

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 General Government

BILL: PCS/CS/SB 1548 (488530)

INTRODUCER: Appropriations Subcommittee on General Government; Environmental Preservation and Conservation Committee; and Senator Dean

SUBJECT: Vessel Safety

DATE: April 16, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Uchino</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Howard</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1548 provides definitions for “developed waterfront property” and “safe harbor.” The bill prohibits anchoring and mooring within 200 feet of mooring fields, public boat ramps, hoists, marine railways, and other launching or landing facilities available for use by the general public. The bill also prohibits the anchoring or mooring of vessels within 200 feet of the shoreline of developed waterfront property and provides exceptions. The bill prohibits the anchoring or mooring of a vessel in state waters under certain conditions, except under exigent circumstances. The bill provides an exception to the provisions of s. 327.4107, F.S., created by the bill, for local governments participating in the Anchoring and Mooring Pilot Program. Lastly, the bill provides penalties for violations of s. 327.4107, F.S.

Fines assessed for violation of the provisions of the bill will have a positive, but minor, indeterminate fiscal impact on the Florida Fish and Wildlife Conservation Commission (FWC).

This bill is effective July 1, 2015.

II. Present Situation:

Local governments are prohibited from regulating the anchoring of vessels, other than live-aboard vessels,¹ outside of permitted mooring fields.² However, unregulated anchoring and mooring can contribute to various problems, including:

- Unattended vessels;
- Anchored vessels that are dragging anchor or not showing proper lighting;
- Vessels that are not maintained properly;
- Vessels that become derelict; and
- Locations where anchored vessels accumulate.³

Anchoring and Mooring Pilot Program

Section 327.4105, F.S., was enacted in 2009 to create the Anchoring and Mooring Pilot Program (program) to, “explore potential options for regulating the anchoring and mooring of non-live-aboard vessels outside the marked boundaries of public mooring fields.” The program is directed by the Fish and Wildlife Conservation Commission (FWC) in cooperation with the Department of Environmental Preservation (DEP).

Currently, the only local governmental entities that are allowed to regulate anchoring and mooring outside the marked boundaries of permitted mooring fields are the participants in the program, which include:

- St. Augustine;
- St. Petersburg;
- Sarasota;
- Monroe County – cities of Marathon and Key West; and
- Martin County – City of Stuart.⁴

The program was set to expire on July 1, 2014. Due to challenges that affected the progress of the pilot program, the FWC recommended that the program be extended to July 2017 to provide more time to fully evaluate each of the pilot program locations.⁵ The program was extended during the 2014 Regular Legislative Session and will expire on July 1, 2017.⁶

Penalties for Boating Infractions

Section 327.73, F.S., provides for non-criminal violations relating to vessel laws. In addition to civil penalties specified for particular violations, the section provides that a person who fails to appear or otherwise properly respond to a uniform boating citation will be charged with second-

¹ Section 327.02(19), F.S., defines a live-aboard vessel as “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 pursuant to s. 222.17.” The definition excludes commercial fishing boats.

² Section 327.60(2)(f), F.S.

³ FWC, *Anchoring and Mooring Pilot Program, Report of Finding and Recommendations*, 3 (Dec. 31, 2013), available at <http://myfwc.com/media/2704721/FindingsRecommendations.pdf> (last visited Mar. 28, 2015).

⁴ *Id.*

⁵ *Supra* note 3, 1-2.

⁶ Section 327.4105, F.S.

degree misdemeanor, which is punishable by a maximum fine of \$500 and no more than 60 days imprisonment.⁷

Derelict Vessels

Section 327.70, F.S., provides a list of noncriminal violations that may be enforced by mailing a uniform boating citation to the registered owner of the unattended vessel anchored, aground, or moored in state waters. These violations relate to:

- Navigational rules; s. 327.33(3)(b), F.S.;
- Interference with navigation; s. 327.44, F.S.;
- Required lights and shapes; s. 327.50(2), F.S.;
- Marine sanitation; s. 327.53, F.S.;
- Display of decal; s. 328.48(5), F.S., and
- Display of number; s. 328.52(2), F.S.

The Division of Law Enforcement within the Fish and Wildlife Conservation Commission and its officers, sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officer whom may order the removal of vessels deemed to be an interference or hazard to public safety may issue the noncriminal violations.

III. Effect of Proposed Changes:

Section 1 amends s. 327.02, F.S., to define “developed waterfront property” to mean:

any upland property bounded on at least one side by the waters of the state, above the mean high water mark of the shoreline or seawall, upon which a single-family home, multi-family apartment, townhouse, condominium, or other similar residential dwelling exists. The term does not include docks and other infrastructure adjacent thereto or properties with mixed residential and commercial use.

The bill also defines “safe harbor” to mean:

taking refuge by temporarily anchoring, mooring, or docking due to a mechanical breakdown or when imminent or existing extreme weather conditions impose an unreasonable risk of harm. A vessel may remain anchored, moored, or docked until repaired, which must occur within seven working days, or in the event of extreme weather, until weather conditions improve to the point it is no longer perilous to operate the vessel.

Section 2 creates s. 327.4107, F.S., to provide that the anchoring or mooring of vessels, other than live-aboard vessels, on the waters of the state may only be regulated as provided in chs. 327 and 403, F.S., regarding Vessel Safety and Environmental Control, respectively.

⁷ Sections 775.082 and 775.083, F.S.

The bill prohibits an owner, operator, or person in charge of a vessel from anchoring or mooring a vessel within 200 feet of:

- The marked boundary of a permitted mooring field;
- A public boat ramp;
- A hoist;
- A marine railway; or
- Other launching or landing facility available for use by the general public.

Additionally, an owner, operator, or person in charge of a vessel may not anchor or moor a vessel within 200 feet of the shoreline of developed waterfront property, as defined in the bill, one hour past sunset and one hour before sunrise except as follows:

- Vessels that require safe harbor, in which case the vessel may remain anchored for seven business days until repaired, or in the event of extreme weather, until weather conditions improve to the point it is no longer perilous to operate the vessel;
- Vessels in transit manned by a captain and crew that is incapable of safely continuing due to physical exhaustion, provided that anchoring or mooring is limited to one overnight period before continuing;
- Vessels owned or operated by a governmental entity for law enforcement, firefighting, or rescue purposes;
- Construction or dredging vessels while on an active job site;
- Vessels actively engaged in commercial fishing;
- Vessels engaged in recreational fishing whereby persons onboard are actively tending hook and line fishing gear or nets; and
- Vessels present for the duration of events as described in s. 327.48, F.S., which pertains specifically to regattas, races, marine parades, tournaments, or exhibitions.

The bill provides that an owner, operator, or person in charge of a vessel may not anchor or moor a vessel if any of the following conditions exist, unless the condition is the result of an exigent circumstance:

- The vessel is taking or has taken on water without 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 is leaking petroleum products or other harmful contaminants in violation of law;
- The vessel has broken loose or is in danger of breaking loose from its anchor or mooring;
- The vessel is involved in one or more violations of marine sanitation laws; or
- The vessel is listing due to water intrusion, or is sunk, partially sunken, or left aground and is unattended.

The bill provides that a person who anchors or moors a vessel in violation of s. 327.4107, F.S., which is created in this section of the bill, commits a noncriminal infraction, punishable as provided in s. 327.73, F.S., which is amended in Section 3 of the bill.

The bill provides that penalties provided in this section are in addition to penalties already provided for in Florida Statutes.

The bill provides that counties or municipalities participating in the Anchoring and Mooring Pilot Program may continue to regulate the anchoring or mooring of non-live-aboard vessels as provided in s. 327.4105, F.S., which authorizes the Anchoring and Mooring Pilot Program.

Section 3 amends s. 327.70, F.S., to add the newly created s. 327.4107, F.S., to the list of noncriminal violations that may be enforced by mailing a uniform boating citation to the registered owner of the unattended vessel. The entities that may issue the citation are the Division of Law Enforcement of the Fish and Wildlife Conservation Commission and its officers, sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officer whom may order the removal of vessels deemed to be an interference or hazard to public safety.

Section 4 amends s. 327.73, F.S., to provide for a civil penalty for an infraction of provisions of s. 327.4107, F.S., created in Section 2 of the bill. The penalties provided are:

- For a first offense, \$50;
- For a second offense, \$100; and
- For a third or subsequent offense, \$250.

Section 5 amends s. 327.391, F.S., to correct and conform a cross reference. Section 327.391(1), F.S., incorrectly cross references to s. 327.02(25), F.S., defining “moored ballooning,” instead of the correct cross reference to s. 327.02(27), F.S., defining “muffler.”

Section 6 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The fines assessed for violations of the provisions of PCS/CS/SB 1548 will have a negative, but minor, indeterminate impact for individuals guilty of violating the provisions of the bill.

There could be a negative fiscal impact if the setback provisions affect areas where vessels traditionally anchor, particularly if businesses have developed around such anchorages.

C. Government Sector Impact:

The fines assessed for violations of the provisions of the bill will have a positive, but minor, indeterminate fiscal impact on the Florida Fish and Wildlife Conservation Commission.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides an exception to the prohibition on anchoring or mooring within 200 feet of the shoreline of developed waterfront property for vessels in transit upon which the captain and crew are incapable of safely continuing their journey due to physical exhaustion. The term “captain and crew” is not defined in statute, which may lead to different interpretations.

The bill also provides an exception to the prohibition on anchoring or mooring within 200 feet of the shoreline of developed waterfront property for, “[v]essels engaged in recreational fishing whereby persons onboard are actively tending hook and line fishing gear or nets.” This does not appear to include all forms of active recreational fishing.

According to the FWC, some challenges with the definition of “developed waterfront property” may include confusion on the part of boat owners and operators, as well as law enforcement officers, whether or not a waterfront property has mixed residential and commercial use from the vantage point of the adjacent waterway.

The bill provides exemptions to the 200 foot setback provision from the shoreline of developed waterfront property. According to the FWC, in some areas of limited waterbody width, historic anchorages may be excluded by this law or may be decreased in size such that the only legal place to anchor in such an area will be closer to marked or historic navigation channels.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 327.02 and 327.73.

This bill creates section 327.4107 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on General Government on April 14, 2015:

The CS/CS provides that the entities responsible for enforcing boating regulations in the state are also responsible for enforcing the newly created s. 327.4107, F.S.

CS by Environmental Preservation and Conservation on March 31, 2015:

- Changes the term “working days” to “business days”;
- Changes the term “active recreational fishing” to “recreational fishing whereby persons onboard are actively tending hook and line fishing gear or nets” for clarification;
- Provides an exception from the provisions of the bill for local government participants in the Anchoring and Mooring Pilot Program;
- Provides an exception to the prohibition on anchoring or mooring within 200 feet of the shoreline of developed waterfront property between one hour past sunset and one hour before sunrise for vessels in transit whose captain and crew are too exhausted to continue for the night;
- Provides an exception to the prohibition on anchoring or mooring in state waters for exigent circumstances;
- Removes the prohibition on anchoring and mooring in state waters when a vessel is incapable of navigating under its own propulsion; and
- Provides that penalties provided for in the bill are in addition to any other penalties provided for in the Florida Statutes.

- B. **Amendments:**

None.