

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/CS/CS/HB 639 Operation and Safety of Motor Vehicles and Vessels

**SPONSOR(S):** State Affairs Committee; Criminal Justice & Public Safety Subcommittee; Environment, Agriculture & Flooding Subcommittee; Sirois, Rizo and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 1086

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**FINAL HOUSE FLOOR ACTION:** 114 Y's      1 N's      **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/CS/CS/HB 639 passed the House on April 28, 2021, as CS/CS/SB 1086 as amended. The Senate refused to concur in the House amendments on April 28, 2021, and returned the bill to the House. The House receded and passed the Senate Bill on April 29, 2021.

The Fish and Wildlife Conservation Commission (FWC) is the agency responsible for regulating boating in the state. Through its Division of Law Enforcement, FWC works to enforce a variety of state and federal boating laws.

The bill addresses boating safety by:

- Prohibiting certain people from operating a vessel unless such person has proof he or she has completed, or is exempt from completing, boating safety education.
- Prohibiting a vessel that is operating at slow speed, minimum wake from proceeding at a speed greater than a speed that is reasonable and prudent to avoid the creation of an excessive wake.
- Revising penalties for failure to submit to impairment tests while operating a vehicle or vessel.

The bill authorizes local governments to adopt an ordinance establishing a slow speed, minimum wake boating-restricted area under certain conditions. The bill also authorizes FWC to establish protection zones that prohibit certain activities to protect and prevent harm to springs.

The bill addresses derelict vessels by:

- Creating the derelict vessel prevention program.
- Authorizing FWC to relocate an at-risk vessel that is near a mangrove or upland vegetation.
- Requiring a law enforcement officer to provide notice to the owner of a derelict vessel in a certain form.
- Authorizing a law enforcement agency or its designee to remove, destroy, and dispose of a derelict vessel or authorize the vessel's use as an artificial reef under certain circumstances.

Effective upon approval by the U.S. Environmental Protection Agency, the bill designates certain state waters as no-discharge zones.

The bill establishes limitations on operating a human-powered vessel within the Florida Intracoastal Waterway.

The bill authorizes certain law enforcement entities, when necessary for space launch or reentry service or for the recovery of spaceflight assets, to temporarily establish a protection zone requiring vessels to leave, or prohibiting vessels from entering, waterbodies within certain parameters.

The bill increases and creates certain penalties.

The bill may have an indeterminate positive fiscal impact on the state and local governments.

The bill was approved by the Governor on June 29, 2021, ch. 2021-184, L.O.F., and became effective on July 1, 2021.

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

**STORAGE NAME:** h0639z1.EAF.DOCX

**DATE:** 7/12/2021

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

The Fish and Wildlife Conservation Commission (FWC) is the agency responsible for regulating boating in the state.<sup>1</sup> Through its Division of Law Enforcement, FWC works to enforce a variety of state and federal boating laws, including regulations related to boating safety, waterway management, vessel maintenance, and marine sanitation.

#### **Boating Safety Education**

##### Background

In order to operate a motorboat of 10 horsepower or greater, Florida law requires anyone who was born on or after January 1, 1988, to either complete an approved boating safety course and obtain a boating safety education identification card issued by FWC or pass a temporary certificate examination developed and approved by FWC.<sup>2</sup> Because Florida does not require boaters to have a boating license, the boating safety education identification card serves as proof of successful completion of the educational requirements and is valid for life.<sup>3</sup>

FWC established the temporary certificate to help nonresidents without qualifying proof of boating safety education to comply with the boater education law when visiting the state. The temporary certificate serves as a knowledge check, which satisfies the requirement for a boater to have a boating safety identification card to operate a boat in Florida.<sup>4</sup>

##### Effect of the Bill

While operating a vessel, the bill requires a person born on or after January 1, 1988, to possess photographic identification and a Florida boating safety identification card issued by FWC, a state-issued identification card or driver license indicating possession of the boating safety identification card, or photographic identification and a temporary certificate issued or approved by FWC, an International Certificate of Competency, a boating safety card or certificate from another state or United States territory, or a Canadian Pleasure Craft Operator Card, which shows that he or she has:

- Completed a FWC-approved boating safety education course that meets the minimum requirements established by the National Association of State Boating Law Administrators (NASBLA);
- Passed a temporary certificate examination developed or approved by FWC;
- A valid International Certificate of Competency (ICC);<sup>5</sup> or
- Completed a boating safety education course or equivalency examination in another state, a U.S. territory, or Canada that meets or exceeds the minimum requirements established by NASBLA.

The bill prohibits liveries from knowingly leasing, hiring, or renting a vessel to a person unless he or she has presented to the livery one of the forms of required documentation described above, unless an exemption applies.

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

<sup>2</sup> Section 327.395, F.S.

<sup>3</sup> FWC, *Boater Education Identification Card*, available at <https://myfwc.com/boating/safety-education/id/> (last visited Mar.22, 2021).

<sup>4</sup> FWC, *Temporary Certificate*, available at <https://myfwc.com/boating/safety-education/temporary-certificate/> (last visited Mar. 22, 2021).

<sup>5</sup> ICC certification is required by European countries and signatories to the United Nations Resolution 40 as the minimum requirement to operate sailboats and powerboats of up to 10 meters in such countries. EduMaritime, *Get Your ICC Sailing License*, available at <https://www.edumaritime.net/nauticed/rya-day-skipper-icc-license> (last visited Mar. 22, 2021).

The bill exempts a person previously licensed by the U.S. Coast Guard to serve as master of a vessel from the boating safety education requirement if the person provides proof of such licensure to FWC and requests a boating safety identification card.

The bill repeals a duplicative provision authorizing FWC to appoint liveries, marinas, or other persons as its agents to administer the boating safety education course or temporary certificate examination and issue identification cards or temporary certificates in digital, electronic, or paper format.

## **Boating Speed Safety Regulations**

### Background

In Florida, a vessel<sup>6</sup> must be operated in a reasonable and prudent manner, having regard for other waterborne traffic, posted speed and wake restrictions, and all other attendant circumstances so as not to endanger the life, limb, or property of another person outside the vessel or due to vessel overloading or excessive speed.<sup>7</sup> A person operating a vessel in excess of a posted speed limit is guilty of a noncriminal infraction punishable by a fine of \$50.<sup>8</sup>

### Effect of the Bill

The bill specifies that a vessel that is required to operate at slow speed, minimum wake only if it is fully off plane and completely settled into the water and proceeding without wake or with minimum wake. A vessel that is operating at slow speed, minimum wake is prohibited from proceeding at a speed greater than a speed that is reasonable and prudent to avoid the creation of an excessive wake or other hazardous condition under the existing circumstances.

The bill specifies that a vessel is not proceeding at slow speed, minimum wake if it is operating on plane, if it is in the process of coming off plane and settling into the water or getting on plane, or if it is operating at a speed that creates a wake that unreasonably or unnecessarily endangers other vessels.

The bill prohibits a person from operating a vessel faster than slow speed, minimum wake within 300 feet of any emergency vessel, including, but not limited to, a law enforcement vessel, a U.S. Coast Guard vessel, or a firefighting vessel, when such emergency vessel's emergency lights are activated.

The bill also prohibits a person from operating a vessel faster than slow speed, minimum wake within 300 feet of any construction vessel or barge when the vessel or barge is displaying an orange flag. The flag indicates that the vessel or barge is actively engaged in construction operations and must be flown from a pole extending at least 10 feet above the tallest portion of the vessel or barge or at least five feet above any superstructure permanently installed upon the vessel or barge. The flag must be at least two feet by three feet in size, must have a wire or other stiffener or be otherwise constructed to ensure that the flag remains fully unfurled and extended in the absence of a wind or breeze, and must be displayed so that the visibility of the flag is not obscured in any direction.

The bill specifies that a person operating a vessel in violation of these slow speed, minimum wake requirements commits a noncriminal infraction. However, a person may not be cited for a violation of these requirements in periods of low visibility, including any time between 30 minutes after sunset and 30 minutes before sunrise, unless the orange flag is illuminated and visible from a distance of at least two nautical miles. The bill further specifies that such illumination does not relieve the construction vessel or barge from complying with all navigation rules.

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<sup>6</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>7</sup> Section 327.33, F.S.

<sup>8</sup> Section 327.73(1)(h), F.S.

The bill specifies that the owner of, or party who is responsible for, a construction vessel or barge who displays an orange flag on the vessel or barge when it is not actively engaged in construction operations commits a noncriminal infraction.

The bill specifies that the speed and penalty provisions described above do not apply to a law enforcement, firefighting, or rescue vessel that is owned or operated by a governmental entity.

## Operating a Vehicle or Vessel under the Influence

### Background

A person commits the offense of boating under the influence (BUI) if the person is operating a vessel within the state and:

- The person is under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, F.S., or any substance controlled under ch. 893, F.S., when affected to the extent that the person's normal faculties are impaired;
- The person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or
- The person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.<sup>9</sup>

The offense is punishable as follows:

Conviction	Penalty	Fine	Imprisonment
1 <sup>st</sup> conviction	Misdemeanor	Minimum: \$500 Maximum: \$1,000	No more than 6 months
2 <sup>nd</sup> conviction <sup>10</sup>	Misdemeanor	Minimum: \$1,000 Maximum: \$2,000	No more than 9 months
3 <sup>rd</sup> conviction within 10 years after prior conviction	Third Degree Felony	Maximum: \$5,000 <sup>11</sup>	No more than 5 years <sup>12</sup>
3 <sup>rd</sup> conviction more than 10 years after date of prior conviction <sup>13</sup>	Misdemeanor	Minimum: \$2,000 Maximum: \$5,000	No more than 12 months
4 <sup>th</sup> or subsequent conviction	Third Degree Felony	Minimum: \$2,000 Maximum: \$5,000 <sup>14</sup>	No more than 5 years <sup>15</sup>

### Implied Consent

Under current law, a person who accepts the privilege of operating a motor vehicle or vessel is deemed to have given consent to submit to an approved chemical, physical, or urine test for the purpose of determining the alcoholic content of his or her blood, breath, or urine if the person is lawfully arrested for any offense committed while the person was driving or operating a motor vehicle or vessel and was in actual physical control of a motor vehicle or vessel while under the influence of alcoholic beverages.<sup>16</sup>

If a person is arrested under suspicion of driving under the influence (DUI) and refuses to submit to a lawful blood, breath, or urine test, the person's driver license is suspended for one year for a first refusal, and suspended 18 months if the person's license has previously been suspended for a

<sup>9</sup> Section 327.35(1), F.S.

<sup>10</sup> Section 327.35(2)(a), F.S.

<sup>11</sup> Section 775.083(1)(c), F.S.

<sup>12</sup> Sections 327.35(b)1. and 775.084, F.S.

<sup>13</sup> Sections 327.35(2)(b)1.- 2., F.S.

<sup>14</sup> Section 775.083(1)(c), F.S.

<sup>15</sup> Sections 327.35(b)3. and 775.084, F.S.

<sup>16</sup> Sections 316.1932 and 327.352, F.S.

refusal.<sup>17</sup> In addition, it is a first degree misdemeanor<sup>18</sup> to refuse to submit to a breath, blood, or urine test if a person's driver license has previously been suspended for a prior refusal following an arrest for suspicion of DUI.<sup>19</sup> Under current law, a refusal following an arrest for BUI does not count as a prior refusal for purposes of driver license suspension or criminal prosecution in DUI cases.

A person who is arrested under suspicion of BUI who refuses to submit to a lawful blood, breath, or urine test is subject to a civil penalty of \$500.<sup>20</sup> In addition, it is a first degree misdemeanor to refuse to submit to such test if a person has previously been fined for a refusal to submit to a blood, breath, or urine test following an arrest for BUI. Under current law, a refusal following an arrest for DUI does not count as a prior refusal for purposes of criminal prosecution in BUI cases.

In 2016, the U.S. Supreme Court held that states could not criminalize the refusal to take a blood test without a warrant in driving under the influence cases.<sup>21</sup>

#### Effect of the Bill

Effective October 1, 2021, the bill provides that a blood, breath, or urine test refusal in a BUI case counts as a prior refusal for purposes of driver license suspension and criminal prosecution in a subsequent DUI case, and that a test refusal following an arrest for DUI counts as a refusal for purposes of criminal prosecution in a subsequent BUI case. To align with current case law, the bill deletes the first degree misdemeanor penalty for refusal to submit to a blood test in both BUI and DUI cases where a person has a previous refusal.

### **Derelict Vessels**

#### Background

A derelict vessel is a vessel that is left, stored, or abandoned in a wrecked, junked, or substantially dismantled condition upon any public state waters; at a port in the state without the consent of the agency that has jurisdiction of the port; or docked, grounded, or beached upon the property of another without the consent of the owner of the property.<sup>22</sup>

It is unlawful to store, leave, or abandon a derelict vessel in Florida.<sup>23</sup> Violations are punishable by a term of imprisonment of no more than one year and a fine of up to \$1,000.<sup>24</sup> 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.<sup>25</sup> Each day during any portion of which the violation occurs constitutes a separate offense.<sup>26</sup>

#### *Removal of Derelict Vessels*

The Division of Law Enforcement within FWC and its officers, and the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officer, have the responsibility and authority to enforce vessel safety and vessel title certificates, liens, and registration.<sup>27</sup>

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<sup>17</sup> Section 316.1932, F.S.

<sup>18</sup> A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>19</sup> Sections 316.1932(1)(a)1.a. and b., F.S.

<sup>20</sup> Section 327.352, F.S.

<sup>21</sup> *Birchfield v. North Dakota*, 136 S.Ct. 2160 (2016).

<sup>22</sup> Section 823.11(1)(b), F.S.

<sup>23</sup> Section 823.11(2), F.S.

<sup>24</sup> Sections 775.082(4)(a) and 775.083(1)(d), F.S.

<sup>25</sup> Section 376.16(1), F.S.

<sup>26</sup> *Id.*

<sup>27</sup> 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.

Both state and local law enforcement are authorized and empowered to relocate or remove a derelict vessel from public waters if the derelict vessel obstructs, or threatens to obstruct, navigation or in any way constitutes a danger to the environment, property, or persons. The costs incurred for relocating or removing a derelict vessel are recoverable against the vessel owner. A vessel owner who neglects or refuses to pay the costs of removal, storage, and destruction of the vessel, less any salvage value obtained by disposal of the vessel, is not entitled to be issued a certificate of registration for such vessel, or any other vessel or motor vehicle, until the costs are paid.<sup>28</sup>

FWC may provide grants to local governments for the removal of derelict vessels from state waters if funds are appropriated for such grants.<sup>29</sup> Grants are awarded based on a set of criteria outlined in FWC rules.<sup>30</sup> Removal or relocation of the vessel on private property is not eligible for grant funding.<sup>31</sup>

#### *At-risk vessels*

In 2016, the Legislature passed House Bill 7025 to prohibit neglected vessels or those in deteriorating condition from anchoring, mooring, or occupying state waters.<sup>32</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.
- The vessel has broken loose or is in danger of breaking loose from its anchor.
- The vessel is left or stored aground unattended in such a state that would prevent the vessel from getting underway, or is listing due to water intrusion, or is sunk or partially sunk.
- The vessel does not have an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives telephonic or written notice, which may be provided by facsimile, electronic mail, or other electronic means, stating such from an officer, and the vessel owner or operator is unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair.<sup>33</sup>

A violation for anchoring, mooring, or occupying a vessel at risk of becoming derelict on state waters is a noncriminal infraction, for which the civil penalty is \$50 for a first offense, \$100 for a second offense occurring 30 days or more after a first offense, and \$250 for a third or subsequent offense occurring 30 days or more after a previous offense.<sup>34</sup>

#### Effect of the Bill

The bill grants FWC authority to adopt rules to implement the provisions of ch. 705, F.S., relating to vessels, and ss. 376.15 and 823.11, F.S., relating to derelict vessels.

The bill specifies that a vessel is deemed at risk of becoming derelict if the vessel is listing due to water intrusion or if it does not have an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives in-person notice recorded on an agency-approved body camera.

The bill authorizes FWC, an officer of FWC, or a law enforcement agency or officer specified in s. 327.70, F.S., to relocate or cause to be relocated an at-risk vessel found to be in violation of s. 327.4107, F.S., to a distance greater than 20 feet from a mangrove or upland vegetation. The bill specifies that FWC, an officer of FWC, or a law enforcement agency or officer acting pursuant to this

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<sup>28</sup> Section 705.103(4), F.S.

<sup>29</sup> Section 376.15, F.S.

<sup>30</sup> Rule 68-1.003, F.A.C.

<sup>31</sup> National Oceanic and Atmospheric Association: Marine Debris Program, *Abandoned and Derelict Vessels in Florida*, available at <https://marinedebris.noaa.gov/abandoned-and-derelict-vessels/florida> (last visited Mar. 22, 2021).

<sup>32</sup> Chapter 2016-108, Laws of Fla.; s. 327.4107, F.S.

<sup>33</sup> Section 327.4107(2), F.S.

<sup>34</sup> Section 327.73(aa), F.S.

authority upon state waters is held harmless for all damages to the at-risk vessel resulting from such relocation unless the damage results from gross negligence or willful misconduct.

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

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

The bill authorizes FWC to adopt rules to implement the derelict vessel prevention program and specifies that implementation of the program is subject to appropriation by the Legislature and must be funded by the Marine Resources Conservation Trust Fund or the Florida Coastal Protection Trust Fund.

The bill defines “leave” to mean to allow a vessel to remain occupied or unoccupied on state waters for more than 24 hours.

The bill specifies that a person who owns or operates a vessel that becomes derelict upon state waters solely as a result of a boating accident that is reported to law enforcement, a hurricane, or another sudden event outside of his or her control may not be charged with a violation if:

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

The bill specifies that this sudden accident or event exception does not apply to a vessel that was derelict upon state waters before the stated accident or event.

When a law enforcement officer determines that a derelict vessel or a vessel declared a public nuisance is present on state waters, the bill requires the officer to cause a notice to be placed upon the vessel in substantially the following form:

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

The officer must also make a reasonable effort to ascertain the name and address of the owner of the vessel and mail a copy of the notice to the owner. The mailed notice must inform the owner or responsible party that he or she has a right to a hearing to dispute the determination that the vessel is derelict or otherwise in violation of the law. If a request for a hearing is made, a state agency must follow the processes set forth in the Administrative Procedure Act. Local government entities must also follow the processes set forth in the Administrative Procedure Act, except that a local judge, magistrate, or code enforcement officer may be designated to conduct such a hearing.

If, after 21 days from the date notice was provided, the derelict vessel or vessel declared a public nuisance remains abandoned and a hearing has not been requested, the bill authorizes the law enforcement agency or its designee to:

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

The bill also authorizes a law enforcement agency or its designee to take action if, following a hearing, the judge, magistrate, administrative law judge, or hearing officer has determined the vessel to be derelict or otherwise in violation of the law and a final order has been entered or the case is otherwise closed.

The bill specifies that a person who has neglected or refused to pay all costs of removal, storage, and destruction of an abandoned or lost vessel or motor vehicle, after having been provided written notice via certified mail that such costs are owed, and who applies for and is issued a registration for a vessel or motor vehicle before such costs have been paid in full commits a first degree misdemeanor.

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

The bill specifies that a vessel is junked if it has been substantially stripped of vessel components, if vessel components have substantially degraded or been destroyed, or if the vessel has been discarded by the owner or operator. The bill further specifies that attaching an outboard motor to a vessel that is otherwise junked will not cause the vessel to no longer be junked if such motor is not an effective means of propulsion.

The bill specifies that a vessel is substantially dismantled if at least two of the three following vessel systems or components are missing, compromised, incomplete, inoperable, or broken: the steering system, the propulsion system, or the exterior hull integrity. The bill further specifies that attaching an outboard motor to a vessel that is otherwise substantially dismantled will not cause the vessel to no longer be substantially dismantled if such motor is not an effective means of propulsion.

## **Anchoring or Mooring**

### Background

Anchoring or mooring refers to a boater's practice of seeking and using a safe harbor on the public waterway system for an undefined duration. Anchoring is accomplished using an anchor carried on the vessel, while mooring uses fixtures, known as moorings, permanently affixed to the bottom of the water body.<sup>35</sup> Anchorages are areas that boaters regularly use for anchoring or mooring, whether designated

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<sup>35</sup> Ankersen, Hamann, & Flagg, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, 2 (March 2011), available at [https://www.cityofmarcoisland.com/sites/default/files/fileattachments/administration/page/7491/anchoring\\_away\\_03\\_09\\_11\\_full\\_web3.pdf](https://www.cityofmarcoisland.com/sites/default/files/fileattachments/administration/page/7491/anchoring_away_03_09_11_full_web3.pdf) (last visited Mar. 22, 2021).



or managed for that purpose or not. Mooring fields are areas designated and used for a system of properly spaced moorings.<sup>36</sup>

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

Florida law prohibits a person from anchoring a vessel, except in case of emergency, in a manner that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel.<sup>37</sup> Anchoring under bridges or in or adjacent to heavily traveled channels constitutes interference, if unreasonable under the prevailing circumstances.<sup>38</sup> Interference with navigation is a noncriminal infraction and punishable by a fine of \$50.<sup>39</sup>

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

- Within 150 feet of any marina, boat ramp, boatyard, or vessel launching or loading facility;
- Within 300 feet of a superyacht repair facility; or
- Within 100 feet outward from the marked boundary of a public mooring field or a lesser distance if approved by the local government within which the mooring field is located.<sup>40</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>41</sup>

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

- The vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor for five business days or until the vessel is repaired, whichever occurs first.
- Imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor until weather conditions no longer pose such risk.<sup>42</sup>

A vessel or floating structure may not be anchored, moored, or affixed to an unpermitted, unauthorized, or otherwise unlawful object that is on or affixed to the bottom of state waters. This does not apply to a private mooring owned by the owner of privately owned submerged lands.<sup>43</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>44</sup> Mooring fields must be located where navigational access already exists between the mooring field and the nearest customarily used access channel or navigable waters that the mooring field is designed to serve. Each mooring field must be associated with a land-based support facility that provides amenities and conveniences, such as parking, bathrooms, showers, and laundry facilities. Major boat repairs and maintenance, fueling activities other than from the land-based support facility, and boat hull scraping and painting are not authorized within mooring fields.<sup>45</sup>

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<sup>36</sup> *Id.*

<sup>37</sup> Section 327.44(2), F.S.

<sup>38</sup> *Id.*

<sup>39</sup> Section 327.73(j), F.S.

<sup>40</sup> Section 327.4109(1), F.S.

<sup>41</sup> Section 327.4109(3), F.S.

<sup>42</sup> Section 327.4109(2), F.S.

<sup>43</sup> Section 327.4019(4), F.S.

<sup>44</sup> Section 373.118, F.S.; r. 62-330.420(1), F.A.C.

<sup>45</sup> Rule 62-330.420, F.A.C.

Local governments are further authorized to enact and enforce ordinances that prohibit or restrict the mooring or anchoring of floating structures<sup>46</sup> or live-aboard vessels<sup>47</sup> within their jurisdictions and vessels that are within the marked boundaries of permitted mooring fields.<sup>48</sup> However, they are prohibited from enacting, continuing in effect, or enforcing any ordinance or local regulation that regulates the anchoring of vessels, other than live-aboard vessels, outside the marked boundaries of permitted mooring fields.<sup>49</sup>

### Effect of the Bill

The bill specifies that the owner or operator of a vessel or floating structure may not anchor or moor such that the nearest approach of the anchored or moored vessel or floating structure is within 150 feet of any public or private marina, boat ramp, boatyard, or other public vessel launching or loading facility. In addition, an owner or operator of a vessel may anchor or moor within 150 feet of any public or private marina, boat ramp, boatyard, or other public vessel launching or loading facility under certain conditions. The bill increases the distance in which a person is prohibited from anchoring or mooring a vessel in proximity to a superyacht repair facility from 300 feet to 500 feet.

The bill designates Monroe County as an anchoring limitation area within which a vessel may only be anchored in the same location for a maximum of 90 days. The bill requires FWC to adopt rules to implement this limitation and specifies that the limitation does not apply to an approved and permitted mooring field. The bill further specifies that, notwithstanding the rules adopted by FWC, the anchoring limitation area is not effective for Monroe County until the county approves, permits, and opens new moorings for public use, including at least 250 moorings within one mile of the Key West Bight City Dock and at least 50 moorings within the Key West Garrison Bight Mooring Field. Until such time, FWC must designate the area within one mile of the Key West Bight City Dock as a priority for the investigation and removal of derelict vessels.

### **No-Discharge Zones**

#### Background

A no-discharge zone is an area in which both treated and untreated sewage discharges from vessels are prohibited. Within no-discharge zone boundaries, vessel operators are required to retain their sewage discharges onboard for discharge at sea (beyond three miles from shore) or onshore at a pump-out facility.<sup>50</sup>

A state may completely prohibit sewage discharge from vessels, whether the sewage is treated or not, into some or all of its waters if the state determines that the protection and enhancement of the quality of the waterbody requires greater environmental protection than the current federal standards allow, and the U.S. Environmental Protection Agency (EPA) determines that adequate facilities for the safe and sanitary removal and treatment of sewage from vessels are reasonably available.<sup>51</sup> A state can also apply for a no-discharge zone to be established if the EPA determines the protection and enhancement of specified waters requires sewage discharges to be prohibited.<sup>52</sup> There are currently

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<sup>46</sup> Section 327.02(14), F.S., defines “floating structure” as a floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term includes an entity used as a residence, place of business, or office with public access; a hotel or motel; a restaurant or lounge; a clubhouse; a meeting facility; a storage or parking facility; or a mining platform, dredge, dragline, or similar facility or entity represented as such.

<sup>47</sup> Section 327.02(22), F.S., defines “live-aboard vessel” as a vessel used solely as a residence and not for navigation; a vessel represented as a place of business or a professional or other commercial enterprise; or a vessel for which a declaration of domicile has been filed. The definition expressly excludes commercial fishing boats.

<sup>48</sup> Section 327.60(2)(f), F.S.

<sup>49</sup> Section 327.60(3), F.S.

<sup>50</sup> U.S. Environmental Protection Agency (EPA), *Vessel Sewage Discharge: No-Discharge Zones*, available at <https://www.epa.gov/vessels-marinas-and-ports/vessel-sewage-discharges-no-discharge-zones-ndzs> (last visited Apr. 19, 2021).

<sup>51</sup> 33 U.S.C. s. 1322(f)(3).

<sup>52</sup> 33 U.S.C. s. 1322(f)(4)(A).

three no-discharge zones located in the state of Florida: one in the Destin Harbor<sup>53</sup> and two in the Florida Keys.<sup>54</sup>

### Effect of the Bill

Effective immediately upon approval by the EPA, the bill designates all waters within the boundaries of aquatic preserves<sup>55</sup> as no-discharge zones within which a person is prohibited from discharging sewage of any type, whether treated or untreated, from any vessel or floating structure.

The bill specifies that a person who violates the no-discharge prohibition commits a noncriminal infraction, punishable by a civil penalty of up to \$250. If any prohibited discharge is ongoing or continuous, the person discharging may be assessed a penalty of up to \$250 for each day the violation continues.

The bill requires the owner or operator of a vessel or floating structure convicted a second time for violating the no-discharge zone to, within 30 days following the conviction, remove the vessel or floating structure from state waters. If the vessel or floating structure remains on state waters in violation of this requirement, the bill further requires law enforcement officers charged with the enforcement of ch. 327, F.S., 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 state waters at the owner's expense. If the owner cannot be found or otherwise fails to pay the removal costs, the provisions governing the nonjudicial sale of vessels apply. If the proceeds under the nonjudicial sale of vessels are not sufficient to pay all removal costs, the bill authorizes funds appropriated from the Marine Resources Conservation Trust Fund to be used.

The bill requires FWC to maintain a list of marine sewage pumpout facilities throughout the state and make the list available on its website, and provide the list with information about the Department of Environmental Protection's Clean Marina Program to all counties for distribution to public and private marinas.

The bill requires the owner or operator of a live-aboard vessel or a houseboat that is equipped with a marine sanitation device to maintain a record of the date of each pumpout of the marine sanitation device and the location of the pumpout station or waste reception facility. Each record must be maintained for one year after the date of the pumpout. The bill specifies that these requirements do not apply to marine compost toilets that process and manage human waste using marine compost toilet technologies that comply with U.S. Coast Guard requirements.

## **Florida Intracoastal Waterway**

### Background

The Intracoastal Waterway is a navigable toll-free shipping route, extending for about 3,000 miles along the Atlantic Ocean and Gulf of Mexico coasts in the southern and eastern U.S. It utilizes sounds, bays, lagoons, rivers, and canals and is usable in many portions by deep-draft vessels. The route is federally maintained and is connected to inland waterways in many places. It was originally planned to form a continuous channel from New York City to Brownsville, Texas, but the necessary canal link through northern Florida was never completed; hence, it is now in two separate sections—the Atlantic and the Gulf.<sup>56</sup>

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<sup>53</sup> 53 Fed. Reg. 1678 (1988).

<sup>54</sup> 64 Fed. Reg. 46390 (1999); 67 Fed. Reg. 35735 (2002); *see also*, EPA, *No-Discharge Zones by State*, available at <https://www.epa.gov/vessels-marinas-and-ports/no-discharge-zones-ndzs-state#fl> (last visited Apr. 19, 2021).

<sup>55</sup> Aquatic preserves are state-owned submerged lands in areas that have exceptional biological, aesthetic, and scientific value that are set aside as sanctuaries for the benefit of future generations. Florida has 42 aquatic preserves, encompassing coastline, marsh, and estuary habitats. *See* s. 258.36, F.S. Department of Environmental Protection, *Aquatic Preserve Program*, available at <https://floridadep.gov/rcp/aquatic-preserve> (last visited Apr. 19, 2021).

<sup>56</sup> Encyclopedia Britannica, *Intracoastal Waterway*, available at <https://www.britannica.com/topic/Intracoastal-Waterway> (last visited Mar. 22, 2021).

The Florida Intracoastal Waterway means the Atlantic Intracoastal Waterway, the Georgia state line north of Fernandina to Miami; the Port Canaveral lock and canal to the Atlantic Intracoastal Waterway; the Atlantic Intracoastal Waterway, Miami to Key West; the Okeechobee Waterway, Stuart to Fort Myers; the St. Johns River, Jacksonville to Sanford; the Gulf Intracoastal Waterway, Anclote to Fort Myers; the Gulf Intracoastal Waterway, Carrabelle to Tampa Bay; Carrabelle to Anclote open bay section, using the Gulf of Mexico; the Gulf Intracoastal Waterway, Carrabelle to the Alabama state line west of Pensacola; and the Apalachicola, Chattahoochee, and Flint Rivers in Florida.<sup>57</sup>

### Effect of the Bill

The bill defines the term “human-powered vessel” to mean a vessel powered only by its occupant or occupants, including, but not limited to, a vessel powered only by the occupants’ hands or feet, oars, or paddles.

The bill allows a person to operate a human-powered vessel within the boundaries of the marked channel of the Florida Intracoastal Waterway under the following circumstances:

- When the marked channel is the only navigable portion of the waterway available due to vessel congestion or obstructions on the water. The operator of the human-powered vessel must proceed with diligence to a location where he or she may safely operate the vessel outside the marked channel of the Florida Intracoastal Waterway.
- When crossing the marked channel, provided that the crossing is done in the most direct, continuous, and expeditious manner possible and does not interfere with other vessel traffic in the channel.
- During an emergency endangering life or limb.

The bill otherwise prohibits a person from operating a human-powered vessel in the marked channel of the Florida Intracoastal Waterway and specifies that a person who violates this prohibition commits a noncriminal infraction.

## **Boating-restricted Areas**

### Background

#### *Boating-restricted Areas Generally*

Boating-restricted areas, including, but not limited to, restrictions of vessel speeds and vessel traffic, may be established on state waters for any purpose necessary to protect the safety of the public if such restrictions are necessary based on boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion, or other navigational hazards or to protect seagrasses on privately owned submerged lands.<sup>58</sup>

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.<sup>59</sup>

- 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

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<sup>57</sup> Section 327.02(15), F.S.

<sup>58</sup> Section 327.46(1), F.S.

<sup>59</sup> Sections 327.46(1)(a) and (b), F.S.

- feet of the fuel pumps or dispensers at any licensed terminal facility that sells motor fuel to the general boating public on waterways not exceeding 300 feet in width.
  - Inside or within 300 feet of any lock structure.
- An ordinance establishing a slow speed, minimum wake boating-restricted area if the area is:
  - Within 300 feet of any bridge fender system.
  - Within 300 feet of any bridge span presenting a vertical clearance of less than 25 feet or a horizontal clearance of less than 100 feet.
  - On a creek, stream, canal, or similar linear waterway if the waterway is less than 75 feet in width from shoreline to shoreline.
  - On a lake or pond of less than 10 acres in total surface area.
- An ordinance establishing a vessel-exclusion zone if the area is designated as a public bathing beach or swim area or within 300 feet of a dam, spillway, or flood control structure.

### *Protection Zones for Springs*

Geologists estimate that there are more than 1,000 springs in the state of Florida, representing what may be the largest concentration of freshwater springs on Earth.<sup>60</sup> Springs offer many recreational opportunities, such as swimming, kayaking and diving; attract visitors from all over the world; and serve as economic drivers for Florida communities.<sup>61</sup>

FWC is authorized to establish by rule protection zones that restrict the speed and operation of vessels to protect and prevent harm to springs. This harm includes negative impacts to water quality, water quantity, hydrology, wetlands, and aquatic and wetland-dependent species.<sup>62</sup> When developing a protection zone, FWC must consult and coordinate with the water management district, the Department of Environmental Protection, and the governing bodies of the county and municipality, if applicable, in which the zone is located. If the zone includes navigable waters of the U.S., FWC must also coordinate with the U.S. Coast Guard and the U.S. Army Corps of Engineers.<sup>63</sup>

### Effect of the Bill

The bill authorizes municipalities and counties to adopt an ordinance establishing a slow speed, minimum wake boating-restricted area if the area is within the boundaries of a permitted public mooring field and a buffer around the mooring field of up to 100 feet.

The bill specifies that vessel exclusion zones designated as a public bathing beach or swim area or within 300 feet of a dam, spillway, or flood control structure must be marked with uniform waterway markers permitted by FWC. The bill prohibits such zones from being marked by ropes.

Notwithstanding the prohibition in current law against local government ordinances that regulate vessels upon the Florida Intracoastal Waterway, the bill authorizes municipalities and counties to establish a boating-restricted area by ordinance within the portion of the waterway within their jurisdiction.

The bill authorizes FWC to establish protection zones that prohibit the anchoring, mooring, beaching, or grounding of vessels to protect and prevent harm to first, second, and third magnitude springs and springs groups, including their associated spring runs, as determined by FWC using the most recent Florida Geological Survey springs bulletin.

## **Spaceflight**

### Background

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<sup>60</sup> DEP, *Protect and Restore Springs*, available at <https://floridadep.gov/springs/protect-restore> (last visited Mar. 22, 2021).

<sup>61</sup> DEP, *Springs*, available at <https://floridadep.gov/springs> (last visited Mar. 22, 2021).

<sup>62</sup> Section 327.45(2), F.S.

<sup>63</sup> Section 327.45(3), F.S.

Florida is a national leader in spaceflight activities.<sup>64</sup> Florida's aerospace industry helps to generate economic development initiatives and bring jobs not only to Florida's Space Coast, but also throughout the state.<sup>65</sup> This can bring additional challenges when parts of spaceflight assemblies fall into Florida waters as well as when recovery operations are necessary. There is no existing statute in place to keep boaters away from potentially sensitive spaceflight operations.

#### Effect of the Bill

The bill defines the following terms:

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

The bill authorizes the head of a law enforcement agency or entity, or his or her designee, to temporarily establish a protection zone upon state waters within the agency's or entity's jurisdiction when necessary for preparations in advance of a launch service or reentry service or for the recovery of spaceflight assets before or after a launch service or reentry service. The protection zone may require vessels to leave, or prohibit vessels from entering, waterbodies within:

- 500 yards of where launch services, reentry services, or spaceflight asset recovery operations are being conducted; or
- A distance greater than 500 yards if the head of such law enforcement agency or entity, or his or her designee, determines such greater distance is in the best interest of public safety.

The bill specifies that a protection zone may remain in effect only as long as necessary to ensure security around the launch and recovery areas and to recover spaceflight assets and any personnel being transported within a spacecraft following the launch or reentry activity. A protection zone may not be in place more than 72 hours before or 72 hours after the launch.

The bill authorizes the head of a law enforcement agency or entity, or his or her designee, to restrict vessels from operating within up to 500 yards of any vessel transporting recovered spaceflight assets following a spaceflight launch or reentry while such vessel is continuously underway transporting such assets to a location for removal from state waters. The bill prohibits such entities from restricting vessel movement within the Florida Intracoastal Waterway, except as necessary during the transport of spaceflight assets to or from port or during exigent circumstances.

The bill requires the head of a law enforcement agency or entity, or his or her designee, establishing a protection zone to report the establishment of such protection zone via e-mail to FWC's Division of Law Enforcement, Boating and Waterways Section, and to the appropriate U.S. Coast Guard Sector Command with responsibility over the waterbody at least 72 hours before establishing the protection zone. The report must include the reasons for the protection zone, the portion of the waterbody or waterbodies that will be included in the protection zone, and the duration of the protection zone. In

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<sup>64</sup> Space Florida, *One Place. Infinite Possibilities.*, available at <https://www.spaceflorida.gov/> (last visited Mar. 22, 2021).

<sup>65</sup> Florida Chamber of Commerce, *Aviation and Aerospace*, available at [http://www.flchamber.com/wp-content/uploads/2019/03/1Pager\\_AviationandAerospace\\_2019.pdf](http://www.flchamber.com/wp-content/uploads/2019/03/1Pager_AviationandAerospace_2019.pdf) (last visited Mar. 22, 2021).

addition, the details of all citations issued for violating the protection zone must be reported in the same manner no later than 72 hours after the end of the protection zone period.

The bill specifies that the above requirements apply only to launch services, reentry services, or the recovery of spaceflight assets occurring or originating within spaceport territory, and to federally licensed or federally authorized launches and reentries occurring or transiting to an end destination upon state waters.

The bill specifies that a person who violates these requirements or any directive given by a law enforcement officer relating to the establishment of a protection zone after being advised of the establishment of the protection zone commits a second degree misdemeanor.

## **Penalties for Boating Infractions**

### Background

An owner or operator of a vessel or floating structure who violates the law by anchoring in an anchoring limitation area or anchoring or mooring in a prohibited area is subject to a uniform boating citation and the following penalties:<sup>66</sup>

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

A person who operates a vessel without the required boating safety identification card may be charged with a noncriminal infraction and is subject to a uniform boating citation and a \$50 civil penalty.<sup>67</sup> In addition to civil penalties, current law provides that a person who fails to appear or otherwise properly respond to a uniform boating citation will be charged with a second degree misdemeanor, which is punishable by a maximum fine of \$500 and no more than 60 days imprisonment.<sup>68</sup>

### Effect of the Bill

The bill specifies that a person cited for failure to have the required proof of boating safety education in his or her possession may not be convicted if, before or at the time of a county court hearing, the person produces proof of the boating safety education identification card or temporary certificate for verification to the hearing officer or court clerk, and the identification card or temporary certificate was valid at the time the person was cited.

The bill increases the penalties relating to vessels at risk of becoming derelict:

- For a first offense, from \$50 to \$100.
- For a second offense occurring 30 days or more after a first offense, from \$100 to \$250.
- For a third or subsequent offense occurring 30 days or more after a previous offense, from \$250 to \$500.

The bill requires a vessel that is the subject of three or more derelict vessel violations within an 18-month period that result in dispositions other than acquittal or dismissal to be declared a public nuisance. The bill authorizes FWC, an officer of FWC, or another law enforcement agency or officer to relocate, remove, or cause to be relocated or removed such public nuisance vessels from state waters. The bill specifies that FWC, an officer of FWC, or another law enforcement agency or officer must be held harmless for all damages to the vessel resulting from such relocation or removal unless the damage results from gross negligence or willful misconduct.

The bill establishes the following penalties relating to vessels that create special hazards:

- For a first offense, \$50.

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<sup>66</sup> Sections 327.73(1)(z) and 327.73(1)(bb), F.S.

<sup>67</sup> Section 327.73(1)(s), F.S.

<sup>68</sup> Sections 775.082 and 775.083, F.S.

- For a second offense occurring within 12 months after a prior offense, \$100.
- For a third offense occurring within 36 months after a prior offense, \$250.

The bill specifies that a violation of regulations related to human-powered vessels is a noncriminal infraction subject to a civil penalty of \$50.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill may have an indeterminate positive fiscal impact on state revenue due to an increase in penalties associated with derelict vessels and the creation of penalties for no-discharge zones, if approved by the EPA, and vessels creating special hazards.

#### 2. Expenditures:

The bill may have an insignificant negative fiscal impact on FWC that can be absorbed within existing resources for the rulemaking requirements of the bill. Implementation of the derelict vessel prevention program is subject to appropriation by the Legislature.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill may have an indeterminate positive fiscal impact on local government expenditures due to the cost savings associated with the creation and implementation of the derelict vessel prevention program.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.