

**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.)

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Prepared By: The Professional Staff of the Committee on Environmental Preservation and Conservation

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BILL: SB 1260

INTRODUCER: Senator Simpson

SUBJECT: Recreational Boating Zones

DATE: February 16, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	<b>Pre-meeting</b>
2.			ATD	
3.			FP	

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**I. Summary:**

SB 1260 establishes recreational boating zones in sections of Broward, Miami-Dade, and Okaloosa Counties. The bill prohibits a person from anchoring or mooring a vessel at any time between the hours from one-half hour after sunset to one-half hour before sunrise in any such recreational boating zone.

**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.<sup>1</sup> 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.”<sup>2</sup>

Riparian rights are rights that are those incident to land bordering upon navigable waters.<sup>3</sup> Under Florida law, riparian rights specifically include the right to an unobstructed view and the right of ingress to and egress from the water.<sup>4</sup> 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.<sup>5</sup> A riparian owner’s rights

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<sup>1</sup> 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.”

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

<sup>3</sup> Section 253.141, F.S.

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

<sup>5</sup> *Id.*

are concurrent with that of the public, not superior to that of the public.<sup>6</sup> 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.<sup>7</sup> The public has the right to use navigable waters for navigation or commerce.<sup>8</sup> Anchoring is considered to be incidental to the right of navigation.<sup>9</sup>

The anchoring and mooring of vessels has created conflicts 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.<sup>10</sup>

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

### **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. 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 regulations 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.<sup>13</sup> Such regulations 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.<sup>14</sup> 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.<sup>15</sup>

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

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

<sup>7</sup> *Id.*

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

<sup>9</sup> 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>.

<sup>10</sup> 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>.

<sup>11</sup> *Id.* at 1.

<sup>12</sup> *Id.*

<sup>13</sup> Section 253.03(7)(b), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> See Fla. Admin. Code Ch. 18-21 for rules regulating the construction of structures used for mooring or accessing vessels.

constitutes interference, if unreasonable under the prevailing circumstances.<sup>16</sup> Interference with navigation is a noncriminal infraction, punishable by a civil penalty of \$50.<sup>17</sup>

### **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.<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup>

While 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 or any vessels that are within the marked boundaries of a mooring field, local governments are prohibited from regulating the anchoring of non-live-aboard vessels outside such mooring fields.<sup>22</sup>

### ***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.<sup>23</sup> 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.<sup>24</sup> The pilot program is directed by the Fish and Wildlife Conservation Commission (FWC) in cooperation with the Department of Environmental Preservation (DEP).<sup>25</sup>

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:

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<sup>16</sup> Section 327.44(2), F.S.

<sup>17</sup> Section 327.73, F.S.

<sup>18</sup> Section 373.118, F.S.; Fla. Admin. Code R. 62-330.420.

<sup>19</sup> Fla. Admin. Code R. 62-330.420.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> 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; 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.

<sup>23</sup> 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>.

<sup>24</sup> Chapter 2009-86, s. 48, Laws of Fla.

<sup>25</sup> Section 327.4105, F.S.

- 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.<sup>26</sup>

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.<sup>27</sup> The pilot program and the local government ordinances developed under the program are set to expire July 1, 2017, unless reenacted by the Legislature.<sup>28</sup>

### ***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.<sup>29</sup> 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.

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<sup>26</sup> 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>.

<sup>27</sup> Chapter 2014-136, s. 2, F.S.

<sup>28</sup> Section 327.4105(6), F.S.

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

- Eighty-eight percent of respondents somewhat or strongly agreed that this concept was appropriate.<sup>30</sup>

### III. Effect of Proposed Changes:

**Section 1** creates s. 327.4107, F.S., to establish recreational boating zones and prohibit a person from anchoring or mooring a vessel in a recreational boating zone at any time between the hours from one-half hour after sunset to one-half hour before sunrise.

The bill establishes the following recreational boating zones:

- 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.
  - San Marino Island and San Marco Island.
  - San Marco Island and Biscayne Island.
- Crab Island in Choctawhatchee Bay at the East Pass in Okaloosa County.

A person who anchors or moors a vessel at any time between the hours from one-half hour after sunset to one-half hour before sunrise in an established recreational boating zone commits a noncriminal infraction, punishable by a \$50 civil penalty.

**Section 2** amends s. 327.73, F.S., to include a violation relating to the anchoring or mooring of vessels in recreational boating zones on the list of noncriminal infractions.

The bill takes effect July 1, 2016.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

#### 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

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<sup>30</sup> *Id.*

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.<sup>31</sup> On the other hand, general laws of local application do not require published notice or referendum.<sup>32</sup> 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.<sup>33</sup> If particular conditions exist in only a portion of the state, enactments with reference thereto nonetheless may be general laws.<sup>34</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>35</sup>

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The FWC or other law enforcement agencies that monitor anchoring or mooring in the recreational boating zones may experience an indeterminate positive fiscal impact resulting from the issuance of boating citations for violations relating to the anchoring or mooring of vessels in recreational boating zones. Additionally, the FWC or other law enforcement agencies may experience increased costs related to the enforcement of these zones.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 327.4107 of the Florida Statutes.

<sup>31</sup> *Lawnwood Medical Center, Inc. v. Seeger*, 990 So.2d 503 (Fla. 2008).

<sup>32</sup> *Dept. of Business Regulation v. Classic Mile, Inc.*, 541 So.2d 1155 (Fla. 1989).

<sup>33</sup> *City of Miami Beach v. Frankel*, 363 So.2d 55 (Fla. 1978).

<sup>34</sup> *Schrader v. Florida Keys Aqueduct Authority*, 840 So.2d 1050, 1055 (Fla. 2003).

<sup>35</sup> *Id.* at 1056.

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.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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