

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 Environmental Preservation and Conservation

BILL: SB 1548

INTRODUCER: Senator Dean

SUBJECT: Vessel Safety

DATE: March 29, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Uchino	EP	Pre-meeting
2.			AGG	
3.			FP	

I. Summary:

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. Lastly, the bill provides penalties for violations of s. 327.4107, F.S., created by the bill.

II. Present Situation:

Local governments are prohibited from regulating the anchoring of vessels, other than live-aboard vessels,¹ outside or 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

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).

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.

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 are:

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

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.

⁴ *Id.*

⁵ *Supra* note 3, 1-2.

⁶ Section 327.4105, F.S.

⁷ Sections 775.082 and 775.083, F.S.

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 7 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 a vessel, other than a live-aboard vessel, 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.

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 working 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 owned or operated by a governmental entity for law enforcement, firefighting, or rescue purposes;
- Vessels involved in active construction activities, active dredging, or active recreational fishing; and
- Vessels present for the duration of special events, such as public music performances, government waterfront activities, boat parades, and fireworks displays.

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:

- The vessel is incapable of navigating under its own means of propulsion as intended by the vessel’s manufacturer;
- 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 ch. 327, F.S., commits a noncriminal infraction, punishable as provided in s. 327.73, F.S., as amended in the Section 3 of the bill.

Section 3 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 4 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 5 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 the bill 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.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

Active recreational fishing, as used in the bill, could be interpreted widely. While it is unclear what constitutes “active recreational fishing,” Rule 68B-4.0086, F.A.C., provides that hook and line gear must be tended, meaning that, “the person fishing the gear is physically present at the terminus of the gear.” This may provide some guidance but it does not appear to address other forms of 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.

According to the FWC, the phrase “7 working days,” could mean seven consecutive days. If it was meant to refer to non-holiday, weekdays, it could be clarified as “7 business days.”

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.

“Special events” is not specifically defined in the bill, however, examples are provided. This could lead to confusion over what constitutes a special event.

The bill specifies that a person who anchors or moors a vessel in violation of “this chapter” commits a noncriminal infraction. Using “this chapter,” in the bill could create a broader result than intended and would encompass other provisions in ch. 327, F.S., that currently have criminal penalties associated with them. Changing “this chapter” to “this section” would clarify.

According to the FWC, non-criminal citations listed in the bill could circumvent other penalties for those violations that are addressed in other areas of law, such as marine sanitation laws or the leaking of harmful contaminants in state waters.

It is not clear whether the setback provisions of the bill would preempt mooring field setback provisions established by local ordinance by the localities participating in the Anchoring and Mooring Pilot Program. The statute establishing the program contains a notwithstanding clause that addresses the prohibition contained in s. 327.60, F.S., which prohibits counties and municipalities from regulating anchoring of vessels outside the marked boundaries of mooring fields. The bill should contain a similar notwithstanding clause to make it clear that participants

in the program are not prohibited from regulating anchoring and mooring outside the marked boundaries of mooring fields.

The bill prohibits anchoring or mooring under certain conditions. A vessel that meets one of those conditions may need to be anchored or moored in order to rectify the problem.

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 Changes:

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

None.

B. Amendments:

None.