

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 Environment and Natural Resources

BILL: SB 494

INTRODUCER: Senator Hutson

SUBJECT: Fish and Wildlife Conservation Commission

DATE: November 29, 2021 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carroll	Rogers	EN	Pre-meeting
2.			AEG	
3.			AP	

I. Summary:

SB 494 revises laws administered by the Fish and Wildlife Conservation Commission (FWC) and other law enforcement entities.

Relating to derelict vessels, the bill:

- Specifies that a vessel is at risk of becoming derelict if it is tied to an unlawful or unpermitted mooring or other structure.
- Specifies the circumstances in which law enforcement officers may destroy or dispose of a vessel.
- Reorganizes provisions authorizing FWC to establish a program to provide grants to local governments for the removal, storage, destruction, and disposal of derelict vessels.

The bill also:

- Requires FWC to establish springs protection zones only when substantial competent evidence shows that vessel activity has caused demonstrable harm.
- Specifies that a local government cannot create a public bathing beach or swim area in the marked channel of the Florida Intracoastal Waterway or within 100 feet of the marked channel.
- Adds public nuisance vessels to the definition of abandoned property.
- Places liability for costs of vessel removal, storage, destruction, and disposition on the owner or responsible party after notice is given.
- Authorizes FWC law enforcement officers to use drones to manage and eradicate invasive plants or animals on public lands and to suppress and mitigate wildfire threats.

II. Present Situation:

Fish and Wildlife Conservation Commission

The Fish and Wildlife Conservation Commission (FWC) is responsible for regulating, managing, protecting, and conserving the state's fish and wildlife resources.¹ FWC is governed by a board of seven members who are appointed by the Governor and confirmed by the Florida Senate to five-year terms.² Under Article IV, Section 9 of the Florida Constitution, FWC is granted the authority to exercise the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life.

Chapters 327 and 328, F.S., concerning vessel safety and vessel title certificates, liens, and registration, are enforced by FWC's Division of Law Enforcement and its officers, county sheriffs and deputies, municipal police officers, and any other law enforcement officer.³ The Division of Law Enforcement manages the state's waterways to ensure boating safety for residents and visitors.⁴ This includes enforcing boating rules and regulations, coordinating boating safety campaigns and education, managing public waters and access to the waters, conducting boating accident investigations, identifying and removing derelict vessels, and investigating vessel theft and title fraud.⁵

Boating Safety Regulations

A vessel operator in Florida must operate the vessel in a reasonable and prudent manner, having regard for other waterborne traffic, posted speed and wake restrictions, and all other attendant circumstances so as not to endanger the life, limb, or property of another person outside the vessel or due to vessel overloading or excessive speed.⁶ Operating a vessel in excess of a posted speed limit is a noncriminal infraction, for which the penalty is \$50.⁷

Vessel owners and operators must maintain safety equipment in accordance with current Coast Guard safety equipment requirements, unless expressly exempted.⁸ Vessel owners and operators are also subject to additional safety requirements relating to appropriate equipment and the use of personal flotation devices.⁹

¹ FLA. CONST. art. IV, s. 9.

² *Id.*; see also s. 379.102(1), F.S.

³ Section 327.70(1), F.S.; see s. 943.10(1), F.S., which defines "law enforcement officer" as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The definition also includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

⁴ Fish and Wildlife Conservation Commission (FWC), *Boating*, <https://myfwc.com/boating/> (last visited Nov. 5, 2021).

⁵ FWC, *Law Enforcement*, <https://myfwc.com/about/inside-fwc/le/> (last visited Nov. 5, 2021). See s. 327.70(1) and (4), F.S.

⁶ Section 327.33, F.S.

⁷ Section 327.73(h), F.S.

⁸ Section 327.50, F.S.

⁹ *Id.*

Boating-Restricted Areas

Boating-restricted areas, which may restrict the speed and operation of vessels, may be established on the waters of the state for any purpose necessary to protect the safety of the public, taking into account boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion, or other navigational hazards, as well as seagrass protection on privately owned submerged lands.¹⁰

Local governments have authority to establish boating-restricted areas by ordinance within the portion of the Florida Intracoastal Waterway within their jurisdiction.¹¹ These areas include, but are not limited to:

- Idle-speed, no wake areas;
- Slow speed, minimum wake areas; and
- Vessel-exclusion zones.

Local governments can establish vessel-exclusion zones if the area is:

- Designated as a public bathing beach or swim area;
- Within 300 feet of a dam, spillway, or flood control structure;
- Reserved as a canoe trail or otherwise limited to vessels under oars or sail; or
- Reserved exclusively for a particular activity and user group separation must be imposed to protect the safety of participants.¹²

Protection Zones for Springs

FWC is authorized to establish springs protection zones that restrict the speed and operation of vessels, or the anchoring, mooring, beaching, or grounding of vessels, to protect and prevent harm to first, second, and third magnitude springs and spring groups.¹³ The types of harm that may lead to the creation of springs protection zones include negative impacts to water quality, water quantity, hydrology, wetlands, and aquatic and wetland-dependent species.¹⁴ To develop a springs protection zone, FWC consults and coordinates with the appropriate water management district, the Department of Environmental Protection, and the county and municipality, if applicable, where the zone is located.¹⁵

The restrictions in a springs protection zone do not apply to certain law enforcement, firefighting, or rescue personnel operating a vessel in the course of performing their official duties, or in emergency situations.¹⁶

¹⁰ Section 327.46(1), F.S.

¹¹ *Id.*

¹² *Id.*

¹³ Section 327.45(2), F.S.

¹⁴ *Id.*

¹⁵ Section 327.45(3), F.S. If the zone includes navigable waters of the United States, FWC is required to coordinate with the United States Coast Guard and the United States Army Corps of Engineers.

¹⁶ Section 327.45(5), F.S.

The language authorizing FWC to establish springs protection zones is discretionary.¹⁷ According to FWC analysis, the discretionary establishment of a springs protection zone could lead to claims that the basis for establishment of zones is arbitrary and capricious.¹⁸ FWC is concerned that it may not have rulemaking authority to establish standards by which it may adopt criteria to determine when a protection zone should be established.¹⁹

Derelict Vessels

A derelict vessel is a vessel that is left, stored, or abandoned in a wrecked, junked, or substantially dismantled condition upon any public waters of this state; at a port in the state without the consent of the agency that has jurisdiction of the port; or docked, grounded, or beached upon the property of another without the consent.²⁰ It is unlawful to store, leave, or abandon any derelict vessel in this state.²¹

At-Risk Vessels

Neglected or deteriorating vessels may not occupy the waters of this state.²² A vessel is at risk of becoming derelict if any of the following conditions exist:

- The vessel is taking on or has taken on water without an effective means to dewater;
- Spaces on the vessel that are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time;
- The vessel has broken loose or is in danger of breaking loose from its anchor;
- The vessel is listing due to water intrusion; or
- The vessel does not have an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives notice.²³

Vessels Declared to be a Public Nuisance

If a vessel is declared at risk of becoming derelict under the same condition three or more times within an 18-month period, and if the determination results in dispositions other than acquittal or dismissal, the vessel is declared to be a public nuisance.²⁴ A vessel is at risk of becoming derelict if any of the following conditions exist:

- The vessel is taking on or has taken on water without an effective means to dewater;
- Spaces on the vessel that are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time;
- The vessel has broken loose or is in danger of breaking loose from its anchor;
- The vessel is listing due to water intrusion; or

¹⁷ Section 327.45(2), F.S.

¹⁸ Fish and Wildlife Conservation Commission, *Senate Bill 494 Analysis* (Oct. 8, 2021) (on file with the Senate Committee on Environment and Natural Resources).

¹⁹ *Id.*

²⁰ Section 823.11(1)(b), F.S.

²¹ Section 376.15, F.S.; s. 823.11(2), F.S.

²² Chapter 2016-108, Laws of Fla.; s. 327.4107, F.S.

²³ Section 327.4107, F.S.

²⁴ Section 327.73(1)(aa), F.S.; 327.4107(2), F.S.

- The vessel does not have effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives notice.²⁵

A vessel that is declared to be a public nuisance and threatens navigation, or is a danger to the environment, property, or persons, may be relocated, removed, stored, destroyed, or disposed of by FWC or other law enforcement.²⁶ When a derelict vessel or a vessel declared to be a public nuisance through the process described above is located on the waters of the state, a law enforcement officer shall place a notice on the vessel in a form substantially similar to the one provided by statute.²⁷

Abandoned Vessels

“Abandoned property”²⁸ means all tangible personal property that does not have an identifiable owner and that has been disposed of on public property in a wrecked, inoperative, or partially dismantled condition, or has no apparent intrinsic value to the rightful owner. The term includes derelict vessels, as defined in state law.

When a derelict vessel or a vessel declared to be a public nuisance is on the waters of the state, a law enforcement officer must place a notice of removal on the vessel. The law enforcement agency must then contact the Department of Highway Safety and Motor Vehicles to determine the name and address of the owner, and must mail a copy of the notice to the owner.²⁹

If, after 21 days of posting and mailing the notice, the owner has not removed the vessel from the waters of the state or shown reasonable cause for failure to do so, the law enforcement agency may remove, destroy, or dispose of the vessel.³⁰

The owner of a derelict vessel or a vessel declared to be a public nuisance who does not remove the vessel after receiving notice, is liable to the law enforcement agency for all costs of removal, storage, and destruction of the vessel, less any salvage value obtained by its disposal.³¹ Upon the final disposition of the vessel, the law enforcement officer must notify the owner of the amount owed. A person who neglects or refuses to pay the amount owed is not entitled to be issued a certificate of registration for the vessel, or any other vessel, until such costs have been paid.³²

Local governments are authorized to enact and enforce regulations to implement the procedures for abandoned or lost property that allow a local law enforcement agency, after providing written notice, to remove a vessel affixed to a public dock within its jurisdiction that is abandoned or lost property.³³

²⁵ Section 3274107(2), F.S.

²⁶ Section 327.73(1)(aa), F.S.; 823.11(3), F.S.

²⁷ Section 705.103(1)(b), F.S.

²⁸ Section 705.101(3), F.S.

²⁹ Section 705.103(2), F.S.

³⁰ *Id.*

³¹ Section 705.103(4), F.S.

³² *Id.*

³³ Section 327.60(5), F.S.

Removal of Derelict Vessels

FWC's Division of Law Enforcement and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officers have the responsibility and authority to enforce vessel safety and vessel title certificates, liens, and registration.³⁴ Sections 376.15 and 823.11, F.S., both address the treatment of derelict vessels. Much of the language between the two statutes is duplicative.³⁵

Both state and local law enforcement are authorized and empowered to relocate, remove, store, destroy, or dispose of a derelict vessel from waters of the state if the derelict vessel threatens navigation or is a danger to the environment, property, or persons.³⁶ FWC officers and other law enforcement agency officers or contractors who perform relocation or removal activities at FWC's direction are required to be licensed, insured, and properly equipped to perform the services to be provided.³⁷

The costs incurred by FWC or another law enforcement agency for relocating or removing a derelict vessel are recoverable against the vessel owner.³⁸ A vessel owner who neglects or refuses to pay the costs of removal, storage, and destruction of the vessel, less any salvage value obtained by its disposal, is not entitled to be issued a certificate of registration for such vessel, or any other vessel or motor vehicle, until the costs are paid.³⁹

FWC has the authority to provide grants, funded from the Marine Resource Conservation Trust Fund or the Florida Coastal Protection Trust Fund, to local governments for the removal of derelict vessels from waters of this state, if funds are appropriated for the grant program.⁴⁰ However, each fiscal year, if all program funds are not requested by and granted to local governments for the removal of derelict vessels by the end of the third quarter, FWC may use the remainder of the funds to remove, or pay private contractors to remove, derelict vessels.⁴¹ Pursuant to this, FWC established the Derelict Vessel Removal Grant Program in 2019.⁴² Grants are awarded based on a set of criteria outlined in FWC rules.⁴³

Penalties for Prohibited Acts Relating to Derelict Vessels and Anchoring and Mooring

It is a first degree misdemeanor to store, leave, or abandon a derelict vessel in Florida.⁴⁴ Violations are punishable by imprisonment of no more than one year and a fine of up to \$1,000.⁴⁵ Further, such violation is punishable by a civil penalty of up to \$75,000 per violation

³⁴ Section 327.70, F.S.

³⁵ Section 376.15, F.S.; s. 823.11, F.S.

³⁶ Section 823.11(3), F.S.; s. 376.15(3)(a), F.S.

³⁷ Section 823.11(3)(c), F.S.; s. 376.15(3)(c), F.S.

³⁸ Section 823.11(3)(a), F.S.; s. 376.15(3)(a), F.S.

³⁹ Section 705.103(4), F.S.

⁴⁰ Section 376.15, F.S.

⁴¹ Section 376.15, F.S.

⁴² Fish and Wildlife Conservation Commission, *FWC Derelict Vessel Removal Grant Program Guidelines*, 2 (2019), available at <https://myfwc.com/media/22317/dv-grant-guidelines.pdf> (last visited Nov. 15, 2021). Incorporated by reference in Fla. Admin. Code R. 68-1.003.

⁴³ *Id.*

⁴⁴ Sections 376.15(2) and 823.11(2) and (5), F.S. A first degree misdemeanor is punishable by up to one year in county jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

⁴⁵ Sections 775.082(4)(a) and 775.083(1)(d), F.S.

per day.⁴⁶ Each day during any portion of which the violation occurs constitutes a separate offense.⁴⁷

An owner or operator of a vessel at risk of becoming derelict on waters of this state or who allows such vessel to occupy such waters, is subject to a uniform boating citation and civil penalty. The civil penalty provided is:

- \$100 for a first offense;
- \$250 for a second offense occurring 30 days or more after a first offense; and
- \$500 for a third offense occurring 30 days or more after a previous offense.⁴⁸

An owner or operator of a vessel or floating structure who anchors or moors in a prohibited area is subject to a uniform boating citation and penalties. The civil penalty provided is up to a maximum of:

- \$50 for a first offense;
- \$100 for a second offense; and
- \$250 for a third offense.⁴⁹

Any person who fails to appear or otherwise properly respond to a uniform boating citation must, in addition to the charge relating to the violation of the boating laws, be charged with a second degree misdemeanor, which is punishable by a maximum fine of \$500 and no more than 60 days of imprisonment.⁵⁰

Florida Intracoastal Waterway

The Florida Intracoastal Waterway consists of the following waterways: the Atlantic Intracoastal Waterway, the Georgia state line north of Fernandina to Miami; the Port Canaveral lock and canal to the Atlantic Intracoastal Waterway; the Atlantic Intracoastal Waterway, Miami to Key West; the Okeechobee Waterway, Stuart to Fort Myers; the St. Johns River, Jacksonville to Sanford; the Gulf Intracoastal Waterway, Anclote to Fort Myers; the Gulf Intracoastal Waterway, Carrabelle to Tampa Bay; Carrabelle to Anclote open bay section, using the Gulf of Mexico; the Gulf Intracoastal Waterway, Carrabelle to the Alabama state line west of Pensacola; and the Apalachicola, Chattahoochee, and Flint Rivers in Florida.⁵¹ The Florida Intracoastal Waterway is shown in the map on the following page.⁵²

⁴⁶ Sections 376.15(2) and 376.16(1), F.S.

⁴⁷ Section 376.16(1), F.S.

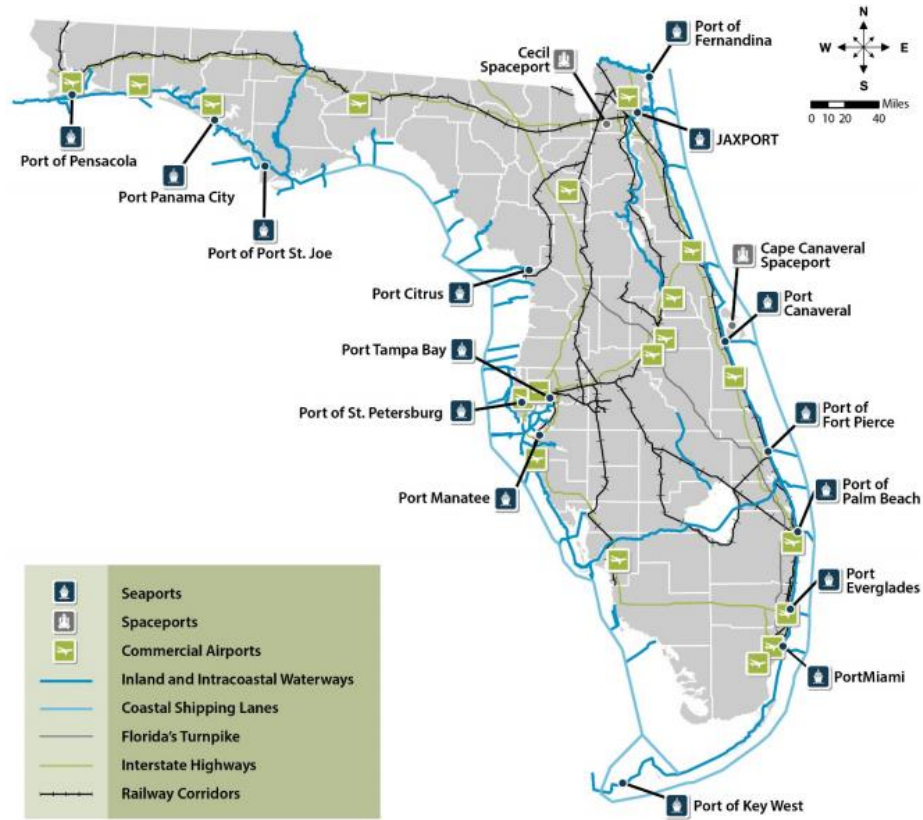
⁴⁸ Section 327.73(1)(aa), F.S.

⁴⁹ Section 327.73(1)(bb), F.S.

⁵⁰ Sections 327.73(1), 775.082 and 775.083, F.S.

⁵¹ Section 327.02(15), F.S.

⁵² Florida Department of Transportation, *Florida Waterways System Plan*, Figure 1-2 on p. 1-12 (2015), available at https://www.fdot.gov/docs/default-source/seaport/pdfs/2015-Florida-Waterways-System-Plan_Final.pdf (last visited Nov. 5, 2021).



Drones

A drone is a powered, aerial vehicle that does not carry a human operator; uses aerodynamic forces to provide vehicle lift; can fly autonomously or be piloted remotely; can be expendable or recoverable; and can carry a lethal or nonlethal payload.⁵³ Florida law prohibits the use of drones by a law enforcement agency to gather evidence or other information, and by a person, state agency, or political subdivision to conduct surveillance on privately-owned real property or on the owner, tenant, occupant, invitee, or licensee of the real property.⁵⁴ The exceptions to the prohibition allow a non-law enforcement employee of FWC or the Florida Forest Service to use a drone to manage or eradicate invasive exotic plants or animals on public lands and to suppress wildfire threats.⁵⁵

Remote sensing using drones for the surveillance, detection, and reporting of an invasive species can improve early detection of invading plants and animals, making management more efficient and less expensive.⁵⁶ Studies have shown that drones can efficiently and inexpensively cover a large geographic range, reach places that are difficult to access, carry a variety of cameras and

⁵³ Section 934.50(1)(a), F.S.

⁵⁴ Section 934.50(3), F.S.

⁵⁵ Section 934.50(4)(p), F.S.

⁵⁶ Barbara Martinez, Alex Dehgan, Brad Zamft, David Baisch, Colin McCormick, Anthony J. Giordano, Rebecca Aicher, Shah Selbe, Cassie Hoffman, *Advancing federal capacities for the early detection of and rapid response to invasive species through technology innovation*, National Invasive Species Council: Contractor’s Report, Mar. 2017, available at [federal capacities for edrr through technology innovation prepub 8.7.17.pdf \(doi.gov\)](https://www.fws.gov/niscc/advancing-federal-capacities-for-the-early-detection-of-and-rapid-response-to-invasive-species-through-technology-innovation-prepub-8.7.17.pdf) (last visited Nov. 15 2021).

sensors, collect biological specimens, and target and eliminate individual organisms through ballistic application of herbicides.⁵⁷

III. Effect of Proposed Changes:

Section 1 amends s. 327.4107, F.S., to allow an officer of the Fish and Wildlife Commission (FWC) or another law enforcement agency to determine that a vessel is at risk of becoming derelict if it is tied to an unlawful or unpermitted mooring or other structure.

Section 2 amends s. 327.45, F.S., to require FWC to have substantial competent evidence that vessel activity has caused demonstrable harm in order to establish springs protection zones to protect and prevent harm to first, second, and third magnitude springs and springs groups.

Section 3 amends s. 327.46, F.S., to clarify that when municipalities and counties establish public bathing beaches or swim areas as vessel-exclusion zones, they may not establish them within the marked channel of the Florida Intracoastal Waterway or within 100 feet of any portion of the marked channel.

Section 4 repeals s. 376.15, F.S. The repeal has no effect, as the bill merely moves non-duplicative language in s. 376.15, F.S., relating to derelict vessels and their relocation or removal from waters of this state, from that section to s. 823.11, F.S., which also addresses derelict vessels.

Section 5 amends s. 379.101, F.S., to clarify the definitions of “marine fish” and “saltwater fish” to reflect updates in the scientific classification of certain identifying terminology.

Section 6 amends s. 705.101, F.S., to add vessels declared a public nuisance to the definition of abandoned property. Vessels that are abandoned property are declared a public nuisance after having been found at risk of dereliction three or more times for the same condition within 18 months.

Section 7 amends s. 705.103, F.S., relating to procedures for abandoned or lost property. The bill adds vessels declared to be a public nuisance into the notice requirements and liability provisions applicable to owners of, or parties responsible for, derelict vessels. The bill also allows law enforcement officers to dispose of derelict vessels or vessels declared to be a public nuisance. This section also makes technical changes and deletes a cross-reference to s. 376.15, F.S.

Section 8 of the bill amends s. 705.103, F.S., as amended by chapters 2019-76 and 2021-184, Laws of Florida, which will be effective July 1, 2023, to make the changes discussed in Section 7 in the bill.

Section 9 of the bill amends s. 823.11, F.S., to clarify that additional time provided for an owner or responsible party to remove a derelict vessel from the waters of this state, or to repair and remedy the vessel’s derelict condition in the event of an accident or event, does not apply if the

⁵⁷ *Id.*

vessel was already derelict. The bill removes language allowing law enforcement to destroy or dispose of derelict vessels threatening navigation or endangering environment, property, or persons. The bill moves language relating to grants for removal and disposal of derelict vessels from s. 376.15, F.S., (deleted by the bill) into s. 823.11, F.S. It also makes technical changes and deletes references to s. 376.15, F.S.

Section 10 of the bill amends s. 934.50, F.S., relating to searches and seizure using a drone. The bill deletes language prohibiting law enforcement employees of FWC and the Florida Forest Service from using a drone to manage and eradicate invasive exotic plants and animals on public lands and to suppress and mitigate wildfire threats.

Sections 11, 12, 13, 14, and 15 of the bill amends s. 327.04, F.S., to delete or revise references to s. 376.15, F.S.

Sections 16 and 17 of the bill reenact ss. 125.01(4) and 379.2412, F.S., to incorporate the amendment made by this bill to make clarifying revisions to the definition of marine and saltwater fish.

Section 18 of the bill provides that except as otherwise expressly provided, the effective date is July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate; local governments may benefit from expanded use of grant programs; expanded use of grant programs may necessitate the need for additional funding from state government.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The amendment in Section 1 revises a section of law authorizing an FWC or other law enforcement officer to determine if a vessel is at risk of becoming derelict. All existing criteria are related to the condition of the vessel, however the criteria the bill adds is unrelated to the condition of the vessel. A clarification may be appropriate.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 327.4107, 327.45, 327.46, 379.101, 705.101, 705.103, 823.11, 934.50, 327.04, 328.09, 328.72, 376.11, 125.01, 379.2412 2019-76.

This bill repeals section 376.15 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 125.01(4), 379.2412.

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.