

**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 Committee on Environment and Natural Resources

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BILL: SB 1086

INTRODUCER: Senator Hutson

SUBJECT: Operation and Safety of Motor Vehicles and Vessels

DATE: March 12, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	<b>Pre-meeting</b>
2.			AEG	
3.			AP	

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**I. Summary:**

SB 1086 contains numerous changes to existing laws administered by the Fish and Wildlife Conservation Commission (FWC).

Relating to rulemaking, the bill:

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

Relating to boater safety, the bill:

- Revises conditions under which a person operating a motor vehicle or vessel commits a misdemeanor by failing to submit to breath or urine testing for alcohol, chemical substances, and controlled substances.
- Deletes the provisions establishing a misdemeanor for the refusal to submit to blood testing for alcohol, chemical substances, and controlled substances.
- Defines the term “human-powered vessel” and restricts the operation of such vessels within the boundaries of the Florida Intracoastal Waterway.
- Requires all persons operating vessels powered by a motor of 10 horsepower or greater to have photo identification and proof of completing a boater safety course aboard a vessel by January 1, 2023.
- 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.
- Prohibits the operation of vessels faster than slow speed, minimum wake upon approaching certain hazardous conditions, including approaching an emergency or construction vessel.

Relating to derelict vessels, the bill:

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

Relating to marine sanitation devices, the bill:

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

Relating to no-discharge zones, the bill:

- Designates waters of this state as no-discharge zones upon approval by the United States Environmental Protection Agency.
- Declares a vessel or floating structure that discharges sewage into the waters of this state a nuisance and a hazard to public safety.

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 to the list of violations resulting in a noncriminal infraction:
  - Operating a human-powered vessel in the Intracoastal Waterway.
  - Discharging sewage into a no-discharge zone.

Relating to spaceflight, the bill:

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

## II. Present Situation:

### Fish and Wildlife Conservation Commission

The Fish and Wildlife Conservation Commission (FWC) is responsible for regulating, managing, protecting, and conserving the state's fish and wildlife resources.<sup>1</sup> 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, FWC is granted the authority to exercise the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life. The Legislature may enact laws that aid FWC in its exercise of regulatory functions and executive powers in the areas of planning, budgeting, personnel management, and purchasing.<sup>3</sup>

Chapters 327 and 328, F.S., concerning vessel safety and vessel title certificates, liens, and registration, are enforced by FWC's Division of Law Enforcement and its officers, county sheriffs and deputies, municipal police officers, and any other law enforcement officer.<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 courses available at various price points ranging from free up to \$50.<sup>9</sup> The course must meet the 8-hour instruction requirement established by the National Association of State Boating Law Administrators and must include a component regarding diving vessels.<sup>10</sup> The card is valid for

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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.

<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.

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, and is attendant to the operation of the vessel and responsible for the safe operation of the vessel and for any violation that occurs during the operation of the vessel.
- Is a nonresident who has in his or her possession proof that he or she has completed a boater education course or equivalency examination in another state which meets or exceeds the requirements in Florida.
- Is operating a vessel within 90 days after the purchase of that vessel and has available for inspection aboard that vessel a bill of sale.
- Is operating a vessel within 90 days after completing the boater education course and has a photographic identification card and a boater education certificate available for inspection as proof of having completed a boater education course. The boater education certificate must provide, at a minimum, the student's first and last name, the student's date of birth, and the date that he or she passed the course examination.
- Is exempted by FWC rule.<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>

### **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

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<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.

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 civil 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:

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

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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.

- 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>

### **Boating-Restricted Areas**

FWC may establish boating-restricted areas on the waters of this state for any purpose deemed necessary to ensure the safety of the public if the restrictions are necessary based on boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion, or other

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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.

navigational hazards or to protect seagrasses on privately owned submerged lands.<sup>33</sup> FWC adopts boating-restricted areas by rule.<sup>34</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, FWC must consult and coordinate with the Coast Guard and the United States Army Corps of Engineers.<sup>35</sup>

Local governments also have authority to establish boating-restricted areas by ordinance.<sup>36</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. FWC must make its determination based on substantial competent evidence that the ordinance is necessary to protect public safety.<sup>37</sup> However, navigational hazards are presumed to exist in several areas noted under FWC rule and statute.<sup>38</sup> In these cases, a showing of substantial competent evidence is not required.

Additionally, the Coast Guard can establish safety zones,<sup>39</sup> security zones,<sup>40</sup> regulated navigation areas,<sup>41</sup> or naval vessel protection zones<sup>42</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>43</sup> The restricted vessel access protects against destruction, loss, or injury from various causes.<sup>44</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>45</sup> including a security zone around the Kennedy Space Center.<sup>46</sup>

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<sup>33</sup> Section 327.46, F.S. Boating-restricted areas can include, but are not limited to, restrictions of vessel speeds and vessel traffic.

<sup>34</sup> See Fla. Admin. Code R. 68D-24, for established boating restricted areas by county.

<sup>35</sup> Section 327.46(3), F.S.

<sup>36</sup> Section 327.46(1), F.S.

<sup>37</sup> *Id.*

<sup>38</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>39</sup> 33 C.F.R. pt. 165 subpart C.

<sup>40</sup> 33 C.F.R. pt. 165 subpart D.

<sup>41</sup> 33 C.F.R. pt. 165 subpart B.

<sup>42</sup> 33 C.F.R. pt. 165 subpart G.

<sup>43</sup> Section 327.461(1)(a), F.S.

<sup>44</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>45</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>46</sup> 33 C.F.R. s. 165.701.

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>47</sup> A person who continues to do so after receiving a warning, or refusing to leave, commits a felony of the third degree.<sup>48</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>49</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>50</sup> It is unlawful for a person, firm, or corporation to store, leave, or abandon any derelict vessel in this state.<sup>51</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>52</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>53</sup>

### ***Abandoned Vessels***

“Abandoned property”<sup>54</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.

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<sup>47</sup> Section 327.461(2), (7), F.S.

<sup>48</sup> Section 327.461(3), F.S.

<sup>49</sup> Section 327.461(1)(a), F.S.

<sup>50</sup> Section 823.11(1)(b), F.S.

<sup>51</sup> Section 376.15, F.S.; s. 823.11(2), F.S.

<sup>52</sup> Chapter 2016-108, Laws of Fla.; s. 327.4107, F.S.

<sup>53</sup> Section 327.4107, F.S.

<sup>54</sup> Section 705.101(3), 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>55</sup>

If, after 5 days of posting the notice and mailing such notice, the owner has not removed the items from public property or shown reasonable cause for failure to do so, the law enforcement agency may retain the property for its own use, trade the property, donate the property, sell the property, or remove the property.<sup>56</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>57</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>58</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>59</sup>

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

FWC's Division of Law Enforcement and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officers have the responsibility and authority to enforce vessel safety and vessel title certificates, liens, and registration.<sup>60</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>61</sup> FWC officers and other law enforcement agency officers or contractors who perform relocation or removal activities at FWC's direction are required to be licensed, insured, and properly equipped to perform the services to be provided.<sup>62</sup>

The costs incurred by FWC or another law enforcement agency for relocating or removing a derelict vessel are recoverable against the vessel owner.<sup>63</sup> A vessel owner who neglects or

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<sup>55</sup> Section 705.103(2), F.S.

<sup>56</sup> *Id.*

<sup>57</sup> Section 705.103(4), F.S.

<sup>58</sup> *Id.*

<sup>59</sup> Section 327.60(5), F.S.

<sup>60</sup> Section 327.70, F.S.

<sup>61</sup> Section 823.11(3), F.S.; s. 376.15(3)(a), F.S.

<sup>62</sup> Section 823.11(3)(c), F.S.; s. 376.15(3)(c), F.S.

<sup>63</sup> Section 823.11(3)(a), F.S.; s. 376.15(3)(a), F.S.

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>64</sup>

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>65</sup> Grants are awarded based on a set of criteria outlined in FWC rules.<sup>66</sup> Removal or relocation of a vessel on private property is not eligible for grant funding.<sup>67</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, FWC may use the remainder of the funds to remove, or to pay private contractors to remove, derelict vessels.<sup>68</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>69</sup> Violations are punishable by a term of imprisonment of no more than one year and a fine of up to \$1,000.<sup>70</sup> Further, such violation is punishable by a civil penalty of up to \$75,000 per violation per day.<sup>71</sup> Each day during any portion of which the violation occurs constitutes a separate offense.<sup>72</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>73</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>74</sup>

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<sup>64</sup> Section 705.103(4), F.S.

<sup>65</sup> Section 376.15, F.S.

<sup>66</sup> Fla. Admin. Code R. 68-1.003.

<sup>67</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>68</sup> Section 376.15, F.S.

<sup>69</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>70</sup> Sections 775.082(4)(a) and 775.083(1)(d), F.S.

<sup>71</sup> Sections 376.15(2) and 376.16(1), F.S.

<sup>72</sup> Section 376.16(1), F.S.

<sup>73</sup> Section 327.73(1)(aa), F.S.

<sup>74</sup> Section 327.73(1)(bb), F.S.

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>75</sup>

### **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>76</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>77</sup> FWC is authorized to accept title, on behalf of the state, of vessels to use as offshore reefs in the artificial reef program.<sup>78</sup> Under the program, FWC provides grants and financial and technical assistance to coastal local governments, state universities, and qualified nonprofit organizations for the siting and development of artificial reefs, and for monitoring and evaluating such reefs and their recreational, economic, and biological effectiveness.<sup>79</sup>

### **Marine Sanitation Devices**

Certain vessels, including those that are 26 feet or longer with an enclosed cabin and berthing facilities, houseboats,<sup>80</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>81</sup> Permanently installed toilets must be properly attached to a Coast Guard certified or labeled marine sanitation device.<sup>82</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>83</sup>

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<sup>75</sup> Sections 775.082 and 775.083, F.S.

<sup>76</sup> FWC, *Artificial Reefs*, <https://myfwc.com/fishing/saltwater/artificial-reefs/> (last visited Feb. 22, 2021).

<sup>77</sup> *Id.*

<sup>78</sup> Section 379.249(1), F.S.

<sup>79</sup> *Id.*

<sup>80</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>81</sup> Section 327.53(1)-(3), F.S.

<sup>82</sup> *Id.*

<sup>83</sup> DEP, *Clean Boater FAQ*, <https://floridadep.gov/rcp/cva/content/clean-boater-faq> (last visited Feb. 22, 2021).

Florida prohibits the discharge of untreated sewage from any vessel, including houseboats, or any floating structure into state waters.<sup>84</sup> This prohibition also applies to live-aboard vessels, which are defined as: a vessel used solely as a residence and not for navigation; for which a declaration of domicile has been filed; or used as a residence that does not have an effective means of propulsion for safe navigation; and specifically excludes commercial fishing vessels.<sup>85</sup> Vessel owners with Type III<sup>86</sup> marine sanitation devices must dispose of sewage in an approved pump-out facility.<sup>87</sup> Violators are subject to a noncriminal infraction, for which the penalty is \$50.<sup>88</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>89</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>90</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>91</sup>

### **No-Discharge Zones**

A no-discharge zone is a designated body of water that prohibits the discharge of treated and untreated boat sewage.<sup>92</sup> Within the boundaries of a no-discharge zone, vessel operators are required to retain their sewage discharges onboard for discharge at sea (beyond three miles from the Atlantic shore and beyond nine miles from the Gulf shore) or onshore at a pump-out facility. There are currently 469 separate sewage pump-out facilities, 345 of which are available for public use.<sup>93</sup> The sparsely populated Big Bend area of Florida has the fewest pump-out facilities.<sup>94</sup>

A state may initiate the process to establish a no-discharge zone if:

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<sup>84</sup> Section 327.53(4)(a), F.S.

<sup>85</sup> Section 327.02(23), F.S.

<sup>86</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>87</sup> Section 327.53(4)(b), F.S.

<sup>88</sup> Section 327.53(6)(a), F.S.

<sup>89</sup> Section 327.53(7), F.S.

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

<sup>91</sup> Section 328.17, F.S.

<sup>92</sup> U.S. Environmental Protection Agency, *Vessel Sewage Discharges: No-Discharge Zones*, <https://www.epa.gov/vessels-marinas-and-ports/vessel-sewage-no-discharge-zones> (last visited Feb. 23, 2021).

<sup>93</sup> FWC, *Senate Bill 1086 Agency Bill Analysis* (February 10, 2021)(on file with the Senate Committee on Environment and Natural Resources).

<sup>94</sup> *Id.* See also DEP, *Clean Vessel Act Pumpout Locations*, [https://geodata.dep.state.fl.us/datasets/dda5772e85b44edda7209b8101e32812\\_2](https://geodata.dep.state.fl.us/datasets/dda5772e85b44edda7209b8101e32812_2) (last visited Feb. 23, 2021).

- The state determines that the water body requires greater environmental protection than the current federal standards allow and the Environmental Protection Agency (EPA) finds that adequate pump-out facilities are available;<sup>95</sup>
- The EPA, upon application by the state, determines that the protection and enhancement of the water body requires establishment of a no-discharge zone;<sup>96</sup> or
- The area is within a drinking water intake zone.<sup>97</sup>

Currently, Florida has three designated no-discharge zones. These are Destin Harbor,<sup>98</sup> the city of Key West waters,<sup>99</sup> and the state waters within the Florida Keys National Marine Sanctuary.<sup>100</sup> Several states have established all state waters as no-discharge zones, including: Massachusetts, Michigan, Missouri, New Hampshire, New Mexico, Rhode Island, Vermont, and Wisconsin.<sup>101</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>102</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>103</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>104</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>105</sup>

A person who operates a motor vehicle and fails to submit to a breath, urine, or blood test will have his or her driver's license suspended for a period of 1 year for a first refusal, or 18 months for a repeat refusal.<sup>106</sup> A person who operates a motor vehicle who fails to submit to such test

<sup>95</sup> 33 U.S.C. s. 1322(f)(3).

<sup>96</sup> 33 U.S.C. s. 1322(f)(4)(A).

<sup>97</sup> 33 U.S.C. s. 1322(f)(4)(B).

<sup>98</sup> Marine Sanitation Device Standard for Destin Harbor, 53 Fed. Reg. 1,678 (Jan. 21, 1988).

<sup>99</sup> City of Key West No Discharge Zone Determination, 64 Fed. Reg. 46,390 (Aug. 25, 1999).

<sup>100</sup> Regulation to Establish a No Discharge Zone for State Waters within the Boundary of the Florida Keys National Marine Sanctuary, 67 FR 35735 (May 21, 2002).

<sup>101</sup> EPA, *No-Discharge Zones by State*, <https://www.epa.gov/vessels-marinas-and-ports/no-discharge-zones-ndzs-state> (last visited Feb. 23, 2021).

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

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

<sup>104</sup> Sections 316.1932(1)(c) and 327.352(1)(c), F.S.

<sup>105</sup> *Id.*

<sup>106</sup> Section 316.1932(1)(a) and (1)(c), F.S.

who has previously had his or her license suspended for a prior refusal commits a misdemeanor of the first degree and is subject to additional penalties.<sup>107</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>108</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>109</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>110</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>111</sup> Under the Court's ruling, refusing a blood test may not subject a person to criminal penalties.<sup>112</sup> Thus, Florida's current laws relating to the refusal to submit to a blood test are unenforceable.

## **Mangroves**

Mangroves are tropical plants that are adapted to loose, wet soils, salt water, and periodic submersion by tides.<sup>113</sup> They provide protected nursery areas for fishes, crustaceans, and shellfish; food, shelter, and nesting areas for a multitude of species;<sup>114</sup> protection of the shoreline from storm surge and erosion;<sup>115</sup> and water quality protection.<sup>116</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>117</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>118</sup> 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>119</sup>

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<sup>107</sup> *Id.*; s. 316.1939, F.S.

<sup>108</sup> Section 327.352(1)(a) and (1)(c), F.S.

<sup>109</sup> *Id.*; s. 327.259, F.S.

<sup>110</sup> *Birchfield v. North Dakota*, 136 U.S. 2160 (2016).

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> DEP, *What is a Mangrove?*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/what-mangrove> (last visited Feb. 23, 2021).

<sup>114</sup> DEP, *Florida's Mangroves*, <https://floridadep.gov/rcp/rcp/content/floridas-mangroves> (last visited Feb. 23, 2021).

<sup>115</sup> FWC, *Mangrove Forests*, <https://myfwc.com/research/habitat/coastal-wetlands/information/mangroves/> (last visited Feb. 23, 2021).

<sup>116</sup> *Id.*

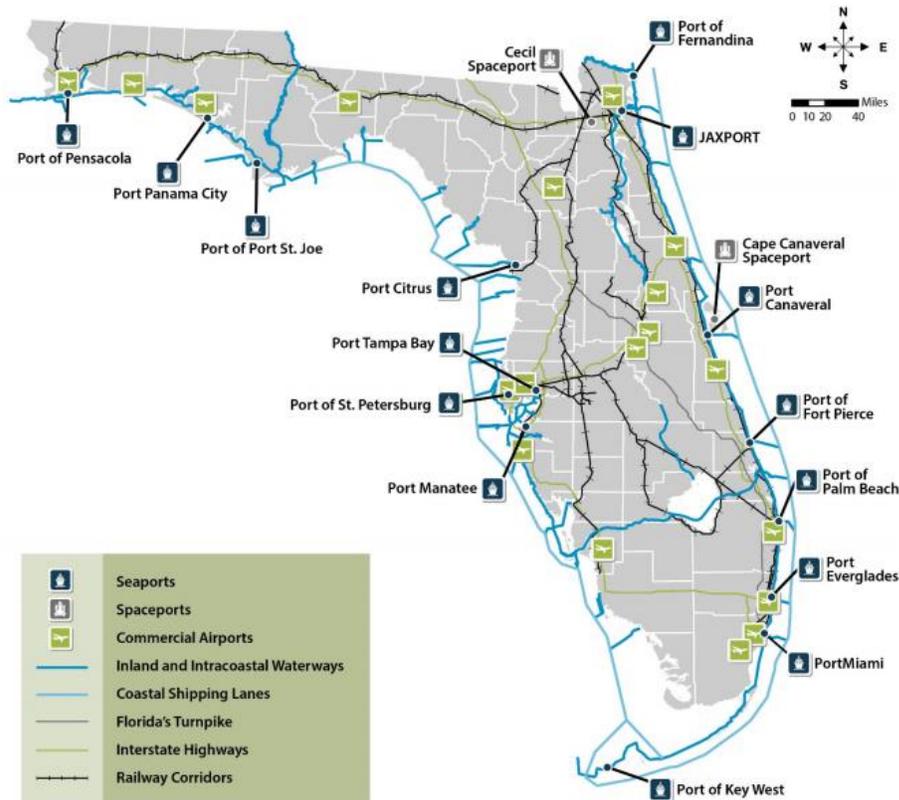
<sup>117</sup> Sections 403.9321-403.9333, F.S.

<sup>118</sup> Section 403.9323, F.S.

<sup>119</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>120</sup> The Florida Intracoastal Waterway is shown in the map below.<sup>121</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 Canaveral Spaceport,<sup>122</sup> including the SpaceX Demo-2 mission in May 2020<sup>123</sup> and the SpaceX

<sup>120</sup> Section 327.02(15), F.S.

<sup>121</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).

<sup>122</sup> Space Florida, *Space Florida and the Future of Aerospace* (undated memo)(on file with the Senate Committee on Environment and Natural Resources).

<sup>123</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).

Crew-1 mission in November 2020.<sup>124</sup> According to Space Florida, over 50 launches are expected in 2021, and up to 100 launches are expected annually going forward.<sup>125</sup> Upon re-entry, the space capsules splashed down in waters off of Florida's coasts for the first time in 45 years.<sup>126</sup> 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>127</sup>

When the capsule landed in waters near Pensacola in August 2020, private boats approached the landing area too closely, according to the National Aeronautics and Space Administration (NASA).<sup>128</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>129</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>130</sup>

There are no existing state statutes in place to protect spaceflight operations and astronauts. FWC stated in its agency bill analysis that "spectator separation is necessary to prevent interference with sensitive operations, as well as for public safety reasons."<sup>131</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 amends s. 316.1932, F.S., relating to tests for alcohol, chemical substances, or controlled substances while driving a motor vehicle. **Section 2** of the bill amends s. 316.1939, F.S., relating to refusal to submit to testing for alcohol, chemical substances, or controlled substances.

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

<sup>124</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>125</sup> Space Florida, *Space Florida and the Future of Aerospace* (undated memo)(on file with the Senate Committee on Environment and Natural Resources).

<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> 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>128</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>129</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>130</sup> *Id.*

<sup>131</sup> FWC, *Senate Bill 1086 Agency Bill Analysis* (February 10, 2021)(on file with the Senate Committee on Environment and Natural Resources).

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

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

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

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

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

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

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

- When the marked channel is the only navigable portion of the waterway available due to vessel congestion or obstructions on the water and the operator proceeds with diligence to a location where he or she may safely operate the vessel outside the marked channel;
- While crossing the marked channel in the most direct, continuous, and expeditious manner possible and not interfering with other vessel traffic in the channel; or
- During an emergency endangering life or limb.

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

**Rulemaking Authority: Section 4**

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

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

**Spaceflight: Section 5**

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

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

- “Launch services” means the conduct of a launch and activities involved in the preparation of a launch vehicle, payload, government astronaut, commercial astronaut, or spaceflight participant for such launch.
- “Reentry services” means the conduct of a reentry and activities involved in the preparation of a reentry vehicle, payload, government astronaut, commercial astronaut, or spaceflight participant for such reentry.
- “Spaceflight assets” means any item, or any part of an item, owned by a spaceflight entity which is used in launch services or reentry services, including crewed and uncrewed spacecraft, launch vehicles, parachutes and other landing aids, and any spacecraft or ancillary equipment that was attached to the launch vehicle during launch, orbit, or reentry.
- “Spaceflight entity” means any public or private entity holding a United States Federal Aviation Administration (FAA) launch, reentry, operator, or launch site license for spaceflight activities. The term also includes any manufacturer or supplier of components, services, or vehicles that have been reviewed by FAA as part of issuing such a license, permit, or authorization.<sup>132</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 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.

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<sup>132</sup> The bill defines “spaceflight entity” to have the same definition as in s. 331.501, F.S.

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

The section of law applies only to launch services, reentry services, or the recovery of spaceflight assets occurring or originating within spaceport territory,<sup>133</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, 14, 15, and 18**

**Section 10** of the bill amends s. 327.395, F.S., relating to boater safety identification. Beginning on January 1, 2023, the bill requires all persons who operate a vessel powered by a motor of 10 horsepower or greater to be in possession of photographic identification and a boating safety identification card. This requirement currently applies only to persons born after January 1, 1988.

The bill exempts from this requirement:

- Persons who have been previously licensed by the Coast Guard to serve as master of a vessel, provided proof of such licensure to FWC, and requested that a boating safety identification card be issued in his or her name; and
- Persons operating a vessel within 90 days after completing a boating safety education course who are in possession of photographic identification and a boating safety education certificate as proof of completing a boating safety education course.

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<sup>133</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 deletes a provision authorizing FWC to appoint liveries, marinas, or other persons as its agents to administer a boating safety education course or temporary certificate examination and issue identification cards or temporary certificates, and requiring the agent to charge a \$2 examination fee. However, the provision is retained in another subsection within the same section of law.

**Section 14** of the bill creates s. 327.332, 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 operating at slow speed, minimum wake from proceeding at a speed greater than is reasonable and prudent to avoid the creation of an excessive wake or other hazardous condition under the existing circumstances.

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

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

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

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

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

**Section 18** of the bill amends s. 327.54, F.S., relating to safety regulations of liveries. The bill prohibits liveries from knowingly leasing, hiring, or renting a vessel unless the person renting presents:

- Photographic identification and a valid boater safety identification card issued by FWC;
- A state-issued identification card or driver license indicating possession of the boating safety identification card; or
- Photographic identification and a valid temporary certificate issued or approved by FWC.

### **Boating-Restricted Areas: Sections 12 and 13**

**Section 12** 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 13** of the bill amends s. 327.46, F.S., relating to boating-restricted areas. The bill authorizes municipalities and counties to establish slow speed, minimum wake boating-restricted areas by ordinance if the area is within the boundaries of a permitted public mooring field and up to a 100 foot buffer around the mooring field.

The bill also authorizes municipalities and counties to establish boating-restricted areas within the portion of the Florida Intracoastal Waterway within their jurisdiction, except that the municipality or county may not establish a vessel-exclusion zone for public bathing beaches or swim areas within the waterway. This provision is notwithstanding existing law that prohibits municipalities and counties from regulating vessels upon the Florida Intracoastal Waterway.<sup>134</sup>

### **Derelict/At-Risk Vessels: Sections 11, 21, 22, 23, 24, and 25**

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

The bill authorizes FWC and other law enforcement officers to relocate or cause to be relocated a vessel at risk of becoming derelict to a distance greater than 20 feet from a mangrove or upland vegetation. Law enforcement agencies and officers must be held harmless for damages to an at-

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<sup>134</sup> Section 327.60(2)(c), F.S.

risk vessel that result from relocation unless the damage results from gross negligence<sup>135</sup> or willful misconduct.<sup>136</sup>

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

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

The bill provides that the program may include other preventative efforts and methods deemed appropriate and necessary by FWC. The bill authorizes FWC to adopt rules to implement the program. Implementation of the program is subject to appropriation by the Legislature and is funded by the Marine Resources Conservation Trust Fund or the Florida Coastal Protection Trust Fund.

**Section 19** 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 21 and Section 22** 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 22 of the bill takes effect on July 1, 2023.* At that time, the bill authorizes DHSMV to reject an application for a certificate of title for a vessel that has been deemed derelict.

**Section 23** of the bill amends s. 376.15, F.S., relating to the relocation or removal of derelict vessels from public waters. The bill revises the authorized relocation or removal of derelict vessels from “public waters” to “waters of this state.” The bill requires a governmental subdivision that has received authorization from a law enforcement agency to perform vessel

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<sup>135</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>136</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.

relocation or removal activities to be licensed, insured, and properly equipped to perform such activities.

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

**Section 24** of the bill amends s. 705.103, F.S., relating to the procedures for abandoned or lost property. The bill creates specific procedures for derelict vessels or vessels that have been declared a public nuisance that are present on waters of this state. When a law enforcement officer ascertains that such a vessel exists, the officer must cause a notice to be placed on the vessel in substantially the following form:

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

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

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

- Remove the vessel from the waters of this state and destroy and dispose of the vessel or authorize another governmental entity or its designee to do so; or
- Authorize the vessel's use as an artificial reef in accordance with FWC's artificial reef program if all necessary federal, state, and local authorizations are received.

The bill provides that neglecting or refusing to pay all costs of removal, storage, 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 25** of the bill amends s. 823.11, F.S., relating to the relocation or removal of derelict vessels. The bill revises 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. 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 allows for governmental subdivisions that have received authorization from a law enforcement officer or agency to recover costs from a vessel owner for relocation or removal of a derelict vessel. The bill provides that neglecting or refusing to pay all costs of removal, storage, and destruction 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.

### **No Discharge Zones: Section 16**

**Section 16** of the bill creates s. 327.521, F.S., relating to no-discharge zones. The bill designates all waters of this state as no-discharge zones upon approval by the United States Environmental Protection Agency. The bill prohibits persons from discharging treated or untreated sewage from any vessel or floating structure into waters of this state. The bill provides that discharging sewage in violation is a noncriminal infraction, for which the penalty is up to \$250. For ongoing or continuous prohibited discharges, a penalty of up to \$250 for each day the violation continues may be assessed.

The bill declares that a vessel or floating structure in violation of these provisions is a nuisance and hazard to public safety and health. The bill requires an owner or operator of a vessel or

floating structure who receives a second conviction for discharging sewage, within 30 days following the conviction, to remove the vessel or floating structure from the waters of this state. The bill defines “conviction” as a disposition other than acquittal or dismissal.

If the vessel or floating structure is not removed, FWC or other law enforcement is required to 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 state at the owner’s expense. If the owner cannot be found or otherwise fails to pay the removal costs, the vessel may be sold by nonjudicial sale to recover the costs of removal. If the proceeds from nonjudicial sale are not sufficient to pay the removal costs, funds appropriated from the Marine Resources Conservation Trust Fund may be used.

### **Marine Sanitation Devices: Section 17**

**Section 17** of the bill amends s. 327.53, F.S., relating to marine sanitation. The bill requires the owner or operator of a live-aboard vessel or houseboat that is equipped with a marine sanitation device to maintain a record of the date of each pumpout of the device and the location of the pumpout station or waste reception facility. The bill requires each record to be maintained for 1 year after the pumpout date.

### **Penalties: Section 20**

**Section 20** of the bill amends s. 327.73, F.S., relating to civil penalties for violations of specified vessel laws.

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

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

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

The bill declares that a vessel that is the subject of three or more violations issued within an 18-month period by a law enforcement officer for being at risk of becoming derelict, which result in a disposition other than acquittal or dismissal, is a public nuisance and is subject to relocation or removal. The bill authorizes FWC or other law enforcement to relocate or remove the vessel or cause it to be relocated or removed. Law enforcement officers who relocate or remove such a

vessel are held harmless for damages to the vessel unless the damage results from gross negligence<sup>137</sup> or willful misconduct.<sup>138</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;
- Operating a human-powered vessel within the boundaries of a marked channel of the Florida Intracoastal Waterway in violation of the new statutory restrictions; and
- Discharging sewage into a no-discharge zone. The penalty for violating the no-discharge zone is up to \$250 per offense.

### **Conforming Changes: Sections 9 and 15**

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

**Section 15** of the bill amends s. 327.50, F.S., relating to vessel safety regulations, equipment, and lighting requirements. The bill corrects an incorrect reference to clarify that FWC may exempt vessel owners and operators from current Coast Guard safety equipment requirements.

### **Effective Date: Section 26**

**Section 26** of the bill provides that except as otherwise expressly provided, the effective date is July 1, 2021. (*Section 22 of the bill takes effect July 1, 2023.*)

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

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<sup>137</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>138</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.

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. Persons of any age who operate certain vessels will have to obtain boater safety identification cards or temporary certificates. Costs for current safety training courses range from free up to \$50.

Additionally, vessel owners and operators may incur increased costs for required pumpouts.

C. Government Sector Impact:

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

If FWC establishes a derelict vessel prevention program, the agency is likely to incur costs from implementing the program. The bill provides that establishment of the program is subject to legislative appropriation, but it is unknown what amount the appropriation would be.

**VI. Technical Deficiencies:**

The bill revises the authorized relocation or removal of derelict vessels from “public waters” to “waters of this state” on lines 1217-1218 of the bill. On line 1228 of the bill, the revised term is “public waters of this state.” On lines 1509-1510 of the bill, the revised term is “public waters of this state.” The revisions reference a term defined in s. 327.02(47), F.S.: “waters of this state.” Lines 1228 and 1509 should be revised for consistency. Additionally, lines 1248 and 1468 use the term “public waters of this state” in existing law and should be revised accordingly.

**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, 327.4109, 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, 327.521.

**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.