

By Senator Posey

15-376A-02

1 A bill to be entitled
2 An act relating to protection of manatees;
3 amending s. 370.12, F.S.; providing for the
4 creation of local rule-review committees in
5 counties where manatee-protection zones or
6 manatee speed zones may be imposed; creating a
7 process for appointing members of local
8 rule-review committees; providing duties and
9 responsibilities; providing that written
10 reports submitted to the Fish and Wildlife
11 Conservation Commission by local rule-review
12 committees are part of the rulemaking record;
13 requiring that commission staff start reviewing
14 all existing manatee-protection rules and
15 ordinances by a specified date; creating a
16 rule-review schedule; revising the
17 circumstances under which the commission may
18 post and regulate boat speeds; revising the
19 circumstances under which a local government
20 may regulate by ordinance motorboat speed and
21 operations on waters within its jurisdiction;
22 requiring that the commission develop a
23 measurable biological goal that defines manatee
24 recovery; providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:
27

28 Section 1. Subsection (2) of section 370.12, Florida
29 Statutes, is amended to read:

30 370.12 Marine animals; regulation.--
31 (2) PROTECTION OF MANATEES OR SEA COWS.--

1 (a) This subsection shall be known and may be cited as
2 the "Florida Manatee Sanctuary Act."

3 (b) The State of Florida is hereby declared to be a
4 refuge and sanctuary for the manatee, the "Florida state
5 marine mammal."

6 (c) Whenever the Fish and Wildlife Conservation
7 Commission is satisfied that the interest of science will be
8 subserved, and that the application for a permit to possess a
9 manatee or sea cow (*Trichechus manatus*) is for a scientific or
10 propagational purpose and should be granted, and after
11 concurrence by the United States Department of the Interior,
12 the commission may grant to any person making such application
13 a special permit to possess a manatee or sea cow, which permit
14 shall specify the exact number which shall be maintained in
15 captivity.

16 (d) Except as may be authorized by the terms of a
17 valid state permit issued pursuant to paragraph (c) or by the
18 terms of a valid federal permit, it is unlawful for any person
19 at any time, by any means, or in any manner intentionally or
20 negligently to annoy, molest, harass, or disturb or attempt to
21 molest, harass, or disturb any manatee; injure or harm or
22 attempt to injure or harm any manatee; capture or collect or
23 attempt to capture or collect any manatee; pursue, hunt,
24 wound, or kill or attempt to pursue, hunt, wound, or kill any
25 manatee; or possess, literally or constructively, any manatee
26 or any part of any manatee.

27 (e) Any gun, net, trap, spear, harpoon, boat of any
28 kind, aircraft, automobile of any kind, other motorized
29 vehicle, chemical, explosive, electrical equipment, scuba or
30 other subaquatic gear, or other instrument, device, or
31 apparatus of any kind or description used in violation of any

1 provision of paragraph (d) may be forfeited upon conviction.
2 The foregoing provisions relating to seizure and forfeiture of
3 vehicles, vessels, equipment, or supplies do not apply when
4 such vehicles, vessels, equipment, or supplies are owned by,
5 or titled in the name of, innocent parties; and such
6 provisions shall not vitiate any valid lien, retain title
7 contract, or chattel mortgage on such vehicles, vessels,
8 equipment, or supplies if such lien, retain title contract, or
9 chattel mortgage is property of public record at the time of
10 the seizure.

11 (f)1. Except for emergency rules adopted under s.
12 120.54, draft rules of the commission, including all rules for
13 which a Notice of Intended Agency Action as provided in s.
14 120.54(3)(a) is filed after the date this paragraph takes
15 effect, proposing to govern the speed and operation of motor
16 boats for purposes of manatee protection must be submitted to
17 each county within which the draft rule will take effect for
18 review by a local rule-review committee.

19 2. At least 45 days before filing a Notice of Rule
20 Development in the Florida Administrative Weekly, the
21 commission shall notify each county for which a draft rule to
22 regulate the speed and operation of motorboats for the
23 protection of manatees is proposed. Each county so notified
24 shall establish a local rule-review committee, or several
25 counties may combine local rule-review committees. After
26 publication of a Notice of Rule Development, a local
27 rule-review committee may elect to participate in the
28 rule-development process.

29 3. The members of each local rule-review committee
30 shall be appointed by the county commission of each county
31

1 within which a draft rule will take effect, and shall consist
2 of the following:

3 a. One representative from the county government
4 selected by the county commission;

5 b. Two representatives from local environmental
6 organizations;

7 c. One representative having significant experience or
8 higher education in water-related biological sciences;

9 d. One representative who is a recreational fisher;

10 e. One representative who is a commercial fisher;

11 f. One representative who is a fishing guide;

12 g. One representative who is a marina owner or
13 operator; and

14 h. One representative who is a riparian property
15 owner.

16 4. The county shall invite other state, federal, or
17 local agency representatives to participate as nonvoting
18 members of the local rule-review committee. The county shall
19 provide logistical and administrative staff support to the
20 local rule-review committee appointed by that county, and may
21 request technical assistance from the commission staff.

22 5. The members of each local rule-review committee
23 shall elect a chair and recording secretary from among the
24 voting members. In conducting a review of a draft
25 manatee-protection rule, each committee may address such
26 factors as whether the best available science supports the
27 draft rule, whether seasonal zones are warranted, and such
28 other factors as are necessary to balance manatee protection
29 and public access to and use of the waters to be regulated
30 under the draft rule.

31

1 6. The draft rule and any supporting data used to
2 develop the draft rule shall be submitted by commission staff
3 to the local rule-review committee. The committee has 45 days
4 from receipt of the draft rule and any supporting data to
5 submit a written report to commission members and commission
6 staff commenting on the draft rule review and providing
7 recommended changes, if any, to proposed manatee-protection
8 zones or speed zones, including a recommendation that no rule
9 be adopted. A report of a local rule-review committee may
10 contain a minority opinion.

11 7. Before the filing of a Notice of Intended Agency
12 Action as provided in s. 120.54(3)(a), the commission staff
13 shall provide a written response to the report of a local
14 rule-review committee to the appropriate counties and to the
15 commission members.

16 8. The members of the commission shall fully consider
17 any timely submitted written report by a local rule-review
18 committee before authorizing commission staff to move forward
19 with proposed rulemaking as well as before adoption of a final
20 rule. Each local rule-review committee written report and the
21 commission staff response shall be part of the rulemaking
22 record.

23 ~~(g)(f)~~ In order to protect manatees or sea cows from
24 harmful collisions with motorboats or from harassment, the
25 Fish and Wildlife Conservation Commission shall adopt rules
26 under chapter 120 regarding the expansion of existing, or the
27 construction of new, marine facilities and mooring or docking
28 slips, by the addition or construction of five or more
29 powerboat slips, and regulating the operation and speed of
30 motorboat traffic, only where manatee sightings are frequent
31 and the best available science, including, but not limited to,

1 manatee surveys, supports the conclusions that manatees ~~it can~~
2 ~~be generally assumed, based on available scientific~~
3 ~~information, that they~~ inhabit these areas on a regular or
4 continuous basis:

5 1. In Lee County: the entire Orange River, including
6 the Tice Florida Power and Light Corporation discharge canal
7 and adjoining waters of the Caloosahatchee River within 1 mile
8 of the confluence of the Orange and Caloosahatchee Rivers.

9 2. In Brevard County: those portions of the Indian
10 River within three-fourths of a mile of the Orlando Utilities
11 Commission Delespine power plant effluent and the Florida
12 Power and Light Frontenac power plant effluents.

13 3. In Indian River County: the discharge canals of the
14 Vero Beach Municipal Power Plant and connecting waters within
15 1 1/4 miles thereof.

16 4. In St. Lucie County: the discharge of the Henry D.
17 King Municipal Electric Station and connecting waters within 1
18 mile thereof.

19 5. In Palm Beach County: the discharges of the Florida
20 Power and Light Riviera Beach power plant and connecting
21 waters within 1 1/2 miles thereof.

22 6. In Broward County: the discharge canal of the
23 Florida Power and Light Port Everglades power plant and
24 connecting waters within 1 1/2 miles thereof and the
25 discharge canal of the Florida Power and Light Fort Lauderdale
26 power plant and connecting waters within 2 miles thereof. For
27 purposes of ensuring the physical safety of boaters in a
28 sometimes turbulent area, the area from the easternmost edge
29 of the authorized navigation project of the intracoastal
30 waterway east through the Port Everglades Inlet is excluded
31 from this regulatory zone.

1 7. In Citrus County: headwaters of the Crystal River,
2 commonly referred to as King's Bay, and the Homosassa River.

3 8. In Volusia County: Blue Springs Run and connecting
4 waters of the St. Johns River within 1 mile of the confluence
5 of Blue Springs and the St. Johns River; and Thompson Creek,
6 Strickland Creek, Dodson Creek, and the Tomoka River.

7 9. In Hillsborough County: that portion of the Alafia
8 River from the main shipping channel in Tampa Bay to U.S.
9 Highway 41.

10 10. In Sarasota County: the Venice Inlet and
11 connecting waters within 1 mile thereof, including Lyons Bay,
12 Donna Bay, Roberts Bay, and Hatchett Creek, excluding the
13 waters of the intracoastal waterway and the right-of-way
14 bordering the centerline of the intracoastal waterway.

15 11. In Collier County: within the Port of Islands,
16 within section 9, township 52 south, range 28 east, and
17 certain unsurveyed lands, all east-west canals and the
18 north-south canals to the southerly extent of the intersecting
19 east-west canals which lie southerly of the centerline of U.S.
20 Highway 41.

21 12. In Manatee County: that portion of the Manatee
22 River east of the west line of section 17, range 19 east,
23 township 34 south; the Braden River south of the north line
24 and east of the west line of section 29, range 18 east,
25 township 34 south; Terra Ceia Bay and River, east of the west
26 line of sections 26 and 35 of range 17 east, township 33
27 south, and east of the west line of section 2, range 17 east,
28 township 34 south; and Bishop Harbor east of the west line of
29 section 13, range 17 east, township 33 south.

30
31

1 13. In Dade County: those portions of Black Creek
2 lying south and east of the water control dam, including all
3 boat basins and connecting canals within 1 mile of the dam.

4 (h)~~(g)~~ The Fish and Wildlife Conservation Commission
5 shall adopt rules pursuant to chapter 120 regulating the
6 operation and speed of motorboat traffic only where manatee
7 sightings are frequent and the best available science,
8 including, but not limited to, manatee surveys, supports the
9 conclusion that manatees ~~it can be generally assumed that they~~
10 inhabit these areas on a regular or continuous basis within
11 that portion of the Indian River between the St. Lucie Inlet
12 in Martin County and the Jupiter Inlet in Palm Beach County
13 ~~and. In addition, the commission shall adopt rules pursuant to~~
14 ~~chapter 120 regulating the operation and speed of motorboat~~
15 ~~traffic only where manatee sightings are frequent and it can~~
16 ~~be generally assumed that they inhabit these areas on a~~
17 ~~regular or continuous basis~~ within the Loxahatchee River in
18 Palm Beach and Martin Counties, including the north and
19 southwest forks thereof. ~~A limited lane or corridor providing~~
20 ~~for reasonable motorboat speeds may be identified and~~
21 ~~designated within this area.~~

22 (i)~~(h)~~ The commission shall adopt rules pursuant to
23 chapter 120 regulating the operation and speed of motorboat
24 traffic only where manatee sightings are frequent and the best
25 available science, including, but not limited to, manatee
26 surveys, supports the conclusion that manatees ~~it can be~~
27 ~~generally assumed that they~~ inhabit these areas on a regular
28 or continuous basis within the Withlacoochee River and its
29 tributaries in Citrus and Levy Counties. The specific areas to
30 be regulated include the Withlacoochee River and the U.S. 19
31 bridge westward to a line between U.S. Coast Guard markers

1 number 33 and number 34 at the mouth of the river, including
2 all side channels and coves along that portion of the river;
3 Bennets' Creek from its beginning to its confluence with the
4 Withlacoochee River; Bird's Creek from its beginning to its
5 confluence with the Withlacoochee River; and the two dredged
6 canal systems on the north side of the Withlacoochee River
7 southwest of Yankeetown. ~~A limited lane or corridor providing~~
8 ~~for reasonable motorboat speeds may be identified and~~
9 ~~designated within this area.~~

10 (j)1. By February 1, 2004, commission staff shall
11 begin to review rules that establish manatee-protection zones,
12 manatee speed zones, or "no access" or "limited entry" zones
13 to determine their continued effectiveness. All rules eligible
14 for review under this subparagraph must also be reviewed by a
15 local rule-review committee created with the membership,
16 procedures, duties, and responsibilities established in
17 paragraph (f). A local rule-review committee's written report
18 shall be reviewed by commission staff and by commission
19 members, and shall be considered part of the rulemaking
20 record.

21 2. To accommodate commission staff workload issues,
22 the rule-review schedule is as follows:

- 23 a. Brevard and Palm Beach counties in year one.
- 24 b. Broward and Dade counties in year two.
- 25 c. Citrus and Hillsborough counties in year three.
- 26 d. Pinellas and Manatee counties in year four.
- 27 e. Sarasota and Charlotte counties in year five.
- 28 f. Lee and Collier counties in year six.
- 29 g. Duval and St. Johns counties in year seven.
- 30 h. Flagler and Volusia counties in year eight.

1 i. Martin, Indian, and St. Lucie counties in year
2 nine.

3
4 The rule-review schedule may be accelerated at the discretion
5 of commission staff.

6 ~~(k)(i)~~ If any new power plant is constructed or other
7 source of warm water discharge is discovered within the state
8 which attracts a concentration of manatees or sea cows, the
9 Fish and Wildlife Conservation Commission is directed to adopt
10 rules pursuant to chapter 120 regulating the operation and
11 speed of motorboat traffic within the area of such discharge.
12 Such rules shall designate a zone which is sufficient in size,
13 and which shall remain in effect for a sufficient period of
14 time, to protect the manatees or sea cows.

15 ~~(l)(j)~~ It is the intent of the Legislature ~~through~~
16 ~~adoption of this paragraph~~ to allow the Fish and Wildlife
17 Conservation Commission to post and regulate boat speeds only
18 where the best available science, including, but not limited
19 to, manatee surveys, supports the conclusion that manatees
20 ~~manatee sightings are frequent and it can be generally assumed~~
21 ~~that they~~ inhabit these areas on a regular or continuous
22 basis. The commission may post and regulate boat speeds on a
23 seasonal basis in areas where the best available science,
24 including, but not limited to, manatee surveys, supports the
25 conclusion that manatees inhabit such areas on a seasonal
26 basis. It is not the intent of the Legislature to permit the
27 commission to post and regulate boat speeds generally in the
28 waters of the state ~~above-described inlets, bays, rivers,~~
29 ~~creeks,~~ thereby unduly interfering with the rights of fishers,
30 boaters, ~~and~~ water skiers, and other traditional waterway
31 users who are using the areas for recreational and commercial

1 purposes. Access ~~Limited~~ lanes or corridors providing for
2 reasonable motorboat speeds shall ~~may~~ be identified and
3 designated within ~~these~~ areas affected by rules adopted
4 pursuant to this subsection. This paragraph applies to all
5 rules adopted pursuant to this subsection.

6 (m)~~(k)~~ The commission shall adopt rules pursuant to
7 chapter 120 regulating the operation and speed of motorboat
8 traffic all year around within Turkey Creek and its
9 tributaries and within Manatee Cove in Brevard County. The
10 specific areas to be regulated consist of:

11 1. A body of water which starts at Melbourne-Tillman
12 Drainage District structure MS-1, section 35, township 28
13 south, range 37 east, running east to include all natural
14 waters and tributaries of Turkey Creek, section 26, township
15 28 south, range 37 east, to the confluence of Turkey Creek and
16 the Indian River, section 24, township 28 south, range 37
17 east, including all lagoon waters of the Indian River bordered
18 on the west by Palm Bay Point, the north by Castaway Point,
19 the east by the four immediate spoil islands, and the south by
20 Cape Malabar, thence northward along the shoreline of the
21 Indian River to Palm Bay Point.

22 2. A triangle-shaped body of water forming a cove
23 (commonly referred to as Manatee Cove) on the east side of the
24 Banana River, with northern boundaries beginning and running
25 parallel to the east-west cement bulkhead located 870 feet
26 south of SR 520 Relief Bridge in Cocoa Beach and with western
27 boundaries running in line with the City of Cocoa Beach
28 channel markers 121 and 127 and all waters east of these
29 boundaries in section 34, township 24 south, range 37 east;
30 the center coordinates of this cove are 28°20'14" north,
31 80°35'17" west.

1 (n)~~(l)~~ The commission shall promulgate regulations
2 pursuant to chapter 120 relating to the operation and speed of
3 motor boat traffic in port waters with due regard to the
4 safety requirements of such traffic and the navigational
5 hazards related to the movement of commercial vessels.

6 (o)~~(m)~~ The commission may designate by rule adopted
7 pursuant to chapter 120 other portions of state waters where
8 manatees are frequently sighted and the best available
9 science, including, but not limited to, manatee surveys,
10 supports the conclusion that ~~it can be assumed that~~ manatees
11 inhabit such waters periodically or continuously. Upon
12 designation of such waters, the commission shall adopt rules
13 pursuant to chapter 120 to regulate motorboat speed and
14 operation which are necessary to protect manatees from harmful
15 collisions with motorboats and from harassment. The commission
16 may adopt rules pursuant to chapter 120 to protect manatee
17 habitat, such as seagrass beds, within such waters from
18 destruction by boats or other human activity. Such rules
19 shall not protect noxious aquatic plants subject to control
20 under s. 369.20.

21 (p)~~(n)~~ The commission may designate, by rule adopted
22 pursuant to chapter 120, limited areas as a safe haven for
23 manatees to rest, feed, reproduce, give birth, or nurse
24 undisturbed by human activity. Access by motor boat to private
25 residences, boat houses, and boat docks through these areas by
26 residents, and their authorized guests, who must cross one of
27 these areas to have water access to their property is
28 permitted when the motorboat is operated at idle speed, no
29 wake.

30 (q)~~(o)~~ Except in the marked navigation channel of the
31 Florida Intracoastal Waterway as defined in s. 327.02 and the

1 area within 100 feet of such channel, a local government may
2 regulate, by ordinance, motorboat speed and operation on
3 waters within its jurisdiction only where the best available
4 science, including, but not limited to, manatee surveys,
5 supports the conclusion that manatees inhabit these areas on a
6 regular or continuous basis ~~where manatees are frequently~~
7 ~~sighted and can be generally assumed to inhabit periodically~~
8 ~~or continuously.~~ However, such an ordinance may not take
9 effect until it has been reviewed and approved by the
10 commission under this subsection. ~~If the commission and a~~
11 ~~local government disagree on the provisions of an ordinance, a~~
12 ~~local manatee protection committee must be formed to review~~
13 ~~the technical data of the commission and the United States~~
14 ~~Fish and Wildlife Service, and to resolve conflicts regarding~~
15 ~~the ordinance. The manatee protection committee must be~~
16 ~~comprised of:~~

- 17 1. ~~A representative of the commission;~~
- 18 2. ~~A representative of the county;~~
- 19 3. ~~A representative of the United States Fish and~~
20 ~~Wildlife Service;~~
- 21 4. ~~A representative of a local marine-related~~
22 ~~business;~~
- 23 5. ~~A representative of the Save the Manatee Club;~~
- 24 6. ~~A local fisher;~~
- 25 7. ~~An affected property owner;~~ and
- 26 8. ~~A representative of the Florida Marine Patrol.~~

27
28 ~~If local and state regulations are established for the same~~
29 ~~area, the more restrictive regulation shall prevail.~~

30 (r)~~(p)~~ The commission shall evaluate the need for use
31 of fenders to prevent crushing of manatees between vessels

1 (100' or larger) and bulkheads or wharves in counties where
2 manatees have been crushed by such vessels. For areas in
3 counties where evidence indicates that manatees have been
4 crushed between vessels and bulkheads or wharves, the
5 commission shall:

6 1. Adopt rules pursuant to chapter 120 requiring use
7 of fenders for construction of future bulkheads or wharves;
8 and

9 2. Implement a plan and time schedule to require
10 retrofitting of existing bulkheads or wharves consistent with
11 port bulkhead or wharf repair or replacement schedules.

12

13 The fenders shall provide sufficient standoff from the
14 bulkhead or wharf under maximum operational compression to
15 ensure that manatees cannot be crushed between the vessel and
16 the bulkhead or wharf.

17 (s)~~(q)~~ Any violation of a restricted area established
18 by this subsection, or established by rule pursuant to chapter
19 120 or ordinance pursuant to this subsection, shall be
20 considered a violation of the boating laws of this state and
21 shall be charged on a uniform boating citation as provided in
22 s. 327.74, except as otherwise provided in paragraph(u) ~~(s)~~.
23 Any person who refuses to post a bond or accept and sign a
24 uniform boating citation shall, as provided in s. 327.73(3),
25 be guilty of a misdemeanor of the second degree, punishable as
26 provided in s. 775.082 or s. 775.083.

27 (t) By February 15, 2003, the commission, working in
28 conjunction with the U.S. Fish and Wildlife Service, shall
29 develop a measurable biological goal that defines manatee
30 recovery. This manatee recovery goal shall be used by the
31 commission to develop and implement a management plan that is

1 used by the commission and the local rule-review committees to
2 evaluate the effectiveness of existing and proposed
3 manatee-protection rules and to determine the progress in
4 achieving the manatee-recovery goal.

5 (u)~~(r)~~ Except as otherwise provided in this paragraph,
6 any person violating the provisions of this subsection or any
7 rule or ordinance adopted pursuant to this subsection shall be
8 guilty of a misdemeanor, punishable as provided in s.
9 370.021(1)(a) or (b).

10 1. Any person operating a vessel in excess of a posted
11 speed limit shall be guilty of a civil infraction, punishable
12 as provided in s. 327.73, except as provided in subparagraph
13 2.

14 2. This paragraph does not apply to persons violating
15 restrictions governing "No Entry" zones or "Motorboat
16 Prohibited" zones, who, if convicted, shall be guilty of a
17 misdemeanor, punishable as provided in s. 370.021(1)(a) or
18 (b), or, if such violation demonstrates blatant or willful
19 action, may be found guilty of harassment as described in
20 paragraph (d).

21 Section 2. This act shall take effect upon becoming a
22 law.

23
24 *****

25 SENATE SUMMARY

26 Provides for the creation of local rule-review committees
27 in counties where manatee-protection zones or manatee
28 speed zones may be imposed. Provides that written reports
29 submitted to the Fish and Wildlife Conservation
30 Commission by local rule-review committees are part of
31 the rulemaking record. Creates a rule-review schedule.
Revises the circumstances under which boat speeds may be
regulated. Requires the commission to develop a
measurable biological goal that defines manatee recovery.