

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1221 Anchored Vessels

SPONSOR(S): State Affairs Committee, Agriculture & Natural Resources Subcommittee, Polsky, Raschein and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/CS/SB 1666

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	15 Y, 0 N, As CS	Melkun	Shugar
2) Agriculture & Natural Resources Appropriations Subcommittee	11 Y, 0 N	White	Pigott
3) State Affairs Committee	21 Y, 0 N, As CS	Melkun	Williamson

SUMMARY ANALYSIS

In order to operate a motorboat of 10 horsepower or greater, a person born on or after January 1, 1988, is required to complete an approved boating safety course and obtain a boating safety education identification card.

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.

A no-discharge zone is an area in which both treated and untreated sewage discharges from vessels are prohibited. Within no-discharge zone boundaries, vessel operators are required to retain their sewage discharges onboard for discharge at sea or onshore at a pump-out facility.

The bill establishes criteria for obtaining temporary certificates and provides that boating safety education identification cards and temporary certificates may be issued in a digital, electronic, or paper format.

The bill defines "long-term stored vessel" as a vessel on the waters of the state that is not under the supervision and control of a person capable of operating, maintaining, or moving it from one location to another and that has remained anchored or moored outside of a public mooring field for at least 30 days out of a 60-day period.

The bill requires the Florida Fish and Wildlife Conservation Commission (FWC) to conduct a study of the impacts of long-term stored vessels on local communities and the state, and to provide recommendations for appropriate management options for long-term stored vessels and vessels anchored or moored outside of public mooring fields for more than 30 days to mitigate any identified negative impacts. The bill further requires FWC to submit a report of its findings to the Governor and the Legislature within six months after the date the study is completed.

The bill authorizes counties designated as rural areas of opportunity to create no-discharge zones, if approved by the United States Environmental Protection Agency, and imposes a civil penalty for a violation of a no-discharge zone.

The bill prohibits a person from residing or dwelling on a vessel that has been charged by an officer of FWC or any law enforcement agency as derelict until the vessel is removed from the waters of the state permanently or returned to the waters of the state in a condition that is no longer derelict.

The bill may have an indeterminate negative fiscal impact on the private sector and state agencies.

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

STORAGE NAME: h1221e.SAC

DATE: 4/22/2019

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Boating Safety

In order to operate a motorboat of 10 horsepower or greater, Florida law requires anyone who was born on or after January 1, 1988, to complete an approved boating safety course and obtain a boating safety education identification card issued by the Florida Fish and Wildlife Conservation Commission (FWC).¹ Because Florida does not have a boating license, the boating safety education identification card serves as proof of successful completion of the educational requirements and is valid for life.²

The temporary certificate was established to help nonresidents without qualifying proof of boating safety education to comply with the boater education law when visiting the state of Florida. The temporary certificate is a knowledge check, which satisfies the requirement for a boater to have a boating safety identification card to operate a boat in Florida.³ The temporary certificate cannot be turned in for issuance of a boating safety education identification card that is valid for life, is valid for only one year, and is not valid in any other state.⁴

Anchored Vessels

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,⁵ while mooring is accomplished through the utilization of tie-ups, or moorings, permanently affixed to the bottom of the waterway. 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.⁶

The anchoring of vessels has created conflicts in some areas of the state related to the use and enjoyment of waters. 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;
- Inconsistent regulation of anchoring on state waters and confusion among the boating community; and
- Questions about local governmental authority to regulate anchoring.⁷

¹ Section 327.395, F.S.

² FWC, *Boater Education Identification Card*, available at <https://myfwc.com/boating/safety-education/id/> (last visited Apr. 18, 2019).

³ FWC, *Temporary Certificate*, available at <https://myfwc.com/boating/safety-education/temporary-certificate/> (last visited Apr. 18, 2019).

⁴ *Id.*; see also, FWC, *FAQs*, available at <https://myfwc.com/boating/safety-education/faqs/> (last visited Apr. 18, 2019).

⁵ Section 327.02, F.S., defines "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.

⁶ Ankersen, Hamann, and Flagg, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida* (Rev. May 2012), p. 2, available at <http://nsgl.gso.uri.edu/flsgp/flsgpt12001.pdf> (last visited Mar. 15, 2017).

⁷ Fish and Wildlife Conservation Commission (FWC), *Anchoring and Mooring Pilot Program Report of Findings and Recommendations* (Dec. 21, 2016), p. 6, available at <http://myfwc.com/media/4126646/anchoringandmooringpilotprogramreport122116.pdf> (last visited Mar. 15, 2017).

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.⁸ 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.⁹

Local governments are further authorized to enact and enforce ordinances that prohibit or restrict the mooring or anchoring of floating structures¹⁰ or live-aboard vessels¹¹ within their jurisdictions and vessels that are within the marked boundaries of permitted mooring fields.¹² However, they 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.¹³

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.¹⁴

It is unlawful to store, leave, or abandon a derelict vessel in Florida.¹⁵ Those found in violation of this law commit a first degree misdemeanor.¹⁶ State law further provides that a violation of derelict vessel laws may also be subject to a civil penalty of up to \$50,000 per day.¹⁷ Each day during any portion of which the violation occurs constitutes a separate offense.¹⁸

Removal of Derelict Vessels

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., have the responsibility and authority to enforce vessel safety and vessel title certificates, liens, and registration.¹⁹

⁸ See s. 373.118, F.S.; r. 62-330.420(1), F.A.C.

⁹ See r. 62-330.420, F.A.C.

¹⁰ Section 327.02(14), F.S., defines “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.

¹¹ Section 327.02(22), F.S., defines “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.

¹² Section 327.602(3), F.S.

¹³ Section 327.60(2)(f), F.S.

¹⁴ Section 823.11(1)(b), F.S.

¹⁵ Section 823.11(2), F.S.

¹⁶ 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.

¹⁷ Section 376.16(1), F.S.

¹⁸ *Id.*

¹⁹ Section 943.10(1), F.S., defines “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

Both state and local law enforcement are authorized and empowered to relocate or remove 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.²⁰

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 have a minimal cost if a law enforcement officer is able to tow it to a suitable location. Costs for professional towing services are approximately \$200 per hour.²¹

FWC may provide grants to local governments for the removal of derelict vessels from waters of the state if funds are appropriated for the grant program.²² Grants are awarded based on a set of criteria outlined in FWC rules.²³ Removal or relocation of the vessel on private property is not eligible for grant funding.²⁴

At-risk vessels

In 2016, the Legislature passed ch. 2016-108, Laws of Fla., to prohibit neglected vessels or those in deteriorating conditions from anchoring, mooring, or occupying the waters of the state.²⁵ 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.²⁶

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 \$50 for a first offense, \$100 for a second offense occurring 30 days or more after a first offense, and \$250 for a third or subsequent offense occurring 30 days or more after a previous offense.²⁷

No-Discharge Zones

A no-discharge zone is an area in which both treated and untreated sewage discharges from vessels are prohibited. Within no-discharge zone boundaries, vessel operators are required to retain their sewage discharges onboard for discharge at sea (beyond three miles from shore) or onshore at a pump-out facility.²⁸

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.

²⁰ Section 705.103(4), F.S.

²¹ FWC, Agency Analysis of 2016 House Bill 7025, p. 3 (Jan.8, 2016).

²² Section 376.15, F.S.

²³ Rule 68-1.003, F.A.C.

²⁴ National Oceanic and Atmospheric Association: Marine Debris Program, *Abandoned and Derelict Vessels in Florida*, available at <https://marinedebris.noaa.gov/abandoned-and-derelict-vessels/florida> (last visited Mar. 15, 2019).

²⁵ Chapter 2016-108, Laws of Fla.; s. 327.4107, F.S.

²⁶ Section 327.4107, F.S.

²⁷ Section 327.73(aa), F.S.

²⁸ United States Environmental Protection Agency (EPA), *Vessel Sewage Discharge: No-Discharge Zones*, available at <https://www.epa.gov/vessels-marinas-and-ports/vessel-sewage-discharges-no-discharge-zones-ndzs> (last visited Apr. 18, 2019).

A state may completely prohibit sewage discharge from vessels, whether the sewage is treated or not, into some or all of its waters if the state determines that the protection and enhancement of the quality of the waterbody requires greater environmental protection than the current federal standards allow, and the United States Environmental Protection Agency (EPA) determines that adequate facilities for the safe and sanitary removal and treatment of sewage from vessels are reasonably available.²⁹

A state can also apply for a no-discharge zone to be established if the EPA determines the protection and enhancement of specified waters requires sewage discharges to be prohibited.³⁰

There are currently three no-discharge zones located in the state of Florida: one in the Destin Harbor³¹ and two in the Florida Keys.³²

Rural Area of Opportunity

Rural areas of opportunity are defined as rural communities, or a region composed of rural communities, that have been adversely affected by extraordinary economic events or natural disasters.³³ The Governor, by executive order, may designate up to three rural areas of opportunity, which establishes each region as a priority assignment for Rural and Economic Development Initiative agencies and allows the Governor to waive criteria of any economic development incentive.³⁴

There are three rural areas of opportunity designated in Florida: the Northwest, containing Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington counties, and the City of Freeport in Walton County; South Central, containing DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee counties, and the cities of Pahokee, Belle Glade, and South Bay (Palm Beach County), and Immokalee (Collier County); and North Central, containing Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union counties.³⁵

Penalties for Boating Infractions

An owner or operator of a vessel or floating structure who violates the law by anchoring in an anchoring limitation area or anchoring or mooring in a prohibited area is subject to a uniform boating citation and penalties.³⁶ The penalties are:

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

A person who operates a vessel without the required boating safety identification card may be charged with a noncriminal infraction and is subject to a uniform boating citation and a \$50 civil penalty.³⁷

In addition to civil penalties, current law provides that a person who fails to appear or otherwise properly respond to a uniform boating citation will be charged with a second degree misdemeanor, which is punishable by a maximum fine of \$500 and no more than 60 days imprisonment.³⁸

²⁹ 33 U.S.C. s. 1322(f)(3).

³⁰ 33 U.S.C. s. 1322(f)(4)(A).

³¹ 53 Fed. Reg. 1678 (1988).

³² 64 Fed. Reg. 46390 (1999); 67 Fed. Reg. 35735 (2002); *see also*, EPA, *No-Discharge Zones by State*, available at <https://www.epa.gov/vessels-marinas-and-ports/no-discharge-zones-ndzs-state#fl> (last visited Apr. 18, 2019).

³³ Section 288.0656(1)(d), F.S.

³⁴ Florida Department of Economic Opportunity, *Rural Areas of Opportunity*, available at <http://www.floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity> (last visited Apr. 18, 2019).

³⁵ *Id.*

³⁶ Sections 327.73(1)(z) and 327.73(1)(bb), F.S.

³⁷ Section 327.73(1)(s), F.S.

Effect of Proposed Changes

The bill establishes criteria for obtaining a boating safety education temporary certificate. The bill provides that boating safety identification cards and temporary certificates may be issued in a digital, electronic, or paper format. The bill further provides that temporary certificates are valid for 90 days after the date of issuance. The bill authorizes FWC to appoint agents to administer boating safety education and temporary certificate requirements such as the administration of the boating safety education course or temporary certificate examination, issue temporary certificates, and collect fees on behalf of FWC.

The bill defines the term “long-term stored vessel” as a vessel on the waters of the state that is not under the supervision and control of a person capable of operating, maintaining, or moving it from one location to another and that has remained anchored or moored outside of a public mooring field for at least 30 days out of a 60-day period.

The bill requires FWC, contingent upon appropriation, to conduct, or contract with a vendor to conduct, for no longer than two years, a study of the impacts of long-term stored vessels on local communities and the state. The study must:

- Investigate if, and to what extent, long-term stored vessels and vessels anchored or moored outside of public mooring fields for more than 30 days contribute to the number of derelict and abandoned vessels on the waters of the state;
- Investigate the impacts of long-term stored vessels, vessels anchored or moored outside of public mooring fields for more than 30 days, and vessels anchored within public mooring fields on the local and state economies, public safety, and the environment during and after a significant tropical storm or hurricane event; and
- Provide recommendations for appropriate management options for long-term stored vessels and vessels anchored or moored outside of public mooring fields for more than 30 days to mitigate any identified negative impacts.

The bill further requires FWC to submit a report of its findings to the Governor and the Legislature within six months after the date the study is completed. The bill clarifies that the subsection governing the study expires January 1, 2024, and is contingent upon appropriation by the Legislature.

Upon approval of the EPA, the bill authorizes a county designated as a rural area of opportunity to create a no-discharge zone for freshwater waterbodies within the county’s jurisdiction that prohibits sewage discharges from floating structures, live-aboard vessels, and houseboats. The bill provides that a violation of a no-discharge zone will result in a civil penalty of \$250.

The bill prohibits a person from residing or dwelling on a vessel that has been charged by an officer of FWC or any law enforcement agency as derelict until the vessel is removed from the waters of the state permanently or returned to the waters of the state in a condition that is no longer derelict.

B. SECTION DIRECTORY:

Section 1 amends s. 327.395, F.S., to provide requirements for boating safety education.

Section 2 amends s. 327.4109, F.S., to define “long-term stored vessel” and requires FWC to conduct a study.

Section 3 amends s. 327.60, F.S., to authorize no-discharge zones under certain conditions in accordance with federal law.

Section 4 amends s. 327.73, F.S., to impose a penalty for a violation of a no-discharge zone.

Section 5 amends s. 823.11, F.S., to prohibit a person from residing or dwelling on a vessel that has been charged as derelict until it is no longer considered derelict.

Section 6 provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate positive fiscal impact if a county located in a rural area of opportunity is authorized to establish a no-discharge zone because FWC may collect penalties for violations of the no-discharge zone.

2. Expenditures:

The bill may have an indeterminate negative impact to the Department of Environmental Protection because DEP would be responsible for applying, on behalf of the county, to the EPA to establish a no-discharge zone. In addition, the study required by the bill is contingent upon appropriation by the Legislature, so there is likely no fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative fiscal impact on boat owners or occupants residing on a vessel that has been deemed derelict.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of sales tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill would require FWC to update its existing rules. FWC possesses sufficient rulemaking authority to adopt rules to comply with statutory changes.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2019, the Agriculture & Natural Resources Subcommittee adopted a strike all amendment and reported the bill favorably as a committee substitute. The amendment made clarifications to the requirements and parameters of the study to be conducted by FWC and removed provisions regarding the redistribution of vessel registration fees and the local government derelict vessel removal grant program.

On April 18, 2019, the State Affairs Committee adopted a strike all amendment and reported the bill favorably as a committee substitute. The amendment established criteria for obtaining temporary certificates; provided that the boating safety education identification cards and temporary certificates may be issued in a digital, electronic, or paper format; authorized FWC to appoint agents; authorized counties designated as rural areas of opportunity to create no-discharge zones under certain conditions; and imposed a civil penalty for a violation of a no-discharge zone.

This analysis is drafted to the committee substitute as passed by the State Affairs Committee.