

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 323 Fish and Wildlife Conservation Commission

SPONSOR(S): State Affairs Committee, Environment, Agriculture & Flooding Subcommittee, Sirois

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 494

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Environment, Agriculture & Flooding Subcommittee	17 Y, 0 N, As CS	Gawin	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee	12 Y, 0 N	White	Pigott
3) State Affairs Committee	22 Y, 0 N, As CS	Gawin	Williamson

SUMMARY ANALYSIS

The Florida Fish and Wildlife Conservation Commission (FWC) is the agency responsible for regulating boating, wild animal life, fresh water aquatic life, and marine life in the state.

A derelict vessel is a vessel that is left, stored, or abandoned in a wrecked, junked, or substantially dismantled condition upon any public state waters; at a port in the state without the consent of the agency that has jurisdiction of the port; or docked, grounded, or beached upon the property of another without the consent of the property owner. It is unlawful to store, leave, or abandon a derelict vessel in Florida. In addition, current law prohibits a vessel that is at risk of becoming derelict from anchoring, mooring, or occupying state waters. A vessel that has been the subject of three or more at-risk violations within an 18-month period is deemed a public nuisance. The bill expands the types of vessels that may be considered at-risk vessels by authorizing an FWC officer or a law enforcement officer to determine that a vessel is at risk of becoming derelict if it is tied to an unlawful or unpermitted structure or mooring. The bill also expands the definition of "abandoned property" to include vessels that have been declared a public nuisance to clarify that the laws and procedures that apply to abandoned property also apply to such vessels.

The bill specifies that an owner or party responsible for a vessel declared a public nuisance who does not remove the vessel within 21 days after a notice directing the removal is placed on the vessel is liable for all costs of removal, storage, destruction, and disposal of the vessel. In addition, the bill specifies that grants provided to local governments for the removal, storage, destruction, and disposal of derelict vessels may also be used for the removal, storage, destruction, and disposal of vessels declared a public nuisance.

The bill prohibits municipalities and counties from establishing public bathing beach or swim areas on waters that include any portion of the Florida Intracoastal Waterway or that are within 100 feet of any portion of the marked channel of the waterway. The bill also authorizes a person to operate a human-powered vessel within the waterway when participating in certain club athletic teams or sports affiliated with an educational institution under certain circumstances.

The bill requires each lead land managing agency to consider the feasibility of using specified state lands as gopher tortoise recipient sites and requires FWC to follow specified timelines related to gopher tortoise recipient site permitting.

The bill authorizes a law enforcement employee of FWC or the Florida Forest Service to use drones for the purposes of managing and eradicating invasive exotic plants or animals on public lands and suppressing and mitigating wildfire threats.

The bill may have an insignificant negative fiscal impact on the state that can be absorbed within existing resources.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Fish and Wildlife Conservation Commission

The Fish and Wildlife Conservation Commission (FWC) is the agency responsible for regulating boating in the state.¹ Through its Division of Law Enforcement, FWC works to enforce a variety of state and federal boating laws, including regulations related to boating safety, waterway management, vessel maintenance, and marine sanitation. FWC also exercises the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life.² These powers include authority with respect to the control and management of nonnative plant and animal species.

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 state waters; at a port in the state without the consent of the agency that has jurisdiction of the port; or docked, grounded, or beached upon the property of another without the consent of the owner of the property.³

It is unlawful to store, leave, or abandon⁴ a derelict vessel in Florida.⁵ Violations are punishable by a term of imprisonment of no more than one year and a fine of up to \$1,000.⁶ State law further provides that a violation of derelict vessel laws may also be subject to a civil penalty of up to \$75,000 per day.⁷ Each day during any portion of which the violation occurs constitutes a separate offense.⁸

At-risk Vessels

Current law also prohibits vessels that are at risk of becoming derelict from anchoring, mooring, or occupying state waters.⁹ A vessel is considered 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.
- The vessel has broken loose or is in danger of breaking loose from its anchor.
- The vessel is listing due to water intrusion.
- 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.¹⁰

A violation for anchoring, mooring, or occupying a vessel at risk of becoming derelict on state waters is a noncriminal infraction, for which the civil penalty is \$100 for a first offense, \$250 for a second offense

¹ FWC, *Boating*, available at <https://myfwc.com/boating/> (last visited Nov. 22, 2021).

² Art. IV, s. 9, FLA. CONST.

³ Section 823.11(1)(b), F.S.

⁴ Section 705.101(3), F.S., defines “abandoned property” as all tangible personal property that does not have an identifiable owner and that has been disposed 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.

⁵ Section 823.11(2), F.S.

⁶ Sections 775.082(4)(a) and 775.083(1)(d), F.S.

⁷ Section 376.16(1), F.S.

⁸ *Id.*

⁹ Chapter 2016-108, Laws of Fla.; s. 327.4107, F.S.

¹⁰ Section 327.4107(2), F.S.

occurring 30 days or more after a first offense, and \$500 for a third or subsequent offense occurring 30 days or more after a previous offense.¹¹

A vessel that has been the subject of three or more at-risk vessel violations within an 18-month period that result in dispositions other than acquittal or dismissal is deemed a public nuisance.¹²

Removal of Derelict and At-risk Vessels

The Division of Law Enforcement within FWC and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officer have the responsibility and authority to enforce vessel safety and vessel title certificates, liens, and registration.¹³

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.¹⁴ Such law enforcement are also authorized to relocate or remove a vessel declared a public nuisance.¹⁵

When a law enforcement officer determines that a derelict vessel or a vessel declared a public nuisance is present on state waters, the officer is required to place a notice on the vessel stating the vessel is unlawfully upon state waters and must be removed within 21 days.¹⁶ The notice must also specify that if the vessel is not removed by the owner within 21 days, the vessel will be removed and disposed of and that the owner or party deemed legally responsible for the vessel being in a derelict condition will be liable for costs of removal, destruction, and disposal if not removed.¹⁷

The costs incurred for relocating or removing a derelict vessel are recoverable against the vessel owner. A vessel owner who neglects or refuses to pay the costs of removal, storage, and destruction of the vessel, less any salvage value obtained by disposal of the vessel, is not entitled to be issued a certificate of registration for such vessel, or any other vessel or motor vehicle, until the costs are paid.¹⁸

FWC may provide grants to local governments for the removal, storage, destruction, and disposal of derelict vessels from state waters if funds are appropriated for such grants.¹⁹ Grants are awarded based on a set of criteria outlined in FWC rules.²⁰ Removal or relocation of the vessel on private property is not eligible for grant funding.²¹

Boating-restricted Areas

Boating-restricted areas, including, but not limited to, restrictions of vessel speeds and vessel traffic, may be established on state waters for any purpose necessary to protect the safety of the public if such restrictions are necessary based on boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion, or other navigational hazards or to protect seagrasses on privately owned submerged lands.²²

¹¹ Section 327.73(1)(aa), F.S.

¹² *Id.*

¹³ Section 943.10(1), F.S., defines “law enforcement officer” as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The definition also includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

¹⁴ Sections 376.15(3)(a) and 823.11(3), F.S.

¹⁵ *Id.*

¹⁶ Section 705.103(2)(a)(1)(b), F.S.

¹⁷ *Id.*

¹⁸ Section 705.103(4), F.S.

¹⁹ Section 376.15, F.S.

²⁰ Rule 68-1.003, F.A.C.

²¹ National Oceanic and Atmospheric Association: Marine Debris Program, *Abandoned and Derelict Vessels in Florida*, available at <https://marinedebris.noaa.gov/abandoned-and-derelict-vessels/florida> (last visited Nov. 18, 2021).

²² Section 327.46(1), F.S.

FWC may establish a boating-restricted area pursuant to the Administrative Procedure Act, and municipalities and counties have the authority to establish the following boating-restricted areas by ordinance, including within the portion of the Florida Intracoastal Waterway within their jurisdiction:²³

- An ordinance establishing an idle speed, no wake boating-restricted area, if the area is:
 - Within 500 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways more than 300 feet in width or within 300 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways not exceeding 300 feet in width.
 - Within 500 feet of fuel pumps or dispensers at any marine fueling facility that sells motor fuel to the general boating public on waterways more than 300 feet in width or within 300 feet of the fuel pumps or dispensers at any licensed terminal facility that sells motor fuel to the general boating public on waterways not exceeding 300 feet in width.
 - Inside or within 300 feet of any lock structure.
- An ordinance establishing a slow speed, minimum wake boating-restricted area if the area is:
 - Within 300 feet of any bridge fender system.
 - Within 300 feet of any bridge span presenting a vertical clearance of less than 25 feet or a horizontal clearance of less than 100 feet.
 - On a creek, stream, canal, or similar linear waterway if the waterway is less than 75 feet in width from shoreline to shoreline.
 - On a lake or pond of less than 10 acres in total surface area.
 - Within the boundaries of a permitted public mooring field and a buffer around the mooring field of up to 100 feet.
- An ordinance establishing a vessel-exclusion zone if the area is designated as a public bathing beach or swim area or within 300 feet of a dam, spillway, or flood control structure.

Florida Intracoastal Waterway

The Intracoastal Waterway is a navigable toll-free shipping route, extending for about 3,000 miles along the Atlantic Ocean and Gulf of Mexico coasts in the southern and eastern U.S. It utilizes sounds, bays, lagoons, rivers, and canals and is usable in many portions by deep-draft vessels. The route is federally maintained and is connected to inland waterways in many places. It was originally planned to form a continuous channel from New York City to Brownsville, Texas, but the necessary canal link through northern Florida was never completed; hence, it is now in two separate sections—the Atlantic and the Gulf.²⁴

The Florida Intracoastal Waterway refers to 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.²⁵

The Florida Forever Act

The Legislature created the Florida Forever program in 1999 as the blueprint for conserving Florida's natural resources.²⁶ The Florida Forever Act 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

²³ Sections 327.46(1)(a) and (b), F.S.

²⁴ Encyclopedia Britannica, *Intracoastal Waterway*, available at <https://www.britannica.com/topic/Intracoastal-Waterway> (last visited Nov. 18, 2021).

²⁵ Section 327.02(15), F.S.

²⁶ Chapter 99-247, Laws of Fla.

purchase of conservation easements.²⁷ The state has acquired more than 2.4 million acres since 1991 under the Preservation 2000 Act and the Florida Forever program.²⁸

Gopher Tortoises

Gopher tortoises are long-lived reptiles that occupy upland habitat throughout Florida, including forests, pastures, and yards.²⁹ Gopher tortoises dig deep burrows for shelter and forage on low-growing plants.³⁰ Gopher tortoises share their burrows with more than 350 other species, and are therefore referred to as a keystone species.³¹ Habitat destruction is a significant threat to gopher tortoises, which need large parcels of undeveloped land not fragmented by roads, buildings, parking lots, and other structures.³² Such barriers in natural habitat limit food availability and burrow space for tortoises and expose them to closer contact with humans and their vehicles.³³

Gopher Tortoise Protections

On the federal level, the gopher tortoise is listed as a threatened species only in areas west of the Mobile and Tombigbee rivers in Alabama.³⁴ The areas east of these rivers, including Florida, are currently under review for federal protection.³⁵ In Florida, however, FWC lists the gopher tortoise as a threatened species.³⁶ Therefore, it is illegal to harm, capture, or kill a gopher tortoise or damage its burrow unless authorized by FWC, and a gopher tortoise relocation permit must be obtained from FWC before disturbing burrows and conducting construction activities.³⁷

Gopher Tortoise Relocation Permits and Sites

If a development site avoids impacts to tortoise burrows by 25 feet in all directions from the burrow opening, no permit is required.³⁸ If a development site will impact tortoise burrows, the type of relocation permit required depends on the number of burrows impacted and whether the ground has been disturbed before tortoise burrow surveys are complete.³⁹ FWC requires a mitigation contribution to be paid for all relocation permits.⁴⁰ Tortoises can be relocated on-site if suitable habitat remains, or to an off-site recipient site. Recipient sites are privately or publicly owned lands permitted by FWC to

²⁷ Section 259.105, F.S.

²⁸ DEP, *Frequently Asked Questions about Florida Forever*, <https://floridadep.gov/lands/environmental-services/content/faq-florida-forever> (last visited Feb. 23, 2022).

²⁹ FWC, *Gopher Tortoise Program*, <https://myfwc.com/wildlifehabitats/wildlife/gopher-tortoise/> (last visited Feb. 3, 2022).

³⁰ FWC, *Gopher Tortoise*, <https://myfwc.com/wildlifehabitats/profiles/reptiles/gopher-tortoise/#:~:text=Gopher%20tortoises%20prefer%20well%20drained,including%20pastures%20and%20urban%20areas>. (last visited Feb. 3, 2022).

³¹ FWC, *Gopher Tortoise Program*, <https://myfwc.com/wildlifehabitats/wildlife/gopher-tortoise/> (last visited Feb. 3, 2022).

³² FWC, *Gopher Tortoise*, <https://myfwc.com/wildlifehabitats/profiles/reptiles/gopher-tortoise/#:~:text=Gopher%20tortoises%20prefer%20well%20drained,including%20pastures%20and%20urban%20areas>. (last visited Feb. 3, 2022).

³³ *Id.*
³⁴ United States Fish & Wildlife Service (FWS), *Gopher tortoise (Gopherus polyphemus)*, <https://ecos.fws.gov/ecp/species/6994> (last visited Feb. 23, 2022).

³⁵ *Id.*
³⁶ FWC, *Gopher Tortoise*, <https://myfwc.com/wildlifehabitats/profiles/reptiles/gopher-tortoise/#:~:text=Gopher%20tortoises%20prefer%20well%20drained,including%20pastures%20and%20urban%20areas>. (last visited Feb. 23, 2022).

³⁷ Rule 68A-27.003(f)(5), F.A.C.

³⁸ FWC, *Gopher Tortoise Permits*, <https://myfwc.com/license/wildlife/gopher-tortoise-permits/> (Last visited Feb. 23, 2022).

³⁹ See FWC, *Gopher Tortoise Permitting Guidelines* (April 2008, revised July 2020), p. 7, available at <https://myfwc.com/media/11854/gt-permitting-guidelines.pdf> (last visited Feb. 23, 2022).

⁴⁰ *Id.*

accept tortoises needing relocation.⁴¹ A recipient site on public conservation lands must be 40 contiguous acres.⁴²

Nonnative Plant and Animal Species

Nonnative⁴³ species are animals or plants living in Florida outside captivity or human cultivation that were not historically present in the state.⁴⁴ More than 500 fish and wildlife nonnative species have been documented in Florida, and over 1,180 nonnative plant species have become established outside of human cultivation.⁴⁵ Not all nonnative species pose a threat to Florida's ecology, but some nonnative species become invasive species by causing harm to native species, posing a threat to human health and safety, or causing economic damage.⁴⁶

To manage and minimize the impacts of nonnative animal species, individuals may not import, introduce, or possess any nonnative animal species without a permit from FWC.⁴⁷ Permittees who possess these species must meet certain requirements set by FWC related to identifying, inspecting, and transporting such species as well as record-keeping requirements and certain captivity requirements to prevent escape. Permittees are also required to maintain disaster incident plans and detailed research plans.⁴⁸ To further manage invasive and nonnative species, FWC provides public education, exotic pet amnesty days to surrender nonnative pets to pre-qualified adopters,⁴⁹ and nonnative species eradication programs for fish and wildlife as well as plants.

FWC's Nonnative Fish and Wildlife Program aims to minimize the adverse impacts of nonnative animal species through prevention, early detection, rapid response, control and management, and education and outreach. The program staff work to monitor and remove nonnative species, respond to new invasions, and assess the risk of species not yet present in the state.⁵⁰

FWC's Upland Invasive Exotic Plant Management Program conducts invasive plant removal on public conservation lands throughout the state.⁵¹ Invasive plant removal projects are recommended by a network of regional invasive plant working groups, which are comprised of local land managers who are interested in or responsible for maintaining and restoring federal, state, and local government conservation land. The program identifies areas that are in need of restoration and hires private vegetation management contractors to do the removal.⁵² The Upland Invasive Plant Management Program has conducted 2,000 invasive plant control operations targeting 2.7 million acres and has assisted land managers on 700 federal, state, and county-managed natural areas that comprise over 10 million acres, or 90 percent of public conservation land in the state.⁵³

Drones

⁴¹ FWC, *Gopher Tortoise Recipient Sites*, <https://myfwc.com/license/wildlife/gopher-tortoise-permits/recipient-sites/> (last visited Feb. 23, 2022).

⁴² FWC, *Gopher Tortoise Permitting Guidelines* (April 2008, revised July 2020), p. 29, available at <https://myfwc.com/media/11854/gt-permitting-guidelines.pdf> (last visited Feb. 25, 2022.)

⁴³ The terms "nonnative" and "exotic" have the same meaning and are used interchangeably.

⁴⁴ FWC, *Nonnative Species Information*, available at <https://myfwc.com/wildlifehabitats/nonnatives/exotic-information/> (last visited Nov. 18, 2021).

⁴⁵ Nicole Dodds, Mary Miller, and Alexa Lamm, University of Florida Institute of Food and Agricultural Sciences, *Floridians' Perceptions of Invasive Species*, Feb. 2014, p. 1, available at <http://edis.ifas.ufl.edu/pdf/files/WC/WC18600.pdf> (last visited Nov. 18, 2021).

⁴⁶ FWC, *Florida's Nonnative Fish and Wildlife*, available at <https://myfwc.com/wildlifehabitats/nonnatives/> (last visited Nov. 18, 2021).

⁴⁷ Section 379.231(1), F.S.

⁴⁸ Rule 68-5.005, F.A.C.

⁴⁹ FWC, *Exotic Pet Amnesty Programs*, available at <https://myfwc.com/wildlifehabitats/nonnatives/amnesty-program/> (last visited Nov. 18, 2021); r. 68-5.008, F.A.C.

⁵⁰ FWC, *Florida's Nonnative Fish and Wildlife*, available at <https://myfwc.com/wildlifehabitats/nonnatives/> (last visited Nov. 18, 2021).

⁵¹ FWC, *Upland Plant Management*, available at <https://myfwc.com/wildlifehabitats/habitat/invasive-plants/upland-plant/> (last visited Nov. 18, 2021); s. 369.252, F.S.

⁵² *Id.*

⁵³ *Id.*

Under Florida law, a drone is a powered, aerial vehicle that:

- Does not carry a human operator;
- Uses aerodynamic forces to provide vehicle lift;
- Can fly autonomously or be piloted remotely;
- Can be expendable or recoverable; and
- Can carry a lethal or nonlethal payload.⁵⁴

The full system comprised of a drone and its associated elements, including communication links and components used to control the drone, is called an unmanned aircraft system.⁵⁵ Drones can range vastly in size and weight and may be controlled manually or through an autopilot that uses a data link to connect the drone's pilot to the drone. Drones can also be equipped with infrared cameras⁵⁶ and "LADAR" (laser radar).⁵⁷

Restrictions on Drone Use

Section 934.50, F.S., restricts the use of drones by individuals and government entities to conduct surveillance. The law recognizes that a real property owner is presumed to have a reasonable expectation of privacy on his or her privately owned real property if he or she cannot be seen by persons at ground level who are in a place they have a legal right to be.⁵⁸ Thus, law enforcement may not use a drone to gather evidence or other information, with certain exceptions. When law enforcement has reasonable suspicion that swift action is needed, drone use is permitted to:

- Prevent imminent danger to life or serious damage to property;
- Forestall the imminent escape of a suspect or the destruction of evidence; or
- Achieve certain purposes such as facilitating the search for a missing person.⁵⁹

Other exceptions for which drone use is authorized include:

- Countering terrorist attacks;
- Effecting search warrants authorized by a judge;
- Lawful business activities licensed by the state, with certain exceptions;
- Assessing property for ad valorem taxation purposes;
- Capturing images of utilities for specified purposes;
- Aerial mapping;
- Cargo delivery;
- Capturing images necessary for drone navigation; and
- Routing, siting, installing, maintaining, or inspecting communications service facilities.⁶⁰

Additionally, current law allows the use of a drone by non-law enforcement employees of FWC or the Florida Forest Service for the purposes of managing and eradicating invasive exotic plants or animals on public lands and suppressing and mitigating wildfire threats.⁶¹

Section 934.50, F.S., specifies that evidence obtained or collected by a law enforcement agency using a drone is not admissible in a criminal prosecution in any court of law in the state, unless it is permitted under one of the statute's exceptions.⁶²

⁵⁴ Section 934.50(2)(a), F.S.

⁵⁵ Section 330.41(2)(c), F.S.

⁵⁶ Infrared cameras can see objects through walls based on the relative levels of heat produced by the objects. Congressional Research Service, *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Congressional Response*, Apr. 3, 2013, available at www.fas.org/sgp/crs/natsec/R42701.pdf (last visited Nov. 18, 2021).

⁵⁷ The research and development laboratory at the Massachusetts Institute of Technology has developed airborne lidar systems that generate detailed 3D imagery of terrain and structures, including those beneath dense foliage. The lab reports that the micro-lidar could be used under both clear and heavy foliage conditions for surveillance and reconnaissance missions as well as for humanitarian assistance and disaster relief operations. Massachusetts Institute of Technology, *Micro-lidar*, available at <https://www.ll.mit.edu/r-d/projects/micro-lidar> (last visited Nov. 18, 2021).

⁵⁸ Sections 934.50(3)(a) and 934.50(4), F.S.

⁵⁹ Section 943.50(4)(c), F.S.

⁶⁰ Sections 943.50(4)(a)-(b) and 943.50(4)(d)-(j), F.S.

⁶¹ Section 943.50(4)(p), F.S.

⁶² Section 934.50(6), F.S.

Use of Drones for Managing Invasive Species and Suppressing and Mitigating Wildfire Threats

Remote sensing using drones for the surveillance, detection, and reporting of an invasive species on a landscape scale can improve early detection of invading plants and animals, making their management more efficient and less expensive.⁶³ Studies have shown that drones can efficiently and inexpensively cover a large geographic range, reach places that are physically difficult for humans to access, cover substantially more territory and topography, carry a variety of cameras and sensors, collect biological specimens, and target and eliminate individual organisms through ballistic application of herbicides.⁶⁴ Current law allows only non-law enforcement employees of FWC and the Florida Forest Service to use drones for such purposes.

Effect of the Bill

Derelict and At-risk Vessels

The bill expands the types of vessels that may be considered at-risk vessels by authorizing an FWC officer or a law enforcement officer to determine that a vessel is at risk of becoming derelict if it is tied to an unlawful or unpermitted structure or mooring.

The bill expands the definition of “abandoned property” to include vessels that have been declared a public nuisance to clarify that the laws and procedures that apply to abandoned property also apply to such vessels.

The bill specifies that an owner or party responsible for a vessel declared a public nuisance who does not remove the vessel within 21 days after a notice directing the removal is placed on the vessel is liable for all costs of removal, storage, destruction, and disposal of the vessel. The bill also requires the notice to inform the owner or responsible party of this liability.

Upon the final disposition of a derelict vessel or vessel declared a public nuisance, the bill requires the law enforcement agency or other government agency to notify the owner or other party determined to be legally responsible for the vessel of the amount owed.

The bill 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 a public nuisance unless a law enforcement officer has verified in writing that the vessel is no longer a public nuisance.

The bill specifies that FWC, an FWC officer, or a law enforcement agency or officer may relocate, remove, and store a derelict vessel, but may not destroy or dispose of the vessel.

The bill specifies that grants provided to local governments for the removal, storage, destruction, and disposal of derelict vessels may also be used for the removal, storage, destruction, and disposal of vessels declared a public nuisance. The bill also specifies that such grants may be funded using money in the Florida Coastal Protection Trust Fund.

The bill repeals s. 376.15, F.S., to remove duplicative provisions related to derelict vessels and transfers non-duplicative provisions to s. 832.11, F.S.

Boating-restricted Areas

The bill prohibits counties and municipalities from establishing public bathing beach or swim areas on waters that include any portion of the Florida Intracoastal Waterway or that are within 100 feet of the marked channel of the Florida Intracoastal Waterway.

⁶³ Barbara Martinez, Alex Dehgan, Brad Zamft, David Baisch, Colin McCormick, Anthony J. Giordano, Rebecca Aicher, Shah Selbe, Cassie Hoffman, *Advancing federal capacities for the early detection of and rapid response to invasive species through technology innovation*, National Invasive Species Council: Contractor’s Report, Mar. 2017, available at https://www.doi.gov/sites/doi.gov/files/uploads/federal_capacities_for_edrr_through_technology_innovation_contractorsreport_10.22.18.pdf (last visited Nov. 18, 2021).

⁶⁴ *Id.*

The bill authorizes a person to operate a human-powered vessel within the boundaries of the marked channel of the Florida Intracoastal Waterway when participating in interscholastic, intercollegiate, intramural, or club athletic teams or sports affiliated with an educational institution if the adjacent area outside of the marked channel is not suitable for such practices or competition. The bill requires the teams to use their best efforts to make use of the adjacent area outside the marked channel. FWC must be notified in writing of the details of any such competition, and the notice must include, but need not be limited to, the date, time, and location of the competition.

Gopher Tortoise Recipient Sites

The bill requires each lead land managing agency, in consultation with FWC, to consider the feasibility of using a portion of state lands as a gopher tortoise recipient site in management plans for all state lands under the management of the agency that are greater than 40 contiguous acres. If the lead land managing agency, in consultation with FWC, determines that the gopher tortoise recipient site management does not conflict with the primary management objectives of the lands, the management plan must contain a component prepared by the agency or cooperatively with an FWC wildlife biologist that assesses the feasibility of managing the lands as a recipient site consistent with FWC rules.

Additionally, the bill requires the feasibility assessment by the lead land managing agency to evaluate the economic feasibility of establishing a gopher tortoise recipient site, including the initial cost and recurring management costs of operating the recipient site consistent with the requirements of FWC rules and the revenue projections necessary to ensure the initial and recurring costs of establishing and perpetually maintaining the recipient site do not create an increased recurring expense for the agency.

The bill specifies that gopher tortoise recipient sites are an authorized use of easements acquired pursuant to s. 570.71(2)(a) and (b), F.S.

The bill authorizes owners of land where a conservation easement or other less-than-fee interest has been acquired by the Board of Trustees of the Internal Improvement Trust Fund or another state agency or a regional or local government to establish a recipient site or conservation bank on the lands. The bill specifies such establishment must advance the restoration, enhancement, management, or repopulation of imperiled species habitat, and the recipient site or operation and maintenance of the conservation bank may not interfere with the management plan for the conservation easement. The bill also requires the landowner to comply with all state and federal permitting requirements for the recipient site or conservation bank.

By December 31, 2022, the bill requires FWC to streamline and improve the review of applications for public and private gopher tortoise recipient sites. The bill requires requests for additional information to be received by the applicant within 45 days after receipt of an application and requires FWC to approve or deny a complete application within 45 days after receipt of such application.

By October 31 2022, the bill requires FWC to establish an ongoing effort to encourage the establishment of new gopher tortoise recipient sites on private lands throughout the state. In addition, FWC must update its permitting systems to create an online dashboard to show permitted and available capacity for reservations in permitted gopher tortoise recipient sites to assist with the efficient relocation of gopher tortoises.

By February 1, 2023, the bill requires FWC to submit a report to the President of the Senate and the Speaker of the House of Representatives that includes the progress made in establishing new private and public gopher tortoise recipient sites; the average time it takes to approve or deny a recipient site application once a complete application is received; any federal action taken to modify the listing of the gopher tortoise under the Endangered Species Act; and any other information relevant to the gopher tortoise conservation program.

Drones

The bill authorizes a law enforcement employee of FWC or the Florida Forest Service to use drones for the purposes of managing and eradicating invasive exotic plants or animals on public lands and suppressing and mitigating wildfire threats.

Clarifying Provisions

The bill clarifies the definitions of “marine fish” and “saltwater fish” to reflect updates in the scientific classification of certain identifying terminology.

The bill revises provisions related to boating under the influence to clarify that certain forms are provided by FWC.

B. SECTION DIRECTORY:

- Section 1. Amends s. 259.105, F.S., related to the Florida Forever Act.
- Section 2. Creates an unnumbered section of law creating guidelines for FWC related to gopher tortoise recipient site permitting.
- Section 3. Amends s. 327.35215, F.S., relating to penalties for failure to submit to a blood, breath, or urine test.
- Section 4. Amends s. 327.371, F.S., relating to human-powered vessels
- Section 5. Amends s. 327.4107, F.S., to specify that vessels tied to unlawful or unpermitted moorings or other structures are considered at risk of becoming derelict.
- Section 6. Amends 327.46, F.S., to prohibit the designation of public bathing beaches in certain areas.
- Section 7. Repeals s. 376.15, F.S., related to the relocation and removal of derelict vessels.
- Section 8. Amends s. 379.101, F.S., to clarify the definitions of “marine fish” and “saltwater fish.”
- Section 9. Amends s. 705.101, F.S., to expand the definition of “abandoned property” to include vessels declared a public nuisance.
- Section 10. Amends s. 705.103, F.S., to specify requirements for vessels declared a public nuisance.
- Section 11. Effective July 1, 2023, amends s. 705.103, F.S., as amended by chs. 2019-76 and 2021-184, L.O.F., to specify notice requirements for vessels deemed a public nuisance.
- Section 12. Amends s. 823.11, F.S., related to derelict vessel relocation and removal.
- Section 13. Amends s. 934.50, F.S., to authorize FWC law enforcement officers to use drones for specified purposes.
- Section 14. Amends s. 327.04, F.S., to make conforming changes.
- Section 15. Amends s. 327.352, F.S., relating to tests for alcohol, chemical substances, or controlled substances.
- Section 16. Amends s. 328.09, F.S., to specify certificates of title may not be issued to an applicant for a vessel deemed a public nuisance.
- Section 17. Repeals s. 25 of ch. 2021-184, L.O.F., relating to refusal to issue and authority to cancel a certificate of title or registration.
- Section 18. Amends s. 328.72, F.S., to make conforming changes.

- Section 19. Amends s. 376.11, F.S., to authorize funds from the Florida Coastal Protection Trust Fund to be used for the removal of public nuisance vessels from the waters of the state.
- Section 20. Reenacts s. 125.01, F.S., relating to powers and duties of county organization and intergovernmental relations.
- Section 21. Reenacts s. 379.2412, F.S., relating to state preemption of the power to regulate the taking or possession of saltwater fish.
- Section 22. Provides an effective date of July 1, 2022, except as otherwise expressly provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an insignificant negative fiscal impact on FWC for adopting a new rule. This impact can be absorbed within existing resources. Additionally, lead land managing agencies may have an indeterminate negative fiscal impact associated with the gopher tortoise recipient lands portion of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The private sector may see an indeterminate positive fiscal impact associated with state lands becoming available as gopher tortoise recipient sites.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires FWC to adopt by rule procedures for local governments to apply for grant funding to remove vessels declared a public nuisance.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 1, 2021, the Environment, Agriculture & Flooding Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Made technical changes related to boating while impaired or intoxicated;
- Removed a provision related to springs protection areas;
- Authorized a person to operate a human-powered vessel within the Florida Intracoastal Waterway when participating in certain activities;
- Prohibited the Department of Highway Safety and Motor Vehicles from issuing a certificate of title to an applicant for a vessel that has been deemed a public nuisance; and
- Specified that money from the Florida Coastal Protection Trust Fund may be used to remove public nuisance vessels.

On February 23, 2022, the State Affairs Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Required specified state lands to be considered for use as gopher tortoise recipient sites;
- Required FWC to streamline gopher tortoise recipient site permitting and submit a report to the Legislature related to gopher tortoise recipient site permits;
- Revised an exception for when a human powered vessel may be used in the Florida Intracoastal Waterway; and
- Clarified language related to vessel exclusions zones established on public bathing beach or swim areas.

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