

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: SB 1312

INTRODUCER: Senator Dean

SUBJECT: Protection Zones for Springs

DATE: February 24, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Istler</u>	<u>Rogers</u>	<u>EP</u>	Favorable
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	Recommend: Favorable
3.	<u>Betta</u>	<u>Kynoch</u>	<u>AP</u>	Pre-meeting

I. Summary:

SB 1312 requires the Fish and Wildlife Conservation Commission (FWC) to establish protection zones restricting the speed and operation of vessels to protect and prevent harm to Florida's springs. Any individual who operates a vessel in violation of a spring protection zone may be charged a uniform boating citation. The bill requires the FWC to adopt rules for implementation.

The FWC indicates that the fiscal impact of the bill can be absorbed within its existing budget.

The effective date of the bill is July 1, 2016.

II. Present Situation:

Florida's Springs

Springs are major sources of stream flow in a number of rivers such as the Rainbow, Chassahowitzka, Homosassa, and Ichetucknee.¹ Florida's springs provide a "window" into the Floridan aquifer system, which provides most of the state's drinking water.

Springs form when groundwater is forced out through natural openings in the ground.² Florida has more than 700 recognized springs, categorized by flow in cubic feet per second. First magnitude springs are those that discharge 100 cubic feet of water per second or greater. Florida has 33 first magnitude springs in 18 counties that discharge more than 64 million gallons of water per day. Spring discharges, primarily from the Floridan aquifer, are used to determine groundwater quality and the degree of human impact on a spring's recharge area. Rainfall,

¹ Department of Community Affairs, *Protecting Florida's Springs: An Implementation Guidebook*, 3-1 (Feb. 2008), available at <http://www.dep.state.fl.us/springs/reports/files/springsimplementguide.pdf> (last visited Jan. 21, 2016).

² *Id.* at 3-1 to 3-2.

surface conditions, soil type, mineralogy, the composition and porous nature of the aquifer system, flow, and length of time in the aquifer all contribute to groundwater chemistry.³

Motorboat activity has the potential to harm aquatic ecosystems by causing impacts such as sediment re-suspension and shoreline erosion. Propeller-induced turbulence can cause disturbance of sediments.⁴ The amount of resuspension varies with water depth and sediment type, as depth and sediment particle size decrease, resuspension increases.⁵ Shoreline erosion refers to the process by which soil particles located along a bank or shore become detached and transported by water currents or wave energy.⁶ Boats produce wake, which may in turn create waves that propagate outward until dissipated at the shoreline.⁷ Physical impacts due to wake and the consequent wave action are dependent on various factors such as boat size, boating speed, hull design, water depth, and local shoreline characteristics.⁸ The impacts of boats on aquatic ecosystems are exhibited in shallow-water near-shore areas; protecting these areas with no wake-zones has been suggested as the most effective way of reducing such impacts.⁹

Regulation of Motorboat Speeds in Florida

Boating Restricted Areas

Section 327.46, F.S., authorizes the Fish and Wildlife Conservation Commission (FWC) to establish restrictions on vessel speeds and vessel traffic on the waters of this state 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. Boating-restricted areas are adopted by the FWC by rule.¹⁰

Each boating-restricted area must be developed in consultation and coordination with the governing body of the county or municipality in which the boating-restricted area is located. When the boating-restricted area is to be on the navigable waters of the United States, the FWC must consult and coordinate with the United States Coast Guard and the United States Army Corps of Engineers.

Local governments are authorized to establish boating-restricted areas by ordinance within certain parameters.¹¹ Such ordinances must be reviewed by the FWC and determined necessary to protect public safety based upon substantial competent evidence.¹² The following types of restrictions are authorized to be established:

³ Florida Geological Survey, *Springs of Florida Bulletin No. 66*, available at <http://www.dep.state.fl.us/geology/geologictopics/springs/bulletin66.htm> (last visited Oct. 18, 2015).

⁴ Richard Klein, Community & Environmental Defense Services, *The Effects of Marinas & Boating Activity upon Tidal Waterways*, pg. 6 (July 2007), available at <http://www.ceds.org/pdffdocs/Marinas.pdf>.

⁵ *Id.*

⁶ Timothy R. Asplund, Wisconsin Department of Natural Resources, Bureau of Integrated Science Services and University of Wisconsin - Madison, Water Chemistry Program, *The Effects of Motorized Watercraft on Aquatic Ecosystems*, pg. 7 (Mar. 17, 2000), available at <http://dnr.wi.gov/topic/ShorelandZoning/documents/201301041052.pdf>.

⁷ *Id.* at 7.

⁸ Klein at 9.

⁹ Asplund at 18.

¹⁰ Chapter 68D-24, F.A.C., provides the commission established boating restricted areas by county.

¹¹ Section 327.46(1)(b), F.S.

¹² *Id.*

- An ordinance establishing an idle speed, no wake¹³ 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.
 - 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.
 - Within 300 feet of the fuel pumps or dispensers at any licensed terminal facility that sells motor fuel to the general boating public on waterways not exceeding 300 feet in width.
 - Inside or within 300 feet of any lock structure.¹⁴
- An ordinance establishing a slow speed, minimum wake¹⁵ 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.¹⁶
- An ordinance establishing a vessel-exclusion zone if the area is:
 - Designated as a public bathing beach or swim area.
 - Within 300 feet of a dam, spillway, or flood control structure.¹⁷

The penalty for operating a vessel in a prohibited manner within a boating-restricted area that has been clearly marked by regulatory markers is a noncriminal infraction, punishable by a civil penalty of \$50.¹⁸

Manatee Protection Zones

Slower boat speeds provide boat operators with more time to see manatees and take avoidance actions. Blunt force injuries that do occur will be less severe, and less likely lethal, when boats are traveling at slower speeds.¹⁹ The Florida Manatee Sanctuary Act requires the FWC to regulate the operation and speed of motorboat traffic where manatee sightings are frequent utilizing the best available scientific information, as well as other available, relevant, and reliable information. This information may include, but is not limited to, manatee surveys, observations, available studies of food sources, water depths, and data that supports the conclusions that

¹³ Rule 68D-24.002, F.A.C., defines the term “Idle Speed No Wake” to mean that a vessel cannot proceed at a speed greater than necessary to maintain steerageway.

¹⁴ Section 327.46(1)(b), F.S.

¹⁵ Rule 68D-24.002, F.A.C. defines the term “Slow Speed Minimum Wake” to mean that a vessel must be fully off plane and completely settled in the water and it may not proceed greater than that speed which is reasonable and prudent to avoid the creation of an excessive wake or other hazardous condition under existing circumstances.

¹⁶ Section 327.46(1)(b), F.S.

¹⁷ *Id.*

¹⁸ Section 327.73, F.S.

¹⁹ C. Scott Calleson & R. Kipp Frohlich, *Slower Boat Speeds Reduce Risks to Manatees*, Vol. 3 ENDANG. SPECIES RES. 295 304, 302 (2007), available at <http://www.int-res.com/articles/esr2007/3/n003p295.pdf>.

manatees inhabit these areas on a regular basis.²⁰ However, the Legislature made clear that it did not intend to authorize the FWC to post and regulate boat speeds generally throughout the waters of the state, thereby unduly interfering with the rights of fishers, boaters, and water skiers using the areas for recreational and commercial purposes.²¹

Local governments, except in the marked navigation channel of the Florida Intracoastal Waterway and the area within 100 feet of such channel, may regulate (by ordinance) motorboat speed and operation on waters within their jurisdiction that manatees inhabit on a regular basis. The best available scientific information, as well as other available, relevant, and reliable information, which may include but is not limited to, manatee surveys, observations, available studies of food sources, and water depths, must support the conclusion that manatees inhabit these areas on a regular basis.²² However, such an ordinance may not take effect until it has been reviewed and approved by the FWC.²³ If local and state regulations are established for the same area, the more restrictive regulation prevails.²⁴

The penalty for operating a vessel in excess of a posted speed limit is a noncriminal infraction, punishable by a civil penalty of \$50.²⁵

Uniform Waterway Markers

The FWC has established a uniform system of regulatory markers compatible with the system of regulatory markers prescribed by the United States Coast Guard in the United States Aids to Navigation System, 33 C.F.R. part 62.²⁶ The Division of Law Enforcement's Boating Waterways Section, within the FWC, permits and regulates the placement of markers in, on, and over the waters and shores of Florida.²⁷

A person or municipality, county, or other governmental entity may not place any uniform waterway marker in, on, or over the waters or shores of the state without a permit.²⁸ The FWC will not issue any permit authorizing placement of regulatory markers implementing municipal or county ordinances that:

- Are in violation of s. 327.60, F.S., relating to limitations on local regulations;
- Establish boating-restricted areas until such ordinances have been reviewed and approved by the Boating and Waterways Section; or
- Regulate vessel speed or operation for manatee protection purposes, until such ordinances have been reviewed and approved by the FWC, coordinated through the Imperiled Species Management Section, and provided that such ordinances do not apply within the marked

²⁰ Section 379.2431, F.S.

²¹ Section 379.2431(2)(k), F.S.

²² Section 379.2431(2)(p), F.S.

²³ *Id.*

²⁴ *Id.*

²⁵ Section 327.73(1), F.S.

²⁶ Section 327.41, F.S.

²⁷ Rule 68D-23.102, F.A.C.

²⁸ Section 327.40, F.S.

navigation channel of the Florida Intracoastal Waterway nor to the waters within 100 feet of said channel.²⁹

III. Effect of Proposed Changes:

The bill creates s. 373.469, F.S., to require the Fish and Wildlife Conservation Commission (FWC) to establish protection zones restricting the speed and operation of vessels to protect and prevent harm to Florida's springs. The bill clarifies that harm includes negative impacts to water quality, water quantity, hydrology, wetlands, and aquatic- and wetland-dependent species.

The bill requires the FWC to develop each protection zone in consultation and coordination with the water management district 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 United States, the commission shall additionally coordinate with the United States Coast Guard and the United States Army Corps of Engineers.

Any individual who operates a vessel in violation of a spring protection zone shall be charged on a uniform boating citation and is subject to the following penalties:

- First offense is a noncriminal infraction, up to a maximum fine of \$50.
- Second offense is a noncriminal infraction, up to a maximum fine of \$250.
- Third and subsequent violations are misdemeanors of the second degree, punishable by up to 60 days of imprisonment or up to a \$500 fine.

The bill clarifies that any restriction in a spring protection zone does not apply:

- To law enforcement, firefighting, or rescue personnel operating a vessel in the course of performing their official duties; or
- In emergency situations, provided the emergency operation of a vessel is a reasonable response given the circumstances.

The bill defines the following terms:

- "Commission" means "the Fish and Wildlife Conservation Commission."
- "Navigable waters of the United States" means "the waters of the United States, including the territorial seas, as referenced in the Clean Water Act, 33 U.S.C. ss. 1251 et seq., and the federal rules and regulations promulgated thereunder."
- "Vessel" has the same meaning as provided in s. 327.02, F.S., which defines the term "vessel" as "synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution and includes 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."³⁰

The bill provides that the FWC is responsible for the posting and maintenance of regulatory markers identifying the spring protection zones and requires the FWC to adopt rules to establish and implement the spring protection zones.

²⁹ Rule 68D-23.101, F.A.C.

³⁰ Section 327.02, F.S.

The bill amends s. 327.73, F.S., to include the penalties for violations relating to protection zones for springs on the list of noncriminal infractions.

The bill amends s. 327.731, F.S., to conform a cross-reference to the list of noncriminal infractions.

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

SB 1312 creates fines with the following penalties for any individual who operates a vessel in violation of a spring protection zone and charged on a uniform boating citation:

- First offense is a noncriminal infraction, up to a maximum fine of \$50.
- Second offense is a noncriminal infraction, up to a maximum fine of \$250.
- Third and subsequent violations are misdemeanors of the second degree, punishable by up to 60 days of imprisonment or up to a \$500 fine.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The FWC will incur costs associated with rulemaking to develop protection zones and for the posting and maintenance of the regulatory markers for identifying the zones. The FWC estimates that regulatory markers for springs will cost approximately \$3,000 per marker. The number of markers are indeterminate at this time. According to the FWC, it is anticipated that these additional costs can be absorbed within existing budget.³¹

³¹ Phone conversation on February 11, 2016.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 327.73, 373.469, and 327.731.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.