

<b>Tab 1 CS/SB 1086 by EN, Hutson; (Similar to CS/CS/H 00639) Operation and Safety of Motor Vehicles and Vessels</b>						
434550	D	S	RCS	AEG, Hutson	Delete everything after	04/08 05:28 PM
479594	AA	S	WD	AEG, Hutson	Delete L.729 - 732:	04/08 04:26 PM
817788	AA	S	RCS	AEG, Hutson	Delete L.729 - 732:	04/08 05:28 PM

<b>Tab 2 CS/SB 1152 by GO, Brandes; (Similar to H 01203) Fleet Management</b>						
598084	A	S	RCS	AEG, Brandes	Delete L.72:	04/08 04:27 PM

<b>Tab 3 CS/SB 1574 by BI, Brandes; Citizens Property Insurance Corporation</b>						
133436	A	S	RS	AEG, Brandes	Delete L.370 - 977:	04/08 04:39 PM
610716	SA	S	RCS	AEG, Brandes	Delete L.370 - 977:	04/08 04:39 PM

<b>Tab 4 SB 1482 by Garcia (CO-INTRODUCERS) Pizzo; (Similar to CS/H 01177) Biscayne Bay</b>						
492814	D	S	RCS	AEG, Garcia	Delete everything after	04/08 05:32 PM

<b>Tab 5 CS/SB 1522 by EN, Stewart; (Similar to H 01225) Implementation of the Recommendations of the Blue-Green Algae Task Force</b>						
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<b>Tab 6 CS/SB 1900 by GO, Boyd; (Similar to CS/CS/H 01297) Cybersecurity</b>						
930416	A	S	RCS	AEG, Boyd	Delete L.557 - 589:	04/08 05:32 PM

<b>Tab 7 SB 1480 by Brodeur (CO-INTRODUCERS) Rodriguez; (Identical to H 01173) Land Acquisition Trust Fund</b>						
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<b>Tab 8 CS/SB 1616 by GO, Brodeur; (Similar to CS/CS/H 01079) Agency Contracts for Commodities and Contractual Services</b>						
859634	A	S	RCS	AEG, Brodeur	Delete L.135 - 143:	04/08 05:33 PM
215548	A	S	RS	AEG, Brodeur	Delete L.183 - 364:	04/08 05:33 PM
334084	SA	S	RCS	AEG, Brodeur	Delete L.183 - 383:	04/08 05:33 PM
880594	A	S	WD	AEG, Brodeur	Delete L.363 - 383:	04/08 02:28 PM

<b>Tab 9 SB 7060 by EN; (Similar to H 01309) Biosolids</b>						
925996	A	S	RCS	AEG, Brodeur	Delete L.57 - 63.	04/08 05:33 PM

<b>Tab 10 CS/SB 406 by EN, Rodrigues; (Similar to CS/CS/H 00209) Big Cypress Basin</b>						
343560	A	S	RCS	AEG, Rodrigues	Delete L.30 - 117:	04/08 05:33 PM
459842	AA	S	RCS	AEG, Rodrigues	Delete L.51 - 53:	04/08 05:33 PM

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**APPROPRIATIONS SUBCOMMITTEE ON AGRICULTURE,  
ENVIRONMENT, AND GENERAL GOVERNMENT**

**Senator Albritton, Chair**  
**Senator Rodrigues, Vice Chair**

**MEETING DATE:** Thursday, April 8, 2021  
**TIME:** 11:30 a.m.—1:30 p.m.  
**PLACE:** Toni Jennings Committee Room, 110 Senate Building

**MEMBERS:** Senator Albritton, Chair; Senator Rodrigues, Vice Chair; Senators Ausley, Berman, Boyd, Bradley, Brodeur, Garcia, Mayfield, Stewart, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A1 AT THE DONALD L. TUCKER CIVIC CENTER, 505 W PENSACOLA STREET, TALLAHASSEE, FL 32301			
1	<b>CS/SB 1086</b> Environment and Natural Resources / Hutson (Similar CS/CS/H 639, Compare CS/CS/H 1515, CS/CS/S 1946)	Operation and Safety of Motor Vehicles and Vessels; Revising conditions under which a person's driving privilege is suspended and under which the person commits a misdemeanor relating to tests for alcohol, chemical substances, or controlled substances; providing circumstances under which a person may operate a human-powered vessel within the boundaries of the marked channel of the Florida Intracoastal Waterway; designating Monroe County as an anchoring limitation area subject to certain requirements; authorizing a county or municipality to establish a boating-restricted area within and around a public mooring field and within certain portions of the Florida Intracoastal Waterway, etc.  EN 03/15/2021 Fav/CS AEG 04/08/2021 Fav/CS AP	Fav/CS Yeas 11 Nays 0
2	<b>CS/SB 1152</b> Governmental Oversight and Accountability / Brandes (Similar H 1203)	Fleet Management; Requiring the Department of Management Services to prepare an inventory of state-owned motor vehicles, maintenance facilities, and fuel depots; requiring the department to submit the inventory to the Governor and the Legislature by a specified date; requiring state agencies and state universities to provide certain information requested by the department; requiring the department to create, administer, and maintain a centralized management system for the motor vehicle fleet, maintenance facilities, and fuel depots; requiring the department to contract with a vendor or contractor for a specified purpose, etc.  GO 03/17/2021 Fav/CS AEG 04/08/2021 Fav/CS AP	Fav/CS Yeas 11 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Appropriations Subcommittee on Agriculture, Environment, and General Government  
Thursday, April 8, 2021, 11:30 a.m.—1:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	<b>CS/SB 1574</b> Banking and Insurance / Brandes	Citizens Property Insurance Corporation; Revising the method for determining the amounts of potential surcharges to be levied against policyholders under certain circumstances; specifying a limit for agent commission rates; providing that eligible surplus lines insurers may participate, in the same manner and on the same terms as an authorized insurer, in depopulation, take-out, or keep-out programs relating to policies removed from Citizens Property Insurance Corporation; authorizing information from underwriting files and confidential claims files to be released by the corporation to specified entities considering writing or underwriting risks insured by the corporation under certain circumstances, etc.  BI 03/16/2021 Fav/CS AEG 04/08/2021 Fav/CS AP	Fav/CS Yeas 10 Nays 1
4	<b>SB 1482</b> Garcia (Similar CS/H 1177)	Biscayne Bay; Establishing the Biscayne Bay Commission; providing for commission purpose, membership, duties, and authority; prohibiting sewage disposal facilities from disposing of any wastes into Biscayne Bay, etc.  EN 03/15/2021 Favorable AEG 04/08/2021 Fav/CS AP	Fav/CS Yeas 11 Nays 0
5	<b>CS/SB 1522</b> Environment and Natural Resources / Stewart (Similar H 1225)	Implementation of the Recommendations of the Blue-Green Algae Task Force; Citing this act as the "Implementation of Governor DeSantis' Blue-Green Algae Task Force Recommendations Act"; requiring owners of onsite sewage treatment and disposal systems to have the system periodically inspected, beginning on a specified date; requiring the Department of Health to administer the inspection program; requiring the department to implement program standards, procedures, and requirements; providing for rulemaking; requiring new or revised basin management action plans to include an identification and prioritization of certain spatially focused projects, etc.  EN 03/29/2021 Fav/CS AEG 04/08/2021 Favorable AP	Favorable Yeas 11 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Appropriations Subcommittee on Agriculture, Environment, and General Government  
 Thursday, April 8, 2021, 11:30 a.m.—1:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	<b>CS/SB 1900</b> Governmental Oversight and Accountability / Boyd (Similar CS/CS/H 1297)	Cybersecurity; Requiring certain audit plans of an inspector general to include certain information; providing that the Department of Management Services, acting through the Florida Digital Service, is the lead entity for the purpose of certain responsibilities; requiring the department, through the Florida Digital Service, to track the implementation by state agencies of certain plans; creating the Florida Cybersecurity Advisory Council within the Department of Management Services; requiring the council to provide certain assistance to the Florida Digital Service; providing for the membership of the council, etc.  GO 03/31/2021 Fav/CS AEG 04/08/2021 Fav/CS AP	Fav/CS Yeas 11 Nays 0
7	<b>SB 1480</b> Brodeur (Identical H 1173, Compare H 1211, S 1510)	Land Acquisition Trust Fund; Extending the date by which bonds issued to fund the Florida Forever Act are intended to be retired, etc.  EN 03/15/2021 Favorable AEG 04/08/2021 Favorable AP	Favorable Yeas 11 Nays 0
8	<b>CS/SB 1616</b> Governmental Oversight and Accountability / Brodeur (Similar CS/CS/H 1079, Compare H 1585, S 788)	Agency Contracts for Commodities and Contractual Services; Abrogating the scheduled expiration of provisions relating to certain public agency contracts for services; providing that an agency must issue a request for quote to certain approved vendors when it issues certain requests for quote for contractual services; revising the maximum value of certain contracts that may not be renewed or amended by state agency before submitting a written report to the Governor and the Legislature; prohibiting certain vendors from submitting bids, proposals, or replies to, or entering into or renewing any contract with, an agency, etc.  GO 03/24/2021 Fav/CS AEG 04/08/2021 Fav/CS AP	Fav/CS Yeas 11 Nays 0
9	<b>SB 7060</b> Environment and Natural Resources (Similar H 1309)	Biosolids; Ratifying specified rules relating to biosolids management for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule exceeding any specified thresholds for likely adverse impact or increase in regulatory costs; exempting the rules from certain review and approval by the Environmental Regulation Commission, etc.  AEG 04/08/2021 Fav/CS AP	Fav/CS Yeas 11 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Appropriations Subcommittee on Agriculture, Environment, and General Government  
Thursday, April 8, 2021, 11:30 a.m.—1:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	<b>CS/SB 406</b> Environment and Natural Resources / Rodrigues (Similar CS/CS/H 209)	Big Cypress Basin; Revising the membership of the Big Cypress Basin governing board; requiring the South Florida Water Management District to revise the boundaries of the Big Cypress Basin based on a specified study at a specified time; requiring the South Florida Water Management District to ensure that the distribution of basin ad valorem taxes collected within the Big Cypress Basin be used for projects and flood control operations and maintenance within the counties in which they were collected, etc.  EN 02/15/2021 Fav/CS AEG 04/08/2021 Fav/CS AP	Fav/CS Yeas 11 Nays 0

Other Related Meeting Documents

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Agriculture, Environment, and General Government

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BILL: PCS/CS/SB 1086 (518944)

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

SUBJECT: Operation and Safety of Motor Vehicles and Vessels

DATE: April 12, 2021

REVISED: \_\_\_\_\_

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

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

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

Relating to rulemaking, the bill:

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

Relating to boater safety, the bill:

- Effective October 1, 2021, revises conditions under which a person operating a motor vehicle or vessel commits a misdemeanor by failing to submit to breath or urine testing for alcohol, chemical substances, and controlled substances.
- Deletes the provisions establishing a misdemeanor for the refusal to submit to blood testing for alcohol, chemical substances, and controlled substances.
- Defines the term “human-powered vessel” and restricts the operation of such vessels within the boundaries of the Florida Intracoastal Waterway.
- Prohibits a livery from leasing, hiring, or renting a vessel to a person required to complete a FWC-approved boating safety education course, unless the person presents certain documentation indicating compliance.
- Revises boating-restricted areas to include certain areas around public or private marinas, permitted public mooring fields, and the Florida Intracoastal Waterway.

- Designates Monroe County as an anchoring limitation area under certain conditions.
- Authorizes the FWC to establish anchoring/mooring/beaching/grounding protection zones for springs.
- Prohibits the operation of vessels faster than slow speed, minimum wake upon approaching certain hazardous conditions, including approaching an emergency or construction vessel.

Relating to derelict vessels, the bill:

- Authorizes officers to provide in-person notice that a vessel is at risk of becoming derelict if there is a body camera recording.
- Authorizes law enforcement officers to relocate at-risk vessels to a certain distance from mangroves or vegetation.
- Authorizes the FWC to establish a derelict vessel prevention program.
- Authorizes local governments to enact and enforce regulations to remove an abandoned or lost vessel affixed to a public mooring.
- Authorizes law enforcement officers to relocate or remove public nuisance vessels from the waters of this state.
- Prohibits the Department of Highway Safety and Motor Vehicles (DHSMV) from issuing a certificate of title to an applicant for a vessel that has been deemed derelict, and beginning in 2023, authorizes the DHSMV to reject an application for a certificate of title for a vessel that has been deemed derelict.
- Authorizes the FWC to provide local government grants for the destruction and disposal of derelict vessels.
- Creates specific procedures for derelict vessels or vessels that have been declared a public nuisance that are present on waters of this state, including notice and hearing requirements and liability for removal costs.
- Revises the definition of the term “derelict vessel” to specify requirements for a vessel to be considered “wrecked,” “junked,” or “substantially dismantled.”
- Authorizes certain governmental subdivisions to perform relocation or removal activities and specifies requirements for licensure, insurance, and equipment.

Relating to marine sanitation devices, the bill:

- Requires the owner/operator of a live-aboard vessel or houseboat equipped with a marine sanitation device to maintain records of each pump out.

Relating to penalties, the bill:

- Increases the civil penalties for a vessel deemed at risk of becoming derelict.
- Creates civil penalties for vessels creating special hazards as specified in the bill.
- Adds operating a human-powered vessel in the Intracoastal Waterway to the list of violations resulting in a noncriminal infraction.

Relating to spaceflight, the bill:

- Authorizes the FWC to establish temporary protective zones in certain water bodies in preparation for a launch service or reentry service, or for the recovery of spaceflight assets before or after a launch service or reentry service.

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

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

## **II. Present Situation:**

### **Fish and Wildlife Conservation Commission**

The Fish and Wildlife Conservation Commission (FWC) is responsible for regulating, managing, protecting, and conserving the state's fish and wildlife resources.<sup>1</sup> The FWC is governed by a board of seven members who are appointed by the Governor and confirmed by the Florida Senate to five-year terms.<sup>2</sup> Under Article IV, Section 9 of the Florida Constitution, the FWC is granted the authority to exercise the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life. The Legislature may enact laws that aid the FWC in its exercise of regulatory functions and executive powers in the areas of planning, budgeting, personnel management, and purchasing.<sup>3</sup>

Chapters 327 and 328, F.S., concerning vessel safety and vessel title certificates, liens, and registration, are enforced by the FWC's Division of Law Enforcement and its officers, county sheriffs and deputies, municipal police officers, and any other law enforcement officer.<sup>4</sup> The Division of Law Enforcement manages the state's waterways to ensure boating safety for residents of and visitors to the state.<sup>5</sup> This includes enforcing boating rules and regulations, coordinating boating safety campaigns and education, managing public waters and access to the waters, conducting boating accident investigations, identifying and removing derelict vessels, and investigating vessel theft and title fraud.<sup>6</sup>

### **Boater Safety Education**

A person born on or after January 1, 1988, who will be operating a boat in Florida waters with an engine of 10 horsepower or more, must obtain a Florida boating safety identification card.<sup>7</sup> To obtain a card, a person must complete an approved boating safety course.<sup>8</sup> There are several

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<sup>1</sup> FLA. CONST. art. IV, s. 9.

<sup>2</sup> *Id.*; see also s. 379.102(1), F.S.

<sup>3</sup> FLA. CONST. art. IV, s. 9.

<sup>4</sup> Section 327.70(1), F.S.; see s. 943.10(1), F.S., which defines "law enforcement officer" as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The definition also includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

<sup>5</sup> Fish and Wildlife Conservation Commission (FWC), *Boating*, <https://myfwc.com/boating/> (last visited Feb. 13, 2021).

<sup>6</sup> FWC, *Law Enforcement*, <https://myfwc.com/about/inside-fwc/le/> (last visited Feb. 15, 2021). See s. 327.70(1) and (4), F.S.

<sup>7</sup> Section 327.395(1), F.S.

<sup>8</sup> FWC, *Boater Education Identification Card*, <https://myfwc.com/boating/safety-education/id/> (last visited Feb. 23, 2021).

This card is not a boating license, it is a certification that the person named on the card has successfully completed the required boating safety course.

courses available at various price points ranging from free up to \$50.<sup>9</sup> The course must meet the eight-hour instruction requirement established by the National Association of State Boating Law Administrators and must include a component regarding diving vessels.<sup>10</sup> The card is valid for life, unless it was obtained by passing a temporary certificate examination, in which case it is valid for 90 days after the date of issuance.<sup>11</sup>

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

- Is licensed by the United States Coast Guard (Coast Guard) to serve as master of a vessel.
- Operates a vessel only on a private lake or pond.
- Is accompanied in the vessel by a person who is exempt from this section or who holds an identification card in compliance with this section, is 18 years of age or older, is attendant to the operation of the vessel and responsible for the safe operation of the vessel and for any violation that occurs during the operation of the vessel.
- Is a nonresident who has in his or her possession proof that he or she has completed a boater education course or equivalent examination in another state which meets or exceeds the requirements in Florida.
- Is operating a vessel within 90 days after the purchase of that vessel and has available for inspection aboard that vessel a bill of sale.
- Is operating a vessel within 90 days after completing the boater education course and has a photographic identification card and a boater education certificate available for inspection as proof of having completed a boater education course. The boater education certificate must provide, at a minimum, the student's first and last name, the student's date of birth, and the date that he or she passed the course examination.
- Is exempted by FWC rule.<sup>12</sup>

A person who operates a vessel without the required boating safety identification card can be charged with a noncriminal infraction and is subject to a uniform boating citation and a \$50 civil penalty.<sup>13</sup>

A livery may not knowingly lease, hire, or rent vessels under certain conditions meant to ensure boater safety.<sup>14</sup> A livery may also not knowingly lease, hire, or rent any vessel powered by a motor of 10 horsepower or greater to any person who is required to comply with boater safety education requirements, unless the person presents photographic identification and a valid boater safety identification card to the livery or meets one of the listed exemptions.<sup>15</sup>

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

<sup>10</sup> Section 327.395(1), F.S.

<sup>11</sup> Section 327.395(5), F.S.

<sup>12</sup> Section 327.395(6), F.S.

<sup>13</sup> Section 327.73(1)(s), F.S.

<sup>14</sup> Section 327.54(1), F.S. For example, vessels must have proper safety equipment and be seaworthy and the number of vessel occupants may not exceed the maximum safety load of the vessel.

<sup>15</sup> Section 327.54(2), F.S.

## Boating Safety Regulations

An operator of a vessel in Florida must operate the vessel in a reasonable and prudent manner, having regard for other waterborne traffic, posted speed and wake restrictions, and all other attendant circumstances so as not to endanger the life, limb, or property of another person outside the vessel or due to vessel overloading or excessive speed.<sup>16</sup> Operating a vessel in excess of a posted speed limit is a noncriminal infraction, for which the penalty is \$50.<sup>17</sup>

Vessel owners and operators must carry, store, maintain, and use safety equipment in accordance with current Coast Guard safety equipment requirements, unless expressly exempted.<sup>18</sup> Vessel owners and operators are also subject to additional safety requirements relating to appropriate equipment and the use of personal flotation devices.<sup>19</sup>

## Anchoring or Mooring

Anchoring or mooring refers to a boater's practice of seeking and using a safe harbor on the public waterway system for an undefined duration. Anchoring is accomplished using an anchor carried on the vessel.<sup>20</sup> Mooring is accomplished through the use of moorings permanently affixed to the bottom of the water body. Anchorages are areas that boaters regularly use for anchoring or mooring, whether designated or managed for that purpose or not. Mooring fields are areas designated and used for a system of properly spaced moorings.<sup>21</sup>

State law prohibits a person from anchoring a vessel, except in case of emergency, in a manner which unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel.<sup>22</sup> Interference with navigation is a noncriminal infraction and punishable by a fine of \$50.<sup>23</sup>

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

- Within 150 feet of any marina, boat ramp, boatyard, or vessel launching or loading facility;
- Within 300 feet of a superyacht repair facility (a facility that services or repairs a yacht with a water line of 120 feet or more in length); or
- Within 100 feet outward from the marked boundary of a public mooring field or a lesser distance if approved by the local government within which the mooring field is located.<sup>24</sup>

However, there are exceptions if:

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<sup>16</sup> Section 327.33, F.S.

<sup>17</sup> Section 327.73(h), F.S.

<sup>18</sup> Section 327.50, F.S.

<sup>19</sup> *Id.*

<sup>20</sup> Section 327.02, F.S., defines the term "vessel" to include every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

<sup>21</sup> Ankersen, Hamann, & Flagg, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, 2 (Rev. May 2012), available at [https://www.flseagrant.org/wp-content/uploads/anchoring\\_away\\_5\\_12\\_update\\_web.pdf](https://www.flseagrant.org/wp-content/uploads/anchoring_away_5_12_update_web.pdf) (last visited Mar. 10, 2021).

<sup>22</sup> Section 327.44, F.S.

<sup>23</sup> Section 327.73, F.S.

<sup>24</sup> Section 327.4109(1)(a), F.S.

- The vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor for five business days or until the vessel is repaired, whichever occurs first; or
- Imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor until weather conditions no longer pose such risk.<sup>25</sup>

Additionally, the owner or operator of a vessel or floating structure may not anchor or moor within the marked boundary of a public mooring field unless the owner or operator has a lawful right to do so by contractual agreement or other business arrangement.<sup>26</sup>

### ***Local Regulation of the Anchoring or Mooring of Vessels***

Local governments are authorized by general permit to construct, operate, and maintain public mooring fields, each for up to 100 vessels.<sup>27</sup> Mooring fields are required to be located where navigational access already exists between the mooring field and the nearest customarily used access channel or navigable waters which the mooring field is designed to serve. Each mooring field must be associated with a land-based support facility that provides amenities and conveniences, such as parking, bathrooms, showers, and laundry facilities. Major boat repairs and maintenance, fueling activities other than from the land-based support facility, and boat hull scraping and painting are not authorized within mooring fields.<sup>28</sup>

Local governments are authorized to enact and enforce ordinances that prohibit or restrict the mooring or anchoring of floating structures<sup>29</sup> or live-aboard vessels<sup>30</sup> within their jurisdictions and vessels that are within the marked boundaries of permitted mooring fields.<sup>31</sup> However, local governments are prohibited from enacting, continuing in effect, or enforcing any ordinance or local regulation that regulates the anchoring of vessels, other than live-aboard vessels, outside the marked boundaries of permitted mooring fields.<sup>32</sup>

### **Anchoring Limitation Areas**

State law designates certain densely populated urban areas as anchoring limitation areas.<sup>33</sup> To promote the public's use and enjoyment of these waterways, anchoring a vessel is prohibited at any time between 30 minutes after sunset and 30 minutes before sunrise in an anchoring

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<sup>25</sup> Section 327.4109(2), F.S.

<sup>26</sup> Section 327.4109(3), F.S.

<sup>27</sup> See s. 373.118, F.S. and Fla. Admin. Code R. 62-330.420(1).

<sup>28</sup> See Fla. Admin. Code R. 62-330.420.

<sup>29</sup> Section 327.02, F.S., defines the term "floating structure" as a "floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term includes an entity used as a residence, place of business, or office with public access; a hotel or motel; a restaurant or lounge; a clubhouse; a meeting facility; a storage or parking facility; or a mining platform, dredge, dragline, or similar facility or entity represented as such."

<sup>30</sup> Section 327.02, F.S., defines the term "live-aboard vessel" as "a vessel used solely as a residence and not for navigation; a vessel represented as a place of business or a professional or other commercial enterprise; or a vessel for which a declaration of domicile has been filed. The definition expressly excludes commercial fishing boats."

<sup>31</sup> Section 327.60(3), F.S.

<sup>32</sup> Section 327.60(2)(f), F.S.

<sup>33</sup> Section 327.4108(1), F.S.

limitation area.<sup>34</sup> However, there are some exceptions where anchoring is permitted in an anchoring limitation area:

- When a vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors;
- If imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors; or
- During certain special events.<sup>35</sup>

Certain types of vessels are exempt from anchoring limitation areas, including certain government, construction, and fishing vessels.<sup>36</sup> Law enforcement officers or agencies may remove and impound vessels from anchoring limitation areas when a vessel operator who was previously issued a citation continues to anchor the vessel in or refuses to leave the anchoring limitation area.<sup>37</sup>

### **Boating-Restricted Areas**

The FWC may establish boating-restricted areas on the waters of this state for any purpose deemed necessary to ensure the safety of the public if the restrictions are necessary based on boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion, or other navigational hazards or to protect seagrasses on privately owned submerged lands.<sup>38</sup> The FWC adopts boating-restricted areas by rule.<sup>39</sup>

Each boating-restricted area must be developed in consultation and coordination with the governing body of the county or municipality in which the boating-restricted area is located. When the boating-restricted area is to be on the navigable waters of the United States, the FWC must consult and coordinate with the Coast Guard and the United States Army Corps of Engineers.<sup>40</sup>

Local governments also have authority to establish boating-restricted areas by ordinance.<sup>41</sup> These areas include, but are not limited to:

- Idle-speed, no wake areas;
- Slow speed, minimum wake areas; and
- Vessel-exclusion zones.

Local ordinances establishing boating-restricted areas are subject to FWC review and approval. The FWC must make its determination based on substantial competent evidence that the ordinance is necessary to protect public safety.<sup>42</sup> However, navigational hazards are presumed to

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<sup>34</sup> Section 327.4108(2), F.S.

<sup>35</sup> Section 327.4108(3), F.S.

<sup>36</sup> Section 327.4108(4), F.S.

<sup>37</sup> Section 327.4108(5), F.S.

<sup>38</sup> Section 327.46, F.S. Boating-restricted areas can include, but are not limited to, restrictions of vessel speeds and vessel traffic.

<sup>39</sup> See Fla. Admin. Code R. 68D-24, for established boating restricted areas by county.

<sup>40</sup> Section 327.46(3), F.S.

<sup>41</sup> Section 327.46(1), F.S.

<sup>42</sup> *Id.*

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

Additionally, the Coast Guard can establish safety zones,<sup>44</sup> security zones,<sup>45</sup> regulated navigation areas,<sup>46</sup> or naval vessel protection zones<sup>47</sup> where persons may not knowingly operate a vessel or authorize the operation of a vessel in violation of the restrictions under the zone.<sup>48</sup> The restricted vessel access protects against destruction, loss, or injury from various causes.<sup>49</sup> Generally, the Coast Guard establishes security zones around vessels, harbors, ports, and waterfront facilities. The Coast Guard has established several safety zones, security zones, and regulated navigation areas in Florida,<sup>50</sup> including a security zone around the Kennedy Space Center.<sup>51</sup>

A person who knowingly operates a vessel or authorizes the operation of a vessel in violation of an established zone or area, and without authorization by the Coast Guard Captain of the Port, commits a misdemeanor of the first degree.<sup>52</sup> A person who continues to do so after receiving a warning, or refusing to leave, commits a felony of the third degree.<sup>53</sup> State and local law enforcement may enforce these zones at the request of a federal authority if necessary to augment federal law enforcement efforts and if there is a compelling need to protect the residents and infrastructure of the state.<sup>54</sup>

### **Protection Zones for Springs**

The FWC is authorized to establish protection zones that restrict the speed and operation of vessels to protect and prevent harm to springs, including negative impacts to water quality, water quantity, hydrology, wetlands, and aquatic and wetland-dependent species.<sup>55</sup> To develop a springs protection zone, the FWC consults and coordinates with the appropriate water management district, the Department of Environmental Protection, and the county and municipality, if applicable, where the zone is located.<sup>56</sup>

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<sup>43</sup> *Id.*; Fla. Admin. Code R. 68D-21.004. Navigational hazards are presumed to exist in areas including: within certain distances of launching and landing facilities, fuel pumps, lock structures, bridge fenders; in certain small waterways or areas designated as a public bathing or swimming area; near certain bends in the waterway; areas subject to unsafe levels of vessel traffic congestion, hazardous water levels or currents; and canoe trails.

<sup>44</sup> 33 C.F.R. pt. 165 subpart C.

<sup>45</sup> 33 C.F.R. pt. 165 subpart D.

<sup>46</sup> 33 C.F.R. pt. 165 subpart B.

<sup>47</sup> 33 C.F.R. pt. 165 subpart G.

<sup>48</sup> Section 327.461(1)(a), F.S.

<sup>49</sup> 33 C.F.R. pt. 165; see United States Coast Guard, *Regulated Navigation Areas*, <https://www.dco.uscg.mil/RNA/> (last visited Feb. 17, 2021).

<sup>50</sup> 33 C.F.R. s. 165.T07-0794 - 165.786, providing safety and security zones and regulated navigation areas in the Seventh Coast Guard District.

<sup>51</sup> 33 C.F.R. s. 165.701.

<sup>52</sup> Section 327.461(2), (7), F.S.

<sup>53</sup> Section 327.461(3), F.S.

<sup>54</sup> Section 327.461(1)(a), F.S.

<sup>55</sup> Section 327.45(2), F.S.

<sup>56</sup> Section 327.45(3), F.S. If the zone includes navigable waters of the United States, FWC is required to coordinate with the United States Coast Guard and the United States Army Corps of Engineers.

The restrictions in a springs protection zone do not apply to certain law enforcement, firefighting, or rescue personnel operating a vessel in the course of performing their official duties, or in emergency situations.<sup>57</sup>

### **Derelict Vessels**

A derelict vessel is a vessel that is left, stored, or abandoned in a wrecked, junked, or substantially dismantled condition upon any public waters of this state; at a port in the state without the consent of the agency that has jurisdiction of the port; or docked, grounded, or beached upon the property of another without the consent of the owner of the property.<sup>58</sup> It is unlawful for a person, firm, or corporation to store, leave, or abandon any derelict vessel in this state.<sup>59</sup>

### ***At-Risk Vessels***

In 2016, the Legislature prohibited neglected vessels or those in deteriorating conditions from anchoring, mooring, or occupying the waters of this state.<sup>60</sup> A vessel is at risk of becoming derelict if any of the following conditions exist:

- The vessel is taking on or has taken on water without an effective means to dewater;
- Spaces on the vessel that are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time;
- The vessel has broken loose or is in danger of breaking loose from its anchor;
- The vessel is left or stored aground unattended in such a state that would prevent the vessel from getting underway, or is listing due to water intrusion, or is sunk or partially sunk; or
- The vessel does not have an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives telephonic or written notice from an officer, and the vessel owner or operator is unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair.<sup>61</sup>

### ***Abandoned Vessels***

“Abandoned property”<sup>62</sup> means all tangible personal property that does not have an identifiable owner and that has been disposed of on public property in a wrecked, inoperative, or partially dismantled condition or has no apparent intrinsic value to the rightful owner. The term includes derelict vessels, as defined in s. 823.11, F.S.

When an article of lost or abandoned property is present on public property and is not easily removable, the law enforcement officer must place a notice of removal on the property. The law enforcement agency must then contact the Department of Highway Safety and Motor Vehicles to determine the name and address of the owner, and must mail a copy of the notice to the owner.<sup>63</sup>

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<sup>57</sup> Section 327.45(5), F.S.

<sup>58</sup> Section 823.11(1)(b), F.S.

<sup>59</sup> Section 376.15, F.S.; s. 823.11(2), F.S.

<sup>60</sup> Chapter 2016-108, Laws of Fla.; s. 327.4107, F.S.

<sup>61</sup> Section 327.4107, F.S.

<sup>62</sup> Section 705.101(3), F.S.

<sup>63</sup> Section 705.103(2), F.S.

If, after five days of posting the notice and mailing such notice, the owner has not removed the items from public property or shown reasonable cause for failure to do so, the law enforcement agency may retain the property for its own use, trade the property, donate the property, sell the property, or remove the property.<sup>64</sup>

The owner of abandoned or lost property who does not remove the property after being noticed, is liable to the law enforcement agency for all costs of removal, storage, and destruction of the property, less any salvage value obtained by the disposal of the property.<sup>65</sup> Upon the final disposition of the property, the law enforcement officer is required to notify the owner of the amount owed. A person who neglects or refuses to pay the amount owed is not entitled to be issued a certificate of registration for the vessel, or any other vessel, until such costs have been paid.<sup>66</sup>

Local governments are authorized to enact and enforce regulations to implement the procedures for abandoned or lost property that allow the local law enforcement agency, after providing written notice, to remove a vessel affixed to a public dock within its jurisdiction that is abandoned or lost property.<sup>67</sup>

### ***Removal of Derelict Vessels***

The FWC's Division of Law Enforcement and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officers have the responsibility and authority to enforce vessel safety and vessel title certificates, liens, and registration.<sup>68</sup>

Both state and local law enforcement are authorized and empowered to relocate or remove a derelict vessel from public waters if the derelict vessel obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment, property, or persons.<sup>69</sup> FWC officers and other law enforcement agency officers or contractors who perform relocation or removal activities at the FWC's direction are required to be licensed, insured, and properly equipped to perform the services to be provided.<sup>70</sup>

The costs incurred by the FWC or another law enforcement agency for relocating or removing a derelict vessel are recoverable against the vessel owner.<sup>71</sup> A vessel owner who neglects or refuses to pay the costs of removal, storage, and destruction of the vessel, less any salvage value obtained by disposal of the vessel, is not entitled to be issued a certificate of registration for such vessel, or any other vessel or motor vehicle, until the costs are paid.<sup>72</sup>

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<sup>64</sup> *Id.*

<sup>65</sup> Section 705.103(4), F.S.

<sup>66</sup> *Id.*

<sup>67</sup> Section 327.60(5), F.S.

<sup>68</sup> Section 327.70, F.S.

<sup>69</sup> Section 823.11(3), F.S.; s. 376.15(3)(a), F.S.

<sup>70</sup> Section 823.11(3)(c), F.S.; s. 376.15(3)(c), F.S.

<sup>71</sup> Section 823.11(3)(a), F.S.; s. 376.15(3)(a), F.S.

<sup>72</sup> Section 705.103(4), F.S.

The FWC may provide grants, funded from the Florida Coastal Protection Trust Fund, to local governments for the removal of derelict vessels from waters of this state, if funds are appropriated for the grant program.<sup>73</sup> Grants are awarded based on a set of criteria outlined in FWC rules.<sup>74</sup> Removal or relocation of a vessel on private property is not eligible for grant funding.<sup>75</sup> However, each fiscal year, if all program funds are not requested by and granted to local governments for the removal of derelict vessels by the end of the third quarter, the FWC may use the remainder of the funds to remove, or to pay private contractors to remove, derelict vessels.<sup>76</sup>

***Penalties for Prohibited Acts Relating to Derelict Vessels and Anchoring and Mooring***

It is a first degree misdemeanor to store, leave, or abandon a derelict vessel in Florida.<sup>77</sup> Violations are punishable by a term of imprisonment of no more than one year and a fine of up to \$1,000.<sup>78</sup> Further, such violation is punishable by a civil penalty of up to \$75,000 per violation per day.<sup>79</sup> Each day during any portion of which the violation occurs constitutes a separate offense.<sup>80</sup>

Section 327.73(1)(aa), F.S., provides that an owner or operator of a vessel at risk of becoming derelict on waters of this state or who allows such vessel to occupy such waters, is subject to a uniform boating citation and civil penalty. The civil penalty provided is:

- \$50 for a first offense;
- \$100 for a second offense occurring 30 days or more after a first offense; and
- \$250 for a third offense occurring 30 days or more after a previous offense.<sup>81</sup>

Section 327.73(1)(bb), F.S., provides that an owner or operator of a vessel or floating structure who anchors or moors in a prohibited area is subject to a uniform boating citation and penalties. The civil penalty provided is up to a maximum of:

- \$50 for a first offense;
- \$100 for a second offense; and
- \$250 for a third offense.<sup>82</sup>

Finally, s. 327.73(1), F.S., provides that any person who fails to appear or otherwise properly respond to a uniform boating citation must, in addition to the charge relating to the violation of the boating laws, be charged with a second degree misdemeanor, which is punishable by a maximum fine of \$500 and no more than 60 days imprisonment.<sup>83</sup>

<sup>73</sup> Section 376.15, F.S.

<sup>74</sup> Fla. Admin. Code R. 68-1.003.

<sup>75</sup> National Oceanic and Atmospheric Association, Marine Debris Program, *Abandoned and Derelict Vessels in Florida*, <https://marinedebris.noaa.gov/abandoned-and-derelict-vessels/florida> (last visited Feb. 22, 2021).

<sup>76</sup> Section 376.15, F.S.

<sup>77</sup> Sections 376.15(2) and 823.11(2) and (5), F.S. A first degree misdemeanor is punishable by up to one year in county jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

<sup>78</sup> Sections 775.082(4)(a) and 775.083(1)(d), F.S.

<sup>79</sup> Sections 376.15(2) and 376.16(1), F.S.

<sup>80</sup> Section 376.16(1), F.S.

<sup>81</sup> Section 327.73(1)(aa), F.S.

<sup>82</sup> Section 327.73(1)(bb), F.S.

<sup>83</sup> Sections 775.082 and 775.083, F.S.

## Artificial Reef Program

Artificial reefs are reef habitats using one or more objects of natural or human origin intentionally placed on the seafloor to enhance marine life for human use. Artificial reefs provide benefits including:

- Enhancing recreational and diving opportunities;
- Providing socio-economic benefits to local coastal communities;
- Increasing reef fish habitat;
- Mitigation reefs to replace hard bottom habitat lost through activities such as beach re-nourishment and damage caused by vessel groundings;
- Oyster reef regeneration; and
- Shoreline protection.<sup>84</sup>

Florida has one of the most active artificial reef programs in the nation. Since the 1940s, more than 3,750 planned public artificial reefs have been placed in state and federal waters off of Florida's coast.<sup>85</sup> The FWC is authorized to accept title, on behalf of the state, of vessels to use as offshore reefs in the artificial reef program.<sup>86</sup> Under the program, the FWC provides grants and financial and technical assistance to coastal local governments, state universities, and qualified nonprofit organizations for the siting and development of artificial reefs, and for monitoring and evaluating such reefs and their recreational, economic, and biological effectiveness.<sup>87</sup>

## Marine Sanitation Devices

Certain vessels, including those that are 26 feet or longer with an enclosed cabin and berthing facilities, houseboats,<sup>88</sup> and floating structures with an enclosed living space with berthing facilities or work space with public access, are required to have a working toilet on board.<sup>89</sup> Permanently installed toilets must be properly attached to a Coast Guard certified or labeled marine sanitation device.<sup>90</sup> A marine sanitation device is equipment that is designed to receive, retain, treat, or discharge sewage and the process to treat such sewage.<sup>91</sup>

Florida prohibits the discharge of untreated sewage from any vessel, including houseboats, or any floating structure into state waters.<sup>92</sup> This prohibition also applies to live-aboard vessels, which are defined as: a vessel used solely as a residence and not for navigation; a vessel for which a declaration of domicile has been filed; or a vessel used as a residence that does not have an effective means of propulsion for safe navigation; and specifically excludes commercial

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<sup>84</sup> FWC, *Artificial Reefs*, <https://myfwc.com/fishing/saltwater/artificial-reefs/> (last visited Feb. 22, 2021).

<sup>85</sup> *Id.*

<sup>86</sup> Section 379.249(1), F.S.

<sup>87</sup> *Id.*

<sup>88</sup> Section 327.02(17), F.S. defines a "houseboat" as a vessel used primarily as a residence and not moved for 21 out of 30 days in a county of this state if the residential use of the vessel is to the preclusion of its use as a means of transportation. Section 327.02(17).

<sup>89</sup> Section 327.53(1)-(3), F.S.

<sup>90</sup> *Id.*

<sup>91</sup> DEP, *Clean Boater FAQ*, <https://floridadep.gov/rcp/cva/content/clean-boater-faq> (last visited Feb. 22, 2021).

<sup>92</sup> Section 327.53(4)(a), F.S.

fishing vessels.<sup>93</sup> Vessel owners with Type III<sup>94</sup> marine sanitation devices must dispose of sewage in an approved pump-out facility.<sup>95</sup> Violators are subject to a noncriminal infraction, for which the penalty is \$50.<sup>96</sup>

### ***Nuisance Vessels***

Florida law declares that vessels or floating structures that are operated or occupied on the waters of this state and violate marine sanitation device requirements are a nuisance and hazard to public safety and health.<sup>97</sup> If an owner or operator does not correct a violation within 30 days after a citation is issued, and their vessel or floating structure remains on the waters of this state, law enforcement officers are required to apply to the appropriate court in the county where the vessel or floating structure is located, to order or cause the removal of the vessel or floating structure from the waters of this state at the owner's expense.<sup>98</sup> If the owner cannot be found or fails to pay the removal costs, the vessel or floating structure will be sold at a nonjudicial sale and the proceeds will be used to pay the removal costs.<sup>99</sup>

### **Testing for Alcohol, Chemical Substances, and Controlled Substances**

Anyone who operates a motor vehicle or vessel in the state is, by operating such a vehicle or vessel, deemed to have given his or her consent to submit to an approved chemical or physical test of his or her breath to determine the alcoholic content of his or her blood or breath, or a urine test to detect the presence of chemical substances or controlled substances.<sup>100</sup> These tests may be performed if the person is lawfully arrested for any offense allegedly committed while the person was driving or in actual physical control of a motor vehicle, or operating a vessel, while under the influence of alcohol or chemical or controlled substances.<sup>101</sup>

Additionally, anyone who operates a motor vehicle or vessel in the state is deemed to have given his or her consent to submit to an approved blood test to determine the alcoholic content of his or her blood or to detect the presence of chemical substances or controlled substances.<sup>102</sup> These tests may be performed if there is reasonable cause to believe that the person was driving or in actual physical control of a motor vehicle, or operating a vessel, while under the influence of alcohol or chemical or controlled substances and the person appears for treatment at a hospital, clinic, or emergency vehicle, and the administration of a breath or urine test is impractical or impossible.<sup>103</sup>

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<sup>93</sup> Section 327.02(22), F.S.

<sup>94</sup> Type III marine sanitation devices hold sewage, preventing the direct overboard discharge of sewage. Type I marine sanitation devices treat sewage by chemical or thermal means before discharge. Type II marine sanitation devices treat sewage by biological means, using bacteria, before discharge.

<sup>95</sup> Section 327.53(4)(b), F.S.

<sup>96</sup> Section 327.53(6)(a), F.S.

<sup>97</sup> Section 327.53(7), F.S.

<sup>98</sup> *Id.*

<sup>99</sup> Section 328.17, F.S.

<sup>100</sup> Sections 316.1932(1)(a) and 327.352(1)(a), F.S.

<sup>101</sup> *Id.*

<sup>102</sup> Sections 316.1932(1)(c) and 327.352(1)(c), F.S.

<sup>103</sup> *Id.*

A person who operates a motor vehicle and fails to submit to a breath, urine, or blood test will have his or her driver's license suspended for a period of one year for a first refusal, or 18 months for a repeat refusal.<sup>104</sup> A person who operates a motor vehicle who fails to submit to such test who has previously had his or her license suspended for a prior refusal commits a misdemeanor of the first degree and is subject to additional penalties.<sup>105</sup>

A person who operates a vessel and fails to submit to a breath, urine, or blood test is subject to a civil penalty of \$500 for a first refusal.<sup>106</sup> A person who operates a vessel and fails to submit to such test who has been previously fined commits a misdemeanor and is subject to additional penalties.<sup>107</sup>

However, in 2016, the United States Supreme Court issued a ruling in *Birchfield v. North Dakota* that prohibits warrantless blood tests incident to arrests for driving under the influence.<sup>108</sup> The Court held that the Fourth Amendment prohibits unreasonable searches, and the taking of a blood sample or administration of a blood test is a search.<sup>109</sup> Under the Court's ruling, refusing a blood test may not subject a person to criminal penalties.<sup>110</sup> Thus, Florida's current laws relating to the penalties for refusal to submit to a blood test are unenforceable.

## Mangroves

Mangroves are tropical plants that are adapted to loose, wet soils, salt water, and periodic submersion by tides.<sup>111</sup> They provide protected nursery areas for fishes, crustaceans, and shellfish; food, shelter, and nesting areas for a multitude of species;<sup>112</sup> protection of the shoreline from storm surge and erosion;<sup>113</sup> and water quality protection.<sup>114</sup>

Currently, there are not any state regulations for anchoring or mooring near mangroves, although the trimming of mangroves is regulated under the Mangrove Trimming and Preservation Act.<sup>115</sup> Through the Mangrove Trimming and Preservation Act, the Legislature intends to protect and preserve mangrove resources valuable to our environment and economy from unregulated removal, defoliation, and destruction.<sup>116</sup> The FWC notes that removing derelict and at-risk vessels from areas in close proximity to mangroves and other upland vegetation can be considerably more expensive than from other areas due to conservation and depth concerns.<sup>117</sup>

<sup>104</sup> Section 316.1932(1)(a) and (1)(c), F.S.

<sup>105</sup> *Id.*; s. 316.1939, F.S.

<sup>106</sup> Section 327.352(1)(a) and (1)(c), F.S.

<sup>107</sup> *Id.*; s. 327.259, F.S.

<sup>108</sup> *Birchfield v. North Dakota*, 136 U.S. 2160 (2016).

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> DEP, *What is a Mangrove?*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/what-mangrove> (last visited Feb. 23, 2021).

<sup>112</sup> DEP, *Florida's Mangroves*, <https://floridadep.gov/rcp/rcp/content/floridas-mangroves> (last visited Feb. 23, 2021).

<sup>113</sup> FWC, *Mangrove Forests*, <https://myfwc.com/research/habitat/coastal-wetlands/information/mangroves/> (last visited Feb. 23, 2021).

<sup>114</sup> *Id.*

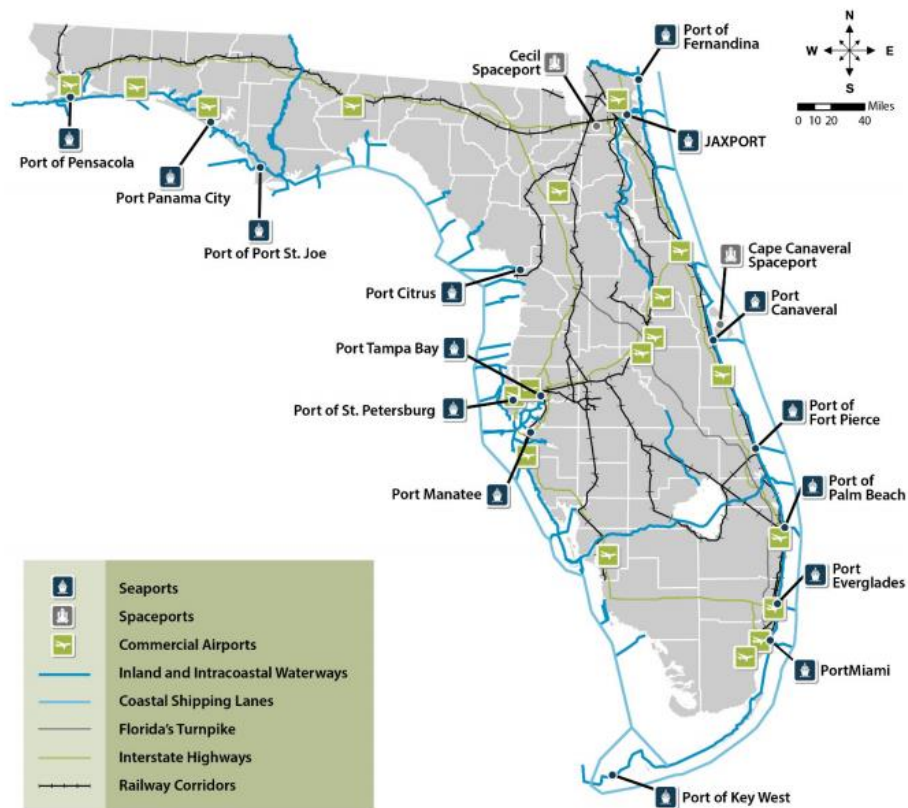
<sup>115</sup> Sections 403.9321-403.9333, F.S.

<sup>116</sup> Section 403.9323, F.S.

<sup>117</sup> FWC, *Senate Bill 1086 Agency Bill Analysis* (February 10, 2021)(on file with the Senate Committee on Environment and Natural Resources).

## Florida Intracoastal Waterway

The Florida Intracoastal Waterway is defined as the Atlantic Intracoastal Waterway, the Georgia state line north of Fernandina to Miami; the Port Canaveral lock and canal to the Atlantic Intracoastal Waterway; the Atlantic Intracoastal Waterway, Miami to Key West; the Okeechobee Waterway, Stuart to Fort Myers; the St. Johns River, Jacksonville to Sanford; the Gulf Intracoastal Waterway, Anclote to Fort Myers; the Gulf Intracoastal Waterway, Carrabelle to Tampa Bay; Carrabelle to Anclote open bay section, using the Gulf of Mexico; the Gulf Intracoastal Waterway, Carrabelle to the Alabama state line west of Pensacola; and the Apalachicola, Chattahoochee, and Flint Rivers in Florida.<sup>118</sup> The Florida Intracoastal Waterway is shown in the map below.<sup>119</sup>



## Spaceflight

With the recent resurgence of space activity, Florida is emerging as a national leader in spaceflight activities. In 2020, the space industry in Florida completed 31 launches from Cape

<sup>118</sup> Section 327.02(15), F.S.

<sup>119</sup> Florida Department of Transportation, *Florida Waterways System Plan*, Figure 1-2 on p. 1-12 (2015), available at [https://www.fdot.gov/docs/default-source/seaport/pdfs/2015-Florida-Waterways-System-Plan\\_Final.pdf](https://www.fdot.gov/docs/default-source/seaport/pdfs/2015-Florida-Waterways-System-Plan_Final.pdf) (last visited Mar. 1, 2021).

Canaveral Spaceport,<sup>120</sup> including the SpaceX Demo-2 mission in May 2020<sup>121</sup> and the SpaceX Crew-1 mission in November 2020.<sup>122</sup> According to Space Florida, over 50 launches are expected in 2021, and up to 100 launches are expected annually going forward.<sup>123</sup> Upon re-entry, the space capsules splashed down in waters off of Florida's coasts for the first time in 45 years.<sup>124</sup> The National Aeronautics and Space Administration (NASA) and SpaceX teams coordinated with the Coast Guard to ensure crew safety upon splashdown, including providing extra ships and air assets to patrol the splashdown zone to mitigate safety concerns for boaters approaching the landing area.<sup>125</sup>

When the capsule landed in waters near Pensacola in August 2020, private boats approached the landing area too closely, according to NASA.<sup>126</sup> This led to confusion as recovery crews tried to reach the spacecraft. There were concerns that private boats could have interfered with the emergency recovery operation and that the spacecraft's thrusters could have released toxic propellant fumes.<sup>127</sup> Although the Coast Guard had patrol boats in the area ahead of the splashdown, it stated that "numerous boaters ignored the Coast Guard crews' requests and decided to encroach the area, putting themselves and those involved in the operation in potential danger."<sup>128</sup>

There are no existing state statutes in place to protect spaceflight operations and astronauts. The FWC stated in its agency bill analysis that "spectator separation is necessary to prevent interference with sensitive operations, as well as for public safety reasons."<sup>129</sup>

### III. Effect of Proposed Changes:

#### Testing for Alcohol, Chemical Substances, or Controlled Substances: Sections 1, 2, 6, and 7

**Section 1** of the bill, effective October 1, 2021, amends s. 316.1932, F.S., relating to tests for alcohol, chemical substances, or controlled substances while driving a motor vehicle.

<sup>120</sup> Space Florida, *Space Florida and the Future of Aerospace* (undated memo) (on file with the Senate Committee on Environment and Natural Resources).

<sup>121</sup> National Aeronautics and Space Administration (NASA), *NASA, SpaceX Successfully Launch Demo-2 Mission*, <https://blogs.nasa.gov/kennedy/2020/05/30/nasa-spacex-successfully-launch-demo-2-mission/> (last visited Feb. 22, 2021).

<sup>122</sup> NASA, *NASA, SpaceX Officials Thrilled with Crew-1 Launch Success*, <https://blogs.nasa.gov/kennedy/2020/11/15/nasa-spacex-officials-thrilled-with-crew-1-launch-success/> (last visited Feb. 22, 2021).

<sup>123</sup> Space Florida, *Space Florida and the Future of Aerospace* (undated memo) (on file with the Senate Committee on Environment and Natural Resources).

<sup>124</sup> AP News, *SpaceX Capsule and NASA Crew Make 1st Splashdown in 45 Years*, <https://apnews.com/article/virus-outbreak-ap-top-news-ca-state-wire-gulf-of-mexico-pensacola-bf77af89c527340793d15a9957d30c84> (last visited Feb. 22, 2021).

<sup>125</sup> NASA, *NASA and SpaceX Teams Prepare for Crew-1 Mission*, <https://blogs.nasa.gov/kennedy/2020/09/30/nasa-and-spacex-teams-prepare-for-crew-1-mission/> (last visited Feb. 22, 2021).

<sup>126</sup> AP News, *SpaceX Capsule and NASA Crew Make 1st Splashdown in 45 Years*, <https://apnews.com/article/virus-outbreak-ap-top-news-ca-state-wire-gulf-of-mexico-pensacola-bf77af89c527340793d15a9957d30c84> (last visited Feb. 22, 2021).

<sup>127</sup> The Verge, *SpaceX capsule Swarmed by Boaters After Successful Splashdown*, <https://www.theverge.com/2020/8/2/21351811/spacex-capsule-boaters-splashdown-boats> (last visited Feb. 22, 2021).

<sup>128</sup> *Id.*

<sup>129</sup> FWC, *Senate Bill 1086 Agency Bill Analysis* (February 10, 2021) (on file with the Senate Committee on Environment and Natural Resources).

**Section 2** of the bill, effective October 1, 2021, amends s. 316.1939, F.S., relating to refusal to submit to testing for alcohol, chemical substances, or controlled substances.

The bill revises the conditions under which a person's driving privilege is suspended and under which a person commits a misdemeanor relating to tests for alcohol, chemical substances, or controlled substances. The bill provides that failure to submit to a lawful breath test for alcohol, chemical substances, or controlled substances if a person has previously been fined for failure to submit to such test is a misdemeanor of the first degree.

**Section 6** of the bill, effective October 1, 2021, amends s. 327.352, F.S., relating to tests for alcohol, chemical substances, or controlled substances while operating a vessel. The bill revises the conditions under which a person commits a misdemeanor relating to boating while impaired or intoxicated. The bill provides that failure to submit to a lawful breath or urine test for alcohol, chemical substances, or controlled substances if a person has previously been fined for failure to submit to such test, or had his or her driver's license suspended for an unlawful blood-alcohol or breath-alcohol level, is a misdemeanor of the first degree.

**Section 7** of the bill, effective October 1, 2021, amends s. 327.359, F.S., relating to refusal to submit to testing for alcohol, chemical substances, or controlled substances. The bill revises the conditions under which a person commits a misdemeanor of the first degree for failure to submit to a chemical or physical breath or urine test for alcohol, chemical substances, or controlled substances to include refusal to submit to such a test, and either a previous fine for failure to submit to a chemical or physical breath test, or a driver's license suspension for an unlawful blood-alcohol or breath-alcohol level. The bill deletes from the list of misdemeanors the refusal to submit to a lawful blood test for alcohol, chemical substances, or controlled substances.

In **Sections 1, 2, 6, and 7**, the bill deletes the provisions establishing that a person commits a misdemeanor for refusing to submit to a lawful blood test for alcohol, chemical substances, or controlled substances if the person has been previously fined for refusal to submit to a lawful breath, urine, or blood test.

### **Human-Powered Vessels: Sections 3 and 8**

**Section 3** of the bill amends s. 327.02, F.S., relating to definitions. The bill defines the term "human-powered vessel" to mean a vessel powered only by its occupant or occupants, including, but not limited to, a vessel powered only by the occupants' hands or feet, oars, or paddles.

The bill revises references to the International Navigational Rules Act of 1977 and Inland Navigational Rules Act of 1980 to the most recent versions of the Acts, as amended.

**Section 8** of the bill creates a new section of law, s. 327.371, F.S., regulating human-powered vessels. The bill authorizes persons to operate a human-powered vessel within the boundaries of the marked channel of the Florida Intracoastal Waterway only under the following conditions:

- When the marked channel is the only navigable portion of the waterway available due to vessel congestion or obstructions on the water and the operator proceeds with diligence to a location where he or she may safely operate the vessel outside the marked channel;

- While crossing the marked channel in the most direct, continuous, and expeditious manner possible and not interfering with other vessel traffic in the channel; or
- During an emergency endangering life or limb.

The bill provides that a person who operates a human-powered vessel within the marked channel outside of these conditions commits a noncriminal infraction.

#### **Rulemaking Authority: Section 4**

**Section 4** of the bill amends s. 327.04, F.S., related to the Fish and Wildlife Conservation Commission (FWC) rules. The bill provides additional rulemaking authority to the FWC to implement the provisions of:

- Chapter 705, F.S., relating to lost or abandoned vessels;
- Section 376.15, F.S., relating to relocation or removal of derelict vessels from public waters; and
- Section 823.11, F.S., relating to criminal penalties for relocation or removal of derelict vessels.

#### **Spaceflight: Section 5**

**Section 5** of the bill creates a new section of law, s. 327.462, F.S., regulating the temporary establishment of protection zones in water bodies to ensure security around the launch and recovery of spaceflight assets.

The bill defines the following terms for the new section of law:

- “Launch services” means the conduct of a launch and activities involved in the preparation of a launch vehicle, payload, government astronaut, commercial astronaut, or spaceflight participant for such launch.
- “Reentry services” means the conduct of a reentry and activities involved in the preparation of a reentry vehicle, payload, government astronaut, commercial astronaut, or spaceflight participant for such reentry.
- “Spaceflight assets” means any item, or any part of an item, owned by a spaceflight entity which is used in launch services or reentry services, including crewed and uncrewed spacecraft, launch vehicles, parachutes and other landing aids, and any spacecraft or ancillary equipment that was attached to the launch vehicle during launch, orbit, or reentry.
- “Spaceflight entity” means any public or private entity holding a United States Federal Aviation Administration (FAA) launch, reentry, operator, or launch site license for spaceflight activities. The term also includes any manufacturer or supplier of components, services, or vehicles that have been reviewed by the FAA as part of issuing such a license, permit, or authorization.<sup>130</sup>

The bill authorizes the head of a law enforcement agency or entity, or his or her designee (law enforcement), to, within the agency or entity’s jurisdiction, temporarily establish a protection zone requiring vessels to leave, or prohibiting vessels from entering, water bodies when

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

necessary for preparations in advance of or for recovery of spaceflight assets before or after a launch service or reentry service.

A temporary protection zone must be established under the following conditions:

- The zone must be located within five hundred yards of where launch services, reentry services, or spaceflight asset recovery operations are being conducted. However, the protection zone may be located at a distance greater than five hundred yards if law enforcement determines that such greater distance is in the best interest of public safety.
- The zone may remain in effect only as long as necessary to ensure security around the launch and recovery areas and to recover spaceflight assets and any personnel being transported within a spacecraft following the launch or reentry activity. Such protection zone may not be in place more than 72 hours before or 72 hours after the launch.
- Law enforcement may also restrict vessels from operating within up to 500 yards of any vessel transporting recovered spaceflight assets following a launch or reentry while the transport vessel is continuously underway transporting such assets to a location for removal.
- Law enforcement may not restrict vessel movement within the Florida Intracoastal Waterway, except as necessary during the transport of spaceflight assets to or from port or during exigent circumstances.
- Law enforcement must report the establishment of the temporary protection zone via email to The FWC's Division of Law Enforcement, Boating and Waterways Section, and to the appropriate Coast Guard Sector Command having responsibility over the water body, at least 72 hours before establishment of the protection zone. The report must include:
  - Reasons for the protection zone;
  - The portion of the water body or water bodies that will be included in the protection zone; and
  - The duration of the protection zone.
- Law enforcement must report via email to the FWC's Division of Law Enforcement, Boating and Waterways Section, the details of all citations issued for violation of the protection zone no later than 72 hours after the end of the protection zone period.

The section of law applies only to launch services, reentry services, or the recovery of spaceflight assets occurring or originating within spaceport territory,<sup>131</sup> and to federally licensed or federally authorized launches and reentries occurring or transiting to an end destination upon waters of this state.

The bill provides that a person who violates this section or any directive given by law enforcement relating to an established temporary protection zone after being advised of the establishment of the protection zone commits a misdemeanor of the second degree.

### **Boating Safety: Sections 10, 16, 15, and 19**

**Section 10** of the bill amends s. 327.395, F.S., relating to boater safety identification.

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<sup>131</sup> Section 331.304, F.S. establishes as spaceport territory specified real property in Brevard, Santa Rosa, Okaloosa, Gulf, Walton, and Duval Counties, and real property which is a spaceport licensed by the FAA, as designated by the board of directors of Space Florida.

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

The bill exempts from the boater safety identification card requirement:

- Persons who have been previously licensed by the Coast Guard to serve as master of a vessel, provided proof of such licensure to the FWC, and requested that a boating safety identification card be issued in his or her name; and

The bill deletes a provision authorizing the FWC to appoint liveries, marinas, or other persons as its agents to administer a boating safety education course or temporary certificate examination and issue identification cards or temporary certificates, and requiring the agent to charge a \$2 examination fee. However, the provision is retained in another subsection within the same section of law.

**Section 16** of the bill creates s. 327.463, F.S., relating to special hazards requiring slow speeds by vessel operators. The bill specifies conditions under which a vessel is and is not considered to be operating at slow speed, minimum wake.

A vessel is considered to be operating at slow speed, minimum wake only if it is:

- Fully off plane and completely settled into the water; and
- Proceeding without wake or with minimum wake.

A vessel is not considered to be operating at slow speed, minimum wake if it is:

- Operating on plane;
- In the process of coming off plane and settling into the water or getting on plane; or
- Operating at a speed that creates a wake which unreasonably or unnecessarily endangers other vessels.

The bill prohibits a vessel that is required to operate at slow speed, minimum wake from proceeding at a speed greater than is reasonable and prudent to avoid the creation of an excessive wake or other hazardous condition under the existing circumstances.

The bill prohibits vessel operators from operating a vessel faster than slow speed, minimum wake upon approaching certain hazardous conditions and provides that a vessel operator found in violation of this requirement is guilty of a noncriminal infraction. The hazardous conditions are:

- Approaching within 300 feet of any emergency vessel, including but not limited to, a law enforcement vessel, a Coast Guard vessel, or a firefighting vessel, when such emergency vessel has its emergency lights activated; and
- Approaching within 300 feet of any construction vessel or barge displaying an orange flag indicating that the vessel or barge is actively engaged in construction operations.
  - The flag must be displayed from a pole that extends at least 10 feet above the tallest portion of the vessel or barge, or at least five feet above any superstructure permanently installed upon the vessel or barge.
  - The flag must meet certain requirements, including:
    - Be a size of at least two feet by three feet;

- Include a wire or other stiffener or be otherwise constructed to ensure that the flag remains fully unfurled and extended in the absence of a wind or breeze; and
- Be displayed so the visibility of the flag is not obscured in any direction.

The bill specifies that a person may not be cited for a violation during periods of low visibility, including any time between the hours from 30 minutes after sunset to 30 minutes before sunrise, unless the orange flag is illuminated and visible from a distance of at least two nautical miles. Such illumination does not relieve the construction vessel or barge from complying with all navigation rules.

The bill also provides that a person operating a vessel who violates this section, or the owner of or responsible party for a construction vessel or barge that displays an orange flag when it is not actively engaged in construction operations, is guilty of a noncriminal infraction.

The bill specifies that the speed and penalty provisions of this section do not apply to law enforcement, firefighting, or rescue vessels that are owned or operated by a governmental entity.

**Section 19** of the bill amends s. 327.54, F.S., relating to safety regulations of liveries. The bill prohibits liveries from knowingly leasing, hiring, or renting a vessel unless the person renting presents:

- Photographic identification and a valid boater safety identification card issued by the FWC;
- A state-issued identification card or driver license indicating possession of the boating safety identification card; or
- Photographic identification and a valid temporary certificate issued or approved by the FWC.
- These provisions do not apply to those individuals that are exempt from boating safety education requirements (Individuals born before January 1, 1988).

### **Boating-Restricted Areas: Sections 12, 13, 14, and 15**

**Section 12** of the bill amends s. 327.4108, F.S., relating to anchoring of vessels in anchoring limitation areas. The bill designates Monroe County as an anchoring limitation area within which a vessel may only be anchored in the same location for a maximum of 90 days. The bill requires the FWC to adopt rules to implement the anchoring limitation area. The bill provides that this anchoring limitation area does not apply to an approved and permitted mooring field. The bill provides that this section is not effective until Monroe County approves, permits, and opens new moorings for public use, at least 250 moorings within one mile of the Key West Bight City Dock and at least 50 moorings within the Key West Garrison Bight Mooring Field. Until such time the FWC shall designate the area within one mile of the Key West Bight City Dock as a priority for the expedited removal of derelict vessels, notwithstanding the FWC rules adopted pursuant to this section.

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

**Section 13** of the bill amends s. 327.4109, F.S., relating to prohibited anchoring and mooring. The bill revises existing anchoring and mooring restrictions to prohibit anchoring and mooring within 150 feet of a *public or private* marina or other *public* vessel launching or loading facility. However, vessels may anchor and moor within these areas under the exemptions in existing law.

**Section 14** of the bill amends s. 327.45, F.S., relating to protection zones for springs. The bill authorizes the FWC to establish protection zones for springs which prohibit the anchoring, mooring, beaching, or grounding of vessels, to protect and prevent harm to first, second, and third magnitude springs and springs groups, including their associated spring runs, as determined by the FWC using the most recent Florida Geological Survey springs bulletin.

**Section 15** of the bill amends s. 327.46, F.S., relating to boating-restricted areas. The bill authorizes municipalities and counties to establish slow speed, minimum wake boating-restricted areas by ordinance if the area is within the boundaries of a permitted public mooring field and up to a 100 foot buffer around the mooring field.

### **Derelict/At-Risk Vessels: Sections 11, 20, 22, 23, 24, 25, and 27**

**Section 11** of the bill amends s. 327.4107, F.S., relating to vessels at risk of becoming derelict on waters of this state. The bill revises the conditions under which a vessel is determined to be at risk of becoming derelict to delete vessels that are left or stored aground unattended in such a state that would prevent the vessel from getting underway or are sunk or partially sunk.

The bill authorizes the FWC and other law enforcement officers to provide notice to a vessel owner or operator that a vessel is at risk of becoming derelict via in-person notice recorded on an agency-approved body camera.

The bill authorizes the FWC and other law enforcement officers to relocate or cause to be relocated a vessel at risk of becoming derelict to a distance greater than 20 feet from a mangrove or upland vegetation. Law enforcement agencies and officers must be held harmless for damages to an at-risk vessel that result from relocation unless the damage results from gross negligence<sup>132</sup> or willful misconduct.<sup>133</sup>

The bill authorizes the FWC to establish a derelict vessel prevention program to address vessels at risk of becoming derelict. The program may, but is not required to, include:

- Removal, relocation, and destruction of vessels declared a public nuisance, derelict or at risk of becoming derelict, or lost or abandoned in accordance with state law;
- Creation of a vessel turn-in program allowing the owner of a vessel determined by law enforcement to be at risk of becoming derelict to turn his or her vessel and vessel title over to the FWC to be destroyed without penalty;
- Removal and destruction of an abandoned vessel for which an owner cannot be identified or the owner of which is deceased and no heir is interested in acquiring the vessel;
- Purchase of anchor line, anchors, and other equipment necessary for securing vessels at risk of becoming derelict; and

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<sup>132</sup> “Gross negligence” means conduct so reckless or wanting in care that it constitutes a conscious disregard or indifference to the safety of the property exposed to such conduct. Section 823.11, F.S.

<sup>133</sup> “Willful misconduct” means conduct evidencing carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design or to show an intentional and substantial disregard of the interests of the vessel owner. Section 823.11, F.S.

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

The bill authorizes the FWC to adopt rules to implement the program. Implementation of the program is subject to appropriation by the Legislature and is funded by the Marine Resources Conservation Trust Fund or the Florida Coastal Protection Trust Fund.

**Section 20** of the bill amends s. 327.60, F.S., relating to local regulations. The bill authorizes local governments to enact and enforce regulations to implement the procedures for abandoned or lost property that allow the local law enforcement agency to remove an abandoned or lost vessel within its jurisdiction that is affixed to a public mooring.

**Section 22 and Section 23** of the bill amend s. 328.09, F.S., relating to the refusal to issue and authority to cancel a certificate of title or registration. The bill prohibits the Department of Highway Safety and Motor Vehicles (DHSMV) from issuing a certificate of title to an applicant for a vessel that has been deemed derelict.

*Section 23 of the bill takes effect on July 1, 2023.* At that time, the bill authorizes the DHSMV to reject an application for a certificate of title for a vessel that has been deemed derelict.

**Section 24** of the bill amends s. 376.15, F.S., relating to the relocation or removal of derelict vessels from public waters. The bill deletes the prohibition in existing law against storing or abandoning a derelict vessel and provides that it is unlawful for any person, firm, or corporation to leave a derelict vessel upon the waters of this state. The bill provides that for purposes of this section, the term “leave” means to allow a vessel to remain occupied or unoccupied on the waters of this state for more than 24 hours.

The bill prohibits charging a person who owns or operates a vessel that becomes derelict upon the waters of this state solely as a result of a boating accident that is reported to law enforcement in a written report or otherwise; a hurricane; or another sudden event outside of his or her control with a violation if:

- The individual documents for law enforcement the specific event that led to the vessel being derelict upon the waters of this state; and
- The vessel has been removed from the waters of this state or has been repaired or addressed such that it is no longer derelict upon the waters of this state:
  - For a vessel that has become derelict as a result of a boating accident or other sudden event outside of his or her control, within seven days after such accident or event; or
  - Within 45 days after the hurricane has passed over this state.

However, this provision does not apply to a vessel that was derelict upon the waters of this state before a stated accident or event.

The bill authorizes the FWC or law enforcement agencies or officers to store, destroy, or dispose of derelict vessels, in addition to relocating or removing them. The bill authorizes the recovery of relocation, removal, storage, destruction, and disposal costs incurred by the FWC or a law enforcement agency from the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition. The FWC or law enforcement agencies or

officers, are held harmless for damages to the derelict vessel resulting from these actions, unless the damage results from gross negligence or willful misconduct.

The bill requires a governmental subdivision that has received authorization from a law enforcement agency to perform vessel relocation or removal activities to be licensed, insured, and properly equipped to perform such activities.

The bill adds storage, destruction, and disposal to the list of authorized actions for which the FWC may provide grants from the Marine Resources Conservation Trust Fund or Florida Coastal Protection Trust Fund to local governments under an established program for derelict vessels.

**Section 25** of the bill amends s. 705.103, F.S., relating to the procedures for abandoned or lost property. The bill creates specific procedures for derelict vessels or vessels that have been declared a public nuisance that are present on waters of this state. When a law enforcement officer ascertains that such a vessel exists, the officer must cause a notice to be placed on the vessel in substantially the following form:

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

The bill requires the law enforcement agency to mail a copy of the notice and inform the owner or responsible party that he or she has a right to a hearing to dispute the determination that the vessel is derelict or otherwise in violation of the law. If a request for a hearing is made, the bill requires a state agency to follow the statutory processes for proceedings in which the substantial interests of a party are determined by an agency, except that a local judge, magistrate, or code enforcement officer may be designated to conduct a hearing.

The bill authorizes the law enforcement agency, or its designee, if the owner or responsible party for a derelict vessel or vessel that has been declared a nuisance has not requested a hearing at the end of 21 days after the notice is published, or if, following a hearing, the judge, magistrate, administrative law judge, or hearing officer has determined the vessel to be derelict or at risk of becoming derelict and a final order has been entered or the case is otherwise closed, to:

- Remove the vessel from the waters of this state and destroy and dispose of the vessel or authorize another governmental entity or its designee to do so; or

- Authorize the vessel's use as an artificial reef in accordance with the FWC's artificial reef program if all necessary federal, state, and local authorizations are received.

The bill provides that the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition is liable to the law enforcement agency, governmental entity, or the agency's or entity's designee for removal, storage, and destruction costs.

The bill provides that neglecting or refusing to pay all costs of removal, storage, disposal, and destruction of a vessel or motor vehicle, after having been provided written notice via certified mail that such costs are owed, and after having applied for and been issued a registration for a vessel or motor vehicle before such costs have been paid in full, is a misdemeanor of the first degree.

**Section 27** of the bill amends s. 823.11, F.S., relating to the relocation or removal of derelict vessels. The bill revises the definition of "derelict vessel" to delete that the vessel is left, stored, or abandoned. The portion of the definition of "derelict vessel" that describes the vessel as in a wrecked, junked, or substantially dismantled condition upon any public waters of this state is also revised to delete the word "public." The new definition provides that a vessel is:

- Wrecked if it is sunken or sinking; aground without the ability to extricate itself absent mechanical assistance; or remaining after a marine casualty, including, but not limited to, a boating accident, extreme weather, or a fire.
- Junked if it has been substantially stripped of vessel components, if vessel components have substantially degraded or been destroyed, or if the vessel has been discarded by the owner or operator. Attaching an outboard motor to a vessel that is otherwise junked will not cause the vessel to no longer be junked if such motor is not an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives telephonic or written notice of such from an officer, and the vessel owner or operator is unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair.
- Substantially dismantled if at least two of the three following vessel systems or components are missing, compromised, incomplete, inoperable, or broken: the steering system; the propulsion system; or the exterior hull integrity. Attaching an outboard motor to a vessel that is otherwise substantially dismantled will not cause the vessel to no longer be substantially dismantled if the motor is not an effective means of propulsion.

The bill deletes the prohibition against storing or abandoning a derelict vessel in existing law and prohibits a person, firm, or corporation from leaving a derelict vessel upon the waters of this state. The bill provides that for purposes of the paragraph, the term "leave" means to allow a vessel to remain occupied or unoccupied on the waters of this state for more than 24 hours.

The bill prohibits charging a person who owns or operates a vessel that becomes derelict upon the waters of this state solely as a result of a boating accident that is reported to law enforcement in a written report or otherwise; a hurricane; or another sudden event outside of his or her control with a violation if:

- The individual documents for law enforcement the specific event that led to the vessel being derelict upon the waters of this state; and

- The vessel has been removed from the waters of this state or has been repaired or addressed such that it is no longer derelict upon the waters of this state:
  - For a vessel that has become derelict as a result of a boating accident or other sudden event outside of his or her control, within 7 days after such accident or event; or
  - Within 45 days after the hurricane has passed over this state.

However, this provision does not apply to a vessel that was derelict upon the waters of this state before a stated accident or event.

The bill authorizes the FWC or law enforcement agencies or officers to store, destroy, or dispose of derelict vessels, in addition to relocating or removing them, if the derelict vessel obstructs or threatens to obstruct navigation or constitutes a danger to the environment, property, or persons. The FWC or law enforcement agencies or officers, are held harmless for damages to the derelict vessel resulting from these actions, unless the damage results from gross negligence or willful misconduct.

The bill allows for the FWC, law enforcement agencies, or governmental subdivisions that have received authorization from a law enforcement officer or agency to recover costs for relocation, removal, storage, destruction, and disposal of a derelict vessel from a vessel owner or the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition. The bill provides that neglecting or refusing to pay all costs of removal, storage, destruction, or disposal of a derelict vessel, after having been provided written notice via certified mail that such costs are owed, and after having applied for and been issued a registration for a vessel or motor vehicle before such costs have been paid in full, is a misdemeanor of the first degree.

The bill requires a governmental subdivision that has received authorization from a law enforcement agency to perform vessel relocation or removal activities to be licensed, insured, and properly equipped to perform such activities.

### **Marine Sanitation Devices: Section 18**

**Section 18** of the bill amends s. 327.53, F.S., relating to marine sanitation. The bill requires the owner or operator of a live-aboard vessel or houseboat that is equipped with a marine sanitation device to maintain a record of the date of each pump-out of the device and the location of the pump-out station or waste reception facility. The bill requires each record to be maintained for one year after the pump-out date.

### **Penalties: Section 21**

**Section 21** of the bill amends s. 327.73, F.S., relating to civil penalties for violations of specified vessel laws.

The bill amends the noncriminal infraction for a violation of s. 327.395, F.S., relating to boater safety education to provide that a person cited for failing to have the required proof of boating safety education in his or her possession may not be convicted if, before or at the time of a county court hearing, the person produces proof of the boating safety education identification

card or temporary certificate for verification by the hearing officer or the court clerk and the identification card or temporary certificate was valid at the time the person was cited.

The bill increases civil penalties for a violation of s. 327.4107, F.S., relating to vessels at risk of becoming derelict on waters of this state, from:

- \$50 to \$100 for a first offense;
- \$100 to \$250 for a second offense occurring 30 days or more after a previous offense; and
- \$250 to \$500 for a third or subsequent offense occurring 30 days or more after a previous offense.

The bill declares that a vessel that is the subject of three or more violations issued within an 18-month period by a law enforcement officer for being at risk of becoming derelict, which result in a disposition other than acquittal or dismissal, is a public nuisance and is subject to relocation or removal. The bill authorizes the FWC or other law enforcement to relocate or remove the vessel or cause it to be relocated or removed. Law enforcement officers who relocate or remove such a vessel are held harmless for damages to the vessel unless the damage results from gross negligence<sup>134</sup> or willful misconduct.<sup>135</sup>

The bill creates civil penalties for a violation of s. 327.463(4)(a) and (b), F.S., the new section relating to vessels creating special hazards, of:

- \$50 for a first offense;
- \$100 for a second offense occurring within 12 months after a prior offense; and
- \$250 for a third offense occurring within 36 months after a prior offense.

The bill adds to the list of violations resulting in a noncriminal offense:

- Failing to maintain the required pump-out records of a marine sanitation device for a live-aboard vessel or houseboat; and
- Operating a human-powered vessel within the boundaries of a marked channel of the Florida Intracoastal Waterway in violation of the new statutory restrictions.

### **Conforming Changes: Sections 9, 17, and 26**

**Section 9** of the bill amends s. 327.391, F.S., relating to the regulation of airboats, to make conforming and technical changes.

**Section 17** of the bill amends s. 327.50, F.S., relating to vessel safety regulations, equipment, and lighting requirements. The bill corrects an incorrect reference to clarify that the FWC may exempt vessel owners and operators from current Coast Guard safety equipment requirements.

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<sup>134</sup> “Gross negligence” means conduct so reckless or wanting in care that it constitutes a conscious disregard or indifference to the safety of the property exposed to such conduct. Section 823.11, F.S.

<sup>135</sup> “Willful misconduct” means conduct evidencing carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design or to show an intentional and substantial disregard of the interests of the vessel owner. Section 823.11, F.S.

**Section 26** of the bill amends s. 705.103, F.S., relating to the procedures for abandoned or lost property, to conform with revisions from ch. 2019-76, Laws of Florida, which take effect in 2023.

**Effective Date**

**Section 28** of the bill provides that except as otherwise expressly provided, the effective date is July 1, 2021. (*Section 23 of the bill takes effect July 1, 2023.*)

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

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

If the FWC establishes a derelict vessel prevention program, the agency is likely to incur costs from implementing the program. The bill provides that establishment of the

program is subject to legislative appropriation, but it is unknown what amount the appropriation would be.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 316.1932, 316.1939, 327.02, 327.04, 327.352, 327.359, 327.391, 327.395, 327.4107, 327.4108, 327.4109, 327.45, 327.46, 327.50, 327.53, 327.54, 327.60, 327.73, 328.09, 376.15, 705.103, 823.11.

This bill creates the following sections of the Florida Statutes: 327.462, 327.371, 327.463.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Recommended CS/CS by Appropriations Subcommittee on Agriculture, Environment, and General Government on April 8, 2021:**

The committee substitute:

- Provides that the head of a law enforcement agency or entity, or his or her designee may not restrict vessel movement within the Florida Intracoastal Waterway, when establishing a temporary protective zone, except as necessary during transport of spaceflight assets to or from port or during exigent circumstances
- Establishes an effective date of October 1, 2021, to revise conditions under which a person operating a motor vehicle or vessel commits a misdemeanor by failing to submit to breath or urine testing for alcohol, chemical substances, and controlled substances.
- Clarifies what documents or certifications are required for operation of a vessel.
- Provides that the designation of Monroe County as an anchoring limitation area is not effective until Monroe County approves, permits, and opens new moorings for public use, at least 250 moorings within 1 mile of the Key West Bight City Dock and at least 50 moorings within the Key West Garrison Bight Mooring Field. Until such time the FWC shall designate the area within 1 mile of the Key West Bight City Dock as a priority for the expedited removal of derelict vessels.

**CS by Environment and Natural Resources on March 15, 2021:**

- Deletes the requirement from the underlying bill that persons have boating safety identification documents in his or her possession aboard a vessel beginning in 2023.

- Adds persons who possess an International Certificate of Competence in sailing to those exempt from the boating safety identification card requirement.
- Revises the conditions under which a vessel is determined to be at risk of becoming derelict to delete vessels that are left or stored aground unattended in such a state that would prevent the vessel from getting underway or are sunk or partially sunk.
- Deletes a provision authorizing the derelict vessel prevention program created under the bill to include other preventative efforts and methods as determined appropriate and necessary by the Fish and Wildlife Conservation Commission (FWC).
- Designates Monroe County as an anchoring limitation area within which a vessel may only be anchored in the same location for a maximum of 90 days, excluding approved and permitted mooring fields.
- Requires the FWC to adopt rules to implement the Monroe County anchoring limitation area.
- Authorizes the FWC to establish protection zones for first, second, and third magnitude springs and springs groups, including their associated spring runs, which prohibit the anchoring, mooring, beaching, or grounding of vessels.
- Provides that the springs, springs groups, and springs runs be determined by the FWC using the most recent Florida Geological Survey springs bulletin.
- Clarifies that vessels that are required to operate at slow speed, minimum wake are prohibited from proceeding at certain speeds.
- Deletes provisions from the underlying bill designating the waters of this state as a no-discharge zone and associated penalties for violation.
- Revises provisions relating to derelict vessels to prohibit persons, firms, or corporations from leaving, rather than storing or abandoning, a derelict vessel upon the waters of this state.
- Provides that, for derelict vessels provisions, the term “leave” means to allow a vessel to remain occupied or unoccupied on the waters of this state for more than 24 hours.
- Provides that persons who own or operate a vessel that becomes derelict as a result of a reported boating accident, hurricane, or other uncontrollable event may not be charged with having a derelict vessel if the person provides documentation of the events leading to the vessel being derelict or the vessel has been removed or repaired within a specific time frame.
- Authorizes the FWC and law enforcement officers to store, destroy, or dispose of derelict vessels, in addition to relocating and removing the vessels.
- Authorizes the recovery of relocation, removal, storage, destruction, and disposal costs incurred by the FWC or a law enforcement agency from the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2021	.	
	.	
	.	
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Appropriations Subcommittee on Agriculture, Environment, and  
General Government (Hutson) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

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

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

(1)(a)1.a. A ~~Any~~ person who accepts the privilege extended



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11 by the laws of this state of operating a motor vehicle within  
12 this state is, by ~~se~~ operating such vehicle, deemed to have  
13 given his or her consent to submit to an approved chemical test  
14 or physical test including, but not limited to, an infrared  
15 light test of his or her breath for the purpose of determining  
16 the alcoholic content of his or her blood or breath if the  
17 person is lawfully arrested for any offense allegedly committed  
18 while the person was driving or was in actual physical control  
19 of a motor vehicle while under the influence of alcoholic  
20 beverages. The chemical or physical breath test must be  
21 incidental to a lawful arrest and administered at the request of  
22 a law enforcement officer who has reasonable cause to believe  
23 such person was driving or was in actual physical control of the  
24 motor vehicle within this state while under the influence of  
25 alcoholic beverages. The administration of a breath test does  
26 not preclude the administration of another type of test. The  
27 person shall be told that his or her failure to submit to any  
28 lawful test of his or her breath will result in the suspension  
29 of the person's privilege to operate a motor vehicle for a  
30 period of 1 year for a first refusal, or for a period of 18  
31 months if the driving privilege of such person has been  
32 previously suspended or if he or she has previously been fined  
33 under s. 327.35215 as a result of a refusal to submit to ~~such~~ a  
34 test or tests required under this chapter or chapter 327, and  
35 shall also be told that if he or she refuses to submit to a  
36 lawful test of his or her breath and his or her driving  
37 privilege has been previously suspended or if he or she has  
38 previously been fined under s. 327.35215 for a prior refusal to  
39 submit to a lawful test of his or her breath, urine, or blood as



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required under this chapter or chapter 327, he or she commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, in addition to any other penalties provided by law. The refusal to submit to a chemical or physical breath test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

b. A ~~Any~~ person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by ~~so~~ operating such vehicle, deemed to have given his or her consent to submit to a urine test for the purpose of detecting the presence of chemical substances as set forth in s. 877.111 or controlled substances if the person is lawfully arrested for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of chemical substances or controlled substances. The urine test must be incidental to a lawful arrest and administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such tests at the request of a law enforcement officer who has reasonable cause to believe such person was driving or was in actual physical control of a motor vehicle within this state while under the influence of chemical substances or controlled substances. The urine test shall be administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such test in a reasonable manner that will ensure the accuracy of the specimen and maintain the privacy of the individual involved. The administration of a urine test does not preclude the administration of another type



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of test. The person shall be told that his or her failure to submit to any lawful test of his or her urine will result in the suspension of the person's privilege to operate a motor vehicle for a period of 1 year for the first refusal, or for a period of 18 months if the driving privilege of such person has been previously suspended or if he or she has previously been fined under s. 327.35215 as a result of a refusal to submit to ~~such~~ a test or tests required under this chapter or chapter 327, and shall also be told that if he or she refuses to submit to a lawful test of his or her urine and his or her driving privilege has been previously suspended or if he or she has previously been fined under s. 327.35215 for a prior refusal to submit to a lawful test of his or her breath, urine, or blood as required under this chapter or chapter 327, he or she commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, in addition to any other penalties provided by law. The refusal to submit to a urine test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

2. The Alcohol Testing Program within the Department of Law Enforcement is responsible for the regulation of the operation, inspection, and registration of breath test instruments utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327. The program is responsible for the regulation of the individuals who operate, inspect, and instruct on the breath test instruments utilized in the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327. The program is further



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responsible for the regulation of blood analysts who conduct blood testing to be utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327. The program shall:

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

Nothing in this section shall be construed to supersede provisions in this chapter and chapters 322 and 327. The specifications in this section are derived from the power and authority previously and currently possessed by the Department of Law Enforcement and are enumerated to conform with the



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mandates of chapter 99-379, Laws of Florida.

(c) A ~~Any~~ person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by operating such vehicle, deemed to have given his or her consent to submit to an approved blood test for the purpose of determining the alcoholic content of the blood or a blood test for the purpose of determining the presence of chemical substances or controlled substances as provided in this section if there is reasonable cause to believe the person was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages or chemical or controlled substances and the person appears for treatment at a hospital, clinic, or other medical facility and the administration of a breath or urine test is impractical or impossible. As used in this paragraph, the term "other medical facility" includes an ambulance or other medical emergency vehicle. The blood test shall be performed in a reasonable manner. A ~~Any~~ person who is incapable of refusal by reason of unconsciousness or other mental or physical condition is deemed not to have withdrawn his or her consent to such test. A blood test may be administered whether or not the person is told that his or her failure to submit to such a blood test will result in the suspension of the person's privilege to operate a motor vehicle upon the public highways of this state and that a refusal to submit to a lawful test of his or her blood, if his or her driving privilege has been previously suspended for refusal to submit to a lawful test of his or her breath, urine, or blood, is a misdemeanor. A ~~Any~~ person who is capable of refusal shall be told that his or her failure to submit to such a blood test will result in the



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suspension of the person's privilege to operate a motor vehicle for a period of 1 year for a first refusal, or for a period of 18 months if the driving privilege of the person has been suspended previously or if he or she has previously been fined under s. 327.35215 as a result of a refusal to submit to ~~such a~~ test or tests required under this chapter or chapter 327, ~~and that a refusal to submit to a lawful test of his or her blood, if his or her driving privilege has been previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood, is a misdemeanor.~~ The refusal to submit to a blood test upon the request of a law enforcement officer is admissible in evidence in any criminal proceeding.

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

316.1939 Refusal to submit to testing; penalties.—

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

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

(b) Who was placed under lawful arrest for a violation of s. 316.193 unless such test was requested pursuant to s.



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316.1932(1)(c);

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

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

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

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

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

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



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paddles.

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

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

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

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

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

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

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

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

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

(b) "Reentry services" means the conduct of a reentry and activities involved in the preparation of a reentry vehicle,



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payload, government astronaut, commercial astronaut, or  
spaceflight participant for such reentry.

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

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

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

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

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

(3) A protection zone established under subsection (2) may  
remain in effect only as long as necessary to ensure security  
around the launch and recovery areas and to recover spaceflight



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assets and any personnel being transported within a spacecraft following the launch or reentry activity. Such protection zone may not be in place more than 72 hours before or 72 hours after the launch. The head of a law enforcement agency or entity identified in s. 327.70, or his or her designee:

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

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

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



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violating the protection zone.

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

(6) A person who violates this section or any directive given by a law enforcement officer relating to the establishment of a protection zone under this section after being advised of the establishment of the protection zone commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

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

327.352 Tests for alcohol, chemical substances, or controlled substances; implied consent; refusal.—

(1)(a)1. The Legislature declares that the operation of a vessel is a privilege that must be exercised in a reasonable manner. In order to protect the public health and safety, it is essential that a lawful and effective means of reducing the incidence of boating while impaired or intoxicated be established. Therefore, a ~~any~~ person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by ~~so~~ operating such vessel, deemed to have given his or her consent to submit to an approved chemical test or physical test including, but not limited to, an infrared light test of his or her breath for the purpose of determining the



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alcoholic content of his or her blood or breath if the person is lawfully arrested for any offense allegedly committed while the person was operating a vessel while under the influence of alcoholic beverages. The chemical or physical breath test must be incidental to a lawful arrest and administered at the request of a law enforcement officer who has reasonable cause to believe such person was operating the vessel within this state while under the influence of alcoholic beverages. The administration of a breath test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her breath under this chapter will result in a civil penalty of \$500, and shall also be told that if he or she refuses to submit to a lawful test of his or her breath and he or she has been previously fined under s. 327.35215 or has previously had his or her driver license suspended under s. 322.2615 for refusal to submit to any lawful test of his or her breath, urine, or blood, he or she commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, in addition to any other penalties provided by law. The refusal to submit to a chemical or physical breath test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

2. A ~~Any~~ person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by ~~so~~ operating such vessel, deemed to have given his or her consent to submit to a urine test for the purpose of detecting the presence of chemical substances as set forth in s. 877.111 or controlled substances if the person is lawfully arrested for



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any offense allegedly committed while the person was operating a vessel while under the influence of chemical substances or controlled substances. The urine test must be incidental to a lawful arrest and administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such tests at the request of a law enforcement officer who has reasonable cause to believe such person was operating a vessel within this state while under the influence of chemical substances or controlled substances. The urine test shall be administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such test in a reasonable manner that will ensure the accuracy of the specimen and maintain the privacy of the individual involved. The administration of a urine test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her urine under this chapter will result in a civil penalty of \$500, and shall also be told that if he or she refuses to submit to a lawful test of his or her urine and he or she has been previously fined under s. 327.35215 or has previously had his or her driver license suspended under s. 322.2615 for refusal to submit to any lawful test of his or her breath, urine, or blood, he or she commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, in addition to any other penalties provided by law. The refusal to submit to a urine test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

(c) A ~~Any~~ person who accepts the privilege extended by the



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laws of this state of operating a vessel within this state is, by operating such vessel, deemed to have given his or her consent to submit to an approved blood test for the purpose of determining the alcoholic content of the blood or a blood test for the purpose of determining the presence of chemical substances or controlled substances as provided in this section if there is reasonable cause to believe the person was operating a vessel while under the influence of alcoholic beverages or chemical or controlled substances and the person appears for treatment at a hospital, clinic, or other medical facility and the administration of a breath or urine test is impractical or impossible. As used in this paragraph, the term "other medical facility" includes an ambulance or other medical emergency vehicle. The blood test shall be performed in a reasonable manner. A ~~Any~~ person who is incapable of refusal by reason of unconsciousness or other mental or physical condition is deemed not to have withdrawn his or her consent to such test. A ~~Any~~ person who is capable of refusal shall be told that his or her failure to submit to such a blood test will result in a civil penalty of \$500 ~~and that a refusal to submit to a lawful test of his or her blood, if he or she has previously been fined for refusal to submit to any lawful test of his or her breath, urine, or blood, is a misdemeanor.~~ The refusal to submit to a blood test upon the request of a law enforcement officer shall be admissible in evidence in any criminal proceeding.

Section 7. Effective October 1, 2021, section 327.359, Florida Statutes, is amended to read:

327.359 Refusal to submit to testing; penalties.—A ~~Any~~ person who has refused to submit to a chemical or physical test



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of his or her breath, ~~blood~~, or urine, as described in s.  
327.352, and who has been previously fined under s. 327.35215 or  
has previously had his or her driver license suspended under s.  
322.2615 for refusal to submit to a lawful test of his or her  
breath, urine, or blood, and:

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

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

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

(4) Who was informed that a refusal to submit to a lawful  
test of his or her breath or, ~~urine, or blood~~, if he or she has  
been previously fined under s. 327.35215 or has previously had  
his or her driver license suspended under s. 322.2615 for  
refusal to submit to a lawful test of his or her breath, urine,  
or blood, is a misdemeanor of the first degree, punishable as  
provided in s. 775.082 or s. 775.083; and

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

Section 8. Section 327.371, Florida Statutes, is created to  
read:

327.371 Human-powered vessels regulated.—



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

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

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

(c) During an emergency endangering life or limb.

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

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

Section 9. Subsection (1) and paragraphs (a) and (b) of subsection (5) of section 327.391, Florida Statutes, are amended to read:

327.391 Airboats regulated.—

(1) The exhaust of every internal combustion engine used on any airboat operated on the waters of this state shall be provided with an automotive-style factory muffler, underwater exhaust, or other manufactured device capable of adequately muffling the sound of the exhaust of the engine as described in s. 327.02(31) ~~s. 327.02(30)~~. The use of cutouts or flex pipe as



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the sole source of muffling is prohibited, except as provided in subsection (4). A ~~Any~~ person who violates this subsection commits a noncriminal infraction, punishable as provided in s. 327.73(1).

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

1. A photographic identification card.

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

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

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

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

Section 10. Section 327.395, Florida Statutes, is amended to read:

327.395 Boating safety education.—

(1) A person born on or after January 1, 1988, may not



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operate a vessel powered by a motor of 10 horsepower or greater unless such person has in his or her possession aboard the vessel the documents required by subsection (2).

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

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

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

(c) A valid International Certificate of Competency; or

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

(3) (a) ~~(2) (a)~~ A person may obtain a Florida boating safety identification card by successfully completing a boating safety education course that meets the requirements of this section and



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rules adopted by the commission pursuant to this section.

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

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

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

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

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

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

2. Has been previously licensed by the United States Coast



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Guard to serve as master of a vessel, provides proof of such  
licensure to the commission, and requests that a boating safety  
identification card be issued in his or her name.

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

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

(d) Is a nonresident who has in his or her possession  
photographic identification and proof that he or she has  
completed a boating safety education course or equivalency  
examination in another state or a United States territory which  
meets or exceeds the minimum requirements established by the  
National Association of State Boating Law Administrators.

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

(f) Is operating a vessel within 90 days after completing a  
boating safety education course in accordance with paragraph

~~(2) (a) the requirements of paragraph (1) (a)~~ and has a  
photographic identification card and a boating safety education  
certificate available for inspection as proof of having  
completed a boating safety education course. The boating safety  
education certificate must provide, at a minimum, the student's  
first and last name, the student's date of birth, and the date  
that he or she passed the course examination.

(g) Is exempted by rule of the commission.



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

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

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

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

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

Section 11. Present subsection (5) of section 327.4107, Florida Statutes, is redesignated as subsection (6), a new subsection (5) and subsection (7) are added to that section, and paragraphs (d) and (e) of subsection (2) of that section are amended, to read:

327.4107 Vessels at risk of becoming derelict on waters of



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this state.—

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

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

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

(5) The commission, an officer of the commission, or a law enforcement agency or officer specified in s. 327.70 may relocate or cause to be relocated an at-risk vessel found to be in violation of this section to a distance greater than 20 feet from a mangrove or upland vegetation. The commission, an officer of the commission, or a law enforcement agency or officer acting pursuant to this subsection upon waters of this state shall be held harmless for all damages to the at-risk vessel resulting from such relocation unless the damage results from gross negligence or willful misconduct as these terms are defined in s. 823.11.



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

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

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

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

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

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

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

Section 12. Section 327.4108, Florida Statutes, is amended to read:

327.4108 Anchoring of vessels in anchoring limitation



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areas.—

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

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

(b) Sunset Lake in Miami-Dade County.

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

1. Rivo Alto Island and Di Lido Island.

2. San Marino Island and San Marco Island.

3. San Marco Island and Biscayne Island.

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

(b) This subsection does not apply to an approved and permitted mooring field or to privately owned submerged land.

(c) Notwithstanding the commission rules adopted pursuant to this section, the designation made by this section is not effective until Monroe County establishes 200 approved and permitted moorings.

~~(2) To promote the public's use and enjoyment of the designated waterway, except as provided in subsections (3) and (4), a person may not anchor a vessel at any time during the~~



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~~period between one-half hour after sunset and one-half hour  
before sunrise in an anchoring limitation area.~~

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

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

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

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

(4) This section does not apply to:

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

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

(c) Vessels actively engaged in commercial fishing.

(d) Vessels engaged in recreational fishing if the persons



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onboard are actively tending hook and line fishing gear or nets.

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

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

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

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

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

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

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

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

3. Be properly equipped to perform such services.

(e) In addition to the civil penalty imposed under s.



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327.73(1)(z), the operator of a vessel that is removed and impounded pursuant to paragraph (b) must pay all removal and storage fees before the vessel is released. A vessel removed pursuant to paragraph (b) may not be impounded for longer than 48 hours.

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

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

Section 13. Paragraph (a) of subsection (1) and subsection (2) of section 327.4109, Florida Statutes, are amended to read:  
327.4109 Anchoring or mooring prohibited; exceptions; penalties.—

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

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

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

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



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implement this subparagraph.

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

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

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

Section 14. Subsection (2) of section 327.45, Florida Statutes, is amended to read:

327.45 Protection zones for springs.—

(2) The commission may establish by rule protection zones that restrict the speed and operation of vessels, or that prohibit the anchoring, mooring, beaching, or grounding of vessels, to protect and prevent harm to first, second, and third magnitude springs and springs groups, including their associated spring runs, as determined by the commission using the most



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recent Florida Geological Survey springs bulletin. This harm includes negative impacts to water quality, water quantity, hydrology, wetlands, and aquatic and wetland-dependent species.

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

327.46 Boating-restricted areas.—

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

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

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

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

b. Within 500 feet of fuel pumps or dispensers at any



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marine fueling facility that sells motor fuel to the general boating public on waterways more than 300 feet in width or within 300 feet of the fuel pumps or dispensers at any licensed terminal facility that sells motor fuel to the general boating public on waterways not exceeding 300 feet in width.

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

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

a. Within 300 feet of any bridge fender system.

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

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

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

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

3. An ordinance establishing a vessel-exclusion zone if the area is:

a. Designated as a public bathing beach or swim area, except that such areas may not be established within the Florida Intracoastal Waterway.

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

Section 16. Section 327.463, Florida Statutes, is created to read:

327.463 Special hazards.—



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

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

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

and

2. Proceeding without wake or with minimum wake.

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

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

1. Operating on plane;

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

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

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

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

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



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

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

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

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

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

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

(4) (a) A person operating a vessel in violation of this section commits a noncriminal infraction, punishable as provided in s. 327.73.

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

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



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Section 17. Paragraph (a) of subsection (1) of section 327.50, Florida Statutes, is amended to read:

327.50 Vessel safety regulations; equipment and lighting requirements.—

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

Section 18. Paragraph (a) of subsection (6) and subsection (7) of section 327.53, Florida Statutes, are amended, and subsection (8) is added to that section, to read:

327.53 Marine sanitation.—

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

(7) A ~~Any~~ vessel or floating structure operated or occupied on the waters of this ~~the~~ state in violation of this section is declared a nuisance and a hazard to public safety and health. The owner or operator of a ~~any~~ vessel or floating structure cited for violating this section shall, within 30 days following the issuance of the citation, correct the violation for which the citation was issued or remove the vessel or floating structure from the waters of this ~~the~~ state. If the violation is not corrected within the 30 days and the vessel or floating structure remains on the waters of this ~~the~~ state in violation



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of this section, law enforcement officers charged with the enforcement of this chapter under s. 327.70 shall apply to the appropriate court in the county in which the vessel or floating structure is located, to order or otherwise cause the removal of such vessel or floating structure from the waters of this the state at the owner's expense. If the owner cannot be found or otherwise fails to pay the removal costs, the provisions of s. 328.17 shall apply. If the proceeds under s. 328.17 are not sufficient to pay all removal costs, funds appropriated from the Marine Resources Conservation Trust Fund pursuant to paragraph (6) (b) or s. 328.72(15) (c) ~~s. 328.72(16)~~ may be used.

(8) The owner or operator of a live-aboard vessel as defined in s. 327.02(23), or a houseboat as defined in s. 327.02(17), that is equipped with a marine sanitation device must maintain a record of the date of each pumpout of the marine sanitation device and the location of the pumpout station or waste reception facility. Each record must be maintained for 1 year after the date of the pumpout.

Section 19. Subsection (2) of section 327.54, Florida Statutes, is amended to read:

327.54 Liveries; safety regulations; penalty.—

(2) A livery may not knowingly lease, hire, or rent a any vessel ~~powered by a motor of 10 horsepower or greater to a any~~ person who is required to comply with s. 327.395, unless such person presents to the livery photographic identification and a valid boater safety identification card issued by the commission, a state-issued identification card or driver license indicating possession of the boating safety identification card, or photographic identification and a valid temporary certificate



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issued or approved by the commission as required under s.  
327.395(2) ~~s. 327.395(1)~~, or meets the exemption provided under  
s. 327.395(6)(f).

Section 20. Subsection (5) of section 327.60, Florida  
Statutes, is amended to read:

327.60 Local regulations; limitations.—

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

Section 21. Paragraphs (q), (s), and (aa) of subsection (1)  
of section 327.73, Florida Statutes, are amended, and paragraphs  
(cc) and (dd) are added to that subsection, to read:

327.73 Noncriminal infractions.—

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

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

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



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temporary certificate was valid at the time the person was cited.

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

1. For a first offense, \$100 ~~\$50~~.

2. For a second offense occurring 30 days or more after a first offense, \$250 ~~\$100~~.

3. For a third or subsequent offense occurring 30 days or more after a previous offense, \$500 ~~\$250~~.

A vessel that is the subject of three or more violations issued pursuant to the same paragraph of s. 327.4107(2) within an 18-month period which result in dispositions other than acquittal or dismissal shall be declared to be a public nuisance and subject to ss. 705.103(2) and (4) and 823.11(3). The commission, an officer of the commission, or a law enforcement agency or officer specified in s. 327.70 may relocate, remove, or cause to be relocated or removed such public nuisance vessels from waters of this state. The commission, an officer of the commission, or a law enforcement agency or officer acting pursuant to this paragraph upon waters of this state shall be held harmless for all damages to the vessel resulting from such relocation or removal unless the damage results from gross negligence or willful misconduct as these terms are defined in s. 823.11.

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

1. For a first offense, \$50.

2. For a second offense occurring within 12 months after a



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prior offense, \$100.

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

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

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

Section 22. Subsection (4) of section 328.09, Florida Statutes, is amended to read:

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

(4) The department may not issue a certificate of title to an ~~any~~ applicant for a ~~any~~ vessel that has been deemed derelict by a law enforcement officer under s. 376.15 or s. 823.11. A law enforcement officer must inform the department in writing, which may be provided by facsimile, electronic mail, or other electronic means, of the vessel's derelict status and supply the



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

Section 23. Effective July 1, 2023, paragraph (e) of subsection (3) of section 328.09, Florida Statutes, as amended by section 12 of chapter 2019-76, Laws of Florida, is amended to read:

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

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

(e) The application is for a vessel that has been deemed derelict by a law enforcement officer under s. 376.15 or s. 823.11. In such case, a law enforcement officer must inform the department in writing, which may be provided by facsimile, e-mail, or other electronic means, of the vessel's derelict status and supply the department with the vessel title number or vessel identification number. The department may issue a certificate of title once a law enforcement officer has verified in writing, which may be provided by facsimile, e-mail, or other electronic means, that the vessel is no longer a derelict vessel.

Section 24. Section 376.15, Florida Statutes, is amended to read:

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

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



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

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

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

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

(b) Notwithstanding paragraph (a), a person who owns or operates a vessel that becomes derelict upon the waters of this state solely as a result of a boating accident that is reported to law enforcement in accordance with s. 327.301 or otherwise reported to law enforcement; a hurricane; or another sudden event outside of his or her control may not be charged with a violation if:

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

2. The vessel has been removed from the waters of this state or has been repaired or addressed such that it is no



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longer derelict upon the waters of this state:

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

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

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

(3)(a) The commission, an officer ~~officers~~ of the commission, or a ~~and any~~ law enforcement agency or officer specified in s. 327.70 may ~~are authorized and empowered to~~ relocate, remove, store, destroy, or dispose of or cause to be relocated, ~~or removed, stored, destroyed, or disposed of a~~ any derelict vessel as defined in s. 823.11 from ~~public~~ waters of this state as defined in s. 327.02. All costs, including costs owed to a third party, incurred by the commission or other law enforcement agency in the relocation, ~~or removal, storage,~~ destruction, or disposal of any abandoned or derelict vessel are recoverable against the owner of the vessel or the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition. The Department of Legal Affairs shall represent the commission in actions to recover such costs.

(b) The commission, an officer ~~officers~~ of the commission, or a ~~and any other~~ law enforcement agency or officer specified in s. 327.70 acting pursuant to ~~under~~ this section to relocate, remove, store, destroy, or dispose of or cause to be relocated, ~~or removed, stored, destroyed, or disposed of~~ a derelict vessel



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from ~~public~~ waters of this state as defined in s. 327.02 shall be held harmless for all damages to the derelict vessel resulting from such action ~~relocation or removal~~ unless the damage results from gross negligence or willful misconduct as these terms are defined in s. 823.11.

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

(d) The commission may establish a program to provide grants to local governments for the removal, storage, destruction, and disposal of derelict vessels from the ~~public~~ waters of this ~~the~~ state as defined in s. 327.02. The program shall be funded from the Marine Resources Conservation Trust Fund or the Florida Coastal Protection Trust Fund. Notwithstanding ~~the provisions in~~ s. 216.181(11), funds available for grants may only be authorized by appropriations acts of the Legislature. In a given fiscal year, if all funds appropriated pursuant to this paragraph are not requested by and granted to local governments for the removal, storage,



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destruction, and disposal of derelict vessels by the end of the third quarter, the Fish and Wildlife Conservation Commission may use the remainder of the funds to remove, store, destroy, and dispose of, or to pay private contractors to remove, store, destroy, and dispose of, derelict vessels.

(e) The commission shall adopt by rule procedures for submitting a grant application and criteria for allocating available funds. Such criteria shall include, but not be limited to, the following:

1. The number of derelict vessels within the jurisdiction of the applicant.

2. The threat posed by such vessels to public health or safety, the environment, navigation, or the aesthetic condition of the general vicinity.

3. The degree of commitment of the local government to maintain waters free of abandoned and derelict vessels and to seek legal action against those who abandon vessels in the waters of this the state as defined in s. 327.02.

(f) This section constitutes the authority for such removal but is not intended to be in contravention of any applicable federal act.

Section 25. Subsections (2) and (4) of section 705.103, Florida Statutes, are amended to read:

705.103 Procedure for abandoned or lost property.—

(2) (a) 1. Whenever a law enforcement officer ascertains that:

a. An article of lost or abandoned property other than a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa) is present on public property and is of such



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nature that it cannot be easily removed, the officer shall cause a notice to be placed upon such article in substantially the following form:

NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED PROPERTY. This property, to wit: ...(setting forth brief description)... is unlawfully upon public property known as ...(setting forth brief description of location)... and must be removed within 5 days; otherwise, it will be removed and disposed of pursuant to chapter 705, Florida Statutes. The owner will be liable for the costs of removal, storage, and publication of notice. Dated this: ...(setting forth the date of posting of notice)..., signed: ...(setting forth name, title, address, and telephone number of law enforcement officer)....

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

NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED VESSEL. This vessel, to wit: ...(setting forth brief description)... has been determined to be (derelict or a public nuisance) and is unlawfully upon waters of this state ...(setting forth brief description of location)... and must be removed within 21 days; otherwise, it will be removed and disposed of pursuant to chapter 705, Florida Statutes. The owner and other interested parties have the right to a hearing to challenge the determination that this vessel is derelict or



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otherwise in violation of the law. Please contact ... (contact information for person who can arrange for a hearing in accordance with this section).... The owner or the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition will be liable for the costs of removal, destruction, and disposal if this vessel is not removed by the owner. Dated this: ... (setting forth the date of posting of notice)...., signed: ... (setting forth name, title, address, and telephone number of law enforcement officer)....

2. The notices required under subparagraph 1. may ~~Such~~ ~~notice shall be~~ not be less than 8 inches by 10 inches and shall be sufficiently weatherproof to withstand normal exposure to the elements. In addition to posting, the law enforcement officer shall make a reasonable effort to ascertain the name and address of the owner. If such is reasonably available to the officer, she or he shall mail a copy of such notice to the owner on or before the date of posting. If the property is a motor vehicle as defined in s. 320.01(1) or a vessel as defined in s. 327.02, the law enforcement agency shall contact the Department of Highway Safety and Motor Vehicles in order to determine the name and address of the owner and any person who has filed a lien on the vehicle or vessel as provided in s. 319.27(2) or (3) or s. 328.15(1). On receipt of this information, the law enforcement agency shall mail a copy of the notice by certified mail, return receipt requested, to the owner and to the lienholder, if any, except that a law enforcement officer who has issued a citation for a violation of s. 376.15 or s. 823.11 to the owner of a derelict vessel is not required to mail a copy of the notice by



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certified mail, return receipt requested, to the owner. For a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), the mailed notice must inform the owner or responsible party that he or she has a right to a hearing to dispute the determination that the vessel is derelict or otherwise in violation of the law. If a request for a hearing is made, a state agency shall follow the processes set forth in s. 120.569. Local governmental entities shall follow the processes set forth in s. 120.569, except that a local judge, magistrate, or code enforcement officer may be designated to conduct such a hearing. If, at the end of 5 days after posting the notice in sub-subparagraph 1.a., or at the end of 21 days after posting the notice in sub-subparagraph 1.b., and mailing such notice, if required, the owner or any person interested in the lost or abandoned article or articles described has not removed the article or articles from public property or shown reasonable cause for failure to do so, and, in the case of a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), has not requested a hearing in accordance with this section, the following shall apply:

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

b. For a derelict vessel or a vessel declared a public



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nuisance pursuant to s. 327.73(1)(aa), the law enforcement agency or its designee may:

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

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

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

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

1. If the agency elects to retain the property for use by the unit of government, donate the property to a charitable organization, surrender such property to the finder, sell the property, or trade the property to another unit of local government or state agency, notice of such election shall be given by an advertisement published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the property was found if the value of the property



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is more than \$100. If the value of the property is \$100 or less, notice shall be given by posting a description of the property at the law enforcement agency where the property was turned in. The notice must be posted for not less than 2 consecutive weeks in a public place designated by the law enforcement agency. The notice must describe the property in a manner reasonably adequate to permit the rightful owner of the property to claim it.

2. If the agency elects to sell the property, it must do so at public sale by competitive bidding. Notice of the time and place of the sale shall be given by an advertisement of the sale published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the sale is to be held. The notice shall include a statement that the sale shall be subject to any and all liens. The sale must be held at the nearest suitable place to that where the lost or abandoned property is held or stored. The advertisement must include a description of the goods and the time and place of the sale. The sale may take place no earlier than 10 days after the final publication. If there is no newspaper of general circulation in the county where the sale is to be held, the advertisement shall be posted at the door of the courthouse and at three other public places in the county at least 10 days prior to sale. Notice of the agency's intended disposition shall describe the property in a manner reasonably adequate to permit the rightful owner of the property to identify it.

(4) The owner of any abandoned or lost property, or in the case of a derelict vessel, the owner or other party determined to be legally responsible for the vessel being upon the waters



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1403 of this state in a derelict condition, who, after notice as  
1404 provided in this section, does not remove such property within  
1405 the specified period shall be liable to the law enforcement  
1406 agency, other governmental entity, or the agency's or entity's  
1407 designee for all costs of removal, storage, and destruction of  
1408 such property, less any salvage value obtained by disposal of  
1409 the property. Upon final disposition of the property, the law  
1410 enforcement officer or representative of the law enforcement  
1411 agency or other governmental entity shall notify the owner, if  
1412 known, of the amount owed. In the case of an abandoned vessel or  
1413 motor vehicle, any person who neglects or refuses to pay such  
1414 amount is not entitled to be issued a certificate of  
1415 registration for such vessel or motor vehicle, or any other  
1416 vessel or motor vehicle, until such costs have been paid. A  
1417 person who has neglected or refused to pay all costs of removal,  
1418 storage, disposal, and destruction of a vessel or motor vehicle  
1419 as provided in this section, after having been provided written  
1420 notice via certified mail that such costs are owed, and who  
1421 applies for and is issued a registration for a vessel or motor  
1422 vehicle before such costs have been paid in full commits a  
1423 misdemeanor of the first degree, punishable as provided in s.  
1424 775.082 or s. 775.083. The law enforcement officer or  
1425 representative of the law enforcement agency or other  
1426 governmental entity shall supply the Department of Highway  
1427 Safety and Motor Vehicles with a list of persons whose vessel  
1428 registration privileges and ~~or whose~~ motor vehicle privileges  
1429 have been revoked under this subsection. ~~Neither~~ The department  
1430 or a ~~nor any other~~ person acting as an agent of the department  
1431 may not ~~thereof shall~~ issue a certificate of registration to a



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person whose vessel and ~~or~~ motor vehicle registration privileges have been revoked, as provided by this subsection, until such costs have been paid.

Section 26. Effective July 1, 2023, subsection (2) of section 705.103, Florida Statutes, as amended by section 29 of chapter 2019-76, Laws of Florida, is amended to read:

705.103 Procedure for abandoned or lost property.—

(2) (a) 1. Whenever a law enforcement officer ascertains that:

a. An article of lost or abandoned property other than a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa) is present on public property and is of such nature that it cannot be easily removed, the officer shall cause a notice to be placed upon such article in substantially the following form:

NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED PROPERTY. This property, to wit: ...(setting forth brief description)... is unlawfully upon public property known as ...(setting forth brief description of location)... and must be removed within 5 days; otherwise, it will be removed and disposed of pursuant to chapter 705, Florida Statutes. The owner will be liable for the costs of removal, storage, and publication of notice. Dated this: ...(setting forth the date of posting of notice)..., signed: ...(setting forth name, title, address, and telephone number of law enforcement officer)....

b. A derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa) is present on the waters of this



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

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

2. The notices required under subparagraph 1. may ~~Such~~ notice shall be not be less than 8 inches by 10 inches and shall be sufficiently weatherproof to withstand normal exposure to the elements. In addition to posting, the law enforcement officer shall make a reasonable effort to ascertain the name and address of the owner. If such is reasonably available to the officer,



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she or he shall mail a copy of such notice to the owner on or before the date of posting. If the property is a motor vehicle as defined in s. 320.01(1) or a vessel as defined in s. 327.02, the law enforcement agency shall contact the Department of Highway Safety and Motor Vehicles in order to determine the name and address of the owner and any person who has filed a lien on the vehicle or vessel as provided in s. 319.27(2) or (3) or s. 328.15. On receipt of this information, the law enforcement agency shall mail a copy of the notice by certified mail, return receipt requested, to the owner and to the lienholder, if any, except that a law enforcement officer who has issued a citation for a violation of s. 376.15 or s. 823.11 to the owner of a derelict vessel is not required to mail a copy of the notice by certified mail, return receipt requested, to the owner. For a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), the mailed notice must inform the owner or responsible party that he or she has a right to a hearing to dispute the determination that the vessel is derelict or otherwise in violation of the law. If a request for a hearing is made, a state agency shall follow the processes as set forth in s. 120.569. Local governmental entities shall follow the processes set forth in s. 120.569, except that a local judge, magistrate, or code enforcement officer may be designated to conduct such a hearing. If, at the end of 5 days after posting the notice in sub-subparagraph 1.a., or at the end of 21 days after posting the notice in sub-subparagraph 1.b., and mailing such notice, if required, the owner or any person interested in the lost or abandoned article or articles described has not removed the article or articles from public property or shown



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reasonable cause for failure to do so, and, in the case of a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), has not requested a hearing in accordance with this section, the following shall apply:

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

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

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

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

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



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

1. If the agency elects to retain the property for use by the unit of government, donate the property to a charitable organization, surrender such property to the finder, sell the property, or trade the property to another unit of local government or state agency, notice of such election shall be given by an advertisement published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the property was found if the value of the property is more than \$100. If the value of the property is \$100 or less, notice shall be given by posting a description of the property at the law enforcement agency where the property was turned in. The notice must be posted for not less than 2 consecutive weeks in a public place designated by the law enforcement agency. The notice must describe the property in a manner reasonably adequate to permit the rightful owner of the property to claim it.

2. If the agency elects to sell the property, it must do so at public sale by competitive bidding. Notice of the time and place of the sale shall be given by an advertisement of the sale published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the sale is to be held. The notice shall include a statement that the sale shall be subject to any and all liens. The sale must be held at the nearest suitable place to that where the lost or abandoned



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property is held or stored. The advertisement must include a description of the goods and the time and place of the sale. The sale may take place no earlier than 10 days after the final publication. If there is no newspaper of general circulation in the county where the sale is to be held, the advertisement shall be posted at the door of the courthouse and at three other public places in the county at least 10 days prior to sale. Notice of the agency's intended disposition shall describe the property in a manner reasonably adequate to permit the rightful owner of the property to identify it.

Section 27. Subsections (1), (2), and (3) of section 823.11, Florida Statutes, are amended to read:

823.11 Derelict vessels; relocation or removal; penalty.—

(1) As used in this section and s. 376.15, the term:

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

(b) "Derelict vessel" means a vessel, as defined in s. 327.02, that is ~~left, stored, or abandoned~~:

1. In a wrecked, junked, or substantially dismantled condition upon any ~~public~~ waters of this state.

a. A vessel is wrecked if it is sunken or sinking; aground without the ability to extricate itself absent mechanical assistance; or remaining after a marine casualty, including, but not limited to, a boating accident, extreme weather, or a fire.

b. A vessel is junked if it has been substantially stripped of vessel components, if vessel components have substantially degraded or been destroyed, or if the vessel has been discarded by the owner or operator. Attaching an outboard motor to a vessel that is otherwise junked will not cause the vessel to no



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

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

(I) The steering system;

(II) The propulsion system; or

(III) The exterior hull integrity.

Attaching an outboard motor to a vessel that is otherwise substantially dismantled will not cause the vessel to no longer be substantially dismantled if such motor is not an effective means of propulsion as required by s. 327.4107(2) (e) and associated rules.

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

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

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

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

(2) (a) ~~It is unlawful for~~ A person, firm, or corporation



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may not to store, leave, or abandon any derelict vessel upon  
waters of in this state. For purposes of this paragraph, the  
term "leave" means to allow a vessel to remain occupied or  
unoccupied on the waters of this state for more than 24 hours.

(b) Notwithstanding paragraph (a), a person who owns or  
operates a vessel that becomes derelict upon the waters of this  
state solely as a result of a boating accident that is reported  
to law enforcement in accordance with s. 327.301 or otherwise  
reported to law enforcement; a hurricane; or another sudden  
event outside of his or her control may not be charged with a  
violation if:

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

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

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

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

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

(3) The commission, an officer ~~officers~~ of the commission,  
or a ~~and any~~ law enforcement agency or officer specified in s.  
327.70 ~~may are authorized and empowered to~~ relocate, remove,  
~~store, destroy, or dispose of~~ or cause to be relocated, ~~or~~



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

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

(b) All costs, including costs owed to a third party, incurred by the commission, another ~~or other~~ law enforcement agency, or a governmental subdivision, when the governmental subdivision has received authorization from a law enforcement officer or agency, in the relocation, ~~or removal,~~ storage, destruction, or disposal of a derelict vessel are recoverable against the vessel owner or the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition. The Department of Legal Affairs shall represent the commission in actions to recover such costs. As provided in s. 705.103(4), a person who neglects or refuses to



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pay such costs may not be issued a certificate of registration for such vessel or for any other vessel or motor vehicle until such costs have been paid. A person who has neglected or refused to pay all costs of removal, storage, destruction, or disposal of a derelict vessel as provided in this section, after having been provided written notice via certified mail that such costs are owed, and who applies for and is issued a registration for a vessel or motor vehicle before such costs have been paid in full commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

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

Section 28. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2021.

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

And the title is amended as follows:

Delete everything before the enacting clause



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and insert:

A bill to be entitled

An act relating to operation and safety of motor vehicles and vessels; amending ss. 316.1932 and 316.1939, F.S.; revising conditions under which a person's driving privilege is suspended and under which the person commits a misdemeanor relating to tests for alcohol, chemical substances, or controlled substances; specifying that such misdemeanor is a misdemeanor of the first degree; amending s. 327.02, F.S.; defining the term "human-powered vessel"; revising the definition of the term "navigation rules"; amending s. 327.04, F.S.; providing additional rulemaking authority to the Fish and Wildlife Conservation Commission; creating s. 327.462, F.S.; defining terms; authorizing heads of certain entities to establish temporary protection zones in certain water bodies for certain purposes; providing protection zone requirements; prohibiting the restriction of vessel movement within the Florida Intracoastal Waterway except under certain circumstances; requiring the heads of certain entities to report the establishment of such protection zones to the commission and to the appropriate United States Coast Guard Sector Command; providing requirements for the report; providing applicability; providing penalties; amending ss. 327.352 and 327.359, F.S.; revising conditions under which a person commits a misdemeanor of the first degree for refusing to submit



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1751 to certain tests; creating s. 327.371, F.S.; providing  
1752 circumstances under which a person may operate a  
1753 human-powered vessel within the boundaries of the  
1754 marked channel of the Florida Intracoastal Waterway;  
1755 providing a penalty; amending s. 327.391, F.S.;  
1756 conforming cross-references; amending s. 327.395,  
1757 F.S.; revising the types of documentation that a  
1758 person may use to comply with certain boating safety  
1759 requirements; removing the authority of the commission  
1760 to appoint certain entities to administer a boating  
1761 safety education course or temporary certificate  
1762 examination and issue certain credentials; exempting  
1763 certain persons from the requirement to possess  
1764 certain documents aboard a vessel; removing the  
1765 specified service fee amount that certain entities  
1766 that issue boating safety identification cards and  
1767 temporary certificates may charge and keep; amending  
1768 s. 327.4107, F.S.; revising the conditions under which  
1769 officers may determine a vessel is at risk of becoming  
1770 derelict; authorizing certain officers to provide  
1771 notice that a vessel is at risk of becoming derelict  
1772 via body camera recordings; authorizing the commission  
1773 or certain officers to relocate at-risk vessels to a  
1774 certain distance from mangroves or vegetation;  
1775 providing that the commission or officers are not  
1776 liable for damages to such vessels; providing an  
1777 exception; authorizing the commission to establish a  
1778 derelict vessel prevention program consisting of  
1779 certain components; authorizing the commission to



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1780 adopt rules; providing that such program is subject to  
1781 appropriation by the Legislature; providing for  
1782 funding; amending s. 327.4108, F.S.; designating  
1783 Monroe County as an anchoring limitation area subject  
1784 to certain requirements; requiring the commission to  
1785 adopt rules; providing applicability; deleting  
1786 obsolete language; amending s. 327.4109, F.S.;  
1787 prohibiting the anchoring or mooring of a vessel or  
1788 floating structure within a certain distance of  
1789 certain facilities; providing exceptions; amending s.  
1790 327.45, F.S.; authorizing the commission to establish  
1791 protection zones where certain activities are  
1792 prohibited in or near springs; amending s. 327.46,  
1793 F.S.; authorizing a county or municipality to  
1794 establish a boating-restricted area within and around  
1795 a public mooring field and within certain portions of  
1796 the Florida Intracoastal Waterway; creating s.  
1797 327.463, F.S.; specifying conditions under which a  
1798 vessel is and is not operating at slow speed, minimum  
1799 wake; prohibiting a person from operating a vessel  
1800 faster than slow speed, minimum wake within a certain  
1801 distance from other specified vessels; providing  
1802 requirements for construction vessel or barge flags;  
1803 exempting a person from being cited for a violation  
1804 under certain circumstances; providing penalties;  
1805 providing applicability; amending s. 327.50, F.S.;  
1806 authorizing the commission to exempt vessel owners and  
1807 operators from certain safety equipment requirements;  
1808 amending s. 327.53, F.S.; requiring the owner or



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1809 operator of a live-aboard vessel or houseboat equipped  
1810 with a marine sanitation device to maintain a record  
1811 of the date and location of each pumpout of the device  
1812 for a certain period; conforming a cross-reference;  
1813 making technical changes; amending s. 327.54, F.S.;  
1814 prohibiting a livery from leasing, hiring, or renting  
1815 a vessel to a person required to complete a  
1816 commission-approved boating safety education course  
1817 unless such person presents certain documentation  
1818 indicating compliance; amending s. 327.60, F.S.;  
1819 authorizing a local government to enact and enforce  
1820 regulations allowing the local law enforcement agency  
1821 to remove an abandoned or lost vessel affixed to a  
1822 public mooring; amending s. 327.73, F.S.; providing  
1823 additional violations that qualify as noncriminal  
1824 infractions; providing civil penalties; prohibiting  
1825 conviction of a person cited for a violation relating  
1826 to possessing proof of boating safety education under  
1827 certain circumstances; increasing certain civil  
1828 penalties; providing that certain vessels shall be  
1829 declared a public nuisance subject to certain  
1830 statutory provisions; authorizing the commission or  
1831 certain officers to relocate or remove public nuisance  
1832 vessels from the waters of this state; providing that  
1833 the commission or officers are not liable for damages  
1834 to such vessels; providing an exception; amending s.  
1835 328.09, F.S.; prohibiting the Department of Highway  
1836 Safety and Motor Vehicles from issuing a certificate  
1837 of title to an applicant for a vessel that has been



434550

1838 deemed derelict pursuant to certain provisions;  
1839 authorizing the department, at a later date, to reject  
1840 an application for a certificate of title for such a  
1841 vessel; amending s. 376.15, F.S.; revising unlawful  
1842 acts relating to derelict vessels; defining the term  
1843 "leave"; prohibiting an owner or operator whose vessel  
1844 becomes derelict due to specified accidents or events  
1845 from being charged with a violation under certain  
1846 circumstances; providing applicability; conforming  
1847 provisions to changes made by the act; authorizing a  
1848 governmental subdivision that has received  
1849 authorization from a law enforcement officer or agency  
1850 to direct a contractor to perform vessel storage,  
1851 destruction, and disposal activities; authorizing the  
1852 commission to provide local government grants for the  
1853 storage, destruction, and disposal of derelict  
1854 vessels; providing for funding; amending s. 705.103,  
1855 F.S.; providing notice procedures for when a law  
1856 enforcement officer ascertains that a derelict or  
1857 public nuisance vessel is present on the waters of  
1858 this state; requiring a mailed notice to the owner or  
1859 party responsible for the vessel to inform him or her  
1860 of the right to a hearing; providing hearing  
1861 requirements; authorizing a law enforcement agency to  
1862 take certain actions if a hearing is not requested or  
1863 a vessel is determined to be derelict or otherwise in  
1864 violation of law; revising provisions relating to  
1865 liability for vessel removal costs and notification of  
1866 the amount owed; providing penalties for a person who



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1867 is issued a registration for a vessel or motor vehicle  
1868 before such costs are paid; requiring persons whose  
1869 vessel registration and motor vehicle privileges have  
1870 been revoked for failure to pay certain costs to be  
1871 reported to the department; prohibiting issuance of a  
1872 certificate of registration to such persons until such  
1873 costs are paid; amending s. 823.11, F.S.; revising  
1874 application of definitions; revising the definition of  
1875 the term "derelict vessel"; specifying requirements  
1876 for a vessel to be considered wrecked, junked, or  
1877 substantially dismantled; providing construction;  
1878 revising unlawful acts relating to derelict vessels;  
1879 defining the term "leave"; prohibiting an owner or  
1880 operator whose vessel becomes derelict due to  
1881 specified accidents or events from being charged with  
1882 a violation under certain circumstances; providing  
1883 applicability; providing that relocation or removal  
1884 costs incurred by a governmental subdivision are  
1885 recoverable against the vessel owner or the party  
1886 determined to be legally responsible for the vessel  
1887 being derelict; providing penalties for a person who  
1888 is issued a registration for a vessel or motor vehicle  
1889 before such costs are paid; authorizing a governmental  
1890 subdivision that has received authorization from a law  
1891 enforcement officer or agency to direct a contractor  
1892 to perform vessel relocation or removal activities;  
1893 providing effective dates.



479594

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/08/2021	.	
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Appropriations Subcommittee on Agriculture, Environment, and  
General Government (Hutson) recommended the following:

**Senate Amendment to Amendment (434550) (with title  
amendment)**

Delete lines 729 - 732  
and insert:

(c) Notwithstanding the commission rules adopted pursuant  
to this subsection, this subsection is not effective for Monroe  
County until the county approves, permits, and opens new  
moorings for public use, including at least 250 moorings within  
1 mile of the Key West Bight Marina and at least 50 moorings



479594

within the Key West Garrison Bight Mooring Field. Until such  
time, the commission shall designate the area within 1 mile of  
the Key West Bight Marina as a priority for the expedited  
removal of derelict vessels.

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

And the title is amended as follows:

    Delete line 1785

and insert:

    adopt rules; providing construction; requiring the  
    commission to designate a specified area as a priority  
    for the removal of derelict vessels until certain  
    conditions are met; deleting



817788

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2021	.	
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	.	
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Appropriations Subcommittee on Agriculture, Environment, and  
General Government (Hutson) recommended the following:

**Senate Amendment to Amendment (434550) (with title  
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Delete lines 729 - 732  
and insert:

(c) Notwithstanding the commission rules adopted pursuant  
to this section, this section is not effective for Monroe County  
until the county approves, permits, and opens new moorings for  
public use, including at least 250 moorings within 1 mile of the  
Key West Bight City Dock and at least 50 moorings within the Key



817788

West Garrison Bight Mooring Field. Until such time, the  
commission shall designate the area within 1 mile of the Key  
West Bight City Dock as a priority for the expedited removal of  
derelict vessels.

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

And the title is amended as follows:

    Delete line 1785

and insert:

    adopt rules; providing construction; requiring the  
    commission to designate a specified area as a priority  
    for the removal of derelict vessels until certain  
    conditions are met; deleting

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

592-02886-21

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1 A bill to be entitled  
2 An act relating to operation and safety of motor  
3 vehicles and vessels; amending ss. 316.1932 and  
4 316.1939, F.S.; revising conditions under which a  
5 person's driving privilege is suspended and under  
6 which the person commits a misdemeanor relating to  
7 tests for alcohol, chemical substances, or controlled  
8 substances; specifying such misdemeanor as a  
9 misdemeanor of the first degree; amending s. 327.02,  
10 F.S.; defining the term "human-powered vessel";  
11 revising the definition of the term "navigation  
12 rules"; amending s. 327.04, F.S.; providing additional  
13 rulemaking authority to the Fish and Wildlife  
14 Conservation Commission; creating s. 327.462, F.S.;  
15 defining terms; authorizing heads of certain entities  
16 to establish temporary protection zones in certain  
17 water bodies for certain purposes; providing  
18 protection zone requirements; requiring reports of  
19 establishment of such protection zones to the  
20 commission and to the appropriate United States Coast  
21 Guard Sector Command; providing report requirements;  
22 providing applicability; providing penalties; amending  
23 ss. 327.352 and 327.359, F.S.; revising conditions  
24 under which a person commits a misdemeanor the first  
25 degree for refusing to submit to certain tests;  
26 creating s. 327.371, F.S.; providing circumstances  
27 under which a person may operate a human-powered  
28 vessel within the boundaries of the marked channel of  
29 the Florida Intracoastal Waterway; providing a

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30 penalty; amending s. 327.391, F.S.; conforming cross-  
31 references; amending s. 327.395, F.S.; removing  
32 authority of the commission to appoint certain  
33 entities to administer a boating safety education  
34 course or temporary certificate examination and issue  
35 certain credentials; exempting certain persons from  
36 the requirement to possess certain documents aboard a  
37 vessel; amending s. 327.4107, F.S.; revising the  
38 conditions under which officers may determine a vessel  
39 is at risk of becoming derelict; authorizing certain  
40 officers to provide notice that a vessel is at risk of  
41 becoming derelict via body camera recordings;  
42 authorizing the commission or certain officers to  
43 relocate at-risk vessels to a certain distance from  
44 mangroves or vegetation; providing that the commission  
45 or officers are not liable for damages to such  
46 vessels; providing an exception; authorizing the  
47 commission to establish a derelict vessel prevention  
48 program consisting of certain components; authorizing  
49 the commission to adopt rules; providing that such  
50 program is subject to appropriation by the  
51 Legislature; providing for funding; amending s.  
52 327.4108, F.S.; designating Monroe County as an  
53 anchoring limitation area subject to certain  
54 requirements; requiring the commission to adopt rules;  
55 providing applicability; deleting obsolete language;  
56 amending s. 327.4109, F.S.; prohibiting the anchoring  
57 or mooring of a vessel or floating structure within a  
58 certain distance of certain facilities; providing

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59 exceptions; amending s. 327.45, F.S.; authorizing the  
 60 commission to establish protection zones where certain  
 61 activities are prohibited in or near springs; amending  
 62 s. 327.46, F.S.; authorizing a county or municipality  
 63 to establish a boating-restricted area within and  
 64 around a public mooring field and within certain  
 65 portions of the Florida Intracoastal Waterway;  
 66 providing an exception with respect to a certain  
 67 vessel-exclusion zone; creating s. 327.463, F.S.;  
 68 specifying conditions under which a vessel is and is  
 69 not operating at slow speed, minimum wake; prohibiting  
 70 a person from operating a vessel faster than slow  
 71 speed, minimum wake within a certain distance from  
 72 other specified vessels; exempting a person from being  
 73 cited for a violation under certain circumstances;  
 74 providing penalties; providing applicability; amending  
 75 s. 327.50, F.S.; authorizing the commission to exempt  
 76 vessel owners and operators from certain safety  
 77 equipment requirements; amending s. 327.53, F.S.;  
 78 requiring the owner or operator of a live-aboard  
 79 vessel or houseboat equipped with a marine sanitation  
 80 device to maintain a record of the date and location  
 81 of each pumpout of the device for a certain period;  
 82 conforming a cross-reference; making technical  
 83 changes; amending s. 327.54, F.S.; prohibiting a  
 84 livery from leasing, hiring, or renting a vessel to a  
 85 person required to complete a commission-approved  
 86 boating safety education course unless such person  
 87 presents certain documentation indicating compliance;

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88 amending s. 327.60, F.S.; authorizing a local  
 89 government to enact and enforce regulations allowing  
 90 the local law enforcement agency to remove an  
 91 abandoned or lost vessel affixed to a public mooring;  
 92 amending s. 327.73, F.S.; providing additional  
 93 violations that qualify as noncriminal infractions;  
 94 providing civil penalties; prohibiting conviction of a  
 95 person cited for a violation relating to possessing  
 96 proof of boating safety education under certain  
 97 circumstances; increasing certain civil penalties;  
 98 providing that certain vessels shall be declared a  
 99 public nuisance subject to certain statutory  
 100 provisions; authorizing the commission or certain  
 101 officers to relocate or remove public nuisance vessels  
 102 from the waters of this state; providing that the  
 103 commission or officers are not liable for damages to  
 104 such vessels; providing an exception; amending s.  
 105 328.09, F.S.; prohibiting the Department of Highway  
 106 Safety and Motor Vehicles from issuing a certificate  
 107 of title to an applicant for a vessel that has been  
 108 deemed derelict pursuant to certain provisions;  
 109 authorizing the department, at a later date, to reject  
 110 an application for a certificate of title for such a  
 111 vessel; amending s. 376.15, F.S.; revising unlawful  
 112 acts relating to derelict vessels; defining the term  
 113 "leave"; prohibiting an owner or operator whose vessel  
 114 becomes derelict due to specified accidents or events  
 115 from being charged with a violation under certain  
 116 circumstances; providing applicability; conforming

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117 provisions to changes made by the act; authorizing a  
 118 governmental subdivision that has received  
 119 authorization from a law enforcement officer or agency  
 120 to direct a contractor to perform vessel storage,  
 121 destruction, and disposal activities; authorizing the  
 122 commission to provide local government grants for the  
 123 storage, destruction, and disposal of derelict  
 124 vessels; providing for funding; amending s. 705.103,  
 125 F.S.; providing notice procedures for when a law  
 126 enforcement officer ascertains that a derelict or  
 127 public nuisance vessel is present on the waters of  
 128 this state; requiring a mailed notice to the owner or  
 129 party responsible for the vessel to inform him or her  
 130 of the right to a hearing; providing hearing  
 131 requirements; authorizing a law enforcement agency to  
 132 take certain actions if a hearing is not requested or  
 133 a vessel is determined to be derelict or otherwise in  
 134 violation of law; revising provisions relating to  
 135 liability for vessel removal costs and notification of  
 136 the amount owed; providing penalties for a person who  
 137 is issued a registration for a vessel or motor vehicle  
 138 before such costs are paid; requiring persons whose  
 139 vessel registration and motor vehicle privileges have  
 140 been revoked for failure to pay certain costs to be  
 141 reported to the department; prohibiting issuance of a  
 142 certificate of registration to such persons until such  
 143 costs are paid; amending s. 823.11, F.S.; revising  
 144 application of definitions; revising the definition of  
 145 the term "derelict vessel"; specifying requirements

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146 for a vessel to be considered wrecked, junked, or  
 147 substantially dismantled; providing construction;  
 148 revising unlawful acts relating to derelict vessels;  
 149 defining the term "leave"; prohibiting an owner or  
 150 operator whose vessel becomes derelict due to  
 151 specified accidents or events from being charged with  
 152 a violation under certain circumstances; providing  
 153 applicability; providing that relocation or removal  
 154 costs incurred by a governmental subdivision are  
 155 recoverable against the vessel owner or the party  
 156 determined to be legally responsible for the vessel  
 157 being derelict; providing penalties for a person who  
 158 is issued a registration for a vessel or motor vehicle  
 159 before such costs are paid; authorizing a governmental  
 160 subdivision that has received authorization from a law  
 161 enforcement officer or agency to direct a contractor  
 162 to perform vessel relocation or removal activities;  
 163 providing effective dates.

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

166  
 167 Section 1. Paragraphs (a) and (c) of subsection (1) of  
 168 section 316.1932, Florida Statutes, are amended to read:

169 316.1932 Tests for alcohol, chemical substances, or  
 170 controlled substances; implied consent; refusal.-

171 (1)(a)1.a. A ~~Any~~ person who accepts the privilege extended  
 172 by the laws of this state of operating a motor vehicle within  
 173 this state is, by ~~so~~ operating such vehicle, deemed to have  
 174 given his or her consent to submit to an approved chemical test

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175 or physical test including, but not limited to, an infrared  
 176 light test of his or her breath for the purpose of determining  
 177 the alcoholic content of his or her blood or breath if the  
 178 person is lawfully arrested for any offense allegedly committed  
 179 while the person was driving or was in actual physical control  
 180 of a motor vehicle while under the influence of alcoholic  
 181 beverages. The chemical or physical breath test must be  
 182 incidental to a lawful arrest and administered at the request of  
 183 a law enforcement officer who has reasonable cause to believe  
 184 such person was driving or was in actual physical control of the  
 185 motor vehicle within this state while under the influence of  
 186 alcoholic beverages. The administration of a breath test does  
 187 not preclude the administration of another type of test. The  
 188 person shall be told that his or her failure to submit to any  
 189 lawful test of his or her breath will result in the suspension  
 190 of the person's privilege to operate a motor vehicle for a  
 191 period of 1 year for a first refusal, or for a period of 18  
 192 months if the driving privilege of such person has been  
 193 previously suspended or if he or she has previously been fined  
 194 under s. 327.35215 as a result of a refusal to submit to ~~such~~ a  
 195 test or tests required under this chapter or chapter 327, and  
 196 shall also be told that if he or she refuses to submit to a  
 197 lawful test of his or her breath and his or her driving  
 198 privilege has been previously suspended or if he or she has  
 199 previously been fined under s. 327.35215 for a prior refusal to  
 200 submit to a lawful test of his or her breath, urine, or blood as  
 201 required under this chapter or chapter 327, he or she commits a  
 202 misdemeanor of the first degree, punishable as provided in s.  
 203 775.082 or s. 775.083, in addition to any other penalties

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204 provided by law. The refusal to submit to a chemical or physical  
 205 breath test upon the request of a law enforcement officer as  
 206 provided in this section is admissible into evidence in any  
 207 criminal proceeding.

208 b. ~~A~~ ~~Any~~ person who accepts the privilege extended by the  
 209 laws of this state of operating a motor vehicle within this  
 210 state is, by ~~so~~ operating such vehicle, deemed to have given his  
 211 or her consent to submit to a urine test for the purpose of  
 212 detecting the presence of chemical substances as set forth in s.  
 213 877.111 or controlled substances if the person is lawfully  
 214 arrested for any offense allegedly committed while the person  
 215 was driving or was in actual physical control of a motor vehicle  
 216 while under the influence of chemical substances or controlled  
 217 substances. The urine test must be incidental to a lawful arrest  
 218 and administered at a detention facility or any other facility,  
 219 mobile or otherwise, which is equipped to administer such tests  
 220 at the request of a law enforcement officer who has reasonable  
 221 cause to believe such person was driving or was in actual  
 222 physical control of a motor vehicle within this state while  
 223 under the influence of chemical substances or controlled  
 224 substances. The urine test shall be administered at a detention  
 225 facility or any other facility, mobile or otherwise, which is  
 226 equipped to administer such test in a reasonable manner that  
 227 will ensure the accuracy of the specimen and maintain the  
 228 privacy of the individual involved. The administration of a  
 229 urine test does not preclude the administration of another type  
 230 of test. The person shall be told that his or her failure to  
 231 submit to any lawful test of his or her urine will result in the  
 232 suspension of the person's privilege to operate a motor vehicle

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for a period of 1 year for the first refusal, or for a period of 18 months if the driving privilege of such person has been previously suspended or if he or she has previously been fined under s. 327.35215 as a result of a refusal to submit to ~~such~~ a test or tests required under this chapter or chapter 327, and shall also be told that if he or she refuses to submit to a lawful test of his or her urine and his or her driving privilege has been previously suspended or if he or she has previously been fined under s. 327.35215 for a prior refusal to submit to a lawful test of his or her breath, urine, or blood as required under this chapter or chapter 327, he or she commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, in addition to any other penalties provided by law. The refusal to submit to a urine test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

2. The Alcohol Testing Program within the Department of Law Enforcement is responsible for the regulation of the operation, inspection, and registration of breath test instruments utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327. The program is responsible for the regulation of the individuals who operate, inspect, and instruct on the breath test instruments utilized in the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327. The program is further responsible for the regulation of blood analysts who conduct blood testing to be utilized under the driving and boating under the influence provisions and related provisions located in this

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chapter and chapters 322 and 327. The program shall:

- a. Establish uniform criteria for the issuance of permits to breath test operators, agency inspectors, instructors, blood analysts, and instruments.
- b. Have the authority to permit breath test operators, agency inspectors, instructors, blood analysts, and instruments.
- c. Have the authority to discipline and suspend, revoke, or renew the permits of breath test operators, agency inspectors, instructors, blood analysts, and instruments.
- d. Establish uniform requirements for instruction and curricula for the operation and inspection of approved instruments.
- e. Have the authority to specify one approved curriculum for the operation and inspection of approved instruments.
- f. Establish a procedure for the approval of breath test operator and agency inspector classes.
- g. Have the authority to approve or disapprove breath test instruments and accompanying paraphernalia for use pursuant to the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327.
- h. With the approval of the executive director of the Department of Law Enforcement, make and enter into contracts and agreements with other agencies, organizations, associations, corporations, individuals, or federal agencies as are necessary, expedient, or incidental to the performance of duties.
- i. Issue final orders which include findings of fact and conclusions of law and which constitute final agency action for the purpose of chapter 120.

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

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

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

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

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

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

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

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

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

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state is, by operating such vehicle, deemed to have given his or her consent to submit to an approved blood test for the purpose of determining the alcoholic content of the blood or a blood test for the purpose of determining the presence of chemical substances or controlled substances as provided in this section if there is reasonable cause to believe the person was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages or chemical or controlled substances and the person appears for treatment at a hospital, clinic, or other medical facility and the administration of a breath or urine test is impractical or impossible. As used in this paragraph, the term "other medical facility" includes an ambulance or other medical emergency vehicle. The blood test shall be performed in a reasonable manner. A ~~Any~~ person who is incapable of refusal by reason of unconsciousness or other mental or physical condition is deemed not to have withdrawn his or her consent to such test. A blood test may be administered whether or not the person is told that his or her failure to submit to such a blood test will result in the suspension of the person's privilege to operate a motor vehicle upon the public highways of this state and that a refusal to submit to a lawful test of his or her blood, if his or her driving privilege has been previously suspended for refusal to submit to a lawful test of his or her breath, urine, or blood, is a misdemeanor. A ~~Any~~ person who is capable of refusal shall be told that his or her failure to submit to such a blood test will result in the suspension of the person's privilege to operate a motor vehicle for a period of 1 year for a first refusal, or for a period of 18 months if the driving privilege of the person has been

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suspended previously or if he or she has previously been fined under s. 327.35215 as a result of a refusal to submit to ~~such a~~ test or tests required under this chapter or chapter 327, and ~~that a refusal to submit to a lawful test of his or her blood, if his or her driving privilege has been previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood, is a misdemeanor.~~ The refusal to submit to a blood test upon the request of a law enforcement officer is admissible in evidence in any criminal proceeding.

Section 2. Subsection (1) of section 316.1939, Florida Statutes, is amended to read:

316.1939 Refusal to submit to testing; penalties.—

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

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

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

(c) Who was informed that, if he or she refused to submit to such test, his or her privilege to operate a motor vehicle

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would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months;

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

(e) Who, after having been so informed, refused to submit to any such test when requested to do so by a law enforcement officer or correctional officer

commits a misdemeanor of the first degree and is subject to punishment as provided in s. 775.082 or s. 775.083.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) A protection zone established under subsection (2) may remain in effect only as long as necessary to ensure security around the launch and recovery areas and to recover spaceflight assets and any personnel being transported within a spacecraft following the launch or reentry activity. Such protection zone

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may not be in place more than 72 hours before or 72 hours after the launch. The head of a law enforcement agency or entity identified in s. 327.70(1), or his or her designee, may also restrict vessels from operating within up to 500 yards of any vessel transporting recovered spaceflight assets following a spaceflight launch or reentry while such vessel is continuously underway transporting such assets to a location for removal from the waters of this state.

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

(5) This section applies only to launch services, reentry services, or the recovery of spaceflight assets occurring or originating within spaceport territory, as defined in s. 331.304, and to federally licensed or federally authorized launches and reentries occurring or transiting to an end

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destination upon waters of this state.

(6) A person who violates this section or any directive given by a law enforcement officer relating to the establishment of a protection zone under this section after being advised of the establishment of the protection zone commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 6. Paragraphs (a) and (c) of subsection (1) of section 327.352, Florida Statutes, are amended to read:

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

(1)(a)1. The Legislature declares that the operation of a vessel is a privilege that must be exercised in a reasonable manner. In order to protect the public health and safety, it is essential that a lawful and effective means of reducing the incidence of boating while impaired or intoxicated be established. Therefore, ~~a~~ any person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by ~~so~~ operating such vessel, deemed to have given his or her consent to submit to an approved chemical test or physical test including, but not limited to, an infrared light test of his or her breath for the purpose of determining the alcoholic content of his or her blood or breath if the person is lawfully arrested for any offense allegedly committed while the person was operating a vessel while under the influence of alcoholic beverages. The chemical or physical breath test must be incidental to a lawful arrest and administered at the request of a law enforcement officer who has reasonable cause to believe such person was operating the vessel within this state while

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under the influence of alcoholic beverages. The administration of a breath test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her breath under this chapter will result in a civil penalty of \$500, and shall also be told that if he or she refuses to submit to a lawful test of his or her breath and he or she has been previously fined under s. 327.35215 or has previously had his or her driver license suspended under s. 322.2615 for refusal to submit to any lawful test of his or her breath, urine, or blood, he or she commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, in addition to any other penalties provided by law. The refusal to submit to a chemical or physical breath test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

2. ~~A~~ Any person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by ~~se~~ operating such vessel, deemed to have given his or her consent to submit to a urine test for the purpose of detecting the presence of chemical substances as set forth in s. 877.111 or controlled substances if the person is lawfully arrested for any offense allegedly committed while the person was operating a vessel while under the influence of chemical substances or controlled substances. The urine test must be incidental to a lawful arrest and administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such tests at the request of a law enforcement officer who has reasonable cause to believe such person was

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operating a vessel within this state while under the influence of chemical substances or controlled substances. The urine test shall be administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such test in a reasonable manner that will ensure the accuracy of the specimen and maintain the privacy of the individual involved. The administration of a urine test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her urine under this chapter will result in a civil penalty of \$500, and shall also be told that if he or she refuses to submit to a lawful test of his or her urine and he or she has been previously fined under s. 327.35215 or has previously had his or her driver license suspended under s. 322.2615 for refusal to submit to any lawful test of his or her breath, urine, or blood, he or she commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, in addition to any other penalties provided by law. The refusal to submit to a urine test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

(c) ~~A~~ Any person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by operating such vessel, deemed to have given his or her consent to submit to an approved blood test for the purpose of determining the alcoholic content of the blood or a blood test for the purpose of determining the presence of chemical substances or controlled substances as provided in this section if there is reasonable cause to believe the person was operating

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581 a vessel while under the influence of alcoholic beverages or  
 582 chemical or controlled substances and the person appears for  
 583 treatment at a hospital, clinic, or other medical facility and  
 584 the administration of a breath or urine test is impractical or  
 585 impossible. As used in this paragraph, the term "other medical  
 586 facility" includes an ambulance or other medical emergency  
 587 vehicle. The blood test shall be performed in a reasonable  
 588 manner. A Any person who is incapable of refusal by reason of  
 589 unconsciousness or other mental or physical condition is deemed  
 590 not to have withdrawn his or her consent to such test. A Any  
 591 person who is capable of refusal shall be told that his or her  
 592 failure to submit to such a blood test will result in a civil  
 593 penalty of \$500 ~~and that a refusal to submit to a lawful test of~~  
 594 ~~his or her blood, if he or she has previously been fined for~~  
 595 ~~refusal to submit to any lawful test of his or her breath,~~  
 596 ~~urine, or blood, is a misdemeanor.~~ The refusal to submit to a  
 597 blood test upon the request of a law enforcement officer shall  
 598 be admissible in evidence in any criminal proceeding.

599 Section 7. Section 327.359, Florida Statutes, is amended to  
 600 read:

601 327.359 Refusal to submit to testing; penalties.—~~A Any~~  
 602 person who has refused to submit to a chemical or physical test  
 603 of his or her breath, ~~blood,~~ or urine, as described in s.  
 604 327.352, and who has been previously fined under s. 327.35215 or  
 605 has previously had his or her driver license suspended under s.  
 606 322.2615 for refusal to submit to a lawful test of his or her  
 607 breath, urine, or blood, and:

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

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610 a vessel in this state while under the influence of alcoholic  
 611 beverages, chemical substances, or controlled substances;

612 (2) Who was placed under lawful arrest for a violation of  
 613 s. 327.35 unless such test was requested pursuant to s.  
 614 327.352(1)(c);

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

617 (4) Who was informed that a refusal to submit to a lawful  
 618 test of his or her breath or urine, ~~or blood,~~ if he or she has  
 619 been previously fined under s. 327.35215 or has previously had  
 620 his or her driver license suspended under s. 322.2615 for  
 621 refusal to submit to a lawful test of his or her breath, urine,  
 622 or blood, is a misdemeanor of the first degree, punishable as  
 623 provided in s. 775.082 or s. 775.083; and

624 (5) Who, after having been so informed, refused to submit  
 625 to any such test when requested to do so by a law enforcement  
 626 officer or correctional officer

627  
 628 commits a misdemeanor of the first degree, punishable ~~and is~~  
 629 ~~subject to punishment~~ as provided in s. 775.082 or s. 775.083.

630 Section 8. Section 327.371, Florida Statutes, is created to  
 631 read:

632 327.371 Human-powered vessels regulated.—

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

636 (a) When the marked channel is the only navigable portion  
 637 of the waterway available due to vessel congestion or  
 638 obstructions on the water. The operator of the human-powered

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vessel shall proceed with diligence to a location where he or she may safely operate the vessel outside the marked channel of the Florida Intracoastal Waterway.

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

(c) During an emergency endangering life or limb.

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

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

Section 9. Subsection (1) and paragraphs (a) and (b) of subsection (5) of section 327.391, Florida Statutes, are amended to read:

327.391 Airboats regulated.—

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

(5) (a) ~~Beginning July 1, 2019,~~ A person may not operate an airboat to carry one or more passengers for hire on waters of

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this ~~the~~ state unless he or she has all of the following onboard the airboat:

1. A photographic identification card.

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

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

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

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

Section 10. Section 327.395, Florida Statutes, is amended to read:

327.395 Boating safety education.—

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

(2) While operating a vessel, a person identified under subsection (1) must have in his or her possession aboard the vessel photographic identification and a boating safety

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697 identification card issued by the commission, a state-issued  
 698 identification card or driver license indicating possession of  
 699 the boating safety identification card, or photographic  
 700 identification and a temporary certificate issued or approved by  
 701 the commission, which shows that he or she has:

702 (a) Completed a commission-approved boating safety  
 703 education course that meets the minimum requirements established  
 704 by the National Association of State Boating Law Administrators;  
 705 or

706 (b) Passed a temporary certificate examination developed or  
 707 approved by the commission.

708 (3) (a) (2) (a) A person may obtain a boating safety  
 709 identification card by successfully completing a boating safety  
 710 education course that meets the requirements of this section and  
 711 rules adopted by the commission pursuant to this section.

712 (b) A person may obtain a temporary certificate by passing  
 713 a temporary certificate examination that meets the requirements  
 714 of this section and rules adopted by the commission pursuant to  
 715 this section.

716 (4) (3) A ~~Any~~ commission-approved boating safety education  
 717 course or temporary certificate examination developed or  
 718 approved by the commission must include a component regarding  
 719 diving vessels, awareness of divers in the water, divers-down  
 720 warning devices, and the requirements of s. 327.331.

721 ~~(4) The commission may appoint liveries, marinas, or other~~  
 722 ~~persons as its agents to administer the course or temporary~~  
 723 ~~certificate examination and issue identification cards or~~  
 724 ~~temporary certificates in digital, electronic, or paper format~~  
 725 ~~under guidelines established by the commission. An agent must~~

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726 ~~charge the \$2 examination fee, which must be forwarded to the~~  
 727 ~~commission with proof of passage of the examination and may~~  
 728 ~~charge and keep a \$1 service fee.~~

729 (5) A boating safety identification card issued to a person  
 730 who has completed a boating safety education course is valid for  
 731 life. A temporary certificate issued to a person who has passed  
 732 a temporary certification examination is valid for 90 days after  
 733 the date of issuance. The commission may issue either the  
 734 boating safety identification card or the temporary certificate  
 735 in a digital, electronic, or paper format.

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

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

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

743 3. Possesses an International Certificate of Competence in  
 744 sailing.

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

746 (c) Is accompanied in the vessel by a person who is exempt  
 747 from this section or who holds a boating safety identification  
 748 card in compliance with this section, who is 18 years of age or  
 749 older, and who is attendant to the operation of the vessel and  
 750 responsible for the safe operation of the vessel and for any  
 751 violation that occurs during the operation of the vessel.

752 (d) Is a nonresident who has in his or her possession  
 753 photographic identification and proof that he or she has  
 754 completed a boating safety education course or equivalency

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examination in another state or a United States territory which meets or exceeds the minimum requirements established by the National Association of State Boating Law Administrators.

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

(f) Is operating a vessel within 90 days after completing a boating safety education course in accordance with paragraph

(2) (a) the requirements of paragraph (1) (a) and has a photographic identification card and a boating safety education certificate available for inspection as proof of having completed a boating safety education course. The boating safety education certificate must provide, at a minimum, the student's first and last name, the student's date of birth, and the date that he or she passed the course examination.

(g) Is exempted by rule of the commission.

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

(8) The commission shall institute and coordinate a statewide program of boating safety instruction and certification to ensure that boating safety courses and examinations are available in each county of this ~~the~~ state. The commission may appoint agents to administer the boating safety education course or temporary certificate examination and may authorize the agents to issue temporary certificates in digital, electronic, or paper format. An agent ~~The agents~~ shall charge and collect the \$2 fee required in subsection (9) for each temporary certificate requested of the commission by that agent,

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which must be forwarded to the commission. The agent may charge and keep a \$1 service fee.

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

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

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

Section 11. Present subsection (5) of section 327.4107, Florida Statutes, is redesignated as subsection (6), a new subsection (5) and subsection (7) are added to that section, and paragraphs (d) and (e) of subsection (2) of that section are amended, to read:

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

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

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

(e) The vessel does not have an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives telephonic notice, in-person notice ~~recorded on an agency-approved body camera,~~ or written notice, which may be provided by facsimile, electronic mail, or other

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electronic means, stating such from an officer, and the vessel owner or operator is unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair. The commission may adopt rules to implement this paragraph.

(5) The commission, an officer of the commission, or a law enforcement agency or officer specified in s. 327.70 may relocate or cause to be relocated an at-risk vessel found to be in violation of this section to a distance greater than 20 feet from a mangrove or upland vegetation. The commission, an officer of the commission, or a law enforcement agency or officer acting pursuant to this subsection upon waters of this state shall be held harmless for all damages to the at-risk vessel resulting from such relocation unless the damage results from gross negligence or willful misconduct as these terms are defined in s. 823.11.

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

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

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

(c) Providing for removal and destruction of an abandoned

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vessel for which an owner cannot be identified or the owner of which is deceased and no heir is interested in acquiring the vessel.

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

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

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

Section 12. Section 327.4108, Florida Statutes, is amended to read:

327.4108 Anchoring of vessels in anchoring limitation areas.—

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

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

(b) Sunset Lake in Miami-Dade County.

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

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871 1. Rivo Alto Island and Di Lido Island.  
 872 2. San Marino Island and San Marco Island.  
 873 3. San Marco Island and Biscayne Island.  
 874 (2) (a) Monroe County is designated as an anchoring  
 875 limitation area within which a vessel may only be anchored in  
 876 the same location for a maximum of 90 days. The commission shall  
 877 adopt rules to implement this subsection.  
 878 (b) This subsection does not apply to an approved and  
 879 permitted mooring field.  
 880 ~~(2) To promote the public's use and enjoyment of the~~  
 881 ~~designated waterway, except as provided in subsections (3) and~~  
 882 ~~(4), a person may not anchor a vessel at any time during the~~  
 883 ~~period between one half hour after sunset and one half hour~~  
 884 ~~before sunrise in an anchoring limitation area.~~  
 885 (3) Notwithstanding subsections (1) and ~~subsection~~ (2), a  
 886 person may anchor a vessel in an anchoring limitation area  
 887 during a time that would otherwise be unlawful:  
 888 (a) If the vessel suffers a mechanical failure that poses  
 889 an unreasonable risk of harm to the vessel or the persons  
 890 onboard unless the vessel anchors. The vessel may anchor for 3  
 891 business days or until the vessel is repaired, whichever occurs  
 892 first.  
 893 (b) If imminent or existing weather conditions in the  
 894 vicinity of the vessel pose an unreasonable risk of harm to the  
 895 vessel or the persons onboard unless the vessel anchors. The  
 896 vessel may anchor until weather conditions no longer pose such  
 897 risk. During a hurricane or tropical storm, weather conditions  
 898 are deemed to no longer pose an unreasonable risk of harm when  
 899 the hurricane or tropical storm warning affecting the area has

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900 expired.  
 901 (c) During events described in s. 327.48 or other special  
 902 events, including, but not limited to, public music  
 903 performances, local government waterfront activities, or  
 904 fireworks displays. A vessel may anchor for the lesser of the  
 905 duration of the special event or 3 days.  
 906 (4) This section does not apply to:  
 907 (a) Vessels owned or operated by a governmental entity for  
 908 law enforcement, firefighting, military, or rescue purposes.  
 909 (b) Construction or dredging vessels on an active job site.  
 910 (c) Vessels actively engaged in commercial fishing.  
 911 (d) Vessels engaged in recreational fishing if the persons  
 912 onboard are actively tending hook and line fishing gear or nets.  
 913 (5) (a) As used in this subsection, the term "law  
 914 enforcement officer or agency" means an officer or agency  
 915 authorized to enforce this section pursuant to s. 327.70.  
 916 (b) A law enforcement officer or agency may remove a vessel  
 917 from an anchoring limitation area and impound the vessel for up  
 918 to 48 hours, or cause such removal and impoundment, if the  
 919 vessel operator, after being issued a citation for a violation  
 920 of this section:  
 921 1. Anchors the vessel in violation of this section within  
 922 12 hours after being issued the citation; or  
 923 2. Refuses to leave the anchoring limitation area after  
 924 being directed to do so by a law enforcement officer or agency.  
 925 (c) A law enforcement officer or agency acting under this  
 926 subsection to remove or impound a vessel, or to cause such  
 927 removal or impoundment, shall be held harmless for any damage to  
 928 the vessel resulting from such removal or impoundment unless the

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damage results from gross negligence or willful misconduct.

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

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

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

3. Be properly equipped to perform such services.

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

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

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

Section 13. Paragraph (a) of subsection (1) and subsection (2) of section 327.4109, Florida Statutes, are amended to read:

327.4109 Anchoring or mooring prohibited; exceptions; penalties.—

(1)(a) The owner or operator of a vessel or floating structure may not anchor or moor such that the nearest approach

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of the anchored or moored vessel or floating structure is:

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

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

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

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

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

(b) Imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor until weather conditions no longer pose such risk. During a hurricane or tropical storm, weather

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conditions are deemed to no longer pose an unreasonable risk of harm when the hurricane or tropical storm warning affecting the area has expired.

Section 14. Subsection (2) of section 327.45, Florida Statutes, is amended to read:

327.45 Protection zones for springs.—

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

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

327.46 Boating-restricted areas.—

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

(b) Municipalities and counties ~~may have the authority to~~ establish the following boating-restricted areas by ordinance:

1. An ordinance establishing an idle speed, no wake

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boating-restricted area, if the area is:

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

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

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

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

a. Within 300 feet of any bridge fender system.

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

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

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

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

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

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area is:

- a. Designated as a public bathing beach or swim area.
- b. Within 300 feet of a dam, spillway, or flood control structure.

4. Notwithstanding the prohibition in s. 327.60(2)(c), within the portion of the Florida Intracoastal Waterway within their jurisdiction, except that the municipality or county may not establish a vessel-exclusion zone for public bathing beaches or swim areas within the waterway.

Section 16. Section 327.463, Florida Statutes, is created to read:

327.463 Special hazards.—

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

(a) Is operating at slow speed, minimum wake only if it is:  
1. Fully off plane and completely settled into the water;

and

2. Proceeding without wake or with minimum wake.

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

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

1. Operating on plane;

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

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

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

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

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

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

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

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

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

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

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

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all navigation rules.

(4) (a) A person operating a vessel in violation of this section commits a noncriminal infraction, punishable as provided in s. 327.73.

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

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

Section 17. Paragraph (a) of subsection (1) of section 327.50, Florida Statutes, is amended to read:

327.50 Vessel safety regulations; equipment and lighting requirements.—

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

Section 18. Paragraph (a) of subsection (6) and subsection (7) of section 327.53, Florida Statutes, are amended, and subsection (8) is added to that section, to read:

327.53 Marine sanitation.—

(6) (a) A violation of this section is a noncriminal infraction, punishable as provided in s. 327.73. Each violation shall be a separate offense. The owner and operator of any

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vessel shall be jointly and severally liable for the civil penalty imposed pursuant to this section.

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

(8) The owner or operator of a live-aboard vessel as defined in s. 327.02(23)(a) or (c), or a houseboat as defined in s. 327.02(17), that is equipped with a marine sanitation device must maintain a record of the date of each pumpout of the marine sanitation device and the location of the pumpout station or waste reception facility. Each record must be maintained for 1

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year after the date of the pumpout.

Section 19. Subsection (2) of section 327.54, Florida Statutes, is amended to read:

327.54 Liveries; safety regulations; penalty.—

(2) A livery may not knowingly lease, hire, or rent ~~a any~~ vessel ~~powered by a motor of 10 horsepower or greater to a any~~ person who is required to comply with s. 327.395, unless such person presents to the livery photographic identification and a valid boater safety identification card issued by the commission, a state-issued identification card or driver license indicating possession of the boating safety identification card, or photographic identification and a valid temporary certificate issued or approved by the commission as required under s. 327.395(2) s. 327.395(1), or meets the exemption provided under s. 327.395(6)(f).

Section 20. Subsection (5) of section 327.60, Florida Statutes, is amended to read:

327.60 Local regulations; limitations.—

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

Section 21. Paragraphs (q), (s), and (aa) of subsection (1) of section 327.73, Florida Statutes, are amended, and paragraphs (cc) and (dd) are added to that subsection, to read:

327.73 Noncriminal infractions.—

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

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

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

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

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

A vessel that is the subject of three or more violations issued pursuant to the same paragraph of s. 327.4107(2) within an 18-month period which result in dispositions other than acquittal or dismissal shall be declared to be a public nuisance and subject to ss. 705.103(2) and (4) and 823.11(3). The commission, an officer of the commission, or a law enforcement agency or

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1219 officer specified in s. 327.70 may relocate, remove, or cause to  
 1220 be relocated or removed such public nuisance vessels from waters  
 1221 of this state. The commission, an officer of the commission, or  
 1222 a law enforcement agency or officer acting pursuant to this  
 1223 paragraph upon waters of this state shall be held harmless for  
 1224 all damages to the vessel resulting from such relocation or  
 1225 removal unless the damage results from gross negligence or  
 1226 willful misconduct as these terms are defined in s. 823.11.

1227 (cc) Section 327.463(4)(a) and (b), relating to vessels  
 1228 creating special hazards, for which the penalty is:

1229 1. For a first offense, \$50.

1230 2. For a second offense occurring within 12 months after a  
 1231 prior offense, \$100.

1232 3. For a third offense occurring within 36 months after a  
 1233 prior offense, \$250.

1234 (dd) Section 327.371, relating to the regulation of human-  
 1235 powered vessels.

1236

1237 Any person cited for a violation of any provision of this  
 1238 subsection shall be deemed to be charged with a noncriminal  
 1239 infraction, shall be cited for such an infraction, and shall be  
 1240 cited to appear before the county court. The civil penalty for  
 1241 any such infraction is \$50, except as otherwise provided in this  
 1242 section. Any person who fails to appear or otherwise properly  
 1243 respond to a uniform boating citation shall, in addition to the  
 1244 charge relating to the violation of the boating laws of this  
 1245 state, be charged with the offense of failing to respond to such  
 1246 citation and, upon conviction, be guilty of a misdemeanor of the  
 1247 second degree, punishable as provided in s. 775.082 or s.

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1248 775.083. A written warning to this effect shall be provided at  
 1249 the time such uniform boating citation is issued.

1250 Section 22. Subsection (4) of section 328.09, Florida  
 1251 Statutes, is amended to read:

1252 328.09 Refusal to issue and authority to cancel a  
 1253 certificate of title or registration.—

1254 (4) The department may not issue a certificate of title to  
 1255 an ~~any~~ applicant for a ~~any~~ vessel that has been deemed derelict  
 1256 by a law enforcement officer under s. 376.15 or s. 823.11. A law  
 1257 enforcement officer must inform the department in writing, which  
 1258 may be provided by facsimile, electronic mail, or other  
 1259 electronic means, of the vessel's derelict status and supply the  
 1260 department with the vessel title number or vessel identification  
 1261 number. The department may issue a certificate of title once a  
 1262 law enforcement officer has verified in writing, which may be  
 1263 provided by facsimile, electronic mail, or other electronic  
 1264 means, that the vessel is no longer a derelict vessel.

1265 Section 23. Effective July 1, 2023, paragraph (e) of  
 1266 subsection (3) of section 328.09, Florida Statutes, as amended  
 1267 by section 12 of chapter 2019-76, Laws of Florida, is amended to  
 1268 read:

1269 328.09 Refusal to issue and authority to cancel a  
 1270 certificate of title or registration.—

1271 (3) Except as otherwise provided in subsection (4), the  
 1272 department may reject an application for a certificate of title  
 1273 only if:

1274 (e) The application is for a vessel that has been deemed  
 1275 derelict by a law enforcement officer under s. 376.15 or s.  
 1276 823.11. In such case, a law enforcement officer must inform the

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

Section 24. Section 376.15, Florida Statutes, is amended to read:

376.15 Derelict vessels; relocation or removal from ~~public~~ waters of this state.-

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

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

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

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

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

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(b) Notwithstanding paragraph (a), a person who owns or operates a vessel that becomes derelict upon the waters of this state solely as a result of a boating accident that is reported to law enforcement in accordance with s. 327.301 or otherwise reported to law enforcement; a hurricane; or another sudden event outside of his or her control may not be charged with a violation if:

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

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

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

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

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

(3) (a) The commission, ~~an officer~~ officers of the commission, ~~or a and any~~ law enforcement agency or officer specified in s. 327.70 ~~may are authorized and empowered to~~ relocate, remove, ~~store, destroy, or dispose of~~ or cause to be relocated, ~~or removed, stored, destroyed, or disposed of a any~~ derelict vessel as defined in s. 823.11 from ~~public~~ waters of this state as defined in s. 327.02. All costs, including costs owed to a third party, incurred by the commission or other law

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enforcement agency in the relocation, ~~or removal, storage,~~  
~~destruction, or disposal~~ of any abandoned or derelict vessel are  
 recoverable against the owner of the vessel ~~or the party~~  
~~determined to be legally responsible for the vessel being upon~~  
~~the waters of this state in a derelict condition~~. The Department  
 of Legal Affairs shall represent the commission in actions to  
 recover such costs.

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

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

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equipped to perform the services to be provided.

(d) The commission may establish a program to provide  
 grants to local governments for the removal, storage,  
~~destruction, and disposal~~ of derelict vessels from the ~~public~~  
 waters of ~~this the~~ state as defined in s. 327.02. The program  
 shall be funded from the Marine Resources Conservation Trust  
 Fund or the Florida Coastal Protection Trust Fund.  
 Notwithstanding ~~the provisions in~~ s. 216.181(11), funds  
 available for grants may only be authorized by appropriations  
 acts of the Legislature. In a given fiscal year, if all funds  
 appropriated pursuant to this paragraph are not requested by and  
 granted to local governments for the removal, storage,  
destruction, and disposal of derelict vessels by the end of the  
 third quarter, the Fish and Wildlife Conservation Commission may  
 use the remainder of the funds to remove, store, destroy, and  
dispose of, or to pay private contractors to remove, store,  
destroy, and dispose of, derelict vessels.

(e) The commission shall adopt by rule procedures for  
 submitting a grant application and criteria for allocating  
 available funds. Such criteria shall include, but not be limited  
 to, the following:

1. The number of derelict vessels within the jurisdiction  
 of the applicant.

2. The threat posed by such vessels to public health or  
 safety, the environment, navigation, or the aesthetic condition  
 of the general vicinity.

3. The degree of commitment of the local government to  
 maintain waters free of abandoned and derelict vessels and to  
 seek legal action against those who abandon vessels in the

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

(f) This section constitutes the authority for such removal but is not intended to be in contravention of any applicable federal act.

Section 25. Subsections (2) and (4) of section 705.103, Florida Statutes, are amended to read:

705.103 Procedure for abandoned or lost property.—

(2)(a)1. Whenever a law enforcement officer ascertains that:

a. An article of lost or abandoned property other than a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa) is present on public property and is of such nature that it cannot be easily removed, the officer shall cause a notice to be placed upon such article in substantially the following form:

NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED PROPERTY. This property, to wit: ...(setting forth brief description)... is unlawfully upon public property known as ...(setting forth brief description of location)... and must be removed within 5 days; otherwise, it will be removed and disposed of pursuant to chapter 705, Florida Statutes. The owner will be liable for the costs of removal, storage, and publication of notice. Dated this: ...(setting forth the date of posting of notice)..., signed: ...(setting forth name, title, address, and telephone number of law enforcement officer)....

b. A derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa) is present on the waters of this

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

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

2. The notices required under subparagraph 1. may ~~Such notice shall be~~ not be less than 8 inches by 10 inches and shall be sufficiently weatherproof to withstand normal exposure to the elements. In addition to posting, the law enforcement officer shall make a reasonable effort to ascertain the name and address of the owner. If such is reasonably available to the officer, she or he shall mail a copy of such notice to the owner on or

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1451 before the date of posting. If the property is a motor vehicle  
 1452 as defined in s. 320.01(1) or a vessel as defined in s. 327.02,  
 1453 the law enforcement agency shall contact the Department of  
 1454 Highway Safety and Motor Vehicles in order to determine the name  
 1455 and address of the owner and any person who has filed a lien on  
 1456 the vehicle or vessel as provided in s. 319.27(2) or (3) or s.  
 1457 328.15(1). On receipt of this information, the law enforcement  
 1458 agency shall mail a copy of the notice by certified mail, return  
 1459 receipt requested, to the owner and to the lienholder, if any,  
 1460 except that a law enforcement officer who has issued a citation  
 1461 for a violation of s. 376.15 or s. 823.11 to the owner of a  
 1462 derelict vessel is not required to mail a copy of the notice by  
 1463 certified mail, return receipt requested, to the owner. For a  
 1464 derelict vessel or a vessel declared a public nuisance pursuant  
 1465 to s. 327.73(1)(aa), the mailed notice must inform the owner or  
 1466 responsible party that he or she has a right to a hearing to  
 1467 dispute the determination that the vessel is derelict or  
 1468 otherwise in violation of the law. If a request for a hearing is  
 1469 made, a state agency shall follow the processes set forth in s.  
 1470 120.569. Local governmental entities shall follow the processes  
 1471 set forth in s. 120.569, except that a local judge, magistrate,  
 1472 or code enforcement officer may be designated to conduct such a  
 1473 hearing. If, at the end of 5 days after posting the notice in  
 1474 sub-subparagraph 1.a., or at the end of 21 days after posting  
 1475 the notice in sub-subparagraph 1.b., and mailing such notice, if  
 1476 required, the owner or any person interested in the lost or  
 1477 abandoned article or articles described has not removed the  
 1478 article or articles from public property or shown reasonable  
 1479 cause for failure to do so, and, in the case of a derelict

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1480 vessel or a vessel declared a public nuisance pursuant to s.  
 1481 327.73(1)(aa), has not requested a hearing in accordance with  
 1482 this section, the following shall apply:  
 1483 a. ~~(a)~~ For abandoned property other than a derelict vessel  
 1484 or a vessel declared a public nuisance pursuant to s.  
 1485 327.73(1)(aa), the law enforcement agency may retain any or all  
 1486 of the property for its own use or for use by the state or unit  
 1487 of local government, trade such property to another unit of  
 1488 local government or state agency, donate the property to a  
 1489 charitable organization, sell the property, or notify the  
 1490 appropriate refuse removal service.  
 1491 b. For a derelict vessel or a vessel declared a public  
 1492 nuisance pursuant to s. 327.73(1)(aa), the law enforcement  
 1493 agency or its designee may:  
 1494 (I) Remove the vessel from the waters of this state and  
 1495 destroy and dispose of the vessel or authorize another  
 1496 governmental entity or its designee to do so; or  
 1497 (II) Authorize the vessel's use as an artificial reef in  
 1498 accordance with s. 379.249 if all necessary federal, state, and  
 1499 local authorizations are received.  
 1500 A law enforcement agency or its designee may also take action as  
 1501 described in this sub-subparagraph if, following a hearing  
 1502 pursuant to this section, the judge, magistrate, administrative  
 1503 law judge, or hearing officer has determined the vessel to be  
 1504 derelict as provided in s. 823.11 or otherwise in violation of  
 1505 the law in accordance with s. 327.73(1)(aa) and a final order  
 1506 has been entered or the case is otherwise closed.  
 1507 (b) For lost property, the officer shall take custody and  
 1508

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the agency shall retain custody of the property for 90 days. The agency shall publish notice of the intended disposition of the property, as provided in this section, during the first 45 days of this time period.

1. If the agency elects to retain the property for use by the unit of government, donate the property to a charitable organization, surrender such property to the finder, sell the property, or trade the property to another unit of local government or state agency, notice of such election shall be given by an advertisement published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the property was found if the value of the property is more than \$100. If the value of the property is \$100 or less, notice shall be given by posting a description of the property at the law enforcement agency where the property was turned in. The notice must be posted for not less than 2 consecutive weeks in a public place designated by the law enforcement agency. The notice must describe the property in a manner reasonably adequate to permit the rightful owner of the property to claim it.

2. If the agency elects to sell the property, it must do so at public sale by competitive bidding. Notice of the time and place of the sale shall be given by an advertisement of the sale published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the sale is to be held. The notice shall include a statement that the sale shall be subject to any and all liens. The sale must be held at the nearest suitable place to that where the lost or abandoned property is held or stored. The advertisement must include a

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description of the goods and the time and place of the sale. The sale may take place no earlier than 10 days after the final publication. If there is no newspaper of general circulation in the county where the sale is to be held, the advertisement shall be posted at the door of the courthouse and at three other public places in the county at least 10 days prior to sale. Notice of the agency's intended disposition shall describe the property in a manner reasonably adequate to permit the rightful owner of the property to identify it.

(4) The owner of any abandoned or lost property, or in the case of a derelict vessel, the owner or other party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition, who, after notice as provided in this section, does not remove such property within the specified period shall be liable to the law enforcement agency, other governmental entity, or the agency's or entity's designee for all costs of removal, storage, and destruction of such property, less any salvage value obtained by disposal of the property. Upon final disposition of the property, the law enforcement officer or representative of the law enforcement agency or other governmental entity shall notify the owner, if known, of the amount owed. In the case of an abandoned vessel or motor vehicle, any person who neglects or refuses to pay such amount is not entitled to be issued a certificate of registration for such vessel or motor vehicle, or any other vessel or motor vehicle, until such costs have been paid. A person who has neglected or refused to pay all costs of removal, storage, disposal, and destruction of a vessel or motor vehicle as provided in this section, after having been provided written

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notice via certified mail that such costs are owed, and who applies for and is issued a registration for a vessel or motor vehicle before such costs have been paid in full commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. The law enforcement officer or representative of the law enforcement agency or other governmental entity shall supply the Department of Highway Safety and Motor Vehicles with a list of persons whose vessel registration privileges and ~~or whose~~ motor vehicle privileges have been revoked under this subsection. ~~Neither~~ The department ~~or a nor any other~~ person acting as an agent of the department ~~may not thereof shall~~ issue a certificate of registration to a person whose vessel and ~~or~~ motor vehicle registration privileges have been revoked, as provided by this subsection, until such costs have been paid.

Section 26. Effective July 1, 2023, subsection (2) of section 705.103, Florida Statutes, as amended by section 29 of chapter 2019-76, Laws of Florida, is amended to read:

705.103 Procedure for abandoned or lost property.—

(2) (a) 1. Whenever a law enforcement officer ascertains that:

a. An article of lost or abandoned property other than a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa) is present on public property and is of such nature that it cannot be easily removed, the officer shall cause a notice to be placed upon such article in substantially the following form:

NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED

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PROPERTY. This property, to wit: ...(setting forth brief description)... is unlawfully upon public property known as ...(setting forth brief description of location)... and must be removed within 5 days; otherwise, it will be removed and disposed of pursuant to chapter 705, Florida Statutes. The owner will be liable for the costs of removal, storage, and publication of notice. Dated this: ...(setting forth the date of posting of notice)..., signed: ...(setting forth name, title, address, and telephone number of law enforcement officer)....

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

NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED VESSEL. This vessel, to wit: ...(setting forth brief description of location)... has been determined to be (derelict or a public nuisance) and is unlawfully upon the waters of this state ...(setting forth brief description of location)... and must be removed within 21 days; otherwise, it will be removed and disposed of pursuant to chapter 705, Florida Statutes. The owner and other interested parties have the right to a hearing to challenge the determination that this vessel is derelict or otherwise in violation of the law. Please contact ...(contact information for person who can arrange for a hearing in accordance with this section)... The owner or the party determined to be legally responsible for the vessel being upon the waters of this state in a derelict condition will be liable

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for the costs of removal, destruction, and disposal if this vessel is not removed by the owner. Dated this: ...(setting forth the date of posting of notice)..., signed: ...(setting forth name, title, address, and telephone number of law enforcement officer)....

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

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dispute the determination that the vessel is derelict or otherwise in violation of the law. If a request for a hearing is made, a state agency shall follow the processes as set forth in s. 120.569. Local governmental entities shall follow the processes set forth in s. 120.569, except that a local judge, magistrate, or code enforcement officer may be designated to conduct such hearings. If, at the end of 5 days after posting the notice in sub-subparagraph 1.a., or at the end of 21 days after posting the notice in sub-subparagraph 1.b., and mailing such notice, if required, the owner or any person interested in the lost or abandoned article or articles described has not removed the article or articles from public property or shown reasonable cause for failure to do so, and, in the case of a derelict vessel or a vessel declared a public nuisance pursuant to s. 327.73(1)(aa), has not requested a hearing in accordance with this section, the following shall apply:

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

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

(I) Remove the vessel from the waters of this state and destroy and dispose of the vessel or authorize another

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governmental entity or its designee to do so; or

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

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

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

1. If the agency elects to retain the property for use by the unit of government, donate the property to a charitable organization, surrender such property to the finder, sell the property, or trade the property to another unit of local government or state agency, notice of such election shall be given by an advertisement published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the property was found if the value of the property is more than \$100. If the value of the property is \$100 or less, notice shall be given by posting a description of the property at the law enforcement agency where the property was turned in. The notice must be posted for not less than 2 consecutive weeks

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in a public place designated by the law enforcement agency. The notice must describe the property in a manner reasonably adequate to permit the rightful owner of the property to claim it.

2. If the agency elects to sell the property, it must do so at public sale by competitive bidding. Notice of the time and place of the sale shall be given by an advertisement of the sale published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the sale is to be held. The notice shall include a statement that the sale shall be subject to any and all liens. The sale must be held at the nearest suitable place to that where the lost or abandoned property is held or stored. The advertisement must include a description of the goods and the time and place of the sale. The sale may take place no earlier than 10 days after the final publication. If there is no newspaper of general circulation in the county where the sale is to be held, the advertisement shall be posted at the door of the courthouse and at three other public places in the county at least 10 days prior to sale. Notice of the agency's intended disposition shall describe the property in a manner reasonably adequate to permit the rightful owner of the property to identify it.

Section 27. Subsections (1), (2), and (3) of section 823.11, Florida Statutes, are amended to read:

823.11 Derelict vessels; relocation or removal; penalty.—

(1) As used in this section and s. 376.15, the term:

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

(b) "Derelict vessel" means a vessel, as defined in s.

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327.02, that is ~~left, stored, or abandoned~~:

1. In a wrecked, junked, or substantially dismantled condition upon any ~~public~~ waters of this state.

a. A vessel is wrecked if it is sunken or sinking; aground without the ability to extricate itself absent mechanical assistance; or remaining after a marine casualty, including, but not limited to, a boating accident, extreme weather, or a fire.

b. A vessel is junked if it has been substantially stripped of vessel components, if vessel components have substantially degraded or been destroyed, or if the vessel has been discarded by the owner or operator. Attaching an outboard motor to a vessel that is otherwise junked will not cause the vessel to no longer be junked if such motor is not an effective means of propulsion as required by s. 327.4107(2)(e) and associated rules.

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

(I) The steering system;

(II) The propulsion system; or

(III) The exterior hull integrity.

Attaching an outboard motor to a vessel that is otherwise substantially dismantled will not cause the vessel to no longer be substantially dismantled if such motor is not an effective means of propulsion as required by s. 327.4107(2)(e) and associated rules.

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

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

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

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

(2) ~~(a) It is unlawful for~~ A person, firm, or corporation ~~may not to store, leave, or abandon~~ any derelict vessel upon waters of in this state. For purposes of this paragraph, the term "leave" means to allow a vessel to remain occupied or unoccupied on the waters of this state for more than 24 hours.

(b) Notwithstanding paragraph (a), a person who owns or operates a vessel that becomes derelict upon the waters of this state solely as a result of a boating accident that is reported to law enforcement in accordance with s. 327.301 or otherwise reported to law enforcement; a hurricane; or another sudden event outside of his or her control may not be charged with a violation if:

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

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

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1799       a. For a vessel that has become derelict as a result of a  
 1800 boating accident or other sudden event outside of his or her  
 1801 control, within 7 days after such accident or event; or  
 1802       b. Within 45 days after the hurricane has passed over the  
 1803 state.  
 1804       (c) This subsection does not apply to a vessel that was  
 1805 derelict upon the waters of this state before the stated  
 1806 accident or event.  
 1807       (3) The commission, an officer ~~officers~~ of the commission,  
 1808 or a and any law enforcement agency or officer specified in s.  
 1809 327.70 may are ~~are authorized and empowered to~~ relocate, remove,  
 1810 store, destroy, or dispose of or cause to be relocated, ~~or~~  
 1811 removed, stored, destroyed, or disposed of a derelict vessel  
 1812 from public waters of this state as defined in s. 327.02 if the  
 1813 derelict vessel obstructs or threatens to obstruct navigation or  
 1814 in any way constitutes a danger to the environment, property, or  
 1815 persons. The commission, an officer ~~officers~~ of the commission,  
 1816 or any other law enforcement agency or officer acting pursuant  
 1817 to ~~under~~ this subsection to relocate, remove, store, destroy,  
 1818 dispose of or cause to be relocated, ~~or~~ removed, stored,  
 1819 destroyed, or disposed of a derelict vessel from public waters  
 1820 of this state shall be held harmless for all damages to the  
 1821 derelict vessel resulting from such action ~~relocation or removal~~  
 1822 unless the damage results from gross negligence or willful  
 1823 misconduct.  
 1824       (a) Removal of derelict vessels under this subsection may  
 1825 be funded by grants provided in ss. 206.606 and 376.15. The  
 1826 commission shall implement a plan for the procurement of any  
 1827 available federal disaster funds and use such funds for the

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1828 removal of derelict vessels.  
 1829       (b) All costs, including costs owed to a third party,  
 1830 incurred by the commission, another ~~or other~~ law enforcement  
 1831 agency, or a governmental subdivision, when the governmental  
 1832 subdivision has received authorization from a law enforcement  
 1833 officer or agency, in the relocation, ~~or~~ removal, storage,  
 1834 destruction, or disposal of a derelict vessel are recoverable  
 1835 against the vessel owner or the party determined to be legally  
 1836 responsible for the vessel being upon the waters of this state  
 1837 in a derelict condition. The Department of Legal Affairs shall  
 1838 represent the commission in actions to recover such costs. As  
 1839 provided in s. 705.103(4), a person who neglects or refuses to  
 1840 pay such costs may not be issued a certificate of registration  
 1841 for such vessel or for any other vessel or motor vehicle until  
 1842 such costs have been paid. A person who has neglected or refused  
 1843 to pay all costs of removal, storage, destruction, or disposal  
 1844 of a derelict vessel as provided in this section, after having  
 1845 been provided written notice via certified mail that such costs  
 1846 are owed, and who applies for and is issued a registration for a  
 1847 vessel or motor vehicle before such costs have been paid in full  
 1848 commits a misdemeanor of the first degree, punishable as  
 1849 provided in s. 775.082 or s. 775.083.  
 1850       (c) A contractor performing such ~~relocation or removal~~  
 1851 activities at the direction of the commission, an officer  
 1852 ~~officers~~ of the commission, ~~or~~ a law enforcement agency or  
 1853 officer, or a governmental subdivision, when the governmental  
 1854 subdivision has received authorization for the relocation or  
 1855 removal from a law enforcement officer or agency, pursuant to  
 1856 this section must be licensed in accordance with applicable

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1857 United States Coast Guard regulations where required; obtain and  
1858 carry in full force and effect a policy from a licensed  
1859 insurance carrier in this state to insure against any accident,  
1860 loss, injury, property damage, or other casualty caused by or  
1861 resulting from the contractor's actions; and be properly  
1862 equipped to perform the services to be provided.

1863 Section 28. Except as otherwise expressly provided in this  
1864 act, this act shall take effect July 1, 2021.

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

4/8/2021

*Meeting Date*

SB 1086

*Bill Number (if applicable)*

479594

*Amendment Barcode (if applicable)*

Topic anchoring of vessels

Name Bonnie Basham

Job Title \_\_\_\_\_

Address 10797 Wadesboro Rd

*Street*

Phone 8509337277

TALLAHASSEE

*City*

FL

*State*

32317

*Zip*

Email capital.ideas@att.net

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
*(The Chair will read this information into the record.)*

Representing Boat Owners of the United States (BOAT US)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

**YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM**

**THE FLORIDA SENATE**

**APPEARANCE RECORD**

04/08/2021

*Meeting Date*

1086

*Bill Number (if applicable)*

434550

*Amendment Barcode (if applicable)*

Topic Operation and Safety of Motor Vehicles and Vessels

Name Jessica Crawford

Job Title Legislative Affairs Director

Address 620 South Meridian Street

*Street*

Tallahassee

*City*

FL

*State*

32399

*Zip*

Phone 850-487-3795

Email Jessica.Crawford@myfwc.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Fish and Wildlife Conservation Commission

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/21

Meeting Date

SB 1086

Bill Number (if applicable)

Topic Operation & Safety of Motor Vehicles & Vessels

Amendment Barcode (if applicable)

Name Melanie Bostick

Job Title Vice President, Liberty Partners of Tallahassee

Address 113 E. College Ave.

Phone (850) 841-1726

Street

Tallahassee

City

FL

State

32302

Zip

Email melanie@libertypartnersfl.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Pensacola Shipyard Marina & Boatyard

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Agriculture, Environment, and General Government

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BILL: PCS/CS/SB 1152 (169628)

INTRODUCER: Appropriations Subcommittee on Agriculture, Environment, and General Government; Governmental Oversight and Accountability Committee; and Senator Brandes

SUBJECT: Fleet Management

DATE: April 12, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Candelaria	McVaney	GO	<b>Fav/CS</b>
2.	Davis	Betta	AEG	<b>Recommend: Fav/CS</b>
3.			AP	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/CS/SB 1152 requires the Department of Management Services (DMS) to prepare an inventory of all state-owned motor vehicles, maintenance facilities, and fuel depots. The inventory must be submitted to the Governor, President of the Senate, and Speaker of the House of Representatives by December 31, 2021.

The bill requires the DMS to create, administer, and maintain a centralized management system for the fleet of state-owned motor vehicles, maintenance facilities, and fuel depots. The DMS is also required to consolidate under a centralized system the management of existing motor vehicles, maintenance facilities, fuel depots, and any full-time equivalent and other personal services positions associated with state-owned maintenance facilities and fuel depots.

Each state agency and state university must provide information to the DMS necessary for consolidating the management of existing vehicles, maintenance facilities, fuel depots, and personnel under the centralized system.

The bill requires the DMS to contract with a vendor or contractor for privatizing the centralized management and operation of the state-owned motor vehicle fleet, motor vehicle acquisitions, maintenance facilities, and fuel depots. Data related to the contract must be stored in at least one common format approved by the DMS, and remains DMS property. In addition, the bill specifies

that any vehicle-monitoring hardware installed in a state-owned motor vehicle must be commercially available and may not be proprietary to the vendor or contractor.

The bill has an indeterminate, likely significant, negative fiscal impact on state expenditures. The DMS will incur indeterminate costs associated with creating and maintaining the centralized system, along with the process of privatizing with a vendor or contractor.

The bill takes effect upon becoming a law.

## **II. Present Situation:**

### **Acquisition, Assignment, and Use of Motor Vehicles and Watercraft**

The DMS has the authority to adopt and enforce rules for the efficient and safe use, operation, maintenance, repair, disposal, and replacement of all state-owned or state-leased aircraft, watercraft, and motor vehicles assigned.<sup>1</sup> Rules 60B-1.001–1.013 of the Florida Administrative Code, provide for the acquisition, assignment, and use of motor vehicles owned by the state.<sup>2</sup>

No state agency can purchase, lease, or acquire any motor vehicle, watercraft, or aircraft of any type unless prior approval from the DMS. The DMS approval is not required for the short-term lease of motor vehicles by state agencies.<sup>3</sup> Special authorization, with approval from the DMS, is given to the Department of Children and Families, the Agency for Persons with Disabilities, the Department of Health, the Department of Juvenile Justice, and the Department of Corrections to secure motor vehicles for use at residential facilities, centers, and county health departments.<sup>4</sup>

All state-owned or leased vehicles will be assigned to and operated in conformance with the regulations pertaining to one of the following classes of assignment:

- Class A – Pool assignment.<sup>5</sup>
- Class B – Limited use assignment.<sup>6</sup>
- Class C – Special assignment.<sup>7</sup>

Except when otherwise specifically authorized by law, all state-owned vehicles are required to carry an official state license plate.<sup>8</sup>

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<sup>1</sup> Section 287.16(6), F.S. establishes rulemaking authority for the Department of Management Services (DMS).

<sup>2</sup> Fla. Admin. Code R. 60B-1.001 – 60B-1.013.

<sup>3</sup> Section 287.15, F.S.

<sup>4</sup> Section 287.155, F.S.

<sup>5</sup> Fla. Admin. Code R. 60B-1.006, defines “pool vehicle assignment” to mean vehicles which are centrally controlled and made available for specific trips and returned to the pool upon completion of the trips.

<sup>6</sup> Fla. Admin. Code R. 60B-1.007, defines “limited use assignment” to mean state-owned or leased passenger vehicles required by an employee or position to conduct official state business and which are required for use 15 or more work days per month but do not meet special use assignment use classification.

<sup>7</sup> Fla. Admin. Code R. 60B-1.008, defines “special assignment” to mean vehicles which are state-owned or leased vehicles and are: 1) officially authorized as a prerequisite by the DMS, 2) required by an employee after normal duty hours to perform duties of the position to which he is assigned, or 3) assigned to an employee whose home is his official base of operation

<sup>8</sup> Fla. Admin. Code R. 60B-1.005.

## Bureau of Fleet Management and Federal Property Assistance

The Bureau of Fleet Management (bureau) within the DMS provides oversight responsibility for the state's fleet of motor vehicles and mobile equipment, along with the federal surplus property program. The bureau's programs include fleet management, federal property assistance, and aircraft operations.<sup>9</sup>

The bureau oversees fleet management, which manages the purchase, operation, maintenance, and disposal of the state's fleet of motor vehicles and watercraft. The state's fleet currently includes approximately 25,000 assets of 30 agencies.<sup>10</sup> The fleet includes automobiles, light trucks, heavy trucks, aircraft, construction and industrial equipment, trailers, tractors, motorcycles, all-terrain vehicles, boats, airboats, and boat engines. The bureau is responsible for four areas of fleet management which include: the purchase of mobile equipment, the fleet information management system (FIMS), the disposal of mobile equipment, and the surplus state vehicles and equipment auctions.<sup>11</sup>

The FIMS is used to provide management and cost information required to effectively manage the state's fleet. The FIMS also provides accountability of equipment use and expenditures. The FIMS requires agencies to keep records and provide reports regarding the effective use, operation, maintenance, repair, and replacement of motor vehicles.<sup>12</sup> The FIMS also assures the safe use of motor vehicles and they are used solely for state business.<sup>13</sup> The FIMS does not account for maintenance facilities and fuel depots.

## State Agency Fleets

Table 1 provides the total fleet count by state agency.

**Table 1. Agency Fleets**

Agency	Total Fleet Count
Agriculture and Consumer Services	4,573
Agency for Health Care Administration	1
Agency for Persons with Disabilities	242
Business and Professional Regulation	538
Citrus Commission	1

<sup>9</sup> DMS, *Fleet Management and Federal Property Assistance*, available at [https://www.dms.myflorida.com/business\\_operations/fleet\\_management\\_and\\_federal\\_property\\_assistance](https://www.dms.myflorida.com/business_operations/fleet_management_and_federal_property_assistance) (last visited Mar. 15, 2021).

<sup>10</sup> DMS, *Fleet Management*, available at [https://www.dms.myflorida.com/business\\_operations/fleet\\_management\\_and\\_federal\\_property\\_assistance/fleet\\_management](https://www.dms.myflorida.com/business_operations/fleet_management_and_federal_property_assistance/fleet_management) (last visited Mar. 15, 2021).

<sup>11</sup> *Id.*

<sup>12</sup> DMS, *The Fleet Information Management System*, available at [https://www.dms.myflorida.com/business\\_operations/fleet\\_management\\_and\\_federal\\_property\\_assistance/fleet\\_management/fleet\\_information\\_management\\_system\\_fims](https://www.dms.myflorida.com/business_operations/fleet_management_and_federal_property_assistance/fleet_management/fleet_information_management_system_fims), (last visited Mar. 15, 2021).

<sup>13</sup> DMS, *Fleet Management*, available at [https://www.dms.myflorida.com/business\\_operations/fleet\\_management\\_and\\_federal\\_property\\_assistance/fleet\\_management](https://www.dms.myflorida.com/business_operations/fleet_management_and_federal_property_assistance/fleet_management) (last visited Mar. 15, 2021).

<b>Agency</b>	<b>Total Fleet Count</b>
Children and Families	481
Economic Opportunities	7
Environmental Protection	1,451
Financial Services	590
Juvenile Justice	526
Law Enforcement	745
Military Affairs	104
Management Services	62
Education	43
Health	416
Lottery	228
Revenue	15
State	25
Transportation	4,484
Veterans' Affairs	23
Executive Office of the Governor	54
Florida Commission on Offender Review	2
Corrections	2,956
Fish and Wildlife Conservation Commission	2,965
Highway Safety and Motor Vehicles	2,891
Justice Administration Commission	602
Office of the Attorney General	115
Public Service Commission	22
School for the Deaf and Blind	43
<b>TOTALS</b>	<b>24,205<sup>14</sup></b>

### Business Case for Outsourcing Projects

Section 287.0571(4), F.S., provides that an agency should complete a business case for any outsourcing projects that have an expected cost in excess of \$10 million within a single fiscal year. The business case should be available for solicitation and must include all of the following:

- A detailed description of the service or activity for which the outsourcing is proposed.
- A description and analysis of the state agency's current performance, based on existing performance metrics if the state agency is currently performing the service or activity.
- The goals desired to be achieved through the proposed outsourcing and the rationale for such goals.
- A citation to the existing or proposed legal authority for outsourcing and the rationale for such goals.
- A description of available options for achieving the goals. If state employees are currently performing the service or activity, at least one option involving maintaining state provision of the service or activity must be included.

<sup>14</sup> Information contained in Fleet Information Management System (FIMS) report provided by the DMS (Mar. 7, 2021).

- An analysis of the advantages and disadvantages of each option, including, at a minimum, potential performance improvements and risks.
- A description of the current market for the contractual services that are under consideration for outsourcing.
- A cost-benefit analysis documenting the direct and indirect specific baseline costs, savings, and qualitative and quantitative benefits involved in or resulting from the implementation of the recommended option or options.
- A description of differences among current state agency policies and processes and, as appropriate, a discussion of options for or a plan to standardize, consolidate, or revise current policies and processes, if any, to reduce the customization of any proposed solution that would otherwise be required.
- A description of the specific performance standards that must, at a minimum, be met to ensure adequate performance.
- The projected timeframe for key events from the beginning of the procurement process through the expiration of a contract.
- A plan to ensure compliance with the public records law.
- A specific and feasible contingency plan addressing contractor nonperformance and a description of the tasks involved in and costs required for its implementation.
- A state agency's transition plan for addressing changes in the number of agency personnel, affected business processes, employee transition issues, and communication with affected stakeholders, such as agency clients and the public. The transition plan must contain a reemployment and retraining assistance plan for employees who are not retained by the state agency or employed by the contractor.
- A plan for ensuring access by persons with disabilities in compliance with applicable state and federal law.<sup>15</sup>

Business cases to outsource should be evaluated for feasibility, cost-effectiveness, and efficiency before a state agency proceeds with any outsourcing of services.<sup>16</sup>

### III. Effect of Proposed Changes:

**Section 1** requires the DMS to prepare an inventory of all state-owned motor vehicles, maintenance facilities, and fuel depots. The DMS is required to submit the inventory to the Governor, President of the Senate, and the Speaker of the House of Representatives by December 31, 2021.

The section provides the inventory to, at a minimum, provide all of the following information:

- The entity of ownership of all state-owned motor vehicles, maintenance facilities, and fuel depots.
- The entity of possession of all state-owned motor vehicles, maintenance facilities, and fuel depots.
- The estimated annual operating and other costs of all state-owned motor vehicles, maintenance facilities, and fuel depots.

<sup>15</sup> Section 287.0571(4)(a)-(o), F.S.

<sup>16</sup> Section 287.0571(2), F.S.

- The number of full-time equivalent and other personal services positions assigned to operate and maintain each state-owned maintenance facility and fuel depot.
- The physical address for the location of all state-owned motor vehicles, maintenance facilities, and fuel depots.

Each state agency and state university must provide any information requested by the DMS necessary for the completion of the inventory.

**Section 2** requires the DMS to create, administer, and maintain a centralized management system for the fleet of state-owned motor vehicles, maintenance facilities, and fuel depots. The DMS is also required to consolidate under a centralized management system the existing motor vehicles, maintenance facilities, fuel depots, and any full-time equivalent and other personal services positions assigned to operate and maintain each state-owned maintenance facility and fuel depot. Each state agency and state university must provide any information requested by the DMS that is necessary for consolidating under the centralized system.

**Section 3** requires the DMS to contract with a vendor or contractor for privatizing the centralized management and operation of the state-owned motor vehicle fleet, motor vehicle acquisitions, maintenance facilities, and fuel depots. Any data that relates to the contract must be stored in at least one common format approved by the DMS, and the data remains the property of the DMS. Any vehicle-monitoring hardware installed in a state-owned motor vehicle must be commercially available and may not be proprietary to the vendor or contractor.

**Section 4** provides that the act will take effect upon becoming a law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

None.

##### **E. Other Constitutional Issues:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill has an indeterminate fiscal impact on state expenditures. Based on the state's expenditures on fleet management that exceed \$10 million, a business case pursuant to s. 287.0571(4), F.S., may be required in order to outsource and privatize fleet management.

The DMS will incur costs associated with consolidating the fleets and updating the FIMS with fuel depots and maintenance facilities. The outsourcing of the management and operation of the state-owned motor vehicle fleets, motor vehicle acquisitions, maintenance facilities, and fuel depots to a contractor or vendor will result in a significant indeterminate fiscal impact on the DMS.

State agencies and state universities may incur additional workload responding to requests from the DMS for information to complete the inventory and consolidate under a centralized system.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Lines 51-60 require the DMS to create and consolidate, under a centralized system, the management of existing motor vehicles, maintenance facilities, fuel depots, and any full-time equivalent and other personal services positions assigned to operate and maintain each state-owned maintenance facility and fuel depot. The DMS noted, if the intent of the bill is to permanently transfer such positions to the DMS, the Legislature may want to consider an amendment specifying this transfer as a type two transfer pursuant to s. 20.06, F.S.<sup>17</sup>

**VIII. Statutes Affected:**

This bill creates an undesignated section of law.

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<sup>17</sup> Department of Management Services, *2021 Agency Legislative Bill Analysis for CS/SB 1152*, at 5 (Mar. 23, 2021) (on file with the Senate Subcommittee on Agriculture, Environment, and General Government).

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

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

**Recommended CS/CS by Appropriations Subcommittee on Agriculture, Environment, and General Government on April 8, 2021:**

The committee substitute:

- Requires data relating to the fleet privatization contract required in the bill to be stored in at least one common format approved by the DMS and such data remains the property of the DMS.
- Specifies that any vehicle-monitoring hardware installed in a state-owned motor vehicle must be commercially available and not proprietary to the vendor or contractor.

**CS by Governmental Oversight and Accountability on March 17, 2021:**

The CS narrows the governmental entities required to provide certain information to the DMS to include only state agencies and state universities.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2021	.	
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Appropriations Subcommittee on Agriculture, Environment, and  
General Government (Brandes) recommended the following:

**Senate Amendment (with title amendment)**

Delete line 72  
and insert:  
acquisitions, maintenance facilities, and fuel depots. Any data  
that relates to the contract must be stored in at least one  
common format approved by the department, and such data remains  
the property of the department. Any vehicle-monitoring hardware  
installed in a state-owned motor vehicle must be commercially  
available and may not be proprietary to the vendor or



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contractor.

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

And the title is amended as follows:

Delete line 21

and insert:

a specified purpose; requiring that data relating to  
such contract be stored in at least one common format  
approved by the department; providing that such data  
remains the property of the department; specifying  
requirements for motor vehicle-monitoring hardware  
installed in a state-owned motor vehicle; providing an  
effective date.

By the Committee on Governmental Oversight and Accountability;  
and Senator Brandes

585-02993-21

20211152c1

A bill to be entitled

An act relating to fleet management; requiring the Department of Management Services to prepare an inventory of state-owned motor vehicles, maintenance facilities, and fuel depots; requiring the department to submit the inventory to the Governor and the Legislature by a specified date; specifying requirements for the inventory; requiring state agencies and state universities to provide certain information requested by the department; requiring the department to create, administer, and maintain a centralized management system for the motor vehicle fleet, maintenance facilities, and fuel depots; requiring the department to consolidate the management of existing motor vehicles, maintenance facilities, fuel depots, and certain full-time equivalent and other personal services positions; requiring state agencies and state universities to provide certain information requested by the department; requiring the department to contract with a vendor or contractor for a specified purpose; providing an effective date.

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

Section 1. Statewide inventory.—

(1) The Department of Management Services shall prepare an inventory of all state-owned motor vehicles, maintenance facilities, and fuel depots. By December 31, 2021, the department shall submit the inventory to the Governor, the

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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President of the Senate, and the Speaker of the House of Representatives.

(2) The inventory must provide, at a minimum, all of the following:

(a) Entity of ownership of all state-owned motor vehicles, maintenance facilities, and fuel depots.

(b) Entity of possession of all state-owned motor vehicles, maintenance facilities, and fuel depots.

(c) Estimated annual operating and other costs of all state-owned motor vehicles, maintenance facilities, and fuel depots.

(d) Number of full-time equivalent and other personal services positions assigned to operate and maintain each state-owned maintenance facility and fuel depot.

(e) Physical address for the location of all state-owned motor vehicles, maintenance facilities, and fuel depots.

(3) Each state agency and state university shall provide any information requested by the Department of Management Services necessary for the completion of the inventory.

Section 2. Centralized fleet and fleet operations management.—

(1) The Department of Management Services shall create, administer, and maintain a centralized management system for the fleet of state-owned motor vehicles, maintenance facilities, and fuel depots.

(2) The Department of Management Services shall consolidate under a centralized system the management of existing motor vehicles, maintenance facilities, fuel depots, and any full-time equivalent and other personal services positions assigned to

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

585-02993-21

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59 operate and maintain each state-owned maintenance facility and  
60 fuel depot.

61 (3) Each state agency and state university shall provide  
62 any information requested by the Department of Management  
63 Services necessary for consolidating under the centralized  
64 system the management of existing motor vehicles, maintenance  
65 facilities, fuel depots, and any full-time equivalent and other  
66 personal services positions assigned to operate and maintain  
67 each state-owned maintenance facility and fuel depot.

68 Section 3. Privatization of fleet management.~~The~~  
69 Department of Management Services shall contract with a vendor  
70 or contractor for privatizing the centralized management and  
71 operation of the state-owned motor vehicle fleet, motor vehicle  
72 acquisitions, maintenance facilities, and fuel depots.

73 Section 4. This act shall take effect upon becoming a law.



The Florida Senate

## Committee Agenda Request

**To:** Senator Ben Albritton, Chair  
Committee on Appropriations Subcommittee on Agriculture, Environment, and  
General Government

**Subject:** Committee Agenda Request

**Date:** March 17, 2021

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I respectfully request that **Senate Bill # 1152**, relating to Fleet Management be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", with a long horizontal flourish extending to the right.

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Senator Jeff Brandes  
Florida Senate, District 24

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Agriculture, Environment, and General Government

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BILL: PCS/CS/SB 1574 (274232)

INTRODUCER: Appropriations Subcommittee on Agriculture, Environment, and General Government;  
Banking and Insurance Committee; and Senator Brandes

SUBJECT: Citizens Property Insurance Corporation

DATE: April 12, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schrader</u>	<u>Knudson</u>	<u>BI</u>	<b>Fav/CS</b>
2.	<u>Sanders</u>	<u>Betta</u>	<u>AEG</u>	<b>Recommend: Fav/CS</b>
3.	<u>                    </u>	<u>                    </u>	<u>AP</u>	<u>                    </u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/CS/SB 1574 revises Citizens Property Insurance Corporation (Citizens or corporation) eligibility criteria, rates, assessment surcharges on Citizens' policyholders, depopulation programs, producing agent commissions, and confidentiality exceptions for underwriting and claim files.

The bill defines "primary residence" to mean the dwelling that the insured represented as their permanent home on the insurance application or otherwise to the corporation.

The bill limits application of the Citizens "glide path," which prevents rate increases of greater than 10 percent, by applying the glide path to only Citizens personal lines residential policies issued on or before January 1, 2022, on residential properties used as the primary residence with a dwelling replacement cost of less than \$700,000 or single-unit condominiums with a dwelling and contents replacement cost of less than \$700,000.

The bill provides that Citizens policyholders become ineligible for Citizens personal lines residential coverage upon receiving an offer from an authorized insurer for comparable coverage that is not 15 percent greater than the actuarially sound Citizens premium would be on the property. Under current law, Citizens policyholders remain eligible unless they receive an offer of comparable coverage less than the current Citizens premium, which for many policyholders is subject to the glide path's 10 percent limit on annual rate increases.

The bill increases the maximum surcharge that may be levied on Citizens' policyholders if Citizens projects a deficit in one of its accounts to: 20 percent of premium if Citizens has one million policyholders but less than 1.5 million policyholders; and 25 percent of premium if Citizens has 1.5 million policyholders or more. The surcharge may be levied for each of Citizens' three accounts.

The bill authorizes surplus lines insurers to participate in Citizens' depopulation, take-out, and keep-out plans. The surplus lines insurer must: meet financial requirements; provide notice to the policyholder which outlines any coverage differences and explains surplus lines policies are not covered by the Florida Insurance Guaranty Association; and provide coverage similar to that provided by Citizens. A risk with a personal residential dwelling replacement cost or a single condominium unit with a combined dwelling and contents replacement cost that is less than \$700,000, remains eligible for Citizens regardless of receipt of an offer of comparable coverage from a surplus lines insurer. If such risk has a replacement cost of \$700,000 or more, however, the risk is ineligible for Citizens coverage upon receiving an offer of comparable coverage from a surplus lines insurer that is not greater than 15 percent more than the premium for Citizens coverage.

The bill also:

- Revises confidentiality exceptions for Citizens' underwriting and confidential claim files;
- Limits the commissions Citizens may pay to producing agents; and
- Makes technical changes to s. 627.3517, F.S., and reenacts and makes conforming changes to s. 627.3518, F.S.

The bill does not impact state revenue or expenditures.

The bill takes effect January 1, 2022.

## **II. Present Situation:**

### **Citizens Property Insurance Corporation—Overview**

Citizens Property Insurance Corporation (Citizens or corporation) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.<sup>1</sup> Citizens is not a private insurance company.<sup>2</sup> Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an eight member Board of Governors that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission.<sup>3</sup> The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial

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<sup>1</sup> Admitted market means insurance companies licensed to transact insurance in Florida.

<sup>2</sup> Section 627.351(6)(a)1., F.S.

<sup>3</sup> Section 627.351(6)(a)2., F.S.

Officer each appoints two members to the board.<sup>4</sup> Citizens is subject to regulation by the Florida Office of Insurance Regulation (OIR).

Citizens currently offers three policy types: Personal Lines Accounts, Commercial Lines Accounts and Coastal.

### ***Citizens' Accounts***

*The Personal Lines Account (PLA)* offers personal lines residential policies that provide comprehensive, multi-peril coverage statewide, except for those areas contained in the Coastal Account. The PLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided to homeowners, mobile homeowners, dwellings, tenants, and condominium unit owner's policies.<sup>5</sup>

*The Commercial Lines Account (CLA)* offers commercial lines residential and non-residential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial non-residential policies covering business properties.<sup>6</sup>

*The Coastal Account* offers personal residential, commercial residential, and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multi-peril policies.<sup>7</sup>

The Citizens policyholder eligibility clearinghouse program was established by the Legislature in 2013.<sup>8</sup> Under the program, new and renewal policies for Citizens are placed into the clearinghouse where participating private insurers can review and decide to make offers of coverage before policies are placed or renewed with Citizens.<sup>9</sup>

### ***Current Policies***

As of February 28, 2021, Citizens reports 552,340 policies in-force with a total exposure of \$150,498,489,611.<sup>10</sup> The below chart outlines Citizens account and product type, number of policies in-force, total exposure and premium with surcharges.

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<sup>4</sup> Section 627.351(6)(c)4.a., F.S.

<sup>5</sup> See s. 627.351(6)(b)2.a., F.S. and *Account History and Characteristics*, Citizens Property Insurance Corporation, <https://www.citizensfla.com/documents/20702/1183352/20160315+05A+Citizens+Account+History.pdf/31f51358-7105-40e9-aa75-597f51a99563> (March 2016) (last visited Mar. 24, 2021).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Section 10, ch. 2013-60, L.O.F.

<sup>9</sup> Section 627.3518(2)-(3), F.S.

<sup>10</sup> Citizens Property Insurance, *About Us, Snapshot, February 28, 2021*, <https://www.citizensfla.com/-/20210228-policies-in-force> (last visited Mar. 28, 2021).

Account	Product Line	Policies In-Force	Total Exposure	Premium with Surcharges
PLA	Personal Residential Multi-peril (PR-M)	417,152	101,117,610,386	830,762,252
Coastal	Personal Residential Multi-peril (PR-M)	71,958	15,117,007,309	185,808,533
Coastal	Personal Residential Wind-Only (PR-W)	58,163	23,726,750,884	145,934,626
Coastal	Commercial Residential Multi-peril (CR-M)	125	631,877,883	2,910,767
Coastal	Commercial Residential Wind-Only (CR-W)	1,805	4,590,853,279	25,745,969
Coastal	Commercial Non-Residential Multi-peril (CNR-M)	25	20,269,100	181,093
Coastal	Commercial Non-Residential Wind-Only (CNR-W)	2,407	1,945,320,260	23,429,973
CLA	Commercial Residential Multi-peril (CR-M)	566	3,208,005,710	12,309,859
CLA	Commercial Non-Residential Multi-peril (CNR-M)	139	140,794,800	880,037
Total		552,340	150,498,489,611	1,227,963,109

Source: Citizens Property Insurance<sup>11</sup>

These numbers do not reflect policies tagged for takeout via Citizens' Depopulation Program but still serviced by Citizens.<sup>12</sup> Citizens' policy count grew by more than 100,000 in 2020 with 2,000-3,000 new policies written each week. At this rate, Citizens estimates an additional 100,000 policies by year end 2021.<sup>13</sup>

### Citizens Glide Path Rates

From 2007 until 2010, Citizens rates were frozen by statute at the level that had been established in 2006. In 2010, the Legislature established a "glide path" to impose annual rate increases up to a level that is actuarially sound. Citizens must implement an annual rate increase which, except for sinkhole coverage, does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges.<sup>14</sup> The implementation of this increase ceases when Citizens has achieved actuarially sound rates. In addition to the overall glide path rate increase, Citizens can increase its rates to recover the additional reimbursement premium that it incurs as a result of the annual cash build-up factor added to the price of the mandatory layer of the Florida Hurricane Catastrophe Fund coverage, pursuant to s. 215.555(5)(b), F.S.

### Citizens Financial Resources

Citizens' financial resources include insurance premiums, investment income, and operating surplus from prior years, Florida Hurricane Catastrophe Fund (FHCF) reimbursements, private

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Citizens Property Insurance Corporation, *2021 Rate Kit, Executive Summary, Rate Structure Discussion*, [https://www.citizensfla.com/documents/20702/15266147/2021+Rate+Kit\\_final.pdf/d9da9ea7-73da-a958-6477-263da4e49e41?t=1607993377967](https://www.citizensfla.com/documents/20702/15266147/2021+Rate+Kit_final.pdf/d9da9ea7-73da-a958-6477-263da4e49e41?t=1607993377967) (last visited Mar. 26, 2021).

<sup>14</sup> Section 627.351(6)(n)6., F.S.

reinsurance, policyholder surcharges, and regular and emergency assessments. Non-weather water losses, reinsurance costs and litigation are the major determinants of insurance rates.<sup>15</sup> In the event of a catastrophic storm or series of smaller storms, reserves could be exhausted, leaving Citizens unable to pay all claims.<sup>16</sup> Under Florida law, if the Citizens' Board of Directors determines that a Citizens' account has a projected deficit, Citizens is authorized to levy assessments<sup>17</sup> on its policyholders and on each line of property and casualty line of business other than workers' compensation insurance and medical malpractice insurance.<sup>18</sup> Citizens may impose three assessment tiers and their sequence is as follows:<sup>19</sup>

***Citizens Policyholder Surcharge:***

Requires up to 15 percent of premium surcharge for 12 months on all Citizens' policies, collected upon issuance or renewal. This 15 percent assessment can be levied for each of the three Citizens' accounts—the CLA, the PLA, and the Coastal Account—that project a deficit. Thus, the total maximum premium surcharge a policyholder could be assessed is 45 percent.<sup>20</sup>

***Regular Assessment:***

If the Citizens' surcharge is insufficient to cure the deficit for the coastal account, Citizens can require an assessment against all other insurers except medical malpractice and workers' compensation. The assessment may be recouped from policyholders through a rate filing process of up to two percent of premium or two percent of the deficit, whichever is greater.<sup>21</sup> This assessment is not levied against Citizens' policyholders.

***Emergency Assessment:***

Requires any remaining deficit for Citizens' three accounts be funded by multi-year emergency assessments on all insurance policyholders (except medical malpractice and workers' compensation), including Citizens' policyholders. This assessment may not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and all accounts of the

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<sup>15</sup> Citizens Property Insurance Corporation, *2021 Rate Kit, Citizens 2021 Rates, Frequently Asked Questions*, [https://www.citizensfla.com/documents/20702/15266147/2021+Rate+Kit\\_final.pdf/d9da9ea7-73da-a958-6477-263da4e49e41?t=1607993377967](https://www.citizensfla.com/documents/20702/15266147/2021+Rate+Kit_final.pdf/d9da9ea7-73da-a958-6477-263da4e49e41?t=1607993377967) (last visited Mar. 26, 2021).

<sup>16</sup> Citizens Property Insurance Corporation, *Insurance/Insurance 101/Assessments*, <https://www.citizensfla.com/assessments> (last visited Mar. 26, 2021).

<sup>17</sup> Assessments are charges that Citizens and non-Citizens policyholders can be required to pay, in addition to their regular policy premiums. Citizens Property Insurance Corporation, *Insurance/Insurance 101/Assessments*, <https://www.citizensfla.com/assessments> (last visited Mar. 26, 2021).

<sup>18</sup> Accident and health insurance and policies written under the National Flood Insurance Program or the Federal Crop Insurance Program are not assessable types of property and casualty insurance. Surplus lines insurers are not assessable, but their policyholders are. Section 627.351.(6)(b)3.f.-h., F.S.

<sup>19</sup> Citizens Property Insurance Corporation, *Insurance/Insurance 101/Assessments, Assessment Tiers*, <https://www.citizensfla.com/assessments> (last visited Mar. 26, 2021).

<sup>20</sup> Sections 627.351.(6)(b)3.(i)(I) and 627.351.(6)(c)21., F.S. See also, <https://www.citizensfla.com/assessments> (last visited Mar. 26, 2021).

<sup>21</sup> Section 627.351.(6)(b)3.a., F.S.

corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.<sup>22</sup>

### **Eligibility for Insurance in Citizens**

Current law requires Citizens to provide a procedure for determining the eligibility of a potential risk for insurance in Citizens and provides specific eligibility requirements based on premium amounts, value of the property insured, and the location of the property. Risks not meeting the statutory eligibility requirements cannot be insured by Citizens. Citizens has additional eligibility requirements set out in their underwriting rules. These rules are approved by the Office of Insurance Regulation (OIR) and are set out in Citizens' underwriting manuals.<sup>23</sup>

#### ***Eligibility Based on Premium Amount***

An applicant for residential insurance cannot buy insurance in Citizens if an authorized insurer in the private market offers the applicant insurance for a premium that does not exceed the Citizens premium by 15 percent or more.<sup>24</sup> In addition, the coverage offered by the private insurer must be comparable to Citizens' coverage.

A residential policyholder cannot renew insurance in Citizens if an authorized insurer offers to insure the property at a premium equal to or less than the Citizens' renewal premium. The insurance from the private market insurer must be comparable to the insurance from Citizens in order for the renewal premium eligibility requirement to apply.<sup>25</sup>

#### ***Eligibility Based on Value of Property Insured***

In addition to the eligibility restrictions based on premium amount, current law provides eligibility restrictions for homes and condominium units based on the value of the property insured.<sup>26</sup> Structures with a dwelling replacement cost of \$700,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of \$700,000 or more, are not eligible for coverage with Citizens.<sup>27</sup> However, Citizens is allowed to insure structures with a dwelling replacement cost or a condominium unit with a dwelling and contents replacement cost of one million dollars or less in Miami-Dade and Monroe counties, after the OIR determined these counties to be non-competitive.<sup>28</sup>

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<sup>22</sup> Section 627.351(6)(b)3.d., F.S.

<sup>23</sup> See *Revised Underwriting Manuals*, Citizens Property Insurance Corporation, <https://www.citizensfla.com/-/20160329-revised-underwriting-manuals> (last visited March 12, 2021).

<sup>24</sup> Section 627.351(6)(c)5., F.S.

<sup>25</sup> Section 627.351(6)(c)5., F.S.

<sup>26</sup> Section 627.351(6)(a)3., F.S.

<sup>27</sup> Section 627.351(6)(a)3.d., F.S.

<sup>28</sup> Office of Insurance Regulation, Final Order Case No: 165625-14, Dec. 22, 2014 (available at <https://www.floir.com/siteDocuments/Citizens165625-14-O.pdf>) (last visited Mar. 25, 2021). See also Section 627.351(6)(a)3.d., F.S.

## Citizens Depopulation

Florida law requires Citizens to create programs to help return Citizens policies to the private market and reduce the risk of additional assessments for all Floridians.<sup>29</sup> In 2016, the Legislature passed requirements that Citizens, by January 1, 2017, amend its operations relating to takeout agreements.<sup>30</sup> As part of these updated requirements, codified under s. 627.351(6)(ii), F.S., a policy may not be taken out of Citizens unless Citizens:

- Publishes a periodic schedule of cycles during which an insurer may identify, and notify Citizens of, policies the insurer is requesting to take out;<sup>31</sup>
- Maintains and makes available to the agent of record a consolidated list of all insurers requesting to take-out a policy; such list must include a description of the coverage offered and the estimated premium for each take-out request; and
- Provides written notice to the policyholder and the agent of record regarding all insurers requesting to take-out the policy and regarding the policyholder's option to accept a take-out offer or to reject all take-out offers and to remain with the corporation. The notice must be in a format prescribed by the corporation and include, for each take-out offer:
  - The amount of the estimated premium;
  - A description of the coverage; and
  - A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by the corporation.

## Access to Public Records – Generally

The Florida Constitution provides the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>32</sup> The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>33</sup>

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in ss. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.<sup>34</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial

<sup>29</sup> Section 627.351(6)(q)3.a., F.S.

<sup>30</sup> Chapter 2016-229, L.O.F.

<sup>31</sup> Such requests from insurers must include a description of the coverage offered and an estimated premium and must be submitted to the corporation in a form and manner prescribed by the corporation.

<sup>32</sup> FLA. CONST. art. I, s. 24(a).

<sup>33</sup> *Id.*

<sup>34</sup> See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022), [https://www.flsenate.gov/UserContent/Publications/SenateRules/2020-2022\\_Rules.pdf](https://www.flsenate.gov/UserContent/Publications/SenateRules/2020-2022_Rules.pdf) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2020-2022), and <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Reference&CommitteeId=&Session=2021&DocumentType=The%20Rules%20Of%20The%20House%20of%20Representatives&FileName=2020-2022%20House%20Rules%20-%20%20Edition%201.pdf> (last visited Mar. 26, 2021).

branch records.<sup>35</sup> Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

### **Confidentiality of Citizens' Underwriting and Claims Files**

Section 626.916(1)(x), F.S., establishes certain records of Citizens are confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Pursuant to sub-sub-paragraphs 1.a.-b. these exempt records include:

- Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files.
- Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law.

Sub-sub-paragraphs 1.a.-b. also provide that such records may be released to other governmental agencies upon written request and demonstration of need. Records so released and held by the receiving agency would remain confidential and exempt.

### **III. Effect of Proposed Changes:**

**Section 1** revises s. 627.021, F.S., to revise the scope of the Rating Law under ch. 627, F.S., to state the chapter does apply to surplus lines coverage placed pursuant to the Surplus Lines Law under ss. 626.913-626.937, F.S., when “specifically stated to apply.”

**Section 2** defines “primary residence” to mean the dwelling that the insured has represented as their permanent home on the insurance application or otherwise to the corporation and makes a number of revisions to s. 627.351, F.S., regarding Citizens Property Insurance Corporation (Citizens or corporation).

#### ***Surcharge Levied on Citizens' Policyholders for Projected Account Deficits***

The bill revises s. 627.351(6)(b)3.i.(I), F.S., to revise the 15 percent of premium surcharge cap for Citizens' policyholders when the Citizens' Board of Governors determines Citizens has a projected deficit. The 15 percent cap is replaced with an escalating cap for Citizens' policyholders, based upon the total number of Citizens' policyholders if:

- Citizens has less than one million policyholders, the premium surcharge cap is 15 percent per account.
- Citizens has at least one million policyholders, but less than 1.5 million policyholders, the premium surcharge cap is 20 percent per account.
- Citizens has at least 1.5 million or more policyholders, the premium surcharge cap is 25 percent per account.

As under current law, a surcharge may be levied for each of Citizens' three accounts. For example, under the bill, if Citizens has 1.2 million policies, a Citizens policyholder could be assessed a maximum policyholder surcharge of 60 percent of premium, consisting of a 20 percent surcharge for each of Citizens' three accounts.

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<sup>35</sup> *State v. Wooten*, 260 So. 3d 1060 (Fla. 4<sup>th</sup> DCA 2018).

***Revision to Eligibility for Coverage with Citizens Regarding Renewal Premiums***

The bill revises s. 627.351(6)(c)5.a., F.S., to state a residential policyholder is ineligible to renew a policy with Citizens if such policyholder can obtain comparable coverage from an authorized insurer for less than, or equal to, 15 percent more than the actuarially sound Citizens' renewal premium would be for the risk. Under existing law, a policyholder would be ineligible only if an authorized insurer could offer comparable coverage for less than or equal to Citizens' premium, which for many policyholders is subject to the glide path's 10 percent limit on annual rate increases.

***Limitations on Commissions***

In proposed new s. 627.351(6)(c)22., F.S., the bill limits the commissions Citizens may pay to producing agents of record. The bill limits the commissions to no more than the average of commissions paid in the preceding year by the 20 insurers writing the greatest market share of property insurance in Florida.

***Glide Path Eligibility***

The bill revises s. 627.351(6)(n)6., F.S., to create new requirements to remain eligible for the 10 percent rate increase cap under Citizens' glide path provision. To continue to qualify for the glide path, the coverage, must:

- Be a personal residential property used as a primary residence;
- Be a policy initially issued before January 1, 2022; and
- Cover homestead personal residential property that has a dwelling replacement cost below \$700,000, or, if a single condominium unit has a combined dwelling and contents replacement cost below \$700,000.

These provisions take effect on or after January 1, 2022.

***Surplus Lines Insurer Participation in Citizens' Depopulation, Take-out, and Keep-out Plans***

The bill revises s. 627.351(6)(q)3.d., F.S., to establish a new program where eligible surplus lines insurers may participate in any Citizens' depopulation, take-out, or keep-out plan in the same manner and terms as an authorized insurer. To be eligible for participation in a particular program, a surplus lines insurer must follow all Citizens' requirements relating to the plan that would be applicable to admitted insurers, follow statutory requirements applicable to the removal of policies from Citizens, and obtain approval from the OIR. In considering a surplus lines insurer's request for approval, the OIR must ensure that the insurer:

- Maintains surplus of \$50 million on a company or pooled basis;
- Has a superior, excellent, exceptional, or equally comparable financial strength rating by a rating agency acceptable to the OIR;
- Maintains reserves, surplus, reinsurance, and reinsurance equivalents sufficient to cover its 100-year probable maximum hurricane loss at least twice in a single hurricane season;<sup>36</sup>

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<sup>36</sup> The insurer also must submit such reinsurance to the OIR for review.

- Provides prominent notice to the policyholder that surplus lines policies are not provided coverage by the Florida Insurance Guaranty Association and outline any substantial policy differences between the existing Citizens' policy and the policy the insurer is offering; and
- Provides policy coverage similar to that provided by Citizens.

The surplus lines insurer also must file the following with the OIR:

- Information requested by the OIR to demonstrate compliance with s. 624.404(3), F.S., regarding basic qualifications to transact insurance in Florida;<sup>37</sup>
- A service-of-process consent and agreement form executed by the insurer;
- Proof that the insurer has been an eligible or authorized insurer for at least three years;
- A duly authenticated copy of the insurer's current audited financial statement;<sup>38</sup>
- A certified copy of the insurer's most recent official financial statement required by the insurer's domiciliary state (this is only required if the authenticated copy provided above differs from what the insurer provided to their domiciliary state); and
- A copy of the United States trust account agreement, if applicable.

Participation in these plans would not make a surplus line insurer subject to additional requirements under ch. 626, F.S., except that which is already required under part VIII. Policies taken out are not subject to the exporting requirements provided in s. 626.916(1)(a)-(c), and (e), F.S.

After assuming policies under these plans, a surplus lines insurer would be required to remit a special deposit equal to the unearned premium net of unearned commissions on the assumed block of business to the Bureau of Collateral Management within the Department of Financial Services (DFS). The insurer would also need to submit to the OIR an accounting of the policies assumed and the amount of unearned premium for such policies and a sworn affidavit attesting to its accuracy by an officer of the surplus lines insurer. Subsequently, each quarter, the surplus lines insurer must update the OIR with the unearned premium in force for the previous quarter on policies assumed from the corporation, and must submit additional funds with that filing if the special deposit is insufficient to cover the unearned premium on assumed policies. The purpose of the special deposit is to allow the DFS, in the event of liquidation of the surplus lines insurer, to pay unearned premium or policy claims, return all or part of the deposit to the domiciliary receiver, or use the funds in accordance with any action authorized under part I of ch. 631, F.S., or in compliance with any order of a court having jurisdiction over the insurer's insolvency.

A surplus lines broker representing a surplus lines insurer must obtain confirmation, in advance, from the producing agent that the agent is willing to participate in the take-out plan with the surplus lines insurer. Also, authorized insurers are to be given priority over surplus lines insurers if both select a particular policy for removal.

<sup>37</sup> This may include biographical affidavits, fingerprints processed pursuant to s. 624.34, F.S., and the results of criminal history records checks for officers and directors of the insurer and its parent or holding company.

<sup>38</sup> The statement must be in English, expressing all monetary values in United States dollars, at an exchange rate then current and shown in the statement, in the case of statements originally made in the currencies of other countries, and including any additional information relative to the insurer as the OIR may request.

The surplus lines insurer participation provision also states if a policyholder has a dwelling replacement cost of \$700,000 or more or if a single condominium unit has a combined dwelling and contents replacement cost of \$700,000 or more, the policyholder would no longer qualify for Citizens coverage should the premium offered by the surplus lines insurer is no greater than 15 percent higher than that offered by Citizens. This provision does not apply to policyholders with a dwelling replacement cost below \$700,000 or a single condominium unit with a combined dwelling and contents replacement cost below \$700,000. Such policyholders would maintain eligibility for coverage with Citizens.

#### ***Underwriting and Confidential Claim Files***

The bill revises an existing public records exemption<sup>39</sup> under s. 626.916(1)(x)2., F.S., to allow authorized insurers, considering underwriting a risk held by Citizens, to access underwriting files and confidential claims files that would otherwise be exempt from public records requirements. The bill expands this exception to also include reinsurance intermediaries, eligible surplus lines insurers, or entities that have been created to seek authority to write property insurance in this state. The bill also revises activities that would allow such parties, including authorized insurers, to receive this information. In particular, relevant information from both the underwriting files and confidential claim files may be released to the parties seeking to underwrite or assist in underwriting a risk.

**Section 3** of the bill makes technical changes to s. 627.3517, F.S.

**Section 4** of the bill makes conforming changes to s. 627.3518(5) and reenacts s. 627.3518(6)-(7), F.S., to implement revisions made by **Section 2** of the bill above.

**Section 5** specifies an effective date of January 1, 2022 for the bill.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

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<sup>39</sup> Public records, unless expressly stated to be confidential and exempt, are subject to s. 119.07(1) and s. 24(a), Art. 1 of the State Constitution.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill revises surcharge limits Citizens Property Insurance Corporation (Citizens) may charge its policyholders when a Citizens' account shortfall is projected. In addition, the bill authorizes a new surcharge on Citizens' policyholders when a legal expense deficit exists. These additional authorized surcharges, may, depending on the necessity of assessing such surcharges, lead to additional insurance costs for Citizens' policyholders.

Provisions of the bill revising glide path eligibility may also lead to increased premiums, at least in the short term, for some Citizens' policyholders whose policies no longer qualify for the 10 percent rate increase cap. However, private market insurers seeking to write coverage on such policies will benefit from not having to compete on price with Citizens' coverage for which the glide path suppresses an actuarially sound rate.

The bill provides Citizens' policyholders become ineligible for Citizens' personal lines residential coverage upon receiving an offer from an authorized insurer for comparable coverage that is not 15 percent greater than the actuarially sound Citizens' premium would be on the property. This will result in ineligibility for some Citizens' policyholders as competitive market rates may be at a much higher rate than the customer currently pays under Citizens. For example, if a Citizens' premium subject to the glide path is \$2,000 but the actuarially sound premium for that property is \$2,500, the policyholder would be ineligible for Citizens coverage upon receiving an offer of coverage that is not more than 15 percent higher than the actuarially sound premium. In this example, the offered premium could not exceed \$2,875, which represents a 43.75 percent premium increase.

Provisions of the bill allowing surplus lines insurers to participate in Citizens' depopulation, take-out, and keep-out plans will likely have some impact on the number of policies held by Citizens and may result in additional policies moving from Citizens into the private market. Allowing surplus lines insurers to participate in these plans may have an indeterminate negative impact on the number of such policies taken by authorized insurers due to increased competition.

C. Government Sector Impact:

The provisions of the bill relating to allowing surplus lines insurers to participate in Citizens' depopulation, take-out, and keep-out plans requires such insurers, if they take out policies from Citizens, to make specified deposits with the Bureau of Collateral

Management and to make regular filings with the Office of Insurance Regulation. This will likely lead to an indeterminate amount of additional regulatory cost for those government entities.

The bill's revisions to Citizens' eligibility criteria and ratemaking should result in further depopulation of policies, which will reduce the amount of risk insured by Citizens and the possibility of assessments. Citizens will collect an actuarially sound premium on all new business after July 1, 2021, which will benefit Citizens' financial status, and reduce the likelihood of deficits and associated surcharges and assessments.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 627.021 and 627.351 of the Florida Statutes.

This bill makes technical changes to section 627.3517 of the Florida Statutes.

This bill reenacts and makes conforming changes to section 627.3518 of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Recommended CS/CS by Appropriations Subcommittee on Agriculture, Environment, and General Government on April 8, 2021:**

The committee substitute:

- Defines “primary residence” to mean the “dwelling that the insured has represented as their permanent home on the insurance application or otherwise to the corporation.”
- Removes language establishing a legal surcharge for new policies and subsequent renewals.
- Replaces the phrase “owner occupied” with the newly defined “primary residence” in regards to Citizens’ policy eligibility and glide-path eligibility.

**CS by Banking and Insurance on March 16, 2021:**

The committee substitute revises a bill provision creating new requirements for an insurance policy to remain eligible for the 10 percent rate increase cap under Citizens Property Insurance Corporation's (Citizens) glide path provision. Under the original bill, to continue to qualify for the glide path, the policy must meet certain guidelines, including that it cover homestead personal residential property. The committee substitute

deletes the homestead provision and replaces it with the property needing to be owner-occupied and makes a conforming change in in the bill for this revised provision.

The committee substitute also revises a requirement in the original bill regarding qualifications for a surplus lines insurer to participate in a Citizens depopulation, take-out, or keep-out program. The requirement that the insurer maintain “a financial strength rating of A- or higher by A.M. Best Company” is replaced in the committee substitute with a more general requirement that the insurer “have a superior, exceptional, or comparable financial strength rating by a rating agency acceptable to” the Office of Insurance Regulation.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/08/2021	.	
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Appropriations Subcommittee on Agriculture, Environment, and  
General Government (Brandes) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 370 - 977

and insert:

(c) The corporation's plan of operation:

1. Must provide for adoption of residential property and  
casualty insurance policy forms and commercial residential and  
nonresidential property insurance forms, which must be approved  
by the office before use. The corporation shall adopt the  
following policy forms:



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11           a. Standard personal lines policy forms that are  
12 comprehensive multiperil policies providing full coverage of a  
13 residential property equivalent to the coverage provided in the  
14 private insurance market under an HO-3, HO-4, or HO-6 policy.

15           b. Basic personal lines policy forms that are policies  
16 similar to an HO-8 policy or a dwelling fire policy that provide  
17 coverage meeting the requirements of the secondary mortgage  
18 market, but which is more limited than the coverage under a  
19 standard policy.

20           c. Commercial lines residential and nonresidential policy  
21 forms that are generally similar to the basic perils of full  
22 coverage obtainable for commercial residential structures and  
23 commercial nonresidential structures in the admitted voluntary  
24 market.

25           d. Personal lines and commercial lines residential property  
26 insurance forms that cover the peril of wind only. The forms are  
27 applicable only to residential properties located in areas  
28 eligible for coverage under the coastal account referred to in  
29 sub-subparagraph (b)2.a.

30           e. Commercial lines nonresidential property insurance forms  
31 that cover the peril of wind only. The forms are applicable only  
32 to nonresidential properties located in areas eligible for  
33 coverage under the coastal account referred to in sub-  
34 subparagraph (b)2.a.

35           f. The corporation may adopt variations of the policy forms  
36 listed in sub-subparagraphs a.-e. which contain more restrictive  
37 coverage.

38           g. Effective January 1, 2013, the corporation shall offer a  
39 basic personal lines policy similar to an HO-8 policy with



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dwelling repair based on common construction materials and methods.

2. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only.

a. As used in this subsection, the term:

(I) "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the agreement, may not be altered by the inability of the other party to pay its specified percentage of losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that the authorized insurer and the corporation may not be held responsible beyond their



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specified percentage of coverage of hurricane losses.

(II) "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

b. The corporation may enter into quota share primary insurance agreements with authorized insurers at corporation coverage levels of 90 percent and 50 percent.

c. If the corporation determines that additional coverage levels are necessary to maximize participation in quota share primary insurance agreements by authorized insurers, the corporation may establish additional coverage levels. However, the corporation's quota share primary insurance coverage level may not exceed 90 percent.

d. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation must provide for a uniform specified percentage of coverage of hurricane losses, by county or territory as set forth by the corporation board, for all eligible risks of the authorized insurer covered under the agreement.

e. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation is subject to review and approval by the office. However, such agreement shall be authorized only as to insurance contracts entered into between an authorized insurer and an insured who is already insured by the corporation for wind coverage.

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both



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the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under such agreements, the corporation and the authorized insurer must maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

g. The corporation board shall establish in its plan of operation standards for quota share agreements which ensure that there is no discriminatory application among insurers as to the terms of the agreements, pricing of the agreements, incentive provisions if any, and consideration paid for servicing policies or adjusting claims.

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing insurance agreement between the corporation and an authorized insurer is voluntary and at the discretion of the authorized insurer.

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide



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administrative or professional services that may be appropriate to effectuate the plan. The corporation may borrow funds by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2. in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation may take all actions needed to facilitate tax-free status for such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation may pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.



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156           4. Must require that the corporation operate subject to the  
157 supervision and approval of a board of governors consisting of  
158 nine individuals who are residents of this state and who are  
159 from different geographical areas of this ~~the~~ state, one of whom  
160 is appointed by the Governor and serves solely to advocate on  
161 behalf of the consumer. The appointment of a consumer  
162 representative by the Governor is deemed to be within the scope  
163 of the exemption provided in s. 112.313(7)(b) and is in addition  
164 to the appointments authorized under sub-subparagraph a.

165           a. The Governor, the Chief Financial Officer, the President  
166 of the Senate, and the Speaker of the House of Representatives  
167 shall each appoint two members of the board. At least one of the  
168 two members appointed by each appointing officer must have  
169 demonstrated expertise in insurance and be deemed to be within  
170 the scope of the exemption provided in s. 112.313(7)(b). The  
171 Chief Financial Officer shall designate one of the appointees as  
172 chair. All board members serve at the pleasure of the appointing  
173 officer. All members of the board are subject to removal at will  
174 by the officers who appointed them. All board members, including  
175 the chair, must be appointed to serve for 3-year terms beginning  
176 annually on a date designated by the plan. However, for the  
177 first term beginning on or after July 1, 2009, each appointing  
178 officer shall appoint one member of the board for a 2-year term  
179 and one member for a 3-year term. A board vacancy shall be  
180 filled for the unexpired term by the appointing officer. The  
181 Chief Financial Officer shall appoint a technical advisory group  
182 to provide information and advice to the board in connection  
183 with the board's duties under this subsection. The executive  
184 director and senior managers of the corporation shall be engaged



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by the board and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its customer and agent service levels in relationship to the voluntary market insurers writing similar coverage.

(I) The members of the advisory committee consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in this ~~the~~ state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members shall be appointed to 3-year terms and may serve for consecutive terms.

(II) The committee shall report to the corporation at each board meeting on insurance market issues that ~~which~~ may include rates and rate competition with the voluntary market; service,



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including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation.

Whenever an offer of coverage for a personal lines residential risk is received for a policyholder of the corporation ~~at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage,~~ the risk is not eligible for coverage with the corporation unless the premium for comparable coverage from the authorized insurer is more than 15 percent greater than the premium under subparagraph (n)1. for personal residential properties that are not the insured's primary residence. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is



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eligible for a basic policy including wind coverage unless rejected under subparagraph 8. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance



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with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for a policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a commercial lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for



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comparable coverage, the risk is not eligible for coverage with the corporation. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).



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(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison must be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law



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coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage in the coastal account, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an authorized insurer to the applicant must be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate.

6. Must include rules for classifications of risks and rates.

7. Must provide that if premium and investment income for an account attributable to a particular calendar year are in excess of projected losses and expenses for the account attributable to that year, such excess shall be held in surplus in the account. Such surplus must be available to defray



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deficits in that account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year.

8. Must provide objective criteria and procedures to be uniformly applied to all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following must be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation shall be construed as the private placement of insurance, and ~~the provisions of chapter 120~~ does ~~de~~ not apply.

9. Must provide that the corporation make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by the board of governors.

10. The policies issued by the corporation must provide that if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal through the corporation, except as otherwise provided in this subsection.

11. Corporation policies and applications must include a notice that the corporation policy could, under this section, be



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replaced with a policy issued by an authorized insurer which does not provide coverage identical to the coverage provided by the corporation. The notice must also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

12. May establish, subject to approval by the office, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or area if the board determines that such changes are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods continue to have access to coverage from the corporation. If coverage is sought in connection with a real property transfer, the requirements and procedures may not provide an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

13. Must provide that, with respect to the coastal account, any assessable insurer with a surplus as to policyholders of \$25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the coastal account may be paid to the corporation on a monthly basis as the assessments are collected by the limited



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apportionment company from its insureds, but a limited apportionment company must begin collecting the regular assessments not later than 90 days after the regular assessments are levied by the corporation, and the regular assessments must be paid in full within 15 months after being levied by the corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under subparagraph (b)3.d. The plan must provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. However, an emergency assessment to be collected from policyholders under subparagraph (b)3.d. may not be limited or deferred.

14. Must provide that the corporation appoint as its licensed agents only those agents who throughout such appointments also hold an appointment as defined in s. 626.015 by an insurer who is authorized to write and is actually writing or renewing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within this ~~the~~ state.

15. Must provide a premium payment plan option to its policyholders which, at a minimum, allows for quarterly and semiannual payment of premiums. A monthly payment plan may, but is not required to, be offered.

16. Must limit coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.

17. Must provide coverage for manufactured or mobile home



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dwelling. Such coverage must also include the following attached structures:

a. Screened enclosures that are aluminum framed or screened enclosures that are not covered by the same or substantially the same materials as those of the primary dwelling;

b. Carports that are aluminum or carports that are not covered by the same or substantially the same materials as those of the primary dwelling; and

c. Patios that have a roof covering that is constructed of materials that are not the same or substantially the same materials as those of the primary dwelling.

The corporation shall make available a policy for mobile homes or manufactured homes for a minimum insured value of at least \$3,000.

18. May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

19. May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

20. Must provide that new or renewal policies issued by the corporation on or after January 1, 2012, which cover sinkhole loss do not include coverage for any loss to appurtenant structures, driveways, sidewalks, decks, or patios that are directly or indirectly caused by sinkhole activity. The corporation shall exclude such coverage using a notice of coverage change, which may be included with the policy renewal, and not by issuance of a notice of nonrenewal of the excluded coverage upon renewal of the current policy.



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21. As of January 1, 2012, must require that the agent obtain from an applicant for coverage from the corporation an acknowledgment signed by the applicant, which includes, at a minimum, the following statement:

ACKNOWLEDGMENT OF POTENTIAL SURCHARGE  
AND ASSESSMENT LIABILITY:

1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.

3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE



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STATE OF FLORIDA.

a. The corporation shall maintain, in electronic format or otherwise, a copy of the applicant's signed acknowledgment and provide a copy of the statement to the policyholder as part of the first renewal after the effective date of this subparagraph.

b. The signed acknowledgment form creates a conclusive presumption that the policyholder understood and accepted his or her potential surcharge and assessment liability as a policyholder of the corporation.

22. The corporation shall pay a producing agent of record a reasonable commission not to exceed the average of commissions paid in the preceding year by the 20 admitted insurers writing the greatest market share of property insurance in this state.

(n)1. Rates for coverage provided by the corporation must be actuarially sound and subject to s. 627.062, except as otherwise provided in this paragraph. The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.



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3. ~~After~~ The public hurricane loss-projection model under s. 627.06281, if ~~has been~~ found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, ~~the model~~ shall be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

4. The rate filings for the corporation which were approved by the office and took effect January 1, 2007, are rescinded, except for those rates that were lowered. As soon as possible, the corporation shall begin using the lower rates that were in effect on December 31, 2006, and provide refunds to policyholders who paid higher rates as a result of that rate filing. The rates in effect on December 31, 2006, remain in effect for the 2007 and 2008 calendar years except for any rate change that results in a lower rate. The next rate change that may increase rates shall take effect pursuant to a new rate filing recommended by the corporation and established by the office, subject to this paragraph.

5. Beginning on July 15, 2009, and annually thereafter, the corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it writes, to be effective no earlier than January 1, 2010.

6. Beginning on or after January 1, 2022 ~~January 1, 2010~~, and notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates



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under subparagraph 1., the corporation shall annually implement a rate increase which, except for sinkhole coverage, does not exceed 10 percent for any single policy renewed ~~issued~~ by the corporation covering a personal residential property that is used as the primary residence of the insured which has a dwelling replacement cost less than \$700,000 or that is a single condominium unit that has a combined dwelling and contents replacement cost less than \$700,000, excluding coverage changes and surcharges, if the policy was initially issued by the corporation before January 1, 2022. For purposes of this section, the term "primary residence" means the dwelling that the insured has represented as their permanent home on the insurance application or otherwise to the corporation.

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

And the title is amended as follows:

Delete lines 7 - 13

and insert:

certain circumstances; revising conditions for eligibility for coverage with the corporation to require a certain minimum premium; specifying a limit for agent commission rates; revising the application of annual rate increase limits to certain policies issued by the corporation; defining the term "primary residence";



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2021	.	
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Appropriations Subcommittee on Agriculture, Environment, and  
General Government (Brandes) recommended the following:

**Senate Substitute for Amendment (133436) (with title  
amendment)**

Delete lines 370 - 977  
and insert:

(c) The corporation's plan of operation:

1. Must provide for adoption of residential property and  
casualty insurance policy forms and commercial residential and  
nonresidential property insurance forms, which must be approved  
by the office before use. The corporation shall adopt the



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following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which is more limited than the coverage under a standard policy.

c. Commercial lines residential and nonresidential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

e. Commercial lines nonresidential property insurance forms that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

f. The corporation may adopt variations of the policy forms listed in sub-subparagraphs a.-e. which contain more restrictive coverage.

g. Effective January 1, 2013, the corporation shall offer a



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basic personal lines policy similar to an HO-8 policy with dwelling repair based on common construction materials and methods.

2. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only.

a. As used in this subsection, the term:

(II) "Primary residence" means the dwelling that the insured has represented as their permanent home on the insurance application or otherwise to the corporation.

(III)~~(I)~~ "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the agreement, may not be altered by the inability of the other party to pay its specified percentage of losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement,



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clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that the authorized insurer and the corporation may not be held responsible beyond their specified percentage of coverage of hurricane losses.

(I)~~(II)~~ "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

b. The corporation may enter into quota share primary insurance agreements with authorized insurers at corporation coverage levels of 90 percent and 50 percent.

c. If the corporation determines that additional coverage levels are necessary to maximize participation in quota share primary insurance agreements by authorized insurers, the corporation may establish additional coverage levels. However, the corporation's quota share primary insurance coverage level may not exceed 90 percent.

d. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation must provide for a uniform specified percentage of coverage of hurricane losses, by county or territory as set forth by the corporation board, for all eligible risks of the authorized insurer covered under the agreement.

e. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation is subject to review and approval by the office. However, such agreement shall be authorized only as to insurance contracts entered into



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between an authorized insurer and an insured who is already insured by the corporation for wind coverage.

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under such agreements, the corporation and the authorized insurer must maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

g. The corporation board shall establish in its plan of operation standards for quota share agreements which ensure that there is no discriminatory application among insurers as to the terms of the agreements, pricing of the agreements, incentive provisions if any, and consideration paid for servicing policies or adjusting claims.

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing insurance agreement between the corporation and an authorized



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insurer is voluntary and at the discretion of the authorized insurer.

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation may borrow funds by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2. in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation may take all actions needed to facilitate tax-free status for such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation may pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment



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of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of nine individuals who are residents of this state and who are from different geographical areas of this ~~the~~ state, one of whom is appointed by the Governor and serves solely to advocate on behalf of the consumer. The appointment of a consumer representative by the Governor is deemed to be within the scope of the exemption provided in s. 112.313(7)(b) and is in addition to the appointments authorized under sub-subparagraph a.

a. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance and be deemed to be within the scope of the exemption provided in s. 112.313(7)(b). The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The



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Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its customer and agent service levels in relationship to the voluntary market insurers writing similar coverage.

(I) The members of the advisory committee consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in this ~~the~~ state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members shall be appointed to



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3-year terms and may serve for consecutive terms.

(II) The committee shall report to the corporation at each board meeting on insurance market issues that ~~which~~ may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation.

Whenever an offer of coverage for a personal lines residential risk is received for a policyholder of the corporation ~~at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage,~~ the risk is not eligible for coverage with the corporation unless the premium for comparable coverage from the authorized insurer is more than 15 percent greater than the premium under subparagraph (n)1. for personal residential properties that are not the insured's primary residence. If the risk is not able to obtain such offer, the risk is eligible for



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a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of



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policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for a policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from



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the corporation. Whenever an offer of coverage for a commercial lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.



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If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison must be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. A comparison may be made solely of the premium with respect to the main building or structure only on



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the following basis: the same coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage in the coastal account, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an authorized insurer to the applicant must be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate.

6. Must include rules for classifications of risks and rates.

7. Must provide that if premium and investment income for



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an account attributable to a particular calendar year are in excess of projected losses and expenses for the account attributable to that year, such excess shall be held in surplus in the account. Such surplus must be available to defray deficits in that account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year.

8. Must provide objective criteria and procedures to be uniformly applied to all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following must be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation shall be construed as the private placement of insurance, and ~~the provisions of chapter 120~~ does ~~do~~ not apply.

9. Must provide that the corporation make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by the board of governors.

10. The policies issued by the corporation must provide that if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal



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through the corporation, except as otherwise provided in this subsection.

11. Corporation policies and applications must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer which does not provide coverage identical to the coverage provided by the corporation. The notice must also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

12. May establish, subject to approval by the office, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or area if the board determines that such changes are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods continue to have access to coverage from the corporation. If coverage is sought in connection with a real property transfer, the requirements and procedures may not provide an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

13. Must provide that, with respect to the coastal account, any assessable insurer with a surplus as to policyholders of \$25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular



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assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the coastal account may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds, but a limited apportionment company must begin collecting the regular assessments not later than 90 days after the regular assessments are levied by the corporation, and the regular assessments must be paid in full within 15 months after being levied by the corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under subparagraph (b)3.d. The plan must provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. However, an emergency assessment to be collected from policyholders under subparagraph (b)3.d. may not be limited or deferred.

14. Must provide that the corporation appoint as its licensed agents only those agents who throughout such appointments also hold an appointment as defined in s. 626.015 by an insurer who is authorized to write and is actually writing or renewing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within this ~~the~~ state.

15. Must provide a premium payment plan option to its policyholders which, at a minimum, allows for quarterly and semiannual payment of premiums. A monthly payment plan may, but is not required to, be offered.



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16. Must limit coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.

17. Must provide coverage for manufactured or mobile home dwellings. Such coverage must also include the following attached structures:

a. Screened enclosures that are aluminum framed or screened enclosures that are not covered by the same or substantially the same materials as those of the primary dwelling;

b. Carports that are aluminum or carports that are not covered by the same or substantially the same materials as those of the primary dwelling; and

c. Patios that have a roof covering that is constructed of materials that are not the same or substantially the same materials as those of the primary dwelling.

The corporation shall make available a policy for mobile homes or manufactured homes for a minimum insured value of at least \$3,000.

18. May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

19. May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

20. Must provide that new or renewal policies issued by the corporation on or after January 1, 2012, which cover sinkhole loss do not include coverage for any loss to appurtenant structures, driveways, sidewalks, decks, or patios that are directly or indirectly caused by sinkhole activity. The



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corporation shall exclude such coverage using a notice of coverage change, which may be included with the policy renewal, and not by issuance of a notice of nonrenewal of the excluded coverage upon renewal of the current policy.

21. As of January 1, 2012, must require that the agent obtain from an applicant for coverage from the corporation an acknowledgment signed by the applicant, which includes, at a minimum, the following statement:

ACKNOWLEDGMENT OF POTENTIAL SURCHARGE  
AND ASSESSMENT LIABILITY:

1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.

3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER



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INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE  
FLORIDA LEGISLATURE.

4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE  
CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE  
STATE OF FLORIDA.

a. The corporation shall maintain, in electronic format or  
otherwise, a copy of the applicant's signed acknowledgment and  
provide a copy of the statement to the policyholder as part of  
the first renewal after the effective date of this subparagraph.

b. The signed acknowledgment form creates a conclusive  
presumption that the policyholder understood and accepted his or  
her potential surcharge and assessment liability as a  
policyholder of the corporation.

22. The corporation shall pay a producing agent of record a  
reasonable commission not to exceed the average of commissions  
paid in the preceding year by the 20 admitted insurers writing  
the greatest market share of property insurance in this state.

(n)1. Rates for coverage provided by the corporation must  
be actuarially sound and subject to s. 627.062, except as  
otherwise provided in this paragraph. The corporation shall file  
its recommended rates with the office at least annually. The  
corporation shall provide any additional information regarding  
the rates which the office requires. The office shall consider  
the recommendations of the board and issue a final order  
establishing the rates for the corporation within 45 days after  
the recommended rates are filed. The corporation may not pursue  
an administrative challenge or judicial review of the final  
order of the office.



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2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

3. ~~After~~ The public hurricane loss-projection model under s. 627.06281, if ~~has been~~ found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, ~~the model~~ shall be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

4. The rate filings for the corporation which were approved by the office and took effect January 1, 2007, are rescinded, except for those rates that were lowered. As soon as possible, the corporation shall begin using the lower rates that were in effect on December 31, 2006, and provide refunds to policyholders who paid higher rates as a result of that rate filing. The rates in effect on December 31, 2006, remain in effect for the 2007 and 2008 calendar years except for any rate change that results in a lower rate. The next rate change that may increase rates shall take effect pursuant to a new rate filing recommended by the corporation and established by the office, subject to this paragraph.

5. Beginning on July 15, 2009, and annually thereafter, the corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it



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writes, to be effective no earlier than January 1, 2010.

6. Beginning on or after January 1, 2022 ~~January 1, 2010~~, and notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase which, except for sinkhole coverage, does not exceed 10 percent for any single policy renewed ~~issued~~ by the corporation covering a personal residential property that is used as the primary residence of the insured which has a dwelling replacement cost less than \$700,000 or that is a single condominium unit that has a combined dwelling and contents replacement cost less than \$700,000, excluding coverage changes and surcharges, if the policy was initially issued by the corporation before January 1, 2022.

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

And the title is amended as follows:

Delete lines 7 - 8

and insert:

certain circumstances; defining the term "primary residence"; revising

By the Committee on Banking and Insurance; and Senator Brandes

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1 A bill to be entitled  
 2 An act relating to Citizens Property Insurance  
 3 Corporation; amending s. 627.021, F.S.; revising  
 4 applicability; amending s. 627.351, F.S.; revising the  
 5 method for determining the amounts of potential  
 6 surcharges to be levied against policyholders under  
 7 certain circumstances; requiring the corporation to  
 8 levy an annual legal expenses surcharge; revising  
 9 conditions for eligibility for coverage with the  
 10 corporation to require a certain minimum premium;  
 11 specifying a limit for agent commission rates;  
 12 revising the application of annual rate increase  
 13 limits to certain policies issued by the corporation;  
 14 providing that eligible surplus lines insurers may  
 15 participate, in the same manner and on the same terms  
 16 as an authorized insurer, in depopulation, take-out,  
 17 or keep-out programs relating to policies removed from  
 18 Citizens Property Insurance Corporation; providing  
 19 certain exceptions, conditions, and requirements  
 20 relating to such participation by a surplus lines  
 21 insurer in the corporation's depopulation, take-out,  
 22 or keep-out programs; providing thresholds for  
 23 eligibility for coverage by the corporation for risks  
 24 offered coverage from qualified surplus lines  
 25 insurers; authorizing information from underwriting  
 26 files and confidential claims files to be released by  
 27 the corporation to specified entities considering  
 28 writing or underwriting risks insured by the  
 29 corporation under certain circumstances; specifying

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30 that only the corporation's transfer of a policy file  
 31 to an insurer, as opposed to the transfer of any file,  
 32 changes the file's public record status; making  
 33 technical changes; amending s. 627.3517, F.S.; making  
 34 technical changes; amending s. 627.3518, F.S., and  
 35 reenacting subsections (6) and (7), relating to the  
 36 Citizens Property Insurance Corporation policyholder  
 37 eligibility clearinghouse program, to incorporate the  
 38 amendments made to s. 627.351, F.S., in references  
 39 thereto; conforming provisions to changes made by the  
 40 act; providing an effective date.  
 41  
 42 Be It Enacted by the Legislature of the State of Florida:  
 43  
 44 Section 1. Subsection (2) of section 627.021, Florida  
 45 Statutes, is amended to read:  
 46 627.021 Scope of this part.—  
 47 (2) This part does not apply to:  
 48 (a) Reinsurance, except joint reinsurance as provided in s.  
 49 627.311.  
 50 (b) Insurance against loss of or damage to aircraft, their  
 51 hulls, accessories, or equipment, or against liability, other  
 52 than workers' compensation and employer's liability, arising out  
 53 of the ownership, maintenance, or use of aircraft.  
 54 (c) Insurance of vessels or craft, their cargoes, marine  
 55 builders' risks, marine protection and indemnity, or other risks  
 56 commonly insured under marine insurance policies.  
 57 (d) Commercial inland marine insurance.  
 58 (e) Except as may be specifically stated to apply, surplus

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lines insurance placed under ~~the provisions of~~ ss. 626.913-626.937.

Section 2. Paragraphs (b), (c), (n), (q), and (x) of subsection (6) of section 627.351, Florida Statutes, are amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(b)1. All insurers authorized to write one or more subject lines of business in this state are subject to assessment by the corporation and, for the purposes of this subsection, are referred to collectively as "assessable insurers." Insurers writing one or more subject lines of business in this state pursuant to part VIII of chapter 626 are not assessable insurers; however, insureds who procure one or more subject lines of business in this state pursuant to part VIII of chapter 626 are subject to assessment by the corporation and are referred to collectively as "assessable insureds." An insurer's assessment liability begins on the first day of the calendar year following the year in which the insurer was issued a certificate of authority to transact insurance for subject lines of business in this state and terminates 1 year after the end of the first calendar year during which the insurer no longer holds a certificate of authority to transact insurance for subject lines of business in this state.

2.a. All revenues, assets, liabilities, losses, and expenses of the corporation shall be divided into three separate accounts as follows:

(I) A personal lines account for personal residential policies issued by the corporation which provides comprehensive,

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multiperil coverage on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas;

(II) A commercial lines account for commercial residential and commercial nonresidential policies issued by the corporation which provides coverage for basic property perils on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas; and

(III) A coastal account for personal residential policies and commercial residential and commercial nonresidential property policies issued by the corporation which provides coverage for the peril of wind on risks that are located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002. The corporation may offer policies that provide multiperil coverage and shall offer policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage in the coastal account. Effective July 1, 2014, the corporation shall cease offering new commercial residential policies providing multiperil coverage and shall instead continue to offer commercial residential wind-only policies, and may offer commercial residential policies excluding wind. The corporation may, however, continue to renew a commercial residential multiperil policy on a building that is

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117 insured by the corporation on June 30, 2014, under a multiperil  
 118 policy. In issuing multiperil coverage, the corporation may use  
 119 its approved policy forms and rates for the personal lines  
 120 account. An applicant or insured who is eligible to purchase a  
 121 multiperil policy from the corporation may purchase a multiperil  
 122 policy from an authorized insurer without prejudice to the  
 123 applicant's or insured's eligibility to prospectively purchase a  
 124 policy that provides coverage only for the peril of wind from  
 125 the corporation. An applicant or insured who is eligible for a  
 126 corporation policy that provides coverage only for the peril of  
 127 wind may elect to purchase or retain such policy and also  
 128 purchase or retain coverage excluding wind from an authorized  
 129 insurer without prejudice to the applicant's or insured's  
 130 eligibility to prospectively purchase a policy that provides  
 131 multiperil coverage from the corporation. It is the goal of the  
 132 Legislature that there be an overall average savings of 10  
 133 percent or more for a policyholder who currently has a wind-only  
 134 policy with the corporation, and an ex-wind policy with a  
 135 voluntary insurer or the corporation, and who obtains a  
 136 multiperil policy from the corporation. It is the intent of the  
 137 Legislature that the offer of multiperil coverage in the coastal  
 138 account be made and implemented in a manner that does not  
 139 adversely affect the tax-exempt status of the corporation or  
 140 creditworthiness of or security for currently outstanding  
 141 financing obligations or credit facilities of the coastal  
 142 account, the personal lines account, or the commercial lines  
 143 account. The coastal account must also include quota share  
 144 primary insurance under subparagraph (c)2. The area eligible for  
 145 coverage under the coastal account also includes the area within

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146 Port Canaveral, which is bordered on the south by the City of  
 147 Cape Canaveral, bordered on the west by the Banana River, and  
 148 bordered on the north by Federal Government property.  
 149 b. The three separate accounts must be maintained as long  
 150 as financing obligations entered into by the Florida Windstorm  
 151 Underwriting Association or Residential Property and Casualty  
 152 Joint Underwriting Association are outstanding, in accordance  
 153 with the terms of the corresponding financing documents. If the  
 154 financing obligations are no longer outstanding, the corporation  
 155 may use a single account for all revenues, assets, liabilities,  
 156 losses, and expenses of the corporation. Consistent with this  
 157 subparagraph and prudent investment policies that minimize the  
 158 cost of carrying debt, the board shall exercise its best efforts  
 159 to retire existing debt or obtain the approval of necessary  
 160 parties to amend the terms of existing debt, so as to structure  
 161 the most efficient plan for consolidating the three separate  
 162 accounts into a single account.  
 163 c. Creditors of the Residential Property and Casualty Joint  
 164 Underwriting Association and the accounts specified in sub-sub-  
 165 subparagraphs a.(I) and (II) may have a claim against, and  
 166 recourse to, those accounts and no claim against, or recourse  
 167 to, the account referred to in sub-sub-subparagraph a.(III).  
 168 Creditors of the Florida Windstorm Underwriting Association have  
 169 a claim against, and recourse to, the account referred to in  
 170 sub-sub-subparagraph a.(III) and no claim against, or recourse  
 171 to, the accounts referred to in sub-sub-subparagraphs a.(I) and  
 172 (II).  
 173 d. Revenues, assets, liabilities, losses, and expenses not  
 174 attributable to particular accounts shall be prorated among the

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175 accounts.

176 e. The Legislature finds that the revenues of the  
177 corporation are revenues that are necessary to meet the  
178 requirements set forth in documents authorizing the issuance of  
179 bonds under this subsection.

180 f. The income of the corporation may not inure to the  
181 benefit of any private person.

182 3. With respect to a deficit in an account:

183 a. After accounting for the Citizens policyholder surcharge  
184 imposed under sub-subparagraph i., if the remaining projected  
185 deficit incurred in the coastal account in a particular calendar  
186 year:

187 (I) Is not greater than 2 percent of the aggregate  
188 statewide direct written premium for the subject lines of  
189 business for the prior calendar year, the entire deficit shall  
190 be recovered through regular assessments of assessable insurers  
191 under paragraph (q) and assessable insureds.

192 (II) Exceeds 2 percent of the aggregate statewide direct  
193 written premium for the subject lines of business for the prior  
194 calendar year, the corporation shall levy regular assessments on  
195 assessable insurers under paragraph (q) and on assessable  
196 insureds in an amount equal to the greater of 2 percent of the  
197 projected deficit or 2 percent of the aggregate statewide direct  
198 written premium for the subject lines of business for the prior  
199 calendar year. Any remaining projected deficit shall be  
200 recovered through emergency assessments under sub-subparagraph  
201 d.

202 b. Each assessable insurer's share of the amount being  
203 assessed under sub-subparagraph a. must be in the proportion

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204 that the assessable insurer's direct written premium for the  
205 subject lines of business for the year preceding the assessment  
206 bears to the aggregate statewide direct written premium for the  
207 subject lines of business for that year. The assessment  
208 percentage applicable to each assessable insured is the ratio of  
209 the amount being assessed under sub-subparagraph a. to the  
210 aggregate statewide direct written premium for the subject lines  
211 of business for the prior year. Assessments levied by the  
212 corporation on assessable insurers under sub-subparagraph a.  
213 must be paid as required by the corporation's plan of operation  
214 and paragraph (q). Assessments levied by the corporation on  
215 assessable insureds under sub-subparagraph a. shall be collected  
216 by the surplus lines agent at the time the surplus lines agent  
217 collects the surplus lines tax required by s. 626.932, and paid  
218 to the Florida Surplus Lines Service Office at the time the  
219 surplus lines agent pays the surplus lines tax to that office.  
220 Upon receipt of regular assessments from surplus lines agents,  
221 the Florida Surplus Lines Service Office shall transfer the  
222 assessments directly to the corporation as determined by the  
223 corporation.

224 c. After accounting for the Citizens policyholder surcharge  
225 imposed under sub-subparagraph i., the remaining projected  
226 deficits in the personal lines account and in the commercial  
227 lines account in a particular calendar year shall be recovered  
228 through emergency assessments under sub-subparagraph d.

229 d. Upon a determination by the board of governors that a  
230 projected deficit in an account exceeds the amount that is  
231 expected to be recovered through regular assessments under sub-  
232 subparagraph a., plus the amount that is expected to be

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233 recovered through surcharges under sub-subparagraph i., the  
 234 board, after verification by the office, shall levy emergency  
 235 assessments for as many years as necessary to cover the  
 236 deficits, to be collected by assessable insurers and the  
 237 corporation and collected from assessable insureds upon issuance  
 238 or renewal of policies for subject lines of business, excluding  
 239 National Flood Insurance policies. The amount collected in a  
 240 particular year must be a uniform percentage of that year's  
 241 direct written premium for subject lines of business and all  
 242 accounts of the corporation, excluding National Flood Insurance  
 243 Program policy premiums, as annually determined by the board and  
 244 verified by the office. The office shall verify the arithmetic  
 245 calculations involved in the board's determination within 30  
 246 days after receipt of the information on which the determination  
 247 was based. The office shall notify assessable insurers and the  
 248 Florida Surplus Lines Service Office of the date on which  
 249 assessable insurers shall begin to collect and assessable  
 250 insureds shall begin to pay such assessment. The date must be at  
 251 least 90 days after the date the corporation levies emergency  
 252 assessments pursuant to this sub-subparagraph. Notwithstanding  
 253 any other provision of law, the corporation and each assessable  
 254 insurer that writes subject lines of business shall collect  
 255 emergency assessments from its policyholders without such  
 256 obligation being affected by any credit, limitation, exemption,  
 257 or deferment. Emergency assessments levied by the corporation on  
 258 assessable insureds shall be collected by the surplus lines  
 259 agent at the time the surplus lines agent collects the surplus  
 260 lines tax required by s. 626.932 and paid to the Florida Surplus  
 261 Lines Service Office at the time the surplus lines agent pays

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262 the surplus lines tax to that office. The emergency assessments  
 263 collected shall be transferred directly to the corporation on a  
 264 periodic basis as determined by the corporation and held by the  
 265 corporation solely in the applicable account. The aggregate  
 266 amount of emergency assessments levied for an account in any  
 267 calendar year may be less than but may not exceed the greater of  
 268 10 percent of the amount needed to cover the deficit, plus  
 269 interest, fees, commissions, required reserves, and other costs  
 270 associated with financing the original deficit, or 10 percent of  
 271 the aggregate statewide direct written premium for subject lines  
 272 of business and all accounts of the corporation for the prior  
 273 year, plus interest, fees, commissions, required reserves, and  
 274 other costs associated with financing the deficit.

275 e. The corporation may pledge the proceeds of assessments,  
 276 projected recoveries from the Florida Hurricane Catastrophe  
 277 Fund, other insurance and reinsurance recoverables, policyholder  
 278 surcharges and other surcharges, and other funds available to  
 279 the corporation as the source of revenue for and to secure bonds  
 280 issued under paragraph (q), bonds or other indebtedness issued  
 281 under subparagraph (c)3., or lines of credit or other financing  
 282 mechanisms issued or created under this subsection, or to retire  
 283 any other debt incurred as a result of deficits or events giving  
 284 rise to deficits, or in any other way that the board determines  
 285 will efficiently recover such deficits. The purpose of the lines  
 286 of credit or other financing mechanisms is to provide additional  
 287 resources to assist the corporation in covering claims and  
 288 expenses attributable to a catastrophe. As used in this  
 289 subsection, the term "assessments" includes regular assessments  
 290 under sub-subparagraph a. or subparagraph (q)1. and emergency

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assessments under sub-subparagraph d. Emergency assessments collected under sub-subparagraph d. are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium. The emergency assessments shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the documents governing such bonds or indebtedness.

f. As used in this subsection for purposes of any deficit incurred on or after January 25, 2007, the term "subject lines of business" means insurance written by assessable insurers or procured by assessable insureds for all property and casualty lines of business in this state, but not including workers' compensation or medical malpractice. As used in this sub-subparagraph, the term "property and casualty lines of business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers under s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program or the Federal Crop Insurance Program. For purposes of this sub-subparagraph, the term "workers' compensation" includes both workers' compensation insurance and excess workers' compensation insurance.

g. The Florida Surplus Lines Service Office shall determine annually the aggregate statewide written premium in subject

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lines of business procured by assessable insureds and report that information to the corporation in a form and at a time the corporation specifies to ensure that the corporation can meet the requirements of this subsection and the corporation's financing obligations.

h. The Florida Surplus Lines Service Office shall verify the proper application by surplus lines agents of assessment percentages for regular assessments and emergency assessments levied under this subparagraph on assessable insureds and assist the corporation in ensuring the accurate, timely collection and payment of assessments by surplus lines agents as required by the corporation.

i. Upon determination by the board of governors that an account has a projected deficit, the board shall levy a Citizens policyholder surcharge against all policyholders of the corporation.

(I) The surcharge shall be levied as a uniform percentage of the premium for the policy ~~of up to 15 percent of such premium~~, which funds shall be used to offset the deficit, as follows:

(A) If the total number of policyholders of the corporation is less than 1 million, a surcharge of 15 percent of the premium shall be levied.

(B) If the total number of policyholders of the corporation is at least 1 million but less than 1.5 million policyholders, a surcharge of 20 percent of the premium shall be levied.

(C) If the total number of policyholders of the corporation is at least 1.5 million, a surcharge of 25 percent of the premium shall be levied.

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(II) The surcharge is payable upon cancellation or termination of the policy, upon renewal of the policy, or upon issuance of a new policy by the corporation within the first 12 months after the date of the levy or the period of time necessary to fully collect the surcharge amount.

(III) The corporation may not levy any regular assessments under paragraph (q) pursuant to sub-subparagraph a. or sub-subparagraph b. with respect to a particular year's deficit until the corporation has first levied the full amount of the surcharge authorized by this sub-subparagraph.

(IV) The surcharge is not considered premium and is not subject to commissions, fees, or premium taxes. However, failure to pay the surcharge shall be treated as failure to pay premium.

j. If the amount of any assessments or surcharges collected from corporation policyholders, assessable insurers or their policyholders, or assessable insureds exceeds the amount of the deficits, such excess amounts shall be remitted to and retained by the corporation in a reserve to be used by the corporation, as determined by the board of governors and approved by the office, to pay claims or reduce any past, present, or future plan-year deficits or to reduce outstanding debt.

4. After accounting for the rate limitations specified in subparagraph (n)6., any remaining deficit in legal expenses must be recovered through an annual Citizens policyholder legal expenses surcharge against all policyholders of the corporation. The surcharge must be levied as a uniform percentage of the premium for the policy. The surcharge is payable upon issuance of a new policy by the corporation and upon each subsequent renewal of the policy. The surcharge is not considered premium

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and is not subject to commissions, fees, or premium taxes. However, failure to pay the surcharge must be treated as failure to pay premium.

(c) The corporation's plan of operation:

1. Must provide for adoption of residential property and casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which must be approved by the office before use. The corporation shall adopt the following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which is more limited than the coverage under a standard policy.

c. Commercial lines residential and nonresidential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

e. Commercial lines nonresidential property insurance forms

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that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

f. The corporation may adopt variations of the policy forms listed in sub-subparagraphs a.-e. which contain more restrictive coverage.

g. Effective January 1, 2013, the corporation shall offer a basic personal lines policy similar to an HO-8 policy with dwelling repair based on common construction materials and methods.

2. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only.

a. As used in this subsection, the term:

(I) "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the agreement, may not be altered by the

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inability of the other party to pay its specified percentage of losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that the authorized insurer and the corporation may not be held responsible beyond their specified percentage of coverage of hurricane losses.

(II) "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

b. The corporation may enter into quota share primary insurance agreements with authorized insurers at corporation coverage levels of 90 percent and 50 percent.

c. If the corporation determines that additional coverage levels are necessary to maximize participation in quota share primary insurance agreements by authorized insurers, the corporation may establish additional coverage levels. However, the corporation's quota share primary insurance coverage level may not exceed 90 percent.

d. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation must provide for a uniform specified percentage of coverage of hurricane losses, by county or territory as set forth by the corporation board, for all eligible risks of the authorized insurer covered

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under the agreement.

e. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation is subject to review and approval by the office. However, such agreement shall be authorized only as to insurance contracts entered into between an authorized insurer and an insured who is already insured by the corporation for wind coverage.

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under such agreements, the corporation and the authorized insurer must maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

g. The corporation board shall establish in its plan of operation standards for quota share agreements which ensure that there is no discriminatory application among insurers as to the terms of the agreements, pricing of the agreements, incentive provisions if any, and consideration paid for servicing policies or adjusting claims.

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning

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eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing insurance agreement between the corporation and an authorized insurer is voluntary and at the discretion of the authorized insurer.

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation may borrow funds by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2. in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation may take all actions needed to facilitate tax-free status for such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation may pledge assessments, projected

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recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of nine individuals who are residents of this state and who are from different geographical areas of this ~~the~~ state, one of whom is appointed by the Governor and serves solely to advocate on behalf of the consumer. The appointment of a consumer representative by the Governor is deemed to be within the scope of the exemption provided in s. 112.313(7)(b) and is in addition to the appointments authorized under sub-subparagraph a.

a. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance and be deemed to be within the scope of the exemption provided in s. 112.313(7)(b). The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning

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annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its customer and agent service levels in relationship to the voluntary market insurers writing similar coverage.

(I) The members of the advisory committee consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in this ~~the~~ state; one representative from the Office

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of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members shall be appointed to 3-year terms and may serve for consecutive terms.

(II) The committee shall report to the corporation at each board meeting on insurance market issues that ~~which~~ may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a personal lines residential risk is received for a policyholder of the corporation ~~at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage,~~ the risk is not eligible for coverage with the

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corporation unless the premium for comparable coverage from the authorized insurer is more than 15 percent greater than the premium under subparagraph (n)1. for personal residential properties that are not owner-occupied. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the

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corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-paragraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-paragraph (A).

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk

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is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for a policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a commercial lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

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(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison must be based on those forms and coverages that are reasonably comparable. The

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corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage in the coastal account, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an authorized insurer to the applicant must be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as

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not being an offer of coverage from an authorized insurer at the insurer's approved rate.

6. Must include rules for classifications of risks and rates.

7. Must provide that if premium and investment income for an account attributable to a particular calendar year are in excess of projected losses and expenses for the account attributable to that year, such excess shall be held in surplus in the account. Such surplus must be available to defray deficits in that account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year.

8. Must provide objective criteria and procedures to be uniformly applied to all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following must be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation shall be construed as the private placement of insurance, and ~~the provisions of chapter 120~~ does ~~de~~ not apply.

9. Must provide that the corporation make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by

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the board of governors.

10. The policies issued by the corporation must provide that if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal through the corporation, except as otherwise provided in this subsection.

11. Corporation policies and applications must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer which does not provide coverage identical to the coverage provided by the corporation. The notice must also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

12. May establish, subject to approval by the office, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or area if the board determines that such changes are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods continue to have access to coverage from the corporation. If coverage is sought in connection with a real property transfer, the requirements and procedures may not provide an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

13. Must provide that, with respect to the coastal account,

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any assessable insurer with a surplus as to policyholders of \$25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the coastal account may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds, but a limited apportionment company must begin collecting the regular assessments not later than 90 days after the regular assessments are levied by the corporation, and the regular assessments must be paid in full within 15 months after being levied by the corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under subparagraph (b)3.d. The plan must provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. However, an emergency assessment to be collected from policyholders under subparagraph (b)3.d. may not be limited or deferred.

14. Must provide that the corporation appoint as its licensed agents only those agents who throughout such appointments also hold an appointment as defined in s. 626.015 by an insurer who is authorized to write and is actually writing or renewing personal lines residential property coverage, commercial residential property coverage, or commercial

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nonresidential property coverage within this ~~the~~ state.

15. Must provide a premium payment plan option to its policyholders which, at a minimum, allows for quarterly and semiannual payment of premiums. A monthly payment plan may, but is not required to, be offered.

16. Must limit coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.

17. Must provide coverage for manufactured or mobile home dwellings. Such coverage must also include the following attached structures:

a. Screened enclosures that are aluminum framed or screened enclosures that are not covered by the same or substantially the same materials as those of the primary dwelling;

b. Carports that are aluminum or carports that are not covered by the same or substantially the same materials as those of the primary dwelling; and

c. Patios that have a roof covering that is constructed of materials that are not the same or substantially the same materials as those of the primary dwelling.

The corporation shall make available a policy for mobile homes or manufactured homes for a minimum insured value of at least \$3,000.

18. May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

19. May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

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871 20. Must provide that new or renewal policies issued by the  
 872 corporation on or after January 1, 2012, which cover sinkhole  
 873 loss do not include coverage for any loss to appurtenant  
 874 structures, driveways, sidewalks, decks, or patios that are  
 875 directly or indirectly caused by sinkhole activity. The  
 876 corporation shall exclude such coverage using a notice of  
 877 coverage change, which may be included with the policy renewal,  
 878 and not by issuance of a notice of nonrenewal of the excluded  
 879 coverage upon renewal of the current policy.

880 21. As of January 1, 2012, must require that the agent  
 881 obtain from an applicant for coverage from the corporation an  
 882 acknowledgment signed by the applicant, which includes, at a  
 883 minimum, the following statement:

884  
 885 ACKNOWLEDGMENT OF POTENTIAL SURCHARGE  
 886 AND ASSESSMENT LIABILITY:

887  
 888 1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE  
 889 CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A  
 890 DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON,  
 891 MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND  
 892 PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE  
 893 POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT  
 894 OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA  
 895 LEGISLATURE.

896 2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER  
 897 SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM,  
 898 BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO  
 899 BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN

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900 PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE  
 901 WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES  
 902 ARE REGULATED AND APPROVED BY THE STATE.

903 3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY  
 904 ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER  
 905 INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE  
 906 FLORIDA LEGISLATURE.

907 4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE  
 908 CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE  
 909 STATE OF FLORIDA.

910  
 911 a. The corporation shall maintain, in electronic format or  
 912 otherwise, a copy of the applicant's signed acknowledgment and  
 913 provide a copy of the statement to the policyholder as part of  
 914 the first renewal after the effective date of this subparagraph.

915 b. The signed acknowledgment form creates a conclusive  
 916 presumption that the policyholder understood and accepted his or  
 917 her potential surcharge and assessment liability as a  
 918 policyholder of the corporation.

919 22. The corporation shall pay a producing agent of record a  
 920 reasonable commission not to exceed the average of commissions  
 921 paid in the preceding year by the 20 admitted insurers writing  
 922 the greatest market share of property insurance in this state.

923 (n)1. Rates for coverage provided by the corporation must  
 924 be actuarially sound and subject to s. 627.062, except as  
 925 otherwise provided in this paragraph. The corporation shall file  
 926 its recommended rates with the office at least annually. The  
 927 corporation shall provide any additional information regarding  
 928 the rates which the office requires. The office shall consider

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the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

3. ~~After~~ The public hurricane loss-projection model under s. 627.06281, ~~if has been~~ found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, ~~the model~~ shall be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

4. The rate filings for the corporation which were approved by the office and took effect January 1, 2007, are rescinded, except for those rates that were lowered. As soon as possible, the corporation shall begin using the lower rates that were in effect on December 31, 2006, and provide refunds to policyholders who paid higher rates as a result of that rate filing. The rates in effect on December 31, 2006, remain in effect for the 2007 and 2008 calendar years except for any rate change that results in a lower rate. The next rate change that may increase rates shall take effect pursuant to a new rate

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filing recommended by the corporation and established by the office, subject to this paragraph.

5. Beginning on July 15, 2009, and annually thereafter, the corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it writes, to be effective no earlier than January 1, 2010.

6. Beginning on or after January 1, 2022 ~~January 1, 2010~~, and notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase which, except for sinkhole coverage, does not exceed 10 percent for any single policy renewed ~~issued~~ by the corporation covering an owner-occupied personal residential property that has a dwelling replacement cost less than \$700,000 or that is a single condominium unit that has a combined dwelling and contents replacement cost less than \$700,000, excluding coverage changes and surcharges, if the policy was initially issued by the corporation and the dwelling was determined by the corporation to be owner-occupied before July 1, 2021.

7. The corporation may also implement an increase to reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

8. The corporation's implementation of rates as prescribed in subparagraph 6. shall cease for any line of business written by the corporation upon the corporation's implementation of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing for each commercial and personal line of business the corporation

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987 writes.

988 (q)1. The corporation shall certify to the office its needs  
 989 for annual assessments as to a particular calendar year, and for  
 990 any interim assessments that it deems to be necessary to sustain  
 991 operations as to a particular year pending the receipt of annual  
 992 assessments. Upon verification, the office shall approve such  
 993 certification, and the corporation shall levy such annual or  
 994 interim assessments. Such assessments shall be prorated as  
 995 provided in paragraph (b). The corporation shall take all  
 996 reasonable and prudent steps necessary to collect the amount of  
 997 assessments due from each assessable insurer, including, if  
 998 prudent, filing suit to collect the assessments, and the office  
 999 may provide such assistance to the corporation it deems  
 1000 appropriate. If the corporation is unable to collect an  
 1001 assessment from any assessable insurer, the uncollected  
 1002 assessments shall be levied as an additional assessment against  
 1003 the assessable insurers and any assessable insurer required to  
 1004 pay an additional assessment as a result of such failure to pay  
 1005 shall have a cause of action against such nonpaying assessable  
 1006 insurer. Assessments shall be included as an appropriate factor  
 1007 in the making of rates. The failure of a surplus lines agent to  
 1008 collect and remit any regular or emergency assessment levied by  
 1009 the corporation is considered to be a violation of s. 626.936  
 1010 and subjects the surplus lines agent to the penalties provided  
 1011 in that section.

1012 2. The governing body of any unit of local government, any  
 1013 residents of which are insured by the corporation, may issue  
 1014 bonds as defined in s. 125.013 or s. 166.101 from time to time  
 1015 to fund an assistance program, in conjunction with the

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1016 corporation, for the purpose of defraying deficits of the  
 1017 corporation. In order to avoid needless and indiscriminate  
 1018 proliferation, duplication, and fragmentation of such assistance  
 1019 programs, any unit of local government, any residents of which  
 1020 are insured by the corporation, may provide for the payment of  
 1021 losses, regardless of whether or not the losses occurred within  
 1022 or outside of the territorial jurisdiction of the local  
 1023 government. Revenue bonds under this subparagraph may not be  
 1024 issued until validated pursuant to chapter 75, unless a state of  
 1025 emergency is declared by executive order or proclamation of the  
 1026 Governor pursuant to s. 252.36 making such findings as are  
 1027 necessary to determine that it is in the best interests of, and  
 1028 necessary for, the protection of the public health, safety, and  
 1029 general welfare of residents of this state and declaring it an  
 1030 essential public purpose to permit certain municipalities or  
 1031 counties to issue such bonds as will permit relief to claimants  
 1032 and policyholders of the corporation. Any such unit of local  
 1033 government may enter into such contracts with the corporation  
 1034 and with any other entity created pursuant to this subsection as  
 1035 are necessary to carry out this paragraph. Any bonds issued  
 1036 under this subparagraph shall be payable from and secured by  
 1037 moneys received by the corporation from emergency assessments  
 1038 under sub-subparagraph (b)3.d., and assigned and pledged to or  
 1039 on behalf of the unit of local government for the benefit of the  
 1040 holders of such bonds. The funds, credit, property, and taxing  
 1041 power of the state or of the unit of local government may ~~shall~~  
 1042 not be pledged for the payment of such bonds.

1043 3.a. The corporation shall adopt one or more programs  
 1044 subject to approval by the office for the reduction of both new

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and renewal writings in the corporation. Beginning January 1, 2008, any program the corporation adopts for the payment of bonuses to an insurer for each risk the insurer removes from the corporation shall comply with s. 627.3511(2) and may not exceed the amount referenced in s. 627.3511(2) for each risk removed. The corporation may consider any prudent and not unfairly discriminatory approach to reducing corporation writings, and may adopt a credit against assessment liability or other liability that provides an incentive for insurers to take risks out of the corporation and to keep risks out of the corporation by maintaining or increasing voluntary writings in counties or areas in which corporation risks are highly concentrated and a program to provide a formula under which an insurer voluntarily taking risks out of the corporation by maintaining or increasing voluntary writings will be relieved wholly or partially from assessments under sub-subparagraph (b)3.a. However, any "take-out bonus" or payment to an insurer must be conditioned on the property being insured for at least 5 years by the insurer, unless canceled or nonrenewed by the policyholder. If the policy is canceled or nonrenewed by the policyholder before the end of the 5-year period, the amount of the take-out bonus must be prorated for the time period the policy was insured. When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on such policy, and the insurer shall either:

(I) Pay to the producing agent of record of the policy, for the first year, an amount which is the greater of the insurer's usual and customary commission for the type of policy written or

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a policy fee equal to the usual and customary commission of the corporation; or

(II) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the insurer's usual and customary commission for the type of policy written. If the producing agent is unwilling or unable to accept appointment by the new insurer, the new insurer shall pay the agent in accordance with sub-sub-subparagraph (I).

b. Any credit or exemption from regular assessments adopted under this subparagraph shall last no longer than the 3 years following the cancellation or expiration of the policy by the corporation. With the approval of the office, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the corporation, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies so removed.

c. There shall be no credit, limitation, exemption, or deferment from emergency assessments to be collected from policyholders pursuant to sub-subparagraph (b)3.d.

d. Notwithstanding any other provision of law, for purposes of a depopulation, take-out, or keep-out program adopted by the corporation, including an initial or renewal offer of coverage made to a policyholder removed from the corporation pursuant to such program, an eligible surplus lines insurer may participate in the program in the same manner and on the same terms as an authorized insurer, except as provided under this sub-subparagraph.

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(I) To qualify for participation, the surplus lines insurer must first obtain approval from the office for its depopulation, take-out, or keep-out plan and then comply with all of the corporation's requirements for the plan applicable to admitted insurers and with all statutory provisions applicable to the removal of policies from the corporation.

(II) In considering a surplus lines insurer's request for approval for its plan, the office shall determine that the surplus lines insurer meets the following requirements:

(A) Maintains surplus of \$50 million on a company or pooled basis;

(B) Has a superior, excellent, exceptional, or equally comparable financial strength rating by a rating agency acceptable to the office;

(C) Maintains reserves, surplus, reinsurance, and reinsurance equivalents sufficient to cover the insurer's 100-year probable maximum hurricane loss at least twice in a single hurricane season, and submits such reinsurance to the office to review for purposes of the take-out;

(D) Provides prominent notice to the policyholder before the assumption of the policy that surplus lines policies are not provided coverage by the Florida Insurance Guaranty Association, and an outline of any substantial differences in coverage between the existing policy and the policy being offered to the insured; and

(E) Provides policy coverage similar to that provided by the corporation.

(III) To obtain approval for a plan, the surplus lines insurer must file the following with the office:

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(A) Information requested by the office to demonstrate compliance with s. 624.404(3), including biographical affidavits, fingerprints processed pursuant to s. 624.34, and the results of criminal history records checks for officers and directors of the insurer and its parent or holding company;

(B) A service-of-process consent and agreement form executed by the insurer;

(C) Proof that the insurer has been an eligible or authorized insurer for at least 3 years;

(D) A duly authenticated copy of the insurer's current audited financial statement, in English, expressing all monetary values in United States dollars, at an exchange rate then current and shown in the statement, in the case of statements originally made in the currencies of other countries, and including any additional information relative to the insurer as the office may request;

(E) A complete certified copy of the latest official financial statement required by the insurer's domiciliary state, if different from sub-sub-sub-subparagraph (D); and

(F) A copy of the United States trust account agreement, if applicable.

This sub-subparagraph does not subject any surplus lines insurer to requirements in addition to part VIII of chapter 626. Surplus lines brokers making an offer of coverage under this sub-subparagraph are not required to comply with s. 626.916(1)(a), (b), (c), and (e).

(IV) Within 10 days after the date of assumption, the surplus lines insurer assuming policies from the corporation

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1161 shall remit a special deposit equal to the unearned premium net  
 1162 of unearned commissions on the assumed block of business to the  
 1163 Bureau of Collateral Management within the Department of  
 1164 Financial Services. The surplus lines insurer shall submit to  
 1165 the office, along with the initial deposit, an accounting of the  
 1166 policies assumed and the amount of unearned premium for such  
 1167 policies and a sworn affidavit attesting to its accuracy by an  
 1168 officer of the surplus lines insurer. Thereafter, the surplus  
 1169 lines insurer shall make a filing within 10 days after each  
 1170 calendar quarter attesting to the unearned premium in force for  
 1171 the previous quarter on policies assumed from the corporation,  
 1172 and shall submit additional funds with that filing if the  
 1173 special deposit is insufficient to cover the unearned premium on  
 1174 assumed policies, or shall receive a return of funds within 60  
 1175 days if the special deposit exceeds the amount of unearned  
 1176 premium required for assumed policies. The special deposit is an  
 1177 asset of the surplus lines insurer which is held by the  
 1178 department for the benefit of state policyholders of the surplus  
 1179 lines insurer in the event of the insolvency of the surplus  
 1180 lines insurer. If an order of liquidation is entered in any  
 1181 state against the surplus lines insurer, the department may use  
 1182 the special deposit for payment of unearned premium or policy  
 1183 claims, return all or part of the deposit to the domiciliary  
 1184 receiver, or use the funds in accordance with any action  
 1185 authorized under part I of chapter 631 or in compliance with any  
 1186 order of a court having jurisdiction over the insolvency.  
 1187 (V) Surplus lines brokers representing a surplus lines  
 1188 insurer on a take-out program shall obtain confirmation, in  
 1189 written or e-mail form, from each producing agent in advance

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1190 stating that the agent is willing to participate in the take-out  
 1191 program with the surplus lines insurer engaging in the take-out  
 1192 program. The take-out program is also subject to s. 627.3517. If  
 1193 a policyholder is selected for removal from the corporation by a  
 1194 surplus lines insurer and an authorized insurer, the corporation  
 1195 shall give the offer of coverage from the authorized insurer  
 1196 priority.  
 1197 (VI) (A) When offered comparable coverage from a qualified  
 1198 surplus lines insurer no greater than 15 percent higher than the  
 1199 premium charged by the corporation, a risk that has a dwelling  
 1200 replacement cost of \$700,000 or more or a single condominium  
 1201 unit that has a combined dwelling and contents replacement cost  
 1202 of \$700,000 or more is not eligible for coverage by the  
 1203 corporation.  
 1204 (B) When offered coverage from a qualified surplus lines  
 1205 insurer, a risk that has a dwelling replacement cost below  
 1206 \$700,000 or a single condominium unit that has a combined  
 1207 dwelling and contents replacement cost below \$700,000 remains  
 1208 eligible for coverage by the corporation.  
 1209 4. The plan shall provide for the deferment, in whole or in  
 1210 part, of the assessment of an assessable insurer, other than an  
 1211 emergency assessment collected from policyholders pursuant to  
 1212 sub-subparagraph (b)3.d., if the office finds that payment of  
 1213 the assessment would endanger or impair the solvency of the  
 1214 insurer. In the event an assessment against an assessable  
 1215 insurer is deferred in whole or in part, the amount by which  
 1216 such assessment is deferred may be assessed against the other  
 1217 assessable insurers in a manner consistent with the basis for  
 1218 assessments set forth in paragraph (b).

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5. Effective July 1, 2007, in order to evaluate the costs and benefits of approved take-out plans, if the corporation pays a bonus or other payment to an insurer for an approved take-out plan, it shall maintain a record of the address or such other identifying information on the property or risk removed in order to track if and when the property or risk is later insured by the corporation.

6. Any policy taken out, assumed, or removed from the corporation is, as of the effective date of the take-out, assumption, or removal, direct insurance issued by the insurer and not by the corporation, even if the corporation continues to service the policies. This subparagraph applies to policies of the corporation and not policies taken out, assumed, or removed from any other entity.

7. For a policy taken out, assumed, or removed from the corporation, the insurer may, for a period of no more than 3 years, continue to use any of the corporation's policy forms or endorsements that apply to the policy taken out, removed, or assumed without obtaining approval from the office for use of such policy form or endorsement.

(x)1. The following records of the corporation are confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files. Confidential and exempt underwriting file records may also be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided

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herein.

b. Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law. Confidential and exempt claims file records may be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

c. Records obtained or generated by an internal auditor pursuant to a routine audit, until the audit is completed, or if the audit is conducted as part of an investigation, until the investigation is closed or ceases to be active. An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings.

d. Matters reasonably encompassed in privileged attorney-client communications.

e. Proprietary information licensed to the corporation under contract and the contract provides for the confidentiality of such proprietary information.

f. All information relating to the medical condition or medical status of a corporation employee which is not relevant to the employee's capacity to perform his or her duties, except as otherwise provided in this paragraph. Information that is exempt includes ~~shall include~~, but is not limited to, information relating to workers' compensation, insurance benefits, and retirement or disability benefits.

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g. Upon an employee's entrance into the employee assistance program, a program to assist any employee who has a behavioral or medical disorder, substance abuse problem, or emotional difficulty that affects the employee's job performance, all records relative to that participation ~~are shall be~~ confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in s. 112.0455(11).

h. Information relating to negotiations for financing, reinsurance, depopulation, or contractual services, until the conclusion of the negotiations.

i. Minutes of closed meetings regarding underwriting files, and minutes of closed meetings regarding an open claims file until termination of all litigation and settlement of all claims with regard to that claim, except that information otherwise confidential or exempt by law shall be redacted.

2. If an authorized insurer, a reinsurance intermediary, an eligible surplus lines insurer, or an entity that has filed an application with the office for licensure as a property and casualty insurer in this state is considering writing or assisting in the underwriting of a risk insured by the corporation, relevant information from both the underwriting files and confidential claims files may be released to the insurer, reinsurance intermediary, eligible surplus lines insurer, or entity that has been created to seek authority to write property insurance in this state, provided the recipient insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. If a policy file is transferred to an insurer, that policy file is no longer a

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public record because it is not held by an agency subject to ~~the provisions of~~ the public records law. Underwriting files and confidential claims files may also be released to staff and the board of governors of the market assistance plan established pursuant to s. 627.3515, who must retain the confidentiality of such files, except such files may be released to authorized insurers that are considering assuming the risks to which the files apply, provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. Finally, the corporation or the board or staff of the market assistance plan may make the following information obtained from underwriting files and confidential claims files available to an entity that has obtained a permit to become an authorized insurer, a reinsurer that may provide reinsurance under s. 624.610, a licensed reinsurance broker, a licensed rating organization, a modeling company, or a licensed general lines insurance agent: name, address, and telephone number of the residential property owner or insured; location of the risk; rating information; loss history; and policy type. The receiving person must retain the confidentiality of the information received and may use the information only for the purposes of developing a take-out plan or a rating plan to be submitted to the office for approval or otherwise analyzing the underwriting of a risk or risks insured by the corporation on behalf of the private insurance market. A licensed general lines insurance agent may not use such information for the direct solicitation of policyholders.

3. A policyholder who has filed suit against the corporation has the right to discover the contents of his or her

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own claims file to the same extent that discovery of such contents would be available from a private insurer in litigation as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law. Pursuant to subpoena, a third party has the right to discover the contents of an insured's or applicant's underwriting or claims file to the same extent that discovery of such contents would be available from a private insurer by subpoena as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law, and subject to any confidentiality protections requested by the corporation and agreed to by the seeking party or ordered by the court. The corporation may release confidential underwriting and claims file contents and information as it deems necessary and appropriate to underwrite or service insurance policies and claims, subject to any confidentiality protections deemed necessary and appropriate by the corporation.

4. Portions of meetings of the corporation are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution wherein confidential underwriting files or confidential open claims files are discussed. All portions of corporation meetings which are closed to the public shall be recorded by a court reporter. The court reporter shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of any closed meeting shall be off the record. Subject to the provisions hereof and s. 119.07(1)(d)-(f), the court reporter's notes of any closed meeting shall be retained by the corporation for a minimum of 5 years. A copy of the transcript, less any

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exempt matters, of any closed meeting wherein claims are discussed shall become public as to individual claims after settlement of the claim.

Section 3. Section 627.3517, Florida Statutes, is amended to read:

627.3517 Consumer choice.—No provision of s. 627.351, s. 627.3511, or s. 627.3515 shall be construed to impair the right of any insurance risk apportionment plan policyholder, upon receipt of any keep-out ~~keepout~~ or take-out offer, to retain his or her current agent, so long as that agent is duly licensed and appointed by the insurance risk apportionment plan or otherwise authorized to place business with the insurance risk apportionment plan. This right may ~~shall~~ not be canceled, suspended, impeded, abridged, or otherwise compromised by any rule, plan of operation, or depopulation plan, whether through keep-out ~~keepout~~, take-out, midterm assumption, or any other means, of any insurance risk apportionment plan or depopulation plan, including, but not limited to, those described in s. 627.351, s. 627.3511, or s. 627.3515. The commission shall adopt any rules necessary to cause any insurance risk apportionment plan or market assistance plan under such sections to demonstrate that the operations of the plan do not interfere with, promote, or allow interference with the rights created under this section. If the policyholder's current agent is unable or unwilling to be appointed with the insurer making the take-out or keep-out ~~keepout~~ offer, the policyholder is ~~shall~~ not ~~be~~ disqualified from participation in the appropriate insurance risk apportionment plan because of an offer of coverage in the voluntary market. An offer of full property

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1393 insurance coverage by the insurer currently insuring either the  
 1394 ex-wind or wind-only coverage on the policy to which the offer  
 1395 applies ~~is shall~~ not be considered a take-out or ~~keep-out~~  
 1396 ~~keepout~~ offer. Any rule, plan of operation, or plan of  
 1397 depopulation, through ~~keep-out~~ ~~keepout~~, take-out, midterm  
 1398 assumption, or any other means, of any property insurance risk  
 1399 apportionment plan under s. 627.351(2) or (6) is subject to ss.  
 1400 627.351(2)(b) and (6)(c) and 627.3511(4).

1401 Section 4. Subsection (5) of section 627.3518, Florida  
 1402 Statutes, is amended, and paragraph (a) of subsection (6) and  
 1403 paragraph (a) of subsection (7) of that section are reenacted,  
 1404 to read:

1405 627.3518 Citizens Property Insurance Corporation  
 1406 policyholder eligibility clearinghouse program.—The purpose of  
 1407 this section is to provide a framework for the corporation to  
 1408 implement a clearinghouse program by January 1, 2014.

1409 (5) Notwithstanding s. 627.3517, any applicant for new  
 1410 coverage from the corporation is not eligible for coverage from  
 1411 the corporation if provided an offer of coverage from an  
 1412 authorized insurer through the program at a premium that is at  
 1413 or below the eligibility threshold established in s.  
 1414 627.351(6)(c)5.a. Whenever an offer of coverage for a personal  
 1415 lines risk is received for a policyholder of the corporation at  
 1416 renewal from an authorized insurer through the program, if the  
 1417 offer is at or below the eligibility threshold established in s.  
 1418 627.351(6)(c)5.a. equal to or less than the corporation's  
 1419 ~~renewal premium for comparable coverage~~, the risk is not  
 1420 eligible for coverage with the corporation. In the event an  
 1421 offer of coverage for a new applicant or a personal lines risk

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1422 at renewal is received from an authorized insurer through the  
 1423 program, and the premium offered exceeds the eligibility  
 1424 thresholds specified ~~threshold contained~~ in s.  
 1425 627.351(6)(c)5.a., the applicant or insured may elect to accept  
 1426 such coverage, or may elect to accept or continue coverage with  
 1427 the corporation. ~~In the event an offer of coverage for a~~  
 1428 ~~personal lines risk is received from an authorized insurer at~~  
 1429 ~~renewal through the program, and the premium offered is more~~  
 1430 ~~than the corporation's renewal premium for comparable coverage,~~  
 1431 ~~the insured may elect to accept such coverage, or may elect to~~  
 1432 ~~accept or continue coverage with the corporation.~~ Section  
 1433 627.351(6)(c)5.a.(I) does not apply to an offer of coverage from  
 1434 an authorized insurer obtained through the program. An applicant  
 1435 for coverage from the corporation who was declared ineligible  
 1436 for coverage at renewal by the corporation in the previous 36  
 1437 months due to an offer of coverage pursuant to this subsection  
 1438 shall be considered a renewal under this section if the  
 1439 corporation determines that the authorized insurer making the  
 1440 offer of coverage pursuant to this subsection continues to  
 1441 insure the applicant and increased the rate on the policy in  
 1442 excess of the increase allowed for the corporation under s.  
 1443 627.351(6)(n)6.

1444 (6) Independent insurance agents submitting new  
 1445 applications for coverage or that are the agent of record on a  
 1446 renewal policy submitted to the program:

1447 (a) Are granted and must maintain ownership and the  
 1448 exclusive use of expirations, records, or other written or  
 1449 electronic information directly related to such applications or  
 1450 renewals written through the corporation or through an insurer

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1451 participating in the program, notwithstanding s.  
 1452 627.351(6)(c)5.a.(I)(B) and (II)(B). Such ownership is granted  
 1453 for as long as the insured remains with the agency or until sold  
 1454 or surrendered in writing by the agent. Contracts with the  
 1455 corporation or required by the corporation must not amend,  
 1456 modify, interfere with, or limit such rights of ownership. Such  
 1457 expirations, records, or other written or electronic information  
 1458 may be used to review an application, issue a policy, or for any  
 1459 other purpose necessary for placing such business through the  
 1460 program.

1461  
 1462 Applicants ineligible for coverage in accordance with subsection  
 1463 (5) remain ineligible if their independent agent is unwilling or  
 1464 unable to enter into a standard or limited agency agreement with  
 1465 an insurer participating in the program.

1466 (7) Exclusive agents submitting new applications for  
 1467 coverage or that are the agent of record on a renewal policy  
 1468 submitted to the program:

1469 (a) Must maintain ownership and the exclusive use of  
 1470 expirations, records, or other written or electronic information  
 1471 directly related to such applications or renewals written  
 1472 through the corporation or through an insurer participating in  
 1473 the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and  
 1474 (II)(B). Contracts with the corporation or required by the  
 1475 corporation must not amend, modify, interfere with, or limit  
 1476 such rights of ownership. Such expirations, records, or other  
 1477 written or electronic information may be used to review an  
 1478 application, issue a policy, or for any other purpose necessary  
 1479 for placing such business through the program.

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1480  
 1481 Applicants ineligible for coverage in accordance with subsection  
 1482 (5) remain ineligible if their exclusive agent is unwilling or  
 1483 unable to enter into a standard or limited agency agreement with  
 1484 an insurer making an offer of coverage to that applicant.

1485 Section 5. This act shall take effect January 1, 2022.

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The Florida Senate

## Committee Agenda Request

**To:** Senator Ben Albritton, Chair  
Committee on Appropriations Subcommittee on Agriculture, Environment, and  
General Government

**Subject:** Committee Agenda Request

**Date:** March 16, 2021

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I respectfully request that **Senate Bill # 1574**, relating to Citizens Property Insurance Corporation be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", with a long horizontal line extending to the right.

---

Senator Jeff Brandes  
Florida Senate, District 24

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Agriculture, Environment, and General Government

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BILL: PCS/SB 1482 (305928)

INTRODUCER: Appropriations Subcommittee on Agriculture, Environment, and General Government;  
and Senators Garcia and Pizzo

SUBJECT: Biscayne Bay

DATE: April 12, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schreiber	Rogers	EN	<b>Favorable</b>
2.	Reagan	Betta	AEG	<b>Recommend: Fav/CS</b>
3.			AP	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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## I. Summary:

PCS/SB 1482 creates the Biscayne Bay Commission (commission) as an advisory council within the Department of Environmental Protection (DEP) to coordinate and advocate for new and existing plans and programs for improvement of Biscayne Bay and the surrounding areas.

The bill provides that the commission shall serve as the official coordinating clearinghouse for all public policy and projects related to Biscayne Bay to unite all entities in the area:

- To speak with one voice on bay issues;
- To develop coordinated plans, priorities, programs, and projects that will improve the bay; and
- To act as the principal advocate to ensure that bay projects are funded and implemented in a proper and timely manner.

The bill provides that the commission shall:

- Consolidate existing plans, programs, and proposals, including recommendations from the June 2020 Biscayne Bay Task Force report into a coordinated strategic plan for the improvement of Biscayne Bay.
- Prepare a financial plan using the projected financial resources available from the different jurisdictional agencies, monitor the progress of the plan and revise the plan regularly.

- Provide technical assistance and support as needed to implement the strategic and financial plans.
- Work in consultation with the U.S. Department of the Interior.
- Provide a forum and act as a clearinghouse for exchange of information.

The bill provides that the commission may establish subcommittees as necessary to carry out its responsibilities.

The bill requires the commission to submit a semiannual report describing the accomplishments of the commission and each member agency, as well as the status of each pending task to the Miami City Commission, the Miami-Dade County Board of County Commissioners, the Mayor of Miami, the Mayor of Miami-Dade County, the Governor, and the chair of the Miami-Dade County Legislative Delegation.

The bill requires the first report be submitted January 15, 2022.

The bill requires the report to be made available on the DEP and Miami-Dade County websites.

The bill provides that this act does not affect or supersede the regulatory authority of any governmental agency or any local government, and any responsibilities of any governmental entity relating to Biscayne Bay remain with the respective governmental entity.

The bill also prohibits sewage disposal facilities from disposal of any wastes into Biscayne Bay or its tributaries without providing advanced waste treatment.

The bill will have an indeterminate negative fiscal impact on the agencies staffing the commission.

The bill takes effect upon becoming a law.

## **II. Present Situation:**

### **Biscayne Bay**

Biscayne Bay is a 428-square mile estuary extending nearly the entire length of Miami-Dade County.<sup>1</sup> The bay is home to over 500 species of fish and other marine organisms, and it is a source of sustenance, economic activity, and recreational opportunities for nearly 2.8 million residents and millions of visitors each year.<sup>2</sup> Historically, Biscayne Bay would receive freshwater from the Everglades through coastal water bodies and wetlands, as well as

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<sup>1</sup> Biscayne Bay Task Force, *A Unified Approach to Recovery for a Healthy & Resilient Biscayne Bay*, Biscayne Bay Task Force Report and Recommendations (June 2020) (hereinafter *2020 Task Force Report*), available at [https://ecmrer.miamidade.gov/OpenContent/rest/content/content/MANAGEMENT%20PLAN.pdf?id=0902a1348f07bc65&contentType\[\]=pdf.txt,\\*/true](https://ecmrer.miamidade.gov/OpenContent/rest/content/content/MANAGEMENT%20PLAN.pdf?id=0902a1348f07bc65&contentType[]=pdf.txt,*/true) (last visited Mar. 8, 2021).

<sup>2</sup> *Id.* at 4; United States Army Corps of Engineers (USACE), *Biscayne Bay Coastal Wetlands Project*, <https://www.saj.usace.army.mil/BBCW/> (last visited Mar. 9, 2021).

groundwater discharges.<sup>3</sup> The shoreline originally consisted of mangroves and freshwater and saltwater marshes. The estuary's benthic (bottom) habitat was dominated by seagrasses, corals, and sponges.<sup>4</sup> The bay is part of a watershed that covers most of Miami-Dade County, and today the land to the west of the bay is generally characterized by three major regions: a highly urbanized northern region enclosed with islands, a central suburban region that is highly urbanized, and a southern region that is used largely for agriculture.<sup>5</sup>

Around the mid-1900s, environmental conditions in Biscayne Bay began to change in response to rapid population growth in southeast Florida and large-scale drainage and flood protection systems along the coast, including the Central and Southern Florida (C&SF) project.<sup>6</sup> Natural sheet flow and groundwater discharges into the bay were almost completely eliminated due to conversion of rivers and creeks into canals, construction of levies, and development of urban and agricultural areas.<sup>7</sup> The coastal water table has been lowered, which increases saltwater encroachment.<sup>8</sup> Destruction of coastal wetlands eliminated natural filtration of pollutants, and increased runoff from urbanized and agricultural areas have increased nutrient loading, decreasing water quality in the bay.<sup>9</sup> In recent years, the bay has experienced widespread loss of seagrass and decreasing biodiversity.<sup>10</sup> Since 2005, the bay has experienced six major ecological events, including algal blooms, seagrass die-offs, and a fish kill in 2020.<sup>11</sup>

Today, the bay receives pulsed, point source discharges from canals, in addition to rainfall and groundwater discharges.<sup>12</sup> The bay currently faces numerous sources of pollution including pet waste, fertilizer, yard clippings, leaking sewer infrastructure, and septic tank effluent.<sup>13</sup> Challenges presented by storms and sea level rise compound and complicate these issues.<sup>14</sup>

The bay is managed mainly by the Department of Environmental Protection (DEP) or the National Park Service within the U.S. Department of the Interior. Biscayne Bay contains or abuts numerous areas designated as having special ecological significance and legal protections at the national, state, and local levels. These areas include the following:

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<sup>3</sup> Anna Wachnicka, South Florida Water Management District (SFWMD), Governing Board Workshop, *Ecological Characteristics of Biscayne Bay*, slide 3 (Dec. 9, 2020), available at <https://apps.sfwmd.gov/ci/publicmeetings/viewFile/26871> (last visited Mar. 9, 2021).

<sup>4</sup> Anna Wachnicka, SFWMD, Governing Board Workshop, video around 0:11:00 (Dec. 9, 2020), available at <http://sfwmd.ig2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=2043&Format=Agenda> (last visited Mar. 9, 2021).

<sup>5</sup> Lawrence Glenn, SFWMD, Governing Board Workshop, *Biscayne Bay Workshop*, slides 2-4 (Dec. 9, 2020), available at <https://apps.sfwmd.gov/ci/publicmeetings/viewFile/26870> (last visited Mar. 9, 2021).

<sup>6</sup> *Id.*; see Matahal Ansar, SFWMD, Governing Board Workshop, *Operations of C&SF Water Control Structures Discharging to Biscayne Bay*, slide 3 (Dec. 9, 2020), available at <https://apps.sfwmd.gov/ci/publicmeetings/viewFile/26872> (last visited Mar. 9, 2021).

<sup>7</sup> Anna Wachnicka, SFWMD, *Governing Board Workshop*, video around 0:14:00 (Dec. 9, 2020).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Anna Wachnicka, SFWMD, Governing Board Workshop, *Ecological Characteristics of Biscayne Bay*, slides 3, 8-10, 21 (Dec. 9, 2020), available at <https://apps.sfwmd.gov/ci/publicmeetings/viewFile/26871> (last visited Mar. 9, 2021).

<sup>11</sup> Christian Avila, SFWMD, Governing Board Workshop, *Water Quality of the Biscayne Bay Watershed*, 4-5 (Dec. 9, 2020), available at <https://apps.sfwmd.gov/ci/publicmeetings/viewFile/26873> (last visited Mar. 9, 2021).

<sup>12</sup> *2020 Task Force Report*, at 4.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

- Miami-Dade County Aquatic Park and Conservation Area;<sup>15</sup>
- Biscayne Bay Aquatic Preserve;<sup>16</sup>
- Biscayne Bay-Cape Florida to Monroe County Line Aquatic Preserve;<sup>17</sup>
- Bill Sadowski Critical Wildlife Area;<sup>18</sup>
- Bill Baggs Cape Florida State Park;<sup>19</sup>
- Biscayne National Park;<sup>20</sup> and
- Florida Keys National Marine Sanctuary.<sup>21</sup>

Biscayne Bay is subject to estuary-specific numeric nutrient criteria that are established by the DEP.<sup>22</sup> Under the DEP's rules, the waters in Biscayne Bay's state aquatic preserves and Biscayne National Park are designated as Outstanding Florida Waters.<sup>23</sup>

The Comprehensive Everglades Restoration Plan (CERP) is a regional program, implemented through a partnership between the South Florida Water Management District (SFWMD) and the U.S. Army Corps of Engineers (USACE), largely based on modifications to the C&SF project.<sup>24</sup> Recently, in partnership with the USACE, the SFWMD began the Biscayne Bay and Southeastern Everglades Restoration initiative, a planning feasibility study involving six CERP component projects.<sup>25</sup> The objectives of the study include improving distribution of freshwater to Biscayne Bay, improving ecological and hydrological connectivity between coastal wetlands, and increasing resiliency of coastal habitats to sea level rise.<sup>26</sup>

In August of 2019, a grand jury convened by the Miami-Dade State Attorney's Office issued a report finding that Biscayne Bay is now in a "precarious balance," with three major problems negatively impacting the water quality of the bay:

- Sewage contamination, which results in excessive amounts of harmful bacteria;
- The presence of excess nutrients, which results in destructive algal blooms; and

<sup>15</sup> See Miami-Dade County Code of Ordinances, s. 24-48.22.

<sup>16</sup> Section 258.397, F.S. The law prohibits the discharge into the preserve of wastes or effluents which substantially inhibit the purposes of the section.

<sup>17</sup> See s. 258.39(11), F.S.

<sup>18</sup> Fish and Wildlife Conservation Commission (FWC), *Bill Sadowski CWA*, <https://myfwc.com/conservation/terrestrial/cwa/bill-sadowski/> (last visited Mar. 9, 2021).

<sup>19</sup> Department of Environmental Protection (DEP), *Bill Baggs Cape Florida State Park*, <https://www.floridastateparks.org/parks-and-trails/bill-baggs-cape-florida-state-park> (last visited Mar. 9, 2021).

<sup>20</sup> National Park Service (NPS), *Biscayne National Park*, <https://www.nps.gov/bisc/index.htm> (last visited Mar. 9, 2021).

<sup>21</sup> National Oceanic and Atmosphere Administration (NOAA), *Florida Keys National Marine Sanctuary*, <https://floridakeys.noaa.gov/> (last visited Mar. 9, 2021).

<sup>22</sup> Fla. Admin. Code R. 62-302.532(1)(h).

<sup>23</sup> Fla. Admin. Code R. 62-302.700(9).

<sup>24</sup> USACE and US Department of Interior, *2015-2020 Momentum, Report to Congress, Comprehensive Everglades Restoration Plan, Central and Southern Florida Project*, 6 (Dec. 2020), available at [https://issuu.com/usace\\_sai/docs/final\\_2020\\_report\\_to\\_congress\\_on\\_cerp\\_progress\\_hig](https://issuu.com/usace_sai/docs/final_2020_report_to_congress_on_cerp_progress_hig) (last visited Jan. 18, 2021).

<sup>25</sup> Mindy Parrott, SFWMD, *Governing Board Workshop, Biscayne Bay and Southeastern Everglades Restoration (BBSEER), Comprehensive Everglades Restoration Plan*, 2 (Dec. 9, 2020), available at <https://apps.sfwmd.gov/ci/publicmeetings/viewFile/26877> (last visited Mar. 9, 2021).

<sup>26</sup> *Id.* at 3.

- Pollution and littering, which result in massive amounts of trash being discharged into the bay via the storm drainage system.<sup>27</sup>

The report stated that, without corrective action, the declining water quality of Biscayne Bay may become irreversible.<sup>28</sup>

### ***Biscayne Bay Task Force***

In 2019, the Miami-Dade Board of County Commissioners established by resolution the Biscayne Bay Task Force (task force).<sup>29</sup> The task force was established to advise the board of county commissioners and the mayor of Miami-Dade County on issues related to Biscayne Bay.<sup>30</sup> It was required to review existing information, hear comments from county staff and stakeholders, and prepare a report including: an action plan identifying problem areas and projects, and recommendations regarding proposed state and federal legislation, activities or appropriations.<sup>31</sup> Membership consisted of nine county residents including the Director of the County Division of Environmental Resources Management, the County's Chief Resilience Officer, experts in a range of issues, and other community members engaged on the issues.<sup>32</sup> Ultimately, the task force met 18 times and received approximately 35 presentations regarding Biscayne Bay from a broad array of stakeholders.<sup>33</sup> The task force submitted its report in June of 2020 and dissolved in August of 2020.

In the report, the task force recommended a unified and collaborative approach to restoring Biscayne Bay. The report recommends the establishment of an overarching administrative structure to implement the report's recommendations.<sup>34</sup> This recommended structure involves Miami-Dade County creating an intergovernmental Biscayne Bay Watershed Management Board supported by necessary experts and community input, a Chief Bay Officer in the Office of the Mayor, and a Biscayne Bay Watershed Restoration Plan, developed and implemented by the watershed management board, which implements the recommendations of the task force.<sup>35</sup> The report contains over 60 task force recommendations under the following seven policy themes:

- Water Quality.
- Governance.
- Infrastructure.
- Watershed Habitat Restoration and Natural Infrastructure.
- Marine Debris.

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<sup>27</sup> Miami-Dade County Grand Jury, *Final Report of the Miami-Dade County Grand Jury: Fall Term A.D. 2018*, 2 (Aug. 8, 2019), available at <https://www.documentcloud.org/documents/6248684-Grand-Jury-Report-Biscayne-Bay.html> (last visited Mar. 9, 2021). In general, the report discusses many topics including direct discharge of sewage into the ocean, leaking sewer pipes, single use plastics, sediment, stormwater runoff, agricultural activities, and contamination of the Biscayne Aquifer through septic tanks and hypersaline water in cooling canals associated with a power plant.

<sup>28</sup> *Id.*

<sup>29</sup> Miami-Dade County, *Biscayne Bay Task Force*, <https://www.miamidade.gov/global/government/taskforce/biscayne-bay-task-force.page> (last visited Mar. 8, 2021).

<sup>30</sup> Miami-Dade County Board of County Commissioners, *Resolution No. 165-19*, 2-4 (Feb. 5, 2019), available at <https://www.miamidade.gov/global/government/taskforce/biscayne-bay-task-force.page> (last visited Mar. 8, 2021).

<sup>31</sup> *Id.* at 5.

<sup>32</sup> *Id.* at 6.

<sup>33</sup> See *2020 Task Force Report*, at 2.

<sup>34</sup> *Id.* at 7.

<sup>35</sup> *Id.* at 7.

- Education and Outreach.
- Funding.<sup>36</sup>

### Advanced Waste Treatment

Chapter 403, F.S., requires that any facility or activity which discharges wastes into waters of the state or which will reasonably be expected to be a source of water pollution must obtain a permit from the DEP.<sup>37</sup> Generally, persons who intend to collect, transmit, treat, dispose, or reuse wastewater are required to obtain a wastewater permit. A wastewater permit issued by the DEP is required for both operation and certain construction activities associated with domestic or industrial wastewater facilities or activities. A DEP permit must also be obtained prior to construction of a domestic wastewater collection and transmission system.<sup>38</sup>

Florida law prohibits sewage disposal facilities from disposing of any wastes into certain specified water bodies,<sup>39</sup> or into any river, stream, channel, canal, bay, bayou, sound, or other water tributary thereto, without providing advanced waste treatment that is approved by the DEP.<sup>40</sup> The applicable standard for advanced waste treatment is defined in statute using the maximum concentrations of nutrients or contaminants that a reclaimed water product may contain.<sup>41</sup> The reclaimed water product may contain no more, on a permitted annual average basis, than the concentrations listed in the table below.<sup>42</sup> The standard also requires high-level disinfection, as defined in rule by the DEP.<sup>43</sup>

These requirements do not prohibit or regulate septic tanks or other means of individual waste disposal which are otherwise subject to state regulation.<sup>44</sup>

Nutrient or Contaminant	Maximum Concentration Annually
Biochemical Oxygen Demand	5 mg/L
Suspended Solids	5 mg/L
Total Nitrogen	3 mg/L
Total Phosphorus <sup>45</sup>	1 mg/L

<sup>36</sup> *Id.* at 9-29, 39-40.

<sup>37</sup> Section 403.087, F.S.

<sup>38</sup> DEP, *Wastewater Permitting*, <https://floridadep.gov/water/domestic-wastewater/content/wastewater-permitting> (last visited Mar. 9, 2021).

<sup>39</sup> Section 403.086, (1)(c), F.S. These specified water bodies are: Old Tampa Bay, Tampa Bay, Hillsborough Bay, Boca Ciega Bay, St. Joseph Sound, Clearwater Bay, Sarasota Bay, Little Sarasota Bay, Roberts Bay, Lemon Bay, Charlotte Harbor Bay, and, beginning July 1, 2025, Indian River Lagoon; ch. 86-173, s. 2, Laws of Fla. This prohibition was originally passed in 1987; ch. 2020-150, s. 17, Laws of Fla. The prohibition was amended in 2020.

<sup>40</sup> Section 403.086, (1)(c), F.S.

<sup>41</sup> Section 403.086(4), F.S.

<sup>42</sup> *Id.*

<sup>43</sup> Section 403.086(4)(b), F.S.; Fla. Admin. Code R. 62-600.440(6).

<sup>44</sup> Section 403.086(3), F.S.

<sup>45</sup> Section 403.086(4), F.S. In waters where phosphorus has been shown not to be a limiting nutrient or contaminant, DEP is authorized to waive or alter the compliance levels for phosphorus until there is a demonstration that phosphorus is a limiting nutrient or a contaminant.

When a reclaimed water product has been established to be in compliance with these standards, that water is presumed to be allowable, and its discharge is permitted in the specified waters at a reasonably accessible point where such discharge results in minimal negative impact.<sup>46</sup> This presumption may only be overcome by a demonstration that one or more of the following would occur:

- Discharging the reclaimed water meeting the advanced waste treatment standard will be, by itself, a cause of considerable degradation to an Outstanding Florida Water or to other waters, and is not clearly in the public interest.
- The reclaimed water discharge will have a substantial negative impact on an approved shellfish harvesting area or a water used as a public domestic water supply.
- The increased volume of fresh water contributed by the reclaimed water product will seriously alter the natural fresh-salt water balance of the receiving water after reasonable opportunity for mixing.<sup>47</sup>

If one of these three conditions has been demonstrated, remedies may include, but are not limited to: requiring more stringent effluent limitations, ordering the point or method of discharge changed, limiting the duration or volume of the discharge, or prohibiting the discharge only if no other alternative is in the public interest.<sup>48</sup>

### III. Effect of Proposed Changes:

**Section 1** creates s. 163.11, F.S., entitled “Biscayne Bay Commission.”

The bill establishes the Biscayne Bay Commission (commission) as an advisory council within the Department of Environmental Resources (DEP) and the DEP shall provide administrative support and service within available resources.

The bill provides that the commission shall serve as the official coordinating clearinghouse for all public policy and projects related to Biscayne Bay to unite all governmental agencies, businesses, and residents in the area to speak with one voice on bay issues; to develop coordinated plans, priorities, programs, projects, and budgets that might substantially improve the bay area; and to act as the principal advocate and watchdog to ensure that bay projects are funded and implemented in a proper and timely manner. The bill requires the commission, except as otherwise provided in the bill, to comply with s. 20.052, F.S., which contains requirements for establishing, evaluating, or maintaining commissions that are created by specific statutory enactment.

The commission shall be comprised of the following members:

- One member appointed by the Governor.
- Three members of the Miami-Dade Board of County Commissioners, appointed by the board.
- One member of the Miami-Dade County League of Cities, nominated by the league and appointed by the Secretary of the DEP.

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<sup>46</sup> Section 403.086(5), F.S.

<sup>47</sup> Section 403.086(5)(a), F.S.

<sup>48</sup> Section 403.086(5)(b), F.S.

- One member of the South Florida Water Management District Governing Board (SFWMD) who resides in Miami-Dade County, appointed by the board.
- One representative of the DEP, appointed by the Secretary of the DEP.
- One representative of the Fish and Wildlife Conservation Commission (FWC), appointed by the commission.
- One representative of the Florida Inland Navigation District (IND)<sup>49</sup> appointed by the district.

The bill provides that regarding membership of the commission:

- Members shall serve four year terms, however, for the purpose of providing staggered terms, the initial appointments of representatives of the SFWMD, the DEP, the FWC, and the IND shall be for two years.
- A vacancy shall be filled for the remainder of the unexpired term in the same manner as the initial appointment.
- Notwithstanding s. 20.502, F.S., private citizen members of the commission are not required to be confirmed by the Senate.
- All members shall be voting members.
- Members shall serve without compensation and are not entitled to reimbursement for per diem and travel expenses.
- The commission may meet monthly, but must meet at least quarterly.

The bill provides that the commission shall:

- Consolidate existing plans, programs, and proposals, including the recommendations outlined in the June 2020 Biscayne Bay Task Force report, into a coordinated strategic plan for improvement of Biscayne Bay and the surrounding areas. The plan must address environmental, economic, social, recreational, and aesthetic issues. The committee shall monitor the progress on each element of the coordinated strategic plan and revise it regularly.
- Prepare a consolidated financial plan using the different jurisdictional agencies available for projected financial resources. The committee must monitor the progress on each element of the integrated financial plan and revise it regularly.
- Provide technical assistance and political support as needed to help implement each element of the strategic and financial plans.
- Work in consultation with the United States Department of the Interior.
- Provide a forum for exchange of information.
- Act as a clearinghouse for public information.
- Submit a semiannual report describing the accomplishments of the commission and each member agency, as well as the status of each pending task. The committee must distribute the report to:
  - The Miami City Commission;
  - The Miami-Dade County Board of County Commissioners;
  - The Mayor of Miami;
  - The Mayor of Miami-Dade County;

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<sup>49</sup> See Florida Inland Navigation District, <http://www.aicw.org/> (last visited Mar. 9, 2021). The Florida Inland Navigation District is a special State taxing district for the continued management and maintenance of the Atlantic Intracoastal Waterway, commonly referred to as M-95 marine highway.

- The Governor;
- The chair of the Miami-Dade County Legislative Delegation.

The bill provides that the first report shall be submitted by January 15, 2022. The report shall also be made available on the DEP's and the Miami-Dade County's websites.

The bill provides that this act does not affect or supersede the regulatory authority of any governmental agency or any local government, and any responsibilities of any governmental entity relating to Biscayne Bay remain with the respective governmental entity.

**Section 2** amends s. 403.086, F.S., which establishes waste treatment requirements for sewage disposal facilities.

The bill prohibits sewage disposal facilities from disposing of any wastes into Biscayne Bay, or into any river, stream, channel, canal, bay, bayou, sound, or other water tributary thereto, without providing advanced waste treatment, as defined in s. 403.086(4), F.S., approved by the DEP. This requirement does not apply to facilities which were permitted by February 1, 1987, and which discharge secondary treated effluent, followed by water hyacinth treatment, to tributaries of Biscayne Bay.

**Section 3** states that the act shall take effect upon becoming a law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

The bill prohibits sewage disposal facilities from disposing of wastes into Biscayne Bay or its tributaries without providing advanced waste treatment. This may result in indeterminate increased costs to private sewage disposal facilities in the areas surrounding Biscayne Bay.

**C. Government Sector Impact:**

The bill creates a commission that must meet at least quarterly, and part of it must consist of members from specified local, state, and federal government entities. This may result in indeterminate increased costs to the government entities required to provide one or more members. The commission is authorized to seek and receive funding, including grant funding, to further or enhance its purposes. Pursuant to s. 20.052(4)(d), F.S., members may be authorized to receive per diem and reimbursement for travel expenses.

The bill prohibits sewage disposal facilities from disposing of wastes into Biscayne Bay or its tributaries without providing advanced waste treatment. This may result in indeterminate increased costs to public sewage disposal facilities in the areas surrounding Biscayne Bay.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 163.11 of the Florida Statutes.

This bill substantially amends section 403.086 of the Florida Statutes.

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

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

**Recommended CS by Appropriations Subcommittee on Agriculture, Environment, and General Government on April 8, 2021:**

The committee substitute:

- Establishes the Biscayne Bay Commission (Commission) as an advisory council, as defined in statute, within the Department of Environmental Protection (DEP).
- Requires DEP to provide administrative support and service to the Commission as requested by the Commission and within DEP's available resources.

- Provides for the following Commission membership and specified appointment processes:
  - One member appointed by the Governor.
  - Three members of the Miami-Dade Board of County Commissioners, appointed by the board.
  - One member of the Miami-Dade County League of Cities, nominated by the league and appointed by the Secretary of Environmental Protection.
  - One member of the South Florida Water Management District Governing Board who resides in Miami-Dade County, appointed by the board.
  - One representative of the Department of Environmental Protection, appointed by the Secretary of Environmental Protection.
  - One representative of the Fish and Wildlife Conservation Commission, appointed by the commission.
  - One representative of the Florida Inland Navigation District, appointed by the district.
- Requires that members serve four-year terms. For the purpose of providing staggered terms, the initial appointments of representatives from the following entities are for two-year terms: the South Florida Water Management District, DEP, the Fish and Wildlife Conservation Commission, and the Florida Inland Navigation District.
- Requires that a vacancy be filled in the same manner as the initial appointment.
- Provides that private citizen members of the Commission are not required to be confirmed by the Florida Senate.
- Requires members of the Commission to serve without compensation, and provides that members are not entitled to reimbursement for per diem and travel expenses.
- Provides that all members of the Commission are voting members.
- Requires the Commission to meet at least quarterly, and authorizes it to meet monthly.
- Requires the Commission to implement specified activities, instead of granting similar duties to a policy committee within the Commission.
- Requires the Commission to work in consultation with the U.S. Department of the Interior.
- Authorizes the Commission to establish subcommittees as necessary.
- Requires the Commission's first semiannual report to be submitted by January 15, 2022, and the report must be made available on the websites of DEP and Miami-Dade County.

The amendment deletes from the underlying bill provisions that do the following:

- Authorize the Commission to seek and receive funding.
- Authorize the Commission to accept specifically defined coordinating authority or functions delegated to the Commission by a governmental entity.
- Require that the Commission consist of three parts:
  - A policy committee that must meet at least quarterly, with specified membership of voting members.
  - A chief officer that represents the Commission as a liaison.

- A working group consisting of government agencies as well as representatives from business and civic associations.
- Authorize the following powers and duties of the policy committee, which the amendment does not retain as responsibilities of the Commission:
  - Accept specifically defined coordinating authority or functions delegated to the committee by government entities.
  - Seek grant funding and administer contracts.
  - Facilitate the resolution of conflicts.
  - Conduct public education programs.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2021	.	
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Appropriations Subcommittee on Agriculture, Environment, and  
General Government (Garcia) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 163.11, Florida Statutes, is created to  
read:

163.11 Biscayne Bay Commission.—

(1) The Biscayne Bay Commission is hereby established as an  
advisory council, as defined in s. 20.03, within the Department  
of Environmental Protection. The department shall provide



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administrative support and service to the commission as requested by the commission and within the available resources of the department. The commission shall comply with the requirements of s. 20.052 except as otherwise provided in this section.

(2) The commission shall serve as the official coordinating clearinghouse for all public policy and projects related to Biscayne Bay to unite all governmental agencies, businesses, and residents in the area to speak with one voice on bay issues; to develop coordinated plans, priorities, programs, and projects that might substantially improve the bay area; and to act as the principal advocate and watchdog to ensure that bay projects are funded and implemented in a proper and timely manner.

(3) (a) The Biscayne Bay Commission shall be comprised of the following members:

1. One member appointed by the Governor.

2. Three members of the Miami-Dade Board of County Commissioners, appointed by the board.

3. One member of the Miami-Dade County League of Cities, nominated by the league and appointed by the Secretary of Environmental Protection.

4. One member of the South Florida Water Management District Governing Board who resides in Miami-Dade County, appointed by the board.

5. One representative of the Department of Environmental Protection, appointed by the Secretary of Environmental Protection.

6. One representative of the Fish and Wildlife Conservation Commission, appointed by the commission.



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40        7. One representative of the Florida Inland Navigation  
41 District, appointed by the district.

42        (b) Members shall serve for a term of 4 years; however, for  
43 the purpose of providing staggered terms, the initial  
44 appointments of representatives of the South Florida Water  
45 Management District Governing Board, the Department of  
46 Environmental Protection, the Fish and Wildlife Conservation  
47 Commission, and the Florida Inland Navigation District shall be  
48 for a term of 2 years. A vacancy shall be filled for the  
49 remainder of the unexpired term in the same manner as the  
50 initial appointment. Notwithstanding s. 20.052, private citizen  
51 members of the commission are not required to be confirmed by  
52 the Senate.

53        (c) All members shall be voting members.

54        (d) Members of the commission shall serve without  
55 compensation and are not entitled to reimbursement for per diem  
56 and travel expenses pursuant to s. 112.061.

57        (4) The commission may meet monthly, but shall meet at  
58 least quarterly.

59        (5) The commission shall:

60        (a) Consolidate existing plans, programs, and proposals,  
61 including the recommendations outlined in the June 2020 Biscayne  
62 Bay Task Force report, into a coordinated strategic plan for  
63 improvement of Biscayne Bay and the surrounding areas,  
64 addressing environmental, economic, social, recreational, and  
65 aesthetic issues. The commission shall monitor the progress on  
66 each element of such plan and shall revise the plan regularly.

67        (b) Prepare a consolidated financial plan using the  
68 projected financial resources available from the different



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jurisdictional agencies. The commission shall monitor the progress on each element of such plan and revise the plan regularly.

(c) Provide technical assistance and support as needed to help implement each element of the strategic and financial plans.

(d) Work in consultation with the United States Department of the Interior.

(e) Provide a forum for exchange of information.

(f) Act as a clearinghouse for public information.

(6) The commission may establish subcommittees as necessary to carry out its responsibilities.

(7) The commission shall submit a semiannual report describing the accomplishments of the commission and each member agency, as well as the status of each pending task, to the Miami City Commission, the Miami-Dade County Board of County Commissioners, the Mayor of Miami, the Mayor of Miami-Dade County, the Governor, and the chair of the Miami-Dade County Legislative Delegation. The first report shall be submitted by January 15, 2022. The report shall also be made available on the Department of Environmental Protection's website and Miami-Dade County's website.

(8) This act does not affect or supersede the regulatory authority of any governmental agency or any local government, and any responsibilities of any governmental entity relating to Biscayne Bay remain with the respective governmental entity.

Section 2. Paragraph (c) of subsection (1) of section 403.086, Florida Statutes, is amended to read:

403.086 Sewage disposal facilities; advanced and secondary



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waste treatment.—

(1)

(c) Notwithstanding this chapter or chapter 373, sewage disposal facilities may not dispose of any wastes into Old Tampa Bay, Tampa Bay, Hillsborough Bay, Boca Ciega Bay, St. Joseph Sound, Clearwater Bay, Sarasota Bay, Little Sarasota Bay, Roberts Bay, Lemon Bay, Charlotte Harbor Bay, Biscayne Bay, or, beginning July 1, 2025, Indian River Lagoon, or into any river, stream, channel, canal, bay, bayou, sound, or other water tributary thereto, without providing advanced waste treatment, as defined in subsection (4), approved by the department. This paragraph does not apply to facilities which were permitted by February 1, 1987, and which discharge secondary treated effluent, followed by water hyacinth treatment, to tributaries of tributaries of the named waters; or to facilities permitted to discharge to the nontidally influenced portions of the Peace River.

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

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

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled

An act relating to Biscayne Bay; creating s. 163.11,  
F.S.; establishing the Biscayne Bay Commission;  
providing for commission purpose, membership, duties,  
and authority; amending s. 403.086, F.S.; prohibiting  
sewage disposal facilities from disposing of any



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127 wastes into Biscayne Bay without providing advanced  
128 waste treatment; providing an effective date.

By Senator Garcia

37-01395-21

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A bill to be entitled

An act relating to Biscayne Bay; creating s. 163.11, F.S.; establishing the Biscayne Bay Commission; providing for commission purpose, membership, duties, and authority; amending s. 403.086, F.S.; prohibiting sewage disposal facilities from disposing of any wastes into Biscayne Bay; providing an effective date.

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

Section 1. Section 163.11, Florida Statutes, is created to read:

163.11 Biscayne Bay Commission.—

(1) (a) The Biscayne Bay Commission is hereby established as the official coordinating clearinghouse for all public policy and projects related to Biscayne Bay to unite all governmental agencies, businesses, and residents in the area to speak with one voice on bay issues; to develop coordinated plans, priorities, programs, projects, and budgets that might substantially improve the bay area; and to act as the principal advocate and watchdog to ensure that bay projects are funded and implemented in a proper and timely manner. The commission shall comply with the requirements of s. 20.052 except as otherwise provided in this section.

(b) The commission may seek and receive funding to further its coordinating authority or functions regarding bay improvement projects of the commission. This act does not affect or supersede the regulatory authority of any governmental agency or any local government, and any responsibilities of any

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governmental entity relating to Biscayne Bay remain with the respective governmental entity. However, the commission may accept any specifically defined coordinating authority or functions delegated to the commission by any governmental entity through a memorandum of understanding or other legal instrument. The commission shall use powers of persuasion to achieve its objectives through the process of building a consensus work plan and through widespread publication of regular progress reports.

(2) The Biscayne Bay Commission shall consist of:

(a) A policy committee comprised of three members of the Miami-Dade Board of County Commissioners; three members of the Miami-Dade County League of Cities; one member of the South Florida Water Management District Governing Board who resides in Miami-Dade County; one representative of the Department of Environmental Protection; one representative of the Fish and Wildlife Conservation Commission; one representative of the Florida Inland Navigation District; and one representative of the United States Department of the Interior. All members shall be voting members. The policy committee may meet monthly, but shall meet at least quarterly.

(b) A chief officer, who shall be authorized to represent the commission and to implement all policies, plans, and programs of the commission. The chief officer shall advise the Miami-Dade County Mayor and act as a liaison with county departments, county boards, external agencies, stakeholder groups, and local, state, and federal governments.

(c) A working group consisting of all governmental agencies that have jurisdiction in the Biscayne Bay area, as well as representatives from business and civic associations.

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(3) The policy committee shall have the following powers and duties:

(a) Consolidate existing plans, programs, and proposals, including the recommendations outlined in the June 2020 Biscayne Bay Task Force report, into a coordinated strategic plan for improvement of Biscayne Bay and the surrounding areas, addressing environmental, economic, social, recreational, and aesthetic issues. The committee shall monitor the progress on each element of such plan and shall revise the plan regularly.

(b) Prepare an integrated financial plan using the different jurisdictional agencies available for projected financial resources. The committee shall monitor the progress on each element of such plan and revise the plan regularly.

(c) Provide technical assistance and political support as needed to help implement each element of the strategic and financial plans.

(d) Accept any specifically defined coordinating authority or function delegated to the committee by any level of government through a memorandum of understanding or other legal instrument.

(e) Publicize a semiannual report describing accomplishments of the commission and each member agency, as well as the status of each pending task. The committee shall distribute the report to the Miami City Commission, the Miami-Dade County Board of County Commissioners, the Mayor of Miami, the Mayor of Miami-Dade County, the Governor, the chair of the Miami-Dade County Legislative Delegation, stakeholders, and the local media.

(f) Seek grants from public and private sources and receive

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grant funds to provide for the enhancement of its coordinating authority and functions and activities and administer contracts that achieve these goals.

(g) Provide a forum for the exchange of information and facilitate the resolution of conflicts.

(h) Act as a clearinghouse for public information and conduct public education programs.

(i) Establish the Biscayne Bay working group, appoint members to the group, and organize subcommittees, delegate tasks, and seek counsel from members of the working group as necessary to carry out the powers and duties listed in this subsection.

(j) Elect officers and adopt rules of procedure as necessary to carry out the powers and duties listed in this subsection and solicit appointing authorities to name replacements for policy committee members who do not participate on a regular basis.

(k) Hire the commission's chief officer and employ any additional staff necessary to assist the chief officer.

Section 2. Paragraph (c) of subsection (1) of section 403.086, Florida Statutes, is amended to read:

403.086 Sewage disposal facilities; advanced and secondary waste treatment.—

(1)

(c) Notwithstanding this chapter or chapter 373, sewage disposal facilities may not dispose of any wastes into Old Tampa Bay, Tampa Bay, Hillsborough Bay, Boca Ciega Bay, St. Joseph Sound, Clearwater Bay, Sarasota Bay, Little Sarasota Bay, Roberts Bay, Lemon Bay, Charlotte Harbor Bay, Biscayne Bay, or,

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117 beginning July 1, 2025, Indian River Lagoon, or into any river,  
118 stream, channel, canal, bay, bayou, sound, or other water  
119 tributary thereto, without providing advanced waste treatment,  
120 as defined in subsection (4), approved by the department. This  
121 paragraph does not apply to facilities which were permitted by  
122 February 1, 1987, and which discharge secondary treated  
123 effluent, followed by water hyacinth treatment, to tributaries  
124 of tributaries of the named waters; or to facilities permitted  
125 to discharge to the nontidally influenced portions of the Peace  
126 River.

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



The Florida Senate

## Committee Agenda Request

**To:** Senator Ben Albritton, Chair  
Appropriations Subcommittee on Agriculture, Environment, and General Government

**Subject:** Committee Agenda Request

**Date:** March 16, 2021

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I respectfully request that **Senate Bill #1482**, relating to Biscayne Bay Commission, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in black ink, appearing to read "Ileana Garcia", is written over a horizontal line.

Senator Ileana Garcia  
Florida Senate, District 37

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Agriculture, Environment, and General Government

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BILL: CS/SB 1522

INTRODUCER: Environment and Natural Resources Committee and Senator Stewart

SUBJECT: Implementation of the Recommendations of the Blue-Green Algae Task Force

DATE: April 7, 2021

REVISED: \_\_\_\_\_

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

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1522, entitled the “Implementation of Governor DeSantis’ Blue-Green Algae Task Force Recommendations Act,” includes legislation intended to implement the recommendations of the Blue-Green Algae Task Force.

The bill includes provisions that require the Department of Environmental Protection (DEP) to:

- Administer an onsite sewage treatment and disposal system inspection program to inspect systems at least once every five years, beginning on July 1, 2024.
- Assess whether certain pollution reduction projects are effectively reducing nutrient pollution or water use.

The bill requires basin management action plans to identify and prioritize spatially focused suites of projects in areas likely to yield maximum pollutant reductions.

The DEP will incur indeterminate costs relating to the implementation and administration of the inspection program and monitoring required under the bill.

The bill takes effect July 1, 2021.

## II. Present Situation:

### Blue-Green Algae Task Force

In January of 2019, Governor DeSantis issued Executive Order Number 19-12.<sup>1</sup> The order directed the DEP to establish a Blue-Green Algae Task Force charged with expediting progress towards reducing nutrient pollution and the impacts of blue-green algae (cyanobacteria) blooms in the state.<sup>2</sup> The task force's responsibilities included identifying priority projects for funding and making recommendations for regulatory changes. The five-person task force issued a consensus document on October 11, 2019.<sup>3</sup> The recommendations issued by the task force on topics addressed in this Present Situation are included in the relevant section below.

### Onsite Sewage Treatment and Disposal Systems

Onsite sewage treatment and disposal systems (OSTDSs), commonly referred to as “septic systems,” generally consist of two basic parts: the septic tank and the drainfield.<sup>4</sup> Waste from toilets, sinks, washing machines, and showers flows through a pipe into the septic tank, where anaerobic bacteria break the solids into a liquid form. The liquid portion of the wastewater flows into the drainfield, which is generally a series of perforated pipes or panels surrounded by lightweight materials such as gravel or Styrofoam. The drainfield provides a secondary treatment where aerobic bacteria continue deactivating the germs. The drainfield also provides filtration of the wastewater, as gravity draws the water down through the soil layers.<sup>5</sup>

There are an estimated 2.6 million OSTDSs in Florida, providing wastewater disposal for 30 percent of the state's population.<sup>6</sup> In Florida, development in some areas is dependent on OSTDSs due to the cost and time it takes to install central sewer systems.<sup>7</sup> For example, in rural areas and low-density developments, central sewer systems are not cost-effective. Less than one percent of OSTDSs in Florida are actively managed under operating permits and maintenance agreements.<sup>8</sup> The remainder of systems are generally serviced only when they fail, often leading to costly repairs that could have been avoided with routine maintenance.<sup>9</sup>

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<sup>1</sup> State of Florida, Office of the Governor, *Executive Order Number 19-12* (2019), available at [https://www.flgov.com/wp-content/uploads/orders/2019/EO\\_19-12.pdf](https://www.flgov.com/wp-content/uploads/orders/2019/EO_19-12.pdf) (last visited Mar. 24, 2021).

<sup>2</sup> *Id.* at 2; Department of Environmental Protection (DEP), *Blue-Green Algae Task Force*, <https://protectingfloridatogether.gov/state-action/blue-green-algae-task-force> (last visited Mar. 24, 2021).

<sup>3</sup> DEP, *Blue-Green Algae Task Force Consensus Document #1* (Dec. 2, 2019), available at [https://floridadep.gov/sites/default/files/Final%20Consensus%20%231\\_0.pdf](https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf) (last visited Mar. 24, 2021).

<sup>4</sup> Department of Health (DOH), *Septic System Information and Care*, <http://columbia.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/septic-information-and-care.html> (last visited Mar. 24, 2021); Environmental Protection Agency (EPA), *Types of Septic Systems*, <https://www.epa.gov/septic/types-septic-systems> (last visited Mar. 24, 2021) (showing the graphic provided in the analysis).

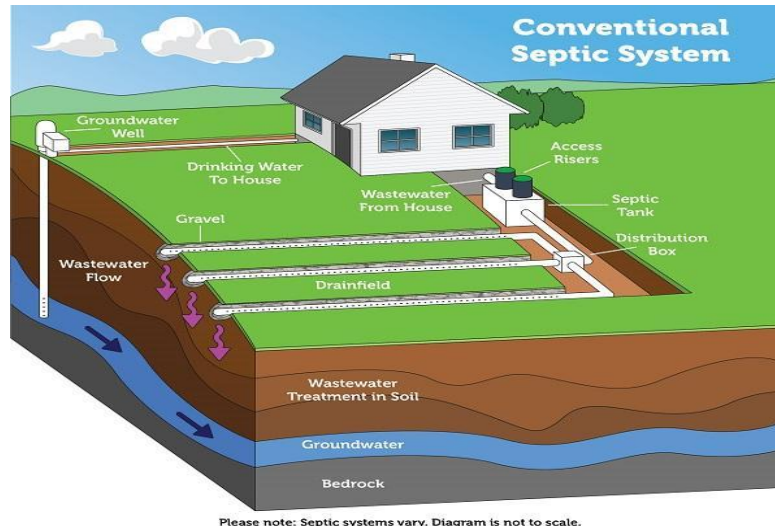
<sup>5</sup> *Id.*

<sup>6</sup> DOH, *Onsite Sewage*, <http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html> (last visited Mar. 24, 2021).

<sup>7</sup> DOH, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, Executive Summary (Oct. 1, 2008), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/research/documents/rrac/2008-11-06.pdf> (last visited Mar. 24, 2021). The report begins on page 56 of the PDF.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*



The Blue-Green Algae Task Force recommended that the DEP develop a more comprehensive regulatory program to ensure that OSTDSs are sized, designed, constructed, installed, operated, and maintained to prevent nutrient pollution, reduce environmental impact, and preserve human health. The task force also recommended more post-permitting septic tank inspections.<sup>10</sup>

The Clean Waterways Act transferred the Onsite Sewage Program from the Department of Health (DOH) to the DEP, effective July 1, 2021.<sup>11</sup> Currently, permitting and inspection of OSTDSs is handled by the Environmental Health Section of the DOH in each county.<sup>12</sup> The section permits, regulates, and inspects the construction of new systems, repairs and modifications to existing systems, existing system approvals, and abandonments of systems.<sup>13</sup> The DEP has historically had jurisdiction over OSTDSs when: domestic sewage flow exceeds 10,000 gallons per day; commercial sewage flow exceeds 5,000 gallons per day; there is a likelihood of hazardous or industrial wastes; a sewer system is available; or if any system or flow from the establishment is currently regulated by the DEP (unless DOH grants a variance).<sup>14</sup>

Historically, OSTDSs have not been regulated for nutrient pollution. However, the Clean Waterways Act requires basin management action plans (BMAPs) to include remediation plans if OSTDSs are found to contribute at least 20 percent of point source or nonpoint source nutrient pollution.<sup>15</sup>

<sup>10</sup> DEP, *Blue-Green Algae Task Force Consensus Document #1*, 6-7 (Oct. 11, 2019), available at [https://floridadep.gov/sites/default/files/Final%20Consensus%20%231\\_0.pdf](https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf) (last visited Mar. 24, 2021).

<sup>11</sup> Chapter 2020-150, s. 2, Laws of Fla.

<sup>12</sup> DOH, *Onsite Sewage*, <http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html> (last visited Mar. 24, 2021).

<sup>13</sup> *Id.*

<sup>14</sup> *Interagency Agreement between the Department of Environmental Protection and the Department of Health for Onsite Sewage Treatment and Disposal Systems*, 6-13 (Sept. 30, 2015), available at [https://floridadep.gov/sites/default/files/HOHOSTDS\\_9\\_30\\_15.pdf](https://floridadep.gov/sites/default/files/HOHOSTDS_9_30_15.pdf) (last visited Mar. 24, 2021); s. 381.0065(3)(b), F.S.; DEP, *Septic Systems*, <https://floridadep.gov/water/domestic-wastewater/content/septic-systems> (last visited Mar. 24, 2021).

<sup>15</sup> Section 403.067(7)(a)9., F.S.

The DEP and DOH issued recommendations on the Onsite Sewage Program transfer in response to the Clean Waterways Act and found, in agreement with the Act, that county health departments should continue to have a role in the inspection, permitting, and tracking of OSTDSs, under the direction of the DEP.<sup>16</sup>

### **Basin Management Action Plans**

The DEP is the lead agency in coordinating the development and implementation of total maximum daily loads (TMDLs), which are scientific determinations of the maximum amount of a given pollutant that can be absorbed by a waterbody and still meet water quality standards.<sup>17</sup> BMAPs are one of the primary mechanisms the DEP uses to achieve TMDLs. BMAPs address the entire pollution load, including point and nonpoint discharges, for a watershed. BMAPs generally include:

- Permitting and other existing regulatory programs, including water quality based effluent limitations;
- Best management practices (BMPs) and non-regulatory and incentive-based programs, including cost-sharing, waste minimization, pollution prevention, agreements, and public education;
- Public works projects, including capital facilities; and
- Land acquisition.<sup>18</sup>

BMAPs equitably allocate pollutant reductions to individual basins, to all basins as a whole, or to each identified point source or category of nonpoint sources.<sup>19</sup> Then, the BMAP establishes the schedule for implementing projects and activities to meet the pollution reduction allocations. The BMAP development process provides an opportunity for local stakeholders, local government and community leaders, and the public to collectively determine and share water quality cleanup responsibilities.<sup>20</sup>

BMAPs must include milestones for implementation and water quality improvement. They must also include an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones must be conducted every five years, with revisions made to the BMAP, as appropriate.<sup>21</sup>

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<sup>16</sup> DOH and DEP, *Onsite Sewage Treatment and Disposal Systems Program Transfer Process – Recommendations Report* (Dec. 31, 2020), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/variances/documents/ostds-recomm-rep-final12-30-20.pdf> (last visited Mar. 24, 2021).

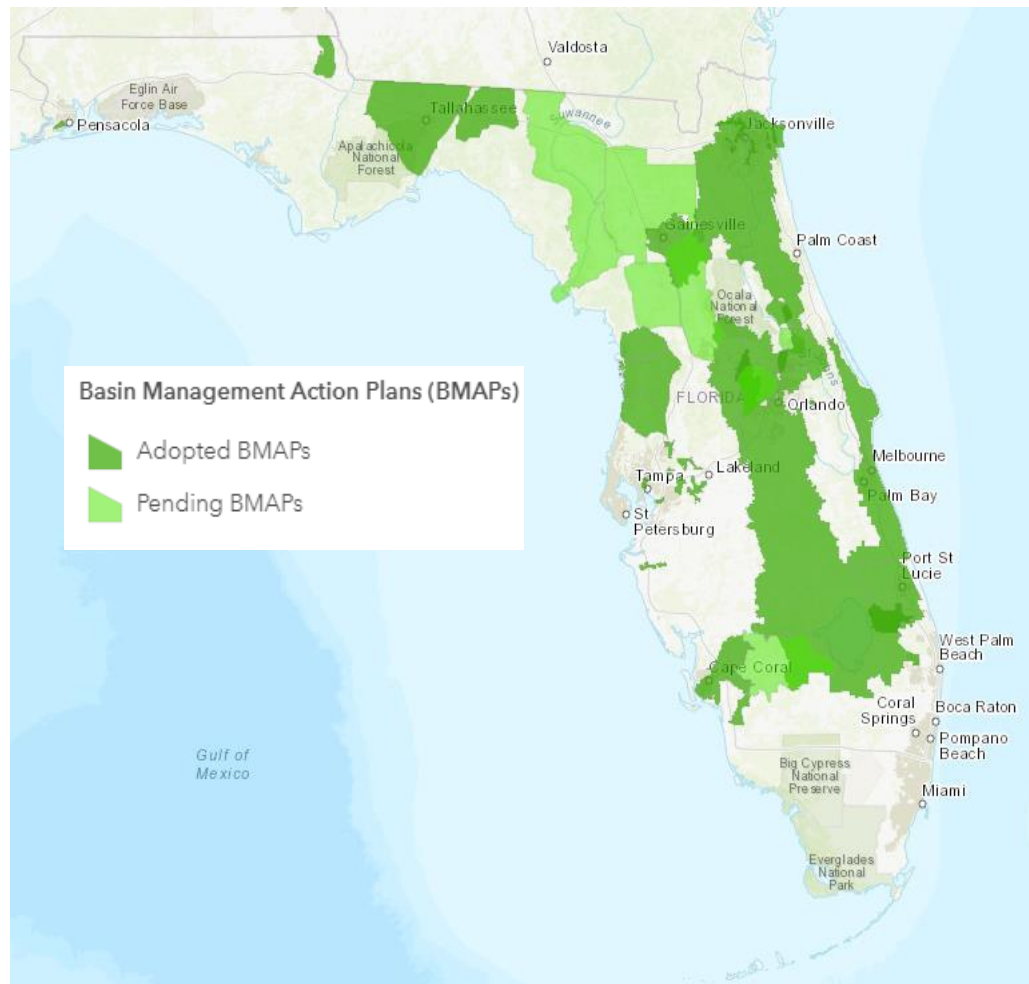
<sup>17</sup> DEP, *Total Maximum Daily Loads Program*, <https://floridadep.gov/dear/water-quality-evaluation-tmdl/content/total-maximum-daily-loads-tmdl-program> (last visited Mar. 24, 2021); s. 403.061, F.S. DEP has the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it. Furthermore, s. 403.061(21), F.S., allows DEP to advise, consult, cooperate, and enter into agreements with other state agencies, the federal government, other states, interstate agencies, etc.

<sup>18</sup> Section 403.067(7), F.S.

<sup>19</sup> Section 403.067(7)(a)2., F.S.

<sup>20</sup> DEP, *Basin Management Action Plans (BMAPs)*, <https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps> (last visited Mar. 24, 2021).

<sup>21</sup> Section 403.067(7)(a)6., F.S.



Currently, BMAPs are adopted or pending for a significant portion of the state and will continue to be developed as necessary to address water quality impairments. The graphic above shows the state's adopted and pending BMAPs.<sup>22</sup>

Producers of nonpoint source pollution included in a BMAP must comply with established pollutant reductions by either implementing appropriate BMPs or by conducting water quality monitoring.<sup>23</sup> BMPs are designed to reduce the amount of nutrients, sediments, and pesticides that enter the water system and to help reduce water use. BMPs are developed for agricultural operations as well as for other activities, such as nutrient management on golf courses, forestry operations, and stormwater management.<sup>24</sup>

The Blue-Green Algae Task Force recommended that the DEP develop a more targeted approach to project selection and evaluate project effectiveness through monitoring.<sup>25</sup>

<sup>22</sup> DEP, *Impaired Waters, TMDLs, and Basin Management Action Plans Interactive Map*, <https://floridadep.gov/dear/water-quality-restoration/content/impaired-waters-tmdls-and-basin-management-action-plans> (last visited Mar. 24, 2021).

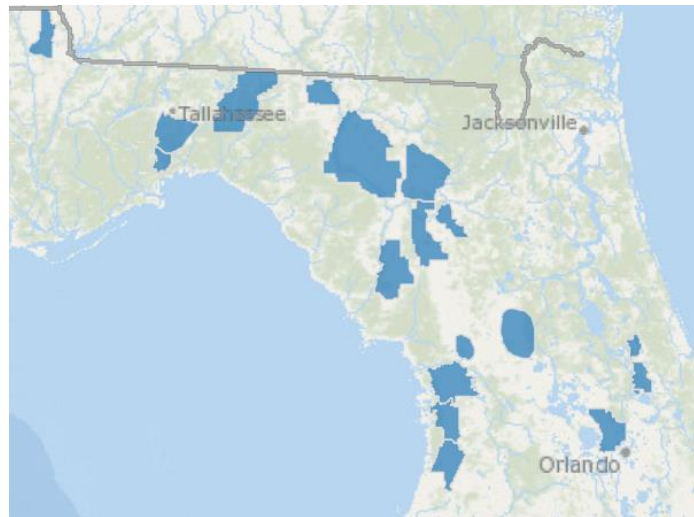
<sup>23</sup> Section 403.067(7)(b)2.g., F.S.

<sup>24</sup> DEP, *NPDES Stormwater Program*, <https://floridadep.gov/Water/Stormwater> (last visited Mar. 24, 2021).

<sup>25</sup> DEP, *Blue-Green Algae Task Force Consensus Document #1*, 2-4 (Oct. 11, 2019), available at [https://floridadep.gov/sites/default/files/Final%20Consensus%20%231\\_0.pdf](https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf) (last visited Mar. 24, 2021).

### Priority Focus Areas for Springs

Pursuant to the Florida Springs and Aquifer Protection Act,<sup>26</sup> the DEP delineates priority focus areas for each Outstanding Florida Spring<sup>27</sup> that is impaired by excessive nutrient pollution.<sup>28</sup> The DEP uses the best available data to delineate these areas, considering groundwater travel time to the spring, hydrogeology, nutrient loads in the springshed, and other factors. These areas are effective upon incorporation into a BMAP.<sup>29</sup> The delineated priority focus areas are shown in the map below.<sup>30</sup>



### III. Effect of Proposed Changes:

The bill includes a series of whereas clauses stating that:

- Governor Ron DeSantis created the Blue-Green Algae Task Force (task force) in 2019, to “improve water quality for the benefit of all Floridians,” the task force issued a consensus report in October 2019, with multiple recommendations for BMAPs, agriculture, human waste, stormwater, technology, public health, and science;
- In June 2020, Governor DeSantis signed SB 712, the Clean Waterways Act, which implemented many of the recommendations of the task force; and
- Full implementation of the task force’s recommendations will require enactment of additional substantive legislation.

**Section 1** titles the bill the “Implementation of Governor DeSantis’ Blue-Green Algae Task Force Recommendations Act.”

<sup>26</sup> Sections 373.801-813, F.S.

<sup>27</sup> See s. 373.802, F.S., Outstanding Florida Springs include all historic first magnitude springs, including their associated spring runs, as determined by DEP using the most recent Florida Geological Survey springs bulletin, and De Leon Springs, Peacock Springs, Poe Springs, Rock Springs, Wekiwa Springs, and Gemini Springs, and their associated spring runs.

<sup>28</sup> Section 373.803, F.S.

<sup>29</sup> *Id.*

<sup>30</sup> DEP, *Springs Priority Focus Areas*, [https://geodata.dep.state.fl.us/datasets/8a6f9e78959d48849e65f96c628eb883\\_1?geometry=-90.108%2C27.975%2C-76.232%2C31.316](https://geodata.dep.state.fl.us/datasets/8a6f9e78959d48849e65f96c628eb883_1?geometry=-90.108%2C27.975%2C-76.232%2C31.316) (last visited Mar. 25, 2021).

**Section 2** amends s. 381.0065, F.S., relating to regulation of OSTDSs Beginning July 1, 2024, the bill requires periodic inspections of OSTDSs. The bill specifies that the owner of an OSTDS, excluding a system required to have an operating permit, must have the system inspected at least once every five years to assess the fundamental operational condition of the system, prolong the life of the system, and identify any failure within the system.

The bill requires the DEP to administer an OSTDS inspection program, including implementing program standards, procedures, and requirements. The bill requires the DEP to adopt rules, including, at a minimum, all of the following:

- A schedule for a five-year inspection cycle;
- A county-by-county implementation plan phased in over a 10-year period with first priority given to those areas within a springshed protection area identified by the DEP;
- Minimum standards for a functioning OSTDS;
- Requirements for the pumpout or repair of a failing OSTDS; and
- Enforcement procedures for the failure of an OSTDS owner to obtain an OSTDS inspection and failure of a contractor to timely report inspection results to the DEP and the owner.

**Section 3** amends s. 403.067, F.S., relating to the development of BMAPs. The bill requires BMAPs to:

- Include identification and prioritization of spatially focused suites of projects in areas likely to yield maximum pollutant reductions; and
- For pollution reduction projects with a total cost exceeding \$1 million, include an assessment, through integrated and comprehensive monitoring, by the DEP of whether the pollution reduction project is working to reduce nutrient pollution or water use, or both, as intended, and complete the assessment expeditiously.

**Section 4** provides that the act takes effect on July 1, 2021.

#### **IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill requires owners of onsite sewage treatment and disposal systems to have the system inspected once every five years. This will have an indeterminate fiscal impact on the owners of the systems to pay for the inspections and any repairs that may be required due to the inspections.

C. Government Sector Impact:

The DEP estimates that three new positions and \$251,625 will be needed for the implementation and administration of the inspection program and monitoring required under the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

On line 57, the bill refers to “springshed protection area.” For clarity and consistency with existing law, the term could be revised to “priority focus area for springs.”

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 381.0065 and 403.067.

**IX. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

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

The amendment deletes requirements from the underlying bill that:

- The DEP implement a stormwater inspection and monitoring program.
- A basin management action plan describe potential future increases in pollutant loading and provide a comprehensive analysis of options for mitigation or elimination of these increases.

- A notice of intent to implement best management practices include an estimate of input reduction and load reduction.
- Verification of interim measures, best management practices, or other measures adopted by rule must be completed by a certain date to receive a presumption of compliance.
- The Department of Agriculture and Consumer Services provide to the DEP certain information promptly and in unadulterated form.

B. Amendments:

None.

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

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1 A bill to be entitled  
2 An act relating to implementation of the  
3 recommendations of the Blue-Green Algae Task Force;  
4 providing a short title; amending s. 381.0065, F.S.;  
5 requiring owners of onsite sewage treatment and  
6 disposal systems to have the system periodically  
7 inspected, beginning on a specified date; requiring  
8 the department to administer the inspection program;  
9 requiring the department to implement program  
10 standards, procedures, and requirements; providing for  
11 rulemaking; amending s. 403.067, F.S.; requiring new  
12 or revised basin management action plans to include an  
13 identification and prioritization of certain spatially  
14 focused projects; requiring the department to assess  
15 certain projects; providing an effective date.  
16  
17 WHEREAS, Governor Ron DeSantis created the Blue-Green Algae  
18 Task Force in 2019 to "improve water quality for the benefit of  
19 all Floridians," and the task force's consensus report was  
20 issued in October 2019, with multiple recommendations for basin  
21 management action plans (BMAP), agriculture, human waste,  
22 stormwater, technology, public health, and science, and  
23 WHEREAS, the Legislature recognizes that in June 2020,  
24 Governor DeSantis signed Senate Bill 712, the Clean Waterways  
25 Act, which implemented many of the recommendations of the task  
26 force, and  
27 WHEREAS, full implementation of the task force's  
28 recommendations will require enactment of additional substantive  
29 legislation, NOW, THEREFORE,

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30  
31 Be It Enacted by the Legislature of the State of Florida:  
32  
33 Section 1. This act may be cited as the "Implementation of  
34 Governor DeSantis' Blue-Green Algae Task Force Recommendations  
35 Act."  
36 Section 2. Present subsections (5), (6), and (7) of section  
37 381.0065, Florida Statutes, are redesignated as subsections (6),  
38 (7), and (8), respectively, and a new subsection (5) is added to  
39 that section, to read:  
40 381.0065 Onsite sewage treatment and disposal systems;  
41 regulation.—  
42 (5) PERIODIC INSPECTIONS.—  
43 (a) Effective July 1, 2024, the owner of an onsite sewage  
44 treatment and disposal system, excluding a system required to  
45 have an operating permit, must have the system inspected at  
46 least once every 5 years to assess the fundamental operational  
47 condition of the system, prolong the life of the system, and  
48 identify any failure within the system. The department shall  
49 administer an onsite sewage treatment and disposal system  
50 inspection program for such periodic inspections. The department  
51 shall implement the program standards, procedures, and  
52 requirements, and adopt rules that must include, at a minimum,  
53 all of the following:  
54 1. A schedule for a 5-year inspection cycle.  
55 2. A county-by-county implementation plan phased in over a  
56 10-year period with first priority given to those areas within a  
57 springshed protection area identified by the department.  
58 3. Minimum standards for a functioning system.

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59 4. Requirements for the pumpout or repair of a failing  
60 system.

61 5. Enforcement procedures for failure of a system owner to  
62 obtain an inspection of the system and failure of a contractor  
63 to timely report inspection results to the department and the  
64 system owner.

65 Section 3. Paragraph (a) of subsection (7) of section  
66 403.067, Florida Statutes, is amended to read:

67 403.067 Establishment and implementation of total maximum  
68 daily loads.—

69 (7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND  
70 IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

71 (a) *Basin management action plans.*—

72 1. In developing and implementing the total maximum daily  
73 load for a water body, the department, or the department in  
74 conjunction with a water management district, may develop a  
75 basin management action plan that addresses some or all of the  
76 watersheds and basins tributary to the water body. Such plan  
77 must integrate the appropriate management strategies available  
78 to the state through existing water quality protection programs  
79 to achieve the total maximum daily loads and may provide for  
80 phased implementation of these management strategies to promote  
81 timely, cost-effective actions as provided for in s. 403.151.  
82 The plan must establish a schedule implementing the management  
83 strategies, establish a basis for evaluating the plan's  
84 effectiveness, and identify feasible funding strategies for  
85 implementing the plan's management strategies. The management  
86 strategies may include regional treatment systems or other  
87 public works, when appropriate, and voluntary trading of water

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88 quality credits to achieve the needed pollutant load reductions.

89 2. A basin management action plan must equitably allocate,  
90 pursuant to paragraph (6)(b), pollutant reductions to individual  
91 basins, as a whole to all basins, or to each identified point  
92 source or category of nonpoint sources, as appropriate. For  
93 nonpoint sources for which best management practices have been  
94 adopted, the initial requirement specified by the plan must be  
95 those practices developed pursuant to paragraph (c). When  
96 appropriate, the plan may take into account the benefits of  
97 pollutant load reduction achieved by point or nonpoint sources  
98 that have implemented management strategies to reduce pollutant  
99 loads, including best management practices, before the  
100 development of the basin management action plan. The plan must  
101 also identify the mechanisms that will address potential future  
102 increases in pollutant loading.

103 3. The basin management action planning process is intended  
104 to involve the broadest possible range of interested parties,  
105 with the objective of encouraging the greatest amount of  
106 cooperation and consensus possible. In developing a basin  
107 management action plan, the department shall assure that key  
108 stakeholders, including, but not limited to, applicable local  
109 governments, water management districts, the Department of  
110 Agriculture and Consumer Services, other appropriate state  
111 agencies, local soil and water conservation districts,  
112 environmental groups, regulated interests, and affected  
113 pollution sources, are invited to participate in the process.  
114 The department shall hold at least one public meeting in the  
115 vicinity of the watershed or basin to discuss and receive  
116 comments during the planning process and shall otherwise

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encourage public participation to the greatest practicable extent. Notice of the public meeting must be published in a newspaper of general circulation in each county in which the watershed or basin lies at least 5 days, but not more than 15 days, before the public meeting. A basin management action plan does not supplant or otherwise alter any assessment made under subsection (3) or subsection (4) or any calculation or initial allocation.

4.a. Each new or revised basin management action plan shall include:

~~(I)a-~~ The appropriate management strategies available through existing water quality protection programs to achieve total maximum daily loads, which may provide for phased implementation to promote timely, cost-effective actions as provided for in s. 403.151;

~~(II)b-~~ A description of best management practices adopted by rule;

~~(III)e-~~ A list of projects in priority ranking with a planning-level cost estimate and estimated date of completion for each listed project;

(IV) Identification and prioritization of spatially focused suites of projects in areas likely to yield maximum pollutant reductions;

~~(V)d-~~ The source and amount of financial assistance to be made available by the department, a water management district, or other entity for each listed project, if applicable; and

~~(VI)e-~~ A planning-level estimate of each listed project's expected load reduction, if applicable.

b. For each project listed pursuant to this subparagraph

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which has a total cost that exceeds \$1 million, the department shall assess through integrated and comprehensive monitoring whether the project is working to reduce nutrient pollution or water use, or both, as intended. These assessments must be completed expeditiously and must be included in each basin management action plan update.

5. The department shall adopt all or any part of a basin management action plan and any amendment to such plan by secretarial order pursuant to chapter 120 to implement this section.

6. The basin management action plan must include milestones for implementation and water quality improvement, and an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones shall be conducted every 5 years, and revisions to the plan shall be made as appropriate. Revisions to the basin management action plan shall be made by the department in cooperation with basin stakeholders. Revisions to the management strategies required for nonpoint sources must follow the procedures in subparagraph (c)4. Revised basin management action plans must be adopted pursuant to subparagraph 5.

7. In accordance with procedures adopted by rule under paragraph (9)(c), basin management action plans, and other pollution control programs under local, state, or federal authority as provided in subsection (4), may allow point or nonpoint sources that will achieve greater pollutant reductions than required by an adopted total maximum daily load or

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wasteload allocation to generate, register, and trade water quality credits for the excess reductions to enable other sources to achieve their allocation; however, the generation of water quality credits does not remove the obligation of a source or activity to meet applicable technology requirements or adopted best management practices. Such plans must allow trading between NPDES permittees, and trading that may or may not involve NPDES permittees, where the generation or use of the credits involve an entity or activity not subject to department water discharge permits whose owner voluntarily elects to obtain department authorization for the generation and sale of credits.

8. The department's rule relating to the equitable abatement of pollutants into surface waters do not apply to water bodies or water body segments for which a basin management plan that takes into account future new or expanded activities or discharges has been adopted under this section.

9. In order to promote resilient wastewater utilities, if the department identifies domestic wastewater treatment facilities or onsite sewage treatment and disposal systems as contributors of at least 20 percent of point source or nonpoint source nutrient pollution or if the department determines remediation is necessary to achieve the total maximum daily load, a basin management action plan for a nutrient total maximum daily load must include the following:

a. A wastewater treatment plan developed by each local government, in cooperation with the department, the water management district, and the public and private domestic wastewater treatment facilities within the jurisdiction of the local government, that addresses domestic wastewater. The

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wastewater treatment plan must:

(I) Provide for construction, expansion, or upgrades necessary to achieve the total maximum daily load requirements applicable to the domestic wastewater treatment facility.

(II) Include the permitted capacity in average annual gallons per day for the domestic wastewater treatment facility; the average nutrient concentration and the estimated average nutrient load of the domestic wastewater; a projected timeline of the dates by which the construction of any facility improvements will begin and be completed and the date by which operations of the improved facility will begin; the estimated cost of the improvements; and the identity of responsible parties.

The wastewater treatment plan must be adopted as part of the basin management action plan no later than July 1, 2025. A local government that does not have a domestic wastewater treatment facility in its jurisdiction is not required to develop a wastewater treatment plan unless there is a demonstrated need to establish a domestic wastewater treatment facility within its jurisdiction to improve water quality necessary to achieve a total maximum daily load. A local government is not responsible for a private domestic wastewater facility's compliance with a basin management action plan unless such facility is operated through a public-private partnership to which the local government is a party.

b. An onsite sewage treatment and disposal system remediation plan developed by each local government in cooperation with the department, the Department of Health, water

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management districts, and public and private domestic wastewater treatment facilities.

(I) The onsite sewage treatment and disposal system remediation plan must identify cost-effective and financially feasible projects necessary to achieve the nutrient load reductions required for onsite sewage treatment and disposal systems. To identify cost-effective and financially feasible projects for remediation of onsite sewage treatment and disposal systems, the local government shall:

(A) Include an inventory of onsite sewage treatment and disposal systems based on the best information available;

(B) Identify onsite sewage treatment and disposal systems that would be eliminated through connection to existing or future central domestic wastewater infrastructure in the jurisdiction or domestic wastewater service area of the local government, that would be replaced with or upgraded to enhanced nutrient-reducing onsite sewage treatment and disposal systems, or that would remain on conventional onsite sewage treatment and disposal systems;

(C) Estimate the costs of potential onsite sewage treatment and disposal system connections, upgrades, or replacements; and

(D) Identify deadlines and interim milestones for the planning, design, and construction of projects.

(II) The department shall adopt the onsite sewage treatment and disposal system remediation plan as part of the basin management action plan no later than July 1, 2025, or as required for Outstanding Florida Springs under s. 373.807.

10. When identifying wastewater projects in a basin management action plan, the department may not require the

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higher cost option if it achieves the same nutrient load reduction as a lower cost option. A regulated entity may choose a different cost option if it complies with the pollutant reduction requirements of an adopted total maximum daily load and meets or exceeds the pollution reduction requirement of the original project.

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

**YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM**

**THE FLORIDA SENATE**

**APPEARANCE RECORD**

4/8/2021

*Meeting Date*

SB1522C1

*Bill Number (if applicable)*

Topic Implementation of the Recommendations of the Blue-Green Algae Task Force

*Amendment Barcode (if applicable)*

Name Beth Alvi ( Audubon Florida)

Job Title Director of Policy

Address 308 N. Monroe

Phone 850-999-1028

*Street*

Tallahassee

FL

32301

*City*

*State*

*Zip*

Email beth.alvi@audubon.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
*(The Chair will read this information into the record.)*

Representing Audubon Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

**YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM**

**THE FLORIDA SENATE**

**APPEARANCE RECORD**

4/8/2021

*Meeting Date*

1522

*Bill Number (if applicable)*

Topic Implementation of the Recommendations of the Blue-Green Algae Task Force

*Amendment Barcode (if applicable)*

Name Jonathan Webber

Job Title Deputy Director

Address 1700 N. Monroe St. #11-286

Phone 954-593-4449

*Street*

Tallahassee

FL

32303

Email jwebber@fcvoters.org

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Conservation Voters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/21  
Meeting Date

1522  
Bill Number (if applicable)

Topic Blue Green Algae Task Force

Amendment Barcode (if applicable)

Name Paul Owens

Job Title President, 1000 Friends of Florida

Address 308 N. Monroe St.

Phone 850-222-6277

Tallahassee FL 32301  
City State Zip

Email powens@1000fof.org

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing 1000 Friends of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

**YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM**

**THE FLORIDA SENATE**

**APPEARANCE RECORD**

4/8/21 AEG 11:30 A1

*Meeting Date*

1522

*Bill Number (if applicable)*

Topic Blue Green Algae Task Force

*Amendment Barcode (if applicable)*

Name David Cullen

Job Title \_\_\_\_\_

Address 1934 Shelby Ct.

Phone 941-323-2404

*Street*

Tallahassee

FL

32308

Email cullenasea@gmail.com

*City*

*State*

*Zip*

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Sierra Club Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)



The Florida Senate

## Committee Agenda Request

**To:** Senator Ben Albritton, Chair  
Appropriations Subcommittee on Agriculture, Environment, and General Government

**Subject:** Committee Agenda Request

**Date:** March 30, 2021

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I respectfully request that **Senate Bill #1522**, relating to Implementation of the Recommendations of the Blue-Green Algae Task Force, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in cursive script that reads "Linda Stewart".

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Senator Linda Stewart  
Florida Senate, District 13

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Agriculture, Environment, and General Government

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BILL: PCS/CS/SB 1900 (410182)

INTRODUCER: Appropriations Subcommittee on Agriculture, Environment, and General Government; Governmental Oversight and Accountability Committee; and Senator Boyd

SUBJECT: Cybersecurity

DATE: April 12, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Candelaria	McVaney	GO	<b>Fav/CS</b>
2.	Davis	Betta	AEG	<b>Recommend: Fav/CS</b>
3.			AP	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/CS/SB 1900 expands the duties and responsibilities of the Florida Digital Service (FDS) relating to the state's cybersecurity governance framework.

The bill defines "cybersecurity" to mean the protection afforded to an automated information system in order to attain the applicable objectives of preserving the confidentiality, integrity, and availability of data, information, and information technology (IT) resources.

The bill requires that a cybersecurity audit plan be included in the long-term and annual audit plans that agency inspectors general are required to complete.

The bill specifies the Department of Management Services (DMS), acting through the FDS, is the lead entity responsible for assessing state agency cybersecurity risks and determining appropriate security measures to combat such risks. The bill creates new, and amends current, cybersecurity related duties and responsibilities of the DMS. The bill also expands the responsibilities of each state agency head in relation to cybersecurity.

The bill creates the Florida Cybersecurity Advisory Council (council) within the DMS. The purpose of the council is to assist the state in protecting the state's IT resources from cyber threats and incidents, and to assist the FDS in implementing best cybersecurity practices. The bill

outlines membership requirements of the council, term requirements of each member, and duties and responsibilities of the council as a whole.

Beginning June 30, 2022, and annually thereafter, the council is required to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives outlining any recommendations considered necessary by the council to address cybersecurity.

The bill makes conforming changes across several provisions by replacing all versions of the term “information technology security” with the term “cybersecurity.”

The bill has an indeterminate significant fiscal impact on state expenditures. *See* Part V, Fiscal Impact Statement.

The bill takes effect July 1, 2021.

## **II. Present Situation:**

### **Agency Inspectors General**

An office of the inspector general (office) is established in each state agency to provide a central point for coordination of, and responsibility for, activities that promote accountability, integrity, and efficiency in government.<sup>1</sup> The office within each agency is responsible for advising in the development of performance measures, standards, and procedures for the evaluation of state agency programs. The office is also required to assess the reliability and validity of information provided by the state agency on performance measures and standards and must make recommendations for improvement when necessary.

In carrying out the auditing duties and responsibilities, each inspector general should review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency. The inspector general will conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of the findings. At the conclusion of an audit, the inspector general will submit preliminary findings and recommendations to the person responsible for supervision of the program function or operational unit who can respond to any adverse findings within 20 working days after receipt of the preliminary findings. The inspector general will submit the final report to the agency head, the Auditor General and, for state agencies under the Governor, the Chief Inspector General. The inspector general shall develop long-term and annual audit plans based on the findings of the risk assessment. The plan, where appropriate, should include post-audit samplings of payments and accounts. The plan should show the individual audits to be conducted during each year and related resources to be devoted to the respective audits. A copy of the approved plan shall be submitted to the Auditor General.<sup>2</sup>

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<sup>1</sup> Section 20.055(2), F.S.

<sup>2</sup> *Id.*

## **National Institute for Standards and Technology Cybersecurity Framework**

The National Institute for Standards and Technology Cybersecurity (NIST) is a non-regulatory federal agency housed within the U.S. Department of Commerce. The NIST is charged with providing a prioritized, flexible, repeatable, performance-based, and cost effective framework that helps owners and operators of critical infrastructure identify, assess, and manage cyber risk. While the framework was developed with critical infrastructure in mind, it can be used by organizations in any sector of the economy or society.<sup>3</sup> The framework is designed to complement, and not replace, an organization's own unique approach to cybersecurity risk management. As such, there are a variety of ways to use the framework and the decision about how to apply it is left to the implementing organization. Overall, the framework provides an outline of best practices that helps organizations decide where to focus resources for cybersecurity protection.<sup>4</sup>

## **The Information Technology Security Act**

The Information Technology (IT) Security Act (act) requires the Department of Management Services (DMS) and heads of state agencies<sup>5</sup> to meet certain requirements to enhance the IT security of state agencies. Specifically, the act provides that the DMS is responsible for establishing standards and processes consistent with generally accepted best practices for IT security, including cybersecurity, and adopting rules that safeguard an agency's data, information, and IT resources to mitigate risks.<sup>6</sup> The DMS is required to designate an employee of the Florida Digital Service (FDS) as the state chief information security officer, who must have experience and expertise in security and risk management for communications and IT resources.

The DMS is required, by February 1 of each year, to develop a statewide IT security strategic plan that includes security goals and objectives for the strategic issues of IT security policy, risk management, training, and disaster recovery planning. Further, the DMS is required to develop and publish for use by state agencies an information technology security framework that includes specific guidelines and processes.<sup>7</sup>

The DMS, in collaboration with the Cybercrime Office of the Department of Law Enforcement, provides training for state agency information security managers and computer security incident response team members that contains training on IT security.<sup>8</sup> The DMS is required to develop and publish for use by state agencies an IT security framework. The act requires each state

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<sup>3</sup> National Institute of Standards and Technology, *Framework for Improving Critical Infrastructure Cybersecurity*, <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf> (last visited March 30, 2021).

<sup>4</sup> *Id.*

<sup>5</sup> The term "state agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government; the Justice Administrative Commission; and the Public Service Commission. The term does not include university boards of trustees or state universities. Section 282.0041(33), F.S. For purposes of the IT Security Act, the term includes the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services. Section 282.318(2), F.S.

<sup>6</sup> Section 282.318, F.S.

<sup>7</sup> Section 282.318(3)(b), F.S.

<sup>8</sup> Section 282.318(3)(e), F.S.

agency to designate an information security manager to administer the IT security program of the state agency. This designation must be provided annually in writing to the DMS.<sup>9</sup>

The act requires the head of each state agency to designate an information security manager to administer the IT security program of the state agency.<sup>10</sup> In addition, the head of each state agency must:

- Establish an agency computer incident response team in consultation with the Cybercrime Office within the Florida Department of Law Enforcement (FDLE);
- Annually submit to the DMS the state agency's strategic and operational IT security plans;
- Conduct, and update every three years, a comprehensive risk assessment to determine the security threats to the data, information, and IT resources of the state agency;
- Develop, and periodically update, written internal policies and procedures, including procedures for reporting IT security incidents and breaches to the Cybercrime Office within the FDLE and the Florida Digital Service (FDS);
- Ensure that periodic internal audits and evaluations of the agency's IT security program for the data, information, and IT resources of the agency are conducted;
- Ensure that the IT security and cybersecurity requirements in both written specifications for the solicitation and service-level agreement of IT and IT resources and services meet or exceed applicable state and federal laws, regulations, and standards for IT security and cybersecurity;
- Provide IT security and cybersecurity awareness training to all state agency employees within 30 days of commencing employment; and
- Develop a process that is consistent with the rules and guidelines established by the DMS for detecting, reporting, and responding to threats, breaches, or IT security incidents.<sup>11</sup>

### **Florida Digital Service**

The FDS has been created within the DMS to propose innovative solutions that securely modernize state government, including technology and information services, to achieve value through digital transformation, and to fully support cloud-first policy<sup>12</sup>. The FDS partners with all state agencies to deliver better government services through design and technology. The FDS is responsible for developing an enterprise architecture, project management and oversight standards, and technology policy for the management of the state's IT<sup>13</sup> resources.

The Secretary of the DMS is required to designate a state chief information officer (CIO), who will administer the FDS. The CIO must have at least five years of experience in the development of IT strategic planning and development or IT policy, and preferably have leadership-level experience in the design, development, and deployment of interoperable software and data solutions. The CIO, on consultation with the Secretary of the DMS, is required to designate a

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<sup>9</sup> *Id.*

<sup>10</sup> Section 282.318(4)(a), F.S.

<sup>11</sup> Section 282.318(4), F.S.

<sup>12</sup> Section 282.0051(1), F.S.

<sup>13</sup> Section 282.0041(1), F.S., defines "information technology" to mean equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form.

state chief data officer. The chief data officer must be a proven and effective administrator who must have significant and substantive experience in data management, data governance, interoperability, and security.

### **Florida Center for Cybersecurity**

Section 1004.444, F.S., creates the Florida Center for Cybersecurity (Cyber Florida).<sup>14</sup> Cyber Florida was created to help the state become a national leader in cybersecurity education, academics, practical research, and community outreach. Established under the auspices of the University of South Florida, Cyber Florida works with all 12 State University System institutions to:

- Assist in the creation of jobs in the state's cybersecurity industry and enhance the existing cybersecurity workforce;
- Act as a cooperative facilitator for state business and higher education communities to share cybersecurity knowledge, resources, and training;
- Seek out partnerships with major military installations to assist, when possible, in homeland cybersecurity defense initiatives; and
- Attract cybersecurity companies to the state with an emphasis on defense, finance, health care, transportation, and utility sectors.<sup>15</sup>

### **State Data Center**

The State Data Center (data center) within the DMS provides data center services that comply with applicable state and federal laws, regulations, and policies, including all applicable security, privacy, and auditing requirements.<sup>16</sup> The data center offers, develops, and supports the services and applications defined in service-level agreements executed with its customer entities. The data center enters into service-level agreements with each customer entity to provide the required type and level of service or services.

### **Cybercrime Office**

The cybercrime office is created within the FDLE. The cybercrime office may investigate violations of state law pertaining to the sexual exploitation of children which are facilitated or connected to the use of any device capable of storing electronic data. The cybercrime office monitors state IT resources and provides analysis on IT security incidents, threats, and breaches as defined in s. 282.0041, F.S. Further, the cybercrime office provides security awareness training and information to state agency employees concerning cybersecurity, online sexual exploitation of children, and the responsibility of employees to comply with policies, standards, guidelines, and operating procedures adopted by the FDLE. The cybercrime office consults with the FDS in the adoption of rules relating to the information technology security provisions in s. 282.318, F.S.<sup>17</sup>

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<sup>14</sup> Section 1004.444, F.S.

<sup>15</sup> *Id.*

<sup>16</sup> Section 282.201, F.S.

<sup>17</sup> Section 943.0415, F.S.

### **Advisory Council Requirements under Section 20.03, Florida Statutes**

Section 20.03(7), F.S., defines a “council” or “advisory council” to mean an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.<sup>18</sup>

Florida law provides the following requirements for statutorily enacted advisory councils:

- A council may only be created when it is found to be necessary and beneficial to the furtherance of a public purpose.
- An advisory council may not be created or reestablished unless it meets a statutorily defined purpose and its powers conform to the definition of “advisory council” under law.
- An advisory council must be terminated by the Legislature when it is no longer necessary and beneficial to the furtherance of a public purpose. The executive agency to which the advisory council is made an adjunct must advise the Legislature at the time the committee ceases to be essential to the furtherance of a public purpose.
- The Legislature and the public must be kept informed of the numbers, purposes, memberships, activities, and expenses of the committee.<sup>19</sup>

A private citizen member of an advisory council that is adjunct to an executive agency must be appointed by the Governor, the head of the department, the executive director of the department, or a Cabinet officer.<sup>20</sup>

### **Standards of Conduct for Public Officers and Employees**

Section 112.313, F.S., provides standards of conduct to which a public officer or public employee must adhere in performing his or her official duties and responsibilities. The standards of conduct are intended to ensure that a public officer or public employee conducts his or her self independently and impartially. Such standards include limitations on the solicitation or acceptance of gifts, doing business with one’s agency, unauthorized compensation, salary and expenses, misuse of his or her public position, and disclosure of information not available to members of the general public and gained by reason of his or her official position.<sup>21</sup>

## **III. Effect of Proposed Changes:**

**Section 1** amends s. 20.055, F.S., to require that a specific cybersecurity audit plan be included in the long-term and annual audit plans that agency inspector generals are required to complete.

**Section 2** amends s. 282.0041, F.S., to substitute the term “cybersecurity” for “information technology (IT) security” and to define the term “cybersecurity” to mean the protection afforded to an automated information system in order to attain the applicable objectives of preserving the confidentiality, integrity, and availability of data, information, and IT resources.

<sup>18</sup> Section 20.03(7), F.S.

<sup>19</sup> Section 20.052(1)-(4), F.S.

<sup>20</sup> Section 20.052(5)(a), F.S.

<sup>21</sup> Section 112.313(2)-(17), F.S.

This section repeals the definition of the term “information technology security,” which is made obsolete by this bill.

**Sections 3, 4, and 5** amend ss. 282.0051, 282.201, and 282.206, F.S., respectively, relating to the powers and duties of the Department of Management Services (DMS), the state data center, and “cloud-first” policy, to conform to the changes of the bill by replacing all versions of the term “information technology security” with the term “cybersecurity.”

**Section 6** amends s. 282.318, F.S., to rename the “Information Technology Security Act” as the “State Cybersecurity Act.”

This section designates the DMS, acting through the Florida Digital Service (FDS), as the lead entity responsible for assessing state agency cybersecurity risks and determining appropriate security measures. Thus, the DMS, acting through the FDS, must:

- Establish standards and processes that must be consistent with generally accepted technology best practices, including the National Institute for Standards and Technology (NIST) Cybersecurity Framework, for cybersecurity;
- Adopt rules that mitigate risk, safeguard the state’s digital assets and agency data to ensure availability, confidentiality, and integrity and support a security governance framework;
- Designate an employee of the FDS as the state chief information security officer. The state chief information security officer is responsible for the development, operation, and oversight of cybersecurity for state technology systems. The state chief information security officer must be notified of all confirmed or suspected incidents or threats of state agency IT resources and must report such incidents the state chief information officer (CIO);
- Develop, and update annually by February 1, a statewide cybersecurity strategic plan that includes security goals and objectives for cybersecurity, including the identification and mitigation of risk, proactive protections against threats, tactical risk detection, threat reporting, and response and recovery protocols for a cyber-incident;
- Develop and publish for use by state agencies a cybersecurity governance that includes guidelines;
- Establish procedures for procuring IT commodities and services that require the commodity or service to meet the NIST Framework;
- Provide training to all state agency technology professionals which develops, assesses, and documents competencies by role and skill level. The training may be provided in collaboration with the Cybercrime Office of the Florid Department of Law Enforcement (FDLE), a private sector entity, or a state university;
- Operate and maintain a Cybersecurity Operations Center led by the state chief information security officer, which must be primarily virtue and staffed with tactical detection and incident response personnel. The Cybersecurity Operations Center must serve as a clearinghouse for threat information and coordinate with the FDLE to support state agencies and their response to any confirmed or suspected cybersecurity incident; and
- Lead an Emergency Support Function, ESF CYBER, under the state comprehensive emergency management plan as described in s. 252.35, F.S.

This section requires each state agency head to:

- Establish an agency cybersecurity response team in consultation with the FDS and the FDLE, and immediately report all confirmed or suspected cybersecurity incidents to the state chief information security officer, or his or her designee;
- Conduct, and update every three years, a comprehensive risk assessment which may be completed by a private sector vendor to determine security threats to the data, information, and IT resources of the agency. If a private sector vendor is used to complete this requirement, the vendor must attest to the validity of the risk assessment findings;
- Implement managerial, operational, and risk assessment remediation plans recommended by the DMS to addresses identified risks to the agency. The DMS, through the FDS, must track implementation by state agencies upon development of such remediation plans in coordination with agency inspectors general;
- Ensure that the cybersecurity requirements in both the written specifications for the solicitation, contracts, and service-level agreement of IT and IT resources and services meet the NIST Cybersecurity Framework; and
- Provide cybersecurity awareness training, in collaboration with the Cybercrime Office, a private sector entity, or an institution of the state university system to all state agency employees in the first 30 days after commencing employment.

This section replaces all versions of the term “information technology security” with the term “cybersecurity.”

**Section 7** creates s. 282.319, F.S., establishing the Florida Cybersecurity Advisory Council (council) within the DMS.

The council must operate in a manner consistent with s. 20.052, F.S. The purpose of the council is to assist the state in protecting the state’s IT resources from cyber threats and incidents and to assist the FDS in implementing the best cybersecurity practices, taking into consideration the final recommendations of the Florida Cybersecurity Task Force.

The council is comprised of the following members:

- The Lieutenant Governor or his or her designee;
- The state chief information officer;
- The state chief information security officer;
- The director of the Division of Emergency Management or his or her designee;
- A representative of the computer crime center of the FDLE, appointed by the executive director of the FDLE;
- A representative of the Florida Fusion Center of the FDLE, appointed by the executive director of the FDLE;
- The Chief Inspector General;
- A representative from the Public Service Commission;
- Up to two representatives from institutions of higher education located in the state, appointed by the Governor;
- Three representatives from critical infrastructure sectors, one of which must be from a water-treatment facility, appointed by the Governor;

- Four representatives of the private sector with senior level experience in cybersecurity or software engineering from within finance, energy, health care, and transportation sector, appointed by the Governor; and
- Two representatives with expertise on emerging technology with one appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives.

The members serve for a term of four years, with the initial appointments made serving for a term of two years. A vacancy must be filled for the remainder of the unexpired term in the same manner as the initial appointment, and all members of the council are eligible for reappointment. The Secretary of Management Services, or his or her designee, must serve as the ex officio, nonvoting executive director of the council. Members of the council serve without compensation but are entitled to reimbursement for per diem and travel expenses as defined in s. 112.061, F.S.

Council members are required to maintain the confidential or exempt status of information received in the performance of their official duties and responsibilities. The bill prohibits current or former members from disclosing or using information not available to the general public and gained by reason of their official position for their personal gain or benefit or the personal gain or benefit of another. Council members must sign an agreement acknowledging these provisions.

The council must meet quarterly to:

- Review existing state agency cybersecurity policies;
- Assess ongoing risks to state agency information technology;
- Recommend a method to notify state agencies of new risks;
- Recommend data breach simulation exercises;
- Examine inconsistencies between state and federal law regarding cybersecurity; and
- Assist the FDS in developing cybersecurity best practices recommendations for state agencies which include recommendations regarding:
  - Continuous risk monitoring;
  - Password management; and
  - Protecting data in legacy and new systems.

The council must work with the NIST and other federal agencies, private sector businesses, and private cybersecurity experts:

- For critical infrastructure not covered by federal law, to identify which local infrastructure sectors are at greatest risk of cyber-attacks and need the most enhanced security measures; and
- To use federal guidance to identify categories of critical infrastructure as critical cyber infrastructure if cyber damage or access could reasonable result in catastrophic consequences.

Beginning June 30, 2022, and annually thereafter, the council must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives outlining any recommendations considered necessary by the council to address cybersecurity.

**Section 8** provides the bill takes effect July 1, 2021.

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

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill will have a significant fiscal impact on state government due to the operation and maintenance of the Cybersecurity Operations Center, and expenses associated with the Florida Digital Service and the Florida Cybersecurity Advisory Council.

The Department of Management Services (DMS) submitted an Amended Legislative Budget Request (LBR) for Fiscal Year 2021-2022 requesting \$30 million (\$21 million non-recurring) General Revenue to allow the Florida Digital Service (FDS) to begin implementing the recommendations<sup>22</sup> of the February 1, 2021, Florida Cybersecurity Task Force Final Report, including additional training, incident reporting, and threat detection monitoring. According to the LBR request, funds would be used to support

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<sup>22</sup> The Department of Management Services Amended Legislative Budget Request for FY 2021-2022 First Submission, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=21881&DocType=PDF>

immediate enterprise level resiliency priorities and risk mitigation measure as identified by the state chief information officer and chief information security officer. The DMS also, provided cost estimates for the following responsibilities required in the bill, which are encompassed in the LBR request: \$672,000 for providing new cybersecurity training, \$3.2 million for operating a virtual Cybersecurity Operations Center, and \$320,000 for procurement of an incident tracking tool.

In addition, an agency may incur additional costs if it uses a private sector vendor to complete the required risk assessment once every three years.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 20.055, 282.0041, 282.0051, 282.201, 282.206, and 282.318.

This bill creates section 282.319 of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Recommended CS/CS by Appropriations Subcommittee on Agriculture, Environment, and General Government on April 8, 2021:**

The committee substitute:

- Clarifies that the executive director of the Department of Law Enforcement appoints the representatives from the computer crime center and the Florida Fusion Center to the advisory council; and
- Includes a provision requiring members of the advisory council to maintain the confidential or exempt status of information received in the performance of their official duties and responsibilities.

**CS by Governmental Oversight and Accountability on March 31, 2021:**

The committee substitute:

- Revises the definition for the term “Cybersecurity;”
- Removes the designation of employees under the chief information security officer as selected exempt service;
- Revises the duties of the chief information security officer from the “development, operation, and management of cybersecurity for state technology systems” to the

“development, operations, and oversight of cybersecurity for state technology systems”;

- Removes the authority from the Florida Digital Service to intervene in any confirmed or suspected cybersecurity incident of a state agency;
- Removes the requirement that an agency head must provide an asset management report detailing the agency’s IT resources to the chief information officer and chief information security officer;
- Removes the requirement that an agency head must conduct a comprehensive risk assessment on an annual basis, and maintains the three-year requirement provided in current law;
- Requires that solicitations, contracts and service level-agreements relating to cybersecurity meet the National Institute of Standards and Technology Cybersecurity Framework;
- Revises the membership of the newly created Florida Cybersecurity Advisory Council; and
- Requires the council to work with the National Institute of Standards and Technology, federal agencies, private sector businesses, and private cybersecurity experts to identify infrastructure vulnerable to cyber attacks.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2021	.	
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Appropriations Subcommittee on Agriculture, Environment, and  
General Government (Boyd) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 557 - 589  
and insert:

(e) A representative of the computer crime center of the  
Department of Law Enforcement, appointed by the executive  
director of the Department of Law Enforcement.

(f) A representative of the Florida Fusion Center of the  
Department of Law Enforcement, appointed by the executive  
director of the Department of Law Enforcement.



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11       (g) The Chief Inspector General.

12       (h) A representative from the Public Service Commission.

13       (i) Up to two representatives from institutions of higher  
14 education located in this state, appointed by the Governor.

15       (j) Three representatives from critical infrastructure  
16 sectors, one of which must be from a water treatment facility,  
17 appointed by the Governor.

18       (k) Four representatives of the private sector with senior  
19 level experience in cybersecurity or software engineering from  
20 within the finance, energy, health care, and transportation  
21 sectors, appointed by the Governor.

22       (l) Two representatives with expertise on emerging  
23 technology, with one appointed by the President of the Senate  
24 and one appointed by the Speaker of the House of  
25 Representatives.

26       (5) Members shall serve for a term of 4 years; however, for  
27 the purpose of providing staggered terms, the initial  
28 appointments of members made by the Governor shall be for a term  
29 of 2 years. A vacancy shall be filled for the remainder of the  
30 unexpired term in the same manner as the initial appointment.  
31 All members of the council are eligible for reappointment.

32       (6) The Secretary of Management Services, or his or her  
33 designee, shall serve as the ex officio, nonvoting executive  
34 director of the council.

35       (7) Members of the council shall serve without compensation  
36 but are entitled to receive reimbursement for per diem and  
37 travel expenses pursuant to s. 112.061.

38       (8) Members of the council shall maintain the confidential  
39 or exempt status of information received in the performance of



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their duties and responsibilities as members of the council. In  
accordance with s. 112.313, a current or former member of the  
council may not disclose or use information not available to the  
general public and gained by reason of their official position,  
except for information relating exclusively to governmental  
practices, for their personal gain or benefit or for the  
personal gain or benefit of any other person or business entity.  
Members shall sign an agreement acknowledging the provisions of  
this subsection.

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

And the title is amended as follows:

Delete line 35

and insert:

for per diem and travel expenses; requiring council  
members to maintain the confidential or exempt status  
of information received; prohibiting council members  
from using information not otherwise public for their  
own personal gain; requiring council members to sign  
an agreement acknowledging certain provisions;  
requiring the

By the Committee on Governmental Oversight and Accountability;  
and Senator Boyd

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1 A bill to be entitled  
2 An act relating to cybersecurity; amending s. 20.055,  
3 F.S.; requiring certain audit plans of an inspector  
4 general to include certain information; amending s.  
5 282.0041, F.S.; revising and providing definitions;  
6 amending ss. 282.0051, 282.201, and 282.206, F.S.;  
7 revising provisions to replace references to  
8 information technology security with cybersecurity;  
9 amending s. 282.318, F.S.; revising provisions to  
10 replace references to information technology security  
11 and computer security with references to  
12 cybersecurity; revising a short title; providing that  
13 the Department of Management Services, acting through  
14 the Florida Digital Service, is the lead entity for  
15 the purpose of certain responsibilities; providing and  
16 revising requirements for the department, acting  
17 through the Florida Digital Service; providing that  
18 the state chief information security officer is  
19 responsible for state technology systems and shall be  
20 notified of certain incidents and threats; revising  
21 requirements for state agency heads; requiring the  
22 department, through the Florida Digital Service, to  
23 track the implementation by state agencies of certain  
24 plans; creating s. 282.319, F.S.; creating the Florida  
25 Cybersecurity Advisory Council within the Department  
26 of Management Services; providing the purpose of the  
27 council; requiring the council to provide certain  
28 assistance to the Florida Digital Service; providing  
29 for the membership of the council; providing for terms

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 of council members; providing that the Secretary of  
31 Management Services, or his or her designee, shall  
32 serve as the ex officio, nonvoting executive director  
33 of the council; providing that members shall serve  
34 without compensation but are entitled to reimbursement  
35 for per diem and travel expenses; requiring the  
36 council to meet at least quarterly for certain  
37 purposes; requiring the council to work with certain  
38 entities to identify certain local infrastructure  
39 sectors and critical cyber infrastructure; requiring  
40 the council to submit an annual report to the  
41 Legislature; providing an effective date.  
42

43 Be It Enacted by the Legislature of the State of Florida:  
44

45 Section 1. Paragraph (i) of subsection (6) of section  
46 20.055, Florida Statutes, is amended to read:

47 20.055 Agency inspectors general.—

48 (6) In carrying out the auditing duties and  
49 responsibilities of this act, each inspector general shall  
50 review and evaluate internal controls necessary to ensure the  
51 fiscal accountability of the state agency. The inspector general  
52 shall conduct financial, compliance, electronic data processing,  
53 and performance audits of the agency and prepare audit reports  
54 of his or her findings. The scope and assignment of the audits  
55 shall be determined by the inspector general; however, the  
56 agency head may at any time request the inspector general to  
57 perform an audit of a special program, function, or  
58 organizational unit. The performance of the audit shall be under

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the direction of the inspector general, except that if the inspector general does not possess the qualifications specified in subsection (4), the director of auditing shall perform the functions listed in this subsection.

(i) The inspector general shall develop long-term and annual audit plans based on the findings of periodic risk assessments. The plan, where appropriate, should include postaudit samplings of payments and accounts. The plan shall show the individual audits to be conducted during each year and related resources to be devoted to the respective audits. The plan shall include a specific cybersecurity audit plan. The Chief Financial Officer, to assist in fulfilling the responsibilities for examining, auditing, and settling accounts, claims, and demands pursuant to s. 17.03(1), and examining, auditing, adjusting, and settling accounts pursuant to s. 17.04, may use audits performed by the inspectors general and internal auditors. For state agencies under the jurisdiction of the Governor, the audit plans shall be submitted to the Chief Inspector General. The plan shall be submitted to the agency head for approval. A copy of the approved plan shall be submitted to the Auditor General.

Section 2. Present subsections (8) through (21) of section 282.0041, Florida Statutes, are redesignated as subsections (9) through (22), respectively, a new subsection (8) is added to that section, and present subsection (22) of that section is amended, to read:

282.0041 Definitions.—As used in this chapter, the term:

(8) "Cybersecurity" means the protection afforded to an automated information system in order to attain the applicable

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objectives of preserving the confidentiality, integrity, and availability of data, information, and information technology resources.

~~(22) "Information technology security" means the protection afforded to an automated information system in order to attain the applicable objectives of preserving the integrity, availability, and confidentiality of data, information, and information technology resources.~~

Section 3. Paragraph (j) of subsection (1) of section 282.0051, Florida Statutes, is amended to read:

282.0051 Department of Management Services; Florida Digital Service; powers, duties, and functions.—

(1) The Florida Digital Service has been created within the department to propose innovative solutions that securely modernize state government, including technology and information services, to achieve value through digital transformation and interoperability, and to fully support the cloud-first policy as specified in s. 282.206. The department, through the Florida Digital Service, shall have the following powers, duties, and functions:

(j) Provide operational management and oversight of the state data center established pursuant to s. 282.201, which includes:

1. Implementing industry standards and best practices for the state data center's facilities, operations, maintenance, planning, and management processes.

2. Developing and implementing cost-recovery mechanisms that recover the full direct and indirect cost of services through charges to applicable customer entities. Such cost-

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recovery mechanisms must comply with applicable state and federal regulations concerning distribution and use of funds and must ensure that, for any fiscal year, no service or customer entity subsidizes another service or customer entity. The Florida Digital Service may recommend other payment mechanisms to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives. Such mechanism may be implemented only if specifically authorized by the Legislature.

3. Developing and implementing appropriate operating guidelines and procedures necessary for the state data center to perform its duties pursuant to s. 282.201. The guidelines and procedures must comply with applicable state and federal laws, regulations, and policies and conform to generally accepted governmental accounting and auditing standards. The guidelines and procedures must include, but need not be limited to:

a. Implementing a consolidated administrative support structure responsible for providing financial management, procurement, transactions involving real or personal property, human resources, and operational support.

b. Implementing an annual reconciliation process to ensure that each customer entity is paying for the full direct and indirect cost of each service as determined by the customer entity's use of each service.

c. Providing rebates that may be credited against future billings to customer entities when revenues exceed costs.

d. Requiring customer entities to validate that sufficient funds exist in the appropriate data processing appropriation category or will be transferred into the appropriate data

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processing appropriation category before implementation of a customer entity's request for a change in the type or level of service provided, if such change results in a net increase to the customer entity's cost for that fiscal year.

e. By November 15 of each year, providing to the Office of Policy and Budget in the Executive Office of the Governor and to the chairs of the legislative appropriations committees the projected costs of providing data center services for the following fiscal year.

f. Providing a plan for consideration by the Legislative Budget Commission if the cost of a service is increased for a reason other than a customer entity's request made pursuant to sub-subparagraph d. Such a plan is required only if the service cost increase results in a net increase to a customer entity for that fiscal year.

g. Standardizing and consolidating procurement and contracting practices.

4. In collaboration with the Department of Law Enforcement, developing and implementing a process for detecting, reporting, and responding to cybersecurity ~~information technology security~~ incidents, breaches, and threats.

5. Adopting rules relating to the operation of the state data center, including, but not limited to, budgeting and accounting procedures, cost-recovery methodologies, and operating procedures.

Section 4. Paragraph (g) of subsection (1) of section 282.201, Florida Statutes, is amended to read:

282.201 State data center.—The state data center is established within the department. The provision of data center

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services must comply with applicable state and federal laws, regulations, and policies, including all applicable security, privacy, and auditing requirements. The department shall appoint a director of the state data center, preferably an individual who has experience in leading data center facilities and has expertise in cloud-computing management.

(1) STATE DATA CENTER DUTIES.—The state data center shall:

(g) In its procurement process, show preference for cloud-computing solutions that minimize or do not require the purchasing, financing, or leasing of state data center infrastructure, and that meet the needs of customer agencies, that reduce costs, and that meet or exceed the applicable state and federal laws, regulations, and standards for cybersecurity information technology security.

Section 5. Subsection (2) of section 282.206, Florida Statutes, is amended to read:

282.206 Cloud-first policy in state agencies.—

(2) In its procurement process, each state agency shall show a preference for cloud-computing solutions that either minimize or do not require the use of state data center infrastructure when cloud-computing solutions meet the needs of the agency, reduce costs, and meet or exceed the applicable state and federal laws, regulations, and standards for cybersecurity information technology security.

Section 6. Section 282.318, Florida Statutes, is amended to read:

282.318 Cybersecurity Security of data and information technology.—

(1) This section may be cited as the "State Cybersecurity

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~~Act.~~ "Information Technology Security Act."

(2) As used in this section, the term "state agency" has the same meaning as provided in s. 282.0041, except that the term includes the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services.

(3) The department, acting through the Florida Digital Service, is the lead entity responsible for establishing standards and processes for assessing state agency cybersecurity risks and determining appropriate security measures. Such standards and processes must be consistent with generally accepted technology best practices, including the National Institute for Standards and Technology Cybersecurity Framework, for cybersecurity. The department, acting through the Florida Digital Service, shall adopt information technology security, to include cybersecurity, and adopting rules that mitigate risks; safeguard state agency digital assets, an agency's data, information, and information technology resources to ensure availability, confidentiality, and integrity; and support a security governance framework and to mitigate risks. The department, acting through the Florida Digital Service, shall also:

(a) Designate an employee of the Florida Digital Service as the state chief information security officer. The state chief information security officer must have experience and expertise in security and risk management for communications and information technology resources. The state chief information security officer is responsible for the development, operation, and oversight of cybersecurity for state technology systems. The

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state chief information security officer shall be notified of all confirmed or suspected incidents or threats of state agency information technology resources and must report such incidents or threats to the state chief information officer and the Governor.

(b) Develop, and annually update by February 1, a statewide ~~cybersecurity information technology security~~ strategic plan that includes security goals and objectives for cybersecurity, including the identification and mitigation of risk, proactive protections against threats, tactical risk detection, threat reporting, and response and recovery protocols for a cyber incident ~~the strategic issues of information technology security policy, risk management, training, incident management, and disaster recovery planning.~~

(c) Develop and publish for use by state agencies a cybersecurity governance ~~an information technology security~~ framework that, at a minimum, includes guidelines and processes for:

1. Establishing asset management procedures to ensure that an agency's information technology resources are identified and managed consistent with their relative importance to the agency's business objectives.

2. Using a standard risk assessment methodology that includes the identification of an agency's priorities, constraints, risk tolerances, and assumptions necessary to support operational risk decisions.

3. Completing comprehensive risk assessments and cybersecurity information technology security audits, which may be completed by a private sector vendor, and submitting

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completed assessments and audits to the department.

4. Identifying protection procedures to manage the protection of an agency's information, data, and information technology resources.

5. Establishing procedures for accessing information and data to ensure the confidentiality, integrity, and availability of such information and data.

6. Detecting threats through proactive monitoring of events, continuous security monitoring, and defined detection processes.

7. Establishing agency cybersecurity ~~computer security~~ incident response teams and describing their responsibilities for responding to cybersecurity information technology security incidents, including breaches of personal information containing confidential or exempt data.

8. Recovering information and data in response to a cybersecurity ~~an information technology security~~ incident. The recovery may include recommended improvements to the agency processes, policies, or guidelines.

9. Establishing a cybersecurity ~~an information technology security~~ incident reporting process that includes procedures and tiered reporting timeframes for notifying the department and the Department of Law Enforcement of cybersecurity information technology security incidents. The tiered reporting timeframes shall be based upon the level of severity of the cybersecurity information technology security incidents being reported.

10. Incorporating information obtained through detection and response activities into the agency's cybersecurity ~~information technology security~~ incident response plans.

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11. Developing agency strategic and operational ~~cybersecurity information technology security~~ plans required pursuant to this section.

12. Establishing the managerial, operational, and technical safeguards for protecting state government data and information technology resources that align with the state agency risk management strategy and that protect the confidentiality, integrity, and availability of information and data.

13. Establishing procedures for procuring information technology commodities and services that require the commodity or service to meet the National Institute of Standards and Technology Cybersecurity Framework.

(d) Assist state agencies in complying with this section.

(e) In collaboration with the Cybercrime Office of the Department of Law Enforcement, annually provide training for state agency information security managers and computer security incident response team members that contains training on ~~cybersecurity information technology security~~, including cybersecurity, threats, trends, and best practices.

(f) Annually review the strategic and operational ~~cybersecurity information technology security~~ plans of state executive branch agencies.

(g) Provide cybersecurity training to all state agency technology professionals which develops, assesses, and documents competencies by role and skill level. The training may be provided in collaboration with the Cybercrime Office of the Department of Law Enforcement, a private sector entity, or an institution of the state university system.

(h) Operate and maintain a Cybersecurity Operations Center

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led by the state chief information security officer, which must be primarily virtual and staffed with tactical detection and incident response personnel. The Cybersecurity Operations Center shall serve as a clearinghouse for threat information and coordinate with the Department of Law Enforcement to support state agencies and their response to any confirmed or suspected cybersecurity incident.

(i) Lead an Emergency Support Function, ESF CYBER, under the state comprehensive emergency management plan as described in s. 252.35.

(4) Each state agency head shall, at a minimum:

(a) Designate an information security manager to administer the ~~cybersecurity information technology security~~ program of the state agency. This designation must be provided annually in writing to the department by January 1. A state agency's information security manager, for purposes of these information security duties, shall report directly to the agency head.

(b) In consultation with the department, through the Florida Digital Service, and the Cybercrime Office of the Department of Law Enforcement, establish an agency cybersecurity ~~computer security incident~~ response team to respond to a cybersecurity ~~an information technology security~~ incident. The agency ~~cybersecurity computer security incident~~ response team shall convene upon notification of a cybersecurity ~~an information technology security~~ incident and must immediately report all confirmed or suspected incidents to the state chief information security officer, or his or her designee, and comply with all applicable guidelines and processes established pursuant to paragraph (3)(c).

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(c) Submit to the department annually by July 31, the state agency's strategic and operational cybersecurity information technology security plans developed pursuant to rules and guidelines established by the department, through the Florida Digital Service.

1. The state agency strategic cybersecurity information technology security plan must cover a 3-year period and, at a minimum, define security goals, intermediate objectives, and projected agency costs for the strategic issues of agency information security policy, risk management, security training, security incident response, and disaster recovery. The plan must be based on the statewide cybersecurity information technology security strategic plan created by the department and include performance metrics that can be objectively measured to reflect the status of the state agency's progress in meeting security goals and objectives identified in the agency's strategic information security plan.

2. The state agency operational cybersecurity information technology security plan must include a progress report that objectively measures progress made towards the prior operational cybersecurity information technology security plan and a project plan that includes activities, timelines, and deliverables for security objectives that the state agency will implement during the current fiscal year.

(d) Conduct, and update every 3 years, a comprehensive risk assessment, which may be completed by a private sector vendor, to determine the security threats to the data, information, and information technology resources, including mobile devices and print environments, of the agency. The risk assessment must

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comply with the risk assessment methodology developed by the department and is confidential and exempt from s. 119.07(1), except that such information shall be available to the Auditor General, the Florida Digital Service within the department, the Cybercrime Office of the Department of Law Enforcement, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General. If a private sector vendor is used to complete a comprehensive risk assessment, it must attest to the validity of the risk assessment findings.

(e) Develop, and periodically update, written internal policies and procedures, which include procedures for reporting cybersecurity information technology security incidents and breaches to the Cybercrime Office of the Department of Law Enforcement and the Florida Digital Service within the department. Such policies and procedures must be consistent with the rules, guidelines, and processes established by the department to ensure the security of the data, information, and information technology resources of the agency. The internal policies and procedures that, if disclosed, could facilitate the unauthorized modification, disclosure, or destruction of data or information technology resources are confidential information and exempt from s. 119.07(1), except that such information shall be available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, the Florida Digital Service within the department, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General.

(f) Implement managerial, operational, and technical safeguards and risk assessment remediation plans recommended by the department to address identified risks to the data,

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information, and information technology resources of the agency.  
 The department, through the Florida Digital Service, shall track  
 implementation by state agencies upon development of such  
 remediation plans in coordination with agency inspectors  
 general.

(g) Ensure that periodic internal audits and evaluations of  
 the agency's ~~cybersecurity information technology security~~  
 program for the data, information, and information technology  
 resources of the agency are conducted. The results of such  
 audits and evaluations are confidential information and exempt  
 from s. 119.07(1), except that such information shall be  
 available to the Auditor General, the Cybercrime Office of the  
 Department of Law Enforcement, the Florida Digital Service  
 within the department, and, for agencies under the jurisdiction  
 of the Governor, the Chief Inspector General.

(h) Ensure that the ~~information technology security and~~  
 cybersecurity requirements in both the written specifications  
 for the solicitation, contracts, and service-level agreement of  
 information technology and information technology resources and  
 services meet or exceed the applicable state and federal laws,  
 regulations, and standards for ~~information technology security~~  
 and cybersecurity, including the National Institute of Standards  
and Technology Cybersecurity Framework. Service-level agreements  
 must identify service provider and state agency responsibilities  
 for privacy and security, protection of government data,  
 personnel background screening, and security deliverables with  
 associated frequencies.

(i) Provide ~~information technology security and~~  
 cybersecurity awareness training to all state agency employees

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in the first 30 days after commencing employment concerning  
~~cybersecurity information technology security~~ risks and the  
 responsibility of employees to comply with policies, standards,  
 guidelines, and operating procedures adopted by the state agency  
 to reduce those risks. The training may be provided in  
 collaboration with the Cybercrime Office of the Department of  
 Law Enforcement, a private sector entity, or an institution of  
the state university system.

(j) Develop a process for detecting, reporting, and  
 responding to threats, breaches, or ~~cybersecurity information~~  
~~technology security~~ incidents which is consistent with the  
 security rules, guidelines, and processes established by the  
 department through the Florida Digital Service.

1. All ~~cybersecurity information technology security~~  
 incidents and breaches must be reported to the Florida Digital  
 Service within the department and the Cybercrime Office of the  
 Department of Law Enforcement and must comply with the  
 notification procedures and reporting timeframes established  
 pursuant to paragraph (3)(c).

2. For ~~cybersecurity information technology security~~  
 breaches, state agencies shall provide notice in accordance with  
 s. 501.171.

(5) Portions of records held by a state agency which  
 contain network schematics, hardware and software  
 configurations, or encryption, or which identify detection,  
 investigation, or response practices for suspected or confirmed  
~~cybersecurity information technology security~~ incidents,  
 including suspected or confirmed breaches, are confidential and  
 exempt from s. 119.07(1) and s. 24(a), Art. I of the State

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Constitution, if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

(a) Data or information, whether physical or virtual; or

(b) Information technology resources, which includes:

1. Information relating to the security of the agency's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

2. Security information, whether physical or virtual, which relates to the agency's existing or proposed information technology systems.

(6) The portions of risk assessments, evaluations, external audits, and other reports of a state agency's cybersecurity ~~information technology security~~ program for the data, information, and information technology resources of the state agency which are held by a state agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the disclosure of such portions of records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

(a) Data or information, whether physical or virtual; or

(b) Information technology resources, which include:

1. Information relating to the security of the agency's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

2. Security information, whether physical or virtual, which relates to the agency's existing or proposed information

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technology systems.

For purposes of this subsection, "external audit" means an audit that is conducted by an entity other than the state agency that is the subject of the audit.

(7) Those portions of a public meeting as specified in s. 286.011 which would reveal records which are confidential and exempt under subsection (5) or subsection (6) are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. No exempt portion of an exempt meeting may be off the record. All exempt portions of such meeting shall be recorded and transcribed. Such recordings and transcripts are confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless a court of competent jurisdiction, after an in camera review, determines that the meeting was not restricted to the discussion of data and information made confidential and exempt by this section. In the event of such a judicial determination, only that portion of the recording and transcript which reveals nonexempt data and information may be disclosed to a third party.

(8) The portions of records made confidential and exempt in subsections (5), (6), and (7) shall be available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, the Florida Digital Service within the department, and, for agencies under the jurisdiction of the Governor, the Chief Inspector General. Such portions of records may be made available to a local government, another state agency, or a federal agency for cybersecurity ~~information technology security~~ purposes or in furtherance of the state agency's official

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duties.

(9) The exemptions contained in subsections (5), (6), and (7) apply to records held by a state agency before, on, or after the effective date of this exemption.

(10) Subsections (5), (6), and (7) are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

(11) The department shall adopt rules relating to cybersecurity information technology security and to administer this section.

Section 7. Section 282.319, Florida Statutes, is created to read:

282.319 Florida Cybersecurity Advisory Council.—

(1) The Florida Cybersecurity Advisory Council, an advisory council as defined in s. 20.03(7), is created within the department. Except as otherwise provided in this section, the advisory council shall operate in a manner consistent with s. 20.052.

(2) The purpose of the council is to assist state agencies in protecting their information technology resources from cyber threats and incidents.

(3) The council shall assist the Florida Digital Service in implementing best cybersecurity practices, taking into consideration the final recommendations of the Florida Cybersecurity Task Force created under chapter 2019-118, Laws of Florida.

(4) The council shall be comprised of the following members:

585-03626A-21

20211900c1

(a) The Lieutenant Governor or his or her designee.

(b) The state chief information officer.

(c) The state chief information security officer.

(d) The director of the Division of Emergency Management or his or her designee.

(e) A representative of the computer crime center of the Department of Law Enforcement, appointed by the executive director of the department.

(f) A representative of the Florida Fusion Center of the Department of Law Enforcement, appointed by the executive director of the department.

(g) The Chief Inspector General.

(h) A representative from the Public Service Commission.

(i) Up to two representatives from institutions of higher education located in this state, appointed by the Governor.

(j) Three representatives from critical infrastructure sectors, one of which must be from a water treatment facility, appointed by the Governor.

(k) Four representatives of the private sector with senior level experience in cybersecurity or software engineering from within the finance, energy, health care, and transportation sectors, appointed by the Governor.

(l) Two representatives with expertise on emerging technology, with one appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives.

(5) Members shall serve for a term of 4 years; however, for the purpose of providing staggered terms, the initial appointments of members made by the Governor shall be for a term

585-03626A-21 20211900c1

581 of 2 years. A vacancy shall be filled for the remainder of the  
 582 unexpired term in the same manner as the initial appointment.  
 583 All members of the council are eligible for reappointment.

584 (6) The Secretary of Management Services, or his or her  
 585 designee, shall serve as the ex officio, nonvoting executive  
 586 director of the council.

587 (7) Members of the council shall serve without compensation  
 588 but are entitled to receive reimbursement for per diem and  
 589 travel expenses pursuant to s. 112.061.

590 (8) The council shall meet at least quarterly to:

591 (a) Review existing state agency cybersecurity policies.

592 (b) Assess ongoing risks to state agency information  
 593 technology.

594 (c) Recommend a reporting and information sharing system to  
 595 notify state agencies of new risks.

596 (d) Recommend data breach simulation exercises.

597 (e) Assist the Florida Digital Service in developing  
 598 cybersecurity best practice recommendations for state agencies  
 599 which include recommendations regarding:

600 1. Continuous risk monitoring.

601 2. Password management.

602 3. Protecting data in legacy and new systems.

603 (f) Examine inconsistencies between state and federal law  
 604 regarding cybersecurity.

605 (9) The council shall work with the National Institute of  
 606 Standards and Technology and other federal agencies, private  
 607 sector businesses, and private cybersecurity experts:

608 (a) For critical infrastructure not covered by federal law,  
 609 to identify which local infrastructure sectors are at the

585-03626A-21 20211900c1

610 greatest risk of cyber attacks and need the most enhanced  
 611 cybersecurity measures.

612 (b) To use federal guidance to identify categories of  
 613 critical infrastructure as critical cyber infrastructure if  
 614 cyber damage or unauthorized cyber access to the infrastructure  
 615 could reasonably result in catastrophic consequences.

616 (10) Beginning June 30, 2022, and each June 30 thereafter,  
 617 the council shall submit to the President of the Senate and the  
 618 Speaker of the House of Representatives any legislative  
 619 recommendations considered necessary by the council to address  
 620 cybersecurity.

621 Section 8. This act shall take effect July 1, 2021.



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

## COMMITTEES:

Banking and Insurance, *Chair*  
Agriculture  
Appropriations Subcommittee on Agriculture,  
Environment, and General Government  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Criminal Justice  
Judiciary

## JOINT COMMITTEE:

Joint Legislative Auditing Committee

## SENATOR JIM BOYD

21st District

April 5<sup>th</sup>, 2021

Senator Albritton

Appropriations Subcommittee on Agriculture, Environment, and General Government

201 The Capitol

404 S. Monroe Street

Tallahassee, FL 32399

Dear Chairman Albritton:

I respectfully request that CS/SB 1900: Cybersecurity, be scheduled for a hearing in the Appropriations Subcommittee on Agriculture, Environment, and General Government at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me.

Thank you for your consideration of this matter.

Best regards,

A handwritten signature in blue ink, appearing to read "Jim Boyd".

Jim Boyd

cc: Giovanni Betta  
Caroline Goodner

## REPLY TO:

☐ 717 Manatee Avenue West, Bradenton, Florida 34205 (941) 742-6445

☐ 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**WILTON SIMPSON**  
President of the Senate

**AARON BEAN**  
President Pro Tempore

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Agriculture, Environment, and General Government

---

BILL: SB 1480

INTRODUCER: Senators Brodeur and Rodriguez

SUBJECT: Land Acquisition Trust Fund

DATE: April 7, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	<b>Favorable</b>
2.	Reagan	Betta	AEG	<b>Recommend: Favorable</b>
3.			AP	

---

## I. Summary:

SB 1480 extends the date by which Florida Forever bonds are intended to be retired to December 31, 2054. Under current law, the bonds are intended to be retired by December 31, 2040.

The bill has no fiscal impact on state revenues or expenditures.

The bill takes effect on July 1, 2021.

## II. Present Situation:

### Florida Forever

As a successor to Preservation 2000, the Legislature created the Florida Forever program in 1999 as the blueprint for conserving Florida's natural resources.<sup>1</sup> The Florida Forever Act reinforced the state's commitment to conserve its natural and cultural heritage, provide urban open space, and better manage the land acquired by the state.<sup>2</sup> Florida Forever encompasses a wide range of goals including: land acquisition; environmental restoration; water resource development and supply; increased public access; public lands management and maintenance; and increased protection of land through the purchase of conservation easements.<sup>3</sup> The state has acquired more than 2.4 million acres since 1991 under the Preservation 2000 and the Florida Forever programs.<sup>4</sup>

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<sup>1</sup> Chapter 99-247, Laws of Fla.

<sup>2</sup> Department of Environmental Protection (DEP), *Florida Forever Five Year Plan* (2020), 17, available at <http://publicfiles.dep.state.fl.us/DSL/FFWeb/Current%20Florida%20Forever%20Five-Year%20Plan.pdf> (last visited Mar. 3, 2021).

<sup>3</sup> Section 259.105, F.S.

<sup>4</sup> DEP, *Frequently Asked Questions about Florida Forever*, <https://floridadep.gov/lands/environmental-services/content/faq-florida-forever> (last visited Mar. 3, 2021). See Florida Natural Areas Inventory, *Summary of Florida Conservation Lands*

## Florida Forever Bonds

The issuance of Florida Forever Bonds, up to \$5.3 billion, is authorized to finance or refinance the cost of acquisition and improvement of land, water areas, and related property interests and resources, in urban and rural settings, for the purposes of restoration, conservation, recreation, water resource development, or historical preservation, and for capital improvements<sup>5</sup> to lands and water areas which accomplish environmental restoration, enhance public access and recreational enjoyment, promote long-term management goals, and facilitate water resource development.<sup>6</sup> Additionally, Florida Forever bonds are also authorized to finance or refinance the acquisition and improvement of land, water areas, and related property interests as provided in section 28, article X of the State Constitution. Florida Forever bonds are payable from a dedicated state tax revenue: documentary stamp tax revenues.<sup>7</sup> Documentary stamp taxes are levied on deeds and other documents related to real property and are collected under ch. 201, F.S. The bonds are issued by the Division of Bond Finance of the State Board of Administration.<sup>8</sup>

Before distribution of the collected documentary stamp tax revenues, the Department of Revenue is required to deduct the amounts necessary to pay the costs of collection and enforcement of the documentary stamp tax.<sup>9</sup> After the deduction of costs, the remaining tax revenues are required to be first deposited into the Land Acquisition Trust Fund to make payments on Florida Forever bonds and bonds for Everglades Restoration.<sup>10</sup>

The amount deposited into the Land Acquisition Trust Fund must be used first for the payment of debt service or funding of debt service reserve funds, rebate obligations, or other amounts payable with respect to Florida Forever bonds.<sup>11</sup> Such bonds generally have a 20-year term and are intended to be retired by December 31, 2040.<sup>12</sup> Except for bonds issued to refund previously issued bonds, no bonds may be issued unless such bonds are approved and the debt service for the remainder of the fiscal year in which the bonds are issued is specifically appropriated in the General Appropriations Act.<sup>13</sup>

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(Feb. 2019), available at [https://www.fnai.org/PDF/Maacres\\_201902\\_FCL\\_plus\\_LTF.pdf](https://www.fnai.org/PDF/Maacres_201902_FCL_plus_LTF.pdf) (last visited Mar. 3, 2021) for a complete summary of the total amount of conservation lands in Florida.

<sup>5</sup> As defined in s. 259.03, F.S., the terms “capital improvement” or “capital project expenditure” when used in ch. 259, F.S., mean “those activities relating to the acquisition, restoration, public access, and recreational uses of such lands, water areas, and related resources deemed necessary to accomplish the purposes of this chapter. Eligible activities include, but are not limited to: the initial removal of invasive plants; the construction, improvement, enlargement or extension of facilities’ signs, firelanes, access roads, and trails; or any other activities that serve to restore, conserve, protect, or provide public access, recreational opportunities, or necessary services for land or water areas. Such activities shall be identified prior to the acquisition of a parcel or the approval of a project. The continued expenditures necessary for a capital improvement approved under this subsection shall not be eligible for funding provided in this chapter.”

<sup>6</sup> Section 215.618, F.S.; FLA. CONST. art. VII, s. 11(e).

<sup>7</sup> Section 215.618(3), F.S.

<sup>8</sup> Section 215.618(4), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> Section 201.15(1), F.S. Florida Forever bonds are governed under s. 215.618, F.S., and bonds for Everglades restoration are governed under s. 215.619, F.S.

<sup>11</sup> Section 201.15(3), F.S.

<sup>12</sup> *Id.*; s. 215.618(1), F.S.

<sup>13</sup> Section 201.15(3), F.S.

In 2017, the Legislature authorized up to \$800 million in new Florida Forever bonds for the Everglades Agricultural Area Reservoir, subject to the existing \$5.3 billion overall bonding limit.<sup>14</sup> No bonds have been issued for the Everglades Agricultural Area Reservoir project.<sup>15</sup>

### **III. Effect of Proposed Changes:**

The bill extends the date by which Florida Forever bonds are intended to be retired from December 31, 2040 to December 31, 2054.

The bill takes effect on July 1, 2021.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

#### **D. State Tax or Fee Increases:**

None.

#### **E. Other Constitutional Issues:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

None.

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<sup>14</sup> Ch. 2017-10, Laws of Fla.

<sup>15</sup> Division of Bond Finance, *Official Statement - Florida Forever Revenue Refunding Bonds, Series 2018A* (Jan. 24, 2019), available at <https://emma.msrb.org/ER1182014-ER924237-ER1325017.pdf> (last visited March. 4, 2021).

C. Government Sector Impact:

None. However, there may be a negative fiscal impact due to debt service payments if bonds are issued in the future.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 201.15 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.

By Senator Brodeur

9-01577-21

20211480\_\_

A bill to be entitled

An act relating to the Land Acquisition Trust Fund;  
amending s. 201.15, F.S.; extending the date by which  
bonds issued to fund the Florida Forever Act are  
intended to be retired; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section  
201.15, Florida Statutes, is amended to read:

201.15 Distribution of taxes collected.—All taxes collected  
under this chapter are hereby pledged and shall be first made  
available to make payments when due on bonds issued pursuant to  
s. 215.618 or s. 215.619, or any other bonds authorized to be  
issued on a parity basis with such bonds. Such pledge and  
availability for the payment of these bonds shall have priority  
over any requirement for the payment of service charges or costs  
of collection and enforcement under this section. All taxes  
collected under this chapter, except taxes distributed to the  
Land Acquisition Trust Fund pursuant to subsections (1) and (2),  
are subject to the service charge imposed in s. 215.20(1).  
Before distribution pursuant to this section, the Department of  
Revenue shall deduct amounts necessary to pay the costs of the  
collection and enforcement of the tax levied by this chapter.  
The costs and service charge may not be levied against any  
portion of taxes pledged to debt service on bonds to the extent  
that the costs and service charge are required to pay any  
amounts relating to the bonds. All of the costs of the  
collection and enforcement of the tax levied by this chapter and

Page 1 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

9-01577-21

20211480\_\_

the service charge shall be available and transferred to the  
extent necessary to pay debt service and any other amounts  
payable with respect to bonds authorized before January 1, 2017,  
secured by revenues distributed pursuant to this section. All  
taxes remaining after deduction of costs shall be distributed as  
follows:

(3) Amounts on deposit in the Land Acquisition Trust Fund  
shall be used in the following order:

(a) Payment of debt service or funding of debt service  
reserve funds, rebate obligations, or other amounts payable with  
respect to Florida Forever bonds issued pursuant to s. 215.618.  
The amount used for such purposes may not exceed \$300 million in  
each fiscal year. It is the intent of the Legislature that all  
bonds issued to fund the Florida Forever Act be retired by  
December 31, 2054 ~~2040~~. Except for bonds issued to refund  
previously issued bonds, no series of bonds may be issued  
pursuant to this paragraph unless such bonds are approved and  
the debt service for the remainder of the fiscal year in which  
the bonds are issued is specifically appropriated in the General  
Appropriations Act or other law with respect to bonds issued for  
the purposes of s. 373.4598.

Bonds issued pursuant to s. 215.618 or s. 215.619 are equally  
and ratably secured by moneys distributable to the Land  
Acquisition Trust Fund.

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

Page 2 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/21

Meeting Date

1480

Bill Number (if applicable)

Topic Land Acquisition Trust Fund

Amendment Barcode (if applicable)

Name TRAVIS MOORE

Job Title \_\_\_\_\_

Address P.O. Box 2020

Phone 727.421.6902

Street

St. Petersburg FL

City

State

33731

Zip

Email travis@moore-relations.ca

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Defenders of Wildlife

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

4/8/2021

Meeting Date

1480

Bill Number (if applicable)

Topic Land Acquisition Trust Fund

Amendment Barcode (if applicable)

Name Jonathan Webber

Job Title Deputy Director

Address 1700 N. Monroe St. #11-286

Phone 954-593-4449

Street

Tallahassee

FL

32303

Email jwebber@fcvoters.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Conservation Voters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

**YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM**

**THE FLORIDA SENATE**

**APPEARANCE RECORD**

4/8/2021

*Meeting Date*

SB 1480

*Bill Number (if applicable)*

Topic Land Acquisition Trust Fund

*Amendment Barcode (if applicable)*

Name Beth Alvi ( Audubon Florida)

Job Title Director of Policy

Address 308 N. Monroe

Phone 850-999-1028

*Street*

Tallahassee

FL

32301

Email beth.alvi@audubon.org

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Audubon Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

**YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM**

**THE FLORIDA SENATE**

**APPEARANCE RECORD**

April 8, 2021

*Meeting Date*

SB 1480

*Bill Number (if applicable)*

Topic Florida Forever

*Amendment Barcode (if applicable)*

Name Will Abberger

Job Title Vice President, Director of Conservation Finance

Address 306 N. Monroe St.

Phone 850-294-2006

*Street*

Tallahassee

FL

32312

Email will.abberger@tpl.org

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing The Trust for Public Land

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/21

Meeting Date

1480

Bill Number (if applicable)

Topic

Land Acquisition Trust Fund

Amendment Barcode (if applicable)

Name

Paul Owens

Job Title

President, 1000 Friends of Florida

Address

308 N. Monroe St

Phone

Street

Tallahassee

FL

State

32301

Zip

Email

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

1000 Friends of Florida

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**This form is part of the public record for this meeting.**

S-001 (10/14/14)



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Environment and Natural Resources, *Chair*  
Health Policy, *Vice Chair*  
Appropriations Subcommittee on Agriculture,  
Environment, and General Government  
Appropriations Subcommittee on Health and  
Human Services  
Children, Families, and Elder Affairs  
Community Affairs

### SELECT COMMITTEE:

Select Committee on Pandemic  
Preparedness and Response

### JOINT COMMITTEE:

Joint Administrative Procedures Committee

**SENATOR JASON BRODEUR**

9th District

March 16, 2021

Honorable Ben Albritton  
314 Senate Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Albritton,

I am writing to request that SB 1480, Land Acquisition Trust Fund, be placed on the agenda to be heard in the Appropriations Subcommittee on Agriculture, Environment, and General Government.

I appreciate your consideration in this matter.

Sincerely,

A handwritten signature in black ink that reads "Jason Brodeur". The signature is written in a cursive style with a long, sweeping underline.

Jason Brodeur

Cc: Giovanni Betta, Staff Director  
Caroline Goodner, Administrative Assistant

### REPLY TO:

□ 311 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5009

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**WILTON SIMPSON**  
President of the Senate

**AARON BEAN**  
President Pro Tempore

**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 Appropriations Subcommittee on Agriculture, Environment, and General Government

---

BILL: PCS/CS/SB 1616 (479650)

INTRODUCER: Appropriations Subcommittee on Agriculture, Environment, and General Government; Governmental Oversight and Accountability Committee; and Senator Brodeur

SUBJECT: Agency Contracts for Commodities and Contractual Services

DATE: April 12, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<b>Fav/CS</b>
2.	<u>Davis</u>	<u>Betta</u>	<u>AEG</u>	<b>Recommend: Fav/CS</b>
3.	<u>                    </u>	<u>                    </u>	<u>AP</u>	<u>                    </u>

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

PCS/CS/SB 1616 revises several provisions of the part I of chapter 287, Florida Statutes, related to public procurement. The bill requires the Secretary of Management Services, rather than the Department of Management Services (DMS), make a written determination finding a contract to be cost effective and the best value to the state before an agency may be authorized to enter such contract let by the Federal Government, another state, or a political subdivision.

The bill provides that each agency contract must include authorization for the agency to inspect certain financial and programmatic records of the contractor relevant to the performance of the contract.

The bill requires an agency that issues a request for quote for contractual services for any state term contract with 25 vendors or fewer to issue a request to *all* approved vendors. For state term contracts with more than 25 vendors, the agency must issue a request to a minimum of 25 approved vendors.

The bill provides for the immediate disqualification from state term contract eligibility for a firm or individual who has been removed from the source of supply or placed on the convicted vendor list or the discriminatory vendor list.

The bill changes the electronic posting requirement for single source contracting from seven to 15 days and to require agencies report – on a quarterly basis – to the DMS each instance in which the agency entered into a single source purchase contract. The DMS is required to report such information to the Governor and the Legislature no later than January 1, 2022, and each January thereafter.

The bill restricts an agency from initiating a competitive solicitation that would require a change in law or change to the agency's budget, unless specifically authorized.

This bill amends the provision governing an agency's designation of a contract manager to prohibit a contract manager from having been employed, within the previous five years, by the vendor awarded the contractual services contract that he or she is assigned. The bill provides for primary responsibilities of a contract manager.

Current law requires the Chief Financial Officer provide training for accountability in contracts and grant management for a contract manager responsible for contracts in excess of the threshold amount for category two (\$35,000). The bill requires the Chief Financial Officer to evaluate this training every five years.

Current law requires a contract manager who is responsible for contracts over \$100,000 annually to complete training in contract management and become a certified contract manager. The bill requires this training to be completed within six months. The bill provides that in addition to the training provided under current law, such a contract manager must also complete the accountability in contracts and grant management training. The DMS is responsible for disseminating the training and certification requirements for certified contract managers and is required to evaluate the training every five years.

The bill provides that a contract manager who is responsible for contracts in excess of \$10 million annually, in addition to completing the accountability in contracts and grant management training and the contract management training and certification requirements, must possess at least five years of experience managing contracts in excess of \$5 million annually.

The bill permits a designated contract administrator to also serve as the contract manager for contracts less than \$500,000 annually, if he or she has completed the required training. For contracts in excess of \$500,000 annually, the contact administrator is prohibited from serving in both capacities.

The bill specifies that for contracts in excess of \$195,000 (category four threshold), the agency head must appoint at least three persons to *independently* evaluate proposals and replies who collectively have experience and knowledge in the program areas and service requirements for the commodity or contractual services sought. The bill specifies that a negotiation *team* conduct negotiations during a competitively sealed reply procurement. For a competitively procured contract in excess of \$1 million in any fiscal year, the negotiation team must include a certified contract negotiator.

Current law provides that for contracts in excess of \$10 million in any fiscal year, at least one person conducting negotiations must be a Project Management Professional. The bill specifies

that such Project Management Professional must provide guidance based on his or her experience, education, and competency to lead and direct complex projects.

The bill requires the DMS to establish and disseminate the training and certification requirements for certified contract negotiators. The bill provides for certification renewal and qualification requirements for certification. The DMS must evaluate such training every five years.

The bill provides that, beginning July 1, 2022, any person who supervises certain contract administrators or contract or grant managers to annually complete public procurement training for supervisors within 12 months of appointment to the supervisory position. The DMS is responsible for establishing and disseminating the training course content required for supervisors.

The bill requires a head of an agency to establish a four person “continuing oversight team” for each contractual services contract in excess of \$5 million. The bill requires the teams to meet to discuss the status of the contract, the pace of deliverables, the quality of deliverables, contractor responsiveness, and contractor performance; and requires the team to provide written notice to the agency head, the DMS, the Office of Policy and Budget within the Executive Office of the Governor, and the legislative appropriations committees in certain instances.

The bill provides that a contract may not contain a nondisclosure clause exempting certain information.

The bill provides that a vendor who is placed on the suspended vendor list is disqualified from bidding on or renewing a contract with the state and provides a mechanism for a vendor to petition for removal from the suspended vendor list.

The bill requires each agency inspector general to complete a risk based compliance audit of all contracts executed by the agency for the preceding three fiscal years and requires the audit to identify and evaluate any trend in vendor preference.

The bill makes conforming statutory changes.

The bill will have an indeterminate negative fiscal impact. *See* Part V, Fiscal Impact Statement.

The bill takes effect on July 1, 2021.

## **II. Present Situation:**

### **Procurement of Commodities and Services**

Chapter 287, F.S., regulates state agency procurement of personal property and services. The term “agency” is defined broadly to mean any unit of the executive branch of state government.<sup>1</sup>

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<sup>1</sup> Section 287.012(1), F.S. The term “agency” is defined as “any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive

The Department of Management Services (DMS) is responsible for overseeing state purchasing activity, including professional and contractual services, as well as commodities needed to support agency activities.<sup>2</sup> The agency head of the DMS is the “Secretary of Management Services” who is appointed by the Governor, subject to confirmation by the Florida Senate, and serves at the pleasure of the Governor.<sup>3</sup>

The DMS is authorized to evaluate contracts let by the federal government, another state, or a political subdivision for the provision of commodities and contract services and, when it is determined to be cost effective and in the best interest of the state, to enter into written agreement authorizing a state agency to make purchases under such contract.<sup>4</sup> The DMS negotiates contracts and purchasing agreements that are intended to leverage the state’s buying power.

Section 287.017, F.S., establishes the following purchasing categories, which are threshold amounts linked to other requirements in ch. 287, F.S.:

- Category one: \$20,000.
- Category two: \$35,000.
- Category three: \$65,000.
- Category four: \$195,000.
- Category five: \$325,000.

***Written Agreements for Procurements Exceeding \$35,000***

Every procurement for contractual services in excess of the threshold amount in category two, \$35,000, with certain exceptions<sup>5</sup>, must be evidenced by a written agreement embodying all provisions and conditions of the procurement of such services.<sup>6</sup> The provisions and conditions must, where applicable, include, but are not limited to a provision:

- That bills for fees or other compensation for services or expenses are to be submitted in detail sufficient for a proper preaudit and postaudit thereof.<sup>7</sup>
- That bills for travel expenses are to be submitted in accordance with statutory procedures.<sup>8</sup>
- Allowing unilateral cancellation by the agency for refusal by the contractor to allow public access to all documents, papers, letters, or other material made or received by the contractor in conjunction with the contract, unless the records are exempt from provisions governing the inspection and copying of public records.<sup>9</sup>

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branch of state government. “Agency” does not include the university and college boards of trustees or the state universities and colleges.”

<sup>2</sup> See ss. 287.032 and 287.042, F.S.

<sup>3</sup> Section 20.22(1), F.S.

<sup>4</sup> Section 287.042(16), F.S.

<sup>5</sup> Excepting providing of health and mental health services or drugs in the examination, diagnosis, or treatment of sick or injured state employees or the providing of other benefits as required by the Workers' Compensation Law.

<sup>6</sup> Section 287.058(1), F.S.

<sup>7</sup> Section 287.058(1)(a), F.S.

<sup>8</sup> Section 287.058(1)(b), F.S., referring to s. 112.061, F.S., and providing further that a state agency may establish rates lower than the maximum provided in that statute.

<sup>9</sup> Section 287.058(1)(c), F.S., referring to Art. I, § 24(a), Fla. Const., and s. 119.07(1), F.S.

- Specifying a scope of work that clearly establishes all tasks the contractor is required to perform.<sup>10</sup>
- Dividing the contract into quantifiable, measurable, and verifiable units of deliverables that must be received and accepted in writing by the contract manager before payment; each deliverable must be directly related to the scope of work and specify a performance measure, that is, the required minimum acceptable level of service to be performed and criteria for evaluating the successful completion of each deliverable.<sup>11</sup>
- Specifying the criteria and the final date by which such criteria must be met for completion of the contract.<sup>12</sup>
- Specifying that the contract may be renewed for a period that may not exceed three years or the term of the original contract, whichever is longer, specifying the renewal price for the contractual service as set forth in the bid, proposal, or reply; specifying that costs for the renewal may not be charged; and specifying that renewals are contingent upon satisfactory performance evaluations by the agency and subject to the availability of funds.<sup>13</sup>
- Specifying the financial consequences that the agency must apply if the contractor fails to perform in accordance with the contract.<sup>14</sup>
- Addressing the property rights of any intellectual property related to the contract and the specific rights of the State regarding the intellectual property if the contractor fails to provide the services or is no longer providing services.<sup>15</sup>

The written agreement must be signed by the agency head or designee and the contractor before the rendering of any contractual service in excess of \$35,000.<sup>16,17</sup> Unless otherwise provided in the General Appropriations Act (GAA) or the substantive bill implementing the GAA, the Chief Financial Officer (CFO) may waive these requirements for services, which are included in law for procurement of commodities or contractual services.<sup>18</sup> A contract may not prohibit a contractor from lobbying the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding any contract to which the contractor and a state agency are parties, after contract execution and during the contract term.<sup>19</sup>

Each public agency contract for services must authorize the public agency to inspect the:

- Financial records, papers, and documents of the contractor that are directly related to the performance of the contract or the expenditure of state funds.

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<sup>10</sup> Section 287.058(1)(d), F.S.

<sup>11</sup> Section 287.058(1)(e), F.S.

<sup>12</sup> Section 287.058(1)(f), F.S.

<sup>13</sup> Section 287.058(1)(g), F.S., noting, however, that exceptional purchase contracts pursuant to ss. 287.057(3)(a), and 287.057(3)(c), F.S., may not be renewed. *See* Florida Dept. of Highway Safety and Motor Vehicles v. National Safety Com'n, Inc., 75 So. 3d 298 (Fla. 1st DCA 2011) (The purpose of the statute allowing state procurement contracts to include a renewal provision is to exempt the parties from the competitive bidding process for a limited time if they are mutually satisfied with the agreement; it does not guarantee any vendor the right to continue to do business with the State beyond the original term of the contract.).

<sup>14</sup> Section 287.058(1)(h), F.S.

<sup>15</sup> Section 287.058(1)(i), F.S.

<sup>16</sup> There is an exception in the case of a valid emergency as certified by the agency head.

<sup>17</sup> Section 287.058(2), F.S.

<sup>18</sup> Section 287.058(5), F.S.

<sup>19</sup> Section 287.058(6), F.S.

- Programmatic records, papers, and documents of the contractor that the public agency determines are necessary to monitor the performance of the contract or to ensure that the terms of the contract are being met.<sup>20</sup>

The contract must require the contractor to provide the records, papers, and documents requested by the public agency within 10 business days after the request is made.<sup>21</sup>

### ***Contract Renewals***

Current law allows contracts for commodities or contractual services to be renewed for a period that does not exceed three years or the term of the original contract, whichever is longer.<sup>22</sup>

Renewal of a contract for commodities or contractual services must be in writing and is subject to the same terms and conditions set forth in the initial contract and any written amendments signed by the parties.<sup>23</sup> A renewal contract may not include any compensation for costs associated with the renewal, is contingent upon satisfactory performance evaluations by the agency, and is subject to the availability of funds.<sup>24</sup>

If a contract amendment results in a longer contract term or increased payments, an agency may not renew or amend a contract for the outsourcing of a service or activity that has an original term value exceeding \$10 million before submitting a written report concerning contract performance to the Governor, the President of the Senate, and the Speaker of the House of Representatives.<sup>25</sup> The written report must be submitted at least 90 days before execution of the renewal or amendment.

### ***Alternate Contract Sources***

The DMS must evaluate contracts let by the Federal Government, another state, or a political subdivision for commodities or contractual services, often referred to as alternate contract sources to determine if the contracts are cost-effective and in the best interest of the state. If the DMS makes such determination in writing, then an agency may make purchases under the contract.<sup>26</sup>

### ***State Term Contracts & Request for Quotes***

Section 287.056, F.S., requires agencies and permits eligible users<sup>27</sup> to purchase commodities and contractual services from purchasing agreements and state term contracts<sup>28</sup> procured by the DMS.

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<sup>20</sup> Section 216.1366(1), F.S.

<sup>21</sup> Section 216.1366(2), F.S.

<sup>22</sup> Section 287.57(13), F.S.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Section 287.042(16), F.S.; see Agency Alternate Contract Source (ACS) Requests, available at [https://www.dms.myflorida.com/business\\_operations/state\\_purchasing/state\\_agency\\_resources/agency\\_alternate\\_contract\\_source\\_acs\\_requests](https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/agency_alternate_contract_source_acs_requests).

<sup>27</sup> Section 287.012(11), F.S., defines “eligible user” to mean any person or entity authorized by the Department of Management Services (DMS) pursuant to rule to purchase from state term contracts or to use the online procurement system.

<sup>28</sup> Section 287.012(28), F.S., defines “state term contract” to mean a term contract that is competitively procured by the DMS pursuant to s. 287.057, F.S., and that is used by agencies and eligible users pursuant to s. 287.056, F.S.

Agencies and eligible users may use a request for quote, to obtain written pricing or services information from a state term contract vendor to determine whether a more favorable price, term or condition than that provided in the state term contract is available.<sup>29</sup> The use of a request for quote does not constitute a decision subject to protest.<sup>30</sup> Rule 60A-1.043, F.A.C., requires agencies to request at least two quotes from state term contracts with multiple vendors, unless (i) the purchase is less than category one (\$20,000), or (ii) the state term contract requires otherwise. Agencies must document the justification for a selection based on receipt of less than two quotes.<sup>31</sup>

### ***Competitive-Solicitation***

With certain exceptions,<sup>32</sup> the procurement of commodities or contractual services in excess of category two, \$35,000, requires agencies to use a competitive solicitation process.<sup>33</sup> Any form of competitive solicitation must be made available simultaneously to all vendors, must include the time and date for the receipt of bids, proposals, or replies, and must include all contractual terms and conditions applicable to the procurement.<sup>34</sup> Agencies may use a variety of methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors, including:

- Single source contracts,<sup>35</sup> used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid,<sup>36</sup> used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposals,<sup>37</sup> which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate,<sup>38</sup> which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services, by an agency dealing with a limited number of vendors.

### ***Contract Evaluations and Negotiations***

For a contract in excess of \$195,000, the agency head must appoint at least three people to evaluate proposals and replies who collectively have experience and knowledge in the program areas and service requirements for which commodities or contractual services are sought.<sup>39</sup> In

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<sup>29</sup> Section 287.056(2), F.S.

<sup>30</sup> Section 287.056(2), F.S.

<sup>31</sup> Rule 60A-1.043, F.A.C.

<sup>32</sup> Section 287.057(3)(e), F.S.

<sup>33</sup> Section 287.057(1), F.S.

<sup>34</sup> *Id.*

<sup>35</sup> Section 287.057(3)(c), F.S.

<sup>36</sup> Section 287.057(1)(a), F.S.

<sup>37</sup> Section 287.057(1)(b), F.S.

<sup>38</sup> Section 287.057(1)(c), F.S.

<sup>39</sup> Section 287.057(16)(a), F.S.

addition, the agency head must appoint three people<sup>40</sup> to conduct negotiations during an invitation to negotiate procurement who collectively have experience and knowledge in negotiating contracts, contract procurement, and the program areas and service requirements for which commodities or contractual services are sought.<sup>41</sup>

If the value of a contract is in excess of \$1 million in any fiscal year, at least one of the persons conducting negotiations must be certified as a Florida certified contract negotiator<sup>42</sup> in order to ensure that certified contract negotiators are knowledgeable about effective negotiation strategies, capable of successfully implementing those strategies, and involved appropriately in the procurement process.<sup>43</sup> If the value of a contract is in excess of \$10 million in any fiscal year, at least one of the persons conducting negotiations must be a Project Management Professional certified by the Project Management Institute.<sup>44</sup>

### **Qualifications for Contract Managers and Contract Negotiators**

Section 287.057(14), F.S., provides that for each contractual services contract, the agency must designate an employee to function as contract manager who must be responsible for enforcing performance of the contract terms and conditions and serve as a liaison with the contractor. Each contract manager who is responsible for contracts in excess of the threshold amount for category two (\$35,000) must complete training in accountability in contracts and grant management conducted by the CFO.<sup>45</sup>

Each contract manager responsible for contracts in excess of \$100,000 annually must complete training in contract management and become a certified contract manager.<sup>46</sup> The DMS must establish and disseminate the requirements for certification which include completing the training conducted by the CFO for accountability and grant management. All agency contract

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<sup>40</sup> Section 287.057(16)(b), F.S., provides that if the value of the contract is in excess of \$1 million in any fiscal year, then at least one person conducting negotiations must be certified as a contract negotiator. If the value of the contract is in excess of \$10 million in any fiscal year, then at least one person conducting negotiations must be a Project Management Professional certified by the Project Management Institute.

<sup>41</sup> Section 287.057(16)(a)2., F.S.

<sup>42</sup> Rule 60A-1.041(3), F.A.C., provides that a person must meet the following requirements for Florida certified contract negotiator (FCCN) Certification, which is valid for five years or until the expiration date stated on the person's FCCN certificate, whichever is later:

- Successful completion of the FCCN certification course;
- At least 12 months' experience as a purchasing agent, contract manager, or contract administrator for an agency or local government entity, where the job description for the position required that at least half of the employee's designated duties included procuring commodities or contractual services, participating in contract negotiation, contract management, or contract administration, or working as an agency attorney whose duties included providing legal counsel to the agency's purchasing or contracting staff; and
- Experience during the preceding five years in leading at least one federal, state, or local government negotiation team through a negotiated procurement, or participation in at least two federal, state, or local government negotiated procurements. Negotiated procurements include those from a single source; those negotiated when fewer than two responsive bids, proposals, or replies are received; and contract renewals. Employees must provide documentation to show compliance with the experience and participation requirements when submitting the application.

<sup>43</sup> Section 287.057(16)(b), F.S.

<sup>44</sup> *Id.*

<sup>45</sup> Section 287.057(14)(a), F.S.

<sup>46</sup> Section 287.057(14)(b), F.S.

managers must become certified within 24 months after establishment of the training and certification requirements by the DMS and the Department of Financial Services (DFS).

Each agency must designate at least one employee to serve as a contract administrator responsible for maintaining a contract file and financial information on all contractual services contracts and who shall serve as a liaison with the contract managers and the DMS.<sup>47</sup>

For a contract in excess of the threshold amount for category four (\$195,000) the agency head must appoint:

- At least three persons to evaluate proposals and replies who collectively have experience and knowledge in the program areas and service requirements for which commodities or contractual services are sought.<sup>48</sup>
- At least three persons to conduct negotiations during a competitive sealed reply procurement who collectively have experience and knowledge in negotiating contracts, contract procurement, and the program areas and service requirements for which commodities or contractual services are sought.<sup>49</sup>

If the value of a contract is in excess of \$1 million in any fiscal year, at least one of the persons conducting negotiations must be certified as a contract negotiator based upon the DMS' rules.<sup>50</sup> If the value of a contract is in excess of \$10 million in any fiscal year, at least one of the persons conducting negotiations must be a Project Management Professional, as certified by the Project Management Institute.

### **Project Management Professional**

Section 287.076, F.S., authorizes the DMS to implement a program to train state agency employees who are involved in managing outsourcings as Project Management Professionals, as certified by the Project Management Institute.<sup>51</sup> The Project Management Institute has stringent requirements for individuals to earn and maintain certification.<sup>52</sup> Subject to annual appropriations, the DMS, in consultation with entities subject to this part, shall identify personnel to participate in this training based on requested need and ensure that each agency is represented. The DMS may remit payment for this training on behalf of all participating personnel.

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<sup>47</sup> Section 287.057(15), F.S.

<sup>48</sup> Section 287.057(16)(a)1., F.S.

<sup>49</sup> Section 287.057(16)(a)2., F.S.

<sup>50</sup> See Rule 60A-1.041, F.A.C.

<sup>51</sup> See Project Management Institute, available at <https://www.pmi.org/> (last visited Mar. 4, 2021).

<sup>52</sup> DMS, *Project Management Professional*, [https://www.dms.myflorida.com/business\\_operations/state\\_purchasing/public\\_procurement\\_professional\\_development/project\\_management\\_professional](https://www.dms.myflorida.com/business_operations/state_purchasing/public_procurement_professional_development/project_management_professional) (last visited Mar. 11, 2021).

## Vendor Registration and the Vendor Bid System

Any vendor that wishes to provide goods or services to the state must register in the Vendor Registration System.<sup>53</sup> Once registered, vendors are able to do business with the State of Florida executive branch agencies through the Vendor Information Portal.<sup>54</sup>

The Vendor Bid System (VBS), allows for agencies to post competitive solicitations of \$35,000 or more. These solicitations include ITBs, RFPs, and ITNs for all vendors to review. Vendors can then bid, submit proposals, or submit a request to negotiate with the state agency through the VBS. A vendor will be notified through the VBS if its bid has been chosen and proceed by following bid specifications, timelines, and budgets.<sup>55</sup>

## Vendor Lists and Removal of Any Source of Supply

Based on the vendor registration process as set out in s. 287.042, F.S., and Rule 60A-1.006, F.A.C., the DMS maintains a vendor list. Section 287.042(1)(b), F.S., authorizes the DMS to remove from its vendor list “any source of supply” – any vendor – which fails to fulfill any of its duties specified in a contract. Rule 60A-1.006, F.A.C., prescribes a three step process for removing a vendor or source of supply. The agency must provide written notice of the nature of the vendor’s failure to perform and provide time certain (more than 10 days) for correcting the failure. Unless the vendor corrects its failure to perform or the agency determines the failure is legally excusable, the agency must find the vendor in default and issue a second notice stating (i) the reasons for default; (ii) that the agency will reprocure or has reprocured the commodities or services, and (iii) the amount of the reprocurement if known. The defaulting vendor is ineligible for award of a contract by the agency until the agency is reimbursed by the defaulting vendor for all reprocurement costs.<sup>56</sup> The defaulting vendor must be advised of the right to petition for an administrative hearing on the intended decision to remove the vendor from the list. An agency is required to provide a copy of all default actions to the DMS for removal from its vendor list.

The DMS maintains the following lists of vendors who have been removed for cause:

- Suspended Vendor List;<sup>57</sup>
- Convicted Vendor List;<sup>58</sup>
- Discriminatory Vendor List;<sup>59</sup>

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<sup>53</sup> In order to register, a vendor must provide the following information: (1) Company Name; (2) Federal Tax ID; (3) Tax Filing Name; (4) Business Location; (5) Commodities and Services Offered; and (5) Certified Business and Enterprise Status. See Department of Management Services (DMS), *Vendor Resources*, available at

[https://www.dms.myflorida.com/business\\_operations/state\\_purchasing/vendor\\_resources](https://www.dms.myflorida.com/business_operations/state_purchasing/vendor_resources) (last visited Feb. 23, 2021).

<sup>54</sup> DMS, *Vendor Resources*, available at

[https://www.dms.myflorida.com/business\\_operations/state\\_purchasing/vendor\\_resources](https://www.dms.myflorida.com/business_operations/state_purchasing/vendor_resources) (last visited Feb. 23, 2021).

<sup>55</sup> *Id.*

<sup>56</sup> Rule 60A-1.006(3)(c), F.A.C., provides that reprocurement costs may include both administrative costs and costs or price increases incurred or to be incurred as a result of the reprocurement.

<sup>57</sup> Rule 60A-1.006(2), F.A.C., (vendors that have been removed for failing to fulfill any of its duties specified in a State contract).

<sup>58</sup> Section 287.133, F.S.

<sup>59</sup> Section 287.134(1)(c), F.S.

- Scrutinized List of Prohibited Companies;<sup>60,61</sup> and
- Vendor Complaint List.<sup>62</sup>

### ***Suspended Vendor List***

The suspended vendor list<sup>63</sup> includes vendors that have been removed from the vendor list for “failing to fulfill any of its duties specified in a contract with the State.”<sup>64</sup> Currently, the DMS has five vendors on the suspended vendor list: (1) Building Maintenance of America, LLC d/b/a Florida Building Maintenance; (2) Club Tex, Inc.; (3) Correctional Consultants; (4) iColor Printing and Mailing, Inc.; and (5) Visual Image Design Firm, LLC.<sup>65</sup>

### ***Convicted Vendor List***

The convicted vendor list comprises the names and addresses of those who have been disqualified from the public contracting and purchasing process due to the conviction of a public entity crime.<sup>66</sup> A vendor who has been placed on the convicted vendor list following a conviction may not submit a bid, proposal, or reply on a contract to provide goods or services to a public entity, and a public entity may not accept any bid, proposal, or reply from, award any contract to, or contract any business with a vendor on the convicted vendor list.<sup>67</sup>

After receiving information that a vendor has been convicted of a public entity crime, the DMS must investigate and determine whether good cause exists to place the vendor on the convicted vendor list. If good cause exists, the DMS must provide written notification to the vendor of its intent to place that vendor on the convicted vendor list and of the vendors’ legal rights. If the vendor does not request an administrative hearing, the DMS must enter a final order placing the vendor on the convicted vendor list.<sup>68</sup>

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<sup>60</sup> Section 287.135, F.S.

<sup>61</sup> There are currently 78 companies on the scrutinized list of prohibited companies. No companies were added to the scrutinized list in the fourth quarter of 2020.

<sup>62</sup> DMS tracks formal complaints issued to vendors by state agencies which is provided to agencies to assist in determining vendor responsibility pursuant to s. 287.057(1-3), F.S. There are currently no vendors on the vendor complaint list. DMS, *Vendor Complaint List*,

[https://www.dms.myflorida.com/business\\_operations/state\\_purchasing/state\\_agency\\_resources/vendor\\_registration\\_and\\_vendor\\_lists/vendor\\_complaint\\_list](https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists/vendor_complaint_list) (last visited Mar. 16, 2021).

<sup>63</sup> DMS, *Vendor Registration and Vendor Lists*,

[https://www.dms.myflorida.com/business\\_operations/state\\_purchasing/state\\_agency\\_resources/vendor\\_registration\\_and\\_vendor\\_lists](https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists) (last visited Feb. 23, 2021).

<sup>64</sup> Section 287.042, F.S.; *See* Rule 60A-10.006, F.A.C.

<sup>65</sup> DMS, *Suspended Vendor List*,

[https://www.dms.myflorida.com/business\\_operations/state\\_purchasing/state\\_agency\\_resources/vendor\\_registration\\_and\\_vendor\\_lists/suspended\\_vendor\\_list](https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists/suspended_vendor_list) (last visited Apr. 2, 2021).

<sup>66</sup> Section 287.133, F.S.; Section 287.133(1)(f), F.S., defines the term “public entity” to mean the State of Florida, any of its departments or agencies, or any political subdivision. Section 287.133(1)(g) defines “public entity crime” to mean a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid, proposal, reply, or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

<sup>67</sup> Section 281.133(2)(b), F.S.

<sup>68</sup> Section 287.133(2)(e), F.S.

A disqualified vendor may petition for removal no sooner than six months after being placed on the convicted vendor list.<sup>69</sup> Since 2016, five vendors have petitioned not to be placed on the convicted vendor list. Currently, there is one vendor on the convicted vendor list, Calixte, Jacques A. (Haitian American Association Against Cancer, Inc.).

### ***Discriminatory Vendor List***

The discriminatory vendor list consists of the names and addresses of any vendor that has been disqualified from the public contracting and purchasing powers due to a violation of any state or federal law prohibiting discrimination on the basis of race, gender, national origin, disability, or religion by an entity under s. 287.134, F.S. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity. The investigative and administrative process for discriminatory vendors is the same as that described above for the convicted vendor list, including the removal process and specified timelines.<sup>70</sup> Currently, there are no vendors on the discriminatory vendor list.

### **Chief Financial Officer and Department of Financial Services**

As provided in the constitution,<sup>71</sup> the CFO is the chief fiscal officer of Florida and is responsible for settling and approving accounts against the state and keeping all state funds and securities.<sup>72</sup> The CFO is a member of the Governor's cabinet,<sup>73</sup> must reside at the seat of government of Florida, and must hold office in a room in the Capitol.<sup>74</sup>

The CFO, using generally accepted auditing procedures for testing or sampling, must examine, audit, and settle all accounts, claims, and demands, whatsoever, against the State, arising under any law or resolution of the Legislature, and issue a warrant directing the payment out of the State Treasury of such amount as he or she allows thereon.<sup>75</sup> The CFO may adopt and disseminate to the agencies procedural and documentation standards for payment requests and may provide training and technical assistance to the agencies for these standards.<sup>76</sup> In addition, the CFO has the legal duty of delivering all state warrants and will be charged with the official responsibility of the protection and security of the state warrants while in his or her custody. The CFO may delegate this authority to other state agencies or officers.<sup>77</sup>

The CFO also serves as the head of the DFS.<sup>78</sup> The DFS consists of the following divisions:

- The Division of Accounting and Auditing.
- The Division of Consumer Services.
- The Division of Funeral, Cemetery, and Consumer Services.

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<sup>69</sup> Section 287.133(2)(f), F.S.

<sup>70</sup> Section 287.134(3)(e), F.S.

<sup>71</sup> FLA. CONST. Art. IV, s.4(c).

<sup>72</sup> Section 17.001, F.S.

<sup>73</sup> FLA. CONST. Art. IV, s.4(a).

<sup>74</sup> Section 17.02, F.S.

<sup>75</sup> Section 17.03(1), F.S.

<sup>76</sup> Section 17.03(3), F.S.

<sup>77</sup> Section 17.03(4), F.S.

<sup>78</sup> Section 20.121, F.S.

- The Division of Insurance Agent and Agency Services.
- The Division of Investigative and Forensic Services.<sup>79</sup>
- The Division of Public Assistance Fraud.
- The Division of Rehabilitation and Liquidation.
- The Division of Risk Management.
- The Division of State Fire Marshal.
- The Division of Treasury.<sup>80</sup>
- The Division of Unclaimed Property.
- The Division of Workers' Compensation.
- The Division of Administration.
- The Office of Insurance Consumer Advocate.

### **Agency Inspectors General**

Section 20.55, F.S., establishes an office of inspector general in each state agency to provide a central point for coordination of and responsibility for activities that promote accountability, integrity, and efficiency in government. It is the duty of each inspector general to:

- Advise in the development of performance measures, standards, and procedures for the evaluation of state agency programs;<sup>81</sup>
- Assess the reliability and validity of the information provided by the state agency on performance measures and standards, and make recommendations for improvement, if necessary, before submission of those measures and standards to the Executive Office of the Governor;<sup>82</sup>
- Review the actions taken by the state agency to improve program performance and meet program standards and make recommendations for improvement, if necessary;<sup>83</sup>
- With specified exception,<sup>84</sup> provide direction for, supervise, and coordinate audits, investigations, and management reviews relating to the programs and operations of the state agency;<sup>85</sup>
- Conduct, supervise, or coordinate other activities carried out or financed by that state agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;<sup>86</sup>

<sup>79</sup> This division functions as a criminal justice agency for purposes of ss. 943.045-943.08. The division may conduct investigations within or outside of this state as it deems necessary. If, during an investigation, the division has reason to believe that any criminal law of this state has or may have been violated, it shall refer any records tending to show such violation to state or federal law enforcement or prosecutorial agencies and shall provide investigative assistance to those agencies as required. The division includes the following bureaus and office: (1) The Bureau of Forensic Services; (2) The Bureau of Fire, Arson and Explosives Investigations; (3) The Office of Fiscal Integrity; (4) The Bureau of Insurance Fraud; and (5) The Bureau of Workers' Compensation Fraud.

<sup>80</sup> This division includes a Bureau of Deferred Compensation responsible for administering the Government Employees Deferred Compensation Plan for state employees.

<sup>81</sup> Section 20.055(2)(a), F.S.

<sup>82</sup> Section 20.055(2)(b), F.S.

<sup>83</sup> Section 20.055(2)(c), F.S.

<sup>84</sup> When the inspector general does not possess the qualifications required by s. 20.055(4), F.S., the director of auditing shall conduct such audits.

<sup>85</sup> Section 20.055(2)(d), F.S.

<sup>86</sup> Section 20.055(2)(e), F.S.

- Keep the agency head or, for state agencies under the jurisdiction of the Governor, the Chief Inspector General informed concerning fraud, abuses, and deficiencies relating to programs and operations administered or financed by the state agency, recommend corrective action concerning fraud, abuses, and deficiencies, and report on the progress made in implementing corrective action;<sup>87</sup>
- Ensure effective coordination and cooperation between the Auditor General, federal auditors, and other governmental bodies with a view toward avoiding duplication;<sup>88</sup>
- Review, as appropriate, rules relating to the programs and operations of such state agency and make recommendations concerning their impact;<sup>89</sup>
- Ensure that an appropriate balance is maintained between audit, investigative, and other accountability activities;<sup>90</sup> and
- Comply with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.<sup>91</sup>

Each inspector general reports to and is under the general supervision of the agency head and is not subject to supervision by any other employee of the state agency.<sup>92</sup> An inspector general may be removed from office by the agency head.<sup>93</sup> The agency head or agency staff may not prevent or prohibit the inspector general from initiating, carrying out, or completing any audit or investigation.<sup>94</sup>

To ensure that state agency audits are performed in accordance with applicable auditing standards, the inspector general or the director of auditing within the inspector general's office must possess qualifications specified by statute.<sup>95</sup> In carrying out the auditing duties and responsibilities of this act, each inspector general must review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency and conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of its findings.<sup>96</sup> Each inspector general must initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government.<sup>97</sup> Except as otherwise provided, each inspector general must, no later than September 30 of each year, prepare an annual report summarizing the activities of the office during the immediately preceding state fiscal year.<sup>98</sup>

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<sup>87</sup> Section 20.055(2)(f), F.S.

<sup>88</sup> Section 20.055(2)(g), F.S.

<sup>89</sup> Section 20.055(2)(h), F.S.

<sup>90</sup> Section 20.055(2)(i), F.S.

<sup>91</sup> Section 20.055(2)(j), F.S.

<sup>92</sup> Section 20.055(3)(b), F.S.

<sup>93</sup> Section 20.055(3)(c), F.S.

<sup>94</sup> Section 20.055(3)(d), F.S.

<sup>95</sup> Section 20.055(4), F.S.

<sup>96</sup> Section 20.055(5), F.S.

<sup>97</sup> Section 20.055(6), F.S.

<sup>98</sup> Section 20.055(7)(a), F.S.

### III. Effect of Proposed Changes:

**Section 1** reenacts s. 216.1366, F.S.,<sup>99</sup> and removes the July 1, 2021, termination date to require each agency contractor services to include authorization for the agency to inspect certain records of the contractor. These records include both financial and programmatic records, papers, and documents of the contractor directly related to the performance of the contract and that are deemed necessary by the agency to monitor the performance of the contract. The contract must require the contractor to provide such records, papers, and documents requested by the agency within 10 business days after the request is made.

**Section 2** amends s. 287.042, F.S., to require the Secretary of Management Services to make a written determination finding a contract to be cost effective and the best value to the state before an agency may be authorized to enter such contract let by the Federal Government, another state, or a political subdivision.

**Section 3** amends s. 287.056, F.S., to require that when an agency issues a request for quote for contractual services for a state term with 25 vendors or fewer, the agency *must* issue a request for quote to *all vendors* approved to provide that contractual service. For any contract with more than 25 vendors, the agency must issue a request for quote to a minimum of 25 vendors approved to provide such contractual services.

This section also provides for the immediate disqualification from state term contract eligibility of a firm or individual who has been placed on the suspended vendor list pursuant to s. 287.1351, F.S., or placed on a disqualified vendor list pursuant to s. 287.133, F.S. (removal based upon public entity crime), or s. 287.134, F.S. (removal based on discriminatory practices).

**Section 4** amends s. 287.057, F.S., to change the electronic posting requirement for single source contracting from seven to 15 days. This section requires agencies to report, on a quarterly basis, to the Department of Management Services (DMS) each instance in which the agency entered into a single source purchase contract. Such report is to be in a manner and form prescribed by the DMS. The DMS is required to report such information to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than January 1, 2022, and each January 1 thereafter.

This section provides that a state agency as defined in s. 287.012, F.S.,<sup>100</sup> may not initiate a competitive solicitation for a product or service if the completion of the competitive solicitation would require a change in law or change to the agency's budget (other than a transfer authorized in law) unless the initiation of the competitive solicitation is specifically authorized in law, in the General Appropriations Act, or by the Legislative Budget Commission.<sup>101</sup> This prohibition does

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<sup>99</sup> Section 106 of ch. 2020-114, Laws of Florida, created s. 216.1366, F.S., in order to implement the appropriation of funds in the special categories, contracted services, and expenses categories of the 2020-2021 General Appropriations Act.

<sup>100</sup> Section 287.012(1), F.S., defines "agency" to mean any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.

<sup>101</sup> This provision has been part of the implementing bill for the General Appropriations Act for the past five years (2020-114(98), 2019-116(106), 2018-10(79), and 2017-71(52)).

not apply to a competitive solicitation when the agency head certifies that a valid emergency exists.

This section amends the provision governing an agency's designation of a contract manager to clarify that the contract manager works as a liaison *between* the contractor *and the agency*, and prohibits a contract manager from having been employed, within the previous five years, by the vendor awarded the contractual services contract that he or she is assigned.

This section sets forth the following primary responsibilities of a contract manager:

- Participating in the solicitation development and review of contract documents;
- Monitoring the contractor's progress and performance to ensure procured products and services conform to the contract requirements and to keep timely records of findings;
- Managing and documenting any changes to the contract through the amendment process authorized by the terms of the contract;
- Monitoring the contract budget to ensure sufficient funds are available throughout the term of the contract; and
- Exercising applicable remedies, as appropriate, when a contractor's performance is deficient.

Current law provides that the Chief Financial Officer (CFO) provide training for accountability in contracts and grant management for a contract manager responsible for contracts in excess of the threshold amount for category two (\$35,000). The bill requires the CFO to evaluate this training every five years.

Current law requires a contract manager responsible for contracts in excess of \$100,000 annually to complete training in contract management and become a certified contract manager. The bill requires this training be completed within six months of a contract manager being assigned responsibility of qualifying contracts. Additionally, the bill requires a contract manager to complete the accountability in contracts and grant management training. The DMS is required to evaluate such training every five years to assess its effectiveness and update the training curriculum.

This section provides that a contract manager responsible for contracts in excess of \$10 million annually must, in addition to the accountability in contracts and grant management training, and the training in contract management and certification, also possess at least five years of experience managing contracts in excess of \$5 million annually.

Current law requires a contract administrator be designated to maintain a contract file and financial information on all contractual services contracts. The bill permits a contract administrator to also serve as the contract manager for contracts less than \$500,000 annually, if he or she has completed the required training. For contracts in excess of \$500,000 annually, the contract administrator is prohibited from serving in both capacities.

The bill specifies that for contracts in excess of \$195,000, the agency head must appoint at least three persons to *independently* evaluate proposals and replies who collectively have experience and knowledge in the program areas and service requirements for the commodity or contractual services sought, and a *negotiation team* of at least three persons is to conduct negotiations during a competitive sealed reply procurement. In addition, a negotiation team for a competitively

procured contract in excess of \$1 million in any fiscal year must include a certified contract negotiator.

Current law provides that for contracts in excess of \$10 million in any fiscal year, at least one person conducting negotiations must be a Project Management Professional. The bill specifies that such Project Management Professional must provide guidance based on his or her experience, education, and competency to lead and direct complex projects.

The bill requires the DMS to establish and disseminate the certification and training requirements for certified contract negotiators. The bill specifies that the training must ensure that certified contract negotiators are knowledgeable about effective negotiation strategies, capable of successfully implementing those strategies, and appropriately involved in the procurement process. The DMS must evaluate such training every five years to assess its effectiveness and update the training curriculum.

A certified contract negotiator is required to complete training every five years for certification renewal. This section specifies that the qualification requirements for certification must include:

- At least 12 months experience as a purchasing agent, contract manager, or contract administrator for an agency or local governmental entity where at least 50 percent of the designated duties included procuring commodities or contractual services, participating in contract negotiation, contract management, or contract administration, or working as an agency attorney whose duties included providing legal counsel to the agency's purchasing or contracting staff.
- Experience during the preceding five years in leading at least two federal, state, or local government negotiation teams through a negotiated procurement, or participation in at least three federal, state, or local government negotiated procurements.

In addition, this section requires any person who supervises certain contract administrators or contract or grant managers to annually complete public procurement training for supervisors within 12 months of appointment to the supervisory position. The DMS is responsible for establishing and disseminating the training course content required for supervisors, and training must commence no later than July 1, 2022.

This section requires a head of an agency to establish a continuing oversight team for each contractual services contract in excess of \$5 million after the award of such contract. The agency head must appoint at least four persons to the continuing oversight team, with one being the certified contract manager. If the value of the contract is in excess of \$10 million, at least one member must possess at least five years of experience in managing contracts of a similar scope or size. If the value of the contractual services contract is in excess of \$20 million, the continuing oversight team must consist of at least five persons, at least one member must be from a state agency other than the agency or agencies participating in the contract. Members of the continuing oversight team must be employees of the state and collectively have experience and knowledge in contract management, contract administration, contract enforcement, and the program areas and service requirements for the contractual services purchased.

For contracts in excess of \$5 million, each continuing oversight team is required to meet at least quarterly. For contracts in excess of \$10 million, each continuing oversight team must meet at

least monthly. A representative of the contractor must be made available to members of the continuing oversight team for at least one meeting every calendar quarter to respond to any questions or requests for information from the continuing oversight team concerning contractor performance.

This section requires that within 30 days after formation of the continuing oversight team, an initial meeting between the continuing oversight team and representatives of the contractor must convene to achieve a mutual understanding of the contract requirements, to provide the contractor with an orientation to the contract management process, and to explain the role of the continuing oversight team, contract manager, and contract administrator.

The continuing oversight team must meet to discuss the status of the contract, the pace of deliverables, the quality of deliverables, contractor responsiveness, and contractor performance. The contract administrator must be present at each meeting with the contract file and all applicable financial information. The continuing oversight team may submit written questions to the contractor concerning any items discussed during a continuing oversight team meeting. The contractor must respond to the team's questions within 10 business days of receiving the written questions. The questions and responses must be included in the contract file.

This section requires the continuing oversight team to provide written notification to:

- The agency head and the DMS of any deficiency in a contractor's performance which substantially affects the pace of deliverables or the likelihood of successful completion of the contract.
- The agency head, the DMS, and the Office of Policy and Budget in the Executive Office of the Governor of any significant change in contract scope and any increase in the cost of the contract that is five percent of the planned contract cost or greater within the fiscal year for contractual service contracts of at least \$5 million.
- The agency head, the DMS, the Office of Policy and Budget in the Executive Office of the Governor, and the legislative appropriations committees of any significant change in contract scope and any increase in the cost of the contract that is five percent of the planned contract cost or greater within the fiscal year for contractual service contracts of \$10 million or greater.

**Section 5** amends s. 287.058, F.S., to prohibit a contract from containing a nondisclosure clause prohibiting a contractor from disclosing information relevant to the performance of the contract to members or staff of the Senate or the House of Representatives.

**Section 6** creates s. 287.1351, F.S., regarding suspended vendors and state contracts. The bill prohibits a vendor that is in default on any contract with an agency or has otherwise repeatedly demonstrated an inability to fulfill the terms and conditions of previous state contracts from submitting a bid, proposal, or reply to an agency or enter into or renew a contract to provide goods or services to an agency after its placement on the suspended vendor list. An agency may not accept a bid, proposal, or reply from, or enter into or renew any contract with, a vendor that is on the suspended vendor list until the vendor has been removed from such list and returned to the vendor list by the DMS. The bill defines the term "vendor" as a person or an entity that provides goods or services to an agency under a contract or submits a bid, proposal, or reply to provide goods or services to an agency.

This section requires an agency to notify the DMS of any vendor that has met the grounds for suspension and must provide documentation to the DMS evidencing the vendor's default or other grounds for suspension. The DMS must review the submitted documentation and decide whether good cause exists to remove the vendor from the vendor list and to place it on the suspended vendor list. The bill requires the DMS to notify the vendor in writing of its intent to remove the vendor from the vendor list and of the vendor's right to an administrative hearing, as well as the applicable procedures and time requirements for any such hearing. A vendor may not be removed from the vendor list without receiving an individual notice of intent from the DMS. If a vendor does not request an administrative hearing, the DMS must enter a final order removing the vendor from the vendor list.

This section provides that, within 21 days after receipt of the notice of intent, a vendor may file with the DMS a petition for a formal hearing to challenge the decision. If a vendor does not file a petition in a timely manner, it is deemed to have waived its right to a hearing and the DMS's decision to remove the vendor from the list becomes final agency action.

This section provides that if a vendor is placed on the suspended vendor list, the vendor may file a petition with the DMS one year or more after entry of the final order of its suspension. A proceeding on the petition must be conducted in accordance with ch. 120, F.S., and an Administrative Law Judge (ALJ) may remove a vendor from the suspended vendor list if the ALJ determines it would be in the public interest. In determining whether removal from the list would be in the public interest, the ALJ may consider whether the suspended vendor has prepared a corrective action plan to address the original grounds for default or failure to fulfill the terms and conditions of the contract, reimbursed the agency for any procurement costs, or provided additional evidence that the vendor has taken other remedial action.

If a petition for removal from the suspended vendor list is denied, the vendor may not petition for another hearing for at least nine months after the date of denial. However, the DMS may petition for the suspended vendor's removal before the expiration period if, in the DMS's discretion, the removal of the vendor from the suspended list would be in the public's interest.

**Section 7** amends s. 287.136, F.S., to require, beginning October 1, 2021, and every three years thereafter, each agency inspector general to complete a risk-based compliance audit of all contract documents executed by the agency for the preceding three fiscal years. The audit must include an evaluation of and identify any trend in vendor preference. The audit findings must be submitted to the agency head, the Secretary of Management Services, and the Governor.

**Sections 8, 9, 10, 11, 12, 13, 14, 15, and 16** amends ss. 43.16, 215.971, 287.0571, 295.187, 394.47865, 402.7305, 408.045, 570.07, and 627.351, F.S., respectively, to make conforming changes.

**Section 17** provides that the bill takes effect July 1, 2021.

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

Not applicable. This bill does not 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, nor reduce the percentage of state tax shared with counties or municipalities.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

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

None.

**B. Private Sector Impact:**

A private firm or individual may experience an indeterminate fiscal impact if such party is disqualified from state term contract eligibility upon removal from the vendor list as specified within the bill.

**C. Government Sector Impact:**

The bill will have an indeterminate negative fiscal impact on state government expenditures related to additional workload for:

- Additional contract performance reporting before executing a contract renewal or amendment due to lowering the reporting threshold;
- A potential increase in the number of vendors responding to RFQs for contractual services; and
- Expanding contract monitoring through continuing oversight teams and by requiring an agency inspector general to perform additional contract auditing.

The Department of Management Services (DMS) will incur additional costs related to workload for establishing and disseminating certification and training requirements for certified contract negotiators, for performing training evaluations every five years, and for maintain and administering the suspended vendor list.

Additionally, the six-month time limitation imposed on training for a contract manager responsible for contracts in excess of \$100,000 annually will likely require the DMS to expend additional resources to ensure timely training.

The Department of Financial Services may also incur nominal additional costs associated with specified training evaluation every five years.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 43.16, 215.971, 216.1366, 287.042, 287.056, 287.057, 287.0571, 287.058, 287.136, 295.187, 394.47865, 402.7305, 408.045, 570.07, and 627.351.

This bill creates the following section of the Florida Statutes: 287.1351.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Recommended CS/CS by Appropriations Subcommittee on Agriculture, Environment, and General Government on April 8, 2021:**

The committee substitute:

- Revises the requirements related to requests for quotes for contractual services available on state term contract. Specifically, the CS provides that if there are 25 or fewer approved vendors on the state term contract, then the agency must issue a request for quote to all approved vendors. If there are more than 25 approved vendors, then the agency must issue the request for quote to at least 25 of the approved vendors on the state term contract.
- Increases certain contract thresholds that trigger certain oversight by the continuing oversight team.
- Includes a statutory reference to the definition of “agency”.

**CS by Governmental Oversight and Accountability on March 24, 2021:**

The CS:

- Adds language to reenact s. 216.1366, F.S., and remove the July 1, 2021, termination date, to require each agency contract for services to include authorization for the agency to inspect certain records of the contractor.
- Adds the requirement prohibiting an agency from initiating a competitive solicitation that would require a change in law or change to the agency's budget, unless specifically authorized.
- Revises the requirement that an agency issuing a request for quote for commodities or contractual services issue the request to *all* approved vendors to require a request for quote issued for *contractual services* be issued to all approved vendors if there are fewer than 100 approved vendors and to at least 100 of the approved vendors when there are more than 100 approved vendors.
- Adds the requirement that Department of Management Services (DMS) to report certain single source contract information received by agencies to the Governor and Legislature by a specified date.
- Removes the requirement that a contract manager who is responsible for contracts in excess of \$10 million annually be a Project Management Professional and instead requires such person to meet certain experience thresholds.
- Increases the threshold for when a contract administrator may also serve as a contract manager from a contract value of \$250,000 to a contract value of \$500,000.
- Specifies that for contracts in excess of \$195,000 that the evaluation is performed *independently*, and removes language regarding an evaluation *team*.
- Revises the experience requirements for qualification for certification as a contract negotiator, to require experience during the preceding five years in leading at least two, instead of three, federal, state, or local government negotiation teams through a negotiated procurement, or participation in at least three, instead of five, federal, state, or local government-negotiated procurements.
- Adds the requirement that supervisors of contract administrators or contract or grant managers must complete training within a specified period.
- Alters the membership requirements meeting requirements for the continuing oversight team (e.g., requires one member be the *certified* contract manager, rather than the contract manager; and removes the requirement that for contracts over \$5 million that one member must be a Project Management Professional and instead imposes an experience threshold).
- Provides more specificity for the notice requirements for the continuing oversight team.
- Adds the requirement that a contract may not contain a nondisclosure clause exempting certain information.
- Adds new language addressing the process for suspending vendors and provides that vendors who are in default on any contract with an agency or has otherwise repeatedly demonstrated an inability to fulfill the terms and conditions of previous state contracts is disqualified from bidding on or renewing a contract with the state.
- Adds language providing a mechanism whereby a vendor placed on the suspended vendor list may petition for removal.
- Revises the requirement that each agency inspector general complete a compliance audit of all contracts executed by the agency every three years to completing a risk based compliance audit of all contracts executed by the agency.

- Makes conforming changes.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2021	.	
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Appropriations Subcommittee on Agriculture, Environment, and  
General Government (Brodeur) recommended the following:

**Senate Amendment**

Delete lines 135 - 143  
and insert:  
that provided in the state term contract is available. If  
an agency issues a request for quote for contractual services  
for any contract with 25 vendors or fewer, the agency must issue  
a request for quote to all vendors approved to provide such  
contractual services. For any contract with more than 25  
vendors, the agency must issue a request for quote to a minimum



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11 of 25 vendors approved to provide such contractual services. Use  
12 of a request for quote does not constitute a decision or  
13 intended decision that is subject to protest under s. 120.57(3).



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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/08/2021	.	
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Appropriations Subcommittee on Agriculture, Environment, and  
General Government (Brodeur) recommended the following:

**Senate Amendment**

Delete lines 183 - 364  
and insert:

(4) A state agency as defined in s. 287.012 may not  
initiate a competitive solicitation for a product or service if  
the completion of such competitive solicitation would:

(a) Require a change in law; or

(b) Require a change to the agency's budget other than a  
transfer authorized in s. 216.292(2) or (3), unless the



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11 initiation of such competitive solicitation is specifically  
12 authorized in law, in the General Appropriations Act, or by the  
13 Legislative Budget Commission.

14 (c) This subsection does not apply to a competitive  
15 solicitation for which the agency head certifies that a valid  
16 emergency exists.

17 (14) ~~(13)~~ Contracts for commodities or contractual services  
18 may be renewed for a period that may not exceed 3 years or the  
19 term of the original contract, whichever is longer. Renewal of a  
20 contract for commodities or contractual services must be in  
21 writing and is subject to the same terms and conditions set  
22 forth in the initial contract and any written amendments signed  
23 by the parties. If the commodity or contractual service is  
24 purchased as a result of the solicitation of bids, proposals, or  
25 replies, the price of the commodity or contractual service to be  
26 renewed must be specified in the bid, proposal, or reply, except  
27 that an agency may negotiate lower pricing. A renewal contract  
28 may not include any compensation for costs associated with the  
29 renewal. Renewals are contingent upon satisfactory performance  
30 evaluations by the agency and subject to the availability of  
31 funds. Exceptional purchase contracts pursuant to paragraphs  
32 (3)(a) and (c) may not be renewed. With the exception of  
33 subsection (11) ~~(10)~~, if a contract amendment results in a  
34 longer contract term or increased payments, a state agency may  
35 not renew or amend a contract for the outsourcing of a service  
36 or activity that has an original term value exceeding \$5 ~~\$10~~  
37 million before submitting a written report concerning contract  
38 performance to the Governor, the President of the Senate, and  
39 the Speaker of the House of Representatives at least 90 days



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before execution of the renewal or amendment.

(15) (a) ~~(14)~~ For each contractual services contract, the agency shall designate an employee to function as contract manager who is responsible for enforcing performance of the contract terms and conditions and serve as a liaison between with the contractor and the agency. The contract manager may not be an individual who has been employed, within the previous 5 years, by the vendor awarded the contractual services contract. The primary responsibilities of a contract manager include, but are not limited to:

1. Participating in the solicitation development and review of contract documents.

2. Monitoring the contractor's progress and performance to ensure procured products and services conform to the contract requirements and keeping timely records of findings.

3. Managing and documenting any changes to the contract through the amendment process authorized by the terms of the contract.

4. Monitoring the contract budget to ensure sufficient funds are available throughout the term of the contract.

5. Exercising applicable remedies, as appropriate, when a contractor's performance is deficient.

(b) ~~(a)~~ Each contract manager who is responsible for contracts in excess of the threshold amount for CATEGORY TWO must, at a minimum, complete training conducted by the Chief Financial Officer for accountability in contracts and grant management. The Chief Financial Officer shall evaluate such training every 5 years to assess its effectiveness and update the training curriculum. The Chief Financial Officer shall



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69 establish and disseminate uniform procedures pursuant to s.  
70 17.03(3) to ensure that contractual services have been rendered  
71 in accordance with the contract terms before the agency  
72 processes the invoice for payment. The procedures must include,  
73 but need not be limited to, procedures for monitoring and  
74 documenting contractor performance, reviewing and documenting  
75 all deliverables for which payment is requested by vendors, and  
76 providing written certification by contract managers of the  
77 agency's receipt of goods and services.

78 (c) ~~(b)~~ Each contract manager who is responsible for  
79 contracts in excess of \$100,000 annually must, in addition to  
80 the accountability in contracts and grant management training  
81 required in paragraph (b) and within 6 months after being  
82 assigned responsibility for such contracts, complete training in  
83 contract management and become a certified contract manager. The  
84 department is responsible for establishing and disseminating the  
85 training and certification requirements for certified contract  
86 managers. Training must promote best practices and procedures  
87 related to negotiating, managing, and ensuring accountability in  
88 agency contracts and grant agreements, which must include the  
89 use of case studies based upon previous audits, contracts, and  
90 grant agreements. A certified contract manager must complete  
91 training every 5 years for certification renewal requirements  
92 for certification which include completing the training  
93 conducted by the Chief Financial Officer for accountability in  
94 contracts and grant management. Training and certification must  
95 be coordinated by the department, and the training must be  
96 conducted jointly by the department and the Department of  
97 Financial Services. The department shall evaluate such training



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every 5 years to assess its effectiveness and update the training curriculum ~~Training must promote best practices and procedures related to negotiating, managing, and ensuring accountability in agency contracts and grant agreements, which must include the use of case studies based upon previous audits, contracts, and grant agreements. All agency contract managers must become certified within 24 months after establishment of the training and certification requirements by the department and the Department of Financial Services.~~

(d) Each contract manager who is responsible for contracts in excess of \$10 million annually must, in addition to the training required in paragraph (b) and the training and certification required in paragraph (c), possess at least 5 years of experience managing contracts in excess of \$5 million annually.

(16) (15) Each agency shall designate at least one employee who shall serve as a contract administrator responsible for maintaining a contract file and financial information on all contractual services contracts and who shall serve as a liaison with the contract managers and the department. For a contract of \$500,000 or less annually, the contract administrator may also serve as the contract manager if he or she has completed the required training. For a contract in excess of \$500,000 annually, the contract administrator may not serve as both the contract administrator and the contract manager.

(17) (a) (16) (a) For a contract in excess of the threshold amount provided in s. 287.017 for CATEGORY FOUR, the agency head shall appoint:

1. At least three persons to independently evaluate



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proposals and replies who collectively have experience and knowledge in the program areas and service requirements for the commodity ~~which commodities~~ or contractual services ~~are~~ sought.

2. At least three persons to a negotiation team to conduct negotiations during a competitive sealed reply procurement. The negotiation team members must ~~who~~ collectively have experience and knowledge in negotiating contracts, contract procurement, and the program areas and service requirements for the commodity ~~which commodities~~ or contractual services ~~are~~ sought.

(b) 1. If the value of a contract is in excess of \$1 million in any fiscal year, at least one of the persons conducting negotiations must be ~~certified as a~~ certified contract negotiator ~~based upon department rules in order to ensure that certified contract negotiators are knowledgeable about effective negotiation strategies, capable of successfully implementing those strategies, and involved appropriately in the procurement process. At a minimum, the rules must address the qualifications required for certification, the method of certification, and the procedure for involving the certified negotiator.~~

2. If the value of a contract is in excess of \$10 million in any fiscal year, at least one of the persons conducting negotiations must be a Project Management Professional, as certified by the Project Management Institute. The Project Management Professional shall provide guidance based on his or her experience, education, and competency to lead and direct complex projects.

3. The department is responsible for establishing and disseminating the certification and training requirements for certified contract negotiators. Training must ensure that



215548

certified contract negotiators are knowledgeable about effective negotiation strategies, capable of successfully implementing those strategies, and involved appropriately in the procurement process. The department shall evaluate such training every 5 years in order to assess its effectiveness and update the training curriculum. A certified contract negotiator is required to complete training every 5 years for certification renewal.

Qualification requirements for certification must include:

a. At least 12 months' experience as a purchasing agent, contract manager, or contract administrator for an agency or a local governmental entity where at least 50 percent of the designated duties included procuring commodities or contractual services; participating in contract negotiation, contract management, or contract administration; or working as an agency attorney whose duties included providing legal counsel to the agency's purchasing or contracting staff; and

b. Experience during the preceding 5 years in leading at least two federal, state, or local government negotiation teams through a negotiated procurement, or participation in at least three federal, state, or local government-negotiated procurements.

(18) Any person who supervises contract administrators or contract or grant managers who meet criteria for certification in subsection (15) shall annually complete public procurement training for supervisors within 12 months after appointment to the supervisory position. The department is responsible for establishing and disseminating the training course content required for supervisors, and training shall commence no later than July 1, 2022.



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185       (26) (a) For each contractual services contract in excess of  
186 \$1 million, the agency head of an agency as defined in s.  
187 287.012 shall establish a continuing



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2021	.	
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Appropriations Subcommittee on Agriculture, Environment, and  
General Government (Brodeur) recommended the following:

**Senate Substitute for Amendment (215548)**

Delete lines 183 - 383

and insert:

(4) A state agency as defined in s. 287.012 may not  
initiate a competitive solicitation for a product or service if  
the completion of such competitive solicitation would:

(a) Require a change in law; or

(b) Require a change to the agency's budget other than a  
transfer authorized in s. 216.292(2) or (3), unless the



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11 initiation of such competitive solicitation is specifically  
12 authorized in law, in the General Appropriations Act, or by the  
13 Legislative Budget Commission.

14 (c) This subsection does not apply to a competitive  
15 solicitation for which the agency head certifies that a valid  
16 emergency exists.

17 (14) ~~(13)~~ Contracts for commodities or contractual services  
18 may be renewed for a period that may not exceed 3 years or the  
19 term of the original contract, whichever is longer. Renewal of a  
20 contract for commodities or contractual services must be in  
21 writing and is subject to the same terms and conditions set  
22 forth in the initial contract and any written amendments signed  
23 by the parties. If the commodity or contractual service is  
24 purchased as a result of the solicitation of bids, proposals, or  
25 replies, the price of the commodity or contractual service to be  
26 renewed must be specified in the bid, proposal, or reply, except  
27 that an agency may negotiate lower pricing. A renewal contract  
28 may not include any compensation for costs associated with the  
29 renewal. Renewals are contingent upon satisfactory performance  
30 evaluations by the agency and subject to the availability of  
31 funds. Exceptional purchase contracts pursuant to paragraphs  
32 (3)(a) and (c) may not be renewed. With the exception of  
33 subsection (11) ~~(10)~~, if a contract amendment results in a  
34 longer contract term or increased payments, a state agency may  
35 not renew or amend a contract for the outsourcing of a service  
36 or activity that has an original term value exceeding \$5 ~~\$10~~  
37 million before submitting a written report concerning contract  
38 performance to the Governor, the President of the Senate, and  
39 the Speaker of the House of Representatives at least 90 days



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before execution of the renewal or amendment.

(15) (a) ~~(14)~~ For each contractual services contract, the agency shall designate an employee to function as contract manager who is responsible for enforcing performance of the contract terms and conditions and serve as a liaison between with the contractor and the agency. The contract manager may not be an individual who has been employed, within the previous 5 years, by the vendor awarded the contractual services contract. The primary responsibilities of a contract manager include, but are not limited to:

1. Participating in the solicitation development and review of contract documents.

2. Monitoring the contractor's progress and performance to ensure procured products and services conform to the contract requirements and keeping timely records of findings.

3. Managing and documenting any changes to the contract through the amendment process authorized by the terms of the contract.

4. Monitoring the contract budget to ensure sufficient funds are available throughout the term of the contract.

5. Exercising applicable remedies, as appropriate, when a contractor's performance is deficient.

(b) ~~(a)~~ Each contract manager who is responsible for contracts in excess of the threshold amount for CATEGORY TWO must, at a minimum, complete training conducted by the Chief Financial Officer for accountability in contracts and grant management. The Chief Financial Officer shall evaluate such training every 5 years to assess its effectiveness and update the training curriculum. The Chief Financial Officer shall



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69 establish and disseminate uniform procedures pursuant to s.  
70 17.03(3) to ensure that contractual services have been rendered  
71 in accordance with the contract terms before the agency  
72 processes the invoice for payment. The procedures must include,  
73 but need not be limited to, procedures for monitoring and  
74 documenting contractor performance, reviewing and documenting  
75 all deliverables for which payment is requested by vendors, and  
76 providing written certification by contract managers of the  
77 agency's receipt of goods and services.

78 (c) ~~(b)~~ Each contract manager who is responsible for  
79 contracts in excess of \$100,000 annually must, in addition to  
80 the accountability in contracts and grant management training  
81 required in paragraph (b) and within 6 months after being  
82 assigned responsibility for such contracts, complete training in  
83 contract management and become a certified contract manager. The  
84 department is responsible for establishing and disseminating the  
85 training and certification requirements for certified contract  
86 managers. Training must promote best practices and procedures  
87 related to negotiating, managing, and ensuring accountability in  
88 agency contracts and grant agreements, which must include the  
89 use of case studies based upon previous audits, contracts, and  
90 grant agreements. A certified contract manager must complete  
91 training every 5 years for certification renewal requirements  
92 for certification which include completing the training  
93 conducted by the Chief Financial Officer for accountability in  
94 contracts and grant management. Training and certification must  
95 be coordinated by the department, and the training must be  
96 conducted jointly by the department and the Department of  
97 Financial Services. The department shall evaluate such training



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every 5 years to assess its effectiveness and update the training curriculum ~~Training must promote best practices and procedures related to negotiating, managing, and ensuring accountability in agency contracts and grant agreements, which must include the use of case studies based upon previous audits, contracts, and grant agreements. All agency contract managers must become certified within 24 months after establishment of the training and certification requirements by the department and the Department of Financial Services.~~

(d) Each contract manager who is responsible for contracts in excess of \$10 million annually must, in addition to the training required in paragraph (b) and the training and certification required in paragraph (c), possess at least 5 years of experience managing contracts in excess of \$5 million annually.

(16) (15) Each agency shall designate at least one employee who shall serve as a contract administrator responsible for maintaining a contract file and financial information on all contractual services contracts and who shall serve as a liaison with the contract managers and the department. For a contract of \$500,000 or less annually, the contract administrator may also serve as the contract manager if he or she has completed the required training. For a contract in excess of \$500,000 annually, the contract administrator may not serve as both the contract administrator and the contract manager.

(17) (a) (16) (a) For a contract in excess of the threshold amount provided in s. 287.017 for CATEGORY FOUR, the agency head shall appoint:

1. At least three persons to independently evaluate



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proposals and replies who collectively have experience and knowledge in the program areas and service requirements for the commodity ~~which commodities~~ or contractual services ~~are~~ sought.

2. At least three persons to a negotiation team to conduct negotiations during a competitive sealed reply procurement. The negotiation team members must ~~who~~ collectively have experience and knowledge in negotiating contracts, contract procurement, and the program areas and service requirements for the commodity ~~which commodities~~ or contractual services ~~are~~ sought.

(b) 1. If the value of a contract is in excess of \$1 million in any fiscal year, at least one of the persons conducting negotiations must be ~~certified as a~~ certified contract negotiator ~~based upon department rules in order to ensure that certified contract negotiators are knowledgeable about effective negotiation strategies, capable of successfully implementing those strategies, and involved appropriately in the procurement process. At a minimum, the rules must address the qualifications required for certification, the method of certification, and the procedure for involving the certified negotiator.~~

2. If the value of a contract is in excess of \$10 million in any fiscal year, at least one of the persons conducting negotiations must be a Project Management Professional, as certified by the Project Management Institute. The Project Management Professional shall provide guidance based on his or her experience, education, and competency to lead and direct complex projects.

3. The department is responsible for establishing and disseminating the certification and training requirements for certified contract negotiators. Training must ensure that



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certified contract negotiators are knowledgeable about effective negotiation strategies, capable of successfully implementing those strategies, and involved appropriately in the procurement process. The department shall evaluate such training every 5 years in order to assess its effectiveness and update the training curriculum. A certified contract negotiator is required to complete training every 5 years for certification renewal.

Qualification requirements for certification must include:

a. At least 12 months' experience as a purchasing agent, contract manager, or contract administrator for an agency or a local governmental entity where at least 50 percent of the designated duties included procuring commodities or contractual services; participating in contract negotiation, contract management, or contract administration; or working as an agency attorney whose duties included providing legal counsel to the agency's purchasing or contracting staff; and

b. Experience during the preceding 5 years in leading at least two federal, state, or local government negotiation teams through a negotiated procurement, or participation in at least three federal, state, or local government-negotiated procurements.

(18) Any person who supervises contract administrators or contract or grant managers who meet criteria for certification in subsection (15) shall annually complete public procurement training for supervisors within 12 months after appointment to the supervisory position. The department is responsible for establishing and disseminating the training course content required for supervisors, and training shall commence no later than July 1, 2022.



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(26) (a) For each contractual services contract in excess of \$5 million, the agency head of an agency as defined in s. 287.012 shall establish a continuing oversight team after the contract has been awarded. The agency head shall appoint at least four persons, one of whom must be the certified contract manager, to the continuing oversight team. If the value of the contractual services contract is in excess of \$10 million, at least one of the persons on the continuing oversight team must possess at least 5 years of experience in managing contracts of a similar scope or size. If the value of the contractual services contract is in excess of \$20 million, the continuing oversight team must consist of at least five persons, and at least one of the persons on the continuing oversight team must be from a state agency other than the agency or agencies participating in the contract. Members of the continuing oversight team must be employees of the state and must collectively have experience and knowledge in contract management, contract administration, contract enforcement, and the program areas and service requirements for the contractual services purchased.

(b)1. For contracts in excess of \$5 million, each continuing oversight team must meet at least quarterly.



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/08/2021	.	
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Appropriations Subcommittee on Agriculture, Environment, and  
General Government (Brodeur) recommended the following:

**Senate Amendment**

Delete lines 363 - 383  
and insert:

(26) (a) For each contractual services contract in excess of  
\$5 million, the agency head shall establish a continuing  
oversight team after the contract has been awarded. The agency  
head shall appoint at least four persons, one of whom must be  
the certified contract manager, to the continuing oversight  
team. If the value of the contractual services contract is in



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excess of \$10 million, at least one of the persons on the  
continuing oversight team must possess at least 5 years of  
experience in managing contracts of a similar scope or size. If  
the value of the contractual services contract is in excess of  
\$20 million, the continuing oversight team shall consist of at  
least five persons, at least one of the persons on the  
continuing oversight team must be from a state agency other than  
the agency or agencies participating in the contract. Members of  
the continuing oversight team must be employees of the state and  
must collectively have experience and knowledge in contract  
management, contract administration, contract enforcement, and  
the program areas and service requirements for the contractual  
services purchased.

(b)1. For contracts in excess of \$5 million, each  
continuing oversight team must meet at least quarterly.

By the Committee on Governmental Oversight and Accountability;  
and Senator Brodeur

585-03332-21

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1 A bill to be entitled  
2 An act relating to agency contracts for commodities  
3 and contractual services; reenacting and amending s.  
4 216.1366, F.S.; abrogating the scheduled expiration of  
5 provisions relating to certain public agency contracts  
6 for services; amending s. 287.042, F.S.; providing  
7 that the Department of Management Services may enter  
8 into an agreement authorizing an agency to make  
9 purchases under certain contracts if the Secretary of  
10 Management Services makes a certain determination;  
11 amending s. 287.056, F.S.; providing that an agency  
12 must issue a request for quote to certain approved  
13 vendors when it issues certain requests for quote for  
14 contractual services; providing for the  
15 disqualification of certain firms or individuals from  
16 state term contract eligibility; amending s. 287.057,  
17 F.S.; revising the period of time during which an  
18 agency must electronically post a description of  
19 certain services in certain circumstances; requiring  
20 an agency to periodically report certain actions to  
21 the department in a specified manner and form;  
22 requiring the department to annually report certain  
23 information to the Governor and the Legislature by a  
24 specified date; prohibiting an agency from initiating  
25 a competitive solicitation in certain circumstances;  
26 providing applicability; revising the maximum value of  
27 certain contracts that may not be renewed or amended  
28 by state agency before submitting a written report to  
29 the Governor and the Legislature; requiring the agency

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 to designate a contract manager to serve as a liaison  
31 between the contractor and the agency; prohibiting  
32 certain individuals from serving as a contract  
33 manager; providing the responsibilities of a contract  
34 manager; requiring the Chief Financial Officer to  
35 evaluate certain training at certain intervals;  
36 requiring that certain contract managers complete  
37 training and certification within a specified  
38 timeframe; requiring the department to establish and  
39 disseminate certain training and certification  
40 requirements; requiring the department to evaluate  
41 certain training at certain intervals; requiring  
42 certain contract managers to possess certain  
43 experience in managing contracts; authorizing a  
44 contract administrator to also serve as a contract  
45 manager in certain circumstances; providing that  
46 evaluations of proposals and replies must be conducted  
47 independently; providing for specified teams to  
48 conduct certain negotiations; requiring a Project  
49 Management Professional to provide guidance based on  
50 certain qualifications; providing qualification  
51 requirements for contract negotiator certification;  
52 requiring supervisors of contract administrators or  
53 contract and grant managers meeting certain criteria  
54 to complete training within a specified period;  
55 providing that the department is responsible for  
56 establishing and disseminating supervisor training by  
57 a certain date; providing for a continuing oversight  
58 team in certain circumstances; providing requirements

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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59 for continuing oversight team members and meetings;  
 60 requiring a continuing oversight team to provide  
 61 notice of certain deficiencies and changes in contract  
 62 scope to certain entities; amending s. 287.058, F.S.;  
 63 prohibiting a contract document for certain  
 64 contractual services from containing a certain  
 65 nondisclosure clause; creating s. 287.1351, F.S.;  
 66 defining the term "vendor"; prohibiting certain  
 67 vendors from submitting bids, proposals, or replies  
 68 to, or entering into or renewing any contract with, an  
 69 agency; prohibiting an agency from accepting a bid,  
 70 proposal, or reply from, or entering into a contract  
 71 with, a suspended vendor until certain conditions are  
 72 met; requiring an agency to notify the department of,  
 73 and provide certain information regarding, any such  
 74 vendors; requiring the department to review any vendor  
 75 reported by an agency; requiring the department to  
 76 notify a vendor of any intended removal from the  
 77 vendor list; specifying administrative remedies and  
 78 applicable procedures for an affected vendor;  
 79 requiring the department to place certain vendors on  
 80 the suspended vendor list; authorizing the removal of  
 81 a suspended vendor from the suspended vendor list in  
 82 accordance with specified procedures; specifying  
 83 requirements and limitations; amending s. 287.136,  
 84 F.S.; requiring each agency inspector general to  
 85 complete certain audits of executed contracts at  
 86 certain intervals; amending ss. 43.16, 215.971,  
 87 287.0571, 295.187, 394.47865, 402.7305, 408.045,

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88 570.07, and 627.351, F.S.; conforming cross-references  
 89 to changes made by the act; providing an effective  
 90 date.

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

94 Section 1. Notwithstanding the expiration date in section  
 95 106 of chapter 2020-114, Laws of Florida, section 216.1366,  
 96 Florida Statutes, is reenacted and amended to read:  
 97 216.1366 Contract terms.—

98 (1) In order to preserve the interest of the state in the  
 99 prudent expenditure of state funds, each public agency contract  
 100 for services entered into or amended on or after July 1, 2020,  
 101 shall authorize the public agency to inspect the:

102 (a) Financial records, papers, and documents of the  
 103 contractor that are directly related to the performance of the  
 104 contract or the expenditure of state funds.

105 (b) Programmatic records, papers, and documents of the  
 106 contractor which the public agency determines are necessary to  
 107 monitor the performance of the contract or to ensure that the  
 108 terms of the contract are being met.

109 (2) The contract shall require the contractor to provide  
 110 such records, papers, and documents requested by the public  
 111 agency within 10 business days after the request is made.

112 ~~(3) This section expires July 1, 2021.~~

113 Section 2. Subsection (16) of section 287.042, Florida  
 114 Statutes, is amended to read:

115 287.042 Powers, duties, and functions.—The department shall  
 116 have the following powers, duties, and functions:

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(16) To evaluate contracts let by the Federal Government, another state, or a political subdivision for the provision of commodities and contract services, and, if it is determined by the Secretary of Management Services in writing to be cost-effective and ~~in the best value to interest of~~ the state, to enter into a written agreement authorizing an agency to make purchases under such contract.

Section 3. Subsection (2) of section 287.056, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

287.056 Purchases from purchasing agreements and state term contracts.—

(2) Agencies and eligible users may use a request for quote to obtain written pricing or services information from a state term contract vendor for commodities or contractual services available on state term contract from that vendor. The purpose of a request for quote is to determine whether a price, term, or condition more favorable to the agency or eligible user than that provided in the state term contract is available. If an agency issues a request for quote for contractual services for any contract with 100 vendors or fewer, the agency must issue a request for quote to all vendors approved to provide such contractual services. For any contract with more than 100 vendors, the agency must issue a request for quote to a minimum of 100 vendors approved to provide such contractual services.

Use of a request for quote does not constitute a decision or intended decision that is subject to protest under s. 120.57(3).

(4) A firm or individual placed on the suspended vendor list pursuant to s. 287.1351 or placed on a disqualified vendor

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list pursuant to s. 287.133 or s. 287.134 is immediately disqualified from state term contract eligibility.

Section 4. Present subsections (4) through (16) and (17) through (23) of section 287.057, Florida Statutes, are redesignated as subsections (5) through (17) and (19) through (25), respectively, new subsections (4) and (18) and subsection (26) are added to that section, and paragraph (c) of subsection (3) and present subsections (13) through (16) of that section are amended, to read:

287.057 Procurement of commodities or contractual services.—

(3) If the purchase price of commodities or contractual services exceeds the threshold amount provided in s. 287.017 for CATEGORY TWO, purchase of commodities or contractual services may not be made without receiving competitive sealed bids, competitive sealed proposals, or competitive sealed replies unless:

(c) Commodities or contractual services available only from a single source may be excepted from the competitive-solicitation requirements. If an agency believes that commodities or contractual services are available only from a single source, the agency shall electronically post a description of the commodities or contractual services sought for at least 15 7 business days. The description must include a request that prospective vendors provide information regarding their ability to supply the commodities or contractual services described. If it is determined in writing by the agency, after reviewing any information received from prospective vendors that the commodities or contractual services are available only from

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a single source, the agency shall provide notice of its intended decision to enter a single-source purchase contract in the manner specified in s. 120.57(3). Each agency shall report all such actions to the department on a quarterly basis in a manner and form prescribed by the department, and the department shall report such information to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than January 1, 2022, and each January 1 thereafter.

(4) A state agency may not initiate a competitive solicitation for a product or service if the completion of such competitive solicitation would:

(a) Require a change in law; or

(b) Require a change to the agency's budget other than a transfer authorized in s. 216.292(2) or (3), unless the initiation of such competitive solicitation is specifically authorized in law, in the General Appropriations Act, or by the Legislative Budget Commission.

(c) This subsection does not apply to a competitive solicitation for which the agency head certifies that a valid emergency exists.

(14)-(13) Contracts for commodities or contractual services may be renewed for a period that may not exceed 3 years or the term of the original contract, whichever is longer. Renewal of a contract for commodities or contractual services must be in writing and is subject to the same terms and conditions set forth in the initial contract and any written amendments signed by the parties. If the commodity or contractual service is purchased as a result of the solicitation of bids, proposals, or replies, the price of the commodity or contractual service to be

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renewed must be specified in the bid, proposal, or reply, except that an agency may negotiate lower pricing. A renewal contract may not include any compensation for costs associated with the renewal. Renewals are contingent upon satisfactory performance evaluations by the agency and subject to the availability of funds. Exceptional purchase contracts pursuant to paragraphs (3) (a) and (c) may not be renewed. With the exception of subsection (11) (10), if a contract amendment results in a longer contract term or increased payments, a state agency may not renew or amend a contract for the outsourcing of a service or activity that has an original term value exceeding \$5 \$10 million before submitting a written report concerning contract performance to the Governor, the President of the Senate, and the Speaker of the House of Representatives at least 90 days before execution of the renewal or amendment.

(15) (a)-(14) For each contractual services contract, the agency shall designate an employee to function as contract manager who is responsible for enforcing performance of the contract terms and conditions and serve as a liaison between with the contractor and the agency. The contract manager may not be an individual who has been employed, within the previous 5 years, by the vendor awarded the contractual services contract. The primary responsibilities of a contract manager include, but are not limited to:

1. Participating in the solicitation development and review of contract documents.

2. Monitoring the contractor's progress and performance to ensure procured products and services conform to the contract requirements and keeping timely records of findings.

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233 3. Managing and documenting any changes to the contract  
 234 through the amendment process authorized by the terms of the  
 235 contract.

236 4. Monitoring the contract budget to ensure sufficient  
 237 funds are available throughout the term of the contract.

238 5. Exercising applicable remedies, as appropriate, when a  
 239 contractor's performance is deficient.

240 (b)-(a) Each contract manager who is responsible for  
 241 contracts in excess of the threshold amount for CATEGORY TWO  
 242 must, at a minimum, complete training conducted by the Chief  
 243 Financial Officer for accountability in contracts and grant  
 244 management. The Chief Financial Officer shall evaluate such  
 245 training every 5 years to assess its effectiveness and update  
 246 the training curriculum. The Chief Financial Officer shall  
 247 establish and disseminate uniform procedures pursuant to s.  
 248 17.03(3) to ensure that contractual services have been rendered  
 249 in accordance with the contract terms before the agency  
 250 processes the invoice for payment. The procedures must include,  
 251 but need not be limited to, procedures for monitoring and  
 252 documenting contractor performance, reviewing and documenting  
 253 all deliverables for which payment is requested by vendors, and  
 254 providing written certification by contract managers of the  
 255 agency's receipt of goods and services.

256 (c)-(b) Each contract manager who is responsible for  
 257 contracts in excess of \$100,000 annually must, in addition to  
 258 the accountability in contracts and grant management training  
 259 required in paragraph (b) and within 6 months after being  
 260 assigned responsibility for such contracts, complete training in  
 261 contract management and become a certified contract manager. The

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262 department is responsible for establishing and disseminating the  
 263 training and certification requirements for certified contract  
 264 managers. Training must promote best practices and procedures  
 265 related to negotiating, managing, and ensuring accountability in  
 266 agency contracts and grant agreements, which must include the  
 267 use of case studies based upon previous audits, contracts, and  
 268 grant agreements. A certified contract manager must complete  
 269 training every 5 years for certification renewal requirements  
 270 ~~for certification which include completing the training~~  
 271 ~~conducted by the Chief Financial Officer for accountability in~~  
 272 ~~contracts and grant management. Training and certification must~~  
 273 ~~be coordinated by the department, and the training must be~~  
 274 ~~conducted jointly by the department and the Department of~~  
 275 ~~Financial Services. The department shall evaluate such training~~  
 276 every 5 years to assess its effectiveness and update the  
 277 training curriculum ~~Training must promote best practices and~~  
 278 ~~procedures related to negotiating, managing, and ensuring~~  
 279 ~~accountability in agency contracts and grant agreements, which~~  
 280 ~~must include the use of case studies based upon previous audits,~~  
 281 ~~contracts, and grant agreements. All agency contract managers~~  
 282 ~~must become certified within 24 months after establishment of~~  
 283 ~~the training and certification requirements by the department~~  
 284 ~~and the Department of Financial Services.~~

285 (d) Each contract manager who is responsible for contracts  
 286 in excess of \$10 million annually must, in addition to the  
 287 training required in paragraph (b) and the training and  
 288 certification required in paragraph (c), possess at least 5  
 289 years of experience managing contracts in excess of \$5 million  
 290 annually.

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(16)(15) Each agency shall designate at least one employee who shall serve as a contract administrator responsible for maintaining a contract file and financial information on all contractual services contracts and who shall serve as a liaison with the contract managers and the department. For a contract of \$500,000 or less annually, the contract administrator may also serve as the contract manager if he or she has completed the required training. For a contract in excess of \$500,000 annually, the contract administrator may not serve as both the contract administrator and the contract manager.

(17) (a) (16) (a) For a contract in excess of the threshold amount provided in s. 287.017 for CATEGORY FOUR, the agency head shall appoint:

1. At least three persons to independently evaluate proposals and replies who collectively have experience and knowledge in the program areas and service requirements for the commodity ~~which commodities~~ or contractual services ~~are~~ sought.

2. At least three persons to a negotiation team to conduct negotiations during a competitive sealed reply procurement. The negotiation team members must ~~who~~ collectively have experience and knowledge in negotiating contracts, contract procurement, and the program areas and service requirements for the commodity ~~which commodities~~ or contractual services ~~are~~ sought.

(b) 1. If the value of a contract is in excess of \$1 million in any fiscal year, at least one of the persons conducting negotiations must be certified as a certified contract ~~negotiator based upon department rules in order to ensure that certified contract negotiators are knowledgeable about effective negotiation strategies, capable of successfully implementing~~

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~~these strategies, and involved appropriately in the procurement process. At a minimum, the rules must address the qualifications required for certification, the method of certification, and the procedure for involving the certified negotiator.~~

2. If the value of a contract is in excess of \$10 million in any fiscal year, at least one of the persons conducting negotiations must be a Project Management Professional, as certified by the Project Management Institute. The Project Management Professional shall provide guidance based on his or her experience, education, and competency to lead and direct complex projects.

3. The department is responsible for establishing and disseminating the certification and training requirements for certified contract negotiators. Training must ensure that certified contract negotiators are knowledgeable about effective negotiation strategies, capable of successfully implementing those strategies, and involved appropriately in the procurement process. The department shall evaluate such training every 5 years in order to assess its effectiveness and update the training curriculum. A certified contract negotiator is required to complete training every 5 years for certification renewal. Qualification requirements for certification must include:

a. At least 12 months' experience as a purchasing agent, contract manager, or contract administrator for an agency or a local governmental entity where at least 50 percent of the designated duties included procuring commodities or contractual services; participating in contract negotiation, contract management, or contract administration; or working as an agency attorney whose duties included providing legal counsel to the

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agency's purchasing or contracting staff; and

b. Experience during the preceding 5 years in leading at least two federal, state, or local government negotiation teams through a negotiated procurement, or participation in at least three federal, state, or local government-negotiated procurements.

(18) Any person who supervises contract administrators or contract or grant managers who meet criteria for certification in subsection (15) shall annually complete public procurement training for supervisors within 12 months after appointment to the supervisory position. The department is responsible for establishing and disseminating the training course content required for supervisors, and training shall commence no later than July 1, 2022.

(26)(a) For each contractual services contract in excess of \$1 million, the agency head shall establish a continuing oversight team after the contract has been awarded. The agency head shall appoint at least four persons, one of whom must be the certified contract manager, to the continuing oversight team. If the value of the contractual services contract is in excess of \$5 million, at least one of the persons on the continuing oversight team must possess at least 5 years of experience in managing contracts of a similar scope or size. If the value of the contractual services contract is in excess of \$20 million, the continuing oversight team shall consist of at least five persons, at least one of the persons on the continuing oversight team must be from a state agency other than the agency or agencies participating in the contract. Members of the continuing oversight team must be employees of the state and

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must collectively have experience and knowledge in contract management, contract administration, contract enforcement, and the program areas and service requirements for the contractual services purchased.

(b)1. For contracts in excess of \$1 million, each continuing oversight team must meet at least quarterly.

2. For contracts in excess of \$10 million, each continuing oversight team must meet at least monthly. A representative of the contractor must be made available to members of the continuing oversight team for at least one meeting every calendar quarter to respond to any questions or requests for information from the continuing oversight team concerning contractor performance.

(c)1. Within 30 days after the formation of the continuing oversight team, the continuing oversight team must convene an initial meeting with representatives of the contractor to achieve a mutual understanding of the contract requirements, to provide the contractor with an orientation to the contract management process, and to provide an explanation of the role of the continuing oversight team, contract manager, and contract administrator.

2. The continuing oversight team must meet to discuss the status of the contract, the pace of deliverables, the quality of deliverables, contractor responsiveness, and contractor performance. The contract administrator must be present at each meeting with the contract file and all applicable financial information. The continuing oversight team may submit written questions to the contractor concerning any items discussed during a continuing oversight team meeting. The contractor must

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respond to the team's questions within 10 business days after receiving the written questions. The questions and responses must be included in the contract file.

(d) The continuing oversight team must notify, in writing:

1. The agency head and the department of any deficiency in a contractor's performance which substantially affects the pace of deliverables or the likelihood of the successful completion of the contract.

2. The agency head, the department, and the Office of Policy and Budget in the Executive Office of the Governor of any significant change in contract scope or any increase in the cost of the contract which is 5 percent of the planned contract cost or greater within the fiscal year for contractual service contracts of at least \$5 million.

3. The agency head, the department, the Office of Policy and Budget in the Executive Office of the Governor, and the legislative appropriations committees of any significant change in contract scope or any increase in the cost of the contract which is 5 percent of the planned contract cost or greater within the fiscal year for contractual service contracts of \$10 million or greater.

Section 5. Subsection (7) is added to section 287.058, Florida Statutes, to read:

287.058 Contract document.—

(7) A contract may not contain a nondisclosure clause that prohibits the contractor from disclosing information relevant to the performance of the contract to members or staff of the Senate or the House of Representatives.

Section 6. Section 287.1351, Florida Statutes, is created

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to read:

287.1351 Suspended vendors; state contracts.—

(1) As used in this section, the term "vendor" means a person or an entity that provides goods or services to an agency under a contract or submits a bid, proposal, or reply to provide goods or services to an agency.

(2)(a) A vendor that is in default on any contract with an agency or has otherwise repeatedly demonstrated a recent inability to fulfill the terms and conditions of previous state contracts or to adequately perform its duties under those contracts may not submit a bid, proposal, or reply to an agency or enter into or renew a contract to provide any goods or services to an agency after its placement, pursuant to this section, on the suspended vendor list.

(b) An agency may not accept a bid, proposal, or reply from, or enter into or renew any contract with, a vendor on the suspended vendor list until such vendor has been removed from the suspended vendor list and returned to the vendor list maintained by the department pursuant to s. 287.042(1)(a) and (b) and the vendor has reimbursed the agency for any reprocurement costs.

(3) An agency shall notify the department of any vendor that has met the grounds for suspension described in paragraph (2)(a). The agency must provide documentation to the department evidencing the vendor's default or other grounds for suspension. The department shall review the documentation provided and determine whether good cause exists to remove the vendor from the vendor list and to place it on the suspended vendor list. If good cause exists, the department must notify the vendor in

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writing of its intent to remove the vendor from the vendor list and of the vendor's right to an administrative hearing and the applicable procedures and time requirements for any such hearing. If the vendor does not request an administrative hearing, the department must enter a final order removing the vendor from the vendor list. A vendor may not be removed from the vendor list without receiving an individual notice of intent from the department.

(4) Within 21 days after receipt of the notice of intent, the vendor may file with the department a petition for a formal hearing pursuant to ss. 120.569 and 120.57 to challenge the department's decision to remove the vendor from the vendor list. A vendor that fails to timely file a petition in accordance with this subsection is deemed to have waived its right to a hearing, and the department's decision to remove the vendor from the vendor list becomes final agency action.

(5) (a) The department shall place any vendor removed from the vendor list pursuant to this section on the suspended vendor list. One year or more after entry of the final order of its suspension, a suspended vendor may file a petition with the department for removal from the suspended vendor list. The proceeding on the petition must be conducted in accordance with chapter 120. The vendor may be removed from the suspended vendor list if the administrative law judge determines that removal from the list would be in the public interest. In determining whether removal from the list would be in the public interest, the administrative law judge may consider, but is not limited to, whether the suspended vendor has prepared a corrective action plan that addresses the original grounds for default or

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failure to fulfill the terms and conditions of the contract, reimbursed the agency for any reprourement costs, or provided additional evidence that the vendor has taken other remedial action.

(b) If a petition for removal from the suspended vendor list is denied, the vendor may not petition for another hearing on removal for a period of at least 9 months after the date of the denial. The department may petition for the suspended vendor's removal before the expiration of such period if, in the department's discretion, the department determines that removal from the suspended vendor list would be in the public interest.

Section 7. Section 287.136, Florida Statutes, is amended to read:

287.136 Audit of executed contract documents.—

(1) After execution of a contract, the Chief Financial Officer shall perform audits of the executed contract document and contract manager's records to ensure that adequate internal controls are in place for complying with the terms and conditions of the contract and for the validation and receipt of goods and services.

(a) ~~(1)~~ At the conclusion of the audit, the Chief Financial Officer's designee shall discuss the audit and potential findings with the official whose office is subject to audit. The final audit report shall be submitted to the agency head.

(b) ~~(2)~~ Within 30 days after receipt of the final audit report, the agency head shall submit to the Chief Financial Officer or designee his or her written statement of explanation or rebuttal concerning findings requiring corrective action, including corrective action to be taken to preclude a

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recurrence.

(2) Beginning October 1, 2021, and every 3 years thereafter, each agency inspector general shall complete a risk-based compliance audit of all contracts executed by the agency for the preceding 3 fiscal years. The audit must include an evaluation of and identify any trend in vendor preference. The audit findings must be submitted to the agency head, the secretary of the Department of Management Services, and the Governor.

Section 8. Subsection (1) of section 43.16, Florida Statutes, is amended to read:

43.16 Justice Administrative Commission; membership, powers and duties.—

(1) There is hereby created a Justice Administrative Commission, with headquarters located in the state capital. The necessary office space for use of the commission shall be furnished by the proper state agency in charge of state buildings. For purposes of the fees imposed on agencies pursuant to s. 287.057(24) ~~s. 287.057(22)~~, the Justice Administrative Commission shall be exempt from such fees.

Section 9. Paragraph (a) of subsection (2) of section 215.971, Florida Statutes, is amended to read:

215.971 Agreements funded with federal or state assistance.—

(2) For each agreement funded with federal or state financial assistance, the state agency shall designate an employee to function as a grant manager who shall be responsible for enforcing performance of the agreement's terms and conditions and who shall serve as a liaison with the recipient

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or subrecipient.

(a)1. Each grant manager who is responsible for agreements in excess of the threshold amount for CATEGORY TWO under s. 287.017 must, at a minimum, complete training conducted by the Chief Financial Officer for accountability in contracts and grant management.

2. Effective December 1, 2014, each grant manager responsible for agreements in excess of \$100,000 annually must complete the training and become a certified contract manager as provided under s. 287.057(15) ~~s. 287.057(14)~~. All grant managers must become certified contract managers within 24 months after establishment of the training and certification requirements by the Department of Management Services and the Department of Financial Services.

Section 10. Paragraph (a) of subsection (3) of section 287.0571, Florida Statutes, is amended to read:

287.0571 Business case to outsource; applicability.—

(3) This section does not apply to:

(a) A procurement of commodities and contractual services listed in s. 287.057(3) (d) and (e) and (23) ~~(24)~~.

Section 11. Paragraph (b) of subsection (4) of section 295.187, Florida Statutes, is amended to read:

295.187 Florida Veteran Business Enterprise Opportunity Act.—

(4) VENDOR PREFERENCE.—

(b) Notwithstanding s. 287.057(12) ~~s. 287.057(11)~~, if a veteran business enterprise entitled to the vendor preference under this section and one or more businesses entitled to this preference or another vendor preference provided by law submit

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581 bids, proposals, or replies for procurement of commodities or  
 582 contractual services which are equal with respect to all  
 583 relevant considerations, including price, quality, and service,  
 584 the state agency shall award the procurement or contract to the  
 585 business having the smallest net worth.

586 Section 12. Paragraph (a) of subsection (1) of section  
 587 394.47865, Florida Statutes, is amended to read:

588 394.47865 South Florida State Hospital; privatization.—

589 (1) The Department of Children and Families shall, through  
 590 a request for proposals, privatize South Florida State Hospital.  
 591 The department shall plan to begin implementation of this  
 592 privatization initiative by July 1, 1998.

593 (a) Notwithstanding s. 287.057(14) ~~s. 287.057(13)~~, the  
 594 department may enter into agreements, not to exceed 20 years,  
 595 with a private provider, a coalition of providers, or another  
 596 agency to finance, design, and construct a treatment facility  
 597 having up to 350 beds and to operate all aspects of daily  
 598 operations within the facility. The department may subcontract  
 599 any or all components of this procurement to a statutorily  
 600 established state governmental entity that has successfully  
 601 contracted with private companies for designing, financing,  
 602 acquiring, leasing, constructing, and operating major privatized  
 603 state facilities.

604 Section 13. Paragraph (b) of subsection (2) and subsection  
 605 (3) of section 402.7305, Florida Statutes, are amended to read:

606 402.7305 Department of Children and Families; procurement  
 607 of contractual services; contract management.—

608 (2) PROCUREMENT OF COMMODITIES AND CONTRACTUAL SERVICES.—

609 (b) When it is in the best interest of a defined segment of

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610 its consumer population, the department may competitively  
 611 procure and contract for systems of treatment or service that  
 612 involve multiple providers, rather than procuring and  
 613 contracting for treatment or services separately from each  
 614 participating provider. The department must ensure that all  
 615 providers that participate in the treatment or service system  
 616 meet all applicable statutory, regulatory, service quality, and  
 617 cost control requirements. If other governmental entities or  
 618 units of special purpose government contribute matching funds to  
 619 the support of a given system of treatment or service, the  
 620 department shall formally request information from those funding  
 621 entities in the procurement process and may take the information  
 622 received into account in the selection process. If a local  
 623 government contributes matching funds to support the system of  
 624 treatment or contracted service and if the match constitutes at  
 625 least 25 percent of the value of the contract, the department  
 626 shall afford the governmental match contributor an opportunity  
 627 to name an employee as one of the persons required by s.  
 628 287.057(17) ~~s. 287.057(16)~~ to evaluate or negotiate certain  
 629 contracts, unless the department sets forth in writing the  
 630 reason why the inclusion would be contrary to the best interest  
 631 of the state. Any employee so named by the governmental match  
 632 contributor shall qualify as one of the persons required by s.  
 633 287.057(17) ~~s. 287.057(16)~~. A governmental entity or unit of  
 634 special purpose government may not name an employee as one of  
 635 the persons required by s. 287.057(17) ~~s. 287.057(16)~~ if it, or  
 636 any of its political subdivisions, executive agencies, or  
 637 special districts, intends to compete for the contract to be  
 638 awarded. The governmental funding entity or contributor of

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639 matching funds must comply with all procurement procedures set  
640 forth in s. 287.057 when appropriate and required.

641 (3) CONTRACT MANAGEMENT REQUIREMENTS AND PROCESS.—The  
642 Department of Children and Families shall review the time period  
643 for which the department executes contracts and shall execute  
644 multiyear contracts to make the most efficient use of the  
645 resources devoted to contract processing and execution. Whenever  
646 the department chooses not to use a multiyear contract, a  
647 justification for that decision must be contained in the  
648 contract. Notwithstanding s. 287.057(15) ~~s. 287.057(14)~~, the  
649 department is responsible for establishing a contract management  
650 process that requires a member of the department's Senior  
651 Management or Selected Exempt Service to assign in writing the  
652 responsibility of a contract to a contract manager. The  
653 department shall maintain a set of procedures describing its  
654 contract management process which must minimally include the  
655 following requirements:

656 (a) The contract manager shall maintain the official  
657 contract file throughout the duration of the contract and for a  
658 period not less than 6 years after the termination of the  
659 contract.

660 (b) The contract manager shall review all invoices for  
661 compliance with the criteria and payment schedule provided for  
662 in the contract and shall approve payment of all invoices before  
663 their transmission to the Department of Financial Services for  
664 payment.

665 (c) The contract manager shall maintain a schedule of  
666 payments and total amounts disbursed and shall periodically  
667 reconcile the records with the state's official accounting

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668 records.

669 (d) For contracts involving the provision of direct client  
670 services, the contract manager shall periodically visit the  
671 physical location where the services are delivered and speak  
672 directly to clients receiving the services and the staff  
673 responsible for delivering the services.

674 (e) The contract manager shall meet at least once a month  
675 directly with the contractor's representative and maintain  
676 records of such meetings.

677 (f) The contract manager shall periodically document any  
678 differences between the required performance measures and the  
679 actual performance measures. If a contractor fails to meet and  
680 comply with the performance measures established in the  
681 contract, the department may allow a reasonable period for the  
682 contractor to correct performance deficiencies. If performance  
683 deficiencies are not resolved to the satisfaction of the  
684 department within the prescribed time, and if no extenuating  
685 circumstances can be documented by the contractor to the  
686 department's satisfaction, the department must terminate the  
687 contract. The department may not enter into a new contract with  
688 that same contractor for the services for which the contract was  
689 previously terminated for a period of at least 24 months after  
690 the date of termination. The contract manager shall obtain and  
691 enforce corrective action plans, if appropriate, and maintain  
692 records regarding the completion or failure to complete  
693 corrective action items.

694 (g) The contract manager shall document any contract  
695 modifications, which shall include recording any contract  
696 amendments as provided for in this section.

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697 (h) The contract manager shall be properly trained before  
698 being assigned responsibility for any contract.

699 Section 14. Subsection (2) of section 408.045, Florida  
700 Statutes, is amended to read:

701 408.045 Certificate of need; competitive sealed proposals.—

702 (2) The agency shall make a decision regarding the issuance  
703 of the certificate of need in accordance with the provisions of  
704 s. 287.057(17) ~~s. 287.057(16)~~, rules adopted by the agency  
705 relating to intermediate care facilities for the developmentally  
706 disabled, and the criteria in s. 408.035, as further defined by  
707 rule.

708 Section 15. Subsection (42) of section 570.07, Florida  
709 Statutes, is amended to read:

710 570.07 Department of Agriculture and Consumer Services;  
711 functions, powers, and duties.—The department shall have and  
712 exercise the following functions, powers, and duties:

713 (42) Notwithstanding the provisions of s. 287.057(24) ~~s.~~  
714 ~~287.057(22)~~ that require all agencies to use the online  
715 procurement system developed by the Department of Management  
716 Services, the department may continue to use its own online  
717 system. However, vendors utilizing such system shall be  
718 prequalified as meeting mandatory requirements and  
719 qualifications and shall remit fees pursuant to s. 287.057(24)  
720 ~~s. 287.057(22)~~, and any rules implementing s. 287.057.

721 Section 16. Paragraph (e) of subsection (6) of section  
722 627.351, Florida Statutes, is amended to read:

723 627.351 Insurance risk apportionment plans.—

724 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

725 (e) The corporation is subject to s. 287.057 for the

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726 purchase of commodities and contractual services except as  
727 otherwise provided in this paragraph. Services provided by  
728 tradepersons or technical experts to assist a licensed adjuster  
729 in the evaluation of individual claims are not subject to the  
730 procurement requirements of this section. Additionally, the  
731 procurement of financial services providers and underwriters  
732 must be made pursuant to s. 627.3513. Contracts for goods or  
733 services valued at or more than \$100,000 are subject to approval  
734 by the board.

735 1. The corporation is an agency for purposes of s. 287.057,  
736 except that, for purposes of s. 287.057(24) ~~s. 287.057(22)~~, the  
737 corporation is an eligible user.

738 a. The authority of the Department of Management Services  
739 and the Chief Financial Officer under s. 287.057 extends to the  
740 corporation as if the corporation were an agency.

741 b. The executive director of the corporation is the agency  
742 head under s. 287.057, except for resolution of bid protests for  
743 which the board would serve as the agency head.

744 2. The corporation must provide notice of a decision or  
745 intended decision concerning a solicitation, contract award, or  
746 exceptional purchase by electronic posting. Such notice must  
747 contain the following statement: "Failure to file a protest  
748 within the time prescribed in this section constitutes a waiver  
749 of proceedings."

750 a. A person adversely affected by the corporation's  
751 decision or intended decision to award a contract pursuant to s.  
752 287.057(1) or (3)(c) who elects to challenge the decision must  
753 file a written notice of protest with the executive director of  
754 the corporation within 72 hours after the corporation posts a

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notice of its decision or intended decision. For a protest of the terms, conditions, and specifications contained in a solicitation, including provisions governing the methods for ranking bids, proposals, replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest must be filed in writing within 72 hours after posting the solicitation. Saturdays, Sundays, and state holidays are excluded in the computation of the 72-hour time period.

b. A formal written protest must be filed within 10 days after the date the notice of protest is filed. The formal written protest must state with particularity the facts and law upon which the protest is based. Upon receipt of a formal written protest that has been timely filed, the corporation must stop the solicitation or contract award process until the subject of the protest is resolved by final board action unless the executive director sets forth in writing particular facts and circumstances that require the continuance of the solicitation or contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.

(I) The corporation must provide an opportunity to resolve the protest by mutual agreement between the parties within 7 business days after receipt of the formal written protest.

(II) If the subject of a protest is not resolved by mutual agreement within 7 business days, the corporation's board must transmit the protest to the Division of Administrative Hearings and contract with the division to conduct a hearing to determine the merits of the protest and to issue a recommended order. The

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contract must provide for the corporation to reimburse the division for any costs incurred by the division for court reporters, transcript preparation, travel, facility rental, and other customary hearing costs in the manner set forth in s. 120.65(9). The division has jurisdiction to determine the facts and law concerning the protest and to issue a recommended order. The division's rules and procedures apply to these proceedings; the division's applicable bond requirements do not apply. The protest must be heard by the division at a publicly noticed meeting in accordance with procedures established by the division.

c. In a protest of an invitation-to-bid or request-for-proposals procurement, submissions made after the bid or proposal opening which amend or supplement the bid or proposal may not be considered. In protesting an invitation-to-negotiate procurement, submissions made after the corporation announces its intent to award a contract, reject all replies, or withdraw the solicitation that amends or supplements the reply may not be considered. Unless otherwise provided by law, the burden of proof rests with the party protesting the corporation's action. In a competitive-procurement protest, other than a rejection of all bids, proposals, or replies, the administrative law judge must conduct a de novo proceeding to determine whether the corporation's proposed action is contrary to the corporation's governing statutes, the corporation's rules or policies, or the solicitation specifications. The standard of proof for the proceeding is whether the corporation's action was clearly erroneous, contrary to competition, arbitrary, or capricious. In any bid-protest proceeding contesting an intended corporation

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813 action to reject all bids, proposals, or replies, the standard  
814 of review by the board is whether the corporation's intended  
815 action is illegal, arbitrary, dishonest, or fraudulent.

816 d. Failure to file a notice of protest or failure to file a  
817 formal written protest constitutes a waiver of proceedings.

818 3. The board, acting as agency head, shall consider the  
819 recommended order of an administrative law judge in a public  
820 meeting and take final action on the protest. Any further legal  
821 remedy lies with the First District Court of Appeal.

822 Section 17. This act shall take effect July 1, 2021.



The Florida Senate

## Committee Agenda Request

**To:** Senator Ben Albritton, Chair  
Appropriations Subcommittee on Agriculture, Environment, and General Government

**Subject:** Committee Agenda Request

**Date:** March 24, 2021

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I respectfully request that **Senate Bill 1616**, relating to **Agency Contracts for Commodities and Contractual Services**, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in black ink that reads "Jason Brodeur".

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Senator Jason Brodeur  
Florida Senate, District 9

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Agriculture, Environment, and General Government

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BILL: PCS/SB 7060 (574708)

INTRODUCER: Appropriations Subcommittee on Agriculture, Environment, and General Government;  
and Environment and Natural Resources Committee

SUBJECT: Biosolids

DATE: April 12, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Anderson	Rogers		<b>EN Submitted as Committee Bill</b>
1.	Reagan	Betta	AEG	<b>Recommend: Fav/CS</b>
2.			AP	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/SB 7060 ratifies the Department of Environmental Protection's (DEP's) revisions to their biosolids rules, chapter 62-640 of the Florida Administrative Code. The bill exempts the rules from review and approval by the Environmental Regulation Commission.

Chapter 2020-150, Laws of Florida, required the DEP to adopt rules for biosolids management and included provisions that the rule must:

- Require a new land application site permit or permit renewal issued after July 1, 2020, to:
  - Ensure a minimum unsaturated soil depth of two feet between the depth of biosolids placement and the water table level at the time biosolids are applied to the soil;
  - Prohibit applying biosolids to land with a seasonal high water table within six inches of the soil surface or depth of biosolids placement unless a department-approved nutrient management plan and water quality monitoring plan provide reasonable assurances that the land application of biosolids at the site will not cause or contribute to a violation of the state's surface water quality standards or groundwater standards; and
  - Require biosolids sites to enroll in a Department of Agriculture and Consumer Services Best Management Practices program;
- Require all permits to comply with these requirements by July 1, 2022; and
- Require biosolids sites to comply with the DEP's new rule within two years of the effective date of the rule.

The Statement of Estimated Regulatory Costs (SERC) developed by the DEP determined that the proposed rule will likely increase regulatory costs in excess of \$1 million in the aggregate within five years after implementation of the rule. This amount triggers the statutory requirement for the rule to be ratified by the Legislature before it may go into effect.

The bill provides a declaratory statement and determination by the Legislature that the rule ratification fulfills an important state interest.

The act is effective upon becoming a law. At that time, the rule also becomes effective.

The bill will have an indeterminate negative fiscal impact on the DEP due to increased inspections and monitoring of application sites.

## **II. Present Situation:**

### **Legislative Ratification**

A rule is subject to legislative ratification if it:

- Has an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within five years after the implementation of the rule;
- Has an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within five years after the implementation of the rule; or
- Increases regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within five years after the implementation of the rule.<sup>1</sup>

If a rule requires ratification by the Legislature, the rule must be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days prior to the regular legislative session. The rule may not go into effect until it is ratified by the Legislature.<sup>2</sup>

### ***Statement of Estimated Regulatory Costs Requirements***

A statement of estimated regulatory costs (SERC) is an analysis prepared by an agency before the adoption, amendment, or repeal of a rule other than an emergency rule. A SERC must be prepared by an agency for a proposed rule that:

- Will have an adverse impact on small business; or
- Is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in the state within one year after the implementation of the rule.<sup>3</sup>

A SERC must include:

- An economic analysis showing whether the rule exceeds the thresholds requiring legislative ratification;

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<sup>1</sup> Section 120.541(2)(a), F.S.

<sup>2</sup> Section 120.541(3), F.S.

<sup>3</sup> Section 120.54(3)(b)1., F.S.

- A good faith estimate of the number and types of individuals and entities likely to be required to comply with the rule, and a general description of the types of individuals likely to be affected by the rule;
- A good faith estimate of the cost to the agency, and to other state and local government entities, of implementing and enforcing the proposed rule, including anticipated effects on state or local revenues;
- A good faith estimate of the transactional costs (direct business costs) likely to be incurred by individuals and entities required to comply with the requirements of the rule;
- An analysis of the impact on small businesses, small counties, and small cities; and
- A description of regulatory alternatives submitted to the agency and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.<sup>4</sup>

## Biosolids

When domestic wastewater is treated, a solid, semisolid, or liquid byproduct, known as biosolids,<sup>5</sup> accumulates in the wastewater treatment plant and must be removed periodically to keep the plant operating properly.<sup>6</sup> Biosolids also include products and treated material from biosolids treatment facilities and septage management facilities regulated by the Department of Environmental Protection (DEP).<sup>7</sup> The collected material is high in organic content and contains moderate amounts of nutrients that are needed by plants.<sup>8</sup>

The DEP has stated that wastewater treatment facilities produce about 340,000 dry tons of biosolids each year.<sup>9</sup> Biosolids can be disposed of in several ways: transfer to another facility, placement in a landfill, distribution and marketing as fertilizer, incineration, bioenergy, and land application to pasture or agricultural lands.<sup>10</sup> About one-third of the total amount of biosolids produced is used for land application<sup>11</sup> and is subject to regulatory requirements established by the DEP to protect public health and the environment.<sup>12</sup>

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<sup>4</sup> Section 120.541(2), F.S.

<sup>5</sup> Section 373.4595, F.S.; *see also* Fla. Admin. Code R. 62-640.200(6). Biosolids are the solid, semisolid, or liquid residue generated during the treatment of domestic wastewater in a domestic wastewater treatment facility and include products and treated material from biosolids treatment facilities and septage management facilities. The term does not include the treated effluent or reclaimed water from a domestic wastewater treatment facility, solids removed from pump stations and lift stations, screenings and grit removed from the preliminary treatment components of domestic wastewater treatment facilities, or ash generated during the incineration of biosolids.

<sup>6</sup> Department of Environmental Protection (DEP), *Domestic Wastewater Biosolids*, <https://floridadep.gov/water/domestic-wastewater/content/domestic-wastewater-biosolids> (last visited Mar. 5, 2021).

<sup>7</sup> Fla. Admin. Code R. 62-640.200(6).

<sup>8</sup> DEP, *Domestic Wastewater Biosolids*, <https://floridadep.gov/water/domestic-wastewater/content/domestic-wastewater-biosolids> (last visited Mar. 5, 2021).

<sup>9</sup> DEP, *Presentation to Senate Committee on Environment and Natural Resources*, 40-62 (Nov. 13, 2019) available at [http://www.flsenate.gov/Committees/Show/EN/MeetingPacket/4733/8393\\_MeetingPacket\\_4733.13.19.pdf](http://www.flsenate.gov/Committees/Show/EN/MeetingPacket/4733/8393_MeetingPacket_4733.13.19.pdf) (last visited Mar. 5, 2021); DEP Technical Advisory Committee, *Biosolids Use and Regulations in Florida Presentation*, 5 (Sept. 2018), available at <https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf> (last visited Mar. 5, 2021).

<sup>10</sup> *Id.* at 4.

<sup>11</sup> *Id.* at 5.

<sup>12</sup> Fla. Admin. Code R. 62-640.

Biosolids may be used by land application in farming and ranching operations, forest lands, and public areas such as parks, or in land reclamation projects such as restoration of mining properties. Biosolids contain macronutrients (such as nitrogen and phosphorus) and micronutrients (such as copper, iron, and manganese) that are utilized by crops. The application of nutrient-rich biosolids increases the organic content of the soil, fostering more productive plant growth.<sup>13</sup> There are approximately 140 permitted land application sites in Florida, with waste haulers being the most common site permittees.<sup>14</sup> The map below shows the permitted sites.



Typically, Class B biosolids are used in land application.<sup>15</sup> The highest quality of biosolids, known in Florida as “Class AA,” are distributed and marketed like other commercial fertilizers. The DEP does not track the sale of commercial fertilizers.

Biosolids are regulated under chapter 62-640 of the Florida Administrative Code. The rules provide minimum requirements, including pollutant limits and monitoring and reporting requirements, for the treatment, management, use, and disposal of biosolids. The rules are applicable to wastewater treatment facilities, applicators, and distributors<sup>16</sup> and include permit requirements for both treatment facilities and biosolids application sites.<sup>17</sup>

<sup>13</sup> *Id.* at 20.

<sup>14</sup> DEP, *Presentation to Senate Committee on Environment and Natural Resources*, 40-62 (Nov. 13, 2019) available at [http://www.flsenate.gov/Committees/Show/EN/MeetingPacket/4733/8393\\_MeetingPacket\\_4733.13.19.pdf](http://www.flsenate.gov/Committees/Show/EN/MeetingPacket/4733/8393_MeetingPacket_4733.13.19.pdf) (last visited Mar. 5, 2021); DEP Technical Advisory Committee, *Biosolids Use and Regulations in Florida Presentation*, 20 (Sept. 2018), available at <https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf> (last visited Mar. 5, 2021). Wastewater treatment facilities commonly contract with waste haulers instead of applying the biosolids themselves.

<sup>15</sup> *Id.* at 6.

<sup>16</sup> Fla. Admin. Code R. 62-640.100.

<sup>17</sup> Fla. Admin. Code R. 62-640.300.

The application of Class A and Class B biosolids is banned in South Florida within the Lake Okeechobee, Caloosahatchee River, and St. Lucie River watersheds unless the applicant can affirmatively demonstrate that the nutrients in the biosolids will not add to nutrient loadings in the watershed.<sup>18</sup> However, other communities have expressed concerns that runoff from farms and ranches that use biosolids can lead to toxic blue-green algae blooms and have sought bans locally.<sup>19</sup>

### **Rule 62-640, Florida Administrative Code**

In 2018, the DEP created a Biosolids Technical Advisory Committee (TAC) to evaluate current biosolids management practices and explore opportunities to better protect Florida's water resources. The TAC convened four times in 2018 and 2019 and discussed current options for biosolids management in the state, potential improvements in biosolids management to protect our water resources, and looked at what research is necessary for successful improvements.<sup>20</sup> The DEP issued its first draft rule in October 2019 after the TAC disbanded, but withdrew the rule following the passage of the Clean Waterways Act.<sup>21</sup>

### ***The Clean Waterways Act (Ch. 2020-150, Laws of Florida)***

The Clean Waterways Act required the DEP to adopt rules for biosolids management and specified that any rules adopted may not take effect until ratified by the Legislature.

Section 403.0855, F.S., includes provisions that the rule must:

- Require a new land application site permit or permit renewal issued after July 1, 2020, to:
  - Ensure a minimum unsaturated soil depth of two feet between the depth of biosolids placement and the water table level at the time biosolids are applied to the soil;
  - Prohibit applying biosolids to land with a seasonal high water table<sup>22</sup> within six inches of the soil surface or depth of biosolids placement unless a department-approved nutrient management plan and water quality monitoring plan provide reasonable assurances that the land application of biosolids at the site will not cause or contribute to a violation of the state's surface water quality standards or groundwater standards; and
  - Require biosolids sites to enroll in a Department of Agriculture and Consumer Services (DACS) Best Management Practices program;
- Require all permits to comply with these requirements by July 1, 2022; and
- Require biosolids sites to comply with the DEP's new rule within two years of the effective date of the rule.

<sup>18</sup> Section 373.4595, F.S.

<sup>19</sup> TCPalm, *Ban biosolids use along upper St. Johns River, Indian River County administrator tells DEP*, <https://www.tcpalm.com/story/news/local/indian-river-lagoon/health/2019/06/27/ban-biosolids-use-along-upper-st-johns-river-irc-official-tells-dep/1581585001/> (last visited Mar. 6, 2021). Local bans on the land application of biosolids have been established in Indian River County and the City of Fellsmere. See Indian River County Commission Ordinance 18-2642 (Jan. 14, 2019), available at [http://ircgov.granicus.com/player/clip/204?view\\_id=1&meta\\_id=77302](http://ircgov.granicus.com/player/clip/204?view_id=1&meta_id=77302) (last visited Mar. 6, 2021); Fellsmere City Council Meeting, Agenda (Feb. 7, 2019), available at [https://www.cityoffellsmere.org/sites/default/files/fileattachments/city\\_council/meeting/14391/co20190221agenda.pdf](https://www.cityoffellsmere.org/sites/default/files/fileattachments/city_council/meeting/14391/co20190221agenda.pdf) (last visited Mar. 6, 2021).

<sup>20</sup> DEP, *DEP Biosolids Technical Advisory Committee*, <https://floridadep.gov/water/domestic-wastewater/content/dep-biosolids-technical-advisory-committee> (last visited Mar. 5, 2021).

<sup>21</sup> Chapter 2020-150, Laws of Fla.

<sup>22</sup> "Seasonal high water" means the elevation to which the ground and surface water may be expected to rise due to a normal wet season. Chapter 2020-150, Laws of Fla.

The DEP published its proposed rule implementing the provisions of s. 403.0855, F.S., on December 3, 2020. In addition to the requirements in the Clean Waterways Act, the proposed rule issued by the DEP:

- Revises the provisions for determining biosolids land application rates to include basing rates on nitrogen and phosphorus levels;
- Imposes groundwater and surface water monitoring requirements for land application sites; and
- Considers biosolids permit applications as projects of heightened public interest.

***DEP Statement of Estimated Regulatory Costs***

The DEP anticipates the rule costing in excess of \$1 million in the next five years. The DEP published a SERC on December 3, 2020.<sup>23</sup> The DEP projects the following changes would increase costs due to the revised rule:

- A significant reduction (estimated 75 percent) in biosolids land application which could lead to permitting more land to accommodate the current quantity of biosolids;
- Longer hauling distances to newly permitted land application sites;
- Additional site monitoring requirements and increased operational costs at land application sites;
- Loss of fertilizer cost savings by not being able to land apply biosolids;<sup>24</sup> and
- Possible transfer of biosolids out-of-state for management or disposal.

The DEP estimates that the cost of the proposed rule over the next five years will be \$310,000,000 to continue land application of Class B biosolids, and \$450,000,000-\$600,000,000 to convert to Class AA biosolids (fertilizer).<sup>25</sup> There are innovative technologies to process biosolids for energy or fuel as an alternative to land application, but the DEP stated that there is limited evidence that these methods could serve as feasible alternatives and the costs are higher than the costs for conversion to Class AA biosolids.<sup>26</sup>

In the SERC, the DEP states that the majority of biosolids are generated by utilities owned and operated by local government entities. Therefore, estimates for one-time capital costs and recurring costs will primarily affect local government entities. This includes 104 domestic wastewater treatment facilities that treat and land apply biosolids, and unknown numbers of small wastewater treatment facilities that send biosolids to larger treatment facilities and biosolids treatment facilities that treat and land apply biosolids.<sup>27</sup>

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<sup>23</sup> DEP, *Statement of Estimated Regulatory Costs* (Dec. 3, 2020), available at [https://floridadep.gov/sites/default/files/SERC%2062-640\\_120320\\_Final.pdf](https://floridadep.gov/sites/default/files/SERC%2062-640_120320_Final.pdf) (last visited Mar. 5, 2021).

<sup>24</sup> DEP states in the SERC that it is unlikely that all of the approximately 94,000 dry tons of Class B biosolids currently land applied in the state will continue to be land applied. *Id.* at 6.

<sup>25</sup> *Id.* at 4.

<sup>26</sup> *Id.* at 11. DEP states in the SERC that it does not have enough information to make an analysis on innovative technologies. *Id.* at 8.

<sup>27</sup> *Id.* at 5.

## Environmental Regulation Commission

The Environmental Regulation Commission (ERC) is an unpaid seven-member board within the DEP.<sup>28</sup> Under specified statutory provisions and with certain exceptions, the ERC must exercise the standard-setting authority of the DEP – approving, modifying, or disapproving proposed rules that contain standards.<sup>29</sup> In exercising its authority to set standards, the ERC must consider scientific and technical validity, economic impacts, and relative risks and benefits to the public and the environment.<sup>30</sup>

The ERC is composed of seven state residents, appointed by the Governor for four-year terms, subject to confirmation by the Senate.<sup>31</sup> The appointees must provide reasonable representation from all sections of the state, and be representative of agriculture, the development industry, local government, the environmental community, lay citizens, and members of the scientific and technical community who have substantial expertise related to water pollutants, toxicology, epidemiology, geology, biology, environmental sciences, or engineering.<sup>32</sup> Most issues that go before the ERC relate to air pollution, water quality, or waste management.<sup>33</sup> The ERC is scheduled to meet monthly, but has not met since 2019.<sup>34</sup> According to the DEP’s website, two of the memberships to the ERC are vacant and the terms of the five listed members have lapsed.<sup>35</sup> However, the Governor recently appointed four members to the ERC.<sup>36</sup>

### III. Effect of Proposed Changes:

The bill ratifies the rules comprising ch. 62-640 of the Florida Administrative Code, titled “Biosolids,” for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), F.S. Chapter 62-640 of the Florida Administrative Code, proposed by the Department of Environmental Protection (DEP) and published on December 3, 2020, in the Florida Administrative Register, Vol. 46, No. 234, pages 5281-5297, consists of rules:

- 62-640.100, entitled Scope, Intent, Purpose, and Applicability;
- 62-640.200, entitled Definitions;
- 62-640.210, entitled General Technical Guidance and Forms;
- 62-640.300, entitled General Requirements;
- 62-640.400, entitled Prohibitions;
- 62-640.500, entitled Nutrient Management Plan (NMP);

<sup>28</sup> Section 20.255(6), F.S., DEP, *Environmental Regulation Commission*, <https://floridadep.gov/ogc/ogc/content/environmental-regulation-commission> (last visited Mar. 5, 2021).

<sup>29</sup> Sections 403.803(13), 403.804, and 403.805(1), F.S. “Standard” is defined as any DEP rule relating to air and water quality, noise, solid-waste management, and electric and magnetic fields associated with electrical transmission and distribution lines and substations. The term does not include rules relating to internal management or procedural matters.

<sup>30</sup> Section 403.804, F.S.

<sup>31</sup> Section 20.255(6), F.S.

<sup>32</sup> *Id.*

<sup>33</sup> DEP, *Environmental Regulation Commission*, <https://floridadep.gov/ogc/ogc/content/environmental-regulation-commission> (last visited Mar. 4, 2021).

<sup>34</sup> *Id.*

<sup>35</sup> DEP, *ERC Members*, <https://floridadep.gov/ogc/ogc/content/erc-members> (last visited Mar. 5, 2021).

<sup>36</sup> News Release, Governor Ron DeSantis, *Governor Ron DeSantis Appoints Four to the Environmental Regulation Commission* (Mar. 12, 2021), <https://www.flgov.com/2021/03/12/governor-ron-desantis-appoints-four-to-the-environmental-regulation-commission/> (last visited Mar. 15, 2021).

- 62-640.600, entitled Pathogen Reduction and Vector Attraction Reduction;
- 62-640.650, entitled Monitoring, Record Keeping, Reporting, and Notification;
- 62-640.700, entitled Requirements for Land Application of Class AA, A, and B Biosolids;
- 62-640.800, entitled Additional Requirements for Land Application at Reclamation Sites;
- 62-640.850, entitled Distribution and Marketing of Class AA Biosolids; and
- 62-640.880, entitled Additional Requirements Related to Biosolids Treatment Facilities.

The bill:

- Exempts the rules from review and approval by the Environmental Regulation Commission (ERC) under s. 403.804(1), F.S.;
- Directs that section one of the bill serves no other purpose and may not be codified in the Florida Statutes;
- Requires the DEP to publish a notice of the enactment of the exemption from review and approval by the ERC in the Florida Administrative Register; and
- Provides that section one of the bill does not:
  - Alter rulemaking authority delegated by prior law;
  - Constitute a legislative preemption of, or exception to, any other provision of law regarding adoption or enforcement of the rule cited; and
  - Does not cure any rulemaking defect or preempt any challenge on lack of authority or a violation of the legal requirements governing adoption of any rule cited.

The bill provides a declaratory statement and determination by the Legislature that section 1 of the bill fulfills an important state interest.

The act is effective upon becoming a law. At that time, the rule also becomes effective.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The county/municipality mandates provision of Art. VII, s. 18(a) of the Florida Constitution may apply to this bill because local governments may be required to expend funds to manage biosolids under the new requirements of the rule. The bill includes a legislative finding that the rule ratification fulfills an important state interest. The expenditures are required to comply with rules and law that applies to all persons similarly situated. Therefore, an exception from Art. VII, s. 18(a) of the Florida Constitution likely applies.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the Department of Environmental's (DEP's) statement of estimated regulatory costs (SERC), there will likely be increased operational costs to biosolids treatment facilities and septage management facilities. There will also likely be impacts to biosolids haulers and the ranchers and farmers who own land application sites. Utility ratepayers and homeowners may ultimately bear the increased operational costs of wastewater treatment facilities.<sup>37</sup> *See discussion of SERC in section II. on page six of the analysis.*

C. Government Sector Impact:

According to the DEP's statement of estimated regulatory costs, there will likely be increased operational costs to wastewater treatment facilities.<sup>38</sup> *See discussion of SERC in section II. on page six of the analysis.*

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 403.0855 of the Florida Statutes.

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<sup>37</sup> DEP, *Statement of Estimated Regulatory Costs* (Dec. 3, 2020), available at [https://floridadep.gov/sites/default/files/SERC%2062-640\\_120320\\_Final.pdf](https://floridadep.gov/sites/default/files/SERC%2062-640_120320_Final.pdf) (last visited Mar. 5, 2021).

<sup>38</sup> *Id.*

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

**Recommended CS by Appropriations Subcommittee on Agriculture, Environment, and General Government on April 8, 2021:**

The committee substitute:

- Deletes the provision of the bill that requires the DEP to provide notice to and receive consent from a private property owner before entering onto his or her property to install monitoring equipment or conduct sampling for biosolids sites.

**B. Amendments:**

None.

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

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925996

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2021	.	
	.	
	.	
	.	

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Appropriations Subcommittee on Agriculture, Environment, and  
General Government (Brodeur) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 57 - 63.

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

And the title is amended as follows:

Delete lines 2 - 16

and insert:

An act relating to ratification of Department of  
Environmental Protection rules; ratifying specified



925996

11 rules relating to biosolids management for the sole  
12 and exclusive purpose of satisfying any condition on  
13 effectiveness pursuant to s. 120.541(3), F.S., which  
14 requires ratification of any rule exceeding any  
15 specified thresholds for likely adverse impact or  
16 increase in regulatory costs; exempting the rules from  
17 certain review and approval by the Environmental  
18 Regulation Commission; providing applicability;  
19 providing construction; providing a declaration of  
20 important state interest; providing an

By the Committee on Environment and Natural Resources

592-02889-21

20217060

A bill to be entitled

An act relating to biosolids; ratifying specified rules relating to biosolids management for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule exceeding any specified thresholds for likely adverse impact or increase in regulatory costs; exempting the rules from certain review and approval by the Environmental Regulation Commission; providing applicability; providing construction; providing a declaration of important state interest; amending s. 403.0855, F.S.; requiring the Department of Environmental Protection to provide notice to and receive consent from private property owners before entering onto private property for specified biosolids testing; providing an effective date.

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

Section 1. (1) The following rules are ratified for the sole and exclusive purpose of satisfying any condition on the effectiveness imposed under s. 120.541(3), Florida Statutes: Rules 62-640.100, 62-640.200, 62-640.210, 62-640.300, 62-640.400, 62-640.500, 62-640.600, 62-640.650, 62-640.700, 62-640.800, 62-640.850, 62-640.880, Florida Administrative Code, entitled Scope, Intent, Purpose, and Applicability; Definitions; General Technical Guidance and Forms; General Requirements; Prohibitions; Nutrient Management Plan (NMP); Pathogen Reduction

Page 1 of 3

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

592-02889-21

20217060

and Vector Attraction Reduction; Monitoring, Record Keeping, Reporting, and Notification; Requirements for Land Application of Class AA, A, and B Biosolids; Additional Requirements for Land Application at Reclamation Sites; Distribution and Marketing of Class AA Biosolids; and Additional Requirements Related to Biosolids Treatment Facilities, respectively, as published on December 3, 2020, in the Florida Administrative Register, Vol. 46, No. 234, pages 5281-5297.

(2) The rules in subsection (1) proposed by the Department of Environmental Protection pursuant to s. 403.0855(2), Florida Statutes, are exempt from review and approval by the Environmental Regulation Commission under s. 403.804(1), Florida Statutes.

(3) This section serves no other purpose and may not be codified in the Florida Statutes. At the time of filing this rule for adoption, or as soon thereafter as practicable, the department shall publish a notice of the enactment of this exemption in the Florida Administrative Register. This section does not alter rulemaking authority delegated by prior law and does not constitute legislative preemption of or exception to any other provision of law governing adoption or enforcement of the rule cited. This section does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

(4) The Legislature determines and declares that this section fulfills an important state interest.

Section 2. Subsection (7) is added to section 403.0855, Florida Statutes, to read:

Page 2 of 3

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

592-02889-21

20217060\_\_

59 403.0855 Biosolids management.—

60 (7) The department shall provide notice to and receive  
61 consent from a private property owner before entering onto his  
62 or her property to install monitoring equipment or conduct  
63 sampling for biosolids sites.

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

**YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM**

**THE FLORIDA SENATE**

**APPEARANCE RECORD**

4/8/2021

*Meeting Date*

7060

*Bill Number (if applicable)*

925996

*Amendment Barcode (if applicable)*

Topic SB 7060 - Biosolids

Name Alex Bickley

Job Title Director of Legislative Affairs

Address 3900 Commonwealth Blvd

*Street*

Tallahassee

*City*

FL

*State*

32399

*Zip*

Phone

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing FL Dept of Environmental Protection

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/2021

Meeting Date

7060

Bill Number (if applicable)

925996

Amendment Barcode (if applicable)

Topic BIO SOLIDS

Name BETH ALVI (AUDUBON FL)

Job Title DIR OF POLICY

Address 308 N. MONROE

Street

Phone \_\_\_\_\_

City

State

Zip

Email Beth.Alvi@Audubon.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing AUDUBON FL

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

**YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM**

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

4/8/21 AEG 11:30 A1

*Meeting Date*

7060

*Bill Number (if applicable)*

Topic Biosolids

*Amendment Barcode (if applicable)*

Name David Cullen

Job Title \_\_\_\_\_

Address 1934 Shelby Ct.

Phone 941-323-2404

*Street*

Tallahassee

FL

32308

*City*

*State*

*Zip*

Email cullenasea@gmail.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against  
*(The Chair will read this information into the record.)*

Representing Sierra Club Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

**YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM**

**THE FLORIDA SENATE**

**APPEARANCE RECORD**

4/8/2021

*Meeting Date*

7060

*Bill Number (if applicable)*

Topic SB 7060 - Biosolids

*Amendment Barcode (if applicable)*

Name Alex Bickley

Job Title Director of Legislative Affairs

Address 3900 Commonwealth Blvd

Phone \_\_\_\_\_

*Street*

Tallahassee

FL

32399

Email \_\_\_\_\_

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing FL Dept of Environmental Protection

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)



The Florida Senate

## Committee Agenda Request

**To:** Senator Ben Albritton, Chair  
Appropriations Subcommittee on Agriculture, Environment, and General Government

**Subject:** Committee Agenda Request

**Date:** March 17, 2021

---

I respectfully request that **Senate Bill 7060**, relating to the **Ratification of Department of Environmental Protection Rules**, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in cursive script that reads "Jason Brodeur".

---

Senator Jason Brodeur  
Florida Senate, District 9

**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 Appropriations Subcommittee on Agriculture, Environment, and General Government

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BILL: PCS/CS/SB 406 (244934)

INTRODUCER: Appropriations Subcommittee on Agriculture, Environment, and General Government; Environment and Natural Resources Committee; and Senator Rodrigues

SUBJECT: Big Cypress Basin

DATE: April 12, 2021

REVISED: \_\_\_\_\_

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

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/CS/SB 406 revises provisions relating to the Big Cypress Basin within the South Florida Water Management District (SFWMD). The bill:

- Revises the membership of the Big Cypress Basin governing board;
- Requires the governing board of the SFWMD to establish the boundary of the Big Cypress Basin as the scientific boundary recommended in the Big Cypress Basin Boundary Delineation study, except that the new basin boundary may include only counties that have at least 25 percent of their jurisdiction delineated within the boundary; and
- Requires that the SFWMD ensure that basin ad valorem taxes that are levied in counties within the Big Cypress Basin are used within the counties in which they were collected, and for local projects that improve flood protection, water quality, or natural systems.

The bill has no impact on state funds. The SFWMD states the bill will reduce available annual funding by \$8.9 million for future operation and maintenance of the Central & Southern Florida (C&SF) Project flood control system; the operation and maintenance of the Comprehensive Everglades Restoration Plan (CERP) features, Northern Everglades features, Restoration Strategies features, and administration of the Big Cypress Basin.

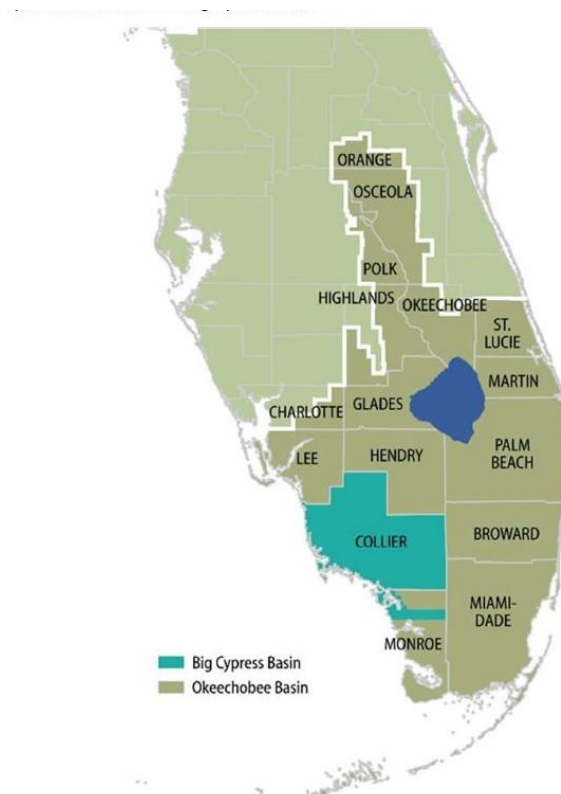
The bill takes effect July 1, 2022.

## II. Present Situation:

### South Florida Water Management District (SFWMD)

The SFWMD is a regional governmental agency that manages the water resources in the southern half of the state, covering 16 counties from Orlando to the Florida Keys and serving a population of 8.7 million residents.<sup>1</sup> The SFWMD is responsible for managing and protecting South Florida's water resources by balancing and improving flood control, water supply, water quality, and natural systems.

Water management district governing boards may designate sub-districts or basins within the district and may revise the boundaries by resolution.<sup>2</sup> The SFWMD encompasses two major watershed basins, the Okeechobee Basin and the Big Cypress Basin. The Big Cypress Basin includes Collier County and part of Monroe County.<sup>3</sup> The rest of the geographic area within the SFWMD boundaries comprises the Okeechobee Basin, as indicated in the map below.<sup>4</sup>



<sup>1</sup> South Florida Water Management District (SFWMD), *Who We Are*, <https://www.sfwmd.gov/who-we-are> (last visited Feb. 2, 2021).

<sup>2</sup> Section 373.0693(1), F.S.

<sup>3</sup> SFWMD, *Big Cypress Basin*, <https://www.sfwmd.gov/who-we-are/bcb> (last visited Feb. 2, 2021). The initial boundaries of the basin are provided in s. 373.0693(9), F.S.

<sup>4</sup> SFWMD, *Fiscal Year 2021-2022 Preliminary Budget Submission*, 79 (Jan. 15, 2021), available at [https://www.sfwmd.gov/sites/default/files/documents/South\\_Florida\\_Water\\_Management\\_District\\_FY2021-22\\_Preliminary\\_Budget.pdf](https://www.sfwmd.gov/sites/default/files/documents/South_Florida_Water_Management_District_FY2021-22_Preliminary_Budget.pdf).

### ***Big Cypress Basin***

The Big Cypress Basin was established in 1977 and was charged with providing conservation, preservation, and enhancement of water resources in the region.<sup>5</sup> In 1979, an agreement with Collier County transferred the primary flood control system operation and maintenance responsibilities to the Big Cypress Basin. This agreement has been renewed every 10 years, and today the Big Cypress Basin provides flood control in cooperation with Collier County.<sup>6</sup>

The Big Cypress Basin is responsible for operating and maintaining 153 miles of primary canals, 45 water control structures, and four back pumps providing flood control during the wet season and protecting regional water supplies and environmental resources from over-drainage during the dry season.<sup>7</sup> The Big Cypress Basin also provides capital improvements to water management infrastructure and assists local governments and water utilities in developing alternative water supplies and implementing stormwater management programs.<sup>8</sup>

The Big Cypress Basin board sets the basin's regional policy, budget, and millage rate.<sup>9</sup> The SFWMD governing board has the authority to revise the boundaries of the Big Cypress Basin, but may not abolish the basin.<sup>10</sup> Members of the Big Cypress Basin board are appointed by the Governor and must be approved by the Florida Senate.<sup>11</sup> The Big Cypress Basin board must have at least five members.<sup>12</sup> The SFWMD governing board member appointed to represent the Southwest region also serves as the chairman of the Big Cypress Basin board.<sup>13</sup>

### **Ad Valorem Taxation**

Water management district activities are partly financed by ad valorem property taxes paid by those who reside within the district.<sup>14</sup> Property tax, or millage, rates are set by each taxing authority and vary throughout the state. Water management district governing boards adopt the budget and millage rates. Article VII, Section 9 of the Florida Constitution prescribes maximum millage rates for water management districts and additional limits are imposed by statute.<sup>15</sup> The maximum millage for the SFWMD is 0.8 mill,<sup>16</sup> but district policy is to levy rolled-back rates.<sup>17</sup>

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<sup>5</sup> Chapter 76-243, Laws of Fla. *See also* SFWMD, *Big Cypress Basin Strategic Plan 2018-2023*, 3, available at [https://www.sfwmd.gov/sites/default/files/documents/2018\\_strategic\\_plan\\_bcb.pdf](https://www.sfwmd.gov/sites/default/files/documents/2018_strategic_plan_bcb.pdf).

<sup>6</sup> *Id.*

<sup>7</sup> SFWMD, *Big Cypress Basin 2019-2020 Budget*, available at [https://www.sfwmd.gov/sites/default/files/documents/factsheet\\_BCBbudget\\_2019-2020.pdf](https://www.sfwmd.gov/sites/default/files/documents/factsheet_BCBbudget_2019-2020.pdf).

<sup>8</sup> SFWMD, *Big Cypress Basin Strategic Plan 2018-2023*, 3, available at [https://www.sfwmd.gov/sites/default/files/documents/2018\\_strategic\\_plan\\_bcb.pdf](https://www.sfwmd.gov/sites/default/files/documents/2018_strategic_plan_bcb.pdf).

<sup>9</sup> SFWMD, *Big Cypress Basin Board*, <https://www.sfwmd.gov/who-we-are/governing-board/big-cypress-basin-board> (last visited Feb. 2, 2021).

<sup>10</sup> Section 373.0693(9)(c), F.S.

<sup>11</sup> Section 373.0693(4), F.S.

<sup>12</sup> Section 373.0693(9), F.S.

<sup>13</sup> SFWMD, *Big Cypress Basin*, <https://www.sfwmd.gov/who-we-are/bcb> (last visited Feb. 2, 2021).

<sup>14</sup> Section 373.503(1), F.S.

<sup>15</sup> Section 373.503(3)(a), F.S.

<sup>16</sup> *Id.*

<sup>17</sup> Section 200.065(1), F.S.

The total millage rate for the Big Cypress Basin in the 2020-2021 Fiscal Year was 0.2255, which applies to Collier County and the portion of mainland Monroe County that is in the Big Cypress Basin.<sup>18</sup> The total millage rate is comprised of the district-wide millage rate of 0.1103 and the Big Cypress Basin millage rate of 0.1152. The millage rate for the Okeechobee Basin in the 2020-2021 Fiscal Year was 0.2675, which applies to 15 of the SFWMD's 16 counties.<sup>19</sup> The total millage rate is comprised of the district-wide millage rate of 0.1103, the Okeechobee Basin millage rate of 0.1192, and the Everglades Construction Project millage rate of 0.0380.<sup>20</sup>

For the 2020-2021 Fiscal Year, \$288.3 million of the SFWMD's budget is provided by ad valorem taxes.<sup>21</sup> The apportionment of ad valorem tax revenues within the SFWMD is a maximum of 40 percent for district purposes and a maximum of 60 percent for basin purposes.<sup>22</sup> The Big Cypress Basin budget approved by the SFWMD governing board was \$14.3 million for the 2020-2021 Fiscal Year.<sup>23</sup> Approximately 76 percent of the revenue that funds the Big Cypress Basin budget comes from ad valorem taxes.<sup>24</sup>

### **Big Cypress Basin Boundary Delineation Study**

Pursuant to Specific Appropriation 1606 in the 2020 General Appropriations Act, the SFWMD was instructed to conduct a study to recommend the most appropriate geographic boundaries for the Big Cypress Basin. The Legislature required that the proposed boundaries be based solely upon the common watershed within the Big Cypress Basin and be scientifically supported.<sup>25</sup> The completed study and recommendations were due to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2021.<sup>26</sup> The map below shows the proposed boundaries recommended in the study.<sup>27</sup>

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<sup>18</sup> SFWMD, *Fiscal Year 2021-2022 Preliminary Budget Submission*, 80 (Jan. 15, 2021), available at [https://www.sfwmd.gov/sites/default/files/documents/South\\_Florida\\_Water\\_Management\\_District\\_FY2021-22\\_Preliminary\\_Budget.pdf](https://www.sfwmd.gov/sites/default/files/documents/South_Florida_Water_Management_District_FY2021-22_Preliminary_Budget.pdf). This tax rate represents \$22.55 per \$100,000 of taxable value.

<sup>19</sup> *Id.* This tax rate represents \$26.95 per \$100,000 of taxable value.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 56.

<sup>22</sup> Section 373.503(3)(b), F.S.

<sup>23</sup> SFWMD, *Fiscal Year 2021-2022 Preliminary Budget Submission*, 257 (Jan. 15, 2021), available at [https://www.sfwmd.gov/sites/default/files/documents/South\\_Florida\\_Water\\_Management\\_District\\_FY2021-22\\_Preliminary\\_Budget.pdf](https://www.sfwmd.gov/sites/default/files/documents/South_Florida_Water_Management_District_FY2021-22_Preliminary_Budget.pdf).

<sup>24</sup> SFWMD, *Big Cypress Basin 2019-2020 Budget*, available at [https://www.sfwmd.gov/sites/default/files/documents/factsheet\\_BCBbudget\\_2019-2020.pdf](https://www.sfwmd.gov/sites/default/files/documents/factsheet_BCBbudget_2019-2020.pdf).

<sup>25</sup> The study states that a science-based approach to watershed delineation establishes the boundary lines based on physical laws and environmental features of the landscape, including land elevation, land use, man-made improvements to drainage features, animal habitats, and subsurface properties of aquifers. SFWMD Hydrology and Hydraulics Bureau, *Big Cypress Basin Boundary Delineation*, 2 (Dec. 2020) (on file with the Senate Committee on Environment and Natural Resources).

<sup>26</sup> Ch. 2020-111, Laws of Fla. See p. 240, available at [http://laws.flrules.org/files/Ch\\_2020-111.pdf](http://laws.flrules.org/files/Ch_2020-111.pdf).

<sup>27</sup> SFWMD Hydrology and Hydraulics Bureau, *Big Cypress Basin Boundary Delineation*, 25 (Dec. 2020) (on file with the Senate Committee on Environment and Natural Resources).

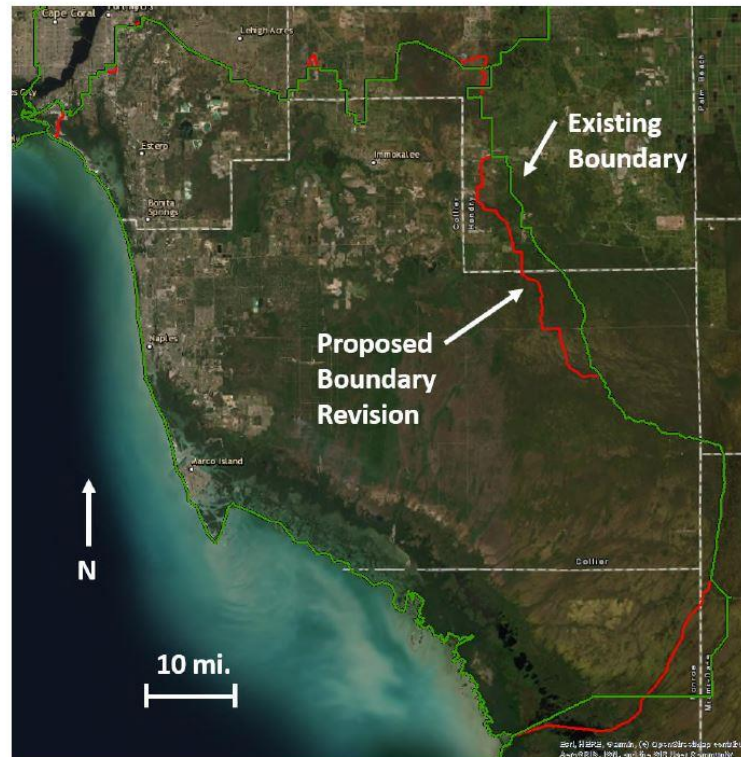


Figure 19. Full set of proposed revisions to existing Big Cypress Basin sub-basin boundary delineation. The green line represents the existing BCS sub-basin boundary, and the red line represents the proposed revisions to the boundary.

### III. Effect of Proposed Changes:

**Section 1** revises the membership of the Big Cypress Basin governing board. The bill requires the Governor to appoint four persons from Collier County and one person from Lee County who reside within the Big Cypress Basin. The bill deletes language that required the Governor to appoint at least five persons who reside in the Big Cypress Basin area.

The bill requires that at 11:59 p.m. on July 1, 2022, the governing board of the SFWMD establish the boundary of the Big Cypress Basin as the scientific boundary recommended in the Big Cypress Basin Boundary Delineation study that the SFWMD completed pursuant to the 2020 General Appropriations Act.<sup>28</sup> The bill provides an exception that the new basin boundary may include only counties that have at least 25 percent of their jurisdiction delineated within the boundary.

The bill also deletes obsolete language.

**Section 2** revises ad valorem taxation within the SFWMD to require the district to ensure that:

- Apportionment of ad valorem tax revenue within the district meets existing statutory requirements that state that a maximum of 40 percent of revenues are used for district purposes and a maximum of 60 percent of revenues are used for basin purposes; and

<sup>28</sup> Ch. 2020-111, Laws of Fla. See p. 240, available at [http://laws.flrules.org/files/Ch\\_2020-111.pdf](http://laws.flrules.org/files/Ch_2020-111.pdf).

- Basin ad valorem taxes levied within the counties that comprise the Big Cypress Basin are used for projects that improve flood protection, water quality, or natural systems within the counties in which they were collected.

**Section 3** reenacts s. 373.0697, F.S., relating to basin taxes, to incorporate the amendments made in section 2 of the bill.

**Section 4** states that the act takes effect on July 1, 2022.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that any areas of land are transferred from the Okeechobee Basin to the Big Cypress Basin under the bill, residents in those areas will see decreased property tax rates. If any areas of land are transferred from the Big Cypress Basin to the Okeechobee Basin under the bill, residents in those areas will see increased property tax rates.

C. Government Sector Impact:

According to the SFWMD, the bill results in the reduction of ad valorem collections and narrows the statutorily authorized usage of ad valorem revenue. The SFWMD states the bill reduces \$8.9 million in annual recurring ad valorem revenue necessary for operation

and maintenance of the Central & Southern Florida (C&SF) Project flood control system; the operation and maintenance of the Comprehensive Everglades Restoration Plan (CERP) features, Northern Everglades features, Restoration Strategies features, and administration of the Big Cypress Basin.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 373.0693 and 373.503.

This bill reenacts section 373.0697 of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Recommended CS/CS by Appropriations Subcommittee on Agriculture, Environment, and General Government on April 8, 2021:**

The committee substitute:

- Revises the membership of the Big Cypress Basin governing board from five persons from Collier and Lee Counties to four persons from Collier County and one person from Lee County;
- Revises the date the governing board of the SFWMD establishes the boundary of the Big Cypress Basin as the scientific boundary recommended in the Big Cypress Basin Boundary Delineation study from July 1, 2021, to July 1, 2022, at 11:59 p.m.
- Clarifies that ad valorem revenue is to be used within the counties in which they were collected, and for local projects that improve flood protection, water quality, or natural systems.
- Changes the effective date of the bill to July 1, 2022, from July 1, 2021.

**CS by Environment and Natural Resources on February 15, 2021:**

The committee substitute:

- Revises the bill to reflect the actual date the Big Cypress Boundary Delineation study was presented to the Legislature.
- Provides that the new Big Cypress Basin boundary may include only counties that have at least 25 percent of their jurisdiction delineated within the boundary, revised from 50 percent in the underlying bill.
- Requires the South Florida Water Management District to ensure that the basin ad valorem taxes that are levied in the Big Cypress Basin be used for flood control

operations and maintenance, as well as projects, within the counties in which the taxes were collected.

B. Amendments:

None.

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

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343560

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2021	.	
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Appropriations Subcommittee on Agriculture, Environment, and  
General Government (Rodrigues) recommended the following:

**Senate Amendment**

Delete lines 30 - 117  
and insert:  
~~31, 1976,~~ The Governor shall appoint four ~~not fewer than five~~  
persons from Collier County and one person from Lee County who  
reside within the Big Cypress Basin ~~residing in the area~~ to  
serve as members of the governing board of the basin, ~~effective~~  
~~at the time of transfer and~~ subject to confirmation by the  
Senate as provided in subsection (4).



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(a) The initial boundaries of the Big Cypress Basin shall be established by resolution of the governing board of Central and Southern Florida Flood Control District, after notice and hearing, and generally shall encompass the Big Cypress Swamp and southwestern coastal area hydrologic cataloging unit, as indicated on River Basin and Hydrologic Unit Map of Florida—1975, Florida Department of Natural Resources, Bureau of Geology Map Series No. 72.

(b) At 11:59 p.m. on July 1, 2022, the governing board of the South Florida Water Management District shall establish the boundary of the Big Cypress Basin as the scientific boundary recommended in the Big Cypress Basin Boundary Delineation study that the district presented to the Legislature on January 12, 2021, except that the new basin boundary may include only counties that have at least 25 percent of their jurisdiction delineated within the boundary ~~If the governing board shall fail to establish the initial boundaries on or before December 31, 1976, the initial boundaries shall be the same boundaries as described for the Big Cypress Basin of the Ridge and Lower Gulf Coast District.~~

~~(c)~~ The governing board of the South Florida Water Management District subsequently may change the boundaries of the basin, but may not abolish the basin.

Section 2. Paragraph (b) of subsection (3) of section 373.503, Florida Statutes, is amended to read:

373.503 Manner of taxation.—

(3) The districts may levy ad valorem taxes on property within the district solely for the purposes of this chapter and of chapter 25270, 1949, Laws of Florida, as amended, and chapter



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61-691, Laws of Florida, as amended. If appropriate, taxes levied by each governing board may be separated by the governing board into a millage necessary for the purposes of the district and a millage necessary for financing basin functions specified in s. 373.0695.

(b) ~~The apportionment in~~ The South Florida Water Management District shall ensure that:

1. The apportionment within the district is ~~be~~ a maximum of 40 percent for district purposes and a maximum of 60 percent for basin purposes; and

2. The basin ad valorem taxes levied within the counties that comprise the Big Cypress Basin are used for projects and flood control operations and maintenance within the counties in which they were collected, ~~respectively.~~

Section 3. For the purpose of incorporating the amendment made by this act to section 373.503, Florida Statutes, in a reference thereto, section 373.0697, Florida Statutes, is reenacted to read:

373.0697 Basin taxes.—The respective basins may, pursuant to s. 9(b), Art. VII of the State Constitution, by resolution request the governing board of the district to levy ad valorem taxes within such basin. Upon receipt of such request, a basin tax levy shall be made by the governing board of the district to finance basin functions enumerated in s. 373.0695, notwithstanding the provisions of any other general or special law to the contrary, and subject to the provisions of s. 373.503(3).

(1) The amount of money to be raised by said tax levy shall be determined by the adoption of an annual budget by the



343560

district board of governors, and the average millage for the basin shall be that amount required to raise the amount called for by the annual budget when applied to the total assessment of the basin as determined for county taxing purposes. However, no such tax shall be levied within the basin unless and until the annual budget and required tax levy shall have been approved by formal action of the basin board, and no county in the district shall be taxed under this provision at a rate to exceed 1 mill.

(2) The taxes provided for in this section shall be extended by the county property appraiser on the county tax roll in each county within, or partly within, the basin and shall be collected by the tax collector in the same manner and time as county taxes, and the proceeds therefrom paid to the district for basin purposes. Said taxes shall be a lien, until paid, on the property against which assessed and enforceable in like manner as county taxes. The property appraisers, tax collectors, and clerks of the circuit court of the respective counties shall be entitled to compensation for services performed in connection with such taxes at the same rates as apply to county taxes.

(3) It is hereby determined that the taxes authorized by this subsection are in proportion to the benefits to be derived by the several parcels of real estate within the basin from the works authorized herein.

Section 4. This act shall take effect July 1, 2022.



459842

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2021	.	
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Appropriations Subcommittee on Agriculture, Environment, and  
General Government (Rodrigues) recommended the following:

**Senate Amendment to Amendment (343560)**

Delete lines 51 - 53  
and insert:  
that comprise the Big Cypress Basin are used as specified in s.  
373.0695 within the counties in which they were collected, and  
for local projects improving flood protection, water quality, or  
natural systems, respectively.

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

592-02133-21

2021406c1

A bill to be entitled

An act relating to the Big Cypress Basin; amending s. 373.0693, F.S.; revising the membership of the Big Cypress Basin governing board; requiring the South Florida Water Management District to revise the boundaries of the Big Cypress Basin based on a specified study at a specified time; removing obsolete language; amending s. 373.503, F.S.; requiring the South Florida Water Management District to ensure that the distribution of basin ad valorem taxes collected within the Big Cypress Basin be used for projects and flood control operations and maintenance within the counties in which they were collected; reenacting s. 373.0697, F.S., relating to basin taxes, to incorporate the amendment made to s. 373.503, F.S., in a reference thereto; providing an effective date.

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

Section 1. Subsection (9) of section 373.0693, Florida Statutes, is amended to read:

373.0693 Basins; basin boards.—

(9) At 11:59 p.m. on December 31, 1976, a portion of the Big Cypress Basin of the Ridge and Lower Gulf Coast District which is being annexed into the South Florida Water Management District by change of boundaries pursuant to chapter 76-243, Laws of Florida, shall be formed into a subdistrict or basin of the South Florida Water Management District. Such portion shall be designated as the Big Cypress Basin. ~~On or before December~~

Page 1 of 5

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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~~31, 1976,~~ The Governor shall appoint ~~not fewer than~~ five persons from Collier and Lee Counties who reside within the Big Cypress Basin residing in the area to serve as members of the governing board of the basin, ~~effective at the time of transfer and~~ subject to confirmation by the Senate as provided in subsection (4).

(a) The initial boundaries of the Big Cypress Basin shall be established by resolution of the governing board of Central and Southern Florida Flood Control District, after notice and hearing, and generally shall encompass the Big Cypress Swamp and southwestern coastal area hydrologic cataloging unit, as indicated on River Basin and Hydrologic Unit Map of Florida—1975, Florida Department of Natural Resources, Bureau of Geology Map Series No. 72.

(b) At 11:59 p.m. on July 1, 2021, the governing board of the South Florida Water Management District shall establish the boundary of the Big Cypress Basin as the scientific boundary recommended in the Big Cypress Basin Boundary Delineation study that the district presented to the Legislature on January 12, 2021, except that the new basin boundary may include only counties that have at least 25 percent of their jurisdiction delineated within the boundary ~~If the governing board shall fail to establish the initial boundaries on or before December 31, 1976, the initial boundaries shall be the same boundaries as described for the Big Cypress Basin of the Ridge and Lower Gulf Coast District.~~

~~(c)~~ The governing board of the South Florida Water Management District subsequently may change the boundaries of the basin, but may not abolish the basin.

Page 2 of 5

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

592-02133-21

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Section 2. Paragraph (b) of subsection (3) of section 373.503, Florida Statutes, is amended to read:

373.503 Manner of taxation.—

(3) The districts may levy ad valorem taxes on property within the district solely for the purposes of this chapter and of chapter 25270, 1949, Laws of Florida, as amended, and chapter 61-691, Laws of Florida, as amended. If appropriate, taxes levied by each governing board may be separated by the governing board into a millage necessary for the purposes of the district and a millage necessary for financing basin functions specified in s. 373.0695.

(b) ~~The apportionment in~~ The South Florida Water Management District shall ensure that:

1. The apportionment within the district is be a maximum of 40 percent for district purposes and a maximum of 60 percent for basin purposes; and

2. The basin ad valorem taxes levied within the counties that comprise the Big Cypress Basin are used for projects and flood control operations and maintenance within the counties in which they were collected, ~~respectively.~~

Section 3. For the purpose of incorporating the amendment made by this act to section 373.503, Florida Statutes, in a reference thereto, section 373.0697, Florida Statutes, is reenacted to read:

373.0697 Basin taxes.—The respective basins may, pursuant to s. 9(b), Art. VII of the State Constitution, by resolution request the governing board of the district to levy ad valorem taxes within such basin. Upon receipt of such request, a basin tax levy shall be made by the governing board of the district to

592-02133-21

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finance basin functions enumerated in s. 373.0695, notwithstanding the provisions of any other general or special law to the contrary, and subject to the provisions of s. 373.503(3).

(1) The amount of money to be raised by said tax levy shall be determined by the adoption of an annual budget by the district board of governors, and the average millage for the basin shall be that amount required to raise the amount called for by the annual budget when applied to the total assessment of the basin as determined for county taxing purposes. However, no such tax shall be levied within the basin unless and until the annual budget and required tax levy shall have been approved by formal action of the basin board, and no county in the district shall be taxed under this provision at a rate to exceed 1 mill.

(2) The taxes provided for in this section shall be extended by the county property appraiser on the county tax roll in each county within, or partly within, the basin and shall be collected by the tax collector in the same manner and time as county taxes, and the proceeds therefrom paid to the district for basin purposes. Said taxes shall be a lien, until paid, on the property against which assessed and enforceable in like manner as county taxes. The property appraisers, tax collectors, and clerks of the circuit court of the respective counties shall be entitled to compensation for services performed in connection with such taxes at the same rates as apply to county taxes.

(3) It is hereby determined that the taxes authorized by this subsection are in proportion to the benefits to be derived by the several parcels of real estate within the basin from the works authorized herein.

592-02133-21

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

**YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM**

**THE FLORIDA SENATE**

**APPEARANCE RECORD**

4/08/21

*Meeting Date*

406

*Bill Number (if applicable)*

459842

*Amendment Barcode (if applicable)*

Topic Big Cypress Basin

Name Lisa Hurley

Job Title \_\_\_\_\_

Address 311 E. Park Ave.

*Street*

Tallahassee

*City*

Florida

*State*

32301

*Zip*

Phone 850.224.5081

Email lhurley@smithbryanandmyers.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Collier County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

**YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM**

**THE FLORIDA SENATE**

**APPEARANCE RECORD**

4/08/21

*Meeting Date*

406

*Bill Number (if applicable)*

**343560**

Topic Big Cypress Basin

*Amendment Barcode (if applicable)*

Name Lisa Hurley

Job Title \_\_\_\_\_

Address 311 E. Park Ave.

Phone 850.224.5081

*Street*

Tallahassee

Florida

32301

Email lhurley@smithbryanandmyers.com

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
*(The Chair will read this information into the record.)*

Representing Collier County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

**YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM**

**THE FLORIDA SENATE**

**APPEARANCE RECORD**

4/8/21

*Meeting Date*

SB 406

*Bill Number (if applicable)*

Topic Big Cypress Basin

*Amendment Barcode (if applicable)*

Name Phil Flood

Job Title Legislative Liaison

Address 2301 McGregor Blvd

Phone \_\_\_\_\_

*Street*

Ft. Myers

FL

33901

Email pflood@sfwmd.gov

*City*

*State*

*Zip*

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against  
(The Chair will read this information into the record.)

Representing South Florida Water Management District

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

4-8-21

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB406

Bill Number (if applicable)

Topic Big Cypress Basin

Amendment Barcode (if applicable)

Name Daniel Delisi

Job Title \_\_\_\_\_

Address 520 27th St.

Phone 239-913-7159

Street

West Palm Beach FL 33407

City

State

Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Lee County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**This form is part of the public record for this meeting.**

S-001 (10/14/14)



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Governmental Oversight and Accountability, *Chair*  
Appropriations Subcommittee on Agriculture,  
Environment, and General Government, *Vice Chair*  
Appropriations Subcommittee on Health and  
Human Services  
Banking and Insurance  
Finance and Tax  
Judiciary  
Regulated Industries

### JOINT COMMITTEES:

Joint Select Committee on Collective Bargaining,  
*Alternating Chair*  
Joint Committee on Public Counsel Oversight

### SENATOR RAY WESLEY RODRIGUES

27th District

February 16, 2021

The Honorable Ben Albritton

Appropriations Subcommittee on Agriculture, Environment, and General Government, Chair

201 the Capitol

404 South Monroe Street

Tallahassee, FL 32399

### RE: SB 406 – Big Cypress Basin

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to place SB 406, relating to the Big Cypress Basin, on the next committee agenda.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in cursive script that reads "Ray Rodrigues".

Ray Rodrigues

Senate District 27

Cc: Giovanni Betta, Staff Director

Caroline Goodner, Administrative Assistant

#### REPLY TO:

☐ 2000 Main Street, Suite 401, Fort Myers, Florida 33901 (239) 338-2570

☐ 305 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**WILTON SIMPSON**  
President of the Senate

**AARON BEAN**  
President Pro Tempore

# CourtSmart Tag Report

**Room:** SB 110

**Case No.:**

**Type:**

**Caption:** Senate Appropriations Subcommittee on Agriculture, Environment, and General Government **Judge:**

**Started:** 4/8/2021 11:30:32 AM

**Ends:** 4/8/2021 1:14:37 PM **Length:** 01:44:06

11:30:31 AM	Sen. Albritton (Chair)
11:32:16 AM	S 406
11:32:23 AM	Sen. Rodrigues
11:33:25 AM	Am. 343560
11:34:19 AM	Am. 459842
11:35:03 AM	Sen. Ausley
11:35:26 AM	Sen. Rodrigues
11:35:59 AM	Lisa Hurley, Lobbyist, Collier County (waives in support)
11:36:25 AM	Am. 343560 (cont.)
11:36:33 AM	Lisa Hurley, Lobbyist, Collier County (waives in support)
11:37:00 AM	S 406 (cont.)
11:37:08 AM	Sen. Mayfield
11:37:49 AM	Sen. Rodrigues
11:38:46 AM	Sen. Mayfield
11:39:42 AM	Sen. Rodrigues
11:41:25 AM	Sen. Thurston
11:41:50 AM	Sen. Rodrigues
11:42:46 AM	Sen. Stewart
11:43:03 AM	Sen. Rodrigues
11:43:26 AM	Phil Flood, Legislative Liaison, South Florida Water Management District
11:43:37 AM	Sen. Thurston
11:44:06 AM	P. Flood
11:47:30 AM	Sen. Thurston
11:48:08 AM	P. Flood
11:48:44 AM	Sen. Rodrigues
11:49:03 AM	P. Flood
11:49:45 AM	Sen. Rodrigues
11:49:53 AM	P. Flood
11:49:59 AM	Sen. Rodrigues
11:50:05 AM	P. Flood
11:51:48 AM	Sen. Rodrigues
11:52:09 AM	P. Flood
11:52:22 AM	Sen. Rodrigues
11:52:30 AM	P. Flood
11:52:48 AM	Sen. Rodrigues
11:53:11 AM	Sen. Albritton
11:54:00 AM	Daniel Delisi, Lobbyist, Lee County
11:56:56 AM	Sen. Thurston
11:58:27 AM	Sen. Rodrigues
11:59:37 AM	S 1152
11:59:45 AM	Sen. Brandes
12:03:10 PM	Am. 598084
12:04:56 PM	S 1152 (cont.)
12:05:00 PM	Sen. Berman
12:05:14 PM	Sen. Brandes
12:06:57 PM	Sen. Berman
12:07:10 PM	Sen. Brandes
12:07:23 PM	Sen. Berman
12:07:30 PM	Sen. Brandes
12:08:16 PM	Sen. Berman
12:08:29 PM	Sen. Brandes
12:09:35 PM	Sen. Thurston

12:10:05 PM	Sen. Brandes
12:10:54 PM	Sen. Thurston
12:11:15 PM	Sen. Brandes
12:11:53 PM	Sen. Thurston
12:12:01 PM	Sen. Brandes
12:13:00 PM	Sen. Boyd
12:13:26 PM	Sen. Thurston
12:13:39 PM	Sen. Brandes
12:14:56 PM	S 1574
12:19:36 PM	Am. 133436
12:19:51 PM	Am. 610716
12:20:30 PM	Sen. Thurston
12:21:04 PM	Sen. Brandes
12:21:21 PM	Sen. Thurston
12:21:44 PM	Sen. Albritton
12:22:28 PM	Sen. Brandes
12:22:45 PM	Sen. Thurston
12:24:02 PM	Sen. Berman
12:24:02 PM	S 1574 (cont.)
12:24:37 PM	Sen. Brandes
12:24:56 PM	Sen. Berman
12:25:33 PM	Sen. Brandes
12:26:21 PM	Sen. Thurston
12:27:34 PM	Sen. Brandes
12:27:38 PM	Sen. Thurston
12:27:44 PM	Sen. Brandes
12:28:46 PM	Sen. Thurston
12:28:53 PM	Sen. Brandes
12:29:21 PM	Sen. Thurston
12:29:36 PM	Sen. Brandes
12:30:28 PM	Sen. Thurston
12:30:40 PM	Sen. Brandes
12:30:53 PM	Sen. Thurston
12:31:19 PM	Sen. Brandes
12:31:57 PM	Sen. Boyd
12:33:58 PM	Sen. Thurston
12:34:33 PM	Sen. Brandes
12:36:53 PM	S 1616
12:37:01 PM	Sen. Brodeur
12:37:23 PM	Am. 880594
12:37:29 PM	Am. 859634
12:38:06 PM	Am. 215548
12:38:28 PM	Am. 334084
12:39:18 PM	S 1616 (cont.)
12:39:46 PM	Sen. Ausley
12:40:05 PM	Sen. Brodeur
12:40:42 PM	S 1900
12:40:59 PM	Sen. Boyd
12:41:39 PM	Am. 930416
12:42:16 PM	S 1900 (cont.)
12:43:10 PM	S 1086
12:43:21 PM	Sen. Hutson
12:43:44 PM	Am. 479594
12:43:49 PM	Am. 434550
12:46:15 PM	Am. 479594 (cont.)
12:46:25 PM	Bonnie Basham, Lobbyist, Boat Owners of the United States
12:46:42 PM	Am. 817788
12:47:03 PM	Sen. Hutson
12:48:04 PM	B. Basham
12:49:42 PM	Am. 434550 (cont.)
12:49:51 PM	Jessica Crawford, Legislative Affairs Director, Florida Fish and Wildlife Conservation Commission (waives in support)

<b>12:50:22 PM</b>	Sen. Hutson
<b>12:51:24 PM</b>	S 1086 (cont.)
<b>12:51:26 PM</b>	Sen. Berman
<b>12:51:59 PM</b>	Sen. Hutson
<b>12:52:25 PM</b>	Sen. Berman
<b>12:53:17 PM</b>	Sen. Albritton
<b>12:53:51 PM</b>	Melanie Bostick, Vice President, Liberty of Partners of Tallahassee (waives in support)
<b>12:54:14 PM</b>	Sen. Albritton
<b>12:54:42 PM</b>	Sen. Hutson
<b>12:55:44 PM</b>	S 1482
<b>12:55:53 PM</b>	Sen. Garcia
<b>12:56:04 PM</b>	Am. 492814
<b>12:57:10 PM</b>	S 1482 (cont.)
<b>12:57:15 PM</b>	Sen. Berman
<b>12:57:39 PM</b>	Sen. Garcia
<b>12:58:42 PM</b>	Sen. Albritton
<b>12:58:43 PM</b>	Sen. Berman
<b>12:58:56 PM</b>	Sen. Garcia
<b>1:00:34 PM</b>	S 1522
<b>1:00:50 PM</b>	Sen. Stewart
<b>1:03:04 PM</b>	Beth Alvi, Director of Policy, Audobon Florida (waives in support)
<b>1:03:08 PM</b>	Jonathan Webber, Deputy Director, Florida Conservation Voters (waives in support)
<b>1:03:15 PM</b>	Paul Owens, President, 1000 Friends of Florida (waives in support)
<b>1:03:29 PM</b>	David Cullen, Lobbyist, Sierra Club Florida (waives in support)
<b>1:04:19 PM</b>	Sen. Stewart
<b>1:04:57 PM</b>	S 1480
<b>1:05:00 PM</b>	Sen. Brodeur
<b>1:05:33 PM</b>	Travis Moore, Lobbyist, Defenders of Wildlife (waives in support)
<b>1:05:37 PM</b>	Jonathan Webber, Deputy Director, Florida Conservation Voters (waives in support)
<b>1:05:42 PM</b>	Beth Alvi, Director of Policy, Audobon Florida (waives in support)
<b>1:05:48 PM</b>	Will Abberger, Vice President, Director of Conservation Finance, The Trust for Public Land (waives in support)
<b>1:06:04 PM</b>	Paul Owen, President, 1000 Friends of Florida (waives in support)
<b>1:06:25 PM</b>	Sen. Stewart
<b>1:06:39 PM</b>	Sen. Brodeur
<b>1:07:09 PM</b>	S 7060
<b>1:07:22 PM</b>	Sen. Brodeur
<b>1:08:05 PM</b>	Am. 925996
<b>1:08:48 PM</b>	Alex Bickley, Director of Legislative Affairs, Florida Department of Environmental Protection (waives in support)
<b>1:08:54 PM</b>	Beth Alvi, Director of Policy, Audobon Florida (waives in support)
<b>1:09:24 PM</b>	S 7060 (cont.)
<b>1:09:35 PM</b>	David Cullen, Lobbyist, Sierra Club Florida
<b>1:11:28 PM</b>	Alex Bickley, Director of Legislative Affairs, Florida Department of Environmental Protection (waives in support)
<b>1:11:36 PM</b>	Sen. Ausley
<b>1:12:21 PM</b>	Sen. Brodeur
<b>1:13:43 PM</b>	Sen Stewart
<b>1:13:59 PM</b>	Sen. Brodeur
<b>1:14:02 PM</b>	Sen. Rodrigues