

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2664

SPONSOR: Natural Resources Committee and Senator Smith

SUBJECT: Vessel Safety

DATE: April 19, 2004

REVISED: 04/20/04 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Molloy</u>	<u>Kiger</u>	<u>NR</u>	<u>Fav/CS</u>
2.	<u>Dodson</u>	<u>Skelton</u>	<u>HP</u>	<u>Favorable</u>
3.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/1 amendment</u>
4.	_____	_____	<u>AGG</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	_____	_____

## I. Summary:

Committee Substitute (CS) for Senate Bill 2664 authorizes the operation of law enforcement vehicles without the display of lighted lamps under certain conditions. The threshold for owners or operators of vessels to report damage to vessels or property resulting from boating accidents is raised from \$500 to \$2,000. The threshold at which law enforcement officers who investigate a boating accident resulting in damage to vessels or other property must forward a written report of the investigation to the Division of Law Enforcement (division) at the Fish and Wildlife Conservation Commission (FWCC) within 24 hours is also raised from \$500 to \$2,000. If a vessel is leased, rented, or chartered at the time of an accident, the person offering the vessel for lease, rent, or charter is responsible for reporting accidents involving damage to the vessel or other property.

The CS authorizes state and local law enforcement personnel to operate in federally designated safety zones, security zones, regulated navigation areas, or naval vessel protection zones if necessary to augment federal law enforcement efforts and if there is a compelling need to protect the residents and infrastructure of the state. The federal government's requests for enforcement assistance must be made to the Florida Department of Law Enforcement (FDLE) through the Florida Mutual Aid Plan established in s. 23.1231, F.S.

The CS provides that persons may not operate a vessel, or authorize the operation of a vessel within the federally designated exclusion areas, and creates misdemeanor and felony penalties for persons violating provisions of the CS relating to those federally designated areas. Law enforcement officers are provided with authority to arrest persons without a warrant when there is probable cause to believe that a person has committed a violation of a federally designated safety zone, security zone, regulated navigation area, or naval vessel protection zone.

This CS substantially amends ss. 316.217, 327.301, 327.35215, 327.731, and 901.15, F.S., and creates s. 327.461, F.S.

## II. Present Situation:

**Lighted Lamps on vehicles** - Section 316.217, F.S., provides that every vehicle operated upon a highway within the state shall display lighted lamps and illuminating devices at any time from sunset to sunrise, including the twilight hours, and during any rain, smoke, or fog. The statutes do not contain an exemption from the lighting requirements for law enforcement officers.

According to the FWCC's *Commission Approved Legislative Proposals 2004 Session*, federal, state, and local law enforcement officers operate without headlights to conduct investigations and apprehend violators and as a matter of safety when an officer is approaching a potentially dangerous situation. The FWCC "currently prohibits the use of vehicles at night without full compliance with the laws addressing vehicle lighting" but also states that "operating without headlights is especially useful for patrol operations due to the unique nature of conservation law enforcement. FWCC law enforcement patrols are conducted on large, rural, unlighted land and water areas. The use of headlights when approaching potential criminal activities places the officer at a tactical disadvantage while greatly impeding the ability of officers to apprehend violators and discover criminal acts."

**Federally designated exclusion areas** - Federally designated safety zones, security zones, regulated navigation areas, and naval vessel protection areas are provided for in Title 33, Code of Federal Regulations (C.F.R.), part 165.

- A safety zone is a water area, shore area, or water and shore area to which, for safety or environmental purposes, access is limited to authorized persons, vehicles, or vessels. It can be stationary and described by fixed limits, or it may be described as a zone around a vessel in motion.
- A security zone is an area of land, water, or land and water which is so designated by the Captain of the Port or District Commander for as long as is necessary to prevent damage or injury to any vessel or waterfront facility, and to safeguard ports, harbors, territories, or waters of the United States from destruction, loss or injury from sabotage, or other subversive acts or accidents.
- A regulated navigation area is a water area within a defined boundary for which vessel navigation regulations are established under 33 C.F.R. part 165.
- A naval vessel protection zone is a 500-yard regulated area of water surrounding large U.S. naval vessels that is necessary to provide for the safety or security of those vessels.

**FWCC Homeland Security Law Enforcement Assistance** - According to information provided by the FWCC, the agency has provided more than 34,000 hours of directed patrol addressing domestic security at a cost of roughly \$2 million. After September 11, 2001, the U.S. Coast Guard requested that the FWCC assist in providing waterside security in the federal security zones surrounding cruise vessels while ported in Florida ports. This service continues today at a cost of approximately \$90,000 a month with no federal reimbursement for normal duty operations. During times of "high alert," the FWCC estimates that costs rise approximately 20 percent.

However, state law does not authorize the FWCC to enforce in federally established exclusion areas. In two specific cases, a group of divers and a vessel violated the federally designated exclusion areas but without specific enforcement authority, the FWCC could only detain the violators until the U.S. Coast Guard arrived to take them into custody.

**Florida Mutual Aid Plan** - The Florida Mutual Aid Plan (Plan) outlines the responsibilities of the state law enforcement community, as well as the security component of the Florida National Guard, in responding to emergencies and disasters. The plan is developed under the authority of the Florida Mutual Aid Act contained in ch. 23, Part I, F.S., and is revised annually<sup>1</sup>

Under the Plan, the FWCC's Division of Law Enforcement is responsible for conducting waterborne security, evacuations, search and rescue, waterborne law enforcement, and patrol of rural natural areas. The FWCC is required to assist the FDLE with communications issues and assist in missions where specialized assets and equipment such as 4 x 4 vehicles, ATVs, vessels, and aircraft are required. According to the FWCC, the agency does not have vessels that are the proper size or construction to withstand this assignment.

### III. Effect of Proposed Changes:

Provided is a section-by-section analysis of the CS:

**Section 1.** Amends s. 316.217, F.S., to authorize the operation of law enforcement vehicles without the display of lighted lamps under the following conditions:

- If operation of the vehicle is necessary to the performance of a law enforcement officer's duties.
- If the law enforcement agency has a written policy providing guidelines and authorizing the operation of a vehicle without the display of lighted lamps.
- If the law enforcement vehicle is being operated in compliance with agency policy.
- If the operation of the vehicle without the display of lighted lamps can be safely accomplished.

The authority to operate a vehicle with the display of lighted lamps does not relieve the vehicle operator of the duty to drive with due regard for public safety, or provide protection to the vehicle operator from the consequences of operating the vehicle with reckless disregard for the safety of others.

**Section 2.** Amends s. 327.301, F.S., to raise from \$500 to \$2,000 the threshold for which owners or operators of vessels must forward to the division a written report of damage to vessels or property resulting from boating accidents. The CS raises from \$500 to \$2,000 the threshold at which law enforcement officers who investigate a boating accident resulting in damage to vessels or other property must forward a written report of the investigation to the division within 24 hours. If a vessel is leased, rented, or chartered at the time of an accident, the person offering the vessel for lease, rent, or charter is responsible for reporting accidents involving damage to the

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<sup>1</sup> **Florida Mutual Aid Plan** (State Law Enforcement Policy Guidelines for Emergency Response), FDLE, June 2003.

vessel or other property. All persons, not just vessel operators, who fail to file the required written reports commit a noncriminal infraction punishable with a \$50 fine.

**Section 3.** Amends s. 327.35215, F.S., to repeal outdated references to wildlife enforcement officers and freshwater fisheries enforcement officers. The CS repeals provisions providing that moneys collected by the Clerk of the Court for infractions committed by a violator arrested by a wildlife enforcement officer or a freshwater fisheries enforcement officer be deposited into the State Game Trust Fund. The CS clarifies that moneys collected by the Clerk of the Court for infractions committed by violators arrested by an officer employed by a state law enforcement agency must be deposited into the Marine Resources Conservation Trust Fund.

**Section 4.** Amends s. 327.731, F.S., to remove the violation of laws relating to muffling devices from the list of noncriminal infractions for which boating education courses are required.

**Section 5.** Creates s. 327.461, F.S., relating to safety zones, security zones, regulated navigation areas, and naval vessel protection zones (federally designated exclusion areas). Persons may not operate a vessel, or authorize the operation of a vessel, in violation of a federally designated exclusion area as those areas are defined in and established pursuant to 33 C.F.R. part 165.

The CS establishes that the intent of the section is to provide for state and local law enforcement agencies to operate in federally designated exclusion areas. The CS authorizes state and local law enforcement personnel to enforce in federally designated exclusion areas at the request of a federal authority if state and local assistance is necessary to augment federal law enforcement efforts, and if there is a compelling need to protect the residents and infrastructure of the state. Requests for state and local law enforcement assistance must be made to the Department of Law Enforcement through the Florida Mutual Aid Plan described in s. 23.1231, F.S.

The CS provides first degree misdemeanor penalties punishable by a fine of \$1,000, or imprisonment of up to 1 year, or both, for:

- Persons who operate a vessel or who authorize the operation of a vessel in violation of a federally designated exclusion area, and
- Persons who enter a federally designated exclusion area by swimming, diving, wading or other similar means.

The CS provides third degree felony penalties punishable by a fine of up to \$5,000, or imprisonment of up to 5 years, or both, for:

- Persons who continue to operate a vessel or who continue to authorize the operation of a vessel in violation of a federally designated exclusion area, and
- Persons who remain within or who reenter a federally designated exclusion area after being warned by a law enforcement officer or competent military authority not to do so.

The CS provides that each excursion into a federally designated exclusion area is considered a separate offense. Entry into a federally designated exclusion area authorized by a port captain or the port captain's designee is not a violation.

**Section 6.** Amends s. 901.15, F.S., to provide that law enforcement officers do not need a warrant to arrest persons if there is probable cause to believe that a person has committed a violation of a federally designated exclusion area.

**Section 7.** Provides that the act takes effect upon becoming a law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. Other Constitutional Issues:**

The CS may violate the “single subject” requirements of s. 6, Art. III, of the State Constitution. The CS is entitled an “Act relating to vessel safety” but authorizes the operation of vehicles without lighted lamps on the highways of the state.

The CS indicates “[a] person may not operate a vessel, or authorize the operation of a vessel, in violation of a safety zone, security zone, regulated navigation area, or naval vessel protection zone as defined in and established pursuant to 33 C.F.R. part 165.” While this statement indicates that the federal regulation defines and establishes the referenced zones and area, it does not indicate that the federal regulation prohibits the conduct that is prohibited in the CS, rather the CS simply speaks to a “violation” of the referenced zones or area. The legislation may be challenged as violating due process for failure to provide sufficient notice of what constitutes a “violation.” The CS may also be challenged as impermissibly vague and, in effect, impermissibly delegating to law enforcement agencies the Legislature’s exclusive power to define crimes by leaving it to those agencies to discern what constitutes a “violation.”

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

Persons found guilty of violating provisions of the CS relating to federally designated exclusion areas can expect to pay significant fines and/or be incarcerated. Persons found guilty of violating provisions relating to lighted lamps on vehicles can expect to pay a

\$50 fine. Persons found guilty of violating provisions relating to the required reporting of boating accidents can expect to pay a \$50 fine.

C. **Government Sector Impact:**

Providing ongoing law enforcement assistance in federally designated exclusion areas will continue to have a significant fiscal impact on the FWCC.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Criminal Justice:

The amendment requires that a person knowingly violate federally designated areas or zones.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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