

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 7043 PCB NRPL 17-01 Vessels

**SPONSOR(S):** Agriculture & Natural Resources Appropriations Subcommittee; Natural Resources & Public Lands Subcommittee, Raschein

**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1338

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Natural Resources & Public Lands Subcommittee	12 Y, 0 N	Moore	Shugar
1) Agriculture & Natural Resources Appropriations Subcommittee	13 Y, 0 N, As CS	White	Pigott
2) Government Accountability Committee			

### SUMMARY ANALYSIS

In 2009, the Legislature required the Fish and Wildlife Conservation Commission (FWC) to establish a pilot program to explore policy options for regulating the anchoring and mooring of vessels outside of public mooring fields, including the authority that should be granted to local governments to regulate such activities (pilot program). With the exception of those participating in the pilot program, local governments are prohibited from regulating the anchoring or mooring of vessels, other than live-aboard vessels, outside the marked boundaries of mooring fields.

FWC was required to submit a report of its findings and recommendations on the pilot program to the Legislature by January 1, 2017. The pilot program and the ordinances adopted by the pilot program participants under the pilot program will expire on July 1, 2017, unless reenacted by the Legislature.

The bill incorporates many of the findings and recommendations from the pilot program. The bill:

- Defines “barge” and “effective means of propulsion for safe navigation,” and revises “live-aboard vessel;”
- Provides that a vessel is at risk of becoming derelict if the vessel does not have effective means of propulsion for safe navigation within 72 hours after the owner or operator of the vessel receives notice of such from an officer and cannot provide proof of purchase of parts necessary for repair;
- Removes the expiration of anchoring limitation areas;
- Prohibits a vessel or floating structure from anchoring or mooring within 150 feet of any marina, boat ramp, boatyard, or other vessel launching or loading facility, within 300 feet of a superyacht repair facility, or within 100 feet of a public mooring field boundary. Provides time-limited exemptions for mechanical failure and for imminent and existing weather conditions. Provides exemptions for government owned or operated vessels, construction or dredging vessels on an active job site, and vessels actively engaged in commercial or recreational fishing;
- Prohibits a vessel or floating structure from anchoring, mooring, tying, or otherwise affixing to an unpermitted or unauthorized object that is on or affixed to the bottom of waters of the state;
- Provides tiered penalties for operation with an expired registration and for anchoring or mooring where prohibited;
- Allows 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 a permitted mooring field or federally designated no discharge zones, when anchored or moored for more than 10 consecutive days, provided the local government has adequate sewage pumpout services and FWC has reviewed and approved the ordinance; or
  - Allow removal of vessels affixed to public docks that are abandoned or lost property.
- Provides that the Department of Highway Safety and Motor Vehicles may not issue a certificate of title for a derelict vessel, until the vessel is no longer deemed derelict.
- Provides that a law enforcement officer who has provided written notice to an owner of a derelict vessel is not required to send notice by certified mail.

The bill allows grandfathered private multifamily docks to exceed the number of moored boats to the number of residential units as authorized under former administrative rule.

The bill allows FWC to establish boating-restricted areas to protect seagrasses on privately owned submerged lands.

The bill may have an indeterminate fiscal impact on state and local governments and the private sector. See Fiscal Analysis & Economic Impact Statement section for discussion.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h7043a.ANR

**DATE:** 3/27/2017

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

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

##### Present Situation

In 2009, the Legislature required FWC to establish a pilot program to explore potential policy options for regulating the anchoring and mooring of vessels<sup>1</sup> outside public mooring fields, including the authority that should be granted to local governments to regulate such activities.<sup>2</sup> With the exception of those participating in the pilot program, local governments are prohibited from enacting or enforcing regulations on the anchoring or mooring of vessels, other than live-aboard vessels,<sup>3</sup> outside the marked boundaries of mooring fields.<sup>4</sup>

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

- Promote the establishment and use of public mooring fields;
- Promote access to the waters of the state;
- Enhance navigational safety;
- Protect maritime infrastructure;
- Protect marine environment; and
- Deter improperly stored, abandoned, or derelict vessels.<sup>5</sup>

Each location selected for inclusion in the pilot program was required to have a properly permitted mooring field.<sup>6</sup> FWC, in consultation with DEP, selected two locations off the east coast, two locations off the west coast, and one location within Monroe County. The locations had to be geographically diverse and take into consideration various users and means of using the waters of the state.<sup>7</sup> The pilot program participants include:

- The City of St. Augustine;<sup>8</sup>
- The City of St. Petersburg;<sup>9</sup>
- The City of Sarasota;<sup>10</sup>
- Martin County in partnership with the City of Stuart;<sup>11</sup> and
- Monroe County in partnership with the cities of Marathon and Key West.<sup>12</sup>

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<sup>1</sup> A “vessel” is synonymous with a boat as referenced in article VII, section 1(b) of the Florida Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water; Section 327.02(43), F.S.

<sup>2</sup> Ch. 2009-86, Laws of Fla.; section 327.4105, F.S.

<sup>3</sup> A “live-aboard vessel” is a vessel used solely as a residence and not for navigation; a vessel represented as a place of business or a professional or other commercial enterprise; or a vessel for which a declaration of domicile has been filed pursuant to section 222.17, F.S. The term expressly excludes commercial fishing boats; Section 327.02(19), F.S.

<sup>4</sup> Sections 327.60(2)(f) and 327.60(3), F.S.

<sup>5</sup> Section 327.4105(1)(a)-(f), F.S.

<sup>6</sup> DEP provides a general permit for local governments to develop and operated mooring fields, which can hold up to 100 vessels, including associated docks and parking facilities; Section 373.118(4), F.S.; rule 62-330.420, F.A.C.

<sup>7</sup> Section 327.4105(2), F.S.

<sup>8</sup> The City of St. Augustine ordinance, [http://www.citystaug.com/document\\_center/Marina/Ord2011-10-2.pdf](http://www.citystaug.com/document_center/Marina/Ord2011-10-2.pdf) (last visited Feb. 14, 2017).

<sup>9</sup> The City of St. Petersburg ordinance, <http://myfwc.com/media/2221101/StPeteOrdinance.pdf> (last visited Feb. 14, 2017).

<sup>10</sup> The City of Sarasota ordinance, <http://myfwc.com/media/2405171/Sarasota-final-Ord-12-5003.pdf> (last visited Feb. 14, 2017).

<sup>11</sup> Martin County ordinance, <https://www.martin.fl.us/sites/default/files/151-538.pdf> (last visited Feb. 14, 2017).

<sup>12</sup> Monroe County anchoring and mooring ordinance, <https://fl-monroecounty.civicplus.com/Documentview.aspx?DID=4039> (last visited Feb. 14, 2017).

Any ordinance enacted under the pilot program could not take effect or become enforceable until approved by FWC. FWC could not approve an ordinance that was inconsistent with the goals of the pilot program.<sup>13</sup> FWC was required to:

- Provide consultation and technical assistance to each pilot program participant to facilitate accomplishment of the pilot program's goals;
- Coordinate the review of any proposed ordinance with DEP; the United States Coast Guard; the Florida Inland Navigation District or the West Coast Inland Navigation District, as appropriate; and associations or other organizations representing vessel owners or operators; and
- Monitor and evaluate at least annually each pilot program participant and make modifications necessary to accomplish the goals of the pilot program.<sup>14</sup>

FWC was required to submit a report of its findings and recommendations of the pilot program to the Legislature by January 1, 2014.<sup>15</sup> At that time, FWC recommended an extension of the pilot program for an additional three years to allow a more thorough and complete assessment of the implementation of ordinances adopted by the pilot program participants.<sup>16</sup> The pilot program was extended by the Legislature, and FWC was required to submit an updated report by January 1, 2017.<sup>17</sup>

The pilot program and the ordinances adopted by the pilot program participants under the pilot program will expire on July 1, 2017, unless reenacted by the Legislature.<sup>18</sup>

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

On December 31, 2016, FWC submitted its report and made the following recommendations categorized by pilot program goals:

- For promoting the establishment and use of public mooring fields:
  - Provide additional safety precautions in the immediate vicinity of public mooring fields by establishing a 300 foot buffer outside the boundaries of public mooring fields within which no anchoring is allowed;
  - Retain regulatory authority for anchoring of vessels outside of mooring fields to the state, but if authority is granted to local governments, then authority should be granted to counties only and with certain stipulations;
  - Conduct research to quantify the economic benefits of mooring fields; and
  - Conduct research on the environmental benefits of mooring fields.
- For promoting access to the waters of the state, enhancing navigational safety, and protecting maritime infrastructure:
  - Create a statewide anchoring limited area whereby anchoring would be prohibited within 150 feet of marinas, boat ramps, or other vessel launching and loading facilities; and
  - Provide exceptions for when there is an unreasonable risk of harm due to weather conditions, vessels owned by government entities, construction and dredging vessels on an active job site, and vessels engaged in commercial or recreational fishing.

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<sup>13</sup> Section 327.4105(3), F.S.

<sup>14</sup> Section 327.4105(4), F.S.

<sup>15</sup> Section 327.4105(5), F.S.

<sup>16</sup> FWC, *Anchoring and Mooring Pilot Program Report of Findings and Recommendations* (Dec. 31, 2013),

<http://myfwc.com/media/2704721/FindingsRecommendations.pdf> (last visited Feb. 14, 2017).

<sup>17</sup> Ch. 2014-136, Laws of Fla.; section 327.4105(5), F.S.

<sup>18</sup> Section 327.4105(6), F.S.

- For the prevention of derelict vessels:<sup>19</sup>
  - Place a “hold” on titles of vessels that have been deemed derelict. Provide that the hold would be released upon court order or when a responsible party comes forward to take possession of the vessel and remove it from the waters of the state;
  - Limit who may renew a vessel registration to the owner or person with power of attorney;
  - Increase the penalty for a repeat violation of an expired vessel registration that is expired by more than six months to mirror that in current motor vehicle law.<sup>20</sup> This would elevate the penalty for a second and any subsequent time a vessel owner is cited for having a registration expired for more than six months from a non-criminal infraction<sup>21</sup> to a second degree misdemeanor;<sup>22</sup>
  - Waive the certified mailing requirement for abandoned or lost property<sup>23</sup> in instances where the owner of a derelict vessel has been notified by law enforcement through a written citation. Provide a 60-day exception for a vessel that has become derelict as a result of a declared natural disaster or state of emergency.
  - Provide that a vessel may be determined to be at risk of becoming a derelict vessel if a vessel owner or operator cannot demonstrate, after 72 hours of notification by a law enforcement officer, that the vessel has an effective means of propulsion for the purpose of safe navigation. For purposes of this provision, an effective means of propulsion for the purpose of safe navigation for a sailing vessel would mean there is a steering system, rigging, and sail(s) in working order and is equipped with a functioning motor, and for all other vessels would mean there is a functioning motor, controls, and steering system.
- For protecting the marine environment:
  - Prohibit a vessel or floating structure<sup>24</sup> from being moored to unauthorized moorings. Provide an exception for private moorings on privately-owned bottomland. Provide penalties for such violation as follows:
    - For a first violation, the penalty would be a noncriminal infraction; and
    - For a second and subsequent violation, the penalty would be a second degree misdemeanor.<sup>25</sup>

Though the pilot program and pilot program participants tried to address issues associated with stored vessels, inoperable vessels being used as residences, marine sanitation concerns, and setbacks from shorelines or private docks these issues remained unresolved. FWC provided the following discussion on these unresolved issues as follows:

- Stored vessels:

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<sup>19</sup> 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 this state without the consent of the agency having jurisdiction thereof; or docked, grounded, or beached upon the property of another without the consent of the property owner; section 823.11(1)(b), F.S.

<sup>20</sup> Section 320.07(3), F.S.

<sup>21</sup> Section 328.72(13), F.S.; Provides that a person cited for a violation of certain vessel laws of the state is charged with a noncriminal infraction, will be cited for the infraction, and ordered to appear in county court. The civil penalty for an infraction is \$50, except as otherwise provided by law. A person who fails to appear or otherwise properly respond to the citation will, in addition to the civil penalty, be charged with failing to respond to the citation and upon conviction will be guilty of a misdemeanor of the second degree.

<sup>22</sup> Sections 775.082 and 775.083, F.S.; Provides that a person who has been convicted of a misdemeanor of the second degree may be sentenced by a definite term of imprisonment not exceeding 60 days and may be sentenced to pay a fine which must not exceed \$500.

<sup>23</sup> Section 705.103, F.S.

<sup>24</sup> A “floating structure” is a floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term includes, but is not limited to, an entity used as a residence, place of business or office with public access; a hotel or motel; a restaurant or lounge; a clubhouse; a meeting facility; a storage or parking facility; or a mining platform, dredge, dragline, or similar facility or entity represented as such. Floating structures are expressly excluded from the definition of the term “vessel.” Incidental movement upon water or resting partially or entirely on the bottom does not, in and of itself, preclude an entity from classification as a floating structure; section 327.02(11), F.S.

<sup>25</sup> FWC, *Anchoring and Mooring Pilot Program Proposed Report of Findings and Recommendations* (Dec. 21, 2016),

<http://myfwc.com/media/4126646/anchoringandmooringpilotprogramreport122116.pdf> (last visited Feb. 14, 2017).

- Ordinances created by the city of St. Petersburg and Monroe County in partnership with the cities of Marathon and Key West prohibited vessels from remaining on the water if conditions existed that indicated the vessel could not effectively navigate. The city of St. Augustine's ordinance required vessels to demonstrate operability twice annually by navigating to the city's marina to receive a decal which served to verify operability. The ordinance enacted by Martin County in partnership with the City of Stuart required that a vessel demonstrate operability if it remained in certain areas for more than 10 consecutive days.
- Enacting a statewide law regarding stored vessels would be very challenging to implement. Instead, FWC believes that implementing some of its recommendations would serve to remedy many of the problems associated with long-term storage of vessels, particularly:
  - Establishing a statewide 300 foot no anchoring buffer outside the permitted boundaries of public mooring fields;
  - Establishing a statewide prohibition on anchoring within 150 feet of any marina, boat ramp, or other vessel launching or loading facility;
  - Increasing the penalty for repeat violations of an expired vessel registration that is expired for more than six months, mirroring motor vehicle law;
  - Providing that a vessel may be determined to be at risk of becoming derelict if, after 72 hours of notification by law enforcement, the owner or operator of the vessel cannot demonstrate that the vessel has an effective means of propulsion for the purpose of safe navigation; and
  - Prohibiting a vessel or floating structure from mooring to unauthorized moorings.
- Inoperable vessels being used as residences:
  - Clarification to the definition of live-aboard vessel may help local governments in their efforts to regulate live-aboard vessels that are inoperable.
- Marine sanitation issues:
  - Clarification relating to whether local governments are authorized to regulate the use of a marine sanitation device<sup>26</sup> on a live-aboard vessel would be helpful.
  - Under the pilot program, ordinances created by Martin County in partnership with the City of Stuart, and Monroe County in partnership with the cities of Marathon and Key West require a proof of pumpout for vessels subject to marine sanitation requirements.<sup>27</sup>
  - Many marinas on Florida's waterways offer pumpout services, but there are considerable expanses of state waters where these services are limited that make it difficult to create a statewide program.
  - Attempting to enact a statewide pumpout program would be costly and extremely difficult to implement.
  - The topic warrants further consideration, perhaps resulting in enhancements to marine sanitation laws and/or expansion of pumpout services around the state.
- Setbacks from shorelines and private docks:
  - Much discussion has occurred throughout the timeframe of the pilot program regarding the establishment of setbacks where anchoring is limited from private property along the shoreline of waters of the state. Current law does not have such restrictions.
  - The cities of Sarasota and St. Augustine authorized a setback from either the shoreline or private docks, but these efforts did not yield a clear resolution.
  - A consensus on a statewide setback has not been identified that would be practical throughout the state.<sup>28</sup>

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<sup>26</sup> A "marine sanitation device" is equipment, other than a toilet, for installation on board a vessel which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage. Marine sanitation device Types I, II, and III are defined as provided in 33 C.F.R. § 159; section 327.02(23), F.S.

<sup>27</sup> Section 327.53, F.S.

<sup>28</sup> FWC, *Anchoring and Mooring Pilot Program Proposed Report of Findings and Recommendations* (Dec. 21, 2016), <http://myfwc.com/media/4126646/anchoringandmooringpilotprogramreport122116.pdf> (last visited Feb. 14, 2017).

## Private Residential Docks on Sovereignty Submerged Lands

### Present Situation

Sovereignty submerged lands include tidal lands, islands, sandbars, shallow banks and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally-influenced waters. The state holds title to sovereignty submerged lands. In order to use sovereignty submerged lands, a person must apply to DEP or water management district for a lease or easement. These leases and easements include fees, term renewals, modifications and assignment to new upland owners.<sup>29</sup> Grandfathering provisions for the use of sovereignty submerged lands were established for structures on sovereignty submerged lands that were built before such regulations.<sup>30</sup>

## Boating-restricted Areas

### Present Situation

Boating-restricted areas may be established 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.<sup>31</sup> Seagrasses are grass-like flowering plants that live completely submerged in marine and estuarine waters at shallow depths where high levels of light are received.<sup>32</sup> Seagrass scarring occurs when a boat propeller tears and cuts up seagrass roots, stems and leaves, leaving a long, narrow furrow devoid of seagrasses. This damage can take eight to 10 years to repair and with severe scarring these areas may never completely recover.<sup>33</sup> Currently, there are no boating-restricted areas to protect boats from running aground in seagrass areas.

### Effect of Proposed Changes

The bill amends s. 253.0347(2), F.S., regarding leases of sovereignty submerged lands for private residential docks and piers, to allow private residential multifamily docks that were grandfathered to use sovereignty submerged lands by January 1, 1998, as previously authorized under former rule 18-21.00405, F.A.C., to exceed the number of moored boats to the number of units within the private multifamily development as previously authorized under the former rule.

The bill amends s. 327.02, F.S., regarding definitions:

- Revising the definition of “live-aboard vessel” to:
  - Remove a vessel represented as a place of business or a professional or other commercial enterprise;
  - Include a vessel used as a residence that does not have an effective means of propulsion for safe navigation; and
  - Exempt a commercial vessel and a barge from the term “live-aboard vessel.”
- Defining “barge” as 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.
- Defining “effective means of propulsion for safe navigation” to mean a vessel, other than a barge, that 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.

<sup>29</sup> DEP, *Sovereignty Submerged Lands*, <http://www.dep.state.fl.us/lands/submerged.htm> (last visited Mar. 21, 2017).

<sup>30</sup> Former r. 18-21.00405, F.A.C. and r. 18-21.0081, F.A.C.

<sup>31</sup> Section 327.46(1), F.S.

<sup>32</sup> Section 253.04(3)(a)1., F.S.; DEP, *What are Seagrasses?*, <http://www.dep.state.fl.us/coastal/habitats/seagrass/default.htm> (last visited Mar. 21, 2017).

<sup>33</sup> Section 253.04(3)(a)2., F.S.; DEP, *Seagrass Conservation Issues*, <http://www.dep.state.fl.us/coastal/habitats/seagrass/issues.htm> (last visited Mar. 21, 2017); DEP, *Boating Tips to Protect Seagrasses and Your Boat*, <http://www.dep.state.fl.us/coastal/habitats/seagrass/boating.htm> (last visited Mar. 21, 2017).

The bill makes conforming renumbering changes to s. 327.02, F.S., resulting from the addition of the definitions of “barge” and “effective means of propulsion for safe navigation” and amends s. 327.391, F.S., to conform a cross-reference.

The bill amends s. 327.4107(2), F.S., regarding vessels at risk of becoming derelict on waters of the state, to include that a vessel is at risk of becoming derelict if the vessel does not have an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives written notice, which may be provided by facsimile, electronic mail or other electronic means, of such from an officer, and the vessel owner or operator is unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair. The bill also provides that FWC may adopt rules to implement this provision.

The bill amends s. 327.4108(7), F.S., regarding the anchoring of vessels in anchoring limitation areas, to save the section from expiring upon the Legislature’s adoption of the pilot program recommendations.

The bill creates s. 327.4109, F.S., prohibiting anchoring or mooring in certain areas, providing exceptions and penalties, as follows:

- A vessel or floating structure may not anchor or moor such that the nearest approach of the anchored vessel is:
  - Within 150 feet of any marina, boat ramp, boatyard, or other vessel launching or loading facility;
  - Within 300 feet of a superyacht repair facility. A superyacht repair facility is defined as a facility that services or repairs a yacht with a load line of 79 feet or more in length; or
  - Within 100 feet of a public mooring field boundary or a lesser distance if approved by the FWC upon request by a local government within which the mooring field is located. The bill allows FWC to adopt rules to implement this provision.
- These anchoring or mooring prohibitions do not apply to:
  - A vessel owned or operated by a governmental entity;
  - A construction or dredging vessels on an active job site;
  - A vessel actively engaged in commercial fishing; or
  - A vessel actively engaged in recreational fishing if the persons onboard are actively tending hook and line fishing gear or nets.
- An owner or operator of a vessel may anchor or moor within 150 feet of any marina, boat ramp, boatyard, or other vessel launching or loading facility or within 100 feet of a public mooring field boundary if:
  - The vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor for five business days or until the vessel is repaired, whichever occurs first; or
  - Imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard. The owner or operator of 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.
- The owner or operator of a vessel or floating structure may not anchor, moor, tie, or otherwise affix or allow 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 the waters of this state. The requirement does not apply to a private mooring owned by the owner of private submerged lands.
- A violation of these anchoring or mooring prohibitions is a noncriminal infraction, punishable as provided in s. 327.73(1)(bb), F.S.

The bill amends s. 327.46(1), F.S., regarding boating-restricted areas, to allow boating-restricted areas to protect seagrasses on privately owned submerged lands, as follows:

- Provides that owners of private submerged lands that are adjacent to Outstanding Florida Waters, as defined in s. 403.061(27), F.S., or an aquatic preserve established under ss. 258.39-258.399, F.S., may request FWC to establish boating-restricted areas, solely to protect any seagrass and contiguous seagrass habitat within their private property boundaries from seagrass scarring due to propeller dredging;
- Provides that the term “seagrass” has the same meaning as in s. 253.04, F.S.;
- Requires an owner to demonstrate to FWC clear ownership of their submerged land;
- Requires FWC to adopt rules establishing an application process and criteria for establishing a boating-restricted area to protect seagrasses on privately owned submerged lands;
- Requires each approved boating restricted area to be established by FWC rule; and
- Requires property owners to apply to FWC for a uniform waterway marker permit in accordance with ss. 327.40, F.S. and 327.41, F.S., for marking these boating restricted zones.

The bill amends s. 327.60, F.S., regarding local government regulations, to:

- Clarify that local governments may regulate the anchoring of live-aboard vessels and vessels represented as a place of business or a professional or other commercial enterprise outside the marked boundaries of mooring fields, except commercial vessels or barges.
- Allow a local government to enact and enforce regulations requiring owners or operators of vessels or floating structures subject to the marine sanitation requirements of s. 327.53, F.S., to provide proof of proper sewage disposal by means of an approved sewage pumpout service, approved sewage pumpout facility, or approved waste reception facility when 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;
  - No-discharge zones as published in Volume 53, No. 13 of the Federal Register, page 1678 (1988) for Destin Harbor; Volume 64, No. 164 of the Federal Register, pages 46390-46391 (1999) for the City of Key West; and Volume 67, No. 98 of the Federal Register, pages 35735-35743 (2002) for the Florida Keys National Marine Sanctuary; or
  - No discharge zones established pursuant to 40 C.F.R. s. 1700.10.
- Require a local government adopting such ordinance to provide adequate sewage pumpout services and for FWC to review and approve the ordinance if it is consistent with these requirements. The bill allows FWC to adopt rules to implement this ordinance process.
- Provide that a local government may enact or enforce such pumpout requirements for live-aboard vessels within any areas of its jurisdiction.
- Allow a local government to enact and enforce regulations which allow the local government to remove a vessel that is affixed to a public dock that is abandoned or lost property pursuant to s. 705.103(1), F.S.

The bill amends s. 327.70, F.S., regarding enforcement, to provide that a noncriminal violation of s. 327.4109, F.S., may be enforced by a uniform boating citation mailed to the registered owner of an unattended vessel or issued to an owner or operator of a vessel or floating structure unlawfully anchored, moored, tied, or otherwise affixed in a prohibited area.

The bill amends s. 327.73, F.S., regarding noncriminal infractions, to provide penalties as follows:

- Relating to operation with an expired registration:
  - For a first or subsequent offense of s. 328.72(13)(a), F.S., up to a maximum of \$50.
  - For a first offense of s. 328.72(13)(b), F.S., up to a maximum of \$250.
  - For a second or subsequent offense of s. 328.72(13)(b), F.S., up to a maximum of \$500, and the violator will not have the provisions of paragraph (4)(a) available to him or her but must appear before the designated official at the time and location of the scheduled hearing.



- Relating to anchoring or mooring where prohibited:
  - For a first offense, up to a maximum of \$50.
  - For a second offense, up to a maximum of \$100.
  - For a third or subsequent offense, up to a maximum of \$250.

The bill amends s. 328.09, F.S., regarding refusal to issue a certificate of title 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 under s. 823.11, F.S.;
- Require a law enforcement officer to inform DHSMV in writing, including facsimile, electronic mail or by other electronic means, of the vessel's derelict status, and supply the vessel title number or vessel identification number; and
- Allow DHSMV to issue a certificate of title once a law enforcement officer has verified in writing, including facsimile, electronic mail or by other electronic means, that the vessel is no longer a derelict vessel.

The bill amends s. 328.72(13), F.S., regarding an expired vessel registration, to provide the following penalties:

- The owner or operator of a vessel with an expired registration of six months or less commits a noncriminal infraction, punishable as provided in s. 327.73(1)(g)1., F.S.; or
- The owner or operator of a vessel with an expired registration of more than six months commits a noncriminal infraction punishable as provided in s. 327.73(1)(g)2. and 3., F.S.

The bill amends s. 705.103(2), F.S., regarding the procedure for abandoned or lost property, to exempt a law enforcement officer who has provided notice of a violation of s. 823.11, F.S., and issued a citation for the violation, to the owner of a derelict vessel is not required to mail a copy of the notice by certified mail to the owner.

#### B. SECTION DIRECTORY:

- Section 1. Amends s. 253.0347(2), F.S., regarding leases of sovereignty submerged lands for private residential docks and piers.
- Section 2. Amends s. 327.02, F.S., defining "barge," "effective means of propulsion for safe navigation" and revising the definition of "live-aboard vessel."
- Section 3. Amends s. 327.391(1), F.S., conforming a cross-reference.
- Section 4. Amends s. 327.4107(2), F.S., regarding vessels at risk of becoming derelict on waters of this state.
- Section 5. Amends s. 327.4108(7), F.S., regarding anchoring of vessels in anchoring limitation areas.
- Section 6. Creates s. 327.4109, F.S., prohibiting anchoring or mooring in certain areas; providing exceptions; penalties.
- Section 7. Amends s. 327.46(1), F.S., regarding boating-restricted areas.
- Section 8. Amends s. 327.60, F.S., regarding local regulations.
- Section 9. Amends s. 327.70(3), F.S., regarding enforcement.
- Section 10. Amends s. 327.73(1), F.S., regarding noncriminal infractions of vessel laws of the state.

- Section 11. Creates s. 328.09(4), F.S., regarding refusal to issue a certificate of title.
- Section 12. Amends s. 328.72(13), F.S., regarding an expired vessel registration.
- Section 13. Amends s. 705.103(2), F.S., regarding procedure for abandoned or lost property.
- Section 14. Provides an effective date of July 1, 2017.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill may have an indeterminate positive fiscal impact on state government revenues. FWC may experience positive fiscal impacts to the Marine Resources Conservation Trust Fund resulting from the issuance of boating citations. Any revenues received for these citations are required to be used for boating safety education.<sup>34</sup>

#### 2. Expenditures:

FWC may have an increased workload from the rulemaking requirements imposed by the bill, but this can be handled within existing resources.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

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

#### 2. Expenditures:

None.

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

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

### D. FISCAL COMMENTS:

None.

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<sup>34</sup> Section 327.73(8), F.S.  
STORAGE NAME: h7043a.ANR  
DATE: 3/27/2017

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill provides FWC with rulemaking authority to:

- Implement rules for vessels that are at risk of becoming derelict on waters of the state if the vessel does not have an effective means of propulsion for safe navigation;
- Establish a process for a local government requesting vessels or floating structures be allowed to anchor or moor within less than 100 feet of public mooring field boundaries;
- Establish an application process and criteria for establishing a boating-restricted area to protect seagrasses on privately owned submerged lands in accordance with s. 327.46(1)(d), F.S.; and
- Establish a process for FWC's review of a local government ordinance establishing a proof of pumpout requirement in accordance with s. 327.60(4), F.S.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 21, 2017, the Agriculture & Natural Resources Appropriations Subcommittee adopted a strike-all amendment and reported the bill favorably with committee substitute. The strike-all amendment:

- Provides that private residential multifamily docks, which were grandfathered to use sovereignty submerged lands by January 1, 1998, as authorized under former rule, to exceed the number of moored boats to the number of units within the private multifamily development, as previously authorized.
- Defines "barge," exempts a barge from the definition of "effective means of propulsion for safe navigation," and clarifies the definition of a "live-aboard vessel."
- Allows an owner or operator of a vessel that is at risk of becoming derelict to provide documentation of purchased or ordered necessary parts for repair as proof that the vessel is not at risk of becoming derelict. The bill allows FWC to adopt rules to implement this procedure.
- Provides that the nearest approach of an anchored or moored vessel or floating structure is the measuring point for determining distance.
- Adds that a vessel or floating structure cannot anchor or moor:
  - Within 150 feet of a boatyard;
  - Within 300 feet of a superyacht repair facility, and defines superyacht repair facility; or
  - Within 100 feet of a public mooring field boundary, or a lesser distance if requested by a local government, and approved by FWC. The bill authorizes FWC to adopt rules to implement such request.
- Allows an owner or operator of a vessel or floating structure suffering mechanical failure to anchor or moor where otherwise prohibited for five business days.

- Allows FWC to establish boating-restricted areas to protect seagrasses on privately owned submerged lands. Provides FWC with rulemaking authority to establish an application process and criteria for meeting the requirements of establishing such boating-restricted areas.
- Provides that regulation by a local government requiring owners or operators of vessels or floating structures subject to marine sanitation requirements to provide proof of sewage disposal applies when a vessel is anchored or moored for more than 10 consecutive days.
- Allows a local government to enact and enforce regulations for removal of a vessel affixed to a public dock that is lost or abandoned property.
- Allows a uniform boating citation to be mailed to the registered owner of an unattended vessel or floating structure that is anchored, aground, or moored in an area where prohibited.
- Provides civil penalties for vessels operating with an expired registration and anchored or moored where prohibited.
- Provides that DHSMV may not issue a certificate of title to an applicant if the vessel has been deemed derelict by a law enforcement officer.
- Requires a law enforcement officer to notify DHSMV of a vessel's derelict status and to provide certain information.
- Provides that DHSMV may issue the certificate of title when the vessel is no longer deemed derelict.
- Provides that a law enforcement officer who has provided notice of a violation of derelict vessel laws, and issued a citation for the violation to the owner of a derelict vessel is not required to mail a copy of the notice by certified mail to the owner.

This analysis is drafted to the committee substitute as approved by the Agriculture & Natural Resources Appropriations Subcommittee.