

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Transportation, Tourism, and Economic
Development

BILL: CS/SB 1260

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Simpson

SUBJECT: Anchoring Limitation Areas

DATE: February 23, 2016 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Istler</u>	<u>Rogers</u>	<u>EP</u>	Fav/CS
2.	<u>Gusky</u>	<u>Miller</u>	<u>ATD</u>	Recommend: Favorable
3.	<u> </u>	<u> </u>	<u>FP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1260 establishes anchoring limitation areas in sections of Broward and Miami-Dade Counties. The bill prohibits a person from anchoring a vessel at any time between the hours from one-half hour after sunset to one-half hour before sunrise in any such anchoring limitation area. The bill authorizes vessels under certain circumstances to anchor overnight in an anchoring limitation area and provides an exemption for certain vessels.

The FWC or other law enforcement agencies that monitor anchoring in an anchoring limitation area may experience an indeterminate positive fiscal impact resulting from the issuance of boating citations for violations relating to the unlawful anchoring of vessels in an anchoring limitation area. Additionally, the FWC or other law enforcement agencies may experience increased costs as a result of enforcing anchoring in these areas. It is expected that any enforcement costs will be covered within existing resources.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

Article X, section 11 of the Florida Constitution authorizes the private use of portions of sovereign lands, but only if not contrary to the public interest.¹ The term “sovereignty submerged lands” means “those lands including but not limited to, tidal lands, islands, sand bars, shallow banks, and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally-influenced waters, to which the State of Florida acquired title on March 3, 1845, by virtue of statehood, and which have not been heretofore conveyed or alienated.”²

Riparian rights are those incident to land bordering upon navigable waters.³ Under Florida law, riparian rights specifically include the right to an unobstructed view and the right of ingress to and egress from the water.⁴ The Court in *Hayes v. Bowman* held that this right only extends over an area “as near practicable in the direction” of the Channel so as to distribute equitably the submerged lands between the upland and the Channel.⁵ A riparian owner’s rights are concurrent with that of the public, not superior to that of the public.⁶ A riparian owner’s right to use the navigable waters abutting his or her property may not obstruct or unreasonably impede lawful navigation by others.⁷ The public has the right to use navigable waters for navigation or commerce.⁸ Anchoring is considered to be incidental to the right of navigation.⁹

The anchoring of vessels has created conflicts in some areas of the state related to the use and enjoyment of the waters of this state for many years. These issues include, but are not limited to:

- The locations where anchored vessels accumulate;
- Unattended vessels;
- Anchored vessels that are dragging anchor or not showing proper lighting;
- Vessels that are not maintained properly or become derelict;
- Interpretation of state laws leading to inconsistent regulation of anchoring on state waters and confusion among the boating community; and
- Questions about local governmental authority to regulate anchoring.¹⁰

¹ Fla. Admin. Code R 18-21.003(51), defines the term “public interest” as “demonstrable environmental, social, and economic benefits which would accrue to the public at large as a result of a proposed action, and which would clearly exceed all demonstrable environmental, social, and economic costs of the proposed action.”

² Fla. Admin. Code R. 18-21.003(61); the Submerged Lands Act, 43 U.S.C. §1301 and 1311(a) (confirmed state ownership).

³ Section 253.141, F.S.

⁴ *Hayes v. Bowman*, 91 So.2d 795 (Fla. 1975).

⁵ *Id.*

⁶ *Harbor Beach Surf Club, Inc. v. Water Taxi of Ft. Lauderdale, Inc.*, 711 So.2d 1230 (Fla. 4th DCA 1998).

⁷ *Id.*

⁸ *Brannon v. Boldt*, 958 So.2d 367, 372 (Fla. 2d DCA 2007).

⁹ Ankersen, Hamann, & Flagg, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, pg. 2 (Rev. May 2012) available at <http://nsgl.gso.uri.edu/flsgp/flsgpt12001.pdf>.

¹⁰ FWC, *Anchoring and Mooring Pilot Program, Report of Findings and Recommendations*, pg. 3 (Dec. 31, 2013) available at <http://myfwc.com/media/2704721/FindingsRecommendations.pdf>.

Balancing the interests of the state, local governments, homeowners, and boaters is complex.¹¹ The policy debate concerning the scope of state and local government regulation of the anchoring of vessels has been ongoing for decades.¹²

State Regulation of the Anchoring or Mooring of Vessels

The Governor and the Cabinet, sitting as the Board of Trustees of Internal Improvement (board), is responsible for administering, controlling, and managing sovereignty submerged lands.¹³ Section 253.03, F.S., authorizes the board to adopt rules governing all uses of sovereignty submerged lands by vessels, floating homes, or any other watercraft. However, the board is limited to adopting rules for anchoring, mooring, or otherwise attaching to the bottom; the establishment of anchorages; and the discharge of sewage, pump-out requirements, and facilities associated with anchorages.¹⁴ Such rules are prohibited from interfering with commerce or the transitory operation of vessels through navigable water but are required to control the use of sovereignty submerged lands as a place of business or residence.¹⁵ The board has adopted rules requiring a permit for the construction of mooring pilings or docks, but the board has not adopted rules regulating the anchoring of vessels.¹⁶

Section 327.44, F.S., prohibits a person from anchoring a vessel, except in case of emergency, in a manner which unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel. Anchoring under bridges or in or adjacent to heavily traveled channels constitutes interference, if unreasonable under the prevailing circumstances.¹⁷ Interference with navigation is a noncriminal infraction, punishable by a civil penalty of \$50.¹⁸

Local Regulation of the Anchoring or Mooring of Vessels

Local governments by general permit are authorized to construct, operate, and maintain public mooring fields, each for up to 100 vessels.¹⁹ Mooring fields are required to be located where navigational access already exists between the mooring field and the nearest customarily used access channel or navigable waters for which the mooring field is designed to serve.²⁰ Each mooring field must be associated with a land-based support facility that provides amenities and conveniences, such as parking, bathrooms, showers, and laundry facilities.²¹ Major boat repairs and maintenance, fueling activities other than from the land-based support facility, and boat hull scrapping and painting are not authorized within such mooring fields.²²

¹¹ *Id.* at 1.

¹² *Id.*

¹³ Section 253.03, F.S.

¹⁴ Section 253.03(7)(b), F.S.

¹⁵ *Id.*

¹⁶ See Fla. Admin. Code Ch. 18-21 for rules regulating the construction of structures used for mooring or accessing vessels.

¹⁷ Section 327.44(2), F.S.

¹⁸ Section 327.73, F.S.

¹⁹ Section 373.118, F.S.; Fla. Admin. Code R. 62-330.420.

²⁰ Fla. Admin. Code R. 62-330.420.

²¹ *Id.*

²² *Id.*

Local governments are authorized to enact and enforce ordinances that prohibit or restrict the mooring or anchoring of floating structures or live-aboard vessels within their jurisdiction and vessels that are within the marked boundaries of permitted mooring fields.²³ However, local governments are prohibited from enacting, continuing in effect, or enforcing any ordinance or local regulation that regulates the anchoring of vessels other than live-aboard vessels outside the marked boundaries of permitted mooring fields.²⁴

Anchoring and Mooring Pilot Program

In an effort to seek resolution of the policy debate over how much authority should appropriately be granted to local governments with respect to vessels anchoring within their jurisdictions, the Legislature in 2009, enacted s. 327.4105, F.S., to create the Anchoring and Mooring Pilot Program.²⁵ The goal of the program is to explore potential options authorizing local governments to regulate the anchoring and mooring of non-live-aboard vessels outside the marked boundaries of public mooring fields.²⁶ The pilot program is directed by the Fish and Wildlife Conservation Commission (FWC) in cooperation with the Department of Environmental Preservation (DEP).²⁷

The following local governments, as participants of the pilot program, are authorized to regulate anchoring and mooring outside the marked boundaries of permitted mooring fields:

- The City of St. Augustine.
- The City of St. Petersburg.
- The City of Sarasota.
- Monroe County in partnership with the cities of Marathon and Key West.
- Martin County in partnership with the City of Stuart.²⁸

The pilot program was set to expire on July 1, 2014. However, the program was extended, on recommendation of the FWC, to provide more time to fully evaluate each pilot program location.²⁹ The pilot program and the local government ordinances developed under the program are set to expire July 1, 2017, unless reenacted by the Legislature.³⁰

²³ Section 327.60(3), F.S.; s. 327.02, F.S., defines the term “floating structure” to mean a floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term includes, but is not limited to, an entity used as a residence, place of business or office with public access; a hotel or motel; a restaurant or lounge; a clubhouse; a meeting facility; a storage or parking facility; or a mining platform, dredge, dragline, or similar facility or entity represented as such.

²⁴ Section 327.60(2)(f), F.S.; s. 327.02, F.S., defines the term “live-aboard vessel” to mean “a vessel used solely as a residence and not for navigation; a vessel represented as a place of business or a professional or other commercial enterprise; or a vessel for which a declaration of domicile has been filed.” The definition expressly excludes commercial fishing boats.

²⁵ FWC, *Anchoring and Mooring Pilot Program, Report of Findings and Recommendations*, pg. 1 (Dec. 31, 2013) available at <http://myfwc.com/media/2704721/FindingsRecommendations.pdf>.

²⁶ Chapter 2009-86, s. 48, Laws of Fla.

²⁷ Section 327.4105, F.S.

²⁸ FWC, *Anchoring and Mooring Pilot Program, Report of Findings and Recommendations*, pg. 1 (Dec. 31, 2013) available at <http://myfwc.com/media/2704721/FindingsRecommendations.pdf>.

²⁹ Chapter 2014-136, s. 2, F.S.

³⁰ Section 327.4105(6), F.S.

FWC Public Survey

The FWC engaged the public through a series of open public meetings to explore potential options for regulating the anchoring of non-live-aboard vessels outside the marked boundaries of public mooring fields.³¹ The following concepts were contemplated in relation to the granting of limited authority to local governments to regulate anchoring within their jurisdiction:

- A setback distance where the anchoring of vessels would be prohibited in the vicinity of public boating access infrastructure, such as boat ramps, hoists, mooring fields and marinas.
 - Sixty-six percent of respondents somewhat or strongly agreed that this concept was appropriate and 44 percent of respondents identified 150 feet as the most appropriate setback distance.
- A setback distance where the anchoring of vessels overnight in close proximity to waterfront residential property would be prohibited.
 - Fifty-one percent of respondents somewhat or strongly agreed that this concept was appropriate and 32 percent of respondents identified 150 feet as the most appropriate setback distance.
- The storing of vessels on the water in deteriorating condition would be prohibited.
 - Eighty-six percent of respondents somewhat or strongly agreed that this concept was appropriate.
- The timeframe for storing vessels on the water would be limited unless relocated a specified distance away.
 - Sixty-six percent of respondents somewhat or strongly agreed that this concept was appropriate and 31 percent of the respondents identified 60 days as most appropriate.
- If authority was granted to local governments to regulate anchoring in their jurisdiction, an allowance could be created for other anchoring regulations where need is demonstrated.
 - Forty-eight percent of respondents somewhat or strongly agreed that this concept was appropriate.
- If authority was granted to local governments to regulate anchoring in their jurisdiction, the creation of an online, interactive map to help boat operators know which local areas were covered under local anchoring restrictions.
 - Eighty-eight percent of respondents somewhat or strongly agreed that this concept was appropriate.³²

III. Effect of Proposed Changes:

Section 1 creates s. 327.4108, F.S., to designate the following densely populated urban areas, which have narrow state waterways, residential docking facilities, and significant recreational boating traffic and which are located in counties with populations exceeding 1.5 million residents as anchoring limitation areas:

- The section of Middle River lying between Northeast 21st Court and the Intracoastal Waterway in Broward County.
- Sunset Lake in Miami-Dade County.
- The sections of Biscayne Bay in Miami-Dade County lying between:
 - Rivo Alto Island and Di Lido Island.

³¹ FWC, *Stakeholder Survey-Anchoring, Executive Summary*, pg. 1 (Jan. 29, 2015) available at <http://myfwc.com/media/2981012/Anchoring-Survey-Executive-Summary.pdf>.

³² *Id.*

- San Marino Island and San Marco Island.
- San Marco Island and Biscayne Island.

The bill prohibits a person from anchoring a vessel at any time during the period between one-half hour after sunset and one-half hour before sunrise in an anchoring limitation area to promote the public's use and enjoyment of the designated waterways.

The bill authorizes vessels to anchor overnight in an anchoring limitation area under the following circumstances:

- If a vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or persons onboard the vessel unless the vessel anchors.
 - A vessel may anchor for three business days or until the vessel is repaired, whichever occurs first.
- If imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard the vessel unless the vessel anchors.
 - A vessel may anchor until weather conditions no longer pose such risk. During a hurricane or a tropical storm, weather conditions are deemed to no longer pose an unreasonable risk of harm when the hurricane or tropical storm warning affecting the area has expired.
- During events described in s. 327.48, F.S., relating to regattas, races, marine parades, tournaments, and exhibitions, or other special events including, but not limited to, public music performances, local government waterfront activities, or fireworks displays.
 - A vessel may anchor for the lesser of the duration of the special event or for three days.

The bill exempts the following vessels:

- Vessels owned or operated by a governmental entity for law enforcement, firefighting, military, or rescue purposes.
- Construction or dredging vessels on an active job site.
- Vessels actively engaged in commercial fishing.
- Vessels engaged in recreational fishing, if the persons onboard are actively tending hook and line fishing gear or nets.

The bill authorizes a law enforcement officer or agency to remove a vessel from an anchoring limitation area and impound the vessel for up to 48 hours, or cause such removal and impoundment, if the vessel operator, after being issued a citation for a violation:

- Anchors the vessel unlawfully in an anchoring limitation area within 12 hours after being issued the citation; or
- Refuses to leave the anchoring limitation area after being directed to do so by a law enforcement officer or agency.

The bill provides a limitation on liability to a law enforcement officer or agency for any damage to the vessel, other than damage resulting from gross negligence or willful misconduct, resulting from the removal or impoundment of the vessel.

For the purposes of such removal or impoundment, the bill defines the term "law enforcement officer or agency" to mean the following officers or agencies:

- The Division of Law Enforcement of the Fish and Wildlife Conservation Commission and its officers;
- The sheriffs of the various counties and their deputies;
- Municipal police officers; and
- Any other law enforcement officer described in s. 943.10, F.S.³³

The bill provides the following requirements for contractors performing removal or impoundment services at the direction of a law enforcement officer or agency:

- Be licensed in accordance with United States Coast Guard regulations, as applicable;
- Obtain and carry a current policy issued by a licensed insurance carrier in this state to insure against any accident, loss, injury, property damage, or other casualty caused by or resulting from the contractor's actions; and
- Be properly equipped to perform such services.

The bill requires the operator of a vessel that is removed and impounded, in addition to a civil penalty, to pay all removal and storage fees before the vessel may be released.

Section 2 amends s. 327.70, F.S., providing that a violation of s. 327.4108, F.S., relating to the anchoring of vessels in anchoring limitation areas, may be enforced by a uniform boating citation issued to the operator of a vessel unlawfully anchored in an anchoring limitation area.

Section 3 amends s. 327.73, F.S., to provide the following civil penalties for the unlawful anchoring of vessels in an anchoring limitation area:

- For a first offense, a maximum fine of \$50.
- For a second offense, a maximum fine of \$100.
- For a third or subsequent offense, a maximum fine of \$250.

The bill provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³³ Section 943.10, F.S., defines the term "law enforcement officer" as "any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state...."

D. Other Constitutional Issues:

Article III, section 10 of the Florida Constitution prohibits the Legislature from enacting any special law unless notice is first published or a referendum is conducted. A special law, or “local law” does not apply with geographic uniformity across the state; it operates only upon designated persons or discrete regions, and bears no reasonable relationship to differences in population or other legitimate criteria.³⁴ On the other hand, general laws of local application do not require published notice or referendum.³⁵ A general law of location application applies to a distinct region or set of subdivisions within the state and its classification scheme is based on population or some other reasonable characteristic which distinguishes one locality from another.³⁶ If particular conditions exist in only a portion of the state, enactments with reference thereto nonetheless may be general laws.³⁷ If a law utilizes a classification that is geographical in its term but its purpose is one of statewide import and impact, and the classification is reasonably related to the law’s purpose, it is a valid general law.³⁸

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Vessel operators that unlawfully anchor a vessel in an anchoring limitation area would be required to pay a civil penalty and may be required to pay vessel removal and storage costs.

C. Government Sector Impact:

The FWC or other law enforcement agencies that monitor anchoring in an anchoring limitation area may experience an indeterminate positive fiscal impact resulting from the issuance of boating citations for violations relating to the unlawful anchoring of vessels in an anchoring limitation area. Additionally, the FWC or other law enforcement agencies may experience increased costs as a result of enforcing anchoring in these areas. It is expected that any enforcement costs will be covered within existing resources.

VI. Technical Deficiencies:

None.

³⁴ *Lawnwood Medical Center, Inc. v. Seeger*, 990 So.2d 503 (Fla. 2008).

³⁵ *Dept. of Business Regulation v. Classic Mile, Inc.*, 541 So.2d 1155 (Fla. 1989).

³⁶ *City of Miami Beach v. Frankel*, 363 So.2d 55 (Fla. 1978).

³⁷ *Schrader v. Florida Keys Aqueduct Authority*, 840 So.2d 1050, 1055 (Fla. 2003).

³⁸ *Id.* at 1056.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 327.4108 of the Florida Statutes.

This bill substantially amends section 327.73 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

CS by Environmental Preservation and Conservation on February 17, 2016:

The CS:

- Designates anchoring limitation areas, rather than recreational boating zones, and provides a limitation to areas that are in densely populated urban areas, which have narrow state waterways, residential docking facilities, and significant boating traffic and are located in counties with populations exceeding 1.5 million residents.
- Removes Crab Island in Okaloosa County as a designated area.
- Authorizes vessels under certain circumstances to anchor overnight in anchoring limitation areas.
- Exempts certain vessels.
- Authorizes law enforcement officers or agencies to remove or cause the removal of vessels from an anchoring limitation area and impound such vessels for up to 48 hours under certain circumstances.
- Provides a limitation on liability for law enforcement officers or agencies that remove or impound a vessel.
- Provides requirements for contractors performing removal or impoundment services.
- Requires a vessel operator to pay all removal and storage fees for removed or impounded vessels.
- Amends s. 327.70, F.S., to authorize violations of s. 327.4108, F.S. to be enforced by a uniform boating citation.
- Increases the penalty for violations for repeat offenders.

B. Amendments:

None.