

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1051 Anchoring Limitation Areas

**SPONSOR(S):** State Affairs; Agriculture & Natural Resources Subcommittee; Caldwell

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1260

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N, As CS	Moore, R.	Harrington
2) State Affairs Committee	15 Y, 1 N, As CS	Moore, R.	Camechis

### SUMMARY ANALYSIS

The public may use sovereignty submerged lands for navigation, commerce, fishing, bathing, and other public purposes. These rights are designed to promote the general welfare and are subject to lawful regulation by the state. The public's right to navigation entitles the public to the reasonable use of navigable waters for legitimate purposes of travel or transportation, boating or sailing for pleasure, carrying persons or property gratuitously for hire, and for uses which are consistent with other uses enjoyed in common. Anchoring is a right incidental to the public's right of navigation, which must be balanced against other public purposes. As such, the right to anchor must not unreasonably obstruct others' navigation rights and does not include the right to anchor indefinitely in a manner that impairs a riparian owner's use and enjoyment of their property.

Riparian owners are entitled to the same rights to use sovereignty submerged lands as the public, but also hold riparian rights, such as the right to access the water, the right to reasonably use the water, the right to accretion and reliction, and the right to an unobstructed view of the water. Riparian rights are necessary for the use and enjoyment of the upland property, but may not be exercised as to injure others in their lawful rights.

The bill creates s. 327.4108, F.S., providing for anchoring limitation areas. The bill designates the following densely populated urban areas, which have narrow state waterways, residential docking facilities, and significant recreational boating traffic 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; and
- The sections of Biscayne Bay in Miami-Dade County lying between:
  - Rivo Alto Island and Di Lido Island;
  - San Marino Island and San Marco Island; and
  - 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.

The bill provides certain exceptions to the prohibition on anchoring in anchoring limitation areas and enforcement procedures. The bill also provides for the issuance of a uniform boating citation with tiered penalties and authorizes the removal and impoundment of a vessel for violating the prohibition on anchoring in anchoring limitation areas in certain circumstances.

The bill provides that s. 327.4108, F.S., expires upon the Legislature's adoption of the Fish and Wildlife Conservation Commission's recommendations from the pilot program for the regulation of mooring vessels outside of public mooring fields pursuant to s. 327.4105, F.S.

The bill may have an indeterminate fiscal impact on local governments and the private sector.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Submerged Lands Act

The Submerged Lands Act (SLA), enacted in 1953, provides that a state, upon becoming a member of the United States (U.S.), acquires:

- Title to and ownership of the lands beneath navigable waters within the boundaries of the respective states,<sup>1</sup> and the natural resources within such lands and waters; and
- The right and power to manage, administer, lease, develop, and use the lands and natural resources all in accordance with applicable state law.<sup>2</sup>

Under the SLA, the U.S. retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which are paramount to, but are not deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of the lands and natural resources which are specifically recognized, confirmed, established, and vested in and assigned to the respective states.<sup>3</sup>

States possess an “absolute right to all their navigable waters and the soils under them for their own common use.”<sup>4</sup> Drawing on this principle, the U.S. Supreme Court held that ownership of submerged lands, and the accompanying power to control navigation, fishing, and other public uses of water, “is an essential attribute of sovereignty.”<sup>5</sup> Consequently, “[a] court deciding a question of title to [a] bed of navigable water [within a State’s boundaries] must ... begin with a strong presumption’ against defeat of a State’s title.”<sup>6</sup>

##### Federal Regulations on Anchoring and Mooring

Federal law restricts anchoring and mooring in all waterways tributary to the Atlantic Ocean south of Chesapeake Bay and the Gulf of Mexico east and south of St. Marks, Florida,<sup>7</sup> and the Gulf of Mexico (except the Mississippi River) from St. Marks, Florida, to the Rio Grande.<sup>8</sup> Waterways include all navigable waters of the U.S., natural or artificial, including bays, lakes, sounds, rivers, creeks, intracoastal waterways, as well as canals and channels of all types, which are tributary to or connected by other waterways.<sup>9</sup>

A clear channel must at all times be left open to permit free and unobstructed navigation by all types of vessels.<sup>10</sup> Accordingly, a person may not anchor or moor a vessel in any of the land cuts or other narrow parts of the waterway, except in case of an emergency, or with permission of the U.S. Army

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<sup>1</sup> 43 U.S.C. §1301 et seq. 43 U.S.C. §1312 designates the seaward boundary of each coastal State as three miles out from its coast line; *U.S. v. Louisiana, et al.*, 363 U.S. 1 (1960), recognizing Florida’s seaward boundary into the Gulf of Mexico is three marine leagues (approximately 9-10 miles).

<sup>2</sup> 43 U.S.C. §1301 and §1311(a).

<sup>3</sup> 43 U.S.C. §1314(a).

<sup>4</sup> *Tarrant Regional Water District v. Hermann*, 133 S.Ct. 2120 (2013) (quoting *Martin v. Lessee of Waddell*, 41 U.S. 367 (1842)).

<sup>5</sup> *Id.*, (quoting *U. S. v. Alaska*, 521 U.S. 1 (1997)).

<sup>6</sup> *Id.*, (quoting *Montana v. United States*, 450 U.S. 544 (1981)); see also *Solid Waste Agency of Northern Cook Cty. v. Army Corps of Engineers*, 531 U.S. 159 (2001); *Utah Div. of State Lands v. United States*, 482 U.S. 193 (1987).

<sup>7</sup> 33 C.F.R. §162.65.

<sup>8</sup> 33 C.F.R. §162.75.

<sup>9</sup> 33 C.F.R. §162.65(a)(1) and §162.75(a)(1).

<sup>10</sup> 33 C.F.R. §162.65(b)(1) and §162.75(b)(1).

Corps of Engineers (Corps).<sup>11</sup> Stoppage may be only for such periods as may be necessary.<sup>12</sup> Additionally, a vessel may not anchor in a dredged channel or narrow portion of a waterway to fish if navigation is obstructed.<sup>13</sup> Lastly, when temporarily anchored or moored, vessels must be tied up and display lights as required by the federal navigation rules.<sup>14</sup>

### Federal Anchorage Grounds

The U.S. Department of Homeland Security is authorized, empowered, and directed to establish anchorage grounds in all harbors, rivers, bays, and other navigable waters of the U.S. whenever the maritime or commercial interests of the U.S. requires anchorage grounds for safe navigation. Rules and regulations adopted regarding the establishment of anchorage grounds are enforced by the U.S. Coast Guard (Coast Guard), provided that at ports or places where there is no Coast Guard vessel available such rules and regulations may be enforced by the Corps.<sup>15</sup>

The following anchorage grounds have been established in Florida, primarily for large commercial vessels using major ports:

- Atlantic Ocean off Fort George Inlet, near Mayport;<sup>16</sup>
- St. Johns River;<sup>17</sup>
- Atlantic Ocean, off the Port of Palm Beach;<sup>18</sup>
- Port Everglades;<sup>19</sup>
- Atlantic Ocean off Miami and Miami Beach;<sup>20</sup>
- Key West Harbor, Key West, FL, naval explosives anchorage area;<sup>21</sup>
- Tortugas Harbor, in vicinity of Garden Key, Dry Tortugas, FL;<sup>22</sup>
- Tampa Bay;<sup>23</sup> and
- St. Joseph Bay.<sup>24</sup>

### Federal Special Anchorage Areas

A special anchorage area is an area where vessels that are not more than 65 feet in length, when at anchor, will not be required to carry or exhibit anchorage lights. The areas designated are to be well removed from the fairways and located where general navigation will not endanger or be endangered by unlighted vessels. The authority to designate special anchorage areas is vested in the U.S. Department of Homeland Security and delegated to the Coast Guard.<sup>25</sup>

Special anchorages in Florida include the:

- St. Johns River;<sup>26</sup>
- Indian River at Sebastian;<sup>27</sup>
- Indian River at Vero Beach;<sup>28</sup>

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<sup>11</sup> 33 C.F.R. §162.65(b)(2)(i)-(ii) and §162.7(b)(3)(i).

<sup>12</sup> 33 C.F.R. §162.65(b)(2)(i) and §162.7(b)(3)(i).

<sup>13</sup> 33 C.F.R. §162.65(b)(2)(vii) and §162.75(b)(3)(v).

<sup>14</sup> 33 C.F.R. §162.65(b)(2)(iii)-(iv) and §162.75(b)(3)(ii)-(iii).

<sup>15</sup> 33 U.S.C. §471(a); 33 C.F.R. §109.05.

<sup>16</sup> 33 C.F.R. §110.182.

<sup>17</sup> 33 C.F.R. §110.183; §110.183(3), provides that vessels may not anchor for more than 24 hours in either anchorage without specific written authorization from the Captain of the Port.

<sup>18</sup> 33 C.F.R. §110.185.

<sup>19</sup> 33 C.F.R. §110.186; §110.186(6), provides that no vessel may anchor within the anchorage for more than 72 hours without the prior approval of the Captain of the Port.

<sup>20</sup> 33 C.F.R. §110.188.

<sup>21</sup> 33 C.F.R. §110.189a.

<sup>22</sup> 33 C.F.R. §110.190.

<sup>23</sup> 33 C.F.R. §110.193.

<sup>24</sup> 33 C.F.R. §110.193a.

<sup>25</sup> 33 C.F.R. §109.10.

<sup>26</sup> 33 C.F.R. §110.73.

<sup>27</sup> 33 C.F.R. §110.73a.

- Okeechobee Waterway, St. Lucie River, Stuart;<sup>29</sup>
- Marco Island, Marco River;<sup>30</sup>
- Manatee River, Bradenton;<sup>31</sup> and
- Apollo Beach.<sup>32</sup>

### Other Federally Designated Anchorages and Moorings in Florida

The Corps possesses the authority to regulate public use of federal water resource development projects in the public interest and the navigable capacity of waters of the U.S.<sup>33</sup> In 2013, the Corps published the Okeechobee Waterway Anchoring and Mooring Policy.<sup>34</sup> It provides the following anchoring and mooring guidance within the Okeechobee Waterway:<sup>35</sup>

- No vessel may anchor in the Okeechobee Waterway, except in case of an emergency or incidental to navigating the 152 mile waterway. Anchoring incidental to navigating the length of the waterway over multiple days is allowed to provide adequate rest for crew members while crossing the waterway to ensure the safety of crew and other users on the waterway. Overnight anchoring may not exceed 24 hours in one location and the vessel needs to show one days travel distance before anchoring again.
- Vessels stopped for longer than 24 hours should be moored or stored at designated areas approved by the Corps, which consists of commercial authorized marinas/docks.<sup>36</sup>

### Public and Private Use of Sovereignty Submerged Lands

When Florida entered the Union as a state,<sup>37</sup> pursuant to the SLA, it gained title to the beds of all navigable waterways (sovereignty submerged lands).<sup>38</sup> Sovereignty submerged lands include, but are not limited to, tidal lands, islands, sandbars, shallow banks and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally-influenced waters.<sup>39</sup> The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state by virtue of its sovereignty in trust for all the people.<sup>40</sup> Private use of portions of these lands may be authorized by law, but only when not contrary to the public interest.<sup>41</sup> However, these lands cannot be wholly alienated by the state.<sup>42</sup>

The state may regulate the public's use of sovereignty submerged lands for the benefit of the public as a whole as circumstances may demand, subject to Congress' regulatory power to control commerce.<sup>43</sup> When regulating sovereignty submerged lands, a state has greater authority to restrict its use than it

<sup>28</sup> 33 C.F.R. §110.73b.

<sup>29</sup> 33 C.F.R. §110.73c.

<sup>30</sup> 33 C.F.R. §110.74.

<sup>31</sup> 33 C.F.R. §110.74a.

<sup>32</sup> 33 C.F.R. §110.74b.

<sup>33</sup> 16 U.S.C. §460d; 33 U.S.C. §1; 36 C.F.R. Part 327; 33 C.F.R. §207.160.

<sup>34</sup> Okeechobee Waterway Anchoring and Mooring Policy, available at

<http://www.saj.usace.army.mil/Portals/44/docs/Navigation/Notices/NTN130318%20Okeechobee%20Waterway%20Anchoring%20and%20Mooring%20Policy.pdf>.

<sup>35</sup> *Id.*; The Okeechobee Waterway is defined as the area of water connecting the W.P. Franklin Lock to the St. Lucie Lock via the Caloosahatchee River, Lake Okeechobee, and the St. Lucie Canal, excluding privately excavated canals and tidal influenced waters from the Gulf of Mexico and Atlantic Ocean.

<sup>36</sup> *Id.*

<sup>37</sup> March 3, 1845.

<sup>38</sup> 43 U.S.C. §1312, designates the seaward boundary of each coastal State as three miles out from its coast line; *U.S. v. Louisiana, et al.*, 363 U.S. 1 (1960), recognizing Florida's seaward boundary into the Gulf of Mexico is three marine leagues (approximately 9-10 miles); *Coastal Petroleum Co. v. American Cyanamid Co.*, 492 So.2d 339 (Fla. 1986); r. 18-21.003(61), F.A.C.

<sup>39</sup> DEP Sovereignty Submerged Lands available at <http://www.dep.state.fl.us/lands/submerged.htm>.

<sup>40</sup> Section 11, Art. X, Fla. Const.

<sup>41</sup> *Id.*

<sup>42</sup> *Walton Co. v. Stop the Beach Renourishment, Inc.*, 988 So.2d 1102, 1110 (Fla. 2008) citing *Brickell v. Trammell*, 82 So. 221 (Fla. 1919). There are rare instances where sovereignty submerged lands have been conveyed. See Chapter 6769, Laws of Florida (1913).

<sup>43</sup> *State v. Gerbing*, 47 So. 353, 356 (Fla. 1908); *State v. Black River Phosphate Co.*, 13 So. 640, 645 (Fla. 1893).

would have over private lands.<sup>44</sup> However, the right to restrict or grant privileges to use such lands must be done in a manner that does not substantially impair the interest of the public as a whole.<sup>45</sup>

The public may use sovereignty submerged lands for navigation, commerce, fishing, bathing, and other public purposes.<sup>46</sup> These rights are designed to promote the general welfare and are subject to lawful regulation by the state.<sup>47</sup> The public's right to navigation entitles the public to the reasonable use of navigable waters for legitimate purposes of travel or transportation, boating or sailing for pleasure, carrying persons or property gratuitously for hire, and for uses which are consistent with other uses enjoyed in common.<sup>48</sup> Anchoring is a right incidental to the public's right of navigation, which must be balanced against other public purposes.<sup>49</sup> As such, the right to anchor or moor must not unreasonably obstruct others' navigation rights and does not include the right to anchor indefinitely in a manner that impairs a riparian owner's use and enjoyment of their property.<sup>50</sup>

Riparian owners are entitled to the same rights to use sovereignty submerged lands as the public, but also hold riparian rights,<sup>51</sup> such as the right to access the water,<sup>52</sup> the right to reasonably use the water, the right to accretion and reliction, and the right to an unobstructed view<sup>53</sup> of the water.<sup>54</sup> Riparian rights are necessary for the use and enjoyment of the upland property, but may not be exercised as to injure others in their lawful rights.<sup>55</sup>

### State Anchoring and Mooring Regulations

The Legislature delegated the responsibility of managing sovereignty submerged lands to the Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund (Board).<sup>56</sup> The Board is authorized to adopt rules governing anchoring, mooring, or otherwise attaching to the bottom of sovereignty submerged lands by vessels, floating homes, or any other watercraft.<sup>57</sup> The Board has adopted rules regulating the construction of mooring and docking structures,<sup>58</sup> but has not adopted rules regulating anchoring.

### *Local Government Regulatory Limitations on Anchoring and Mooring*

Local governments may only enact and enforce regulations prohibiting or restricting the mooring or anchoring of:

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<sup>44</sup> *Mariner Properties Development, Inc. v. Board of Trustees of the Internal Improvement Trust Fund*, 743 So. 2d 1121, 1122-1123 (Fla. 1st DCA 1999).

<sup>45</sup> *Black River Phosphate Co.*, at 645.

<sup>46</sup> *Stop the Beach Renourishment, Inc.*, at 1110 citing *Brickell*, at 221.

<sup>47</sup> *Id.*

<sup>48</sup> 85-45 Fla. Op. Att'y Gen. (1985).

<sup>49</sup> 85-45 Fla. Op. Att'y Gen. (1985); Ankersen, Thomas T., Richard Hamann & Bryon Flagg, *Anchoring Away: Government Regulation of the Right of Navigation in Florida 22* (National Sea Grant 2012) available at <http://www.floridawateraccess.org/boating/Boating-Toolkit/>.

<sup>50</sup> 85-45 Fla. Op. Att'y Gen. (1985), citing *Hall v. Wantz*, 57 N.W.2d 462 (Mich. 1953).

<sup>51</sup> Section 253.141(1), F.S.

<sup>52</sup> *Webb v. Giddens*, 82 So.2d 743, 745 (Fla. 1955) (State Road Department construction of culvert on Lake Jackson blocking access to main water body was found to be an impairment of riparian proprietorship.) Compare *Carmazi v. Board of County Commissioners of Dade Co.*, 108 So.2d 318, 323 (Fla. 3d DCA 1959) (Construction of dam on Little River blocking access to Biscayne Bay was not considered an impairment of riparian rights because it did not deprive a private riparian right. The right of navigation is an interest held by the public as a whole and may be restricted to exercise a necessary police power.)

<sup>53</sup> *Lee Co v. Kiesel*, 705 So.2d 1013, 1016 (Fla. 2d DCA 1998) (Holding that upland owners were entitled to compensation because bridge substantially and materially obstructed their littoral view). Compare *Hayes v. Bowman*, 91 So.2d 795 (Fla. 1957) (To be a compensable obstruction of the riparian right of view, the interference must be substantial).

<sup>54</sup> Section 253.141(1), F.S.; *Stop the Beach Renourishment, Inc.*, at 1111.

<sup>55</sup> *Id.*

<sup>56</sup> Section 253.03(1), F.S. Section 253.03(7), F.S., authorizes the Board to adopt rules governing anchoring, mooring, or otherwise attaching to the bottom of all sovereign submerged lands by vessels, floating homes, or any other watercraft. The Board has not exercised this authority to adopt rules to regulate anchoring, but has adopted rules regulating the construction of mooring and docking structures. See ch. 18-21, F.A.C.

<sup>57</sup> Section 253.03(1) and (7), F.S.

<sup>58</sup> See ch. 18-21, F.A.C.

- A floating structure;<sup>59</sup>
- A live-aboard vessel;<sup>60</sup> or
- A vessel<sup>61</sup> that is within the marked boundaries of a mooring field.<sup>62</sup>

Local governments are otherwise prohibited from regulating the anchoring of vessels that are located outside of a mooring field.<sup>63</sup>

### *Fish and Wildlife Conservation Commission Anchoring and Mooring Pilot Program*

In 2009, the Legislature required the Fish and Wildlife Conservation Commission (FWC), in consultation with the Department of Environmental Protection (DEP), to establish a pilot program to explore options for local governments to regulate the anchoring and mooring of vessels located outside of mooring fields.<sup>64</sup> The program today is commonly referred to as the “Anchoring and Mooring Pilot Program.”<sup>65</sup> Currently, the only local governments that are allowed to regulate anchoring and mooring outside the marked boundaries of mooring fields are the participants in the program,<sup>66</sup> which include:

- The City of St. Augustine;<sup>67</sup>
- The City of St. Petersburg;<sup>68</sup>
- The City of Sarasota;<sup>69</sup>
- Martin County in partnership with the City of Stuart;<sup>70</sup> and
- Monroe County in partnership with the cities of Marathon and Key West.<sup>71</sup>

The goals of the pilot program are to encourage the establishment of additional mooring fields and to develop and test policies and regulatory regimes that:<sup>72</sup>

- Promote the establishment and use of mooring fields;
- Promote access to the waters of the state;
- Enhance navigational safety;
- Protect maritime infrastructure;
- Protect marine environment; and

<sup>59</sup> Section 327.02(11), F.S., defines the term “floating structure” as “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. Floating structures are expressly excluded from the definition of the term ‘vessel.’ Incidental movement upon water or resting partially or entirely on the bottom does not, in and of itself, preclude an entity from classification as a floating structure.”

<sup>60</sup> Section 327.02(19), F.S., defines the term “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 term expressly excludes commercial fishing boats.

<sup>61</sup> Section 327.02(43), F.S., defines term “vessel” as “synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution and includes 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.”

<sup>62</sup> Section 327.60(3), F.S.

<sup>63</sup> Section 327.60(2)(f) and (3), F.S.

<sup>64</sup> Chapter 2009-86, Laws of Florida; s. 327.4105, F.S.

<sup>65</sup> *FWCC Anchoring and Mooring Pilot Program Report of Finding and Recommendations*, (Dec. 31, 2013), available at <http://myfwc.com/media/2704721/FindingsRecommendations.pdf>.

<sup>66</sup> Section 327.4105(3), F.S.

<sup>67</sup> The City of St. Augustine’s ordinance is available at <http://www.staugustinegovernment.com/visitors/documents/Ord2011-10-2.pdf>.

<sup>68</sup> The City of St. Petersburg’s ordinance is available at <http://myfwc.com/media/2221101/StPeteOrdinance.pdf>.

<sup>69</sup> The City of Sarasota’s ordinance is available at <http://myfwc.com/media/2405171/Sarasota-final-Ord-12-5003.pdf>.

<sup>70</sup> Martin County’s ordinance is available at

[http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=3&cad=rja&uact=8&ved=0CC8QFjACahUKEwivnoHv4urIAhVMVh4KHRx7AEg&url=http%3A%2F%2Fwww.martin.fl.us%2Fweb\\_docs%2Feng%2Fweb%2Fcoastal%2FAnchoring\\_Mooring%2FOrd928.pdf&usq=AFQjCNFK0Ou\\_MYuDio-U5VxVaZt\\_WautuA](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=3&cad=rja&uact=8&ved=0CC8QFjACahUKEwivnoHv4urIAhVMVh4KHRx7AEg&url=http%3A%2F%2Fwww.martin.fl.us%2Fweb_docs%2Feng%2Fweb%2Fcoastal%2FAnchoring_Mooring%2FOrd928.pdf&usq=AFQjCNFK0Ou_MYuDio-U5VxVaZt_WautuA).

<sup>71</sup> Monroe County’s ordinance is available at <https://fl-monroecounty.civicplus.com/Documentview.aspx?DID=4039> *FWCC Anchoring and Mooring Pilot Program Report of Finding and Recommendations*, (Dec. 31, 2013), available at <http://myfwc.com/media/2704721/FindingsRecommendations.pdf>.

<sup>72</sup> Section 327.4105(1), F.S.

- Deter improperly stored, abandoned, or derelict vessels.

FWC submitted a report of its findings and recommendations of the pilot program to the Legislature on December 31, 2013.<sup>73</sup> FWC recommended an extension of the program for an additional three years to allow a more thorough and complete assessment of the local government ordinances being implemented.<sup>74</sup> In 2014, the program was extended by the Legislature.<sup>75</sup> FWC must submit an updated report of its findings and recommendations to the Governor and Legislature by January 1, 2017.<sup>76</sup> The program and the local government ordinances developed under the program are set to expire on July 1, 2017, unless reenacted by the Legislature.<sup>77</sup>

### *Noncriminal Boating Infractions*

Section 327.73(1), F.S., provides that a person cited for a violation of certain vessel laws of the state is charged with a noncriminal infraction, will be cited for the infraction, and ordered to appear in county court. The civil penalty for an infraction is \$50, except as otherwise provided by law.<sup>78</sup> A person who fails to appear or otherwise properly respond to the citation will, in addition to the civil penalty, be charged with failing to respond to the citation and upon conviction will be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082<sup>79</sup> or s. 775.083, F.S.<sup>80</sup> A written warning to this effect is provided when the citation is issued.<sup>81</sup>

### **Effect of Proposed Changes**

The bill creates s. 327.4108, F.S., providing for the anchoring of vessels in anchoring limitation areas. The bill designates the following densely populated urban areas, which have narrow state waterways, residential docking facilities, and significant recreational boating traffic 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; and
- The sections of Biscayne Bay in Miami-Dade County lying between:
  - Rivo Alto Island and Di Lido Island;
  - San Marino Island and San Marco Island; and
  - 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.

The bill allows a person to anchor a vessel in an anchoring limitation area:

- If the vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors. The vessel may anchor for 3 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 unless the vessel anchors. The vessel may anchor until weather conditions no longer pose such risk. During a hurricane or 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; and

<sup>73</sup> Section 327.4105(5), F.S.; *FWCC Anchoring and Mooring Pilot Program Report of Finding and Recommendations*, (Dec. 31, 2013), available at <http://myfwc.com/media/2704721/FindingsRecommendations.pdf>.

<sup>74</sup> *FWCC Anchoring and Mooring Pilot Program Report of Finding and Recommendations*, (Dec. 31, 2013), available at <http://myfwc.com/media/2704721/FindingsRecommendations.pdf>.

<sup>75</sup> Chapter 2014-136, Laws of Florida.

<sup>76</sup> Section 327.4105(5), F.S.

<sup>77</sup> Section 327.4105(6), F.S.

<sup>78</sup> Section 327.73(1), F.S.

<sup>79</sup> A person who has been convicted of a misdemeanor of the second degree may be sentenced by a definite term of imprisonment not exceeding 60 days.

<sup>80</sup> A person who has been convicted of a noncriminal violation may be sentenced to pay a fine which must not exceed \$500.

<sup>81</sup> Section 327.73(1), F.S.

- During events described in s. 327.48, F.S.,<sup>82</sup> or other special events, including, 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 3 days.

The bill provides that an anchoring limitation area does not apply to:

- 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; or
- Vessels engaged in recreational fishing if the persons onboard are actively tending hook and line fishing gear or nets.

The bill defines "law enforcement officer or agency" to mean an officer or agency authorized to enforce s. 327.4108, F.S., pursuant to s. 327.70, F.S.,<sup>83</sup> and provides that:

- A law enforcement officer or agency may remove a vessel from an anchoring limitation area and impound the vessel for up to 48 hours, or cause the removal and impoundment, if the vessel operator, after being issued a citation for a violation of s. 327.4108, F.S.:
  - Anchors the vessel in violation of s. 327.4108, F.S., 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;
- A law enforcement officer or agency removing or impounding a vessel, or causing the removal or impoundment, must be held harmless for any damage to the vessel resulting from the removal or impoundment unless the damage results from gross negligence or willful misconduct;
- A contractor performing removal or impoundment services at the direction of a law enforcement officer or agency must:
  - Be licensed in accordance with Coast Guard regulations;
  - 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 the services; and
  - In addition to the civil penalty imposed under s. 327.73(1)(y), F.S.,<sup>84</sup> the operator of a vessel that is removed and impounded must pay all removal and storage fees before the vessel is released. A vessel removed may not be impounded for longer than 48 hours.

The bill provides that a violation of the prohibition on the anchoring of a vessel in an anchoring limitation area is punishable as a noncriminal infraction of the vessel laws of the state, and amends s. 327.73, F.S., providing the following penalty:

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

The bill amends s. 327.70, F.S., regarding enforcement to provide that a noncriminal violation of s. 327.4108, F.S., may be enforced by a uniform boating citation issued to the operator of a vessel unlawfully anchored in an anchoring limitation area.

<sup>82</sup> Section 327.48, F.S., provides for regattas, races, marine parades, tournaments, or exhibitions.

<sup>83</sup> Section 327.70, F.S., provides that chs. 327 and 328, F.S., must be enforced by the Division of Law Enforcement of the FWC and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officer as defined in s. 943.10, F.S., all of whom may order the removal of vessels deemed to be an interference or a hazard to public safety, enforce the provisions of chs. 327 and 328, F.S., or cause any inspections to be made of all vessels in accordance with chs. 327 and 328, F.S.

<sup>84</sup> Section 327.73, F.S., provides for non-criminal infractions of vessel laws.



The bill provides that s. 327.4108, F.S., expires upon the Legislature's adoption of FWC's recommendations from the pilot program for the regulation of mooring vessels outside of public mooring fields pursuant to s. 327.4105, F.S.

**B. SECTION DIRECTORY:**

Section 1. Creates s. 327.4108, F.S., regarding the anchoring of vessels in anchoring limitation areas.

Section 2. Amends s. 327.70(2), F.S., regarding enforcement.

Section 3. Amends s. 327.73(1), F.S., regarding noncriminal infractions of vessel laws of the state.

Section 4. Provides an effective date.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill may have an indeterminate fiscal impact on local governments. While local governments may experience positive fiscal impacts resulting from the issuance of boating citations, local governments may also experience increased costs due to increased enforcement efforts.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill creates a noncriminal boating infraction for anchoring in an anchoring limitation area. As such, a violator will be charged with a noncriminal infraction, cited, and ordered to appear in county court. The noncriminal infraction includes tiered civil penalties. A person who fails to appear or otherwise properly respond to the citation will, in addition to the civil penalty, be charged with failing to respond to the citation and upon conviction will be guilty of a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days or a fine which must not exceed \$500.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise

revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article III, section 10 of the Florida Constitution prohibits the Legislature from enacting a special law<sup>85</sup> unless notice is first published or the law is conditioned upon becoming effective through referendum. 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 classification.<sup>86</sup>

A general law of local application applies to a district 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.<sup>87</sup> If particular conditions exist in only a portion of the state, enactments with reference thereto nonetheless may be general laws.<sup>88</sup> 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.<sup>89</sup> General laws and general laws of local application do not require notice or a referendum.<sup>90</sup>

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 26, 2016, the Agriculture & Natural Resources Subcommittee adopted a strike-all amendment and reported the bill favorably with committee substitute. The strike-all amendment:

- Allows a person to anchor a vessel in a recreational boating zone:
  - If the vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors. The vessel may anchor for 3 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 unless the vessel anchors. The vessel may anchor until weather conditions no longer pose such risk. During a hurricane or 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; and
  - During events described in s. 327.48, F.S., 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 duration of the special event or for 3 days, whichever occurs first;
- Provides that recreational boating zones do not apply to:
  - 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; or
  - Vessels engaged in recreational fishing if the persons onboard are actively tending hook and line fishing gear or nets;

<sup>85</sup> Fla. Const. art. X, §12(g).

<sup>86</sup> *License Acquisitions, LLC v. Debarry Real Estate Holdings, LLC*, 155 So.3d 1137 (Fla. 2014) (citing *Dept. of Bus. Reg. v. Classic Mile, Inc.*, 541 So.2d 1155 (Fla. 1989)).

<sup>87</sup> *City of Miami Beach v. Frankel*, 363 So.2d 555 (Fla. 1978).

<sup>88</sup> *Schrader v. Fla. Keys Aqueduct Authority*, 840 So.2d 1050, 1055 (Fla. 2003).

<sup>89</sup> *Id.* at 1056.

<sup>90</sup> *See Schrader v. Fla. Keys Aqueduct Authority*, 840 So.2d 1050 (Fla. 2003); Fla. Const. art. III, §10.

- Defines "law enforcement officer or agency" to mean an officer or agency authorized to enforce s. 327.4107, F.S., pursuant to s. 327.70, F.S., and provides that:
  - A law enforcement officer or agency may remove a vessel from a recreational boating zone and impound the vessel for up to 48 hours, or cause the removal and impoundment, if the vessel operator, after being issued a citation for a violation of s. 327.4104, F.S.:
    - Anchors the vessel in violation of this section within 12 hours after being issued the citation; or
    - Refuses to leave the recreational boating zone after being directed to do so by a law enforcement officer or agency;
  - A law enforcement officer or agency removing or impounding a vessel, or causing the removal or impoundment, must be held harmless for any damage to the vessel resulting from the removal or impoundment unless the damage results from gross negligence or willful misconduct;
  - A contractor performing removal or impoundment services at the direction of a law enforcement officer or agency must:
    - Be licensed in accordance with Coast Guard regulations;
    - 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 the services;
  - In addition to the civil penalty imposed under s. 327.73(1)(y), F.S., the operator of a vessel that is removed and impounded must pay all removal and storage fees before the vessel is released. A vessel removed may not be impounded for longer than 48 hours;
- Provides that a violation of the prohibition on the anchoring of a vessel in a recreational boating zone is punishable as a noncriminal infraction of the vessel laws of the state, and amends s. 327.73, F.S., to provide the following penalties:
  - For a first offense, up to a maximum of \$50;
  - For a second offense, up to a maximum of \$100;
  - For a third or subsequent offense, up to a maximum of \$250; and
- Amends s. 327.70, F.S., regarding enforcement, to provide that a noncriminal violation of s. 327.4107, F.S., may be enforced by a uniform boating citation issued to the operator of a vessel unlawfully anchored in a recreational boating zone.

On February 25, 2016, the State Affairs Committee adopted a strike-all amendment and reported the bill favorably with committee substitute. The strike-all amendment:

- Renumbers s. 327.4107, F.S., to s. 327.4108, F.S.;
- Renames recreational boating zones as anchoring limitation areas;
- Designates densely populated urban areas, which have narrow state waterways, residential docking facilities, and significant recreational boating traffic as anchoring limitation areas;
- Removes Crab Island; and
- Provides that s. 327.4108, F.S., expires upon the Legislature's adoption of FWC's recommendations from the pilot program for regulation of mooring vessels outside of public mooring fields pursuant to s. 327.4105, F.S.

This analysis is drafted to the committee substitute as approved by the committee.