

**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 Appropriations Subcommittee on The Environment and Natural Resources

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BILL: CS/SB 1338

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Book

SUBJECT: Vessels

DATE: April 12, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	<b>Fav/CS</b>
2.	Reagan	Betta	AEN	<b>Recommend: Favorable</b>
3.			AP	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1338 implements many of the findings and recommendations of the Florida Fish and Wildlife Conservation Commission (FWC) in its report on the pilot program relating to the anchoring or mooring of vessels outside public mooring fields. The bill addresses issues relating to:

- Derelict vessels by:
  - Providing that a vessel is at risk of becoming derelict if an owner or operator of a vessel cannot demonstrate within 72 hours after notification by a law enforcement officer that the vessel has an effective means of propulsion or provide documentation of having ordered the necessary parts for vessel repair;
  - Elevating the civil penalties for having an expired vessel registration longer than six months;
  - Prohibiting the Department of Highway Safety and Motor Vehicles from issuing a certificate of title to any applicant for any vessel that has been deemed derelict by a law enforcement officer until such vessel is no longer deemed a derelict vessel; and
  - Exempting law enforcement officers who post a notice on a derelict vessel which he or she ascertains as lost or abandoned property from the additional requirement that such notice be sent by certified mail to the owner of the property when the law enforcement officer has given such owner notice of a violation of derelict vessels and issued him or her a citation for such violation.
- Anchoring or mooring in certain areas by prohibiting vessels or floating structures from anchoring or mooring within:

- 150 feet of any vessel launching or loading facility;
- 100 feet of public mooring field boundaries; or
- 300 feet of a superyacht repair facility.
- Local governmental authority by:
  - Amending the definition of the term “live-aboard vessel” to revise local governmental authority relating to the anchoring and mooring of vessels;
  - Authorizing local governments to enact and enforce regulations that require owners or operators of vessels or floating structures subject to marine sanitation requirements to provide proof of proper sewage disposal if such vessel has been anchored or moored for 10 consecutive days within the marked boundaries of permitted mooring fields or federally designated no discharge zones, provided the FWC has determined that adequate pumpout services are provided by such local government; and
  - Authorizing local governments to enact and enforce regulations that allow the local government to remove a vessel affixed to a public dock within its jurisdiction which has been deemed abandoned or lost property.

The bill allows that private residential multifamily docks that were grandfathered-in to use sovereignty submerged lands to exceed the 1:1 ratio for number of moored boats to the number of units within a private multifamily development.

The bill authorizes the FWC to establish boating restricted areas upon request of a private property owner of submerged lands that are adjacent to Outstanding Florida Waters or an aquatic preserve for the sole purpose of protecting any seagrass and contiguous seagrass habitat within their property boundaries from seagrass scarring due to propeller dredging.

The bill may have an indeterminate fiscal impact on state and local governments.

## 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.<sup>1</sup> Mooring is accomplished through the utilization of moorings permanently affixed to the bottom. 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.<sup>2</sup>

The anchoring of vessels has created conflicts in some areas of the state related to the use and enjoyment of the waters 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;

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<sup>1</sup> 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.

<sup>2</sup> Ankersen, Hamann, & Flagg, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, 2 (Rev. May 2012) available at <http://nsgl.gso.uri.edu/flsgp/flsgpt12001.pdf> (last visited Mar. 15, 2017).

- Vessels that 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>3</sup>

### **Lease of Sovereignty Submerged Lands**

The Board of Trustees of the Internal Improvement Trust Fund (BOT) is responsible for the administration and disposition of the state's sovereignty submerged lands.<sup>4</sup> The BOT is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.<sup>5</sup> Waterfront landowners must receive the BOT's authorization to build docks and related structures on sovereignty submerged lands. The Department of Environmental Protection (DEP) administers all staff functions on the BOT's behalf.<sup>6</sup>

Florida recognizes riparian rights for landowners with waterfront property bordering navigable waters, which include the rights of ingress, egress, boating, bathing, fishing, and others as defined by law.<sup>7</sup> Riparian landowners must obtain a sovereignty submerged lands authorization in the form of a letter of consent, consent by rule, or a lease prior to installation and maintenance of docks, piers, and boat ramps on sovereignty submerged land.

A preempted area is the area of sovereignty submerged lands from which any traditional public uses have been or will be excluded by an activity, such as the area occupied by docks, piers, and other structures; the area between a dock and the shoreline where access is not allowed, between docks, or areas where mooring routinely occurs that are no longer reasonably accessible to the general public; permanent mooring areas not associated with docks; and swimming areas enclosed by nets, buoys, or similar marking systems.<sup>8</sup> The preemption ratio is the ratio of the preempted area in square feet to the number of linear feet of shoreline owned by the applicant.<sup>9</sup> A dock that preempts more than the 10:1 preemption ratio requires a lease.

A lease agreement between the state and the property owner transfers the use, possession, and control of sovereignty submerged lands to the property owner for up to 10 years. The annual lease fees for a standard term lease are calculated through a formula based on annual income, square footage, or a minimum annual fee. Extended term leases are available, under limited conditions, for up to 25 years. Annual lease fees for extended term leases are calculated in the same fashion as standard lease fees but with a multiplier for the term in years.

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<sup>3</sup> Fish and Wildlife Conservation Commission (FWC), *Anchoring and Mooring Pilot Program Report of Findings and Recommendations*, 6 (Dec. 21, 2016), available at <http://myfwc.com/media/4126646/anchoringandmooringpilotprogramreport122116.pdf> (last visited Mar. 15, 2017).

<sup>4</sup> Section 253.03(8)(b), F.S., defines submerged lands as publicly owned lands below the ordinary high-water mark of fresh waters and below the mean high-water line of salt waters extending seaward to the outer jurisdiction of the state.

<sup>5</sup> Section 253.02(1), F.S.

<sup>6</sup> Section 253.03, F.S.

<sup>7</sup> Section 253.141(1), F.S.

<sup>8</sup> Fla. Admin. R. 18-21.003

<sup>9</sup> Fla. Admin. R. 18-21.005.

A private residential multi-family dock that is designed to moor up to the number of units within the multi-family development is not required to pay a lease fee if the preempted area is less than the 10:1 preempted ratio.<sup>10</sup> When the lease requirements were first adopted, a grandfathering-in program was established, which postponed the requirement for leases and payment of lease fees until January 1, 1998, provided the facility was registered by September 30, 1984.<sup>11</sup> Because many facilities missed the original deadline, a second grandfathering program was adopted in 1990, which allowed unregistered facilities to apply for a lease under the program by April 1, 1991.<sup>12</sup>

### **State Regulation of the Anchoring or Mooring of Vessels**

The BOT is authorized to adopt rules governing all uses of sovereignty submerged lands including rules for anchoring, mooring, or otherwise attaching to the bottom, the establishment of anchorages, the discharge of sewage, pump-out requirements, and facilities associated with anchorages.<sup>13</sup> Such rules must control the use of sovereignty submerged lands as a place of business or residence but are prohibited from interfering with commerce or the transitory operation of vessels through navigable water.<sup>14</sup> The BOT has yet to adopt rules relating to the anchoring of vessels on the waters of the state.

Section 327.44, F.S., prohibits a person from anchoring a vessel, except in cases 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 constitutes interference, if unreasonable under the prevailing circumstances.<sup>15</sup> Interference with navigation is a noncriminal infraction, punishable by a civil penalty of \$50.<sup>16</sup>

The FWC and other law enforcement agencies are authorized to relocate or remove a vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel. The FWC or any law enforcement agency that relocates or removes a vessel under these circumstances is to be held harmless for all damages to the vessel resulting from the relocation or removal unless the damage results from gross negligence or willful misconduct.<sup>17</sup> The costs to relocate or remove a vessel under these circumstances are recoverable against the vessel owner.<sup>18</sup>

Section 327.4108, F.S., prohibits, with specified exceptions, the anchoring of a vessel between one-half hour after sunset and one-half hour before sunrise in the following designated anchoring limitation areas:

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<sup>10</sup> Section 253.0374, F.S. See also DEP, *Construction Criteria for Docks, Piers, and Marinas-Not in an Aquatic Preserve*, [http://publicfiles.dep.state.fl.us/dworm/slerp/erphelp/mergedProjects/docksguide/Not\\_in\\_AP/Private\\_Multi\\_Family\\_or\\_Multi\\_Slip.htm](http://publicfiles.dep.state.fl.us/dworm/slerp/erphelp/mergedProjects/docksguide/Not_in_AP/Private_Multi_Family_or_Multi_Slip.htm) (last visited Mar. 23, 2017).

<sup>11</sup> R. Steven Lewis, Matthew Butler, and Timothy Rach, *Special Permitting Considerations for Sovereign Lands and Aquatic Preserves*, 19 (July 2014) available at <http://floridaenet.com/wp-content/uploads/2015/10/Special-Permitting-Considerations-for-Sovereign-Lands-and-Aquatic-Preserves-July-2014-00354627xBA9D6.pdf> (last visited Mar. 23, 2017).

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

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

<sup>14</sup> See Fla. Admin. Code ch. 18-21.

<sup>15</sup> Section 327.44(2), F.S.

<sup>16</sup> Section 327.73, F.S.

<sup>17</sup> Section 327.44(3), F.S.

<sup>18</sup> Section 327.44(5), F.S.

- 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; or
  - San Marco Island and Biscayne Island.<sup>19</sup>

This prohibition expires upon the Legislature's adoption of the FWC's recommendations for the regulation of mooring vessels outside public mooring fields developed under the pilot program.<sup>20</sup>

### **Local Regulation of the Anchoring or Mooring of Vessels**

Local governments are authorized by general permit to construct, operate, and maintain public mooring fields, each for up to 100 vessels.<sup>21</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 which the mooring field is designed to serve. 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. Major boat repairs and maintenance, fueling activities other than from the land-based support facility, and boat hull scraping and painting are not authorized within mooring fields.<sup>22</sup>

Local governments are authorized to enact and enforce ordinances that prohibit or restrict the mooring or anchoring of floating structures<sup>23</sup> or live-aboard vessels<sup>24</sup> within their jurisdictions and vessels that are within the marked boundaries of permitted mooring fields.<sup>25</sup> However, local governments are prohibited from enacting, continuing in effect, or enforcing any ordinance or local regulation that regulates the anchoring of vessels, other than live-aboard vessels, outside the marked boundaries of permitted mooring fields.<sup>26</sup> Local governments are only authorized to enact and enforce regulations regarding the mooring or anchoring of vessels that are located within marked boundaries of a mooring field.<sup>27</sup>

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<sup>19</sup> Section 327.4108, F.S.

<sup>20</sup> Section 327.4108(7), F.S.

<sup>21</sup> See s. 373.118, F.S. and Fla. Admin. Code R. 62-330.420(1).

<sup>22</sup> See Fla. Admin. Code R. 62-330.420.

<sup>23</sup> Section 327.02, 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 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."

<sup>24</sup> Section 327.02, 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. The definition expressly excludes commercial fishing boats."

<sup>25</sup> Section 327.60(3), F.S.

<sup>26</sup> Section 327.60(2)(f), F.S.

<sup>27</sup> Section 327.60, F.S.

## **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.<sup>28</sup>

It is unlawful to store, leave, or abandon a derelict vessel in Florida.<sup>29</sup> Those who are found in violation of this prohibition commit a first degree misdemeanor.<sup>30</sup> Additionally, s. 376.16, F.S., provides that a violation of derelict vessel laws also subjects the violator to a civil penalty of up to \$50,000 per violation.<sup>31</sup> Each day during any portion of which the violation occurs constitutes a separate offense.<sup>32</sup>

### ***Removal of Derelict Vessels***

Chapters 327 and 328, F.S., concerning vessel safety and vessel title certificates, liens, and registration, are enforced by 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 officer as defined in s. 943.10, F.S.<sup>33</sup>

Section 823.11, F.S., allows for the relocation or removal of 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. The costs incurred for relocating or removing a derelict vessel are recoverable against the vessel owner. 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.<sup>34</sup>

According to the FWC, removal costs for derelict vessels are approximately \$350 to \$450 per foot of vessel length. However, a floating vessel may be towed to a boat ramp or hoist and pulled from the water at a much lower cost. Relocation may cost nothing if a law enforcement officer is

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<sup>28</sup> Section 823.11(1)(b), F.S.

<sup>29</sup> Section 823.11(2), F.S.

<sup>30</sup> 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.

<sup>31</sup> Section 376.16(1), F.S.

<sup>32</sup> *Id.*

<sup>33</sup> Section 943.10(1), F.S., defines the term “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.”

<sup>34</sup> Section 705.103(4), F.S.

able to tow it to a suitable location. Costs for professional towing services are approximately \$200 per hour.<sup>35</sup>

The FWC maintains a statewide database of vessels that have been investigated by a law enforcement officer and deemed to be either derelict or at risk of becoming derelict. The database related to at-risk vessels is largely incomplete, because the current effort related to at-risk vessels is a voluntary, community-oriented policing effort. A total of 166 derelict vessels were removed by local governments in 2014 at a cost of approximately \$665,500, or \$4,009 per vessel.<sup>36</sup>

The FWC held six public meetings in 2015 to seek public input on the problem of derelict vessels and possible solutions. Participants were asked to respond to a survey to indicate their level of support for eight solutions to address problems related to derelict vessels. The concept of prohibiting a vessel at risk of becoming derelict from anchoring on Florida waters received 85.2 percent support from respondents.<sup>37</sup>

### ***At-risk vessels***

In 2016, the legislature passed ch. 2016-108, Laws of Florida, to prohibit neglected vessels or those in deteriorating conditions from anchoring, mooring, or occupying the waters of the state.<sup>38</sup> 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; or
- 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.<sup>39</sup>

A violation for anchoring, mooring, or occupying a vessel at risk of becoming derelict on the waters of the state is a noncriminal infraction, for which the civil penalty is:

- Fifty dollars, for a first offense.
- One hundred dollars, for a second offense occurring 30 days or more after a first offense.
- Two hundred and fifty dollars, for a third or subsequent offense occurring 30 days or more after a previous offense.<sup>40</sup>

### **Anchoring and Mooring Pilot Program**

In 2009, the Legislature created the Anchoring and Mooring Pilot Program to explore options for local governments to regulate the anchoring and mooring of non-live-aboard vessels outside the

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<sup>35</sup> FWC, *2016 Agency Bill Analysis for HB 7025*, (Jan. 6, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).

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

<sup>37</sup> *Id.*

<sup>38</sup> Chapter 2016-108, Laws of Fla.; s. 327.4107, F.S.

<sup>39</sup> Section 327.4107, F.S.

<sup>40</sup> Section 327.40(1)(a)(a), F.S.

marked boundaries of public mooring fields.<sup>41</sup> The pilot program is administered by the FWC in consultation with the DEP.<sup>42</sup>

The following local governments were selected as participants in the pilot program and were authorized to regulate anchoring and mooring outside the marked boundaries of permitted mooring fields:

- 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; and
- Martin County in partnership with the city of Stuart.<sup>43</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>44</sup>

### ***The FWC's Anchoring and Mooring Pilot Program Findings and Recommendations Report***

The FWC in 2016 published a report of its findings and recommendations upon completion of the pilot program.<sup>45</sup> The following recommendations were made based on lessons learned by the FWC through the individual pilot program participating local governments, public responses to surveys, and additional input from key stakeholders:

- Provide an allowance for a 300-foot buffer extending beyond mooring field boundaries within which anchoring is prohibited, to further protect the safety of mooring field users;
- Retain state authority to regulate the anchoring of vessels in the state or, if the state chooses to grant such authority to local governments, restrict such authority to counties in order to minimize confusion among boaters;
- Quantify the economic benefits and document the environmental benefits of mooring fields;
- Establish anchoring limited areas through a universal, statewide prohibition against allowing an anchored vessel to come within 150 feet of any marina, boat ramp, or other vessel launching and loading facility; and
- Require certain vessels within specified areas of Monroe County waters to demonstrate proof of compliance with marine sanitation device pump out requirements.<sup>46</sup>

Additionally, the FWC provided the following recommendations to prevent or remove derelict vessels on the waters of the state:

- Place a hold on titles of vessels deemed derelict;
- Limit who may renew a vessel registration;
- Increase the penalties for repeat violations of expired vessel registrations;
- Authorize an alternate means of notification to derelict vessel owners; and

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<sup>41</sup> Chapter 2009-86, s. 48, Laws of Fla.; s. 327.4105, F.S.

<sup>42</sup> Section 327.4105, F.S.

<sup>43</sup> FWC, *Anchoring and Mooring Pilot Program Report of Findings and Recommendations*, 15 (Dec. 21, 2016).

<sup>44</sup> Section 327.4105(6), F.S. The pilot program was originally set to expire on July 1, 2014. However, the program was extended to provide more time to fully evaluate each pilot program location. See ch. 2014-136, s. 2, Laws of Fla.

<sup>45</sup> See FWC, *Anchoring and Mooring Pilot Program Report of Findings and Recommendations* (Dec. 21, 2016), for the full report.

<sup>46</sup> *Id.* at 50-54.



- Add another condition to the definition of the term “at-risk vessel” which would define a vessel that is incapable of effective navigation when the owner or operator cannot demonstrate an effective means of propulsion for the purpose of safe navigation as an at-risk vessel.<sup>47</sup>

The FWC did not provide recommendations related to the following issues:

- Stored vessels;
- Inoperable vessels being used as residences;
- State-wide marine sanitation; and
- Setbacks from shorelines or private docks.<sup>48</sup>

### **Boating Restricted Areas**

Section 327.46, F.S., authorizes the FWC to establish restrictions on vessel speeds and vessel traffic on the waters of the state for any purpose necessary to protect the safety of the public, if such restrictions are necessary based on boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion, or other navigational hazards. Boating-restricted areas are adopted by the FWC by rule.<sup>49</sup>

Each boating-restricted area must be developed in consultation and coordination with the governing body of the county or municipality in which the boating-restricted area is located. When the boating-restricted area is to be on the navigable waters of the United States, the FWC must consult and coordinate with the United States Coast Guard and the United States Army Corps of Engineers.

Local governments are authorized to establish boating-restricted areas by ordinance within certain parameters.<sup>50</sup> Such ordinances must be reviewed by the FWC and determined necessary to protect public safety based upon substantial competent evidence.<sup>51</sup> The following types of restrictions are authorized to be established:

- An ordinance establishing an idle speed, no wake<sup>52</sup> boating-restricted area, if the area is:
  - Within 500 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways more than 300 feet in width.
  - Within 300 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways not exceeding 300 feet in width.
  - Within 500 feet of fuel pumps or dispensers at any marine fueling facility that sells motor fuel to the general boating public on waterways more than 300 feet in width.
  - Within 300 feet of the fuel pumps or dispensers at any licensed terminal facility that sells motor fuel to the general boating public on waterways not exceeding 300 feet in width.

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<sup>47</sup> *Id.* at 52-54.

<sup>48</sup> *Id.* at 54-56.

<sup>49</sup> See Fla. Admin. Code Ch. 68D-24, for established boating restricted areas by county.

<sup>50</sup> Section 327.46(1)(b), F.S.

<sup>51</sup> *Id.*

<sup>52</sup> Fla. Admin. Code R. 68D-24.002, defines the term “Idle Speed No Wake” to mean that a vessel cannot proceed at a speed greater than necessary to maintain steerageway.

- Inside or within 300 feet of any lock structure.<sup>53</sup>
- An ordinance establishing a slow speed, minimum wake<sup>54</sup> boating-restricted area if the area is:
  - Within 300 feet of any bridge fender system.
  - Within 300 feet of any bridge span presenting a vertical clearance of less than 25 feet or a horizontal clearance of less than 100 feet.
  - On a creek, stream, canal, or similar linear waterway if the waterway is less than 75 feet in width from shoreline to shoreline.
  - On a lake or pond of less than 10 acres in total surface area.<sup>55</sup>
- An ordinance establishing a vessel-exclusion zone if the area is:
  - Designated as a public bathing beach or swim area.
  - Within 300 feet of a dam, spillway, or flood control structure.<sup>56</sup>

The penalty for operating a vessel in a prohibited manner within a boating-restricted area that has been clearly marked by regulatory markers is a noncriminal infraction, punishable by a civil penalty of \$50.<sup>57</sup>

### **Protection of Seagrass**

According to s. 253.04, F.S., the state has a duty to conserve and improve state-owned lands and the products thereof, including the preservation and regeneration of seagrass. A person operating a vessel outside a lawfully marked channel in a careless manner that causes seagrass scarring in an aquatic preserve, except for Lake Jackson, Oklawaha River, Wekiva River, and Rainbow Springs aquatic preserves, commits a noncriminal infraction punishable by:

- Fifty dollars, for a first offense.
- Two hundred and fifty dollars, for a second offense occurring within 12 months after a prior conviction.
- Five hundred dollars, for a third offense occurring within 36 months after a prior conviction.
- One thousand dollars, for a fourth or subsequent offense occurring within 72 months after a prior conviction.<sup>58</sup>

### **Spring Protection Zones**

Section 327.45, F.S., authorizes the FWC to establish protection zones that restrict the speed and operation of vessels to protect and prevent harm to springs.<sup>59</sup> Such harm includes negative impacts to water quality, water quantity, hydrology, wetlands, and aquatic and wetland-dependent species.<sup>60</sup> The penalty for operating a vessel in violation of a spring

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<sup>53</sup> Section 327.46(1)(b), F.S.

<sup>54</sup> Fla. Admin. Code R. 68D-24.002, defines the term “Slow Speed Minimum Wake” to mean that a vessel must be fully off plane and completely settled in the water and it may not proceed greater than that speed which is reasonable and prudent to avoid the creation of an excessive wake or other hazardous condition under existing circumstances.

<sup>55</sup> Section 327.46(1)(b), F.S.

<sup>56</sup> *Id.*

<sup>57</sup> Section 327.73, F.S.

<sup>58</sup> *Id.*

<sup>59</sup> Section 327.45, F.S.

<sup>60</sup> *Id.*

protection zone is a noncriminal infraction charged as a uniform boating citation of which the civil penalty is:

- Fifty dollars, for a first offense.
- Two hundred and fifty dollars, for a second offense occurring within 12 months after a prior conviction.
- Five hundred dollars, for a third offense occurring within 36 months after a prior conviction.
- One thousand dollars, for a fourth or subsequent offense occurring within 72 months after a prior conviction.<sup>61</sup>

The FWC is responsible for the posting and maintenance of regulatory markers to identify protection zones.<sup>62</sup>

### **Uniform Waterway Markers**

The FWC has established a uniform system of regulatory markers compatible with the system of regulatory markers prescribed by the United States Coast Guard in the United States Aids to Navigation System.<sup>63</sup> The Division of Law Enforcement's Boating Waterways Section, within the FWC, permits and regulates the placement of markers in, on, and over the waters and shores of Florida.<sup>64</sup>

A person or municipality, county, or other governmental entity may not place any uniform waterway marker in, on, or over the waters or shores of the state without a permit.<sup>65</sup> The FWC will not issue any permit authorizing placement of regulatory markers implementing municipal or county ordinances that:

- Are in violation of s. 327.60, F.S., relating to limitations on local regulations;
- Establish boating-restricted areas until such ordinances have been reviewed and approved by the Boating and Waterways Section; or
- Regulate vessel speed or operation for manatee protection purposes, until such ordinances have been reviewed and approved by the FWC, coordinated through the Imperiled Species Management Section, and provided that such ordinances do not apply within the marked navigation channel of the Florida Intracoastal Waterway or to the waters within 100 feet of said channel.<sup>66</sup>

### **III. Effect of Proposed Changes:**

The bill implements many of the Florida Fish and Wildlife Conservation Commission's (FWC) recommendations for the anchoring and mooring of vessels on state waters as provided in its report on the pilot program relating to the anchoring or mooring of vessels outside public mooring fields.

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<sup>61</sup> Section 327.73, F.S.

<sup>62</sup> Section 327.45, F.S.

<sup>63</sup> Section 327.41, F.S.; *see* 33 C.F.R. §§ 62.1-62.65.

<sup>64</sup> Fla. Admin. Code R. 68D-23.102.

<sup>65</sup> Section 327.40, F.S.

<sup>66</sup> Fla. Admin. Code R. 68D-23.101.

### **At-risk and Derelict Vessels**

Section 2 amends s. 327.02, F.S., to define the term “barge” to mean “a flat-bottomed vessel used for the transport of goods on inland waterways which is propelled by its own power or towed by another vessel;” and to define the term “effective means of propulsion for safe navigation” to mean “when a vessel, other than a barge, is equipped with a functioning motor, controls, and steering system; or rigging and sails that are present and in good working order, and a functioning steering system.”

Section 4 amends s. 327.4107, F.S., to provide an additional condition for which an officer may deem a vessel at risk of becoming derelict. Under this section, a vessel is at risk of becoming derelict if within 72 hours after the owner or operator of the vessel receives written notification by an officer that the vessel does not have an effective means of propulsion for safe navigation, the vessel still does not have an effective means of propulsion for safe navigation and the owner or operator is unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair. This section authorizes the written notice to be provided by electronic mail or by other electronic documentation. The FWC is authorized to adopt rules to implement the new condition for at-risk vessels.

Sections 10 and 12 amend ss. 327.73 and 328.72, F.S., respectively, to provide the following penalties for an expired vessel registration:

- The owner or operator of a vessel with an expired registration of six months or less, upon a first or subsequent offense, commits a noncriminal infraction, punishable by a civil penalty of up to \$50;
- The owner or operator of a vessel with an expired registration of more than six months, upon a first offense, commits a noncriminal infraction punishable by a civil penalty of up to \$250; and
- The owner or operator of a vessel with an expired registration of more than six months, upon a second or subsequent offense, commits a noncriminal infraction, punishable by a civil penalty of up to \$500. Additionally, such a violator may not just pay the civil penalty by mail or in person within 30 days of receipt of the citation, but must appear before the designated official at the time and location of a scheduled hearing.

Section 11 amends s. 328.09, F.S., to prohibit the Department of Highway Safety and Motor Vehicles (DHSMV) from issuing a certificate of title to any applicant for any vessel that has been deemed derelict by a law enforcement officer. A law enforcement officer must inform the DHSMV in writing, which may include facsimile, electronic mail, or other electronic documentation, of the vessel’s derelict status and must supply the vessel title number or vessel identification number. The DHSMV is authorized to issue a certificate of title once a law enforcement officer has verified in writing that the vessel is no longer a derelict vessel.

Section 13 amends s. 705.103, F.S., to exempt officers who post a notice on a derelict vessel which he or she ascertains as lost or abandoned property from the additional requirement that such notice be sent by certified mail to the owner of the property when the law enforcement officer has given such owner notice of a violation of derelict vessels and issued a violation of such to the owner.

### **Anchoring or Mooring Limitation Areas**

Section 6 creates s. 327.4109, F.S., to prohibit the anchoring or mooring of a vessel or floating structure within:

- 150 feet of any marina, boat ramp, or other vessel launching or loading facility;
- 300 feet of a superyacht repair facility; or
- 100 feet of public mooring field boundaries or a lesser distance if approved by the FWC upon request by a local government within which the mooring field is located.

Section 6 defines the term “superyacht repair facility” to mean a facility that can provide service or repair to a yacht with a load line of 79 feet or more in length.

Exceptions to the anchoring and mooring prohibitions for vessel launching or loading facilities or public mooring field boundaries are allowed if:

- The vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the people on board unless the vessel anchors or moors. In such an event, the vessel may anchor or moor for five business days or until the vessel is repaired, whichever occurs first; or
- Imminent or existing weather in the vicinity of the vessel poses an unreasonable risk of harm to the vessel or the persons on board unless the vessel anchors or moors. The vessel may anchor or moor 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.

Additionally, this section exempts all of the following vessels from the anchoring or mooring prohibition:

- Vessels owned or operated by a governmental entity;
- Construction or dredging vessels on an active job site;
- Vessels actively engaged in commercial fishing; and
- Vessels engaged in recreational fishing when the persons onboard are actively tending hook and line fishing gear or nets.

This section prohibits a vessel or floating structure from anchoring, mooring, tying, or otherwise affixing or allowing the vessel or floating structure to remain anchored, moored, tied, or otherwise affixed to an unpermitted, unauthorized, or otherwise unlawful object that is on or affixed to the bottom of waters of the state. This prohibition does not apply to a private mooring owned by the owner of private submerged lands.

A violation of an anchoring or mooring prohibition under the bill is a noncriminal infraction for a first violation, punishable by a civil penalty of up to \$50; second violation, punishable by a civil penalty of up to \$100; or a third or subsequent violation, punishable by a civil penalty of up to \$250. Additionally, the bill authorizes any such noncriminal violation to be enforced by a uniform boating citation issued to the owner or operator of a vessel or floating structure unlawfully anchored, moored, tied, or otherwise affixed in a prohibited area.

Section 5 amends s. 327.4108, F.S., to keep the designated anchoring limitation areas in place after the Legislature adopts the FWC's recommendations for the regulation of mooring vessels outside of public mooring fields.

### **Local Regulation of the Anchoring or Mooring of Vessels**

Section 2 amends s. 327.02, F.S., to revise the definition of "live-aboard vessel" to remove vessels represented as a place of business or a professional or other commercial enterprise and include vessels used as residences which does not have an effective means of propulsion for safe navigation. Additionally, the definition is revised to expressly exclude commercial vessels and barges, rather than just commercial fishing boats.

Section 8 amends s. 327.60, F.S., to authorize local governments to enact and enforce regulations requiring owners or operators of vessels or floating structures subject to marine sanitation requirements to provide proof of proper disposal of sewage by means of an approved pumpout service, pumpout facility, or waste reception facility if the vessel is anchored or moored for more than 10 consecutive days within the following areas:

- Marked boundaries of a permitted mooring field under the jurisdiction of the local government; or
- Designated no discharge zones pursuant to 40 C.F.R. s. 1700.10, including those provided under 53 F.R. 1678 (1988) for Destin Harbor; 64 F.R. 46390 (1999) for the City of Key West; and 67 F.R. 35735 (2002) for the Florida Keys National Marine Sanctuary.<sup>67</sup>

Before a local government may adopt an ordinance to enact and enforce such regulations, the local government is required to provide adequate sewage pumpout services. The bill prohibits any ordinance that is adopted from taking effect until the FWC has reviewed the ordinance and determined that the ordinance is consistent with the requirements. The bill clarifies that local governments may enact or enforce sewage pumpout requirements for live-aboard vessels within any areas of its jurisdiction. The FWC is authorized to adopt rules to implement the provisions relating to local governmental authority to adopt ordinances for marine sanitation requirements authorized pursuant to the bill.

Additionally, Section 8 authorizes a local government to enact and enforce regulations that allow the local government to remove a vessel affixed to a public dock within its jurisdiction which has been deemed abandoned or lost property.

### **Private Residential Multifamily Docks**

Section 1 amends s. 253.0347, F.S., to allow private residential multifamily docks grandfathered-in to use sovereignty submerged lands by January 1, 1998, pursuant to former Florida Administrative Code Rule 18-21.00405, as it existed in rule on March 15, 1990, to exceed the 1:1 ratio for the number of moored boats to the number of units within the private multifamily development, as previously authorized under the grandfather program.

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<sup>67</sup> United States Environmental Protection Agency, *No-Discharge Zones by State*, <https://www.epa.gov/vessels-marinas-and-ports/no-discharge-zones-ndzs-state#fl> (last visited Mar. 17, 2017).

### **Boating Restricted Areas**

Section 7 amends s. 327.46, F.S., to authorize the FWC to establish boating restricted areas by rule upon request of owners of private submerged lands that are adjacent to Outstanding Florida Waters<sup>68</sup> or an aquatic preserve for the sole purpose of protecting any seagrass and contiguous seagrass habitat within their private property boundaries from seagrass scarring due to propeller dredging. Owners making such request must demonstrate to the FWC clear ownership of the submerged lands.

The term “seagrass” is defined to mean “Cuban shoal grass (*Halodule wrightii*), turtle grass (*Thalassia testudinum*), manatee grass (*Syringodium filiforme*), star grass (*Halophila engelmannii*), paddle grass (*Halophila decipiens*), Johnson’s seagrass (*Halophila johnsonii*), or widgeon grass (*Ruppia maritima*).”<sup>69</sup>

The bill requires the commission to develop rules to implement the establishment of boating restricted areas, including, but not limited to, establishing an application process and criteria for meeting the request requirements. Private property owners are required to apply to the FWC for a uniform waterway marker permit for marking any boating-restricted area established by rule.

Section 3 amends s. 327.391, F.S., to conform a cross-reference for s. 327.02, F.S., relating to definitions.

The bill takes effect July 1, 2017.

#### **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.

<sup>68</sup> Section 403.061(27), F.S., requires the Department of Environmental Protection to establish “Outstanding Florida Waters” which are water bodies worthy of special protection because of their natural attributes.

<sup>69</sup> See s. 253.04, F.S.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

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

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 253.0347, 327.02, 327.391, 327.4107, 327.4108, 327.46, 327.60, 327.70, 327.73, 328.09, 328.72, and 705.103.

This bill creates section 327.4109 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.)

**CS by Environmental Preservation and Conservation on March 22, 2017:**

The CS/SB 1338 does the following:

- Amends s. 253.0347, F.S., to authorize grandfathered-in private residential multifamily docks to exceed the amount of moored boats to the number of units within the private multifamily development.
- Defines the term “barge” to mean a flat-bottomed vessel used for the transport of goods on inland waterways that is propelled by its own power or towed by another vessel.
  - Exempts barges from the definition of the term “effective means of propulsion for safe navigation” and from the definition of the term “live-aboard vessel.”
- Revises the definition of the term “live-aboard vessel” to remove vessels represented as a place of business or a professional or other commercial enterprise.
  - Adds such vessels as vessels that local governments are authorized to regulate outside public mooring fields.
  - Expressly exempts commercial vessels rather than commercial fishing boats from the definition of live-aboard vessel.



- Revises the condition under which a vessel may be deemed at-risk if it does not have an effective means of propulsion for safe navigation by:
  - Clarifying that the notice must be written but may be provided electronically;
  - Provides the vessel owner or operator the opportunity to provide documentation of having ordered necessary parts for vessel repair; and
  - Authorizes the FWC to adopt rules to implement.
- Revises the amendment to s. 327.4108, F.S., instead of striking through the entire subsection the amendment adds that this section shall remain in affect notwithstanding the Legislature’s adoption of FWC’s recommendations.
- Revises s. 327.4109, F.S., relating to anchoring or mooring prohibited by:
  - Adding an additional prohibition on the anchoring or mooring of a vessel within 300 feet of a superyacht repair facility and defines the term “superyacht repair facility.”
  - Revising the 300 feet prohibition relating to public mooring fields to 100 feet. Authorizes the FWC to adopt rules to implement.
  - Revising the circumstances under which a vessel may anchor within 100 feet of a public mooring field and within 150 feet of a vessel launching or loading facility to authorize anchoring or mooring for 5 business days for repairs instead of 3.
  - Removes the criminal penalty for second and subsequent violations.
- Amends s. 327.46, F.S., to authorize the FWC to establish boating restricted areas to protect seagrasses on privately owned submerged lands upon request by owners of such lands which are adjacent to Outstanding Florida Waters or an aquatic preserve.
- Revises the amendment to s. 327.60, F.S., to limit the proof of pumpout requirements to vessels when anchored or moored for more than 10 consecutive days within the specified areas.
- Authorizes local governments to enact and enforce regulations which allow the local government to remove a vessel affixed to a public dock within its jurisdiction that is abandoned or lost property.
- Removes the criminal penalty for violating registration renewal requirements a second or subsequent time.
- Amends s. 328.09, F.S., to prohibit the Department of Highway Safety and Motor Vehicles from issuing a certificate of title to any applicant for any vessel that has been deemed derelict until the officer informs the department in writing that the vessel is no longer derelict.

**B. Amendments:**

None.