

A Legislative History of Florida Statutes Chapter 327



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INTRODUCTION

The University of Florida Levin College of Law's Conservation Clinic, in partnership with the Florida Fish and Wildlife Conservation Commission (FWC), has undertaken a project to analyze the statutory history of several key provisions of Florida Statutes chapter 327.

When Fla. Stat. 327 was originally passed in 1959, Florida's population was 4,808,000 people.¹ Florida's population today is over 18 million,² and there are over one million vessels registered in the state.³ Since the Fla. Stat. ch. 327 was first enacted, many important changes have occurred that have altered the nature of the issues associated with boating law. For example, recreational boating has grown more popular; waterfront property has dramatically increased in value; and local governments have become increasingly charged with planning. While the statute has been amended numerous times since its passage, confusion regarding local governments' authority and the regulation of anchoring and mooring is becoming an increasing problem. In order to assist in clarification and streamlining of the statute, this memorandum analyzes the history of chapter 327 to help determine the best direction to be taken from here.

Part One describes the methodology used to analyze the statutory history of Fla. Stat. ch. 327 (2007). Part Two contains a narrative history of the history of the statute. Part Three contains an index to locate issues by page number. Part Four is an index to locate references to statutes by page number.

¹ Information Resources and Dissemination Branch, Data Integration Division, *Historical Annual Time Series of State Population Estimates and Demographic Components of Change 1900 to 1990 Total Population Estimates* (available at http://www.census.gov/popest/archives/1980s/80s_st_totals.html).

² US Census Bureau (available at: <http://www.census.gov/>).

³ 2006 Florida Boating Accident Report Summary (available at: <http://myfwc.com/law/boating/2006stats/Summary.pdf>).

I. METHODOLOGY

This memorandum considers the statutory history of select statutes of Florida Statutes chapter 327 as it has been amended through and including 2007. The statutes were selected based on several key issues identified in conjunction with FWC and include local government authority, restricted areas, anchoring and mooring, signage, federal preemption, and civil penalties. The Laws of Florida affecting key statutes, relevant case law, and other pertinent documents have been compiled in a database and analyzed based on the applicable issues.

The Laws of Florida are “a compilation of all the laws, resolutions, and memorials passed during a legislative session.”⁴ Each is published by year and in the order it was passed. For example, Laws of Florida, ch. 72-55 is the fifty-fifth law passed in the year 1972. From about 1988 on, the Laws of Florida are available online through legal search engines such as LexisNexis or Westlaw. From 2001 on, the Laws of Florida are available free of charge on the Florida Legislature’s website. The vast majority of the Laws of Florida passed prior to the late 1980s must be accessed through a law library in either book or microfiche format. For this project, the Laws of Florida that were not available electronically were accessed by microfiche and converted to pdf format with text recognition. Those that are available electronically were also collected in pdf format. Other important documents such as Attorney General opinions and court cases were also collected in pdf format. Then, in consultation with the Legal Technology Department at the University of Florida Levin College of Law, the files were compiled into a searchable pdf database and entered into case analysis software. LexisNexis CaseMap case analysis software was used in order to organize the information and analyze it by issue.

⁴ Florida Senate, *Statutes & Constitution*, (available at: <http://www.flsenate.gov/Statutes/index.cfm?Tab=Statutes&submenu=-1&CFID=65812662&CFTOKEN=33089235>).

Through this method, the statutory history of the following statutes has been retrieved and analyzed:

- § 327.02: Definitions of terms used in this chapter and in chapter 328
- § 327.22: Regulation of Vessels by municipalities or counties
- § 327.33: Reckless or careless operation of vessel
- § 327.391: Airboats regulated
- § 327.40: Uniform waterway markers for safety and navigation; informational markers
- § 327.41: Uniform waterway regulatory markers
- § 327.42: Mooring to or damaging of markers or buoys prohibited
- § 327.44: Interference with navigation
- § 327.46: Restricted areas
- § 327.461: Safety zones, security zones, regulated navigation areas, and naval vessel protection zones; prohibited entry; penalties
- § 327.50: Vessel safety regulations; equipment and lighting requirements
- § 327.53: Marine sanitation
- § 327.56: Safety and marine sanitation equipment inspections; qualified
- § 327.59: Marina evacuations
- § 327.60: Local regulations; limitations
- § 327.65: Muffling devices
- § 327.70: Enforcement of this chapter and chapter 328
- § 327.73: Noncriminal infractions
- § 327.74: Uniform boating citations

This memorandum is a narrative analysis of the statutory history of these statutes and the key issues being considered by this project.

II. STATUTORY HISTORY OF CHAPTER 327

Fla. Stat. 327 was originally passed as chapter 371 in 1959, and recodified as chapter 327 in 1981. Any statutes in chapter 327 enacted or amended prior to 1979 have been renumbered since their original appearance in the Laws of Florida. To reduce confusion, statutes will be referred to by their current codification in chapter 327 throughout this memorandum. Original codification will be included in footnotes for reference. Throughout this memorandum, underlined portions of text represent new additions to the statute in question, while ~~strike-through text~~ represents portions that have been removed.

a. Early History – 1959 to 1969

Fla. Stat. ch. 327 was originally passed as chapter 371 in 1959 by Laws of Florida ch. 59-399. This was prompted by the Federal Boating Act of 1958, which passed certain responsibilities onto states, such as the numbering of all motorboats.⁵ Florida’s population in 1959 was 4,808,000 people.⁶ The chapter’s original name was the “Florida motorboat registration and certification act.”⁷ The definitions contained in the original statute were the following: Vessel, Motorboat, Owner, Waters of this state, Person, Operate, Board, Certificate, Length, Conservation department, and Commercial.⁸ At that time “Commercial” meant “any vessel engaged in fishing industry for profit in salt or fresh water.”⁹ The Board of Conservation was charged with managing vessel registration and granted authority to promulgate rules in accordance with the act.¹⁰ With the passage of the original act, all motorboats were required to be registered and the federal numbering system was adopted.¹¹ Monies collected from registration and other fees were put in a motorboat revolving fund to provide for the administrative costs of implementing the act.¹² Also, all accidents involving death or damage of over \$100 must be reported.¹³

Immediately after the creation of the Florida Motorboat Registration and Certification Act, the 1959 Florida Legislature passed additional statutes under the act relating to motorboats

⁵ Interview with Captain Alan Richard, Assistant General Counsel, Florida Fish & Wildlife Conservation Commission, in Tallahassee, Fla. (February 7, 2008).

⁶ Information Resources and Dissemination Branch, Data Integration Division, *Historical Annual Time Series of State Population Estimates and Demographic Components of Change 1900 to 1990 Total Population Estimates* (available at http://www.census.gov/popest/archives/1980s/80s_st_totals.html).

⁷ Laws of Florida §1, ch 59-399.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

and water safety, declaring motorboats to be dangerous instrumentalities.¹⁴ These statutes defined reckless operation of motorboats, defined operation of motorboat while intoxicated, required muffling devices, and provided penalties for violation of these rules.¹⁵ They also regulated operation of motorboats while towing a skier and aquaplaning.¹⁶ Fla. Stat. § 327.65 was passed in 1959, originally requiring motorboats to muffle the noise of their exhaust “in a reasonable manner” and prohibiting cut-outs.¹⁷ Fla. Stat. § 327.56 also appeared in this amendment. It originally stated, “No officer shall board any vessel to make safety inspection without consent of the owner, or operator, if the owner is not aboard, except when he has knowledge that a violation of this act has occurred or is being committed.”¹⁸

The act also “adopt[s] United States coast guard [*sic*] rules and regulations to promote safety in connection with the use, operation and equipment of certain motorboats.”¹⁹ This rule was eventually codified in Fla. Stat. § 327.50 and established that the U.S. Coast Guard rules and regulations were “in full force and effect in the waters of [Florida].”²⁰ The original version of Fla. Sta. § 327.60 prohibited any local regulations that conflict with the act by these amendments, however “nothing in this act shall be construed to prevent the adoption of any ordinance or local law relating to operation of vessels the provisions of which are identical to the provisions of this act, or amendments thereto.”²¹

In 1963 Laws of Florida, ch. 63-103 expanded the definition of commercial to the following:

¹⁴ Laws of Florida preamble, § 3, ch 59-400.

¹⁵ Laws of Florida preamble, § 4-7, ch 59-400.

¹⁶ Laws of Florida § 5, ch 59-400.

¹⁷ Laws of Florida § 7, ch, 59-400. Fla. Stat. 327.65 was originally codified as Fla. Stat. § 371.56.

¹⁸ Laws of Florida § 9, ch. 59-400

¹⁹ Laws of Florida preamble, § 8, ch 59-400.

²⁰ Laws of Florida § 8, ch. 59-400. Originally 371.57.

²¹ Laws of Florida § 10, ch. 59-400.

"Commercial" means any vessel engaged in the taking of salt water fish or salt water products, fresh water fish or fresh water products for the purpose of sale either to the consumer, retail dealer, or wholesale dealer: for fishing, boating, sight-seeing, transportation or any other purpose wherein a fee is paid by the user either directly or indirectly, to the owner, operator or custodian of such vessel.²²

Laws of Florida ch. 63-105 passed the original version of Fla. Stat. § 327.40 entitled "Uniform waterway markers for Safety and Navigation," which required that "[w]aterways in Florida, unmarked by the coast guard, which need marking for safety or navigation purposes, shall be marked only under the uniform safety and navigation system adopted by the National Motorboat Council."²³ This statute also required that "individuals, counties, municipalities, motorboat clubs, or other groups desiring to mark waterways for safety and navigation purposes" apply to the department of conservation before marking "inland lakes and state waters and any navigable waters under concurrent jurisdiction of the coast guard and the conservation department."²⁴ These amendments also added the first version of Fla. Stat. § 327.44, requiring that "[n]o person . . . operate a vessel in a manner which shall unreasonably or unnecessarily interfere with another vessel. Anchoring under bridges or in heavily traveled channels shall constitute interference if unreasonable under the prevailing circumstances."²⁵

This session law also added Fla. Stat. § 327.46, which was originally as follows:

371.522 *Restricted Areas*.-It is unlawful to operate a vessel within a restricted water area which has been clearly marked by buoys or some other distinguishing device as a bathing, or otherwise restricted area in accordance with and marked as authorized by section 371.521, F. S. [now Fla. Sta. 327.40]; provided, that this section shall not apply in the case of an emergency, or to patrol or rescue craft.²⁶

²² Laws of Florida § 1, ch. 63-103.

²³ Laws of Florida §6, ch. 63-105

²⁴ *Id.*

²⁵ Laws of Florida § 4, ch. 63-105. Originally Fla. Stat. § 371.503.

²⁶ Laws of Florida §7, ch. 63-105. Originally Fla. Sta. 371.522 (1963).

Fla. Stat. § 327.65 was amended to require “all inboard internal combustion engines used on any vessel shall be equipped with a U.S.C.G. approved sparkarrestor [*sic*].”²⁷ Fla. Stat. § 327.56 was clarified as follows: “When the owner or operator is aboard an officer may board a vessel with consent or when he has probable cause or knowledge to believe that a violation of a provision of this chapter has occurred or is occurring.”²⁸ Fla. Stat. § 327.60 expanded the prohibition of conflicting local ordinances to regulations implementing the act in addition to the act itself and its amendments.²⁹ Fla. Sta. § 327.50 was amended to require specific safety equipment instead of simply implementing the US Coast Guard rules and regulations.³⁰ This required that “[e]very boat plying the waters of Florida shall carry safety equipment,” including lighting, life saving flotation devices, oars or paddles, ventilators, and anchors, depending on the class of boat.³¹

The next set of notable changes to the statute took place in 1965. Laws of Florida ch. 65-361 made substantial changes to Florida’s boating law. Fla. Stat. § 327.02 was changed, amending the definitions of “vessel,” “motorboat,” “waters of this state,” “length,” “commercial vessel”; removing terms “Certificate,” “Conservation department,” and “board”; and adding “Registration certificate tax,” “Noncommercial vessel,” “dealer,” “sailboat,” and “prohibited activity.”³² This law changed the definition of vessel to the following:

"Vessel" is synonymous with boat as used in this act and means a motor or artificially propelled vehicle registered as provided herein or by chapters 370 or 372, Florida Statutes, as property and defined in section 13, article IX of the state constitution, and every other description of watercraft and air boats, other than a seaplane on the water, used or capable of being used as a means of transportation on water.³³

²⁷ Laws of Florida § 11, ch. 63-105. Originally Fla. Stat. § 371.56.

²⁸ Laws of Florida § 14, ch. 63-105. Originally Fla. Stat. § 371.58.

²⁹ Laws of Florida § 16, ch. 63-105. Originally Fla. Stat. § 371.59.

³⁰ Originally Fla. Stat. § 371.57. Laws of Florida § 13, ch. 63-105.

³¹ *Id.*

³² Originally Fla. Stat. § 371.021 (1963). Laws of Florida § 1, ch. 65-361.

³³ *Id.*

The definition of commercial was expanded to include salt and fresh water fishermen, vessels for hire, and rental boats. It was amended as follows:

"Commercial vessel" means:

(a) Any resident vessel engaged in the taking of salt water fish or salt water products, fresh water fish or fresh water products for sale either to the consumer, retail dealer or wholesale dealer;

(b) Any vessel engaged in ~~for~~ fishing, boating, sightseeing, transportation or any other purpose wherein a fee is paid by the user, either directly or indirectly, to the owner, operator or custodian of the vessel which is used exclusively for one or more of these purposes or from which the owner or operator derives at least fifty per cent (50%) of his total income.

(c) Any rental boat that is made available for hire through out the year to an individual or to the general public.³⁴

Noncommercial vessels were defined as any vessel other than a commercial vessel.³⁵ The definition of motorboat was amended to mean any boat "propelled or powered by machinery in excess of ten (10) horsepower" whereas the original definition only referred to undocumented boats.³⁶ "'Prohibited activity' means such activity as will impede or disturb navigation and/or creates a safety hazard on waterways of this state."³⁷ This definition is essentially unchanged today.

One of the few changes that has been made to Fla. Stat. § 327.44 was made by Laws of Florida, ch. 65-361, prohibiting not only the operation of a vessel in a way that interferes with navigation, but also "permit[ing] to be operated a vessel or carry[ing] on any prohibited activity" in a way that unreasonable interferes with navigation.³⁸ Fla. Stat. § 327.46 was amended by adding the following subsection:

³⁴ Laws of Florida § 1, ch. 65-361. As stated previously, throughout this memorandum, underlined portions of text represent new additions to the statute in question, while ~~strike-through text~~ represents portions that have been removed.

³⁵ Laws of Florida § 1, ch. 65-361.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* Originally Fla. Sta. § 371.503.

The director of the board shall have the power to establish any restricted area, upon approval by the board, when it is determined that a safety hazard exists or there is interference with navigation. Restricted areas shall be established only after an investigation has been conducted and upon application by the governing body of the county or municipality in which the restricted areas are to be located, and one (1) publication in a local newspaper of general circulation in said county or municipality, and if on navigable waters of the United States after consultation and coordination with the district engineer United States army corps of engineers [*sic*].³⁹

This change was likely designed to limit the number of restricted areas established by local governments to those necessary to achieve their stated purpose. Changes were also made to the specific safety equipment requirements of Fla. Stat. § 327.50.⁴⁰

Both Fla. Stat. § 327.22 and Fla. Stat. § 327.70 first appeared in this 1965 amendment. Fla. Stat. § 327.22 was originally codified as Fla. Stat. § 371.63 (1965), and included the following provision: “nothing in this section shall be construed to prohibit any municipality that expends money for the patrol, regulation and maintenance of any lakes, rivers, or waters in such municipality from regulating such boats resident in such municipalities *and charging a license fee therefore.*”⁴¹ At that time, one basis for the municipalities’ ability to regulate resident boats was their ability to charge a “license fee” for local boats. Fla. Stat. § 327.70 was originally as follows:

371.67 Enforcement.-

(1) This chapter shall be enforced by the board and its agents, the commission and its agents, the sheriffs of the various counties and their deputies, and any other authorized law enforcement officer, all of whom may enforce the provisions of this act and cause any inspections to be made of all boats in accordance with this chapter, on the waters of this state.

(2) Such officers and agents shall have the power and duty to make such investigations, reports and arrests in connection with any violation of the provisions of this act as are necessary to effectuate the intent and purpose of this chapter.⁴²

³⁹ Laws of Florida § 1, ch. 65-361. Originally Fla. Sta. § 371.522(1).

⁴⁰ *Id.* Originally Fla. Sta. § 371.57.

⁴¹ *Id.* (*emphasis added*).

⁴² *Id.* Originally Fla. Sta. § 371.67.

A 1967 Special Act that applied only to St Johns County enabled the county commissioners to “to fix, change, and post speed or wake zones for all boats or other water traffic, other than a seaplane, on the waters of St Johns County,” and declared that violation of such speed limits were illegal.⁴³ The speed limit signs were required to not interfere or conflict with any US Coast Guard signs or regulations.⁴⁴

In 1969, Laws of Florida 69-106 was passed “relating to the executive branch of government . . . consolidating and reorganizing existing agencies into named departments.”⁴⁵ This act created the Department of Natural Resources (DNR) and charged the agency with “with the administration, supervision, development and conservation of the natural resources of the state.”⁴⁶ Section 35 of this act amended the nomenclature of any statutes that are inconsistent with this amendment, affecting Fla. Stat. § 327.02, Fla. Sta. § 327.40, Fla. Stat. § 327.46, and Fla. Sta. § 327.70.⁴⁷

b. 1970s

Amendments in the early 1970s focused on ensure consistency with the 1969 act creating the DNR, ensuring ease of navigation, and curtailing local governments’ ability to regulate speed. In 1971, the term “board,” referring to the State Board of Conservation, was replaced with “Division,” meaning the DNR’s Division of Marine Resources.⁴⁸

⁴³ Laws of Florida §1-2, 67-1987.

⁴⁴ Laws of Florida §3, 67-1987.

⁴⁵ Laws of Florida preamble, ch. 69-106.

⁴⁶ Laws of Florida § 25, ch. 69-106.

⁴⁷ Laws of Florida § 35, ch. 69-106. Originally Fla. Stat. § 371.021, Fla. Stat. § 371.521, Fla. Stat. § 371.522, and Fla. Stat. § 371.67.

⁴⁸ Laws of Florida § 132, ch. 71-377.

Several important changes took place in 1972. Laws of Florida ch. 72-16 amended the definition of “vessels” to include barges.⁴⁹ Fla. Stat. § 327.44, Interference with Navigation, was amended to include the act of anchoring and create an emergency exception as follows:

No person shall anchor, operate or permit to be anchored except in case of emergency or operated a vessel or carry on any prohibited activity in a manner which shall unreasonably or unnecessarily constitute a navigational hazard or interfere with another vessel. Anchoring under bridges or in or adjacent to heavily traveled channels shall constitute interference if unreasonable under the prevailing circumstances.⁵⁰

Fla. Stat. § 327.70 was changed to allow law enforcement officers to “order the removal of vessels deemed to be an interference or hazard” in addition to enforce the provisions of the statute and inspect vessels.⁵¹

In Laws of Florida, ch. 72-20, Fla. Stat. § 327.42, called “Mooring to or damaging of markers or buoys prohibited,” was passed preventing damage or mooring to aides-to-navigation.⁵² This law has not been amended since being passed in 1972, and is as follows:

- (1) No person shall moor or fasten a vessel to a lawfully placed aid-to-navigation marker or buoy, regulatory marker or buoy, or area boundary marker or buoy, placed or erected by any governmental agency, except in case of emergency.
- (2) No person shall willfully damage, alter, or move a lawfully placed aid-to-navigation marker or buoy, regulatory marker or buoy, or area boundary marker or buoy.⁵³

As boating became more popular in the state of Florida, municipalities began restricting boat speeds within the Intracoastal Waterway and homemade signs we posted to encourage slow speeds. The Florida Legislature recognized these problems in the preamble to Laws of Florida, ch. 72-55.

⁴⁹ Laws of Florida § 1, ch. 72-16.

⁵⁰ Laws of Florida § 2, ch. 72-16. Originally Fla. Stat. § 371.503.

⁵¹ Laws of Florida § 3, ch. 72-16. Originally Fla. Stat. § 371.67.

⁵² Laws of Florida § 1, ch. 72-20. The statute was originally codified as Fla. Stat. 371.524 (1972).

⁵³ Fla. Stat. 327.42 (2007); Laws of Florida § 1, ch. 72-20. Originally codified as Fla. Stat. § 371.524.

WHEREAS various municipalities in this state have enacted Local ordinances restricting the speed of craft using the Florida Intracoastal waterway to six miles per hour or less within prescribed territorial limits, and
WHEREAS such signs and restrictions abound to the point that it is almost impossible for a boat owner to navigate the Florida Intracoastal Waterway at an average speed greater than SIX miles per hour, and
WHEREAS, nearly two thirds of the Florida Intracoastal Waterway from Stuart to Miami is restricted to six miles per hour or less by a number of municipalities, and
WHEREAS, various individuals along the Florida Intracoastal Waterway have posted homemade signs suggesting "slow speed," "no wake," et cetera, and
WHEREAS, Florida depends on yachtsmen who bring their craft to this state and use the Intracoastal Waterway, just as the automobile owners use the highways, and
WHEREAS, the Florida Intracoastal Waterway is a nautical highway and should be regulated as such, and
WHEREAS, Florida has a long and scenic intracoastal waterway, the beauty of which can be better preserved and the navigation of which can be enhanced and controlled with the proper regulation of navigation and navigational signs on and within the rights-of-way of such waterway.⁵⁴

To act on these concerns, several amendments were passed in the Florida Legislature's first attempt to reign in the ability of local governments to regulate vessels. Definitions of "regulatory markers" and the "Florida Intracoastal Waterway" (ICW) were added to what is now 327.02.⁵⁵

"Regulatory markers" means any anchored or fixed marker in, on or over the water, or anchored platform on the surface of the water, other than markers provided in §871.521, and shall include but not be limited to bathing beach markers, speed zone markers, information markers, restricted zone markers, congested area markers or warning markers.⁵⁶

The law also enacted what is now Fla. Stat. § 327.41, entitled "Uniform watery regulatory markers," charging the DNR with developing a uniform waterway markers system for the ICW compatible with the US Coast Guard system, requiring counties and municipalities to apply for marker permits to mark approved restricted areas, and declaring all markers placed without a

⁵⁴ Laws of Florida preamble, ch. 72-55.

⁵⁵ Laws of Florida §1, ch. 72-55. Originally Fla. Stat. § 371.021.

⁵⁶ *Id.*

permit to be a nuisance.⁵⁷ This version of Fla. Stat. § 327.41 also explicitly stated that “[n]o person, municipality, county or other governmental entity shall place any regulatory markers in, on or over the Florida Intracoastal Waterway without a permit from the division of marine resources [*sic*].”⁵⁸ What is now Fla. Stat. § 327.60 was also amended. While local governments were still permitted to pass ordinances related to the operation and equipment of vessels that are not inconsistent with the rest of the chapter, “no such ordinance or local law may apply to the Florida Intracoastal Waterway”.⁵⁹

Amendments to the statute in 1974 altered many important definitions. The 10 horsepower minimum for a vessel to be considered a motorboat was abolished.⁶⁰ The definition of commercial vessel was simplified by including vessels “engaged in *any activity* wherein a fee is paid by the user” as opposed to vessels “engaged in fishing, boating, sightseeing, transportation, or any other purpose.”⁶¹ The term “Commercial vessel” was also amended to no longer include rental boats.⁶² The term “registration fee” replaced “certificate tax.”⁶³ Changes were made to the required safety equipment of Fla. Stat. § 327.50, including that class 1, 2, and 3 motorboats carry “one coast guard [*sic*] approved throwable device in each boat.”⁶⁴

In 1978, Fla. Stat. § 327.46 was amended to specify that the establishment of restricted areas must be preceded by “one publication in a local newspaper of general circulation in said county or municipality, in addition to any other notice required by law.”⁶⁵ Subsection (1) of Fla.

⁵⁷ Laws of Florida §2, ch. 72-55. Originally Fla. Stat. § 371.523.

⁵⁸ *Id.* Originally Fla. Stat. 371.523.

⁵⁹ Laws of Florida §3, ch. 72-55. Originally Fla. Stat. § 371.59

⁶⁰ Laws of Florida § 1, ch. 74-327.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Laws of Florida § 7, ch. 74-327. Originally Fla. Stat. § 371.57.

⁶⁵ Laws of Florida § 23, ch. 78-95. Originally Fla. Stat. § 371.522. Underlining denotes text added by this amendment.

Stat. 327.70 was amended in 1978 to allow law enforcement officers to “order the removal of vessels deemed to be an interference or a hazard to public safety.”⁶⁶

A 1979 Attorney General Opinion interpreted Fla. Stat. § 327.46 to require a local government to apply to the Division of Marine Resources before establishing a restricted area to control boat traffic near a public beach.⁶⁷

The division [of Marine Resources] shall have the power to establish any restricted area when it is determined that a safety hazard exists or there is interference with navigation. Restricted areas shall be established only after an investigation has been conducted and upon application by the governing body of the county or municipality in which the restricted areas are to be located.⁶⁸

Thus the local government must show that the boat traffic’s proximity to the public beach constitutes a safety hazard or interferes with navigation and must apply to the Division before establishing the restricted area.⁶⁹

In 1979 the definition of live-aboard vessel was added to Fla. Stat. § 327.02 as follows:

(18) "Live-aboard vessel" means:

- (a) Any vessel used primarily as a residence; or
- (b) Any vessel represented as a place of business, a professional or other commercial enterprise, or legal residence, and providing or serving on a long-term basis the essential services or functions typically associated with a structure or other improvement to real property, and, if used as a means of transportation, said use is clearly a secondary or subsidiary use; or
- (c) Any vessel used by any club or any other association of whatever nature when clearly demonstrated to serve a purpose other than a means of transportation.
- (d) Commercial fishing boats are expressly excluded from the term “live-aboard vessel.”⁷⁰

The definition of “vessel” was also amended to correspond to the addition of “live-aboard vessel.”

⁶⁶ Laws of Florida § 3, ch. 78-181. Originally Fla. Stat. § 371.67(1). Underlining denotes text added by this amendment.

⁶⁷ Fla Stat. § 327.46 was originally Fla. Stat. §371.522. Fla. AGO 79-71.

⁶⁸ *Id.* (citing Fla. Stat. § 327.46; originally Fla. Stat. § 371.522).

⁶⁹ *Id.*

⁷⁰ Laws of Florida § 23, ch. 79-334. Originally Fla. Stat. § 371.021(18).

(1) "Vessel" is synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution and means a motor or artificially propelled vehicle registered as provided herein as property and includes defined in s. 1(b), Art. VII of the State Constitution and every ~~other~~ description of watercraft, barges, and air boats, other than a seaplane on the water, used or capable of being used as a means of transportation on water. However, live-aboard vessels are expressly excluded from the term "boat" for purposes of s. 1(b), Art. VII of the State Constitution and purposes of license fees imposed by this part, if assessed as tangible personal property.⁷¹

Revision of Fla. Stat. § 327.22 excluded live-aboard vessels from consideration as motor vehicles for purposes of tax and certification.⁷²

c. 1980s

In 1980, a Florida court determined that Fla. Stat. § 327.22 prevented a municipality from charging a license fee on all vessels within its jurisdiction. At that time, Fla. Stat. § 327.22 allowed municipalities who spent money for the patrol, regulation, and maintenance of their waterways to regulate “boats resident . . . and charge a license fee therefore.”⁷³ In *City of Winter Park v. Jones*, the District Court of Appeals, Fifth District determined that under the common usage of the word “resident,” the lower court was justified in invalidating an ordinance which charged an annual license fee for both “city” boats and “non-city” boats that used the waters within the city, because Fla. Stat. §327.22 did not allow local governments to regulate non-resident boats.⁷⁴ Also in 1980, a Florida Attorney General Opinion determined that Fla. Stat. § 327.22 did not authorize the Town of Mexico Beach to impose a license tax on all vessels operated within the jurisdiction for the purposes of funding the operation and maintenance of a canal.⁷⁵

⁷¹ *Id.* Originally Fla. Stat. § 371.021(1).

⁷² Laws of Florida § 24, ch. 79-334. Originally Fla. Stat. § 371.63.

⁷³ Originally Fla. Stat. § 371.63. Laws of Florida, § 1, ch. 65-361.

⁷⁴ *City of Winter Park v. Jones*, 392 So.2d 568 (1980) (DCA 5th Dist.) (refusing to grant certiorari to review the invalidation of a city ordinance based on the common usage of the word “resident” in Fla. Stat. §371.63 where the ordinance imposed a registration fee on both “city” boats and “non-city” boats).

⁷⁵ Fla. AGO 80-72 (1980).

Laws of Florida, ch. 81-100 removed from the definition of vessel “and means a motor or artificially propelled vehicle registered as provided herein as property and includes.”⁷⁶ The definition of motorboat was modified as follows: "Motorboat" means any ~~boat or~~ vessel propelled or powered by machinery which is used or capable of being used as a means of transportation on water.⁷⁷ This amendment removed the word “boat” and replaced it with “vessel” in several statutes throughout the chapter, including Fla. Stat. § 327.50.⁷⁸ Additionally, Fla. Stat. § 327.46(1), “Restricted Areas,” was substantially reworded to the following:

(1) The department shall have the authority for establishing, by rule, restricted areas on the waters of the state for any purpose deemed necessary for the public's safety, including, but not limited to, boat speeds and boat traffic where such restrictions are deemed necessary based on boating accidents, visibility, tides, congestion, or other navigational hazards. Such restricted areas shall be developed in consultation and coordination with the governing body of the county or municipality in which the restricted areas are located and, where required, the U.S. Army Corps of Engineers. Restricted areas shall be established in accordance with procedures under chapter 120.⁷⁹

A later amendment in 1981 added the definitions of "racing shell," "rowing scull," and "racing kayak" to Fla. Stat. § 327.02 and exempted such vessels from carrying certain lifesaving devices in Fla. Stat. § 327.50.⁸⁰

In 1981 Fla. Stat. chapter 371 was split into chapters 327 and 328. Statutes in chapter 371 regulating vessel safety, operation, and registration were moved to in chapter 327, while laws regarding vessel titles were moved to chapter 328.

A 1982 amendment removed the following language from Fla. Stat. § 327.22: “All boats registered herein, except live-aboard vessels assessed as tangible personal property, are hereby

⁷⁶ Laws of Florida § 1, ch. 81-100.

⁷⁷ *Id.*

⁷⁸ See Laws of Florida §9, ch. 81-100. Originally Fla. Stat. § 371.57.

⁷⁹ Laws of Florida § 7, ch. 81-100. Originally Fla. Stat. § 371.522(1).

⁸⁰ Laws of Florida §1, 2, ch. 81-114. Fla. Stat. § 327.02(33) was originally Fla. Stat. § 371.021(19). Fla. Stat. § 327.50 was originally Fla. Stat. § 371.57.

declared to be motor vehicles and shall be taxed and certified as motor vehicles.”⁸¹ Another 1982 amendment related to property classifications removed the following sentence from the definition of vessel which had been added in 1979: “However, live-aboard vessels are expressly excluded from the term "boat" for purposes of s. 1(b), Art. VII of the State Constitution and purposes of license fees imposed by this part, if assessed as tangible personal property.”⁸²

In 1983, the Florida Legislature, passed Laws of Florida, ch. 83-20 to address problems being caused by live-aboard vessels. The purposes behind these amendments is stated in the preamble as follows:

WHEREAS, the mooring or anchoring of floating structures and live-aboard vessels in the waters of the state often leads to sanitary problems, and
WHEREAS, local governmental entities should be free to regulate such structures and vessels, and
WHEREAS, the Legislature should not interfere with the authority of local governmental entities to regulate the mooring or anchoring of floating structures and live-aboard vessels to prevent sanitary and other problems.⁸³

Prior to this amendment, vessels in several Florida counties, including Dade, Broward, and Palm Beach, remained permanently moored and “occasionally encroach[ed] upon navigable waterways and thereby present[ed] a hazard to navigation.”⁸⁴ Laws of Florida, ch. 83-20 defined live-aboard vessel in Fla. Stat. § 327.02 as “(a) Any vessel used solely as a residence; or (b) Any vessel represented as a place of business, a professional or other commercial enterprise, or legal residence. Commercial fishing boats are expressly excluded from the term live-aboard vessel.”⁸⁵ This definition remains substantially unaltered since this amendment.

⁸¹ Laws of Florida §2, ch. 82-17

⁸² Laws of Florida § 76, ch. 82-226.

⁸³ Laws of Florida preamble, ch. 83-20.

⁸⁴ Senate Staff Analysis and Economic Impact Statement for Bill # 80 (January 27, 1983) (on file at the Florida State Archives, Department of State; series 18 carton 1307).

⁸⁵ Laws of Florida § 1, ch. 83-20. Originally Fla. Stat. § 327.02(19).

Proposed changes to Fla. Stat. § 327.60 were meant to ensure that the statute would “not be construed to prohibit local government regulation of anchoring and mooring of live-aboard vessels or other floating structures.”⁸⁶ This change was suggested as a result of a 1980 Palm Beach County court that held a local ordinance addressing the mooring of live-aboards was invalid because it regulated vessels in the Intracoastal Waterway in violation of Fla. Stat. § 327.60.⁸⁷ When the original version of this bill was introduced in the Florida House, vocal members of the cruising community objected to the idea of “encouraging local government regulation of anchored boats on the navigable waters of the United States.”⁸⁸ The original language of the bill was altered as a result of their concerns. Laws of Florida, ch. 83-20 amended Fla. Stat. § 327.60 by adding the following subsection:

(2) Nothing contained in the provisions of this section shall be construed to prohibit local governmental authorities from the enactment or enforcement of regulations which prohibit or restrict the mooring or anchoring of floating structures or live-aboard vessels within their jurisdictions. However, local government authorities are prohibited from regulating the anchorage of nonlive-aboard vessels engaged in the exercise of rights of navigation.⁸⁹

This specific language was offered by a member of cruising community “in order to better define the groups and activities affected by the intent of your bill.”⁹⁰

Florida Attorney General Opinion 85-45 clarified some of the ambiguities related to this amendment to the Florida Statutes. This opinion purported to answer the question whether “the

⁸⁶ Senate Staff Analysis for Bill # 80, *supra* note 84.

⁸⁷ Originally Fla. Stat. 371.59. *Id*; *Florida v. Jansen*, Notice to Appear No. 55655 (Fla. Palm Beach County Ct. (order granting motion to dismiss).

⁸⁸ Petition regarding House Bill 41, signed by Robert E. Wiley, Commodore of Patrick Air Force Base Yacht Club, and Dulcie Burns, Commodore of the East Coast Cruising Association of Brevard County (1983) (on file at the Florida State Archives, Department of State; series 19 carton 1153).

⁸⁹ Laws of Florida § 2, ch. 83-20.

⁹⁰ Letter from Arthur L. Kirts, Legislative Officer of East Coast Cruising Association and Patrick Air Force Base Yacht Club to Representative James Watt, Florida House of Representatives (referring to Community Affairs Committee hearing on March 29, 1983) (on file at the Florida State Archives, Department of State); *See also* Letter from Arthur L. Kirts, Legislative Officer of East Coast Cruising Association and Patrick Air Force Base Yacht Club to Representative James Watt, Florida House of Representatives (referring to a letter on April 1, 1983 and a phone conversation on April 5, 1983) (on file at the Florida State Archives, Department of State).

occasional recreational use ordinarily associated with any vessel, including a house boat, deprive[s] municipal authorities of jurisdiction” and to clarify “as to the exercise of rights of navigation by non-live-aboard vessels, [local governments’] authority to regulate the mooring and anchoring of such vessels.”⁹¹ In AGO 85-45, the Attorney General stated that occasional use of a vessel for recreational purposes does not prevent it from being considered a live-aboard vessel if there is evidence that the vessel is the person’s legal residence.⁹² While citing cases that emphasize that the best evidence of a person’s legal residence “is where the person says it is,” the Attorney General wrote that there are also objective facts that can establish the location of a person’s legal residence.⁹³ The Attorney General also noted that while there were no court cases clarifying the “rights of navigation,” this term must include “incidental rights as are necessary to render the broader rights reasonably available, including the right of the navigator to anchor and to moor without unreasonably obstructing others’ navigation rights.”⁹⁴ Thus “compel[ing] the conclusion that a municipality is prohibited from regulating the anchorage of nonlive-aboard vessels when such anchorage is incident to the exercise of rights of navigation.”⁹⁵

In 1984, the following changes were made to Fla. Sta. 327.22:

- (1) Nothing in this chapter shall be construed to prohibit any municipality or county that expends money for the patrol, regulation, and maintenance of any lakes, rivers, or waters and for other boating-related activities in such municipality or county from regulating such vessels ~~boats~~ resident in such municipalities or counties ~~and charging a license fee therefore.~~ Any county, and the municipalities therein, may jointly regulate vessels.
- (2) Counties of one hundred thousand persons or more my impose an annual registration fee on vessels operated or stored in their jurisdiction. This fee shall be 50 percent of the applicable state registration fee.⁹⁶

⁹¹1985 Fla. Op. Atty. Gen. 127, Fla. AGO 85-45 (1985).

⁹² *Id.* at 3.

⁹³ *Id.* at 3-4.

⁹⁴ *Id.* at 5.

⁹⁵ *Id.* at 6.

⁹⁶ Laws of Florida, § 7, ch. 84-184.

An Attorney General Opinion interpreted these changes to mean that a local government may not impose a license fee or toll on vessels operating within its jurisdiction.⁹⁷ During the 1980s, Fla. Stat. ch. 327 began to reflect the Legislature’s concern with declining manatee populations. Laws of Florida, ch. 84-184’s amendment to Fla. Stat. § 327.22 required that \$1 of every county registration go to the Save the Manatee Fund, with all other monies going to the patrol, regulation, and maintenance of the county’s waterways.⁹⁸

In 1984, the definitions section of Fla. Stat. ch. 327 was amended to expressly apply to Fla. Stat. ch. 328 as well as Fla. Stat. ch. 327.⁹⁹ Subsection (a) of the definition of “commercial vessel” was amended to read, “Any ~~resident~~ vessel primarily engaged in the taking or landing of saltwater fish or saltwater products, freshwater fish or freshwater products from within and without the waters of this state for sale either to the consumer, retail dealer, or wholesale dealer.”¹⁰⁰ Definitions were also added for “manufactured vessel,” “homemade vessel,” “resident,” “nonresident,” “alien,” “lienholder,” “lien,” “canoe,” and “documented vessel.”¹⁰¹

Another 1984 revision changed Fla. Stat. § 327.50 as follows:

- (1) Every vessel on the waters of this state shall carry safety equipment and conform to uniform lighting requirements in accordance with current United States Coast Guard safety and lighting requirements, as set forth in Titles 33 and 46, Code of Federal Regulations unless expressly exempt by state law.
- (2) The use of sirens or flashing red or blue emergency lights on any vessel is prohibited except on a vessel operated by a law enforcement officer or fire protection officer in the performance of his official duties or on a vessel used for emergency rescue activity.¹⁰²

This amendment also made a change to Fla. Stat. § 327.33, entitled “Reckless or careless operation of a vessel.” Fla. Stat. § 327.33 states that it is illegal to operate a vessel in a way that

⁹⁷ 1988 Fla. Op. Atty. Gen. 159, Fla. AGO 88-46 (1988).

⁹⁸ *Id.* Originally known as the Motorboat Revolving Trust Fund, in 1989 the name of the fund was changed to the Save the Manatee Trust Fund. Laws of Florida, § 4, ch. 89-168.

⁹⁹ Laws of Florida § 1, ch. 84-184.

¹⁰⁰ Laws of Florida § 2, ch. 84-184.

¹⁰¹ *Id.*

¹⁰² Laws of Florida § 9, ch. 84-188.

is likely “to endanger, or likely to endanger, life or limb, or damage the property of, or injure any person.”¹⁰³ However, this amendment added the provision that “vessel wake and shoreline wash resulting from the reasonable and prudent operation of a vessel shall absent negligence not constitute damage or endangerment to property.”¹⁰⁴

In 1985, then subsection (3) was added to Fla. Stat. § 327.22 as follows:

Counties which impose an annual registration fee may establish, by interlocal agreement with one or more of the municipalities located in the county, a distribution formula for dividing the proceeds of the fee or for use of the funds for boating- related projects located within the county or the municipality or municipalities, or the county and the municipality or municipalities.¹⁰⁵

In 1986, Fla. Stat. § 327.73, Noncriminal Infractions, was created.¹⁰⁶ Additionally, subsection (2) of Fla. Stat. § 327.65 was added as follows:

(2)(a) Any county wishing to impose additional noise pollution and exhaust regulations on vessels may, pursuant to Chapter 327.60(1), F.S., adopt by county ordinance the following regulations:

1. No person shall operate or give permission for the operation of any vessel on the waters of any county or on a specified portion of the waters of any county, including the Florida Intracoastal Waterway, which has adopted the provisions of this section in such a manner as to exceed the following sound level at a distance of fifty feet from the vessel: for all vessels, a maximum sound level of 90 dB A.

2. Any person who refuses to submit to a sound level test when requested to do so by a law enforcement officer is guilty of a misdemeanor of the second degree punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Definitions - The following words and phrases, when used in this section, shall have the meanings respectively assigned to them in this subsection.

1. "dB A means the composite abbreviation for the A-weighted sound level and the unit of SOL d level, the decibel.

2. "Sound level" means the A-weighted sound pressure level measured with fast response using an instrument complying with the specification for sound level meters of the American National Standards Institute, Inc., or its successor bodies, except that only a weighting and fast dynamic response need be provided.¹⁰⁷

¹⁰³ Laws of Florida § 6, 84-188.

¹⁰⁴ *Id.*

¹⁰⁵ Laws of Florida § 1, ch. 85-287.

¹⁰⁶ Laws of Florida § 3, ch. 86-35.

¹⁰⁷ Laws of Florida § 5, ch. 86-35.

This change added much greater specificity to this statute, which previously only contained the requirement that noise be muffled “in a reasonable manner.”¹⁰⁸

Also passed in 1986 was a special act affecting Sarasota, Florida, “the provisions of s. 327.60, Florida Statutes...notwithstanding.”¹⁰⁹ This special act declared that

Within the boundaries of the City of Sarasota “rights of navigation” shall not be construed to authorize any vessel to anchor within 500 feet of any real property zoned and used for residential dwelling purposes for a period of time of more than 12 hours except for established and approved mooring areas as authorized by the City Commission of the City of Sarasota.¹¹⁰

“[R]ights of navigation” refers to the provision in Fla. Stat. § 327.60 which states, “Local government authorities are prohibited from regulating the anchorage of nonlive-aboard vessels engaged in the exercise of the rights of navigation.”¹¹¹

In 1987, Fla. Stat. § 327.74, Uniform Boating Citations, was passed.¹¹² 1987 also saw the enactment of a special act affecting the Allen’s Creek Estuary in Pinellas County. Despite the fact that Fla. Stat. § 327.33 does not consider damage to property resulting from normal wake or shoreline wash to be the fault of the vessel operator, the legislature considered damage to property and habitat resulting from vessel wake in Allen’s Creek to be a significant problem.¹¹³

WHEREAS, the Allen’s Creek Estuary includes environmentally sensitive areas inhabited by many species of fish, birds, and other wildlife, and
WHEREAS wakes from speeding motorboats and waterskiers have been damaging the property and threatening wildlife and wildlife habitats along the sandy banks of Allen’s Creek and its tributaries, and
WHEREAS, residents of the Allen’s Creek Estuary have petitioned for a 5-mile-per-hour speed limit . . .NOW THEREFORE

¹⁰⁸ *Id.*; Laws of Florida § 1, ch. 65-361.

¹⁰⁹ Laws of Florida § 1, ch. 86-458

¹¹⁰ *Id.*

¹¹¹ Laws of Florida § 2, ch. 83-20; Fla. Stat. § 327.60(2) (1986).

¹¹² Laws of Florida § 8, ch. 87-392.

¹¹³ Fla. Stat. § 327.33; Laws of Florida § 1, ch. 87-425.

a five mile-per-hour speed limit was created by this special act.¹¹⁴

In 1988, “operate” was redefined to mean to “be in actual physical control of a vessel upon the waters of this state, or to exercise control over or steer a vessel being towed by another vessel upon the waters of the state.”¹¹⁵ Definitions were also added at that time for “boating accident” and “navigation rules.”¹¹⁶ These changes came with several amendments relating to drunk boating and reckless operation of a vessel.¹¹⁷ Fla. Stat § 327.50 was amended as follows:

(1) Every vessel on the waters of this state shall carry store, maintain and use safety equipment ~~and conform to uniform lighting requirements~~ in accordance with current United Coast Guard safety equipment requirements as specified in the code of federal regulations ~~and lighting requirements and federal regulations~~, unless expressly exempted ~~exempt~~ by state law.

(2) Every vessel on the waters of this state shall display the lights and shapes required by the navigation rules.

(3) ~~(2)~~ The use of sirens or flashing or revolving red or blue emergency lights on any vessel is prohibited, except on a vessel operated by a law enforcement officer or fire protection officer in the performance of his official duties or on a vessel engaged in ~~used for~~ emergency rescue activity.¹¹⁸

In 1989, Laws of Florida, ch. 89-136 added the term and a definition of “personal watercraft.”¹¹⁹ Laws of Florida, ch. 89-168 directed funds to manatee protection. The purposes behind these amendments are evident in the preamble:

WHEREAS, Florida's rapid population growth coupled with related development is threatening the fragile population balance of the Florida Manatee, and
WHEREAS, the best available information indicates that there are about 1,200 manatees using Florida waters, and
WHEREAS, research has documented that at least 125 to 130 manatees die each year in Florida, and
WHEREAS, more manpower and funding is needed for programs to ensure survival of a healthy and viable manatee population in Florida.¹²⁰

¹¹⁴ Laws of Florida preamble, §1, ch. 87-425.

¹¹⁵ Laws of Florida § 1, ch. 88-133.

¹¹⁶ *Id.*

¹¹⁷ *See* Laws of Florida ch. 88-133.

¹¹⁸ Laws of Florida, § 5, ch. 88-133.

¹¹⁹ Laws of Florida § 1, ch. 89-136.

¹²⁰ ch. 89-168, preamble

These amendments created the manatee license plate, and amended Fla. Stat. §327.22 to direct \$1 of every county registration fee to go to the Save the Manatee Trust Fund as opposed to the Motorboat Revolving Trust Fund.¹²¹ Laws of Florida, ch. 89-168 directs this money to research, recover, and annual protection.¹²²

Later in 1989, in conjunction with several changes related to salt water commercial fishing, the definition of commercial vessel was expanded by making the following amendment to Fla. Stat, 327.02(5)(a):

([5]) "Commercial vessel" means:

(a) Any vessel primarily engaged in the taking or landing of saltwater fish or saltwater products or freshwater fish or freshwater products, or any vessel pursuant to s. 370.06 from which commercial quantities of salt water products are harvested, from within and without the waters of this state for sale either to the consumer, retail dealer, or wholesale dealer.¹²³

In June 1989, Florida had 710,831 registered boaters.¹²⁴ Despite the concerns addressed in Laws of Florida ch. 89-136, further concerns with declining manatee populations lead the Governor and Cabinet to direct the DNR to make recommendations to protect manatees and manatee habitat.¹²⁵ DNR determined that at that time there were no more than 1,200 manatees alive in Florida, and that the rate of manatee mortality substantially increased from 1988 to 1989.¹²⁶

d. 1990s

The impacts of boating on manatee populations continued as a main concern of the early 1990s. In response to the DNR's recommendations to the Governor and Cabinet, and in order to provide the DNR the capability of implementing the US Fish and Wildlife Service's Florida

¹²¹ Laws of Florida § 3, 4, ch. 89-168.

¹²² Laws of Florida § 6, 7, ch. 89-168.

¹²³ Laws of Florida § 2, ch. 89-250. Originally Fla. Stat. 327.02(3) (1989).

¹²⁴ Senate Staff Analysis and Economic Impact Statement for bill # CS/HB 760 (May 24, 1990) (on file at the Florida State Archives, Department of State; series 18 carton 1870).

¹²⁵ *Id.*

¹²⁶ *Id.*

Manatee Recovery Plan, Laws of Florida, ch. 90-219 was passed.¹²⁷ The preamble explains the purposes behind the bill as follows:

WHEREAS, the Legislature finds that manatees are dying at record rates and our traditional efforts to protect them are not enough, and
WHEREAS, the Legislature intends by passage of this act to ensure that the Department of Natural Resources has the appropriate authority and resources to implement the Florida Manatee Recovery Plan, prepared by the Florida Manatee Recovery Team for the Southeast Region of the United States Fish and Wildlife Service.¹²⁸

These amendments directed \$1 of every boat registration paid to the state to go to the Save the Manatee fund, along with \$1 of every local registration.¹²⁹ Additionally, Fla. Stat. § 327.22 was amended so that all counties could charge a registration fee, whereas previously, only counties of 100,000 people or more could charge these fees.¹³⁰ A 1990 Attorney General Opinion interpreted Fla. Stat. §327.22 to allow a municipality “to regulate vessels resident within its jurisdiction when the municipality expends money for the patrol, regulation, and maintenance of waters in the municipality,” regardless of whether the waters within the municipality’s jurisdiction were considered “waters of the state.”¹³¹ This opinion was referring to an inquiry into whether local governments could regulate vessels on a privately owned canal within their jurisdiction.¹³²

Laws of Florida, ch. 90-219 also added the following provision to Fla. Stat. § 327.40: “(3) The placement of any safety or navigation marker on state submerged lands under this section does not subject such lands to the lease requirements of chapter 253.”¹³³ This change allowed local governments to place markers approved by DNR without going through the

¹²⁷ *Id.*

¹²⁸ Laws of Florida, ch. 89-168, preamble

¹²⁹ Laws of Florida §3, ch. 90-219.

¹³⁰ Laws of Florida §1, ch. 90-219.

¹³¹ 1990 Fla. Op. Atty. Gen. 183, Fla. AGO 90-60 (1990).

¹³² *Id.*

¹³³ Laws of Florida, ch. 90-219.

process of leasing the submerged land from the state. Laws of Florida, ch. 90-219 also made several changes to Fla. Stat. § 370.12 that expand DNR’s authority pursuant to manatee protection, including expanding the times and areas in which DNR can regulate vessel speed.¹³⁴

The main channel of the Atlantic Intracoastal Waterway would no longer be exempt from DNR speed regulations to protect manatees in specified areas...DNR would now adopt rules to protect manatees in [warm water discharge areas from new power plants] for whatever period of time is necessary...DNR is authorized to adopt rules to protect manatee habitat, including seagrass beds from destruction by vessels or human activity.¹³⁵

A 1990 Florida county court case considered the meaning of “vessels engaged in the rights of navigation” from Fla. Stat. 327.60(2) and determined that a municipal ordinance establishing a 72 hour length-of-stay restriction was valid.¹³⁶ The court gave deference to Clearwater’s determination that a vessel anchored for greater than 72 hours during any thirty-day period was no longer engaged in navigation.¹³⁷ After determining that the vessel was a non-live-aboard under Fla. Stat. chapter 327, the court examined whether anchoring for more than 72 hours was “anchorage . . . in the exercise of the rights of navigation.”¹³⁸ Stating, “[n]o authority has been cited which establishes a legal time frame within which to determine when, if ever, an anchored vessel is under navigation,” the court concluded that while 72 hours “may appear unnecessarily restrictive,” the will of the legislative body should stand.¹³⁹

A 1991 court case, however, came to the opposite conclusion regarding an ordinance in Riviera Beach. The court refused to define the rights of navigation in terms of an “arbitrary time period of 72 hours,” because “[t]he length of time that a boat remains anchored may be only one

¹³⁴ Laws of Florida §5, ch. 90-219.

¹³⁵ Explanation of Proposed Committee Substitute for SB 760 (1990) (on file at the Florida State Archives, Department of State; series 18 carton 1870).

¹³⁶ *State v. Hager*, Case No. 90-19207MOANO (County Ct., Pinellas Co., Nov. 27, 1990); See See Thomas T. Ankersen & Richard Hamann, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, 24, Florida Sea Grant, TP 157 (2006).

¹³⁷ *Id.*

¹³⁸ *Id.*

*Id.*¹³⁹

criteria determining whether it is involved in navigation.”¹⁴⁰ In striking down the ordinance, the court determined that innocent boaters forced “out of necessity, weather, or unforeseen conditions” to stop for longer than 72 hours would violate the ordinance.¹⁴¹

It should be noted that in 1991, Fla. Stat. § 253.03(7)(b) was passed, authorizing the Board of Trustees to establish rules for anchoring and mooring over Florida’s sovereignty submerged lands.

With respect to administering, controlling, and managing sovereignty submerged lands, the Board of Trustees of the Internal Improvement Trust Fund also may adopt rules governing all uses of sovereignty submerged lands by vessels, floating homes, or any other watercraft, which shall be limited to regulations for anchoring, mooring, or otherwise attaching to the bottom; the establishment of anchorages; and the discharge of sewage, pumpout requirements, and facilities associated with anchorages. The regulations must not interfere with commerce or the transitory operation of vessels through navigable water, but shall control the use of sovereignty submerged lands as a place of business or residence.¹⁴²

Also in 1991, the final change to Fla. Stat. § 327.65 took place by changing Fla. Stat. § 327.65(2)(a)2. from “punishable as provided in s. 775.082, s. 775.083, or s. 775.084” to “punishable as provided in s. 775.082 or s. 775.083.”¹⁴³ This change reflected a change to Fla. Stat. 775.084, which no longer referenced misdemeanors.¹⁴⁴ From that time on Fla. Stat. §327.65 has remained unchanged.

In 1992, the Florida Legislature passed Laws of Florida, ch. 92-188. Fla. Stat. § 327.22 was amended as follows:

¹⁴⁰ *State v. Frick*, Case No. 91-6860 M0 A08 (May 28, 1991); See See Thomas T. Ankersen & Richard Hamann, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, 24, Florida Sea Grant, TP 157 (2006).

¹⁴¹ *Id.*

¹⁴² Laws of Florida § 1, ch. 91-175.

¹⁴³ Laws of Florida § 47, ch. 91-224.

¹⁴⁴ Interview with Captain Alan Richard, Assistant General Counsel, Florida Fish & Wildlife Conservation Commission, in Tallahassee, Fla. (March 3, 2008).

327.22. Regulation of vessels by municipalities or counties

(1)(a) Nothing in this chapter shall be construed to prohibit any municipality or county that expends money for the patrol, regulation, and maintenance of any lakes, rivers, or waters and for other boating-related activities in such municipality or county from regulating vessels resident in such municipality or county. Any county or municipality may adopt ordinances which provide for enforcement of noncriminal violations of s. 327.33 relating to the careless operation of a vessel which results in the endangering or damaging of property, by citation mailed to registered owner of the vessel. Any such ordinance shall apply only in designated restricted areas which are properly marked and in need of shoreline protection. Any county and the municipalities located within the county may jointly regulate vessels.

(b) Citations issued to liveried vessels pursuant to this subsection shall be the responsibility of the lessee of the vessel. It shall be the responsibility of the lessor upon request of the agency issuing the citation, to provide the name and address of the lessee. It shall be the responsibility of the livery to provide such information as a part of the rental agreement. The livery is not responsible for the payment of citations if the livery provides the required information.¹⁴⁵

This change allowed local governments to adopt ordinances to provide for the enforcement of noncriminal violations for the careless operation of boats. Representative Sanderson sponsored this act at the urging of the Ft Lauderdale Police Department.¹⁴⁶ Prior to this, no action could be taken when a vessel was operated negligently and the law enforcement operator was unable to identify the operator.¹⁴⁷ With this change in effect, law enforcement operators are now able to cite the vessel instead of the operator. It should be noted that this change allowed local governments to adopt ordinances “apply[ing] only in designated restricted areas which are properly marked and in need of shoreline protection.”¹⁴⁸ However, in Fla. Stat. § 327.33 “vessel wake and shoreline wash resulting from the reasonable and prudent operation of a vessel shall, absent negligence, not constitute damage or endangerment to property.” This inconsistency was corrected in a 2000 amendment to Fla. Stat. § 327.22.

¹⁴⁵ Laws of Florida § 1, ch. 92-188.

¹⁴⁶ House of Representatives Committee on Criminal Justice Final Bill Analysis and Economic Impact Statement for bill # CS/HB 789, 4-5 (Apr. 16, 1992) (on file at the Florida State Archives, Department of State).

¹⁴⁷ *Id.* at 4.

¹⁴⁸ Laws of Florida § 1, ch. 92-188.

A 1992 Florida Attorney General Opinion stated that a proposed ordinance requiring commercial mullet fishermen in Collier County to carry a safety permit would violate Fla. Stat § 327.22 and Fla. State § 327.60.¹⁴⁹ While “Collier County is authorized to adopt an ordinance related to the operation and equipment of vessels but such an ordinance may not require the registration of non-resident vessels.”¹⁵⁰ The Attorney General articulated that while a local government can regulate the safety equipment on vessels, it may not require permits for non-resident vessels, citing *Winter Park v. Jones*.¹⁵¹

Laws of Florida, ch. 92-188 also amended Fla. Stat. § 327.50 to require that “[e]very person under 6 years of age on board a motorboat, sailboat, or vessel which measures less than 26 feet in length shall wear a type I, II, or III Coast Guard approved personal flotation device while such motorboat, sailboat, or vessel is underway.”¹⁵² For the purposes of this provision, “underway” means “at all times except when a motorboat, sailboat, or vessel is anchored, moored, or aground.”¹⁵³ These changes were meant to make waterways safer and promote increased compliance with the rules of waterways.¹⁵⁴

Marina evacuations were addressed in 1993 in Laws of Florida, ch. 93-211, an act related to emergency preparedness.¹⁵⁵ This act established Fla. Stat. § 327.59, which was originally as follows:

(1) After June 1, 1994, marinas may not adopt, maintain, or enforce policies pertaining to evacuation of vessels which require vessels to be removed from marinas following the issuance of a hurricane watch or warning, in order to ensure that protecting the lives and safety of vessel owners is placed before interests of protecting property.

¹⁴⁹ Fla. AGO 92-88, 1992 WL 527498

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Laws of Florida § 2, ch. 92-188.

¹⁵³ *Id.*

¹⁵⁴ Final Bill Analysis and Economic Impact Statement for bill # CS/HB 789, *supra* note 139 at 5.

¹⁵⁵ Laws of Florida preamble, ch. 93-211.

(2) The Department of Insurance shall, in cooperation with the Department of Natural Resources, Boating Advisory Council, and Department of Revenue, evaluate the need for insurance programs and immunity provisions to be established to mitigate the effect of subsection (1) on marina owners and submit a report containing suggested statutory revisions, if any, to the President of the Senate, the Speaker of the House of Representatives, and the Governor by November 15, 1993.

(3) Nothing in this section may be construed to restrict the ability of an owner of a vessel or his authorized representative to remove a vessel voluntarily from a marina at any time or to restrict a marina owner from dictating the kind of cleats, ropes, fenders, and other measures that must be used on vessels as a condition of use of a marina.¹⁵⁶

Laws of Florida, ch. 93-213 created the Florida Department of Environmental Protection

(DEP).¹⁵⁷ All legal authority and responsibilities of the DNR and Department of Environmental Regulation were transferred to DEP.¹⁵⁸ Section 14 of this act directed that Florida statutes conform to this grant of authority.¹⁵⁹

In 1994, the Florida Clean Vessel Act was passed.¹⁶⁰ This enacted Fla. Stat. § 327.53, which contained, in part, the following provisions:

(1) Every vessel 26 feet or more in length which has an enclosed cabin with berthing facilities shall, while on the waters of the state, be equipped with a toilet. On a vessel other than a houseboat, the toilet may be portable or permanently installed. Every permanently installed toilet shall be properly attached to the appropriate United States Coast Guard certified or labeled marine sanitation device.

(2)(a) Every houseboat shall be equipped with at least one permanently installed toilet which shall be properly connected to a United States Coast Guard certified or labeled Type III marine sanitation device. . .

(3) Every floating structure that has an enclosed living space with berthing facilities, or working space with public access, must be equipped with a permanently installed toilet properly connected to a Type III marine sanitation device or permanently attached via plumbing to shoreside sewage disposal. No structure shall be plumbed so as to permit the discharge of sewage into the waters of the state.

¹⁵⁶ Laws of Florida § 22, ch. 93-211.

¹⁵⁷ Laws of Florida § 3, ch. 93-213.

¹⁵⁸ *Id.*

¹⁵⁹ Laws of Florida § 14, ch. 93-213.

¹⁶⁰ Laws of Florida § 1, ch. 94-241.

(4)(a) Raw sewage shall not be discharged from any vessel, including houseboats, or any floating structure in Florida waters. The operator of any vessel which is plumbed so that a toilet may be flushed directly into the water or so that a holding tank may be emptied into the water shall, while the vessel is on the waters of the state, set the valve or other mechanism directing the sewage so as to prevent direct discharge and lock or otherwise secure the valve so as to prevent resetting...

(5) Every vessel owner, operator, and occupant shall comply with United States Coast Guard regulations pertaining to marine sanitation devices and with United States Environmental Protection Agency regulations pertaining to areas in which the discharge of sewage, treated or untreated, is prohibited.

(7) Any vessel or floating structure operated or occupied on the waters of the state in violation of this section is declared a nuisance and a hazard to public safety and health.¹⁶¹

Prior to this act, the only mention of marine sanitation equipment in Fla. Stat. ch. 327 was in Fla. Stat. § 327.56, Safety and Marine Sanitation Equipment Inspections; Qualified, passed by 59-400.¹⁶² The Florida Clean Vessel Act also changed references to the DNR in Fla. Stat. § 327.02 to the Department of Environmental Protection (DEP).¹⁶³ Another 1994 act, Laws of Florida ch. 94-356 changed additional DNR references to DEP in Fla. Stat. § 327.02.¹⁶⁴ Fla. Stat. § 327.41 was also amended at that time, changing the DNR references to DEP and removing the following subsection which was passed with the original statute in 1972:

(5) All regulatory markers in, on, or over the Florida Intracoastal Waterway in place on December 1, 1972, which were not placed pursuant to a permit issued by the Division of Marine Resources or which do not comply with the standards adopted by the Department of Natural Resources shall be declared a nuisance. The Division of Marine Resources shall have the authority to direct immediate removal of any regulatory marker in violation of this section.¹⁶⁵

This provision was likely removed because it had served its purpose and was no longer necessary.

¹⁶¹ Laws of Florida § 5, ch. 94-241.

¹⁶² Originally Fla. Stat. § 371.58.

¹⁶³ Laws of Florida § 2, ch. 94-241.

¹⁶⁴ Laws of Florida § 152, ch. 94-356.

¹⁶⁵ Laws of Florida § 158, ch. 94-356.

In 1995, Fla. Stat. § 327.59(2) was repealed because it was also “a provision which has served its purpose.”¹⁶⁶ That subsection originally required compliance with certain marine sanitation requirements by a certain date. Fla. Stat § 327.02, § 327.50, §327.56, § 372.59, § 327.73, and § 327.74 were among the provisions amended by Laws of Florida ch. 95-148 to make them gender neutral.¹⁶⁷ Another 1995 amendment redefined “houseboat” in Fla. Stat. 327.02 to “any vessel which is used primarily as a residence for a minimum of 21 days during any 30-day period, in a county of this state, and this residential use of the vessel is to the preclusion of the use of the vessel as a means of transportation.”¹⁶⁸

In 1996 in an act related to aquaculture, subsection (5) was added to Fla. Stat. § 327.41.

(5) Aquaculture leaseholds shall be marked as required by this section, and the department may approve alternative marking requirements as a condition of the lease pursuant to s. 253.68. The provisions of this section notwithstanding, no permit shall be required for the placement of markers required by such a lease.¹⁶⁹

This provision remains substantially unchanged today. Another act in 1996 terminated the Motorboat Revolving Trust Fund and created the Marine Resources Conservation Trust Fund.¹⁷⁰

This change affected Fla. Stat. § 327.53, replacing “Motorboat Revolving Trust Fund” with “Marine Resources Conservation Trust Fund.”¹⁷¹

In 1998, the Kelly Johnson Act was passed, named after a girl who was killed in a boating accident. The man who was driving the vessel was drunk; however, when the accident occurred, he had left the helm and stepped to the back of the boat.¹⁷² Because he was not at the

¹⁶⁶ Laws of Florida § 11, ch. 95-146.

¹⁶⁷ See Laws of Florida ch. 95-148.

¹⁶⁸ Laws of Florida § 1, ch. 95-333.

¹⁶⁹ Laws of Florida § 9, ch. 96-247.

¹⁷⁰ Laws of Florida § 17, ch. 96-321.

¹⁷¹ Laws of Florida § 19, ch. 96-321.

¹⁷² Interview with Captain Alan Richard, Assistant General Counsel, Florida Fish & Wildlife Conservation Commission, in Tallahassee, Fla. (February 7, 2008).

helm at the time of the accident, he could not be prosecuted for drunk driving.¹⁷³ Thus, the Kelly Johnson Act changed the definition of “operate” in Fla. Stat. 327.02.

"Operate" means to be in charge of or in command of or in the actual physical control of a vessel upon the waters of this state, or to exercise control over or to have responsibility for a vessel's navigation or safety while the vessel is underway upon the waters of this state, or to control or steer a vessel being towed by another vessel upon the waters of the state; provided, however, that this definition shall not apply to a person on a vessel that is docked or otherwise made fast to the shore and shall not apply to a vessel owner or operator who designates a driver pursuant to s. 327.35.¹⁷⁴

This act also amended various other provisions dealing with boating under the influence and alcohol testing. Fla. Stat. 327.50 also underwent the following changes:

- (1) (a) The owner and operator of every vessel on the waters of this state shall carry, store, maintain, and use safety equipment in accordance with current United States Coast Guard safety equipment requirements as specified in the Code of Federal Regulations, unless expressly exempted by the department state law.
(b) No person shall operate a vessel less than 26 feet in length on the waters of this state unless every person under 6 years of age on board the a motorboat, sailboat, or vessel is wearing which measures less than 26 feet in length shall wear a type I, type II, or type III Coast Guard approved personal flotation device while such motorboat, sailboat, or vessel is underway. For the purpose of this section, "underway" shall mean at all times except when a motorboat, sailboat, or vessel is anchored, moored, made fast to the shore, or aground.
- (2) No person shall operate a vessel on the waters of this state unless said vessel is equipped with properly serviceable Every vessel on the waters of this state shall display the lights and shapes required by the navigation rules.
- (3) The use of sirens or flashing, occulting, or revolving red or blue emergency lights on any vessel is prohibited, except as expressly provided in the navigation rules or annexes thereto on a vessel operated by a law enforcement officer or fire protection officer in the performance of his or her official duties or on a vessel engaged in emergency rescue activity.

In 1999, several statutes in Fla. Stat. chapter 327 were amended. In Fla. Stat. § 327.02, “Commission” was added to the definitions, meaning the Florida Fish and Wildlife Conservation

¹⁷³ *Id.*

¹⁷⁴ Laws of Florida § 1, ch. 98-308.

Commission (FWC).¹⁷⁵ Additionally the definition of “Department” was amended so that throughout chapter 327, references to the Department refer to the Department of Law Enforcement of FWC, whereas before they referred to DEP.¹⁷⁶ Fla. Stat. § 327.41 was amended, transferring the DEP’s authority to FWC and adding “(6) The commission is authorized to adopt rules pursuant to chapter 120 to implement the provisions of this section.” Fla. Stat. § 327.41(6) has not changes since this amendment.¹⁷⁷ Fla. Stat. § 327.46(1) was also amended, transferring the authority to create restricted areas from DEP to FWC.¹⁷⁸ Fla. Stat. § 327.70 was amended transferring the authority to enforce chapter 327 to FWC.¹⁷⁹ Authority and responsibility for uniform boating citations were also transferred to FWC in amendments to Fla. Stat. 327.74.¹⁸⁰

Later in 1999, laws dealing with boat registration were moved from chapter 327 to chapter 328. The title of chapter 327 was amended to “Florida Vessel Safety Law” and chapter 328 was entitled “Vessels; title certificates; liens” and contained a section specific to vessel registration.¹⁸¹ The ability of counties to impose annual registration fees was removed completely from the Fla. Stat § 327.22 (1999) and moved to Fla. Stat. 328.66 (1999),¹⁸² however, the language granting local governments the authority to regulate “vessels resident”

¹⁷⁵ Laws of Florida §19, ch 99-245. Section 89 of this amendment renumbered these new definitions and repealed then subsection (6). *See* Laws of Florida §89, ch. 99-245.

¹⁷⁶ *Id.*

¹⁷⁷ Laws of Florida § 25, ch. 99-245.

¹⁷⁸ Laws of Florida § 27, ch. 99-245.

¹⁷⁹ Laws of Florida § 30, ch. 99-245.

¹⁸⁰ Laws of Florida § 33, ch. 99-245.

¹⁸¹ *See* Laws of Florida §5, ch. 99-289, Laws of Fla. (amending Fla. Stat. 327.01 to read: This chapter shall be known as the “Florida Vessel-Registration and Safety Law.”); *See* Laws of Florida §1, ch. 99-289 (creating “Chapter 328, Florida Statutes, consisting of ss. 328.01 through 328.30, Florida Statutes, is designated as part I of said chapter and entitled ‘Vessels; title certificates; liens.’”).

¹⁸² Laws of Florida, § 21, ch. 99-289 removed sections (2) and (3) of 327.22 and Laws of Florida, § 22, ch. 99-289 moved this language to Fla. Stat. 328.66. This change was part of efforts to move laws involving vessel registration from chapter 327 to chapter 328. *See* Laws of Florida §5, ch. 99-289, Laws of Fla. (amending Fla. Stat. 327.01 to read: This chapter shall be known as the “Florida Vessel-Registration and Safety Law.”)

remained in Fla. Stat § 327.22 (1999). Removal of laws from chapter 327 to 328 affected cross-references in Fla. Stat. § 327.53, Fla. Stat. § 327.60, Fla. Stat. § 327.73, among others.¹⁸³

e. Recent History: from 2000 to 2007

Laws of Florida ch. 2000-158 repealed subsections (2)(b) and (8) of Fla. Stat. § 327.53.¹⁸⁴ Prior to this, those subsections had not changed since passage in 1994, and were as follows:

(2)(b) A houseboat on which a Type I marine sanitation device was installed before January 30, 1980, need not install a Type III device until October 1, 1996. A houseboat on which a Type II marine sanitation device was installed before July 1, 1994, need not install a Type III device until October 1, 1996.

(8) Any not-for-profit corporation that is organized and existing under the laws of the state and that possesses a valid exemption from federal income taxation under s. 501(c)(3) of the United States Internal Revenue Code received prior to January 1, 1994, shall have until October 1, 1998, to comply with the provisions of this section.¹⁸⁵

These provisions were repealed because the deadlines contained in them had already passed.¹⁸⁶

Laws of Florida ch. 2000-362 made various changes to Fla. Stat. chapter 327 amending the responsibilities of the FWC.¹⁸⁷ Significant changes were also made to the definitions section of ch. 327, Fla. Stat. ch. 327.02. The term “recreational vessel” was added and defined as “any vessel (a) Manufactured and used primarily for noncommercial purposes; or (b) Leased, rented, or chartered to a person for the person's noncommercial use.”¹⁸⁸ Subsection (b) of the definition of “commercial vessel” in Fla. Stat. 327.02 was amended as follows: “Any other vessel, except a recreational vessel as defined in this section ~~engaged in any activity wherein a fee is paid by the~~

¹⁸³ Laws of Florida § 29-31, ch. 99-289.

¹⁸⁴ Laws of Florida § 49, ch. 2000-158.

¹⁸⁵ Laws of Florida § 5, ch. 94-241.

¹⁸⁶ Laws of Florida § 49, ch. 2000-158.

¹⁸⁷ Laws of Florida preamble, ch. 2000-362.

¹⁸⁸ Laws of Florida § 2, ch. 2000-362.

user, either directly or indirectly, to the owner, operator, or custodian of the vessel.”¹⁸⁹ The terms “livery vessel” and “marker” were also added with their current definitions.¹⁹⁰

"Marker" means any channel mark or other aid to navigation, information or regulatory mark, isolated danger mark, safe water mark, special mark, inland waters obstruction mark, or mooring buoy in, on, or over the waters of the state or the shores thereof, and includes, but is not limited to, a sign, beacon, buoy, or light.¹⁹¹

At the same time this definition was added, the term “regulatory marker” was removed.¹⁹² It was previously defined as

any anchored or fixed marker in, on, or over the water, or anchored platform on the surface of the water, other than a marker provided in s. 327.40, and includes, but is not limited to, a bathing beach marker, speed zone marker, information marker, restricted zone marker, congested area marker, or warning marker.¹⁹³

The definition of motorboat was amended to its current form. “‘Motorboat’ means any vessel equipped with machinery for propulsion, irrespective of whether the propulsion machinery is in actual operation ~~which is propelled or powered by machinery and which is used or capable of being used as a means of transportation on water.~~”¹⁹⁴ The definition of “operate” was amended to remove the following sentence from the Kelly Johnson Act: “however, that this definition shall not apply to a person on a vessel that is docked or otherwise made fast to the shore and shall not apply to a vessel owner or operator who designates a driver pursuant to s. 327.35.”¹⁹⁵

This sentence was originally added to prevent people who are drinking on a docked vessel from

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

being charged with boating under the influence; however, it's placement in the definitions section made this exception apply to all of chapter 327, which had unintended consequences.¹⁹⁶

In 2000, Fla. Stat. § 327.40 underwent several significant changes. Subsection (1) was amended as follows:

(1) Waterways in Florida, ~~unmarked by the Coast Guard,~~ which need marking for safety or navigation purposes, shall be marked under the United States Aids to Navigation System, 33 C.F.R. part 62. Until December 31, 2003, channel markers and obstruction markers conforming to the Uniform State Waterway Marking System, 33 C.F.R. subpart 66.10, may continue to be used on waters of this state that are not navigable waters of the United States. ~~Uniform Safety and Navigation System adopted by the advisory panel of state officials to the Merchant Marine Council of the United States Coast Guard.~~¹⁹⁷

The Uniform Safety and Navigation system, whose reference was removed by these changes, was long defunct, and this change merely updated the statute to reflect this change.¹⁹⁸ Fla. Stat. §327.40(2) underwent the following alterations:

(2) (a) Application for marking inland lakes and state waters and any navigable waters under concurrent jurisdiction of the Coast Guard and the division shall be made to the division, accompanied by a map locating the approximate placement of markers, a list of the markers to be placed, a statement of the specification of the markers, a statement ~~of concerning~~ the purpose of marking, and the names of persons responsible for the placement and upkeep of such markers. The division will assist the applicant to secure the proper permission from the Coast Guard where required, make such investigations as needed, and issue a permit. The division shall furnish the applicant with the information concerning the system adopted and the rules regulations existing for placing and maintaining the ~~uniform safety and navigation~~ markers. The division shall keep records of all approvals given and counsel with individuals, counties, municipalities, motorboat clubs, or other groups desiring to mark waterways for safety and navigation purposes in Florida.

Prior to this change, “a list of the markers to be placed [and] a statement of the specification of the markers” were information required in the application but not by statute, and the provision

¹⁹⁶ Interview with Captain Alan Richard, Assistant General Counsel, Florida Fish & Wildlife Conservation Commission, in Tallahassee, Fla. (February 7, 2008).

¹⁹⁷ Laws of Florida § 14, ch. 2000-362.

¹⁹⁸ Interview with Captain Alan Richard, Assistant General Counsel, Florida Fish & Wildlife Conservation Commission, in Tallahassee, Fla. (March 3, 2008).

was merely amended to include all required information.¹⁹⁹ Subsection (2)(b) was also added as follows: “No person or municipality, county, or other governmental entity shall place any safety or navigation markers in, on, or over the waters or shores of the state without a permit from the division.”²⁰⁰ This change made the violation clear, even though prior to this local governments were required to obtain a permit.²⁰¹ Subsection (c) was also added. “The commission is authorized to adopt rules pursuant to chapter 120 to implement this section.”²⁰² This subsection assured that FWC had explicit rule-making authority regarding this subsection.²⁰³

Fla. Stat. § 327.41 also underwent important changes through this 2000 amendment.

Subsection (1) was amended as follows:

(1) The ~~Fish and Wildlife Conservation~~ commission shall adopt rules ~~and regulations~~ pursuant to chapter 120 establishing a uniform system of regulatory markers for the waters of the state Florida Intra-coastal Waterway, 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, ~~and shall give due regard to the System of Uniform Waterway Markers approved by the Advisory Panel of State Officials to the Merchant Marine Council, United States Coast Guard.~~²⁰⁴

Although FWC had already been using uniform markers, this change made the requirement explicit.²⁰⁵ Fla. Stat. §327.41(2) was amended as follows:

¹⁹⁹ Interview with Captain Alan Richard, Assistant General Counsel, Florida Fish & Wildlife Conservation Commission, in Tallahassee, Fla. (March 3, 2008).

²⁰⁰ Laws of Florida § 14, ch. 2000-362.

²⁰¹ Interview with Captain Alan Richard, Assistant General Counsel, Florida Fish & Wildlife Conservation Commission, in Tallahassee, Fla. (March 3, 2008).

²⁰² Laws of Florida § 14, ch. 2000-362.

²⁰³ Interview with Captain Alan Richard, Assistant General Counsel, Florida Fish & Wildlife Conservation Commission, in Tallahassee, Fla. (March 3, 2008).

²⁰⁴ Laws of Florida § 15, ch. 2000-362.

²⁰⁵ Interview with Captain Alan Richard, Assistant General Counsel, Florida Fish & Wildlife Conservation Commission, in Tallahassee, Fla. (March 3, 2008).

(2) Any county or municipality which has been granted a restricted area designation, pursuant to s. 327.46, for a portion of the Florida Intracoastal Waterway within its jurisdiction or which has adopted a restricted area by ordinance pursuant to s. 327.22, s. 327.60, or s. 370.12(2)(o), or any other governmental entity which has legally established a restricted area, may apply to the ~~Fish and Wildlife Conservation~~ commission for permission to place regulatory markers within the restricted area.

This allows a local government to request regulatory markers for restricted areas related to its own residents, safety, or manatee protection.²⁰⁶ Fla. Stat. § 327.41(3) was changed as follows:

(3) Application for placing regulatory markers in the waters of the state ~~on the Florida Intracoastal Waterway~~ shall be made to the division as provided in s. 327.40 of Marine Resources, ~~accompanied by a map locating the approximate placement of the markers, a statement of the specification of the markers, a statement of purpose of the markers, and a statement of the city or county responsible for the placement and upkeep of the markers.~~²⁰⁷

The change to subsection (3) updated the statute to allow FWC to determine the information that should be included in the application. One important change to this statute is that it expands the FWC's authority to regulate the placing of uniform regulatory markers from the ICW to "the waters of the state."²⁰⁸ From the original passage of Fla. Stat. § 327.41 in 1972 until this amendment in 2000, agency authority over waterway markers only extended to the ICW. Laws of Florida, ch. 2000-362 made this change evident in the following amendment to Fla. Stat. § 327.41(4): "No person or municipality, county, or other governmental entity shall place any regulatory markers in, on, or over the in the waters of the state or the shores thereof ~~on the Florida Intracoastal Waterway~~ without a permit from the division pursuant to s. 327.40 of Marine Resources."²⁰⁹

²⁰⁶ See Fla. Stat. § 327.22; See Fla. Stat. § 327.60; See Fla. Stat. § 370.12(2)(o).

²⁰⁷ Laws of Florida § 15, ch. 2000-362.

²⁰⁸ *Id.*

²⁰⁹ *Id.*

Fla. Stat. §327.46 underwent amendments clarifying the language and removing redundancies. Fla. Stat. §327.46(2) was split into two subsections as follows:

(2) It is unlawful for any person to operate a vessel in a prohibited manner or to carry on any prohibited activity, as defined in this chapter, deemed a safety hazard or interference with navigation as provided above within a restricted water area which has been clearly marked by regulatory markers ~~buoys or some other distinguishing device as a bathing or otherwise restricted area in accordance with and marked~~ as authorized under this chapter; ~~provided, that~~

(3) This section shall not apply in the case of an emergency or to a law enforcement, firefighting, patrol or rescue vessel owned or operated by a governmental entity craft.²¹⁰

Fla. Stat. § 327.53(2)(b) (2000), which had become obsolete, was abolished. That subsection was previously as follows:

(b) A houseboat on which a Type I marine sanitation device was installed before January 30, 1980, need not install a Type III device until October 1, 1996. A houseboat on which a Type II marine sanitation device was installed before July 1, 1994, need not install a Type III device until October 1, 1996.²¹¹

Fla. Stat. § 327.60(1) was amended by adding that “[a]ny ordinance or local law which has been adopted pursuant to this section or to any other state law may not discriminate against personal watercraft as defined in s. 327.02.”²¹² This change was in response to *Lee County v. Lippi*, in which the Florida Court of Appeals for the Second District held that an ordinance regulating the use of personal watercraft did not conflict with State law.²¹³

The 2001 court case *Florida, Board of Trustees v. Day Cruise Association* invalidated a proposed rule “that would forbid the use of sovereignty submerged lands for mooring or anchoring cruise ships bound offshore primarily so their passengers could gamble (legally) on

²¹⁰ Laws of Florida § 16, ch. 2000-362.

²¹¹ Laws of Florida § 18, ch. 2000-362.

²¹² Laws of Florida § 20, ch. 2000-362.

²¹³ Interview with Captain Alan Richard, Assistant General Counsel, Florida Fish & Wildlife Conservation Commission, in Tallahassee, Fla. (March 3, 2008); *Lee County v. Lippi*, 662 So.2d 1304 (1995) (Fla.2d DCA Oct. 25, 1995).

the high seas, as well as for mooring or anchoring vessels used to ferry passengers to or from such cruise ships.”²¹⁴ The wording for the proposed rule was as follows:

The use of sovereign submerged lands for the anchoring or mooring of vessels used primarily for the purposes of gambling shall be prohibited when such vessels are engaged in "cruises to nowhere," where the vessels leave and return to the State of Florida without an intervening stop within another state or foreign country, or waters within the jurisdiction of another state or foreign country. This prohibition also applies to any vessel used to carry passengers to, or from, "cruises to nowhere.”²¹⁵

The court invalidated this proposed rule because the Board of Trustees enabling legislation “qualifies the grant of rulemaking authority in ways that are incompatible with adoption of the proposed rule.”²¹⁶ The Trustee’s rules "must not interfere with commerce or the transitory operation of vessels through navigable water.”²¹⁷ The court reasoned that “[n]othing [in Fla. Stat. § 253.03(7)(b)] authorizes the Trustees to promulgate a rule prohibiting the use of sovereignty submerged lands on account of lawful activities on board ships at sea which have no physical or environmental effect on sovereignty submerged lands or adjacent waters.”²¹⁸

In 2004, Fla. Stat. § 327.461, Safety Zones, Security Zones, Regulated Navigation Areas, and Naval Vessel Protection Zones; Prohibited Entry, Penalties was created by Laws of Florida 2004-74.²¹⁹ The statute has not been amended since.

2005 legislation established a permit system through DEP for managed anchoring and mooring fields. That act added the following subsection to Fla. Stat. § 373.118:

²¹⁴ *Florida, Board of Trustees v. Day Cruise Association*, 794 So. 2d 696 (2001) (1d Fla. DCA, September 13, 2001).

²¹⁵ *Id.* (citing Proposed Rule 18-21.004(1)(i)).

²¹⁶ *Id.*

²¹⁷ Fla. Stat. § 253.03(7)(b) (1999).

²¹⁸ *Florida, Board of Trustees v. Day Cruise Association*, 794 So. 2d 696 (2001) (1d Fla. DCA, September 13, 2001).

²¹⁹ Laws of Florida § 4, 2004-74.

(5) The department shall adopt by rule one or more general permits for local governments to construct, operate, and maintain public marina facilities, public mooring fields, public boat ramps, including associated courtesy docks, and associated parking facilities located in uplands. Such general permits adopted by rule shall include provisions to ensure compliance with part IV of this chapter, subsection (1), and the criteria necessary to include the general permits in a state programmatic general permit issued by the United States Army Corps of Engineers under s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq. A facility authorized under such general permits is exempt from review as a development of regional impact if the facility complies with the comprehensive plan of the applicable local government. Such facilities shall be consistent with the local government manatee protection plan required pursuant to chapter 370 and shall obtain Clean Marina Program status prior to opening for operation and maintain that status for the life of the facility. Marinas and mooring fields authorized under any such general permit shall not exceed an area of 50,000 square feet over wetlands and other surface waters. All facilities permitted under this section shall be constructed, maintained, and operated in perpetuity for the exclusive use of the general public. The department shall initiate the rulemaking process within 60 days after the effective date of this act.²²⁰

Another amendment in 2005 explicitly exempted informational markers from Fla. Stat. § 327.40 by adding the following subsection:

(b)2. The placement of informational markers, including, but not limited to, markers indicating end of boat ramp, no swimming, swimming area, lake name, trash receptacle, public health notice, or underwater hazard and canal, regulatory, emergency, and special event markers, by counties, municipalities, or other governmental entities on inland lakes and their associated canals are exempt from permitting under this section. Such markers, excluding swimming area and special event markers, may be no more than 50 feet from the normal shoreline.²²¹

A 2005 Attorney General Opinion stated that local governments are “prohibited from adopting an ordinance creating a boating restricted area near residential properties for the purpose of vessel noise abatement outside of the specific grant of authority provided in Chapter 327.”²²² The FWC’s regulations states that “pursuant to Sections 327.22, 327.60 and 370.12, F.S., [regulatory markers for restricted areas] are authorized only for the purposes of protecting

²²⁰ Fla. Stat. § 373.118(5) (2007); Laws of Florida § 6, ch. 2005-158.

²²¹ Laws of Florida § 1, 2005-217.

²²² Fla. AGO 2005-58, 2005 WL 3121419 (2005).

human life and limb, vessel traffic safety and maritime property, and manatees.”²²³ Fla. Sta. §327.60(1) allows local ordinances related to vessel operation and equipment “only when they are not in conflict with this chapter or any amendments thereto or regulations thereunder.”²²⁴ Local governments cannot adopt ordinances enacting noise abatement restricted areas because noise abatement is not specifically authorized purpose for restricted areas.²²⁵

In 2005, the US Supreme Court decided a case relating to the definition of a vessel. In *Stewart v. Dutra*, the Court considered whether a dredge, which had certain characteristics of a vessel, “such as a captain and crew, navigational lights, ballast tanks, and a crew dining area,” but with only limited means of self-propulsion, is a vessel for the purposes of the Jones Act.²²⁶ While the dredge could move short distances by manipulating its cables, it was towed when traveling more substantial distances.²²⁷ Despite the requirement applied in previous cases that a vessel be “in navigation” to be considered a vessel, the Court held that the dredge was a vessel because it was “used, or capable of being used, as a means of transportation on water...not requir[ing] that a watercraft be used *primarily* for that purpose.”²²⁸ While this case decided questions related to Federal admiralty law, the Court’s interpretation of the definition of a vessel may be applicable to state law as well.

In 2006, legislation was passed regarding airboats. The following definitions were added to Fla. Stat. § 327.02:

(1) "Airboat" means a vessel that is primarily designed for use in shallow waters and powered by an internal combustion engine with an airplane-type propeller mounted above the stern and used to push air across a set of rudders.

²²³ *Id* (citing Fla. Admin. Code Ann. r. 68D-23.101(1)(d)).

²²⁴ *Id* (citing Fla. Sta. §327.60(1) (2007)).

²²⁵ *Id.*

²²⁶ *Stewart v. Dutra Construction Co.*, 543 US 481, 484 (2005).

²²⁷ *Id.*

²²⁸ *Id.* at 495, 496.

(24) "Muffler" means an automotive-style sound-suppression device or system designed to effectively abate the sound of exhaust gases emitted from an internal combustion engine and prevent excessive sound when installed on such an engine.²²⁹

Fla. Stat. § 327.391 was created by this act. It was originally as follows:

327.391. Airboats regulated

(1) The exhaust of every internal combustion engine used on any airboat operated on the waters of this state shall be provided with an automotive-style factory muffler, underwater exhaust, or other manufactured device capable of adequately muffling the sound of the exhaust of the engine as described in s. 327.02(24). The use of cutouts or flex pipe as the sole source of muffling is prohibited, except as provided in subsection (4). Any person who violates this subsection commits a noncriminal infraction punishable as provided in s. 327.73(1).

(2) An airboat operator cited for an infraction of subsection (1) may not operate the airboat until a muffler as defined in s. 327.02 is installed.

(3) An airboat may not operate on the waters of the state unless it is equipped with a mast or flagpole bearing a flag at a height of at least 10 feet above the lowest portion of the vessel. The flag must be square or rectangular, at least 10 inches by 12 inches in size, international orange in color, and displayed so that the visibility of the flag is not obscured in any direction. Any person who violates this subsection commits a noncriminal infraction punishable as provided in s. 327.73(1).

(4) This section does not apply to a person participating in an event for which a permit is required, or of which notice must be given, under s. 327.48.²³⁰

This act also added the following provision to Fla. Stat. § 327.60(1): "Effective July 1, 2006, any ordinance or local law adopted pursuant to this section or any other state law may not discriminate against airboats except by a two-thirds vote of the governing body enacting such ordinance."²³¹

Later amendments in 2006 affected several statutes including Fla. Stat. § 327.56, Fla. Stat. § 327.59 and Fla. Stat. § 327.60. Fla. Stat. § 327.59(2) regarding marina evacuations was amended by adding the following provision:

²²⁹ Laws of Florida § 1, 2006-172.

²³⁰ Laws of Florida § 2, 2006-172.

²³¹ Laws of Florida § 3, 2006-172.

After a tropical storm or hurricane watch has been issued, a marina owner or operator, or an employee or agent of such owner or operator, may take reasonable actions to further secure any vessel within the marina to minimize damage to a vessel and to protect marina property, private property, and the environment and may charge a reasonable fee for such services.²³²

Additionally, subsections (3) and (4) were added to this statute as follows:

(3) Notwithstanding any other provisions of this section, in order to minimize damage to a vessel and to protect marina property, private property, and the environment, a marina owner may provide by contract that in the event a vessel owner fails to promptly remove a vessel from a marina after a tropical storm or hurricane watch has been issued, the marina owner, operator, employee, or agent may remove the vessel, if reasonable, from its slip or take whatever reasonable actions are deemed necessary to properly secure a vessel to minimize damage to a vessel and to protect marina property, private property, and the environment and may charge the vessel owner a reasonable fee for any such services rendered. In order to add such a provision to a contract, the marina owner must provide notice to the vessel owner in any such contract in a font size of at least 10 points and in substantially the following form:

The undersigned hereby informs you that in the event you fail to remove your vessel from the marina promptly (timeframe to be determined between the marina owner or operator and the vessel owner) after the issuance of a tropical storm or hurricane watch for (insert geographic area), Florida, under Florida law, the undersigned or his or her employees or agents are authorized to remove your vessel, if reasonable, from its slip or take any and all other reasonable actions deemed appropriate by the undersigned or his or her employees or agents in order to better secure your vessel and to protect marina property, private property, and the environment. You are further notified that you may be charged a reasonable fee for any such action.

(4) A marina owner, operator, employee, or agent shall not be held liable for any damage incurred to a vessel from storms or hurricanes and is held harmless as a result of such actions. Nothing in this section may be construed to provide immunity to a marina operator, employee, or agent for any damage caused by intentional acts or negligence when removing or securing a vessel as permitted under this section.²³³

Fla. Stat. § 327.60(2) was amended by Laws of Florida, ch. 2006-309 as follows:

²³² Laws of Florida § 2, ch. 2006-309.

²³³ *Id.*

(2) Nothing contained in the provisions of this section shall be construed to prohibit local governmental authorities from the enactment or enforcement of regulations which prohibit or restrict the mooring or anchoring of floating structures or live-aboard vessels within their jurisdictions or of any vessels within the marked boundaries of mooring fields permitted as provided in s. 327.40. However, local governmental authorities are prohibited from regulating the anchoring outside of such mooring fields anchorage of non-live-aboard vessels ~~engaged in the exercise of rights of navigation.~~²³⁴

No changes have been made to the relevant sections of Fla. Stat. ch. 327 during 2007. However, a 2007 court case interpreted this new version of Fla. Stat. § 327.60(2) to disallow a Marco Island ordinance that prohibits anchoring for more than twelve hours within 300 feet of shore.²³⁵ The court refused to accept the city’s contention that such a vessel would not be “in navigation” because such an interpretation would render the second sentence of Fla. Stat. § 327.60(2) meaningless.²³⁶ There would be no reason to prohibit local governments from regulating the anchoring of non-live-aboard vessels in navigation if anchored vessels are not considered to be “in navigation.” The court interpreted Fla. Stat. § 327.60(2) to expressly prohibit “*any* local regulation regarding non-live-aboard vessels outside mooring fields.”²³⁷

²³⁴ Laws of Florida § 3, 2006-309.

²³⁵ *City of Marco Island v. Dumas*, No. 07-81-MOA-RC, 7 (Collier County, Fla., October 25, 2007) (granting in part motion to declare ordinance unconstitutional).

²³⁶ *Id.*

²³⁷ *Id.* at 8.

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