

**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 1338

INTRODUCER: Senator Book

SUBJECT: Vessels

DATE: March 21, 2017

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

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

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**I. Summary:**

SB 1338 implements many of the findings and recommendations of the Florida Fish and Wildlife Conservation Commission (FWC) in their statutorily required 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, after 72 hours after notification by a law enforcement officer, that the vessel has an effective means of propulsion; and
  - Elevating the penalty for expired registration of more than 6 months upon a second or subsequent offense from a noncriminal infraction to a second degree misdemeanor.
- 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; and
  - 300 feet of public mooring field boundaries.
- Local governmental authority by 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 within 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.

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 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;
- 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>

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

The Board of Trustees of the Internal Improvement Trust Fund (board), which consists of the Governor and the Cabinet, is responsible for administering, controlling, and managing sovereignty submerged lands.<sup>4</sup> The board 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>5</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>6</sup> The board 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>7</sup> Interference with navigation is a noncriminal infraction, punishable by a civil penalty of \$50.<sup>8</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.

<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).

<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(7), F.S.

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

<sup>6</sup> See Fla. Admin. Code ch. 18-21.

<sup>7</sup> Section 327.44(2), F.S.

<sup>8</sup> Section 327.73, F.S.

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>9</sup> The costs to relocate or remove a vessel under these circumstances are recoverable against the vessel owner.<sup>10</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:

- 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>11</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>12</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>13</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>14</sup>

Local governments are authorized to enact and enforce ordinances that prohibit or restrict the mooring or anchoring of floating structures<sup>15</sup> or live-aboard vessels<sup>16</sup> within their jurisdictions

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<sup>9</sup> Section 327.44(3), F.S.

<sup>10</sup> Section 327.44(5), F.S.

<sup>11</sup> Section 327.4108, F.S.

<sup>12</sup> Section 327.4108(7), F.S.

<sup>13</sup> See s. 373.118, F.S. and Fla. Admin. Code R. 62-330.420(1).

<sup>14</sup> See Fla. Admin. Code R. 62-330.420.

<sup>15</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>16</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."

and vessels that are within the marked boundaries of permitted mooring fields.<sup>17</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>18</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>19</sup>

### **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>20</sup>

It is unlawful to store, leave, or abandon a derelict vessel in Florida.<sup>21</sup> Those who are found in violation of this prohibition commit a first degree misdemeanor.<sup>22</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>23</sup> Each day during any portion of which the violation occurs constitutes a separate offense.<sup>24</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 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>25</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

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<sup>17</sup> Section 327.60(3), F.S.

<sup>18</sup> Section 327.60(2)(f), F.S.

<sup>19</sup> Section 327.60, F.S.

<sup>20</sup> Section 823.11(1)(b), F.S.

<sup>21</sup> Section 823.11(2), F.S.

<sup>22</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>23</sup> Section 376.16(1), F.S.

<sup>24</sup> *Id.*

<sup>25</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.”

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>26</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 able to tow it to a suitable location. Costs for professional towing services are approximately \$200 per hour.<sup>27</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>28</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 8 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>29</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>30</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>31</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.

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<sup>26</sup> Section 705.103(4), F.S.

<sup>27</sup> FWC, *2016 Agency Bill Analysis for HB 7025*, (Jan. 6, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Chapter 2016-108, Laws of Fla.; s. 327.4107, F.S.

<sup>31</sup> Section 327.4107, F.S.

- Two-hundred and fifty dollars, for a third or subsequent offense occurring 30 days or more after a previous offense.<sup>32</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 marked boundaries of public mooring fields.<sup>33</sup> The pilot program is administered by the FWC in consultation with the Department of Environmental Protection (DEP).<sup>34</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>35</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>36</sup>

### ***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>37</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

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<sup>32</sup> Section 327.40(1)(a)(a), F.S.

<sup>33</sup> Chapter 2009-86, s. 48, Laws of Fla.; s. 327.4105, F.S.

<sup>34</sup> Section 327.4105, F.S.

<sup>35</sup> FWC, *Anchoring and Mooring Pilot Program Report of Findings and Recommendations*, 15 (Dec. 21, 2016).

<sup>36</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>37</sup> See FWC, *Anchoring and Mooring Pilot Program Report of Findings and Recommendations* (Dec. 21, 2016), for the full report.

- Require certain vessels within specified areas of Monroe County waters to demonstrate proof of compliance with marine sanitation device pump out requirements.<sup>38</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
- 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>39</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>40</sup>

### III. Effect of Proposed Changes:

SB 1338 implements many of the FWC’s 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.

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

The bill 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 the bill, a vessel is at risk of becoming derelict if 72 hours after 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.

The bill amends s. 327.02, F.S., to define the term “effective means of propulsion for safe navigation” to mean “the vessel 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.” The bill revises the definition of the term “live-aboard vessel” to include vessels that qualify as live-aboard vessels but do not have an effective means of propulsion for safe navigation.

The bill amends s. 328.72, F.S., to provide the following enhanced penalties for an expired vessel registration:

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<sup>38</sup> *Id.* at 50-54.

<sup>39</sup> *Id.* at 52-54.

<sup>40</sup> *Id.* at 54-56.

- The owner or operator of a vessel having a registration that has been expired for 6 months or less commits a noncriminal infraction, punishable by a civil penalty of \$50;
- The owner or operator of a vessel having a registration that has been expired for more than 6 months, upon a first offense, commits a noncriminal infraction punishable by a civil penalty of \$50; and
- The owner or operator of a vessel having a registration that has been expired for more than 6 months, upon a second or subsequent offense, commits a misdemeanor of the second degree punishable by up to 60 days in jail or an administrative fine up to \$500.

### **Anchoring or mooring limitation areas**

The bill prohibits 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; or
- 300 feet of public mooring field boundaries.

Exceptions to such anchoring and mooring prohibitions are allowed if:

- The vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the people onboard unless the vessel anchors or moors. In such an event, the vessel may anchor or moor for 3 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 onboard 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, the bill 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.

The bill prohibits a vessel or floating structure from anchoring, mooring, tying, or otherwise affixing 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 lawfully owned on 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 \$50; and a second degree misdemeanor for a second or subsequent violation, punishable by up to 60 days in jail or an administrative fine up to \$500. Additionally, the bill authorizes any such noncriminal violation to be enforced by a uniform boating citation issued to the operator of a vessel unlawfully anchored, moored, tied, or otherwise affixed.



The bill also removes the expiration mandated in s. 327.4108, F.S., the effect of which is 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**

The bill 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 within the following areas:

- Marked boundaries of a permitted mooring field under the jurisdiction of the local government; or
- No discharge zones, as designated 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>41</sup>

Before a local government may adopt an ordinance to enact and enforce such regulations, the local government is required to provide adequate pumpout services. The bill prohibits any ordinance that is adopted from taking effect until the FWC has reviewed the ordinance and determined that the local government provides adequate pumpout services to protect public health and the marine environment. The bill clarifies that local governments may enact pump-out requirements for live-aboard vessels.

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.

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<sup>41</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).

**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: 327.02, 327.391, 327.4107, 327.4108, 327.60, 327.70, 327.73, 328.72.

This bill creates s. 327.4109 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.