

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Environment and Natural Resources

BILL: SB 1530

INTRODUCER: Senator Rouson

SUBJECT: Vessels

DATE: April 1, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	Pre-meeting
2.			CJ	
3.			RC	

I. Summary:

SB 1530 requires vessel operators to reduce speed to a slow speed with minimum wake upon approaching certain hazardous conditions. A vessel operator that violates this requirement is guilty of a noncriminal infraction.

The bill provides that a vessel may be deemed at risk of becoming derelict if:

- It does not have or is unable to demonstrate an effective means of propulsion for safe navigation within 72 hours of the owner or operator receiving a notice stating such from an officer;
- It does not have a declared destination upon inquiry by a law enforcement officer; and
- The owner or operator is unable to provide documentation of vessel repair.

The bill requires that a vessel at risk of becoming derelict must be moved to a location a minimum distance of three miles away from the previous location on or before 90 days after the date notice is delivered to the owner or posted conspicuously on the vessel.

The bill provides that a person who fails to present a certificate of title with the new owner information to the Department of Highway Safety and Motor Vehicles to ensure proper transfer of ownership is guilty of a second degree misdemeanor.

The bill increases the civil penalties for a vessel deemed at risk of becoming derelict, increases the maximum penalties for anchoring or mooring in a prohibited area, and provides that a person who receives a citation for either infraction more than three times in a 12-month period may have their vessel impounded by law enforcement. The bill creates penalties for vessels that do not reduce speed in the hazardous conditions specified under the bill.

II. Present Situation:

Anchoring or mooring refers to a boater's practice of seeking and using a safe harbor on the public waterway system for an undefined duration. Anchoring is accomplished using an anchor carried on the vessel.¹ Mooring is accomplished through the utilization of moorings permanently affixed to the bottom of the water body. Anchorages are areas that boaters regularly use for anchoring or mooring, whether designated or managed for that purpose or not. Mooring fields are areas designated and used for a system of properly spaced moorings.²

Derelict Vessels

A derelict vessel is a vessel that is left, stored, or abandoned in a wrecked, junked, or substantially dismantled condition upon any public waters of this state; at a port in the state without the consent of the agency that has jurisdiction of the port; or docked, grounded, or beached upon the property of another without the consent of the owner of the property.³

It is unlawful to store, leave, or abandon a derelict vessel in Florida.⁴ A person found in violation of this law commits a first degree misdemeanor.⁵ State law further provides that a violation of derelict vessel laws may also subject a person to a civil penalty of up to \$50,000 per day.⁶ Each day during any portion of which the violation occurs constitutes a separate offense.⁷

Removal of Derelict Vessels

The Division of Law Enforcement of the Florida Fish and Wildlife Conservation Commission (FWC) and its officers, and the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officers, have the responsibility and authority to enforce vessel safety and vessel title certificates, liens, and registration.⁸

Both state and local law enforcement are authorized and empowered to relocate or remove a derelict vessel from public waters if the derelict vessel obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment, property, or persons.⁹ The

¹ Section 327.02, F.S., defines the term "vessel" to include every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

² Ankersen, Hamann, & Flagg, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, 2 (Rev. May 2012), available at <https://www.law.ufl.edu/pdf/academics/centers-clinics/clinics/conservation/resources/anchaway.pdf> (last visited Mar. 21, 2019).

³ Section 823.11(1)(b), F.S.

⁴ Section 823.11(2), F.S.

⁵ A first degree misdemeanor is punishable by a term of imprisonment of no more than one year and a fine of up to \$1,000.

⁶ Section 376.16(1), F.S.

⁷ *Id.*

⁸ Section 327.70, F.S.; see section 943.10(1), F.S., which defines "law enforcement officer" as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The definition also includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

⁹ Section 327.44(3), F.S.

costs incurred for relocating or removing a derelict vessel are recoverable against the vessel owner.¹⁰ A vessel owner who neglects or refuses to pay the costs of removal, storage, and destruction of the vessel, less any salvage value obtained by disposal of the vessel, is not entitled to be issued a certificate of registration for such vessel, or any other vessel or motor vehicle, until the costs are paid.¹¹

At-risk vessels

In 2016, the Legislature prohibited neglected vessels or those in deteriorating conditions from anchoring, mooring, or occupying the waters of the state.¹² A vessel is at risk of becoming derelict if any of the following conditions exist:

- The vessel is taking on or has taken on water without an effective means to dewater;
- Spaces on the vessel that are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time;
- The vessel has broken loose or is in danger of breaking loose from its anchor;
- The vessel is left or stored aground unattended in such a state that would prevent the vessel from getting underway, or is listing due to water intrusion, or is sunk or partially sunk; or
- The vessel does not have an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives telephonic or written notice stating such from an officer, and the vessel owner or operator is unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair.¹³

Penalties for Boating Infractions

Section 327.73, F.S., provides for non-criminal violations relating to vessel laws. An owner or operator of a vessel at risk of becoming derelict on waters of the state is subject to a uniform boating citation and penalties.¹⁴ The penalties are:

- For a first offense, \$50;
- For a second offense occurring 30 days or more after a first offense, \$100; and
- For a third offense occurring 30 days or more after a previous offense, \$250.

An owner or operator who violates the law by anchoring or mooring in a prohibited area is subject to a uniform boating citation and penalties.¹⁵ The penalties are:

- For a first offense, up to a maximum of \$50;
- For a second offense, up to a maximum of \$100; and
- For a third offense, up to a maximum of \$250.

In addition to civil penalties, the section provides that a person who fails to appear or otherwise properly respond to a uniform boating citation will be charged with a second-degree

¹⁰ Section 327.44(5), F.S.

¹¹ Section 705.103(4), F.S.

¹² Chapter 2016-108, Laws of Fla.; s. 327.4107, F.S.

¹³ Section 327.4107, F.S.

¹⁴ Section 327.73(aa), F.S.

¹⁵ Section 327.73(bb), F.S.

misdeemeanor, which is punishable by a maximum fine of \$500 and no more than 60 days imprisonment.¹⁶

Vessel Titling and Registrations

All motorized vessels operating on Florida's public waterways must be titled and registered.¹⁷ The Department of Highway Safety and Motor Vehicles (DHSMV) is responsible for issuing vessel registrations and titles.¹⁸ Applications for registrations and titles must be filed at a county tax collector or license plate agent office.

A purchaser of a new or used vessel has 30 days to title and register the vessel and a seller is required to notify DHSMV that he or she has sold their vessel within 30 days of the sale.¹⁹ No person may sell, assign, or transfer a vessel titled in the state without providing the purchaser or transferee a valid certificate of title with an assignment on it showing transfer of title to the purchaser or transferee.²⁰ A person who fails to meet these requirements is guilty of a second degree misdemeanor.²¹

III. Effect of Proposed Changes:

The bill requires vessel operators to reduce speed to a slow speed with minimum wake upon approaching certain hazardous conditions and provides that a vessel operator that violates this requirement is guilty of a noncriminal infraction. The hazardous conditions are:

- Seeing a vessel or person in a hazardous or vulnerable position (which does not include a docked and unattended vessel), if the wake from the operator's vessel is likely to cause property damage or injury to the vulnerable vessel or person;
- Approaching within 300 feet of any emergency vessel, including but not limited to, a law enforcement vessel, a United States Coast Guard vessel or auxiliary vessel, fire vessel, or tow vessel, with its emergency lights activated; and
- Approaching within 300 feet of any construction vessel or barge actively engaged in operations and displaying an orange flag or yellow flashing light from the tallest portion of the vessel or barge.

The bill provides that a vessel may be deemed at risk of becoming derelict if:

- It does not have or is unable to demonstrate an effective means of propulsion for safe navigation within 72 hours of the owner or operator receiving a notice stating such from an officer;
- It does not have a declared destination upon inquiry by a law enforcement officer; and
- The owner or operator is unable to provide documentation of vessel repair.

¹⁶ Sections 775.082 and 775.083, F.S.

¹⁷ See s. 328.03, F.S. Certain vessels are not required to have a certificate of title, including, but not limited to, vessels used only on private lakes or ponds and vessels owned by the U.S. Government or a state or political subdivision thereof.

¹⁸ Section 328.40, F.S.

¹⁹ DHSMV, *Vessel Titling and Registrations*, <https://www.flhsmv.gov/motor-vehicles-tags-titles/vessels/vessel-titling-registrations/> (last visited Mar. 28, 2019).

²⁰ DHSMV, *Renewals, Title Transfers, and Duplicate Certificates*, <https://www.flhsmv.gov/motor-vehicles-tags-titles/vessels/vessel-titling-registrations/renewals-title-transfers-duplicate-certificates/> (last visited Mar. 28, 2019).

²¹ Section 328.21, F.S.

The bill requires that a vessel at risk of becoming derelict must be moved to a location a minimum distance of three miles away from the previous location on or before 90 days after the date notice is delivered to the owner or posted conspicuously on the vessel.

The bill provides that a person who fails to present a certificate of title with the new owner information to the Department of Highway Safety and Motor Vehicles to ensure proper transfer of ownership is guilty of a second degree misdemeanor.

The bill increases the civil penalties for a vessel deemed at risk of becoming derelict for a first offense from \$50 to \$100, for a second offense from \$100 to \$250, and for a third offense from \$250 to \$500. The bill also increases the maximum penalties for anchoring or mooring in a prohibited area for a first offense from \$50 to \$100, for a second offense from \$100 to \$250, and for a third offense from \$250 to \$500. The bill further provides that a person who receives a citation for either infraction more than three times in a 12-month period may have their vessel impounded by law enforcement.

The bill creates penalties for vessels that do not reduce speed in specified hazardous conditions: \$50 for a first offense, \$250 for a second offense occurring within 12 months after a prior conviction, \$500 for a third offense occurring within 36 months after a prior conviction, and \$1000 for a fourth or subsequent offense occurring within 72 months after a prior conviction.

The bill takes effect on July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There may be a positive fiscal impact on FWC due to the new and increased penalties imposed under the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

On lines 24-25, the bill requires a vessel operator to reduce speed to slow speed, minimum wake upon seeing a vessel or person in a hazardous or vulnerable position. It is not clear what would constitute a “hazardous or vulnerable position.” The lack of clarity in the terminology may cause difficulty in compliance for the operator of a vessel and in enforcement for FWC.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 327.4107, 327.73, and 328.21.

This bill creates section 327.332 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.)

None.

B. Amendments:

None.