

By Senator Constantine

22-01390A-09

20092536\_\_

1                   A bill to be entitled  
2           An act relating to boating; amending s. 253.04, F.S.;  
3           providing that the duty of the Board of Trustees of  
4           the Internal Improvement Trust Fund to conserve and  
5           improve state-owned lands includes the preservation  
6           and regeneration of seagrass; providing that operating  
7           a vessel outside a lawfully marked channel in a  
8           careless manner causing seagrass scarring within  
9           certain aquatic preserves is a violation of the vessel  
10          laws and a noncriminal infraction; defining the terms  
11          "seagrass scarring" and "seagrass"; providing for a  
12          uniform boating citation; providing criminal penalties  
13          for refusal to post bond or accept and sign the  
14          citation; amending s. 327.35, F.S.; revising penalties  
15          for boating under the influence of alcohol; revising  
16          the blood-alcohol level or breath-alcohol level at  
17          which certain penalties apply; amending s. 327.36,  
18          F.S.; revising a prohibition against accepting a plea  
19          to a lesser included offense from a person who is  
20          charged with certain offenses involving the operation  
21          of a vessel; revising the blood-alcohol level or  
22          breath-alcohol level at which the prohibition applies;  
23          amending s. 327.50, F.S.; revising requirements for  
24          persons on board a vessel to wear a personal  
25          floatation device; revising the age at which such  
26          device is required; providing exceptions; creating s.  
27          327.66, F.S.; prohibiting possessing or operating a  
28          vessel equipped with certain fuel containers or  
29          related equipment; prohibiting transporting fuel in a

22-01390A-09

20092536\_\_

30 vessel except in compliance with certain federal  
31 regulations; providing penalties; declaring fuel  
32 transported in violation of such prohibitions to be a  
33 public nuisance and directing the enforcing agency to  
34 abate the nuisance; providing for disposal of the  
35 containers and fuel; declaring conveyances, vessels,  
36 vehicles, and equipment used in such violation to be  
37 contraband; providing for seizure of the contraband;  
38 providing for costs to remove fuel, containers,  
39 vessels, and equipment to be paid by the owner;  
40 providing that a person who fails to pay such cost  
41 shall not be issued a certificate of registration for  
42 a vessel or motor vehicle; amending s. 327.73, F.S.;  
43 providing for disposition of a citation for carelessly  
44 causing seagrass scarring; providing penalties;  
45 amending s. 379.338, F.S.; providing for confiscation  
46 and disposition of illegally taken game, wildlife,  
47 freshwater fish, and saltwater fish; providing for  
48 proceeds from sales to be deposited into the Marine  
49 Resources Conservation Trust Fund; providing for an  
50 agency that assists in the enforcement action to  
51 receive a portion or all of any forfeited property;  
52 creating s. 379.3381, F.S.; providing for photographs  
53 of game, wildlife, freshwater fish, or saltwater fish  
54 to be used as evidence in a prosecution in lieu of the  
55 game, wildlife, freshwater fish, or saltwater fish;  
56 providing an effective date.

57  
58 Be It Enacted by the Legislature of the State of Florida:

22-01390A-09

20092536\_\_

59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87

Section 1. Subsection (4) of section 253.04, Florida Statutes, is amended to read:

253.04 Duty of board to protect, etc., state lands; state may join in any action brought.—

(4) Whenever any person or the agent of any person knowingly refuses to comply with or willfully violates any of the provisions of this chapter so that such person causes damage to the lands of the state or products thereof, including removal of those products, such violator is liable for such damage. Whenever two or more persons or their agents cause damage, and if such damage is indivisible, each violator is jointly and severally liable for such damage; however, if such damage is divisible and may be attributed to a particular violator or violators, each violator is liable only for that damage and subject to the fine attributable to his or her violation.

(a) The duty to conserve and improve state-owned lands and the products thereof shall include the preservation and regeneration of seagrass, which is deemed essential to the oceans, gulfs, estuaries, and shorelines of the state. A person operating a vessel outside a lawfully marked channel in a careless manner that causes seagrass scarring within an aquatic preserve established in ss. 258.39-258.399, with the exception of the Lake Jackson, Oklawaha River, Wekiva River, and Rainbow Springs aquatic preserves, commits a noncriminal infraction, punishable as provided in s. 327.73. Each violation is a separate offense. As used in this subsection, the term:

1. "Seagrass scarring" means destruction of seagrass roots, shoots, or stems that results in tracks on the substrate, caused

22-01390A-09

20092536\_\_

88 by the operation of a motorized vessel in waters supporting  
89 seagrasses, commonly referred to as prop scars or propeller  
90 scars.

91 2. "Seagrass" means Cuban shoal grass (*Halodule wrightii*),  
92 turtle grass (*Thalassia testudinum*), manatee grass (*Syringodium*  
93 *filiforme*), star grass (*Halophila engelmannii*), paddle grass  
94 (*Halophila decipiens*), Johnsons seagrass (*Halophila johnsonii*),  
95 or widgeon grass (*Ruppia maritima*).

96 (b) Any violation under paragraph (a) is a violation of the  
97 vessel laws of this state and shall be charged on a uniform  
98 boating citation as provided in s. 327.74. Any person who  
99 refuses to post a bond or accept and sign a uniform boating  
100 citation commits a misdemeanor of the second degree, as provided  
101 in s. 327.73(3), punishable as provided in s. 775.082 or s.  
102 775.083.

103 Section 2. Subsection (4) of section 327.35, Florida  
104 Statutes, is amended to read:

105 327.35 Boating under the influence; penalties; "designated  
106 drivers".-

107 (1) A person is guilty of the offense of boating under the  
108 influence and is subject to punishment as provided in subsection

109 (2) if the person is operating a vessel within this state and:

110 (a) The person is under the influence of alcoholic  
111 beverages, any chemical substance set forth in s. 877.111, or  
112 any substance controlled under chapter 893, when affected to the  
113 extent that the person's normal faculties are impaired;

114 (b) The person has a blood-alcohol level of 0.08 or more  
115 grams of alcohol per 100 milliliters of blood; or

116 (c) The person has a breath-alcohol level of 0.08 or more

22-01390A-09

20092536\_\_

117 grams of alcohol per 210 liters of breath.

118 (4) Any person who is convicted of a violation of  
119 subsection (1) and who has a blood-alcohol level or breath-  
120 alcohol level of 0.15 ~~0.20~~ or higher, or any person who is  
121 convicted of a violation of subsection (1) and who at the time  
122 of the offense was accompanied in the vessel by a person under  
123 the age of 18 years, shall be punished:

124 (a) By a fine of:

125 1. Not less than \$1,000 or more than \$2,000 for a first  
126 conviction.

127 2. Not less than \$2,000 or more than \$4,000 for a second  
128 conviction.

129 3. Not less than \$4,000 for a third or subsequent  
130 conviction.

131 (b) By imprisonment for:

132 1. Not more than 9 months for a first conviction.

133 2. Not more than 12 months for a second conviction.

134

135 For the purposes of this subsection, only the instant offense is  
136 required to be a violation of subsection (1) by a person who has  
137 a blood-alcohol level or breath-alcohol level of 0.15 ~~0.20~~ or  
138 higher.

139 Section 3. Paragraph (a) of subsection (2) of section  
140 327.36, Florida Statutes, is amended to read:

141 327.36 Mandatory adjudication; prohibition against  
142 accepting plea to lesser included offense.-

143 (2) (a) No trial judge may accept a plea of guilty to a  
144 lesser offense from a person who is charged with a violation of  
145 s. 327.35, manslaughter resulting from the operation of a

22-01390A-09

20092536\_\_

146 vessel, or vessel homicide and who has been given a breath or  
147 blood test to determine blood or breath alcohol content, the  
148 results of which show a blood-alcohol level or breath-alcohol  
149 level of 0.15 ~~0.16~~ or more.

150 Section 4. Paragraph (b) of subsection (1) of section  
151 327.50, Florida Statutes, is amended to read:

152 327.50 Vessel safety regulations; equipment and lighting  
153 requirements.-

154 (1)

155 (b) A ~~No~~ person shall not operate a vessel less than 26  
156 feet in length on the waters of this state unless every person  
157 who has not attained 10 ~~under 6~~ years of age on board the vessel  
158 is wearing an appropriate personal flotation device approved by  
159 the a type I, type II, or type III Coast Guard, is below decks,  
160 or is in an enclosed cabin ~~approved personal flotation device~~  
161 while such vessel is underway. For the purpose of this section,  
162 "underway" means ~~shall mean~~ at all times except when a vessel is  
163 anchored, moored, made fast to the shore, or aground.

164 Section 5. Section 327.66, Florida Statutes, is created to  
165 read:

166 327.66 Carriage of fuel on vessels.-

167 (1) (a) A person shall not:

168 1. Possess or operate any vessel that has been equipped  
169 with fuel tanks, bladders, drums, or other containers designed  
170 or intended to hold fuel, or install or maintain such containers  
171 in a vessel, if such containers do not conform to federal  
172 regulations or have not been approved by the United States Coast  
173 Guard by inspection or special permit.

174 2. Possess or operate any vessel that has been equipped

22-01390A-09

20092536\_\_

175 with pipes, hoses, or auxiliary pumps that, when present in the  
176 vessel, could be used to introduce fuel into the primary fuel  
177 system of the vessel from such tanks, bladders, drums, or other  
178 containers or to transfer fuel from one such container to  
179 another.

180 3. Transport any fuel in an approved portable container  
181 when the container is in a compartment that is not ventilated in  
182 strict compliance with United States Coast Guard regulations  
183 pertaining to ventilation of compartments containing fuel tanks.

184 (b) A person who violates paragraph (a) commits a felony of  
185 the third degree, punishable as provided in s. 775.082, s.  
186 775.083, or s. 775.084.

187 (2) (a) Fuel possessed or transported in violation of this  
188 section and all containers holding such fuel are declared to be  
189 a public nuisance. A law enforcement agency discovering fuel  
190 possessed or transported in violation of paragraph (1) (a) shall  
191 abate the nuisance by removing the fuel and containers from the  
192 vessel and from the waters of this state. A law enforcement  
193 agency that removes fuel or containers pursuant to this  
194 subsection may elect to:

195 1. Retain the property for the agency's own use;

196 2. Transfer the property to another unit of state or local  
197 government;

198 3. Donate the property to a charitable organization; or

199 4. Sell the property at public sale pursuant to s. 705.103.

200 (b) A law enforcement agency that seizes fuel or containers  
201 pursuant to this subsection shall remove and reclaim, recycle,  
202 or otherwise dispose of the fuel as soon as practicable in a  
203 safe and proper manner.

22-01390A-09

20092536\_\_

204       (3) All conveyances, vessels, vehicles, and other equipment  
205 described in paragraph (1)(a) or used in the commission of a  
206 violation of paragraph (1)(a), other than fuel or containers  
207 removed as provided in subsection (2), are declared to be  
208 contraband.

209       (a) Upon conviction of a person arrested for a violation of  
210 paragraph (1)(a), the judge shall issue an order adjudging and  
211 ordering that all conveyances, vessels, vehicles, and other  
212 equipment used in the violation shall be forfeited to the  
213 arresting agency. The requirement for a conviction before  
214 forfeiture of property establishes to the exclusion of any  
215 reasonable doubt that the property was used in connection with  
216 the violation resulting in the conviction, and the procedures of  
217 chapter 932 do not apply to any forfeiture of property under  
218 this subsection following a conviction.

219       (b) In the absence of an arrest or conviction, any such  
220 conveyance, vessel, vehicle, or other equipment used in  
221 violation of paragraph (1)(a) shall be subject to seizure and  
222 forfeiture as provided by the Florida Contraband Forfeiture Act.

223       (4) All costs incurred by the law enforcement agency in the  
224 removal of any fuel, fuel container, other equipment, or vessel  
225 as provided in this section shall be recoverable against the  
226 owner thereof. Any person who neglects or refuses to pay such  
227 amount shall not be issued a certificate of registration for  
228 such vessel or for any other vessel or motor vehicle until the  
229 costs have been paid.

230       Section 6. Section 327.73, Florida Statutes, is amended to  
231 read:

232       327.73 Noncriminal infractions.-



22-01390A-09

20092536\_\_

- 233 (1) Violations of the following provisions of the vessel  
234 laws of this state are noncriminal infractions:
- 235 (a) Section 328.46, relating to operation of unregistered  
236 and unnumbered vessels.
- 237 (b) Section 328.48(4), relating to display of number and  
238 possession of registration certificate.
- 239 (c) Section 328.48(5), relating to display of decal.
- 240 (d) Section 328.52(2), relating to display of number.
- 241 (e) Section 328.54, relating to spacing of digits and  
242 letters of identification number.
- 243 (f) Section 328.60, relating to military personnel and  
244 registration of vessels.
- 245 (g) Section 328.72(13), relating to operation with an  
246 expired registration.
- 247 (h) Section 327.33(2), relating to careless operation.
- 248 (i) Section 327.37, relating to water skiing, aquaplaning,  
249 parasailing, and similar activities.
- 250 (j) Section 327.44, relating to interference with  
251 navigation.
- 252 (k) Violations relating to restricted areas and speed  
253 limits:
- 254 1. Established by the commission pursuant to s. 327.46.
- 255 2. Established by local governmental authorities pursuant  
256 to s. 327.22 or s. 327.60.
- 257 3. Speed limits established pursuant to s. 379.2431(2).
- 258 (l) Section 327.48, relating to regattas and races.
- 259 (m) Section 327.50(1) and (2), relating to required safety  
260 equipment, lights, and shapes.
- 261 (n) Section 327.65, relating to muffling devices.

22-01390A-09

20092536\_\_

262 (o) Section 327.33(3)(b), relating to navigation rules.

263 (p) Section 327.39(1), (2), (3), and (5), relating to  
264 personal watercraft.

265 (q) Section 327.53(1), (2), and (3), relating to marine  
266 sanitation.

267 (r) Section 327.53(4), (5), and (7), relating to marine  
268 sanitation, for which the civil penalty is \$250.

269 (s) Section 327.395, relating to boater safety education.

270 (t) Section 327.52(3), relating to operation of overloaded  
271 or overpowered vessels.

272 (u) Section 327.331, relating to divers-down flags, except  
273 for violations meeting the requirements of s. 327.33.

274 (v) Section 327.391(1), relating to the requirement for an  
275 adequate muffler on an airboat.

276 (w) Section 327.391(3), relating to the display of a flag  
277 on an airboat.

278 (x) Section 253.04(4)(a), relating to carelessly causing  
279 seagrass scarring, for which the civil penalty upon conviction  
280 is:

281 1. For a first offense, \$50.

282 2. For a second offense occurring within 12 months after a  
283 prior conviction, \$250.

284 3. For a third offense occurring within 36 months after a  
285 prior conviction, \$500.

286 4. For a fourth or subsequent offense, \$1,000.

287  
288 Any person cited for a violation of any such provision shall be  
289 deemed to be charged with a noncriminal infraction, shall be  
290 cited for such an infraction, and shall be cited to appear

22-01390A-09

20092536\_\_

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

301 (2) Any person cited for an infraction under this section  
302 may:

303 (a) Post a bond, which shall be equal in amount to the  
304 applicable civil penalty; or

305 (b) Sign and accept a citation indicating a promise to  
306 appear.

307

308 The officer may indicate on the citation the time and location  
309 of the scheduled hearing and shall indicate the applicable civil  
310 penalty.

311 (3) Any person who willfully refuses to post a bond or  
312 accept and sign a summons is guilty of a misdemeanor of the  
313 second degree.

314 (4) Any person charged with a noncriminal infraction under  
315 this section may:

316 (a) Pay the civil penalty, either by mail or in person,  
317 within 30 days of the date of receiving the citation; or,

318 (b) If he or she has posted bond, forfeit bond by not  
319 appearing at the designated time and location.

22-01390A-09

20092536\_\_

320

321 If the person cited follows either of the above procedures, he  
322 or she shall be deemed to have admitted the noncriminal  
323 infraction and to have waived the right to a hearing on the  
324 issue of commission of the infraction. Such admission shall not  
325 be used as evidence in any other proceedings. If a person who is  
326 cited for a violation of s. 327.395 can show a boating safety  
327 identification card issued to that person and valid at the time  
328 of the citation, the clerk of the court may dismiss the case and  
329 may assess a dismissal fee of up to \$10. If a person who is  
330 cited for a violation of s. 328.72(13) can show proof of having  
331 a registration for that vessel which was valid at the time of  
332 the citation, the clerk may dismiss the case and may assess the  
333 dismissal fee.

334 (5) Any person electing to appear before the county court  
335 or who is required so to appear shall be deemed to have waived  
336 the limitations on the civil penalty specified in subsection  
337 (1). The court, after a hearing, shall make a determination as  
338 to whether an infraction has been committed. If the commission  
339 of an infraction has been proven, the court may impose a civil  
340 penalty not to exceed \$500.

341 (6) At a hearing under this chapter the commission of a  
342 charged infraction must be proved beyond a reasonable doubt.

343 (7) If a person is found by the hearing official to have  
344 committed an infraction, he or she may appeal that finding to  
345 the circuit court.

346 (8) All fees and civil penalties assessed and collected  
347 pursuant to this section shall be remitted by the clerk of the  
348 court to the Department of Revenue to be deposited into the

22-01390A-09

20092536\_\_

349 Marine Resources Conservation Trust Fund for boating safety  
350 education purposes.

351 (9) (a) Any person who fails to comply with the court's  
352 requirements or who fails to pay the civil penalties specified  
353 in this section within the 30-day period provided for in s.  
354 327.72 must pay an additional court cost of up to \$20, which  
355 shall be used by the clerks of the courts to defray the costs of  
356 tracking unpaid uniform boating citations.

357 (b) Any person who fails to comply with the court's  
358 requirements as to civil penalties specified in this section due  
359 to demonstrated financial hardship shall be authorized to  
360 satisfy such civil penalties by public works or community  
361 service. Each hour of such service shall be applied, at the rate  
362 of the minimum wage, toward payment of the person's civil  
363 penalties; provided, however, that if the person has a trade or  
364 profession for which there is a community service need and  
365 application, the rate for each hour of such service shall be the  
366 average standard wage for such trade or profession. Any person  
367 who fails to comply with the court's requirements as to such  
368 civil penalties who does not demonstrate financial hardship may  
369 also, at the discretion of the court, be authorized to satisfy  
370 such civil penalties by public works or community service in the  
371 same manner.

372 (c) If the noncriminal infraction has caused or resulted in  
373 the death of another, the court may require the person who  
374 committed the infraction to perform 120 community service hours  
375 in addition to any other penalties.

376 (10) Any person cited for any noncriminal infraction which  
377 results in an accident that causes the death of another, or

22-01390A-09

20092536\_\_

378 which results in an accident that causes "serious bodily injury"  
379 of another as defined in s. 327.353(1), shall not have the  
380 provisions of subsection (4) available to him or her but must  
381 appear before the designated official at the time and location  
382 of the scheduled hearing.

383 (11) (a) Court costs that are to be in addition to the  
384 stated civil penalty shall be imposed by the court in an amount  
385 not less than the following:

- 386 1. For swimming or diving infractions, \$4.
- 387 2. For nonmoving boating infractions, \$18.
- 388 3. For boating infractions listed in s. 327.731(1), \$35.

389 (b) In addition to the court cost assessed under paragraph  
390 (a), the court shall impose a \$3 court cost for each noncriminal  
391 infraction, to be distributed as provided in s. 938.01, and a \$2  
392 court cost as provided in s. 938.15 when assessed by a  
393 municipality or county.

394  
395 Court costs imposed under this subsection may not exceed \$45. A  
396 criminal justice selection center or both local criminal justice  
397 access and assessment centers may be funded from these court  
398 costs.

399 Section 7. Section 379.338, Florida Statutes, is amended to  
400 read:

401 379.338 Confiscation and disposition of illegally taken  
402 game, wildlife, freshwater fish, and saltwater fish.-

403 (1) All game, wildlife, and freshwater fish, and saltwater  
404 fish seized under the authority of this chapter, any other  
405 chapter, or rules of the commission shall, upon conviction of  
406 the offender or sooner in accordance with a court order if the

22-01390A-09

20092536\_\_

407 court so orders, be forfeited to the investigating law  
408 enforcement agency. The law enforcement agency may elect to  
409 retain the wildlife, freshwater fish, or saltwater fish for the  
410 agency's official use; transfer it to another unit of state or  
411 local government for official use; donate it to a charitable  
412 organization; sell it at public sale pursuant to s. 705.103; or  
413 destroy the wildlife, freshwater fish, or saltwater fish if none  
414 of the other options is practicable or if the wildlife,  
415 freshwater fish, or saltwater fish is unwholesome or otherwise  
416 not of appreciable value. All live wildlife, freshwater fish,  
417 and saltwater fish the possession of which is unlawful may be  
418 properly documented as evidence as provided in s. 379.3381 and  
419 returned to the habitat unharmed, except that nonnative species  
420 may be released only as allowed by rule of the commission. Any  
421 unclaimed wildlife, freshwater fish, or saltwater fish shall be  
422 retained by the investigating law enforcement agency and  
423 disposed of in accordance with this subsection ~~and given to some~~  
424 ~~hospital or charitable institution and receipt therefor sent to~~  
425 ~~the Fish and Wildlife Conservation Commission.~~

426 (2) All furs or hides or fur-bearing animals seized under  
427 the authority of this chapter shall, upon conviction of the  
428 offender, be forfeited and sent to the commission, which shall  
429 sell the same and deposit the proceeds of such sale to the  
430 credit of the State Game Trust Fund. If any such hides or furs  
431 are seized and the offender is unknown, the court shall order  
432 such hides or furs sent to the Fish and Wildlife Conservation  
433 Commission, which shall sell such hides and furs.

434 (3) ~~and deposit~~ The proceeds of any such sale under this  
435 section shall be remitted to the Department of Revenue to be

22-01390A-09

20092536\_\_

436 deposited to the credit of the State Game Trust Fund or the  
437 Marine Resources Conservation Trust Fund.

438 (4) Any state, county, or municipal law enforcement agency  
439 that enforces or assists the commission in enforcing this  
440 chapter, which enforcement results in a forfeiture of property  
441 as provided in this section, is entitled to receive all or a  
442 share of any property based upon its participation in the  
443 enforcement.

444 Section 8. Section 379.3381, Florida Statutes, is created  
445 to read:

446 379.3381 Photographic evidence of illegally taken wildlife,  
447 freshwater fish, and saltwater fish.-In any prosecution for a  
448 violation of this chapter, any other chapter, or rules of the  
449 commission, a photograph of illegally taken wildlife, freshwater  
450 fish, or saltwater fish may be deemed competent evidence of such  
451 property and may be admissible in the prosecution to the same  
452 extent as if such wildlife, freshwater fish, or saltwater fish  
453 were introduced as evidence. Such photograph shall bear a  
454 written description of the wildlife, freshwater fish, or  
455 saltwater fish alleged to have been illegally taken, the name of  
456 the violator, the location where the alleged illegal taking  
457 occurred, the name of the investigating law enforcement officer,  
458 the date the photograph was taken, and the name of the  
459 photographer. Such writing shall be made under oath by the  
460 investigating law enforcement officer, and the photograph shall  
461 be identified by the signature of the photographer. Upon the  
462 filing of such photograph and writing with the law enforcement  
463 authority or court holding such property as evidence, the  
464 wildlife, freshwater fish, or saltwater fish may be disposed of



22-01390A-09

20092536\_\_

465 in accordance with s. 379.338.

466 Section 9. This act shall take effect October 1, 2009.

467