

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1273 Manatees  
**SPONSOR(S):** Ahern  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1506

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N	Moore, R.	Harrington
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) State Affairs Committee			

### SUMMARY ANALYSIS

Manatees are listed as an endangered species under the Endangered Species Act. Florida's Manatee Sanctuary Act (Act) declares the state to be a refuge and sanctuary for the manatee. The Act provides that the Florida Fish and Wildlife Conservation Commission (FWC) must adopt rules regulating the operation and speed of motorboat traffic where there are manatee sightings based upon best available scientific information and allows local governments to adopt ordinances regulating the same within its jurisdiction if approved by FWC. FWC has established manatee protection rules restricting the speed and operation of vessels where necessary to protect manatees from harassment and harmful collisions with vessels. FWC also conducts aerial distribution and synoptic surveys to acquire information on manatee distribution, abundance, and use of habitat. The Save the Manatee Trust Fund (STMTF) is administered by FWC and its funds are used for a yearly impartial scientific benchmark census of the manatee population in the state and programs to protect and enhance the recovery of the manatee and other species of marine mammals.

The bill:

- Requires FWC to contract with an independent, qualified party to conduct a study evaluating the effectiveness of manatee speed zones including if, and to what extent, risks to manatees are reduced by these zones and to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2019, detailing the findings of the study;
- Requires FWC to conduct a statewide manatee distribution and abundance survey and report by July 1, 2018, that achieves a scientifically reliable population estimate, and allows FWC to repeat the survey as necessary to determine best practices until at least July 1, 2026;
- Allows funds from the STMTF to be used for the manatee speed zone effectiveness study and statewide manatee distribution and abundance survey and report to the extent that funding is not available from other sources; and
- Exempts the STMTF from a service charge assessed against state trust funds until July 1, 2026.

The bill may have a negative fiscal impact on the state by exempting the STMTF from the requirement to contribute to the General Revenue Fund.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

The West Indian manatee, *Trichechus manatus*, is a large aquatic mammal consisting of two subspecies: the Antillean manatee, *Trichechus manatus manatus*, and the Florida manatee, *Trichechus manatus latirostris*.<sup>1</sup> Manatees are protected under the Endangered Species Act (ESA) and the Marine Mammal Protection Act. Under the ESA, species are listed as either endangered<sup>2</sup> or threatened.<sup>3</sup> Manatees are currently listed as an endangered species under the ESA.<sup>4</sup> The ultimate goal of the ESA is to recover species so they no longer need protection.<sup>5</sup>

Manatees are found throughout the Caribbean, including the southeastern United States, eastern Mexico, eastern Central America, northeastern South America, and the Greater Antilles.<sup>6</sup> The range wide population is estimated to be at least 13,000, with more than 6,500 in the southeastern United States and Puerto Rico. When aerial surveys began in 1991, there were an estimated 1,267 manatees in Florida.<sup>7</sup> Today there are more than 6,000, representing a significant increase over the past 25 years.<sup>8</sup> On January 8, 2016, the United States Fish and Wildlife Service proposed reclassifying the manatee from endangered to threatened.<sup>9</sup>

##### Florida's Endangered and Threatened Species Act

Florida's Endangered and Threatened Species Act (FETSA) recognizes that the state harbors a wide diversity of fish and wildlife and provides that it is the policy of the state to conserve and wisely manage these resources, with particular attention to species defined by the Fish and Wildlife Conservation Commission (FWC), the Department of Environmental Protection, or the United States Department of Interior, or successor agencies, as being endangered<sup>10</sup> or threatened<sup>11, 12</sup>. The FETSA also recognizes

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<sup>1</sup> U.S. Fish & Wildlife Service Southeast Region West Indian Manatee, available at <http://www.fws.gov/southeast/wildlife/mammal/manatee/> (last visited Jan. 27, 2016).

<sup>2</sup> "Endangered" means a species is in danger of extinction throughout all or a significant portion of its range.; ESA Fact Sheet available at [http://www.fws.gov/endangered/esa-library/pdf/ESA\\_basics.pdf](http://www.fws.gov/endangered/esa-library/pdf/ESA_basics.pdf).

<sup>3</sup> "Threatened" means a species is likely to become endangered within the foreseeable future.; ESA Fact Sheet available at [http://www.fws.gov/endangered/esa-library/pdf/ESA\\_basics.pdf](http://www.fws.gov/endangered/esa-library/pdf/ESA_basics.pdf).

<sup>4</sup> U.S. Fish & Wildlife Service Southeast Region West Indian Manatee, available at <http://www.fws.gov/southeast/wildlife/mammal/manatee/> (last visited Jan. 27, 2016).

<sup>5</sup> ESA Fact Sheet available at [http://www.fws.gov/endangered/esa-library/pdf/ESA\\_basics.pdf](http://www.fws.gov/endangered/esa-library/pdf/ESA_basics.pdf).

<sup>6</sup> U.S. Fish & Wildlife Service Southeast Region West Indian Manatee, available at <http://www.fws.gov/southeast/wildlife/mammal/manatee/> (last visited Jan. 27, 2016).

<sup>7</sup> U.S. Fish & Wildlife Service Southeast Region West Indian Manatee, available at <http://www.fws.gov/southeast/wildlife/mammal/manatee/> (last visited Jan. 27, 2016); FWC's website available at <http://myfwc.com/research/manatee/research/population-monitoring/synoptic-surveys/> (last visited Jan. 27, 2016).

<sup>8</sup> *Id.*

<sup>9</sup> U.S. Fish & Wildlife Service Southeast Region West Indian Manatee, available at <http://www.fws.gov/southeast/wildlife/mammal/manatee/> (last visited Jan. 27, 2016).

<sup>10</sup> Section 379.2291(3)(b), F.S., defines an "endangered species" as any species of fish and wildlife naturally occurring in Florida, whose prospects of survival are in jeopardy due to modification or loss of habitat; overutilization for commercial, sporting, scientific, or educational purposes; disease; predation; inadequacy of regulatory mechanisms; or other natural or manmade factors affecting its continued existence.

<sup>11</sup> Section 379.2291(3)(c), F.S., defines a "threatened species" as any species of fish and wildlife naturally occurring in Florida which may not be in immediate danger of extinction, but which exists in such small populations as to become endangered if it is subjected to increased stress as a result of further modification of its environment.

<sup>12</sup> Section 379.2291(1)-(2), F.S.

that Florida has more endangered and threatened species than any other continental state, and provides that it is the intent of the Legislature to provide for research and management to conserve and protect these species as a natural resource.<sup>13</sup> The FETSA provides that FWC is responsible for research and management of freshwater, upland, and marine species.<sup>14</sup>

### Manatee Protection

FWC must ensure that manatees receive the maximum protection possible.<sup>15</sup> Recognizing that manatee protection depends upon consistently achieving a high degree of compliance with existing and future rules, FWC must:

- Conduct standardized studies to determine levels of compliance with manatee protection rules;
- Use the results of the studies, and other relevant information, to develop and implement law enforcement initiatives and boater education plans; and
- Identify impediments in consistently achieving high levels of compliance, and adjust enforcement and boater education efforts accordingly.<sup>16</sup>

### Florida Manatee Sanctuary Act

Florida's Manatee Sanctuary Act (Act) declares the state to be a refuge and sanctuary for the manatee<sup>17</sup> and provides that the protections extended to and authorized on behalf of the manatee are independent of, and are not contingent upon, its status as a state or federal listed species.<sup>18</sup> The Act provides that:

- FWC may grant a special permit to possess a manatee for scientific or propagational purposes, which specifies the exact number to be maintained in captivity;<sup>19</sup>
- A person may not, at any time, by any means, or in any manner intentionally or negligently annoy, molest, harass, or disturb or attempt to molest, harass, or disturb any manatee; injure or harm or attempt to injure or harm any manatee; capture or collect or attempt to capture or collect any manatee; pursue, hunt, wound, or kill or attempt to pursue, hunt, wound, or kill any manatee; or possess, literally or constructively, any manatee or any part of any manatee.<sup>20</sup> Any gun, net, trap, spear, harpoon, boat of any kind, aircraft, automobile of any kind, other motorized vehicle, chemical, explosive, electrical equipment, scuba or other subaquatic gear, or other instrument, device, or apparatus of any kind or description used in annoying, harassing or disturbing a manatee may be forfeited upon conviction;<sup>21</sup>
- FWC may provide another permitting agency with comments regarding the expansion of existing, or the construction of new, marine facilities and mooring or docking slips, which propose to add or construct five or more powerboat slips;<sup>22</sup>
- FWC must adopt rules regulating the operation and speed of motorboat traffic:
  - Only where manatee sightings are frequent and the best available scientific information supports the conclusions that manatees inhabit these areas on a *regular* basis in designated areas of the state;<sup>23</sup>

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<sup>13</sup> Section 379.291(2), F.S.

<sup>14</sup> Section 379.2291(4)(a), F.S.

<sup>15</sup> Section 379.2432, F.S.

<sup>16</sup> *Id.*

<sup>17</sup> Section 15.038(1), F.S., designates the manatee as the state's marine mammal.

<sup>18</sup> Section 379.2431(2)(b).

<sup>19</sup> Section 379.2431(2)(c), F.S.

<sup>20</sup> Section 379.2431(2)(d), F.S.

<sup>21</sup> Section 379.2431(2)(e), F.S.

<sup>22</sup> Section 379.2431(2)(g), F.S.

<sup>23</sup> Section 379.2431(2)(g)-(i), F.S.

- All year within Turkey Creek and its tributaries and within Manatee Cove in Brevard County;<sup>24</sup>
- Within an area of any new power plant or other source of warm water discharge that attracts a concentration of manatees, which designates a zone of sufficient size, and for a duration sufficient to protect the manatees;<sup>25</sup> and
- In port waters with due regard to the safety requirements of motorboat traffic and the navigational hazards related to the movement of commercial vessels;<sup>26</sup>
- FWC may post and regulate boat speeds:
  - Only where the best available scientific information supports the conclusion that manatees inhabit areas on a *periodic* basis;<sup>27</sup> and
  - In designated limited lanes or corridors whenever the lanes and corridors are consistent with manatee protection;<sup>28</sup>
- Local governments may regulate motorboat speed and operation on waters within its jurisdiction where the best scientific information supports the conclusion that manatees inhabit areas on a regular basis if approved by FWC;<sup>29</sup>
- FWC may adopt rules to protect manatee habitat (e.g., seagrass beds) from destruction by boats or other human activity;<sup>30</sup> and
- FWC may adopt rules designating limited areas as a safe haven for manatees to rest, feed, reproduce, give birth, or nurse undisturbed by human activity.<sup>31</sup>

FWC, pursuant to the Act, has established manatee protection rules restricting the speed and operation of vessels where necessary to protect manatees from harassment and harmful collisions with vessels.<sup>32</sup> Florida's counties with manatee protection zones, with some zones that vary by season, are:<sup>33</sup>

- Brevard;<sup>34</sup>
- Hillsborough;<sup>35</sup>
- Citrus (includes parts of Levy and Hernando counties);<sup>36</sup>
- Flagler;<sup>37</sup>
- Hillsborough;<sup>38</sup>
- Indian River;<sup>39</sup>
- Lee;<sup>40</sup>
- Miami-Dade;<sup>41</sup>
- Palm Beach;<sup>42</sup>
- Pinellas-East;<sup>43</sup>

<sup>24</sup> Section 379.2431(2)(l), F.S.

<sup>25</sup> Section 379.2431(2)(j), F.S.

<sup>26</sup> Section 379.2431(2)(m), F.S.

<sup>27</sup> Section 379.2431(2)(k) and (n), F.S.

<sup>28</sup> Section 379.2431(2)(k), F.S.

<sup>29</sup> Section 379.2431(2)(p), F.S.

<sup>30</sup> Section 379.2431(2)(n), F.S.

<sup>31</sup> Section 379.2431(2)(o), F.S.

<sup>32</sup> Chapter 68C-22, F.A.C.

<sup>33</sup> FWC Data and Maps, available at <http://myfwc.com/media/2944209/MPZStatewideMap.pdf>.

<sup>34</sup> Rule 68C-22.006, F.A.C.

<sup>35</sup> Rule 68C-22.010, F.A.C.

<sup>36</sup> Rule 68C-22.011, F.A.C.

<sup>37</sup> Rule 68C-22.028, F.A.C.

<sup>38</sup> Rule 68C-22.013, F.A.C.

<sup>39</sup> Rule 68C-22.007, F.A.C.

<sup>40</sup> Rule 68C-22.005, F.A.C.

<sup>41</sup> Rule 68C-22.025, F.A.C.

<sup>42</sup> Rule 68C-22.009, F.A.C.

<sup>43</sup> Rule 68C-22.016, F.A.C.

- Sarasota;<sup>44</sup>
- St. Lucie;<sup>45</sup> and
- Volusia (includes parts of Lake, Marion, Putnam, and Seminole counties along the St. Johns River).<sup>46</sup>

The following Florida counties have year round manatee protection zones:

- Charlotte (includes part of DeSoto County along the Peace River);<sup>47</sup>
- Collier;<sup>48</sup>
- Duval (includes parts of Clay and St. Johns County along the St. Johns River);<sup>49</sup>
- Manatee;<sup>50</sup> and
- Martin.<sup>51</sup>

### Manatee Distribution and Abundance Surveys

FWC conducts aerial surveys to acquire information on manatee distribution, abundance, and use of habitat.<sup>52</sup> The two main types are distribution and synoptic surveys.

FWC's distribution surveys are designed to maximize manatee counts by concentrating on shallow nearshore waters, where manatees and their primary food source are located. These surveys are:

- Between four to six hours in length;
- Flown every two weeks over a two year period;
- Conducted at a height of 500 feet at a speed of 80 miles per hour; and
- Flown in paths parallel to the shoreline.<sup>53</sup>

In urban areas or where waters are opaque, some surveys are made using helicopters. Surveys are also being conducted by the following research groups:

- Jacksonville University surveys Duval County;
- Kennedy Space Center surveys the upper Banana River;
- Dade County Department of Environmental Resource Management, Mote Marine Lab surveys Sarasota and Charlotte counties; and
- Chassahowitzka National Wildlife Refuge surveys the Crystal River and Big Bend areas.<sup>54</sup>

All aerial data are recorded on maps and entered into the Fish and Wildlife Research Institute's Marine Resources Geographic Information System (MRGIS) for spatial analysis. Survey data in the MRGIS are used as a primary source of data for management planning and decisions. FWC's Atlas of Marine Resources CD-ROM includes 31 data sets of manatee aerial distribution survey sightings, detailed aerial flight paths, and related coverages of bathymetry, shorelines, seagrasses, county boundaries, and aids to navigation.<sup>55</sup>

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<sup>44</sup> Rule 68C-22.026, F.A.C.

<sup>45</sup> Rule 68C-22.008, F.A.C.

<sup>46</sup> Rule 68C-22.012, F.A.C.

<sup>47</sup> Rule 68C-22.015, F.A.C.

<sup>48</sup> Rule 68C-22.023, F.A.C.

<sup>49</sup> Rule 68C-22.027, F.A.C.

<sup>50</sup> Rule 68C-22.014, F.A.C.

<sup>51</sup> Rule 68C-22.024, F.A.C.

<sup>52</sup> FWC Manatee Aerial Surveys, available at <http://myfwc.com/research/manatee/research/population-monitoring/aerial-surveys/> (last visited Jan. 27, 2016).

<sup>53</sup> *Id.*

<sup>54</sup> FWC Manatee Aerial Surveys, available at <http://myfwc.com/research/manatee/research/population-monitoring/aerial-surveys/> (last visited Jan. 27, 2016).

<sup>55</sup> *Id.*

FWC also coordinates an interagency team to conduct synoptic surveys each winter. These aerial surveys are conducted after cold fronts pass through Florida and cover areas of known warm water sites (e.g., natural springs, power plants, and deep canals) where manatees congregate after temperatures drop. These counts are believed to be most accurate just after a cold front, because manatees move to the surface to warm in the sun, making them more visible. These surveys are useful in determining minimum estimates of manatee populations.<sup>56</sup> Results of synoptic surveys of Florida are as follows:<sup>57</sup>

<b>Year</b>	<b>Date</b>	<b>East</b>	<b>West</b>	<b>Total</b>
1991	January 23-24	687	580	1,267
1991	February 17-18	828	650	1,478
1992	January 17-18	904	940	1,844
1995	January 21-22	669	787	1,456
1995	February 06-07	917	906	1,823
1996	January 09-10	1,223	1,054	2,277
1996	February 18-19	1,452	1,178	2,630
1997	January 19-20	906	1,335	2,241
1997	February 13	797	918	1,715
1998	January 29-30	1,110	908	2,018
1999	January 06	842	1,023	1,865
1999	February 23	900	1,123	2,023
1999	March 06	960	1,400	2,360
2000	January 16-17	634	1,012	1,646
2000	January 26-27	1,138	1,085	2,223
2001	January 05-06	1,559	1,741	3,300
2002	March 01	864	894	1,758
2003	January 09	1703	1140	2,843
2003	January 21-22	1813	1314	3,127
2003	January 26-28	1,705	1,311	3,016
2004	February 20	1,198	1,307	2,505
2005	January 26	1,594	1,549	3,143
2006	February 13-17	1,639	1,474	3,113
2007	January 30-February 1	1,414	1,403	2,817
2009	January 19-23	2,148	1,654	3,802
2010	January 12-15	2,780	2,297	5,077
2011	January 20 and 24	2,432	2,402	4,834
2014	January 24 and 27	2,315	2,509	4,824
2015	February 16, 20, 23	3,333	2,730	6,063

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

<sup>57</sup> FWC's website available at <http://myfwc.com/research/manatee/research/population-monitoring/synoptic-surveys/> (last visited Jan. 27, 2016); Surveys were not conducted in 2012 or 2013, due to warmer than average weather.

## Save the Manatee Trust Fund

The Save the Manatee Trust Fund (STMTF) is administered by FWC.<sup>58</sup> Funds credited to the trust fund include:

- Annual use fees for a manatee license plate;<sup>59</sup>
- Annual vessel registration fees;<sup>60</sup>
- Voluntary contributions associated with boat registration;<sup>61</sup>
- Purchases of stickers or emblems signifying support of the trust fund;<sup>62</sup>
- Transfers from the Marine Resources Conservation Trust Fund;<sup>63</sup> and
- Donations received by FWC for deposit into the trust fund.<sup>64</sup>

Each fiscal year funds from the STMTF are made available for:

- An impartial scientific benchmark census of the manatee population in the state.<sup>65</sup> Weather permitting, the study is conducted annually by FWC and the results made available to the President of the Senate, the Speaker of the House of Representatives, and the Governor and Cabinet for use in the evaluation and development of manatee protection measures;
- Activities of public and private organizations and those of the FWC intended to provide manatee and marine mammal protection and recovery effort;
- Manufacture and erection of informational and regulatory signs;
- Production, publication, and distribution of educational materials;
- Participation in manatee and marine mammal research programs, including carcass salvage and other programs;
- Programs intended to assist the recovery of the manatee as an endangered species, assist the recovery of the endangered or threatened marine mammals, and prevent the endangerment of other species of marine mammals; and
- Other similar programs intended to protect and enhance the recovery of the manatee and other species of marine mammals.<sup>66</sup>

A balance in the trust fund at the end of any fiscal year must remain in the trust fund at the end of the year and be available for carrying out the purposes of the trust fund.<sup>67</sup> Trust funds, except those enumerated in s. 215.22, F.S.,<sup>68</sup> must contribute 8 percent from income of a revenue nature<sup>69</sup> to the General Revenue Fund.<sup>70</sup>

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<sup>58</sup> Section 379.213(1), F.S.

<sup>59</sup> Section 320.08058, F.S.

<sup>60</sup> Section 328.66, F.S.

<sup>61</sup> Section 328.72, F.S.

<sup>62</sup> Section 328.74, F.S.

<sup>63</sup> Section 328.76, F.S.

<sup>64</sup> Section 379.213(2), F.S.

<sup>65</sup> Section 379.2431(4)(a), F.S.

<sup>66</sup> Section 379.2431(4)(a), F.S.

<sup>67</sup> Section 379.213(3), F.S., provides notwithstanding the provisions of s. 216.301, F.S., regarding appropriations and undisbursed balances, and s. 216.351, F.S., regarding inconsistent laws.

<sup>68</sup> Section 215.22, F.S., provides for certain income and certain trust funds that are exempt from appropriations requirements to the General Revenue Fund.

<sup>69</sup> Section 215.20(1), F.S. provides that income of a revenue nature includes all earnings received or credited by trust funds, including the interest or benefit received from the investment of the principal of the trust fund.

<sup>70</sup> Section 215.20(1), F.S.

## Effect of Proposed Changes

The bill creates s. 379.2434, F.S., providing for a manatee speed zone effectiveness study and a statewide manatee distribution and abundance survey and report. Specifically, the bill:

- Requires FWC to contract with an independent, qualified party to conduct a study evaluating the effectiveness of manatee speed zones including if, and to what extent, risks to manatees are reduced by these zones, and for FWC to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2019, detailing the findings of the study;
- Requires FWC to conduct a statewide manatee distribution and abundance survey and report by July 1, 2018, which achieves a scientifically reliable population estimate, and allows FWC to repeat the statewide manatee distribution and abundance survey and report until at least July 1, 2026, as necessary to determine best practices;
- Exempts the STMTF from the requirement to contribute to the General Revenue Fund<sup>71</sup> until July 1, 2026, to provide additional funding for the speed zone effectiveness study and manatee distribution and abundance surveys and reports; and
- Provides that funds to implement the study, surveys, and reports may be appropriated from the STMTF to the extent that funding is not available from other sources.

The bill amends s. 379.2431, F.S., regarding the STMTF, to require that trust funds are made available for the manatee speed zone effectiveness study and manatee distribution and abundance survey and report. In addition, the bill amends s. 215.22, F.S., exempting the STMTF from contributing a service charge of eight percent to the General Revenue Fund until July 1, 2026.

### B. SECTION DIRECTORY:

Section 1. Amends s. 215.22, F.S., regarding the Save the Manatee Trust Fund.

Section 2. Amends s. 379.2431, F.S., regarding marine animals.

Section 3. Creates s. 379.2434, F.S., regarding a manatee speed zone effectiveness study and a statewide manatee distribution and abundance report.

Section 4. Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill may have a negative fiscal impact on the state by exempting the STMTF from the service charge assessed against state trust funds.

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<sup>71</sup> Section 215.20, F.S.



**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

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

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.