair pay; provides duties of DEO & FHRC; creates Governor's Recognition Award for Pay Equity in Workplace. Effective Date: July 1, 2016 8/27/2015 HOUSE Now in Economic Development & Tourism Subcommittee	
HB 0063	Relating to Medical Use of Low-THC Cannabis	Steube
	Medical Use of Low-THC Cannabis: Allows registered patients & designated caregivers to purchase, acquire, & possess low-THC cannabis subject to specified requirements; allows cultivation or processing licensee, employee, or contractor to acquire, cultivate, transport, & sell low-THC cannabis; allows retail licensee to purchase, receive, possess, store, dispense, & deliver low-THC cannabis; prohibits certain actions regarding acquisition, possession, transfer, use, & administration of low-THC cannabis; clarifies that person is prohibited from driving or boating under influence of low-THC cannabis; provides duties of DOH; provides implementation requirements; specifies act does not require or restrict health insurance coverage for purchase of low-THC cannabis. Effective Date: July 1, 2016 12/15/2015 HOUSE Withdrawn prior to introduction	
HB 0065	Relating to Pub Rec/Low-THC Cannabis Patient Registry/DOH	Steube
	Pub Rec/Low-THC Cannabis Patient Registry/DOH: Exempts from public records requirements personal identifying information of patients & physicians held by DOH in low-THC cannabis patient registry or former compassionate use registry; exempts information related to ordering & dispensing low-THC cannabis; authorizes specified persons & entities access to exempt information; requires that information released from registry remain confidential; provides penalty; provides for future legislative review & repeal; provides statement of public necessity. Effective Date: on the same date that HB 63, or similar legislation establishing an electronic system to record a physician's orders for, and a patient's use of, low-THC cannabis takes effect 12/15/2015 HOUSE Withdrawn prior to introduction	
SB 0076	Relating to Tax-exempt Income	Hukill
	Tax-exempt Income; Increasing the amount of income that is exempt from the corporate income tax; increasing the amount of income that is exempt from the franchise tax imposed on banks and savings associations, etc. Effective Date: 1/1/2017 10/21/2015 SENATE Now in Appropriations	
HB 0083	Relating to Identification Cards and Driver Licenses	Santiago
	Identification Cards and Driver Licenses: Provides for person's status as lifetime freshwater fishing, saltwater fishing, hunting, or sportsman licensee, or boater safety identification cardholder, to be indicated on his or her identification card or driver license; prohibits person born after specified date from operating certain vessel unless such person has in his or her possession photographic identification & boater safety identification card or state-issued identification card or driver license; requires each recreational license & state-issued identification card or driver license indicating possession of recreational license to be in personal possession of person to whom such license is issued while person is taking, attempting to take, or possessing game, freshwater or saltwater fish, or fur-bearing animals. Effective Date: July 1, 2016 1/29/2016 HOUSE Placed on Special Order Calendar, 02/02/16	
HB 0109	Relating to State Minimum Wage	Torres
	State Minimum Wage: Increases state minimum wage; prohibits employer from paying employee at rate less than state minimum wage; removes limitation restricting application of state minimum wage only to individuals entitled to receive federal minimum wage. Effective Date: January 1, 2017 9/10/2015 HOUSE Now in Economic Development & Tourism Subcommittee	
SB 0158	Relating to Identification Cards and Driver Licenses	Hutson
	Identification Cards and Driver Licenses; Providing for a person's status as a lifetime freshwater fishing, saltwater fishing, hunting, or sportsman licensee, or boater safety identification cardholder, to be indicated on his or her identification card or driver license upon payment of an additional fee and presentation of the person's lifetime freshwater fishing, saltwater fishing, hunting, or sportsman's license, or boater safety identification card; providing	

By Senator Ring

29-00359-16

2016644__

1 A bill to be entitled
2 An act relating to boating safety; amending s. 327.39,
3 F.S.; revising the minimum age to operate personal
4 watercraft; conforming a provision to changes made by
5 the act; amending s. 327.395, F.S.; removing the
6 exemption from the photographic identification and
7 boating safety identification card requirement for a
8 person accompanied in the vessel by another person who
9 meets certain criteria; reenacting s. 327.73(1)(p),
10 F.S., relating to noncriminal infractions, to
11 incorporate the amendment made to s. 327.39, F.S., in
12 a reference thereto; providing an effective date.

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

15
16 Section 1. Subsections (5) and (6) of section 327.39,
17 Florida Statutes, are amended to read:

18 327.39 Personal watercraft regulated.—

19 (5) No person under the age of 16 years ~~may~~ ~~shall~~
20 operate any personal watercraft on the waters of this state.

21 (6) (a) It is unlawful for the owner of any personal
22 watercraft or any person having charge over or control of a
23 personal watercraft to authorize or knowingly permit the same to
24 be operated by a person under the age of 16 ~~14 years~~ ~~of age~~ in
25 violation of this section.

26 (b)1. It is unlawful for the owner of any leased, hired, or
27 rented personal watercraft, or any person having charge over or
28 control of a leased, hired, or rented personal watercraft, to
29 authorize or knowingly permit the watercraft to be operated by

29-00359-16

2016644__

30 any person who has not received instruction in the safe handling
31 of personal watercraft, in compliance with rules established by
32 the commission.

33 2. Any person receiving instruction in the safe handling of
34 personal watercraft pursuant to a program established by rule of
35 the commission must provide the owner of, or person having
36 charge of or control over, a leased, hired, or rented personal
37 watercraft with a written statement attesting to the same.

38 3. The commission shall have the authority to establish
39 rules pursuant to chapter 120 prescribing the instruction to be
40 given, which shall take into account the nature and operational
41 characteristics of personal watercraft and general principles
42 and regulations pertaining to boating safety.

43 (c) Any person who violates this subsection commits a
44 misdemeanor of the second degree, punishable as provided in s.
45 775.082 or s. 775.083.

46 Section 2. Subsection (6) of section 327.395, Florida
47 Statutes, is amended to read:

48 327.395 Boating safety identification cards.—

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

50 (a) Is licensed by the United States Coast Guard to serve
51 as master of a vessel.

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

53 ~~(c) Is accompanied in the vessel by a person who is exempt~~
54 ~~from this section or who holds an identification card in~~
55 ~~compliance with this section, is 18 years of age or older, and~~
56 ~~is attendant to the operation of the vessel and responsible for~~
57 ~~the safe operation of the vessel and for any violation that~~
58 ~~occurs during the operation of the vessel.~~

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59 (c)~~(d)~~ Is a nonresident who has in his or her possession
60 proof that he or she has completed a boater education course or
61 equivalency examination in another state which meets or exceeds
62 the requirements of subsection (1).

63 (d)~~(e)~~ Is operating a vessel within 90 days after the
64 purchase of that vessel and has available for inspection aboard
65 that vessel a bill of sale meeting the requirements of s.
66 328.46(1).

67 (e)~~(f)~~ Is operating a vessel within 90 days after
68 completing the requirements of paragraph (1)(a) or paragraph
69 (1)(b) and has a photographic identification card and a boater
70 education certificate available for inspection as proof of
71 having completed a boater education course. The boater education
72 certificate must provide, at a minimum, the student's first and
73 last name, the student's date of birth, and the date that he or
74 she passed the course examination.

75 (f)~~(g)~~ Is exempted by rule of the commission.

76 Section 3. For the purpose of incorporating the amendment
77 made by this act to section 327.39, Florida Statutes, in a
78 reference thereto, paragraph (p) of subsection (1) of section
79 327.73, Florida Statutes, is reenacted to read:

80 327.73 Noncriminal infractions.—

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

83 (p) Section 327.39(1), (2), (3), and (5), relating to
84 personal watercraft.

85

86 Any person cited for a violation of any provision of this
87 subsection shall be deemed to be charged with a noncriminal

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88 infraction, shall be cited for such an infraction, and shall be
89 cited to appear before the county court. The civil penalty for
90 any such infraction is \$50, except as otherwise provided in this
91 section. Any person who fails to appear or otherwise properly
92 respond to a uniform boating citation shall, in addition to the
93 charge relating to the violation of the boating laws of this
94 state, be charged with the offense of failing to respond to such
95 citation and, upon conviction, be guilty of a misdemeanor of the
96 second degree, punishable as provided in s. 775.082 or s.
97 775.083. A written warning to this effect shall be provided at
98 the time such uniform boating citation is issued.

99 Section 4. This act shall take effect July 1, 2016.



671240

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/27/2016	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation
(Smith) recommended the following:

Senate Amendment (with title amendment)

Delete lines 46 - 75.

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

And the title is amended as follows:

Delete lines 5 - 9

and insert:

the act; reenacting s. 327.73(1) (p),

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 Environmental Preservation and Conservation

BILL: SB 644

INTRODUCER: Senator Ring

SUBJECT: Boating Safety

DATE: January 26, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	Pre-meeting
2.			CM	
3.			RC	

I. Summary:

SB 644 increases the age requirement for operating a personal watercraft on the waters of the state from 14 years of age to 16 years of age. The bill revises the requirements for boating safety identification cards by removing an exemption for a person who is accompanied in the vessel by a person who is otherwise exempt from the boating safety identification card requirements or who holds a valid identification card, is 18 years of age or older, and is attendant to the operation of the vessel and responsible for the vessel's safe operation.

II. Present Situation:

Personal Watercraft

The term "personal watercraft" is defined 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."¹

In 2014, there were approximately 111,000 registered personal watercraft in the state, 96 reported injuries involving a personal watercraft, and five fatalities.² Of the 104 accidents that were reported, 34 were deemed to have been primarily caused by operator inexperience and, approximately, nine involved individuals under the age of 17.³

Florida law prohibits a person from operating a personal watercraft unless each person riding on or being towed behind such vessel is wearing a personal flotation device, other than an inflatable

¹ Section 327.02(33), F.S.

² Fish and Wildlife Conservation Commission (FWC), *2014 Boating Accidents Statistical Report*, <http://myfwc.com/boating/safety-education/accidents/> (last visited Jan. 21, 2016).

³ *Id.*

device, that is currently approved by the United States Coast Guard and used in accordance with the approval label.⁴ If a personal watercraft is equipped by the manufacturer with a lanyard type engine cutoff switch, a person operating such device must attach the lanyard to his or her person, clothing, or personal flotation device as is appropriate for the specific vessel.⁵

A person, except for an agent or employee of a fire or emergency rescue service while performing his or her official duties, may not operate a personal watercraft at any time between the hours from one-half hour after sunset to one-half hour before sunrise.⁶

A personal watercraft must at all times be operated in a reasonable and prudent manner.⁷ Maneuvers which unreasonably or unnecessarily endanger life, limb, or property, including, but not limited to, weaving through congested vessel traffic, jumping the wake of another vessel unreasonably or unnecessarily close to such other vessel or when visibility around such other vessel is obstructed, and swerving at the last possible moment to avoid a collision constitutes reckless operation of a vessel. The reckless operation of a vessel is a misdemeanor of the first degree punishable by a maximum of one year imprisonment or a \$1,000 fine.⁸

Any person under the age of 14 may not operate a personal watercraft on the waters of this state.⁹ Additionally, it is unlawful for the owner of any personal watercraft or any person having charge or control of a personal watercraft to authorize or knowingly permit the same to be operated by a person under the age of 14 years of age.¹⁰

Any facility that offers personal watercraft for lease, hire, or rent is required to ensure that all individuals intended to operate the personal watercraft have been properly trained in topics such as operator responsibility, navigation rules, aids to navigation, boating accidents, divers-down flag requirements, and manatee awareness.¹¹ Any person that receives such training is required to provide the facility with a written statement attesting that he or she received such instruction.¹²

The following violations are noncriminal infractions, punishable by a civil penalty of \$50:

- Operating a personal watercraft without wearing an appropriate personal flotation device or operating a personal watercraft with a person riding or being towed that is not wearing an appropriate personal flotation device.
- Operating a personal watercraft that is equipped with a lanyard type engine cutoff switch and not having such lanyard attached to his or her person, clothing, or personal flotation device.
- Operating a personal watercraft between the hours from one-half hour after sunset to one-half hour before sunrise.
- Operating a personal watercraft under the age of 14.¹³

⁴ Section 327.39(1), F.S.

⁵ Section 327.39(2), F.S.

⁶ Section 327.39(3), F.S.

⁷ Section 327.39(4), F.S.

⁸ Section 327.33(1), F.S.

⁹ Section 327.39(5), F.S.

¹⁰ Section 327.39(6)(a), F.S.

¹¹ Rule 68D-36.107, F.A.C.

¹² Section 327.39(6)(b), F.S.

¹³ Section 327.73(1)(p), F.S.

The owner of any personal watercraft or any person having charge or control of a personal watercraft who knowingly allows a person under 14 years of age to operate such personal watercraft, is guilty of a second degree misdemeanor, punishable by a maximum of 60 days imprisonment or a \$500 fine.¹⁴

Boating Safety Identification Cards

In order to operate a vessel of 10 horsepower or greater, Florida law requires anyone who was born on or after January 1, 1988, to have aboard the vessel photographic identification and an FWC-issued boater safety identification card.¹⁵ The card is proof that the holder has:

- Completed a commission-approved boater education course that meets the minimum 8-hour instruction requirement established by the National Association of State Boating Law Administrators;
- Passed a course equivalency examination approved by the commission; or
- Passed a temporary certificate examination developed or approved by the commission.¹⁶

The commission may appoint liveries, marinas, or other persons as its agents to administer the course or examinations and issue identification cards.¹⁷ An agent is required to charge a \$2 examination fee, which must be forwarded to the commission with proof of passage of the examination and may charge and keep a \$1 service fee.¹⁸

An identification card issued to a person who has completed a boating education course or a course equivalency examination is valid for life.¹⁹ A card issued to a person who has passed a temporary certification examination is valid for 12 months from the date of issuance.²⁰

A person is exempt from the boater safety identification card requirement if he or she:

- Is licensed by the United States 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 Florida requirements;
- Is operating a vessel within 90 days after the purchase of that vessel and has available for inspection aboard that vessel a valid bill of sale;
- Is operating a vessel within 90 days after completing a commission-approved boater education course or passed a course equivalency examination approved by the commission and has a photographic identification card and a boater education certificate available for

¹⁴ Section 327.39(6), F.S.

¹⁵ Section 327.395(1), F.S.

¹⁶ *Id.*

¹⁷ Section 327.395(4), F.S.

¹⁸ *Id.*

¹⁹ Section 327.395(5), F.S.

²⁰ *Id.*

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; or

- Is exempted by rule of the commission.²¹

The penalty for operating a vessel in violation of the boating safety identification card requirements is a noncriminal infraction, which is punishable by a civil penalty of \$50.²²

III. Effect of Proposed Changes:

SB 644 amends s. 327.39, F.S., to revise the minimum age requirement for operating a personal watercraft on the waters of this state from 14 years of age to 16 years of age.

The bill amends s. 327.395, F.S., to remove the exemption from the boating safety identification card requirements for a person who is accompanied in the vessel by a person who is otherwise exempt from the boating safety identification card requirements or who holds a valid identification card, is 18 years of age or older, and is attendant to the operation of the vessel and responsible for the vessel's safe operation.

The bill reenacts s. 327.73(1)(p), F.S., relating to noncriminal violations, to incorporate the amendments made to s. 327.39, F.S., which revises the minimum age requirement for operating a personal watercraft.

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²¹ Section 327.395(6), F.S.

²² Section 327.73(1)(s), F.S.

B. Private Sector Impact:

Removing the exemption from the boating safety identification card requirements for a person who is accompanied in the vessel by a person who is otherwise exempt from the boating safety identification card requirements or who holds a valid identification card, is 18 years of age or older, and is attendant to the operation of the vessel and responsible for the vessel's safe operation may increase the scope of individuals that are required to obtain a boating safety identification card. Therefore, additional individuals may be required to satisfy the educational requirements. As this number is indeterminate, the negative fiscal impact to the private sector is indeterminate.

C. Government Sector Impact:

The Fish and Wildlife Conservation Commission (FWC) will collect funds in fees from the additional individuals who will now take an educational course to satisfy the requirements for receiving a boating safety identification card. As the fee is nominal, this will likely have an insignificant positive fiscal impact to the FWC.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 327.39 and 327.395.

This bill reenacts section 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.)

None.

B. Amendments:

None.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 989 Implementation of Water and Land Conservation Constitutional Amendment

SPONSOR(S): Harrell and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1168

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Appropriations Subcommittee	13 Y, 0 N	Massengale	Massengale
2) Appropriations Committee			

SUMMARY ANALYSIS

In 2014, the voters of the state of Florida approved an amendment to the Florida Constitution to create Article X, Section 28, which requires that 33 percent of documentary stamp taxes collected be deposited into the Land Acquisition Trust Fund (LATF) and prohibits funds from the LATF from being used for a purpose not specified in the constitution. In 2015, chapter 2015-229, Laws of Florida, became law and amended the relevant statutes to comply with this constitutional requirement. The bill amended section 375.041, F.S., related to the Land Acquisition Trust Fund to require that funds be used for certain debt service obligations and to require that \$32 million be distributed to the South Florida Water Management District for the Long-Term Plan. The section further provides that any remaining moneys in the Land Acquisition Trust Fund that are not distributed as provided above may be appropriated from time to time for the purposes set forth in s. 28, Art. X of the State Constitution.

HB 989 amends s. 375.041, F.S. to provide for the distribution of funds deposited into the Land Acquisition Trust Fund. Of the funds remaining after the payment of certain debt service obligations, the Legislature will be required to appropriate a minimum of the lesser of 25 percent or \$200 million for Everglades projects that implement the Comprehensive Everglades Restoration Plan (CERP), including the Central Everglades Planning Project subject to congressional authorization, the Long-Term Plan, and the Northern Everglades and Estuaries Protection Program.

The bill requires that from these funds, \$32 million will be distributed each fiscal year through the 2023-2024 fiscal year to the South Florida Water Management District (SFWMD) for the Long-Term Plan. After deducting the \$32 million, from the funds remaining, a minimum of the lesser of 76.5 percent or \$100 million will be appropriated each fiscal year through the 2025-2026 fiscal year for the planning, design, engineering and construction of the CERP.

The bill requires the Department of Environmental Protection (DEP) and the SFWMD to give preference to projects that reduce harmful discharges from Lake Okeechobee to the St. Lucie or Caloosahatchee estuaries in a timely manner.

The House proposed Fiscal Year 2016-2017 General Appropriations Act provides \$32 million for the Long-Term Plan, \$100 million for the CERP and \$66 million for the Northern Everglades and Estuaries Protection Program.

The effective date of this bill is July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

On November 4, 2014, Florida voters approved an initiative petition relating to water and land conservation. The provision added a section 28 to Article X of the Florida Constitution:

SECTION 28. Land Acquisition Trust Fund.—

a) Effective on July 1 of the year following passage of this amendment by the voters, and for a period of 20 years after that effective date, the Land Acquisition Trust Fund shall receive no less than 33 percent of net revenues derived from the existing excise tax on documents¹, as defined in the statutes in effect on January 1, 2012, as amended from time to time, or any successor or replacement tax, after the Department of Revenue first deducts a service charge to pay the costs of the collection and enforcement of the excise tax on documents.

b) Funds in the Land Acquisition Trust Fund shall be expended only for the following purposes:

1) As provided by law, to finance or refinance: the acquisition and improvement of land, water areas, and related property interests, including conservation easements, and resources for conservation lands including wetlands, forests, and fish and wildlife habitat; wildlife management areas; lands that protect water resources and drinking water sources, including lands protecting the water quality and quantity of rivers, lakes, streams, springsheds, and lands providing recharge for groundwater and aquifer systems; lands in the Everglades Agricultural Area and the Everglades Protection Area, as defined in Article II, Section 7(b); beaches and shores; outdoor recreation lands, including recreational trails, parks, and urban open space; rural landscapes; working farms and ranches; historic or geologic sites; together with management, restoration of natural systems, and the enhancement of public access or recreational enjoyment of conservation lands.

2) To pay the debt service on bonds issued pursuant to Article VII, Section 11(e). c) The moneys deposited into the Land Acquisition Trust Fund, as defined by the statutes in effect on January 1, 2012, shall not be or become commingled with the General Revenue Fund of the state.

As a result of Special Session A in 2015, chapter 2015-229, Laws of Florida, became law and amended the relevant statutes to comply with this constitutional requirement. As part of chapter 2015-229, L.O.F., s. 375.041, F.S. was amended to require moneys from the Land Acquisition Trust Fund to be allocated as follows:

1. First, to pay debt service or to fund debt service reserve funds, rebate obligations, or other amounts payable with respect to Florida Forever bonds issued under s. 215.618; and pay debt service, provide reserves, and pay rebate obligations and other amounts due with respect to Everglades restoration bonds issued under s. 215.619;
2. Then, to pay the debt service on bonds issued before February 1, 2009, by the South Florida Water Management District and the St. Johns River Water Management District, which are secured by revenues provided pursuant to former s. 373.59, Florida Statutes 2014, or which are necessary to fund debt service reserve funds, rebate obligations, or other amounts payable with respect to such bonds. This paragraph expires July 1, 2016; and
3. Then, to distribute \$32 million each fiscal year to the South Florida Water Management District for the Long-Term Plan as defined in s. 373.4592(2). This paragraph expires July 1, 2024.

¹ The documentary stamp tax is imposed on documents that transfer interest in Florida real property and certain types of debt. Documents subject to the tax include deeds, bonds, corporate shares, notes and written obligations to pay money, and mortgages, lines and other evidences of indebtedness. ss. ss. 201.02, 201.07 and 201.208, F.S.

The section further provides that any remaining moneys in the Land Acquisition Trust Fund that are not distributed as provided above may be appropriated from time to time for the purposes set forth in s. 28, Art. X of the State Constitution.

Comprehensive Everglades Restoration Plan

The Comprehensive Everglades Restoration Program (CERP) is a large, comprehensive, long-term 50-50 partnership with the federal government to restore the Everglades. The plan originally approved in the 2000 federal Water Resources Development Act includes more than 60 projects that will take more than 30 years to complete and will cost an estimated \$13.5 billion.² The program works in conjunction with other state and federal efforts to revitalize wetlands, lakes, bays and estuaries across south Florida's ecosystem, for the purpose of improving the Everglades and ensuring the area's water supply can meet future needs. DEP and the South Florida Water Management District work in collaboration to review each program proposal, with DEP having final approval authority. Projects must receive DEP approval before being submitted to Congress or the Legislature for funding.

The Central Everglades Planning Project

The Central Everglades Planning Project (CEPP) is a suite of projects in the central Everglades intended to allow more water to be directed south to the central Everglades, Everglades National Park, and Florida Bay. On December 23, 2014, the U.S. Army Corps of Engineers Chief of Engineers submitted his Project Implementation Report for CEPP to the Secretary of the Army for transmission to Congress for congressional authorization. The proposed CEPP is comprised of increments of six components of CERP, including the Everglades Agricultural Area (EAA) Storage Reservoir - Phase I, which was conditionally authorized by Section 601 (b)(2)(C)(ii) of WRDA 2000. However, the reporting officers recommended new authorization consistent with Section 601 (d) of WRDA 2000 due to changes in scope and the inclusion of additional CERP components. The reporting officers recommended increments of the following six components of CERP to be integrated with the existing facilities of the C&SF system: Everglades Agricultural Area Storage Reservoirs (Component G); Water Conservation Area (WCA)-3 Decompartmentalization and Sheetflow Enhancement (Components AA and QQ); S-356 Pump Station Modifications (Component FF); L-31 N Improvements for Seepage Management (Component V); System-wide Operational Changes - Everglades Rain-Driven Operations (Component H); and Flow to Northwest and Central.WCA-3A (Component II).³

Long-Term Plan

Section 373.4592(2), F.S. references the "Long-Term Plan" relating to Everglades protection. The Long-Term Plan resulted from the 1994 Everglades Forever Act, which requires the SFWMD to submit a water quality plan to DEP. The Plan's overarching purpose is to ensure all water entering the Everglades Protection Area complies with state and federal water quality standards. The plan calls for enhancements to existing storm water treatment areas, expanded best management practices and integration with CERP projects.⁴ In 2012, the DEP and the SFWMD, in consultation with U.S. Environmental Protection Agency, developed a technical plan to meet water quality standards, which includes additional stormwater treatment areas and storage reservoirs at a cost of \$880 million over a 13-year period. A total of \$500.7 million in funds will be provided by the South Florida Water Management District with the balance to be provided by the state. The 2013 Legislature appropriated \$32 million on a recurring basis to support the implementation of the technical water quality plan.⁵

Northern Everglades and Estuaries Protection Program (NEEPP)

The term "Northern Everglades" refers to the Lake Okeechobee watershed, the Caloosahatchee River watershed, and the St. Lucie River watershed.⁶ The Northern Everglades and Estuaries Protection Program (NEEPP) promotes a comprehensive, interconnected watershed approach to protect Lake

² <http://www.dep.state.fl.us/secretary/everglades/> (last visited 1/19/2015).

³ U.S. Army Corps of Engineers CEPP Project Implementation Report, available at: <http://www.saj.usace.army.mil/Portals/44/docs/Environmental/CEPP/CentralEverglades-Dec2014%20Chief's%20Report.pdf> (last accessed 1/27/2016).

⁴ South Florida Water Management District, available at: <http://my.sfwmd.gov/portal/page/portal/xweb%20protecting%20and%20restoring/water%20quality%20stormwater%20treatment%20areas> (last accessed 1/13/2016).

⁵ http://edr.state.fl.us/Content/long-range-financial-outlook/3-Year-Plan_Fall-2015_1617-1819.pdf

⁶ s. 373.4595(2)(l)

Okeechobee and the Caloosahatchee and St. Lucie River watersheds. It includes the Lake Okeechobee Watershed Protection Program and the Caloosahatchee and St. Lucie Watershed Protection Program. The 2016 Legislature enacted legislation, Chapter 2016-1, L.O.F., updating and restructuring NEEPP to reflect and build upon the DEP's completion of basin management action plans (BMAPs) for Lake Okeechobee, the Caloosahatchee River and Estuary, and the St. Lucie River and Estuary, and the Department of Agriculture and Consumer Services' (DACS) implementation of best management practices (BMPs).⁷

Provisions of Bill

The bill amends s. 375.041, F.S. to provide for distribution of funds from the Land Acquisition Trust Fund. The bill retains the requirement that funds first be distributed to pay debt service or to fund debt service reserve funds, rebate obligations, or other amounts payable with respect to Florida Forever bonds issued under s. 215.618, F.S., and Everglades restoration bonds issued under s. 215.619, F.S.

Of the funds remaining after this debt service distribution, the Legislature will be required to appropriate a minimum of the lesser of 25 percent or \$200 million for Everglades projects that implement:

1. the Comprehensive Everglades Restoration Plan (CERP) as set forth in s. 373.470, including the Central Everglades Planning Project subject to congressional authorization;
2. the Long-Term Plan as defined in s. 373.4592(2); and
3. the Northern Everglades and Estuaries Protection Program as set forth in s. 373.4595.

From these funds, \$32 million will be distributed each fiscal year through the 2023-2024 fiscal year to the South Florida Water Management District for the Long-Term Plan. After deducting the \$32 million, from the funds remaining, a minimum of the lesser of 76.5 percent or \$100 million will be appropriated each fiscal year through the 2025-2026 fiscal year for the planning, design, engineering and construction of the CERP.

The bill requires DEP and the SFWMD to give preference to projects that reduce harmful discharges from Lake Okeechobee to the St. Lucie or Caloosahatchee estuaries in a timely manner.

Finally, the bill repeals the provision, which expires July 1, 2016, paying for the SFWMD's and the St. Johns River Water Management District's debt service on bonds issued before February 1, 2009.

B. SECTION DIRECTORY:

Section 1: Amends s. 375.041, F.S. relating to the Land Acquisition Trust Fund.

Section 2: Provides effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill specifies how the Land Acquisition Trust Fund would be distributed for Everglades restoration. See the table below.

(In millions)

State Fiscal Year	33% LATF	Less Debt Service	Lesser of 25% or \$200M for Everglades	Long-Term Plan	CERP (Lesser of 76.5% or \$100M)	Remaining Everglades Funds
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⁷ Florida Senate Bill Analysis, CS/CS/SB 552
STORAGE NAME: h0989b.ANRAS
DATE: 1/28/2016

2016-17	\$823.8	\$171.3	\$163.1	\$32.0	\$100.0	\$31.1
2017-18	\$879.6	\$171.4	\$177.1	\$32.0	\$100.0	\$45.1
2018-19	\$922.9	\$171.5	\$187.9	\$32.0	\$100.0	\$55.9
2019-20	\$957.4	\$171.6	\$196.4	\$32.0	\$100.0	\$64.4
2020-21	\$992.4	\$171.6	\$200.00	\$32.0	\$100.0	\$68.0
2021-22	\$1,026.1	\$150.2	\$200.00	\$32.0	\$100.0	\$68.0
2022-23	\$1,064.7	\$139.3	\$200.00	\$32.0	\$100.0	\$68.0
2023-24	\$1,105.6	\$119.2	\$200.00	\$32.0	\$100.0	\$68.0
2024-25	\$1,149.6	\$119.2	\$200.00		\$100.0	\$100.0
2025-26	\$1,194.9	\$93.8	\$200.00		\$100.0	\$100.0

The House proposed Fiscal Year 2016-2017 General Appropriations Act provides \$32 million for the Long-Term Plan, \$100 million for the CERP and \$66 million for the Northern Everglades and Estuaries Protection Program.

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:

The 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

1 A bill to be entitled
 2 An act relating to recreational boating zones;
 3 creating s. 327.4107, F.S.; prohibiting overnight
 4 anchoring of vessels in specified recreational boating
 5 zones; providing exceptions; providing applicability;
 6 authorizing specified law enforcement officers and
 7 agencies to remove and impound vessels or cause
 8 vessels to be removed or impounded under certain
 9 conditions; providing indemnification for such law
 10 enforcement officers and agencies in certain
 11 circumstances; providing requirements for contractors
 12 performing such removal or impoundment services;
 13 providing that certain vessel operators are required
 14 to pay removal and storage fees and are subject to
 15 specified penalties; amending s. 327.70, F.S.;
 16 providing for issuance of citations relating to the
 17 unlawful anchoring of vessels in recreational boating
 18 zones; amending s. 327.73, F.S.; providing penalties
 19 relating to the anchoring of vessels in recreational
 20 boating zones; providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Section 327.4107, Florida Statutes, is created
 25 to read:

26 327.4107 Anchoring of vessels in recreational boating

27 zones.—

28 (1) Except as provided in subsections (2) and (3), a
 29 person may not anchor a vessel at any time between the hours
 30 from one-half hour after sunset to one-half hour before sunrise
 31 in the following recreational boating zones:

32 (a) The section of Middle River lying between Northeast
 33 21st Court and the Intracoastal Waterway in Broward County.

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

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

37 1. Rivo Alto Island and Di Lido Island.

38 2. San Marino Island and San Marco Island.

39 3. San Marco Island and Biscayne Island.

40 (d) Crab Island in Choctawhatchee Bay at the East Pass in
 41 Okaloosa County.

42 (2) A person may anchor a vessel in a recreational boating
 43 zone:

44 (a) If the vessel suffers a mechanical failure that poses
 45 an unreasonable risk of harm to the vessel or the persons
 46 onboard unless the vessel anchors. The vessel may anchor for 3
 47 business days or until the vessel is repaired, whichever occurs
 48 first.

49 (b) If imminent or existing weather conditions in the
 50 vicinity of the vessel pose an unreasonable risk of harm to the
 51 vessel or the persons onboard unless the vessel anchors. The
 52 vessel may anchor until weather conditions no longer pose such

53 risk. During a hurricane or tropical storm, weather conditions
 54 are deemed to no longer pose an unreasonable risk of harm when
 55 the hurricane or tropical storm warning affecting the area has
 56 expired.

57 (c) During events described in s. 327.48 or other special
 58 events, including, but not limited to, public music
 59 performances, local government waterfront activities, or
 60 fireworks displays. A vessel may anchor for the duration of the
 61 special event or for 3 days, whichever occurs first.

62 (3) This section does not apply to:

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

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

67 (c) Vessels actively engaged in commercial fishing.

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

70 (4) (a) As used in this subsection, the term "law
 71 enforcement officer or agency" means an officer or agency
 72 authorized to enforce this section pursuant to s. 327.70.

73 (b) A law enforcement officer or agency may remove a
 74 vessel from a recreational boating zone and impound the vessel
 75 for up to 48 hours, or cause such removal and impoundment, if
 76 the vessel operator, after being issued a citation for a
 77 violation of this section:

78 1. Anchors the vessel in violation of this section within

79 12 hours after being issued the citation; or

80 2. Refuses to leave the recreational boating zone after
 81 being directed to do so by a law enforcement officer or agency.

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

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

90 1. Be licensed in accordance with United States Coast
 91 Guard regulations, as applicable.

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

96 3. Be properly equipped to perform such services.

97 (e) In addition to the civil penalty imposed under s.
 98 327.73(1)(y), the operator of a vessel that is removed and
 99 impounded pursuant to paragraph (a) shall pay all removal and
 100 storage fees before the vessel is released. A vessel removed
 101 pursuant to paragraph (a) may not be impounded for longer than
 102 48 hours.

103 (5) A violation of this section is punishable as provided
 104 in s. 327.73(1)(y).

105 Section 2. Paragraph (c) is added to subsection (2) of
 106 section 327.70, Florida Statutes, to read:

107 327.70 Enforcement of this chapter and chapter 328.-
 108 (2)

109 (c) A noncriminal violation of s. 327.4107 may be enforced
 110 by a uniform boating citation issued to the operator of a vessel
 111 unlawfully anchored in a recreational boating zone.

112 Section 3. Paragraph (y) is added to subsection (1) of
 113 section 327.73, Florida Statutes, to read:

114 327.73 Noncriminal infractions.-

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

117 (y) Section 327.4107, relating to the anchoring of vessels
 118 in recreational boating zones, for which the penalty is:

- 119 1. For a first offense, up to a maximum of \$50.
- 120 2. For a second offense, up to a maximum of \$100.
- 121 3. For a third or subsequent offense, up to a maximum of
 122 \$250.

123
 124 Any person cited for a violation of any provision of this
 125 subsection shall be deemed to be charged with a noncriminal
 126 infraction, shall be cited for such an infraction, and shall be
 127 cited to appear before the county court. The civil penalty for
 128 any such infraction is \$50, except as otherwise provided in this
 129 section. Any person who fails to appear or otherwise properly
 130 respond to a uniform boating citation shall, in addition to the

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131 charge relating to the violation of the boating laws of this
132 state, be charged with the offense of failing to respond to such
133 citation and, upon conviction, be guilty of a misdemeanor of the
134 second degree, punishable as provided in s. 775.082 or s.
135 775.083. A written warning to this effect shall be provided at
136 the time such uniform boating citation is issued.

137 Section 4. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1051 Recreational Boating Zones
SPONSOR(S): Agriculture & Natural Resources Subcommittee; Caldwell
TIED BILLS: **IDEN./SIM. BILLS:** SB 1260

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N, As CS	Moore, R.	Harrington
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The public may use sovereignty submerged lands for navigation, commerce, fishing, bathing, and other public purposes. These rights are designed to promote the general welfare and are subject to lawful regulation by the state. The public's right to navigation entitles the public to the reasonable use of navigable waters for legitimate purposes of travel or transportation, boating or sailing for pleasure, carrying persons or property gratuitously for hire, and for uses which are consistent with other uses enjoyed in common. Anchoring is a right incidental to the public's right of navigation, which must be balanced against other public purposes. As such, the right to anchor or moor must not unreasonably obstruct others' navigation rights and does not include the right to anchor indefinitely in a manner that impairs a riparian owner's use and enjoyment of their property.

Riparian owners are entitled to the same rights to use sovereignty submerged lands as the public, but also hold riparian rights, such as the right to access the water, the right to reasonably use the water, the right to accretion and reliction, and the right to an unobstructed view of the water. Riparian rights are necessary for the use and enjoyment of the upland property, but may not be exercised as to injure others in their lawful rights.

The bill creates s. 327.4107, F.S., providing for the anchoring of vessels in recreational boating zones. The bill prohibits a person from anchoring a vessel from one-half hour after sunset to one-half hour before sunrise in the following recreational boating zones:

- 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.
- Crab Island in Choctawhatchee Bay at the East Pass in Okaloosa County.

The bill provides certain exceptions to the prohibition on anchoring in recreational boating zones and enforcement procedures. The bill also provides for the issuance of a uniform boating citation with tiered penalties and authorizes the removal and impoundment of a vessel for violating the prohibition on anchoring in a recreational boating zone in certain circumstances.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Submerged Lands Act

The Submerged Lands Act (SLA), enacted in 1953, provides that a state, upon becoming a member of the United States (U.S.), acquires:

- Title to and ownership of the lands beneath navigable waters within the boundaries of the respective states,¹ and the natural resources within such lands and waters; and
- The right and power to manage, administer, lease, develop, and use the lands and natural resources all in accordance with applicable state law.²

Under the SLA, the U.S. retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which are paramount to, but are not deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of the lands and natural resources which are specifically recognized, confirmed, established, and vested in and assigned to the respective states.³

States possess an “absolute right to all their navigable waters and the soils under them for their own common use.”⁴ Drawing on this principle, the U.S. Supreme Court held that ownership of submerged lands, and the accompanying power to control navigation, fishing, and other public uses of water, “is an essential attribute of sovereignty.”⁵ Consequently, “[a] court deciding a question of title to [a] bed of navigable water [within a State’s boundaries] must ... begin with a strong presumption’ against defeat of a State’s title.”⁶

Federal Regulations on Anchoring and Mooring

Federal law restricts anchoring and mooring in all waterways tributary to the Atlantic Ocean south of Chesapeake Bay and the Gulf of Mexico east and south of St. Marks, Florida,⁷ and the Gulf of Mexico (except the Mississippi River) from St. Marks, Florida, to the Rio Grande.⁸ Waterways include all navigable waters of the U.S., natural or artificial, including bays, lakes, sounds, rivers, creeks, intracoastal waterways, as well as canals and channels of all types, which are tributary to or connected by other waterways.⁹

A clear channel must at all times be left open to permit free and unobstructed navigation by all types of vessels.¹⁰ Accordingly, a person may not anchor or moor a vessel in any of the land cuts or other narrow parts of the waterway, except in case of an emergency, or with permission of the U.S. Army

¹ 43 U.S.C. §1301 et seq. 43 U.S.C. §1312 designates the seaward boundary of each coastal State as three miles out from its coast line; *U.S. v. Louisiana, et al.*, 363 U.S. 1 (1960), recognizing Florida’s seaward boundary into the Gulf of Mexico is three marine leagues (approximately 9-10 miles).

² 43 U.S.C. §1301 and §1311(a).

³ 43 U.S.C. §1314(a).

⁴ *Tarrant Regional Water District v. Hermann*, 133 S.Ct. 2120 (2013) (quoting *Martin v. Lessee of Waddell*, 41 U.S. 367 (1842)).

⁵ *Id.*, (quoting *U. S. v. Alaska*, 521 U.S. 1 (1997)).

⁶ *Id.*, (quoting *Montana v. United States*, 450 U.S. 544 (1981)); see also *Solid Waste Agency of Northern Cook Cty. v. Army Corps of Engineers*, 531 U.S. 159 (2001); *Utah Div. of State Lands v. United States*, 482 U.S. 193 (1987).

⁷ 33 C.F.R. §162.65.

⁸ 33 C.F.R. §162.75.

⁹ 33 C.F.R. §162.65(a)(1) and §162.75(a)(1).

¹⁰ 33 C.F.R. §162.65(b)(1) and §162.75(b)(1).

Corps of Engineers (Corps).¹¹ Stoppage may be only for such periods as may be necessary.¹² Additionally, a vessel may not anchor in a dredged channel or narrow portion of a waterway to fish if navigation is obstructed.¹³ Lastly, when temporarily anchored or moored, vessels must be tied up and display lights as required by the federal navigation rules.¹⁴

Federal Anchorage Grounds

The U.S. Department of Homeland Security is authorized, empowered, and directed to establish anchorage grounds in all harbors, rivers, bays, and other navigable waters of the U.S. whenever the maritime or commercial interests of the U.S. requires anchorage grounds for safe navigation. Rules and regulations adopted regarding the establishment of anchorage grounds are enforced by the U.S. Coast Guard (Coast Guard), provided that at ports or places where there is no Coast Guard vessel available such rules and regulations may be enforced by the Corps.¹⁵

The following anchorage grounds have been established in Florida, primarily for large commercial vessels using major ports:

- Atlantic Ocean off Fort George Inlet, near Mayport;¹⁶
- St. Johns River;¹⁷
- Atlantic Ocean, off the Port of Palm Beach;¹⁸
- Port Everglades;¹⁹
- Atlantic Ocean off Miami and Miami Beach;²⁰
- Key West Harbor, Key West, FL, naval explosives anchorage area;²¹
- Tortugas Harbor, in vicinity of Garden Key, Dry Tortugas, FL,²²
- Tampa Bay; and²³
- St. Joseph Bay.²⁴

Federal Special Anchorage Areas

A special anchorage area is an area where vessels that are not more than 65 feet in length, when at anchor, will not be required to carry or exhibit anchorage lights. The areas designated are to be well removed from the fairways and located where general navigation will not endanger or be endangered by unlighted vessels. The authority to designate special anchorage areas is vested in the U.S. Department of Homeland Security and delegated to the Coast Guard.²⁵

Special anchorages in Florida include the:

- St. Johns River;²⁶
- Indian River at Sebastian;²⁷
- Indian River at Vero Beach;²⁸

¹¹ 33 C.F.R. §162.65(b)(2)(i)-(ii) and §162.7(b)(3)(i).

¹² 33 C.F.R. §162.65(b)(2)(i) and §162.7(b)(3)(i).

¹³ 33 C.F.R. §162.65(b)(2)(vii) and §162.75(b)(3)(v).

¹⁴ 33 C.F.R. §162.65(b)(2)(iii)-(iv) and §162.75(b)(3)(ii)-(iii).

¹⁵ 33 U.S.C. §471(a); 33 C.F.R. §109.05.

¹⁶ 33 C.F.R. §110.182.

¹⁷ 33 C.F.R. §110.183; §110.183(3), provides that vessels may not anchor for more than 24 hours in either anchorage without specific written authorization from the Captain of the Port.

¹⁸ 33 C.F.R. §110.185.

¹⁹ 33 C.F.R. §110.186; §110.186(6), provides that no vessel may anchor within the anchorage for more than 72 hours without the prior approval of the Captain of the Port.

²⁰ 33 C.F.R. §110.188.

²¹ 33 C.F.R. §110.189a.

²² 33 C.F.R. §110.190.

²³ 33 C.F.R. §110.193.

²⁴ 33 C.F.R. §110.193a.

²⁵ 33 C.F.R. §109.10.

²⁶ 33 C.F.R. §110.73.

²⁷ 33 C.F.R. §110.73a.

- Okeechobee Waterway, St. Lucie River, Stuart;²⁹
- Marco Island, Marco River;³⁰
- Manatee River, Bradenton; and³¹
- Apollo Beach.³²

Other Federally Designated Anchorages and Moorings in Florida

The Corps possesses the authority to regulate public use of federal water resource development projects in the public interest and the navigable capacity of waters of the U.S.³³ In 2013, the Corps published the Okeechobee Waterway Anchoring and Mooring Policy.³⁴ It provides the following anchoring and mooring guidance within the Okeechobee Waterway:³⁵

- No vessel may anchor in the Okeechobee Waterway, except in case of an emergency or incidental to navigating the 152 mile waterway. Anchoring incidental to navigating the length of the waterway over multiple days is allowed to provide adequate rest for crew members while crossing the waterway to ensure the safety of crew and other users on the waterway. Overnight anchoring may not exceed 24 hours in one location and the vessel needs to show one days travel distance before anchoring again.
- Vessels stopped for longer than 24 hours should be moored or stored at designated areas approved by the Corps, which consists of commercial authorized marinas/docks.³⁶

Public and Private Use of Sovereignty Submerged Lands

When Florida entered the Union as a state,³⁷ pursuant to the SLA, it gained title to the beds of all navigable waterways (sovereignty submerged lands).³⁸ Sovereignty 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.³⁹ The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state by virtue of its sovereignty in trust for all the people.⁴⁰ Private use of portions of these lands may be authorized by law, but only when not contrary to the public interest.⁴¹ However, these lands cannot be wholly alienated by the state.⁴²

The state may regulate the public's use of sovereignty submerged lands for the benefit of the public as a whole as circumstances may demand, subject to Congress' regulatory power to control commerce.⁴³ When regulating sovereignty submerged lands, a state has greater authority to restrict its use than it

²⁸ 33 C.F.R. §110.73b.

²⁹ 33 C.F.R. §110.73c.

³⁰ 33 C.F.R. §110.74.

³¹ 33 C.F.R. §110.74a.

³² 33 C.F.R. §110.74b.

³³ 16 U.S.C. §460d; 33 U.S.C. §1; 36 C.F.R. Part 327; 33 C.F.R. §207.160.

³⁴ Okeechobee Waterway Anchoring and Mooring Policy, available at <http://www.saj.usace.army.mil/Portals/44/docs/Navigation/Notices/NTN130318%20Okeechobee%20Waterway%20Anchoring%20and%20Mooring%20Policy.pdf>.

³⁵ *Id.*; The Okeechobee Waterway is defined as the area of water connecting the W.P. Franklin Lock to the St. Lucie Lock via the Caloosahatchee River, Lake Okeechobee, and the St. Lucie Canal, excluding privately excavated canals and tidal influenced waters from the Gulf of Mexico and Atlantic Ocean.

³⁶ *Id.*

³⁷ March 3, 1845.

³⁸ 43 U.S.C. §1312, designates the seaward boundary of each coastal State as three miles out from its coast line; *U.S. v. Louisiana, et al.*, 363 U.S. 1 (1960), recognizing Florida's seaward boundary into the Gulf of Mexico is three marine leagues (approximately 9-10 miles); *Coastal Petroleum Co. v. American Cyanamid Co.*, 492 So.2d 339 (Fla. 1986); r. 18-21.003(61), F.A.C.

³⁹ DEP Sovereignty Submerged Lands available at <http://www.dep.state.fl.us/lands/submerged.htm>.

⁴⁰ Section 11, Art. X, Fla. Const.

⁴¹ *Id.*

⁴² *Walton Co. v. Stop the Beach Renourishment, Inc.*, 988 So.2d 1102, 1110 (Fla. 2008) citing *Brickell v. Trammell*, 82 So. 221 (Fla. 1919). There are rare instances where sovereignty submerged lands have been conveyed. See L.O.F. (Vol. II) Chapter 6769 – (No. 349) (1913).

⁴³ *State v. Gerbing*, 47 So. 353, 356 (Fla. 1908); *State v. Black River Phosphate Co.*, 13 So. 640, 645 (Fla. 1893).

would have over private lands.⁴⁴ However, the right to restrict or grant privileges to use such lands must be done in a manner that does not substantially impair the interest of the public as a whole.⁴⁵

The public may use sovereignty submerged lands for navigation, commerce, fishing, bathing, and other public purposes.⁴⁶ These rights are designed to promote the general welfare and are subject to lawful regulation by the state.⁴⁷ The public's right to navigation entitles the public to the reasonable use of navigable waters for legitimate purposes of travel or transportation, boating or sailing for pleasure, carrying persons or property gratuitously for hire, and for uses which are consistent with other uses enjoyed in common.⁴⁸ Anchoring is a right incidental to the public's right of navigation, which must be balanced against other public purposes.⁴⁹ As such, the right to anchor or moor must not unreasonably obstruct others' navigation rights and does not include the right to anchor indefinitely in a manner that impairs a riparian owner's use and enjoyment of their property.⁵⁰

Riparian owners are entitled to the same rights to use sovereignty submerged lands as the public, but also hold riparian rights,⁵¹ such as the right to access the water,⁵² the right to reasonably use the water, the right to accretion and reliction, and the right to an unobstructed view⁵³ of the water.⁵⁴ Riparian rights are necessary for the use and enjoyment of the upland property, but may not be exercised as to injure others in their lawful rights.⁵⁵

State Anchoring and Mooring Regulations

The Legislature delegated the responsibility of managing sovereignty submerged lands to the Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund (Board).⁵⁶ The Board is authorized to adopt rules governing anchoring, mooring, or otherwise attaching to the bottom of sovereignty submerged lands by vessels, floating homes, or any other watercraft.⁵⁷ The Board has adopted rules regulating the construction of mooring and docking structures,⁵⁸ but has not adopted rules regulating anchoring.

Local Government Regulatory Limitations on Anchoring and Mooring

Local governments may only enact and enforce regulations prohibiting or restricting the mooring or anchoring of:

⁴⁴ *Mariner Properties Development, Inc. v. Board of Trustees of the Internal Improvement Trust Fund*, 743 So. 2d 1121, 1122-1123 (Fla. 1st DCA 1999).

⁴⁵ *Black River Phosphate Co.*, at 645.

⁴⁶ *Stop the Beach Renourishment, Inc.*, at 1110 citing *Brickell*, at 221.

⁴⁷ *Id.*

⁴⁸ 85-45 Fla. Op. Att'y Gen. (1985).

⁴⁹ 85-45 Fla. Op. Att'y Gen. (1985); Ankersen, Thomas T., Richard Hamann & Bryon Flagg, *Anchoring Away: Government Regulation of the Right of Navigation in Florida* 22 (National Sea Grant 2012) available at <http://www.floridawateraccess.org/boating/Boating-Toolkit/>.

⁵⁰ 85-45 Fla. Op. Att'y Gen. (1985), citing *Hall v. Wantz*, 57 N.W.2d 462 (Mich. 1953).

⁵¹ Section 253.141(1), F.S.

⁵² *Webb v. Giddens*, 82 So.2d 743, 745 (Fla. 1955) (State Road Department construction of culvert on Lake Jackson blocking access to main water body was found to be an impairment of riparian proprietorship.) Compare *Carmazi v. Board of County Commissioners of Dade Co.*, 108 So.2d 318, 323 (Fla. 3d DCA 1959) (Construction of dam on Little River blocking access to Biscayne Bay was not considered an impairment of riparian rights because it did not deprive a private riparian right. The right of navigation is an interest held by the public as a whole and may be restricted to exercise a necessary police power.)

⁵³ *Lee Co v. Kiesel*, 705 So.2d 1013, 1016 (Fla. 2d DCA 1998) (Holding that upland owners were entitled to compensation because bridge substantially and materially obstructed their littoral view). Compare *Hayes v. Bowman*, 91 So.2d 795 (Fla. 1957) (To be a compensable obstruction of the riparian right of view, the interference must be substantial).

⁵⁴ Section 253.141(1), F.S.; *Stop the Beach Renourishment, Inc.*, at 1111.

⁵⁵ *Id.*

⁵⁶ Section 253.03(1), F.S. Section 253.03(7), F.S., authorizes the Board to adopt rules governing anchoring, mooring, or otherwise attaching to the bottom of all sovereign submerged lands by vessels, floating homes, or any other watercraft. The Board has not exercised this authority to adopt rules to regulate anchoring, but has adopted rules regulating the construction of mooring and docking structures. See ch. 18-21, F.A.C.

⁵⁷ Section 253.03(1) and (7), F.S.

⁵⁸ See Ch. 18-21, F.A.C.

- A floating structure;⁵⁹
- A live-aboard vessel;⁶⁰ or
- A vessel⁶¹ that is within the marked boundaries of a mooring field.⁶²

Local governments are otherwise prohibited from regulating the anchoring of vessels that are located outside of a mooring field.⁶³

Fish and Wildlife Conservation Commission Anchoring and Mooring Pilot Program

In 2009, the Legislature required the Fish and Wildlife Conservation Commission (FWC), in consultation with the Department of Environmental Protection (DEP), to establish a pilot program to explore options for local governments to regulate the anchoring and mooring of vessels located outside of mooring fields.⁶⁴ The program today is commonly referred to as the “Anchoring and Mooring Pilot Program.”⁶⁵ Currently, the only local governments that are allowed to regulate anchoring and mooring outside the marked boundaries of mooring fields are the participants in the program,⁶⁶ which include:

- The City of St. Augustine;⁶⁷
- The City of St. Petersburg;⁶⁸
- The City of Sarasota;⁶⁹
- Martin County in partnership with the City of Stuart;⁷⁰ and
- Monroe County in partnership with the cities of Marathon and Key West.⁷¹

The goals of the pilot program are to encourage the establishment of additional mooring fields and to develop and test policies and regulatory regimes that:⁷²

- Promote the establishment and use of mooring fields;
- Promote access to the waters of the state;
- Enhance navigational safety;
- Protect maritime infrastructure;
- Protect marine environment; and

⁵⁹ Section 327.02(11), 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, but is not limited to, 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. Floating structures are expressly excluded from the definition of the term ‘vessel.’ Incidental movement upon water or resting partially or entirely on the bottom does not, in and of itself, preclude an entity from classification as a floating structure.”

⁶⁰ Section 327.02(19), 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 pursuant to s. 222.17.” The term expressly excludes commercial fishing boats.

⁶¹ Section 327.02(43), F.S., defines term “vessel” as “synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.”

⁶² Section 327.60(3), F.S.

⁶³ Section 327.60(2)(f) and (3), F.S.

⁶⁴ Chapter 2009-86, Laws of Florida; s. 327.4105, F.S.

⁶⁵ *FWCC Anchoring and Mooring Pilot Program Report of Finding and Recommendations*, (Dec. 31, 2013), available at <http://myfwc.com/media/2704721/FindingsRecommendations.pdf>.

⁶⁶ Section 327.4105(3), F.S.

⁶⁷ The City of St. Augustine’s ordinance is available at <http://www.staugustinegovernment.com/visitors/documents/Ord2011-10-2.pdf>.

⁶⁸ The City of St. Petersburg’s ordinance is available at <http://myfwc.com/media/2221101/StPeteOrdinance.pdf>.

⁶⁹ The City of Sarasota’s ordinance is available at <http://myfwc.com/media/2405171/Sarasota-final-Ord-12-5003.pdf>.

⁷⁰ Martin County’s ordinance is available at

http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=3&cad=rja&uact=8&ved=0CC8QFjACahUKEwivnoHv4urIAhVMVh4KHRx7AEg&url=http%3A%2F%2Fwww.martin.fl.us%2Fweb_docs%2Feng%2Fweb%2Fcoastal%2FAnchoring_Mooring%2FOrd928.pdf&usq=AFQjCNFK0Ou_MYuDIO-U5VxVaZt_WautuA.

⁷¹ Monroe County’s ordinance is available at <https://fl-monroecounty.civicplus.com/Documentview.aspx?DID=4039> *FWCC Anchoring and Mooring Pilot Program Report of Finding and Recommendations*, (Dec. 31, 2013), available at <http://myfwc.com/media/2704721/FindingsRecommendations.pdf>.

⁷² Section 327.4105(1), F.S.

- Deter improperly stored, abandoned, or derelict vessels.

FWC submitted a report of its findings and recommendations of the pilot program to the Legislature on December 31, 2013.⁷³ FWC recommended an extension of the program for an additional three years to allow a more thorough and complete assessment of the local government ordinances being implemented.⁷⁴ In 2014, the program was extended by the Legislature.⁷⁵ The program and the local government ordinances developed under the program are set to expire on July 1, 2017, unless reenacted by the Legislature.⁷⁶

Noncriminal Boating Infractions

Section 327.73(1), F.S., provides that a person cited for a violation of certain vessel laws of the state is charged with a noncriminal infraction, will be cited for the infraction, and ordered to appear in county court. The civil penalty for an infraction is \$50, except as otherwise provided by law.⁷⁷ A person who fails to appear or otherwise properly respond to the citation will, in addition to the civil penalty, be charged with failing to respond to the citation and upon conviction will be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082⁷⁸ or s. 775.083, F.S.⁷⁹ A written warning to this effect is provided when the citation is issued.⁸⁰

Effect of Proposed Changes

The bill creates s. 327.4107, F.S., providing for the anchoring of vessels in recreational boating zones. The bill prohibits a person from anchoring a vessel from one-half hour after sunset to one-half hour before sunrise in the following recreational boating zones:

- 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.
- Crab Island in Choctawhatchee Bay at the East Pass in Okaloosa County.

The bill allows a person to anchor a vessel in a recreational boating zone:

- If the vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors. The vessel may anchor for 3 business days or until the vessel is repaired, whichever occurs first;
- If imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors. The vessel may anchor until weather conditions no longer pose such risk. During a hurricane or tropical storm, weather conditions are deemed to no longer pose an unreasonable risk of harm when the hurricane or tropical storm warning affecting the area has expired; and

⁷³ Section 327.4105(5), F.S.; *FWCC Anchoring and Mooring Pilot Program Report of Finding and Recommendations*, (Dec. 31, 2013), available at <http://myfwc.com/media/2704721/FindingsRecommendations.pdf>.

⁷⁴ *FWCC Anchoring and Mooring Pilot Program Report of Finding and Recommendations*, (Dec. 31, 2013), available at <http://myfwc.com/media/2704721/FindingsRecommendations.pdf>.

⁷⁵ Chapter 2014-136, Laws of Florida.

⁷⁶ Section 327.4105(6), F.S.

⁷⁷ Section 327.73(1), F.S.

⁷⁸ A person who has been convicted of a misdemeanor of the second degree may be sentenced by a definite term of imprisonment not exceeding 60 days.

⁷⁹ A person who has been convicted of a noncriminal violation may be sentenced to pay a fine which must not exceed \$500.

⁸⁰ Section 327.73(1), F.S.

- During events described in s. 327.48, F.S.,⁸¹ or other special events, including, but not limited to, public music performances, local government waterfront activities, or fireworks displays. A vessel may anchor for the duration of the special event or for 3 days, whichever occurs first.

The bill provides that recreational boating zones 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 persons onboard are actively tending hook and line fishing gear or nets.

The bill defines "law enforcement officer or agency" to mean an officer or agency authorized to enforce s. 327.4107, F.S., pursuant to s. 327.70, F.S.,⁸² and provides that:

- A law enforcement officer or agency may remove a vessel from a recreational boating zone and impound the vessel for up to 48 hours, or cause the removal and impoundment, if the vessel operator, after being issued a citation for a violation of s. 327.4104, F.S.:
 - Anchors the vessel in violation of this section within 12 hours after being issued the citation; or
 - Refuses to leave the recreational boating zone after being directed to do so by a law enforcement officer or agency;
- A law enforcement officer or agency removing or impounding a vessel, or causing the removal or impoundment, must be held harmless for any damage to the vessel resulting from the removal or impoundment unless the damage results from gross negligence or willful misconduct;
- A contractor performing removal or impoundment services at the direction of a law enforcement officer or agency must:
 - Be licensed in accordance with United States Coast Guard regulations;
 - Obtain and carry a current policy issued by a licensed insurance carrier in this state to insure against any accident, loss, injury, property damage, or other casualty caused by or resulting from the contractor's actions; and
 - Be properly equipped to perform the services.
- In addition to the civil penalty imposed under s. 327.73(1)(y), F.S.,⁸³ the operator of a vessel that is removed and impounded must pay all removal and storage fees before the vessel is released. A vessel removed may not be impounded for longer than 48 hours.

The bill provides that a violation of the prohibition on the anchoring of a vessel in a recreational boating zone is punishable as a noncriminal infraction of the vessel laws of the state, and amends s. 327.73, F.S., providing the following penalty:

- For a first offense, up to a maximum of \$50;
- For a second offense, up to a maximum of \$100; and
- For a third or subsequent offense, up to a maximum of \$250.

The bill amends s. 327.70, F.S., regarding enforcement to provide that a noncriminal violation of s. 327.4107, F.S., may be enforced by a uniform boating citation issued to the operator of a vessel unlawfully anchored in a recreational boating zone.

B. SECTION DIRECTORY:

Section 1. Creates s. 327.4107, F.S., regarding the anchoring of vessels in recreational boating zones.

⁸¹ Section 327.48, F.S., provides for regattas, races, marine parades, tournaments, or exhibitions.

⁸² Section 327.70, F.S., provides that chs. 327 and 328, F.S., must be enforced by the Division of Law Enforcement of the Fish and Wildlife Conservation Commission and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officer as defined in s. 943.10, F.S., all of whom may order the removal of vessels deemed to be an interference or a hazard to public safety, enforce the provisions of chs. 327 and 328, or cause any inspections to be made of all vessels in accordance with chs. 327 and 328, F.S.

⁸³ Section 327.73, F.S., provides for non-criminal infractions of vessel laws.

Section 2. Amends s. 327.70(2), F.S., regarding enforcement.

Section 3. Amends s. 327.73(1), F.S., regarding noncriminal infractions of vessel laws of the state.

Section 4. 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:

The bill may have an indeterminate fiscal impact on local governments. While local governments may experience positive fiscal impacts resulting from the issuance of boating citations, local governments may also experience increased costs due to increased enforcement efforts.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill creates a noncriminal boating infraction for anchoring in a recreational boating zone. As such, a violator will be charged with a noncriminal infraction, cited, and ordered to appear in county court. The noncriminal infraction includes tiered civil penalties. A person who fails to appear or otherwise properly respond to the citation will, in addition to the civil penalty, be charged with failing to respond to the citation and upon conviction will be guilty of a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days or a fine which must not exceed \$500.

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 take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

There are three basic categorizes of law: general laws, general laws of local application, and special laws. The State Constitution does not provide definitions for these categories of law. Article III, s. 10 of the State Constitution provides that the Legislature may not enact any special law unless certain

procedures are followed. The State Constitution also provides 21 categories of areas of the law where special laws and general laws of local application are expressly forbidden.

Most laws enacted by the Legislature are general laws. General laws need not apply to every person across the state, but must consistently apply to those persons or entities affected by their provisions.⁸⁴ If a law applies equally to a category of persons or entities, which have a reasonable relationship to the subject matter of the law, it is a general law.⁸⁵ In addition, a general law may use a classification scheme that is geographical in terms if the purpose of the statute is one of statewide importance and the impact of the classification is reasonably related to the law's purpose.⁸⁶

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 26, 2016, the Agriculture & Natural Resources Subcommittee adopted a strike-all amendment and reported the bill favorably with committee substitute. The strike-all amendment:

- Allows a person to anchor a vessel in a recreational boating zone:
 - If the vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors. The vessel may anchor for 3 business days or until the vessel is repaired, whichever occurs first;
 - If imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors. The vessel may anchor until weather conditions no longer pose such risk. During a hurricane or tropical storm, weather conditions are deemed to no longer pose an unreasonable risk of harm when the hurricane or tropical storm warning affecting the area has expired; and
 - During events described in s. 327.48, F.S., or other special events, including, but not limited to, public music performances, local government waterfront activities, or fireworks displays. A vessel may anchor for the duration of the special event or for 3 days, whichever occurs first;
- Provides that recreational boating zones 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 persons onboard are actively tending hook and line fishing gear or nets;
- Defines "law enforcement officer or agency" to mean an officer or agency authorized to enforce s. 327.4107, F.S., pursuant to s. 327.70, F.S., and provides that:
 - A law enforcement officer or agency may remove a vessel from a recreational boating zone and impound the vessel for up to 48 hours, or cause the removal and impoundment, if the vessel operator, after being issued a citation for a violation of s. 327.4104, F.S.:
 - Anchors the vessel in violation of this section within 12 hours after being issued the citation; or
 - Refuses to leave the recreational boating zone after being directed to do so by a law enforcement officer or agency;
 - A law enforcement officer or agency removing or impounding a vessel, or causing the removal or impoundment, must be held harmless for any damage to the vessel resulting

⁸⁴ *Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc.*, 434 So.2d 879 (Fla. 1983).

⁸⁵ *Catogas v. Southern Fed. Sav. & Loan Ass'n*, 369 So.2d 922 (Fla. 1979).

⁸⁶ *Schrader v. Florida Keys Aqueduct Authority*, 840 So.2d 1050 at 1055-56 (Fla. 2003).

- from the removal or impoundment unless the damage results from gross negligence or willful misconduct;
- A contractor performing removal or impoundment services at the direction of a law enforcement officer or agency must:
 - Be licensed in accordance with United States Coast Guard regulations;
 - Obtain and carry a current policy issued by a licensed insurance carrier in this state to insure against any accident, loss, injury, property damage, or other casualty caused by or resulting from the contractor's actions; and
 - Be properly equipped to perform the services.
 - In addition to the civil penalty imposed under s. 327.73(1)(y), F.S., the operator of a vessel that is removed and impounded must pay all removal and storage fees before the vessel is released. A vessel removed may not be impounded for longer than 48 hours;
 - Provides that a violation of the prohibition on the anchoring of a vessel in a recreational boating zone is punishable as a noncriminal infraction of the vessel laws of the state, and amends s. 327.73, F.S., to provide the following penalties:
 - For a first offense, up to a maximum of \$50;
 - For a second offense, up to a maximum of \$100;
 - For a third or subsequent offense, up to a maximum of \$250; and
 - Amends s. 327.70, F.S., regarding enforcement, to provide that a noncriminal violation of s. 327.4107, F.S., may be enforced by a uniform boating citation issued to the operator of a vessel unlawfully anchored in a recreational boating zone.

This analysis is drafted to the committee substitute as approved by the subcommittee.

HB 1273

2016

1 A bill to be entitled

2 An act relating to manatees; amending s. 215.22, F.S.;
3 exempting, until a specified date, certain revenue
4 deposited in the Save the Manatee Trust Fund from a
5 service charge assessed against state trust funds;
6 amending s. 379.2431, F.S.; authorizing the
7 expenditure of funds from the Save the Manatee Trust
8 Fund to conduct a manatee speed zone study and
9 statewide manatee distribution and abundance surveys
10 and reports; creating s. 379.2434, F.S.; requiring the
11 Fish and Wildlife Conservation Commission to contract
12 with an independent, qualified party to conduct a
13 manatee speed zone effectiveness study; requiring the
14 commission to submit a report detailing the findings
15 of the study to the Governor and Legislature by a
16 specified date; requiring the commission to conduct a
17 statewide manatee distribution and abundance survey
18 and report; authorizing the commission to conduct
19 additional surveys and reports as necessary;
20 authorizing the expenditure of funds from the Save the
21 Manatee Trust Fund to conduct the manatee speed zone
22 study and statewide manatee distribution and abundance
23 surveys and reports; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:
26

27 Section 1. Paragraph (w) is added to subsection (1) of
 28 section 215.22, Florida Statutes, to read:

29 215.22 Certain income and certain trust funds exempt.—

30 (1) The following income of a revenue nature or the
 31 following trust funds shall be exempt from the appropriation
 32 required by s. 215.20(1):

33 (w) Until July 1, 2026, the Save the Manatee Trust Fund.

34 Section 2. Subsection (4) of section 379.2431, Florida
 35 Statutes, is amended to read:

36 379.2431 Marine animals; regulation.—

37 (4) ~~ANNUAL~~ FUNDING OF PROGRAMS FOR MARINE ANIMALS.—

38 (a) Each fiscal year the Save the Manatee Trust Fund shall
 39 be available to fund an impartial scientific benchmark census of
 40 the manatee population in the state. Weather permitting, the
 41 study shall be conducted annually by the Fish and Wildlife
 42 Conservation Commission and the results shall be made available
 43 to the President of the Senate, the Speaker of the House of
 44 Representatives, and the Governor and Cabinet for use in the
 45 evaluation and development of manatee protection measures. In
 46 addition, the Save the Manatee Trust Fund shall be available for
 47 annual funding of the provisions specified in s. 379.2434;
 48 activities of public and private organizations and those of the
 49 commission intended to provide manatee and marine mammal
 50 protection and recovery effort; manufacture and erection of
 51 informational and regulatory signs; production, publication, and
 52 distribution of educational materials; participation in manatee

53 and marine mammal research programs, including carcass salvage
54 and other programs; programs intended to assist the recovery of
55 the manatee as an endangered species, assist the recovery of the
56 endangered or threatened marine mammals, and prevent the
57 endangerment of other species of marine mammals; and other
58 similar programs intended to protect and enhance the recovery of
59 the manatee and other species of marine mammals.

60 (b) By December 1 each year, the Fish and Wildlife
61 Conservation Commission shall provide the President of the
62 Senate and the Speaker of the House of Representatives a written
63 report, enumerating the amounts and purposes for which all
64 proceeds in the Save the Manatee Trust Fund for the previous
65 fiscal year are expended, in a manner consistent with those
66 recovery tasks enumerated within the manatee recovery plan as
67 required by the Endangered Species Act.

68 (c) When the federal and state governments remove the
69 manatee from status as an endangered or threatened species, the
70 annual allocation may be reduced.

71 (d) Up to 10 percent of the annual use fee deposited in
72 the Save the Manatee Trust Fund from the sale of the manatee
73 license plate authorized in s. 320.08058 may be used to promote
74 and market the license plate issued by the Department of Highway
75 Safety and Motor Vehicles after June 30, 2007.

76 Section 3. Section 379.2434, Florida Statutes, is created
77 to read:

78 379.2434 Manatee speed zone effectiveness study; manatee

79 distribution and abundance survey and report.—

80 (1) The commission shall contract with an independent,
81 qualified party to conduct a study evaluating the effectiveness
82 of manatee speed zones including if, and to what extent, risks
83 to manatees are reduced by such zones. The commission shall
84 submit a report to the Governor, the President of the Senate,
85 and the Speaker of the House of Representatives by January 1,
86 2019, detailing the findings of the study.

87 (2) By July 1, 2018, the commission shall conduct a
88 statewide manatee distribution and abundance survey and report.

89 (a) The survey and report must achieve a scientifically
90 reliable population estimate.

91 (b) The commission may repeat, as necessary to determine
92 best practices, the statewide manatee distribution and abundance
93 survey and report until at least July 1, 2026.

94 (3) To provide additional funding for the speed zone
95 effectiveness study and the manatee distribution and abundance
96 surveys and reports, the Save the Manatee Trust Fund is exempted
97 until July 1, 2026, from the requirement to contribute a service
98 charge to the General Revenue Fund under s. 215.20. Funds
99 required to implement the study, surveys, and reports may be
100 appropriated from the Save the Manatee Trust Fund to the extent
101 that funding is not available from other sources.

102 Section 4. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1273 Manatees
SPONSOR(S): Ahern
TIED BILLS: **IDEN./SIM. BILLS:** SB 1506

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Moore, R.	Harrington
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Manatees are listed as an endangered species under the Endangered Species Act. Florida's Manatee Sanctuary Act (Act) declares the state to be a refuge and sanctuary for the manatee. The Act provides that the Florida Fish and Wildlife Conservation Commission (FWC) must adopt rules regulating the operation and speed of motorboat traffic where there are manatee sightings based upon best available scientific information and allows local governments to adopt ordinances regulating the same within its jurisdiction if approved by FWC. FWC has established manatee protection rules restricting the speed and operation of vessels where necessary to protect manatees from harassment and harmful collisions with vessels. FWC also conducts aerial distribution and synoptic surveys to acquire information on manatee distribution, abundance, and use of habitat. The Save the Manatee Trust Fund (STMTF) is administered by FWC and its funds are used for a yearly impartial scientific benchmark census of the manatee population in the state and programs to protect and enhance the recovery of the manatee and other species of marine mammals.

The bill:

- Requires FWC to contract with an independent, qualified party to conduct a study evaluating the effectiveness of manatee speed zones including if, and to what extent, risks to manatees are reduced by these zones and to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2019, detailing the findings of the study;
- Requires FWC to conduct a statewide manatee distribution and abundance survey and report by July 1, 2018, that achieves a scientifically reliable population estimate, and allows FWC to repeat the survey as necessary to determine best practices until at least July 1, 2026;
- Allows funds from the STMTF to be used for the manatee speed zone effectiveness study and statewide manatee distribution and abundance survey and report to the extent that funding is not available from other sources; and
- Exempts the STMTF from a service charge assessed against state trust funds until July 1, 2026.

The bill may have a negative fiscal impact on the state by exempting the STMTF from the requirement to contribute to the General Revenue Fund.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The West Indian manatee, *Trichechus manatus*, is a large aquatic mammal consisting of two subspecies: the Antillean manatee, *Trichechus manatus manatus*, and the Florida manatee, *Trichechus manatus latirostris*.¹ Manatees are protected under the Endangered Species Act (ESA) and the Marine Mammal Protection Act. Under the ESA, species are listed as either endangered² or threatened.³ Manatees are currently listed as an endangered species under the ESA.⁴ The ultimate goal of the ESA is to recover species so they no longer need protection.⁵

Manatees are found throughout the Caribbean, including the southeastern United States, eastern Mexico, eastern Central America, northeastern South America, and the Greater Antilles.⁶ The range wide population is estimated to be at least 13,000, with more than 6,500 in the southeastern United States and Puerto Rico. When aerial surveys began in 1991, there were an estimated 1,267 manatees in Florida.⁷ Today there are more than 6,000, representing a significant increase over the past 25 years.⁸ On January 8, 2016, the United States Fish and Wildlife Service proposed reclassifying the manatee from endangered to threatened.⁹

Florida's Endangered and Threatened Species Act

Florida's Endangered and Threatened Species Act (FETSA) recognizes that the state harbors a wide diversity of fish and wildlife and provides that it is the policy of the state to conserve and wisely manage these resources, with particular attention to species defined by the Fish and Wildlife Conservation Commission (FWC), the Department of Environmental Protection, or the United States Department of Interior, or successor agencies, as being endangered¹⁰ or threatened^{11, 12}. The FETSA also recognizes

¹ U.S. Fish & Wildlife Service Southeast Region West Indian Manatee, available at <http://www.fws.gov/southeast/wildlife/mammal/manatee/> (last visited Jan. 27, 2016).

² "Endangered" means a species is in danger of extinction throughout all or a significant portion of its range.; ESA Fact Sheet available at http://www.fws.gov/endangered/esa-library/pdf/ESA_basics.pdf.

³ "Threatened" means a species is likely to become endangered within the foreseeable future.; ESA Fact Sheet available at http://www.fws.gov/endangered/esa-library/pdf/ESA_basics.pdf.

⁴ U.S. Fish & Wildlife Service Southeast Region West Indian Manatee, available at <http://www.fws.gov/southeast/wildlife/mammal/manatee/> (last visited Jan. 27, 2016).

⁵ ESA Fact Sheet available at http://www.fws.gov/endangered/esa-library/pdf/ESA_basics.pdf.

⁶ U.S. Fish & Wildlife Service Southeast Region West Indian Manatee, available at <http://www.fws.gov/southeast/wildlife/mammal/manatee/> (last visited Jan. 27, 2016).

⁷ U.S. Fish & Wildlife Service Southeast Region West Indian Manatee, available at <http://www.fws.gov/southeast/wildlife/mammal/manatee/> (last visited Jan. 27, 2016); FWC's website available at <http://myfwc.com/research/manatee/research/population-monitoring/synoptic-surveys/> (last visited Jan. 27, 2016).

⁸ *Id.*

⁹ U.S. Fish & Wildlife Service Southeast Region West Indian Manatee, available at <http://www.fws.gov/southeast/wildlife/mammal/manatee/> (last visited Jan. 27, 2016).

¹⁰ Section 379.2291(3)(b), F.S., defines an "endangered species" as any species of fish and wildlife naturally occurring in Florida, whose prospects of survival are in jeopardy due to modification or loss of habitat; overutilization for commercial, sporting, scientific, or educational purposes; disease; predation; inadequacy of regulatory mechanisms; or other natural or manmade factors affecting its continued existence.

¹¹ Section 379.2291(3)(c), F.S., defines a "threatened species" as any species of fish and wildlife naturally occurring in Florida which may not be in immediate danger of extinction, but which exists in such small populations as to become endangered if it is subjected to increased stress as a result of further modification of its environment.

¹² Section 379.2291(1)-(2), F.S.

that Florida has more endangered and threatened species than any other continental state, and provides that it is the intent of the Legislature to provide for research and management to conserve and protect these species as a natural resource.¹³ The FETSA provides that FWC is responsible for research and management of freshwater, upland, and marine species.¹⁴

Manatee Protection

FWC must ensure that manatees receive the maximum protection possible.¹⁵ Recognizing that manatee protection depends upon consistently achieving a high degree of compliance with existing and future rules, FWC must:

- Conduct standardized studies to determine levels of compliance with manatee protection rules;
- Use the results of the studies, and other relevant information, to develop and implement law enforcement initiatives and boater education plans; and
- Identify impediments in consistently achieving high levels of compliance, and adjust enforcement and boater education efforts accordingly.¹⁶

Florida Manatee Sanctuary Act

Florida's Manatee Sanctuary Act (Act) declares the state to be a refuge and sanctuary for the manatee¹⁷ and provides that the protections extended to and authorized on behalf of the manatee are independent of, and are not contingent upon, its status as a state or federal listed species.¹⁸ The Act provides that:

- FWC may grant a special permit to possess a manatee for scientific or propagational purposes, which specifies the exact number to be maintained in captivity;¹⁹
- A person may not, at any time, by any means, or in any manner intentionally or negligently annoy, molest, harass, or disturb or attempt to molest, harass, or disturb any manatee; injure or harm or attempt to injure or harm any manatee; capture or collect or attempt to capture or collect any manatee; pursue, hunt, wound, or kill or attempt to pursue, hunt, wound, or kill any manatee; or possess, literally or constructively, any manatee or any part of any manatee.²⁰ Any gun, net, trap, spear, harpoon, boat of any kind, aircraft, automobile of any kind, other motorized vehicle, chemical, explosive, electrical equipment, scuba or other subaquatic gear, or other instrument, device, or apparatus of any kind or description used in annoying, harassing or disturbing a manatee may be forfeited upon conviction;²¹
- FWC may provide another permitting agency with comments regarding the expansion of existing, or the construction of new, marine facilities and mooring or docking slips, which propose to add or construct five or more powerboat slips;²²
- FWC must adopt rules regulating the operation and speed of motorboat traffic:
 - Only where manatee sightings are frequent and the best available scientific information supports the conclusions that manatees inhabit these areas on a *regular* basis in designated areas of the state;²³

¹³ Section 379.291(2), F.S.

¹⁴ Section 379.2291(4)(a), F.S.

¹⁵ Section 379.2432, F.S.

¹⁶ *Id.*

¹⁷ Section 15.038(1), F.S., designates the manatee as the state's marine mammal.

¹⁸ Section 379.2431(2)(b).

¹⁹ Section 379.2431(2)(c), F.S.

²⁰ Section 379.2431(2)(d), F.S.

²¹ Section 379.2431(2)(e), F.S.

²² Section 379.2431(2)(g), F.S.

²³ Section 379.2431(2)(g)-(i), F.S.

- All year within Turkey Creek and its tributaries and within Manatee Cove in Brevard County;²⁴
- Within an area of any new power plant or other source of warm water discharge that attracts a concentration of manatees, which designates a zone of sufficient size, and for a duration sufficient to protect the manatees;²⁵ and
- In port waters with due regard to the safety requirements of motorboat traffic and the navigational hazards related to the movement of commercial vessels;²⁶
- FWC may post and regulate boat speeds:
 - Only where the best available scientific information supports the conclusion that manatees inhabit areas on a *periodic* basis;²⁷ and
 - In designated limited lanes or corridors whenever the lanes and corridors are consistent with manatee protection;²⁸
- Local governments may regulate motorboat speed and operation on waters within its jurisdiction where the best scientific information supports the conclusion that manatees inhabit areas on a regular basis if approved by FWC;²⁹
- FWC may adopt rules to protect manatee habitat (e.g., seagrass beds) from destruction by boats or other human activity;³⁰ and
- FWC may adopt rules designating limited areas as a safe haven for manatees to rest, feed, reproduce, give birth, or nurse undisturbed by human activity.³¹

FWC, pursuant to the Act, has established manatee protection rules restricting the speed and operation of vessels where necessary to protect manatees from harassment and harmful collisions with vessels.³² Florida's counties with manatee protection zones, with some zones that vary by season, are:³³

- Brevard;³⁴
- Hillsborough;³⁵
- Citrus (includes parts of Levy and Hernando counties);³⁶
- Flagler;³⁷
- Hillsborough;³⁸
- Indian River;³⁹
- Lee;⁴⁰
- Miami-Dade;⁴¹
- Palm Beach;⁴²
- Pinellas-East;⁴³

²⁴ Section 379.2431(2)(l), F.S.

²⁵ Section 379.2431(2)(j), F.S.

²⁶ Section 379.2431(2)(m), F.S.

²⁷ Section 379.2431(2)(k) and (n), F.S.

²⁸ Section 379.2431(2)(k), F.S.

²⁹ Section 379.2431(2)(p), F.S.

³⁰ Section 379.2431(2)(n), F.S.

³¹ Section 379.2431(2)(o), F.S.

³² Chapter 68C-22, F.A.C.

³³ FWC Data and Maps, available at <http://myfwc.com/media/2944209/MPZStatewideMap.pdf>.

³⁴ Rule 68C-22.006, F.A.C.

³⁵ Rule 68C-22.010, F.A.C.

³⁶ Rule 68C-22.011, F.A.C.

³⁷ Rule 68C-22.028, F.A.C.

³⁸ Rule 68C-22.013, F.A.C.

³⁹ Rule 68C-22.007, F.A.C.

⁴⁰ Rule 68C-22.005, F.A.C.

⁴¹ Rule 68C-22.025, F.A.C.

⁴² Rule 68C-22.009, F.A.C.

⁴³ Rule 68C-22.016, F.A.C.

- Sarasota;⁴⁴
- St. Lucie;⁴⁵ and
- Volusia (includes parts of Lake, Marion, Putnam, and Seminole counties along the St. Johns River).⁴⁶

The following Florida counties have year round manatee protection zones:

- Charlotte (includes part of DeSoto County along the Peace River);⁴⁷
- Collier;⁴⁸
- Duval (includes parts of Clay and St. Johns County along the St. Johns River);⁴⁹
- Manatee;⁵⁰ and
- Martin.⁵¹

Manatee Distribution and Abundance Surveys

FWC conducts aerial surveys to acquire information on manatee distribution, abundance, and use of habitat.⁵² The two main types are distribution and synoptic surveys.

FWC's distribution surveys are designed to maximize manatee counts by concentrating on shallow nearshore waters, where manatees and their primary food source are located. These surveys are:

- Between four to six hours in length;
- Flown every two weeks over a two year period;
- Conducted at a height of 500 feet at a speed of 80 miles per hour; and
- Flown in paths parallel to the shoreline.⁵³

In urban areas or where waters are opaque, some surveys are made using helicopters. Surveys are also being conducted by the following research groups:

- Jacksonville University surveys Duval County;
- Kennedy Space Center surveys the upper Banana River;
- Dade County Department of Environmental Resource Management, Mote Marine Lab surveys Sarasota and Charlotte counties; and
- Chassahowitzka National Wildlife Refuge surveys the Crystal River and Big Bend areas.⁵⁴

All aerial data are recorded on maps and entered into the Fish and Wildlife Research Institute's Marine Resources Geographic Information System (MRGIS) for spatial analysis. Survey data in the MRGIS are used as a primary source of data for management planning and decisions. FWC's Atlas of Marine Resources CD-ROM includes 31 data sets of manatee aerial distribution survey sightings, detailed aerial flight paths, and related coverages of bathymetry, shorelines, seagrasses, county boundaries, and aids to navigation.⁵⁵

⁴⁴ Rule 68C-22.026, F.A.C.

⁴⁵ Rule 68C-22.008, F.A.C.

⁴⁶ Rule 68C-22.012, F.A.C.

⁴⁷ Rule 68C-22.015, F.A.C.

⁴⁸ Rule 68C-22.023, F.A.C.

⁴⁹ Rule 68C-22.027, F.A.C.

⁵⁰ Rule 68C-22.014, F.A.C.

⁵¹ Rule 68C-22.024, F.A.C.

⁵² FWC Manatee Aerial Surveys, available at <http://myfwc.com/research/manatee/research/population-monitoring/aerial-surveys/> (last visited Jan. 27, 2016).

⁵³ *Id.*

⁵⁴ FWC Manatee Aerial Surveys, available at <http://myfwc.com/research/manatee/research/population-monitoring/aerial-surveys/> (last visited Jan. 27, 2016).

⁵⁵ *Id.*

FWC also coordinates an interagency team to conduct synoptic surveys each winter. These aerial surveys are conducted after cold fronts pass through Florida and cover areas of known warm water sites (e.g., natural springs, power plants, and deep canals) where manatees congregate after temperatures drop. These counts are believed to be most accurate just after a cold front, because manatees move to the surface to warm in the sun, making them more visible. These surveys are useful in determining minimum estimates of manatee populations.⁵⁶ Results of synoptic surveys of Florida are as follows:⁵⁷

Year	Date	East	West	Total
1991	January 23-24	687	580	1,267
1991	February 17-18	828	650	1,478
1992	January 17-18	904	940	1,844
1995	January 21-22	669	787	1,456
1995	February 06-07	917	906	1,823
1996	January 09-10	1,223	1,054	2,277
1996	February 18-19	1,452	1,178	2,630
1997	January 19-20	906	1,335	2,241
1997	February 13	797	918	1,715
1998	January 29-30	1,110	908	2,018
1999	January 06	842	1,023	1,865
1999	February 23	900	1,123	2,023
1999	March 06	960	1,400	2,360
2000	January 16-17	634	1,012	1,646
2000	January 26-27	1,138	1,085	2,223
2001	January 05-06	1,559	1,741	3,300
2002	March 01	864	894	1,758
2003	January 09	1703	1140	2,843
2003	January 21-22	1813	1314	3,127
2003	January 26-28	1,705	1,311	3,016
2004	February 20	1,198	1,307	2,505
2005	January 26	1,594	1,549	3,143
2006	February 13-17	1,639	1,474	3,113
2007	January 30-February 1	1,414	1,403	2,817
2009	January 19-23	2,148	1,654	3,802
2010	January 12-15	2,780	2,297	5,077
2011	January 20 and 24	2,432	2,402	4,834
2014	January 24 and 27	2,315	2,509	4,824
2015	February 16, 20, 23	3,333	2,730	6,063

⁵⁶ *Id.*

⁵⁷ FWC's website available at <http://myfwc.com/research/manatee/research/population-monitoring/synoptic-surveys/> (last visited Jan. 27, 2016); Surveys were not conducted in 2012 or 2013, due to warmer than average weather.

Save the Manatee Trust Fund

The Save the Manatee Trust Fund (STMTF) is administered by FWC.⁵⁸ Funds credited to the trust fund include:

- Annual use fees for a manatee license plate;⁵⁹
- Annual vessel registration fees;⁶⁰
- Voluntary contributions associated with boat registration;⁶¹
- Purchases of stickers or emblems signifying support of the trust fund;⁶²
- Transfers from the Marine Resources Conservation Trust Fund;⁶³ and
- Donations received by FWC for deposit into the trust fund.⁶⁴

Each fiscal year funds from the STMTF are made available for:

- An impartial scientific benchmark census of the manatee population in the state.⁶⁵ Weather permitting, the study is conducted annually by FWC and the results made available to the President of the Senate, the Speaker of the House of Representatives, and the Governor and Cabinet for use in the evaluation and development of manatee protection measures;
- Activities of public and private organizations and those of the FWC intended to provide manatee and marine mammal protection and recovery effort;
- Manufacture and erection of informational and regulatory signs;
- Production, publication, and distribution of educational materials;
- Participation in manatee and marine mammal research programs, including carcass salvage and other programs;
- Programs intended to assist the recovery of the manatee as an endangered species, assist the recovery of the endangered or threatened marine mammals, and prevent the endangerment of other species of marine mammals; and
- Other similar programs intended to protect and enhance the recovery of the manatee and other species of marine mammals.⁶⁶

A balance in the trust fund at the end of any fiscal year must remain in the trust fund at the end of the year and be available for carrying out the purposes of the trust fund.⁶⁷ Trust funds, except those enumerated in s. 215.22, F.S.,⁶⁸ must contribute 8 percent from income of a revenue nature⁶⁹ to the General Revenue Fund.⁷⁰

⁵⁸ Section 379.213(1), F.S.

⁵⁹ Section 320.08058, F.S.

⁶⁰ Section 328.66, F.S.

⁶¹ Section 328.72, F.S.

⁶² Section 328.74, F.S.

⁶³ Section 328.76, F.S.

⁶⁴ Section 379.213(2), F.S.

⁶⁵ Section 379.2431(4)(a), F.S.

⁶⁶ Section 379.2431(4)(a), F.S.

⁶⁷ Section 379.213(3), F.S., provides notwithstanding the provisions of s. 216.301, F.S., regarding appropriations and undisbursed balances, and s. 216.351, F.S., regarding inconsistent laws.

⁶⁸ Section 215.22, F.S., provides for certain income and certain trust funds that are exempt from appropriations requirements to the General Revenue Fund.

⁶⁹ Section 215.20(1), F.S. provides that income of a revenue nature includes all earnings received or credited by trust funds, including the interest or benefit received from the investment of the principal of the trust fund.

⁷⁰ Section 215.20(1), F.S.

Effect of Proposed Changes

The bill creates s. 379.2434, F.S., providing for a manatee speed zone effectiveness study and a statewide manatee distribution and abundance survey and report. Specifically, the bill:

- Requires FWC to contract with an independent, qualified party to conduct a study evaluating the effectiveness of manatee speed zones including if, and to what extent, risks to manatees are reduced by these zones, and for FWC to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2019, detailing the findings of the study;
- Requires FWC to conduct a statewide manatee distribution and abundance survey and report by July 1, 2018, which achieves a scientifically reliable population estimate, and allows FWC to repeat the statewide manatee distribution and abundance survey and report until at least July 1, 2026, as necessary to determine best practices;
- Exempts the STMTF from the requirement to contribute to the General Revenue Fund⁷¹ until July 1, 2026, to provide additional funding for the speed zone effectiveness study and manatee distribution and abundance surveys and reports; and
- Provides that funds to implement the study, surveys, and reports may be appropriated from the STMTF to the extent that funding is not available from other sources.

The bill amends s. 379.2431, F.S., regarding the STMTF, to require that trust funds are made available for the manatee speed zone effectiveness study and manatee distribution and abundance survey and report. In addition, the bill amends s. 215.22, F.S., exempting the STMTF from contributing a service charge of eight percent to the General Revenue Fund until July 1, 2026.

B. SECTION DIRECTORY:

Section 1. Amends s. 215.22, F.S., regarding the Save the Manatee Trust Fund.

Section 2. Amends s. 379.2431, F.S., regarding marine animals.

Section 3. Creates s. 379.2434, F.S., regarding a manatee speed zone effectiveness study and a statewide manatee distribution and abundance report.

Section 4. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a negative fiscal impact on the state by exempting the STMTF from the service charge assessed against state trust funds.

⁷¹ Section 215.20, 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. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue 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

Not applicable.

By Senator Dean

5-00194A-16

20161300__

1 A bill to be entitled
2 An act relating to at-risk vessels; creating s.
3 327.4107, F.S.; prohibiting a vessel that is at risk
4 of becoming derelict from anchoring on, mooring on, or
5 occupying the waters of this state; authorizing an
6 officer of the Fish and Wildlife Conservation
7 Commission or of specified law enforcement agencies to
8 determine that a vessel is at risk of becoming
9 derelict if certain conditions exist; providing that a
10 person who anchors or moors such a vessel or allows it
11 to occupy waters of this state commits a noncriminal
12 infraction; providing penalties; providing
13 applicability; amending s. 327.70, F.S.; providing for
14 enforcement of such violations by citation mailed to
15 the owner of the vessel; amending s. 327.73, F.S.;
16 providing civil penalties for such violations;
17 providing an effective date.

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

20
21 Section 1. Section 327.4107, Florida Statutes, is created
22 to read:

23 327.4107 Vessels at risk of becoming derelict on waters of
24 this state.-

25 (1) To prevent vessels in neglected or deteriorating
26 condition from reaching a likely and foreseeable state of
27 disrepair, a vessel that is at risk of becoming derelict
28 pursuant to subsection (2) may not anchor on, moor on, or occupy
29 the waters of this state.

30 (2) An officer of the commission or of a law enforcement
31 agency specified in s. 327.70 may determine that a vessel is at
32 risk of becoming derelict if any of the following conditions

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33 exist:

34 (a) The vessel is taking on, or has taken on, water without
35 an effective means to dewater.

36 (b) Spaces on the vessel which are designed to be enclosed
37 are incapable of being sealed off or remain open to the elements
38 for extended periods of time.

39 (c) The vessel has broken loose or is in danger of breaking
40 loose from its anchor.

41 (d) The vessel is left or stored aground unattended in such
42 a state that would prevent the vessel from getting underway, is
43 listing due to water intrusion, or is sunken or partially
44 sunken.

45 (3) A person who anchors or moors a vessel at risk of
46 becoming derelict on the waters of this state or allows such a
47 vessel to occupy such waters commits a noncriminal infraction,
48 punishable as provided in s. 327.73.

49 (4) The penalty under this section is in addition to other
50 penalties provided by law.

51 (5) This section does not apply to a vessel that is moored
52 to a private dock or wet slip with the consent of the owner for
53 the purpose of receiving repairs.

54 Section 2. Paragraph (a) of subsection (2) of section
55 327.70, Florida Statutes, is amended to read:

56 327.70 Enforcement of this chapter and chapter 328.—

57 (2) (a) Noncriminal violations of the following statutes may
58 be enforced by a uniform boating citation mailed to the
59 registered owner of an unattended vessel anchored, aground, or
60 moored on the waters of this state:

61 1. Section 327.33(3)(b), relating to navigation rules.

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62 2. Section 327.4107, relating to vessels at risk of
63 becoming derelict.

64 ~~3.2.~~ Section 327.44, relating to interference with
65 navigation.

66 ~~4.3.~~ Section 327.50(2), relating to required lights and
67 shapes.

68 ~~5.4.~~ Section 327.53, relating to marine sanitation.

69 ~~6.5.~~ Section 328.48(5), relating to display of decal.

70 ~~7.6.~~ Section 328.52(2), relating to display of number.

71 Section 3. Paragraph (y) is added to subsection (1) of
72 section 327.73, Florida Statutes, to read:

73 327.73 Noncriminal infractions.—

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

76 (y) Section 327.4107, relating to vessels at risk of
77 becoming derelict on waters of this state, for which the civil
78 penalty is:

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

80 2. For a second offense occurring 30 days or more after a
81 first offense, \$100.

82 3. For a third or subsequent offense occurring 30 days or
83 more after a previous offense, \$250.

84
85 Any person cited for a violation of any provision of this
86 subsection shall be deemed to be charged with a noncriminal
87 infraction, shall be cited for such an infraction, and shall be
88 cited to appear before the county court. The civil penalty for
89 any such infraction is \$50, except as otherwise provided in this
90 section. Any person who fails to appear or otherwise properly

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91 respond to a uniform boating citation shall, in addition to the
92 charge relating to the violation of the boating laws of this
93 state, be charged with the offense of failing to respond to such
94 citation and, upon conviction, be guilty of a misdemeanor of the
95 second degree, punishable as provided in s. 775.082 or s.
96 775.083. A written warning to this effect shall be provided at
97 the time such uniform boating citation is issued.

98 Section 4. This act shall take effect July 1, 2016.

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 Environmental Preservation and Conservation

BILL: SB 1300

INTRODUCER: Senator Dean

SUBJECT: At-risk Vessels

DATE: January 25, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Rogers	EP	Favorable
2.	_____	_____	AGG	_____
3.	_____	_____	FP	_____

I. Summary:

SB 1300 addresses vessels that may become derelict. The bill:

- Makes it unlawful for a vessel owner to anchor on, moor on, or occupy the waters of the state when that vessel is at risk of becoming derelict;
- Provides conditions under which a vessel may be considered at risk of becoming derelict;
- Provides civil penalties for vessel owners whose vessels are determined to be at risk of becoming derelict;
- Provides an exemption for vessels that are moored to a private dock or wet slip with the consent of the owner for the purpose of being repaired; and
- Provides that violations may be enforced by a uniform boating citation mailed to the registered owner of the vessel.

II. Present Situation:

Derelict Vessels

Derelict vessels are vessels¹ that are left, stored, or abandoned:

- In a wrecked, junked, or substantially dismantled condition upon any public waters of this state;
- At a port in this state without the consent of the agency having jurisdiction thereof; or
- Docked, grounded, or beached upon the property of another without the consent of the owner of the property.²

¹ Section 327.02, F.S., defines vessel as synonymous with boat as referenced in FLA. CONST. art. VII, s.1(b) (1968), and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water. FLA. CONST. art. VII, s.1(b) (1968) provides, “motor vehicles, boats, airplanes, trailers, trailer coaches and mobile homes, as defined by law, shall be subject to a license tax for their operation in the amounts and for the purposes prescribed by law, but shall not be subject to ad valorem taxes.”

² Section 823.11(1)(b), F.S.

Removal of Derelict Vessels

Section 327.70, F.S., provides that enforcement of chs. 327 and 328, F.S., which concern vessel safety and vessel title certificates, liens, and registration, may be enforced by the Division of Law Enforcement of Florida Fish and Wildlife Conservation Commission (FWC) and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officer as defined in s. 943.10, F.S.³ Section 327.44, F.S., provides authorization for the relocation or removal of a vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel. Additionally, s. 823.11, F.S., provides authorization for the relocation or removal of 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.

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 those costs are paid.⁴

Punishment for Violations of Derelict Vessel Provisions

It is unlawful to store, leave, or abandon a derelict vessel in Florida.⁵ Those who are found in violation of this provision commit a first degree misdemeanor, punishable by a term of imprisonment of no more than one year⁶ and a fine of up to \$1,000.⁷ Additionally, s. 376.16, F.S., provides that violations of certain provisions, including violations of derelict vessel laws, may be punishable by a civil penalty of up to \$50,000 per violation per day.⁸ Each day during any portion of which the violation occurs constitutes a separate offense.⁹

Fines and fees assessed for noncriminal infractions under s. 327.73, F.S., such as operation of an unregistered or unnumbered vessel, careless operation, and violations of navigation rules are deposited into the Marine Resources Conservation Trust Fund for boating safety education purposes.¹⁰ If a person fails to appear or otherwise properly respond to a uniform boating citation, that person will also be charged with the offense of failing to respond to the citation and,

³ Section 943.10, 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.

⁴ Section 705.103(4), F.S.

⁵ Section 823.11(2), F.S.

⁶ Section 775.082(4)(a), F.S.

⁷ Section 775.083(1)(d), F.S.

⁸ Section 376.16(1), F.S.

⁹ *Id.*

¹⁰ Section 327.73(8), F.S.

upon conviction, be found guilty of a second degree misdemeanor,¹¹ punishable by a term of imprisonment of no more than 60 days¹² and a fine of no more than \$500.¹³

Costs of Removal of Derelict Vessels

There are no provisions in law permitting the removal of a vessel that may become derelict. According to the FWC, costs for removal of vessels that do become derelict are approximately \$350 to \$450 per foot of vessel length.¹⁴ However, a floating vessel may be towed to a boat ramp or hoist and pulled from the water at a much lower cost. Relocation may cost nothing if a law enforcement officer is able to tow it to a suitable location.¹⁵ Costs for professional towing services are approximately \$200 per hour.¹⁶

FWC maintains a statewide database of vessels investigated by a law enforcement officer and deemed to be either derelict or at risk of becoming derelict, although the database related to at-risk vessels is largely incomplete due to the fact that the current effort related to at-risk vessels is a voluntary community-oriented policing effort.¹⁷ FWC estimates that 166 derelict vessels were removed in 2014 by local governments. Approximately \$665,500 was spent by local governments on the removal of those vessels, which is an average removal cost of \$4,006 per vessel.¹⁸

Due to the problem of derelict vessels, including the costs of removing derelict vessels, the FWC held six public meetings in 2015 to engage the public on various solutions. Boat owners, boating organizations, marine industries, and local governments participated in the meetings. Participants were asked to respond to a survey to indicate their levels of support for eight concepts addressing derelict vessels. The concept of prohibiting vessels deemed “at risk” of becoming derelict received the most support from those surveyed, with 85.2 percent of survey respondents indicating they either “support” or “highly support” the concept.¹⁹

Local Government Authority

Local governments are only authorized to enact and enforce regulations regarding the mooring or anchoring of vessels that are located within marked boundaries of a mooring field.²⁰ The inability to regulate vessels outside of mooring fields has led to problems that include:

- The locations where anchored vessels accumulate;
- Unattended vessels;
- Anchored vessels which are dragging anchor or not showing proper lighting;
- Vessels which are not maintained properly; and

¹¹ Section 327.73(1), F.S.

¹² Section 775.082(4)(b), F.S.

¹³ Section 775.083(1)(e), F.S.

¹⁴ FWC, *House Bill 7025 Agency Analysis* (Jan. 6, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).

¹⁵ *Id.* Immediate removal of a derelict vessel was a concept that received support among eight proposals for dealing with the problem of derelict vessels.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Section 327.60, F.S.

- Vessels which become derelict.²¹

III. Effect of Proposed Changes:

Section 1 creates s. 327.4107, F.S., to provide that vessels at risk of becoming derelict may not anchor on, moor on, or occupy the waters of the state.

The bill provides that an officer of the FWC or of any other law enforcement agency specified in s. 327.70, F.S., may determine that 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 which 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; and
- The vessel is left or stored aground unattended in such a state that would prevent the vessel from getting underway, is listing due to water intrusion, or is sunken or partially sunken.

The bill provides that a person who anchors or moors a vessel at risk of becoming derelict on the waters of this state or allows such a vessel to occupy such waters commits a noncriminal infraction, punishable by a civil penalty as provided in s. 327.73, F.S., which is added in section 3 of the bill.

The civil penalties are in addition to any other penalties provided for in law.

The bill provides an exemption for vessels that are moored to a private dock or wet slip with the consent of the owner for the purpose of being repaired.

Section 2 amends s. 327.70, F.S., to provide that violations of s. 327.4107, F.S., may be enforced by a uniform boating citation mailed to the registered owner of the vessel.

Section 3 amends s. 327.73, F.S., to provide the following civil penalties for violations of s. 327.4107, F.S. The civil penalties are:

- For a first offense: \$50;
- For a second offense occurring 30 days or more after a first offense: \$100; and
- For a third or subsequent offense occurring 30 days or more after a previous offense: \$250.

The civil penalties are remitted by the clerk of court to the Department of Revenue and deposited into the Marine Resources Conservation Trust fund for boating and education purposes.²²

Section 4 of the bill provides an effective date of July 1, 2016.

²¹ FWC, *Anchoring and Mooring Pilot Program: Report of Findings and Recommendations* (Dec. 31, 2013), pg. 3, available at <http://myfwc.com/media/2704721/FindingsRecommendations.pdf> (last visited Jan. 21, 2016).

²² Section 327.73(8), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There could be a negative but indeterminate effect on boat owners due to new penalties imposed on vessel owners whose vessels are found to be in danger of becoming derelict. FWC provides that the effects are not anticipated to be significant.²³

C. Government Sector Impact:

There could be a positive but indeterminate impact on local and state governments if individuals repair or move their vessels rather than allow them to become derelict.

There could be a positive but indeterminate impact from penalties imposed for violations of the provisions of the bill. The FWC provides that the effects are not anticipated to be significant.²⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 327.70 and 327.73.

²³ FWC, *House Bill 7025 Agency Analysis* (Jan. 6, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).

²⁴ *Id.*

This bill creates the following section of the Florida Statutes: 327.4107.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

1 A bill to be entitled
 2 An act relating to at-risk vessels; creating s.
 3 327.4107, F.S.; prohibiting a vessel that is at risk
 4 of becoming derelict from anchoring on, mooring on, or
 5 occupying the waters of this state; authorizing an
 6 officer of the Fish and Wildlife Conservation
 7 Commission or of specified law enforcement agencies to
 8 determine that a vessel is at risk of becoming
 9 derelict if certain conditions exist; providing that a
 10 person who anchors or moors or allows such a vessel to
 11 occupy waters of this state commits a noncriminal
 12 violation; providing penalties; providing
 13 applicability; amending s. 327.70, F.S.; providing for
 14 enforcement of such violations by citation mailed to
 15 the owner of the vessel; amending s. 327.73, F.S.;
 16 providing civil penalties for such violations;
 17 providing an effective date.

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

20
 21 Section 1. Section 327.4107, Florida Statutes, is created
 22 to read:

23 327.4107 Vessels at risk of becoming derelict on waters of
 24 this state.-

25 (1) To prevent vessels in neglected or deteriorating
 26 condition from reaching a likely and foreseeable state of

27 disrepair, a vessel that is at risk of becoming derelict
 28 pursuant to subsection (2) may not anchor on, moor on, or occupy
 29 the waters of this state.

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

34 (a) The vessel is taking on or has taken on water without
 35 an effective means to dewater.

36 (b) Spaces on the vessel that are designed to be enclosed
 37 are incapable of being sealed off or remain open to the elements
 38 for extended periods of time.

39 (c) The vessel has broken loose or is in danger of
 40 breaking loose from its anchor.

41 (d) The vessel is left or stored aground unattended in
 42 such a state that would prevent the vessel from getting
 43 underway, is listing due to water intrusion, or is sunk or
 44 partially sunk.

45 (3) A person who anchors or moors a vessel at risk of
 46 becoming derelict on the waters of this state or allows such a
 47 vessel to occupy such waters commits a noncriminal infraction,
 48 punishable as provided in s. 327.73.

49 (4) The penalty under this section is in addition to other
 50 penalties provided by law.

51 (5) This section does not apply to a vessel that is moored
 52 to a private dock or wet slip with the consent of the owner for

53 the purpose of receiving repairs.

54 Section 2. Paragraph (a) of subsection (2) of section
55 327.70, Florida Statutes, is amended to read:

56 327.70 Enforcement of this chapter and chapter 328.—

57 (2) (a) Noncriminal violations of the following statutes
58 may be enforced by a uniform boating citation mailed to the
59 registered owner of an unattended vessel anchored, aground, or
60 moored on the waters of this state:

61 1. Section 327.33(3) (b), relating to navigation rules.

62 2. Section 327.44, relating to interference with
63 navigation.

64 3. Section 327.50(2), relating to required lights and
65 shapes.

66 4. Section 327.53, relating to marine sanitation.

67 5. Section 328.48(5), relating to display of decal.

68 6. Section 328.52(2), relating to display of number.

69 7. Section 327.4107, relating to vessels at risk of
70 becoming derelict.

71 Section 3. Paragraph (y) is added to subsection (1) of
72 section 327.73, Florida Statutes, to read:

73 327.73 Noncriminal infractions.—

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

76 (y) Section 327.4107, relating to vessels at risk of
77 becoming derelict on waters of this state, for which the civil
78 penalty is:

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- 79 1. For a first offense, \$50.
- 80 2. For a second offense occurring 30 days or more after a
81 first offense, \$100.
- 82 3. For a third or subsequent offense occurring 30 days or
83 more after a previous offense, \$250.

84

85 Any person cited for a violation of any provision of this
86 subsection shall be deemed to be charged with a noncriminal
87 infraction, shall be cited for such an infraction, and shall be
88 cited to appear before the county court. The civil penalty for
89 any such infraction is \$50, except as otherwise provided in this
90 section. Any person who fails to appear or otherwise properly
91 respond to a uniform boating citation shall, in addition to the
92 charge relating to the violation of the boating laws of this
93 state, be charged with the offense of failing to respond to such
94 citation and, upon conviction, be guilty of a misdemeanor of the
95 second degree, punishable as provided in s. 775.082 or s.
96 775.083. A written warning to this effect shall be provided at
97 the time such uniform boating citation is issued.

98 Section 4. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7025 PCB HWSS 16-01 At-risk Vessels
SPONSOR(S): Highway & Waterway Safety Subcommittee, Raschein
TIED BILLS: **IDEN./SIM. BILLS:** SB 1300

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Highway & Waterway Safety Subcommittee	10 Y, 0 N	Whittaker	Smith
1) Agriculture & Natural Resources Appropriations Subcommittee	12 Y, 0 N	Massengale	Massengale
2) Economic Affairs Committee	14 Y, 0 N	Whittaker	Pitts

SUMMARY ANALYSIS

Under current law, the Fish and Wildlife Conservation Commission (FWCC) does not have the authority to require vessel owners to maintain their vessels or otherwise regulate the condition of vessels that occupy the waters of the state, unless the vessel is a hazard to navigation, discharges contaminants, is derelict (wrecked, junked, or substantially dismantled), or is in violation of other vessel safety laws. Additionally, a vessel owner has no duty to maintain their vessel, and can allow a vessel occupying waters of the state to deteriorate until it reaches a derelict condition. Once a vessel is deemed derelict FWCC can remove or relocate the vessel, but it can become much more difficult and expensive once a vessel has deteriorated to the point that it meets the definition of a derelict vessel.

The bill provides the following regulations for vessels that are at risk of becoming derelict on the waters of this state:

- Prohibits a vessel that is at risk of becoming derelict to anchor on, moor on, or occupy the waters of this state.
- Authorizes an officer of the FWCC or law enforcement agency to determine that a vessel is at risk of becoming a derelict vessel 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, is listing due to water intrusion, or is sunk or partially sunk.
- Provides that a person who anchors or moors a vessel that is at risk of becoming derelict on the waters of this state or allows such a vessel to occupy the waters of this state commits a noncriminal infraction in which civil penalties may be assessed.
- Provides that a civil penalty for a violation of a vessel that is at risk of becoming derelict is in addition to other penalties provided by law.
- Provides that the bill would not apply to a vessel that is moored to a private dock or wet slip with the consent of the owner for the purpose of receiving repairs.
- Provides that a uniform boating citation may be mailed to the registered owner of an unattended vessel that is at risk of becoming derelict, which is anchored, aground, or moored on the waters of this state.
- Provides the following civil penalties for a violation of vessel laws relating to a vessel that is at risk of becoming derelict on waters of this state:
 - For a first offense, \$50;
 - For a second offense occurring 30 days or more after a first offense, \$100;
 - For a third or subsequent offense occurring 30 days or more after a previous offense, \$250.

The bill may have an indeterminate positive fiscal impact on state and local government revenues by establishing a new noncriminal infraction relating to vessels at risk of becoming derelict on waters of this state, and may have a negative impact on the private sector resulting from the assessment of these new civil penalties.

FULL ANALYSIS

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7025c.EAC

DATE: 1/28/2016

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present situation

Background

Current law does not limit the length of time that a properly maintained vessel¹ may occupy waters of this state.² Current law also does not authorize the Fish and Wildlife Conservation Commission (FWCC) to require vessel owners to maintain their vessels or otherwise regulate the condition of vessels that occupy the waters of the state, unless the vessel is a hazard to navigation, discharges contaminants, is derelict (wrecked, junked, or substantially dismantled), or is in violation of other vessel safety laws. Additionally, a vessel owner has no duty to maintain their vessel, and can allow a vessel occupying waters of the state to deteriorate until it reaches a wrecked, junked, or substantially dismantled condition. Once a vessel is deemed derelict FWCC can remove or relocate the vessel, but it can become much more difficult and expensive once a vessel has deteriorated to the point that it meets the definition of a derelict vessel.

Local governments are authorized to enact and enforce regulations regarding the mooring or anchoring of vessels that are located within marked boundaries of a mooring field³ within their jurisdiction.⁴ However, local governments are prohibited from regulating the anchoring of vessels, other than live-aboard vessels,⁵ that are located outside of mooring fields.⁶

The unregulated anchoring and mooring of vessels outside of mooring fields has created issues regarding:

- Vessels being left unattended or unsupervised;
- Vessels that have broken free or are in danger of breaking free; and
- Vessels that are not properly maintained, are listing, or taking on water, but are not to the point of deterioration that they can be deemed derelict.⁷

Derelict Vessels

A derelict vessel is defined in s. 823.11(1)(b), F.S., as 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 this state without the consent of the agency having jurisdiction thereof.
- Docked, grounded, or beached upon the property of another without the consent of the property owner.

¹ A “vessel” is defined in s. 327.02(43), F.S., to be synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

² “Waters of this state” is defined in s. 327.02(44), F.S., to mean any navigable waters of the United States within the territorial limits of this state, the marginal sea adjacent to this state and the high seas when navigated as a part of a journey or ride to or from the shore of this state, and all the inland lakes, rivers, and canals under the jurisdiction of this state.

³ Mooring fields are permitted by the FWCC, under ch. 327, F.S. A mooring field is an area of waters of this state set aside for the mooring of vessels to mooring buoys. The area must have delineated boundaries that are marked with uniform waterway markers as provided in s. 327.40, F.S., and must have mooring buoys installed in a planned array, taking into consideration the following factors: vessel lengths and swing radii; vessel drafts and available water depths; vessel sizes, weights, and wind-loading characteristics; buoy sizes and types; anchor sizes and types; and holding characteristics of the bottom. *See Anchoring and Mooring Pilot Program Questionnaire* (Oct. 14, 2009), available at http://myfwc.com/media/106689/Boat_Anchoring_FieldQuestions.pdf. (Last visited November 10, 2015)

⁴ Section 327.60(3), F.S.

⁵ A “live-aboard vessel” is defined in s. 327.02(19), F.S., as a vessel that is used solely as a residence and not for navigation, represented as a place of business or a professional or other commercial enterprise, or for which a declaration of domicile has been filed pursuant to s. 222.17, F.S. A commercial fishing boat is expressly excluded from the term “live-aboard vessel.”

⁶ Section 327.60(3), F.S.

⁷ *Anchoring and Mooring Pilot Program Report of Findings and Recommendations*, available at <http://myfwc.com/media/2704721/FindingsRecommendations.pdf>. (Last visited November 10, 2015); FWCC 2015 Agency Bill Analysis for SB 1548, on file with staff.

It is unlawful for a person, firm, or corporation to store, leave, or abandon any derelict vessel in this state.⁸ The FWCC, officers of the FWCC, and any law enforcement agency or officer specified in s. 327.70, F.S.,⁹ are authorized and empowered to relocate, remove, or cause to be relocated or removed 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.¹⁰ Additionally, the FWCC and other officers acting under s. 823.11(3), F.S., are held harmless for all damages to the derelict vessel resulting from the relocation or removal unless the damage results from gross negligence or willful misconduct.¹¹ All costs, including costs owed to a third party, incurred by the FWCC or other law enforcement agency in the relocation or removal of a derelict vessel are recoverable against the vessel owner.¹² A person who neglects or refuses to pay such costs may not be issued a certificate of registration for such vessel or for any other vessel or motor vehicle until such costs have been paid.¹³

Additionally, a person, firm, or corporation violating s. 823.11, F.S., commits a first degree misdemeanor.¹⁴ Further, a conviction under s. 823.11, F.S., does not bar the assessment and collection of civil penalties provided in s. 376.16, F.S.¹⁵

The removal of a derelict vessel costs an average of \$350 to \$450 per foot of vessel length.¹⁶ However, there are many variables that affect the costs of removing a vessel.¹⁷ Sunken vessels require professional divers and specialized equipment, resulting in costs in excess of the average.¹⁸ On the other hand, a floating vessel may be towed to a boat ramp or hoist and pulled from the water at much lower cost.¹⁹ Relocation may have no cost if a law enforcement officer is able to tow the vessel to a suitable location.²⁰ If professional towing services are called upon, costs in the neighborhood of \$200 per hour with a one-hour minimum, beginning from the time the tow boat leaves the dock to the time it returns, are standard.²¹ According to the At-Risk Vessel Statewide Database, a known total of 92 derelict vessels were removed in 2013 by local governments.²² Those local governments spent approximately \$325,000 on the removal of derelict vessels, resulting in an average of \$3,533 per vessel.²³

Navigational Hazard

Section 327.44, F.S., authorizes law enforcement officials to relocate, remove, or cause to be relocated or removed any vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel. A violation of s. 327.44, F.S., is a noncriminal infraction, punishable by a

⁸ Section 823.11(2), F.S.

⁹ Section 327.70, F.S., identifies the Division of Law Enforcement of the FWCC and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officer as defined in s. 943.10, F.S.; Section 943.10(1), F.S., defines a “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. This definition 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.

¹⁰ Section 823.11(3), F.S.

¹¹ Id.

¹² Section 823.11(3)(b), F.S.

¹³ Sections 823.11(3)(b) and 705.103(4), F.S.

¹⁴ Section 823.11(5), F.S.; A first degree misdemeanor is punishable by a term of imprisonment not to exceed one year pursuant to s. 775.082(4)(a), F.S., and may be fined \$1,000 pursuant to s. 775.083(1)(d), F.S.

¹⁵ Section 376.16, F.S., provides penalties for discharges of pollutants, such as gasoline or diesel.

¹⁶ FWCC 2014 Agency Bill Analysis for HB 1363, on file with staff.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² Id.

²³ Id.

civil penalty of \$50.²⁴ If the vessel is unattended, a uniform boating citation may be mailed to the registered owner of the vessel.²⁵

Noncriminal Infractions for Violations of Vessel Laws

Section 327.73(1), F.S., provides that a person who violates certain vessel laws of the state commits a noncriminal infraction, will be cited for the infraction, and be cited to appear before the county court. The civil penalty for any such infraction is \$50, except as otherwise provided in the section. A person who fails to appear or otherwise properly respond to a uniform boating citation shall, in addition to the charge relating to the violation of the vessel laws of this state, be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S.²⁶ or s. 775.083, F.S.²⁷ A written warning to this effect will be provided at the time such uniform boating citation is issued.

Effect of proposed changes

The bill creates s. 327.4107, F.S., regarding vessels at risk of becoming derelict on the waters of this state, as follows:

- Provides that a vessel that is at risk of becoming derelict may not anchor on, moor on, or occupy the waters of this state.
- Authorizes an officer of the FWCC or law enforcement agency to determine that a vessel is at risk of becoming a derelict vessel 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, is listing due to water intrusion, or is sunk or partially sunk.
- Provides that a person who anchors or moors a vessel at risk of becoming derelict on the waters of this state or allows such a vessel to occupy waters of this state commits a noncriminal infraction for which civil penalties may be assessed.
- Provides that a civil penalty for a violation of a vessel at risk of becoming derelict is in addition to other penalties provided by law.
- Provides that the bill would not apply to a vessel that is moored to a private dock or wet slip with the consent of the owner for the purpose of receiving repairs.

The bill amends s. 327.70, F.S., regarding enforcement, to provide that a uniform boating citation may be mailed to the registered owner of an unattended vessel that is anchored, aground, or moored on the waters of this state that is at risk of becoming derelict.

The bill amends s. 327.73, F.S., regarding noncriminal infractions, to provide for the following graduated civil penalties for vessels at risk of becoming derelict, which anchor on, moor on, or occupy the waters of this state:

- For a first offense, \$50;
- For a second offense occurring 30 days or more after a first offense, \$100;
- For a third or subsequent offense occurring 30 days or more after a previous offense, \$250.

B. SECTION DIRECTORY:

Section 1 Creates s. 327.4107, F.S., relating to vessels at risk of becoming derelict on the waters of this state.

²⁴ Section 327.73(1)(j), F.S.

²⁵ Section 327.70(2)(a)2., F.S.

²⁶ Section 775.082, F.S., provides that a second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days.

²⁷ Section 775.083, F.S. provides that a second degree misdemeanor is punishable by a fine not to exceed \$500.

- Section 2** Amends s. 327.70, F.S., providing for a uniform boating citation to be issued for a violation relating to vessels at risk of becoming derelict on the waters of this state.
- Section 3** Amends s. 327.73, F.S., providing for tiered civil penalties for a violation relating to vessels at risk of becoming derelict on the waters of this state.
- Section 4** Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
See Fiscal Comments below
2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
See Fiscal Comments below.
2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a potentially negative impact on persons who are subject to the civil penalties created by this bill.

D. FISCAL COMMENTS:

The bill appears to have an indeterminate positive fiscal impact on state and local government revenues by establishing a new noncriminal infraction relating to vessels at risk of becoming derelict on the waters of this state.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:
The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.
2. Other:
None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.