

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1065 Vessel Anchoring
SPONSOR(S): State Affairs Committee, Mooney
TIED BILLS: IDEN./SIM. BILLS: CS/CS/SB 1432

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Environment, Agriculture & Flooding Subcommittee	16 Y, 0 N	Gawin	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee	14 Y, 0 N	White	Pigott
3) State Affairs Committee	22 Y, 0 N, As CS	Gawin	Williamson

SUMMARY ANALYSIS

Current law designates certain densely populated urban areas that have narrow state waterways, residential docking facilities, and significant boating traffic as anchoring limitation areas. In an anchoring limitation area, a person is prohibited from anchoring a vessel at any time during the period between one half-hour after sunset and one half-hour before sunrise. The Division of Law Enforcement of the Fish and Wildlife Conservation Commission (FWC) and its officers, county sheriffs and deputies, and municipal police officers typically enforce anchoring limitation areas. In 2021, the Legislature designated Monroe County as an anchoring limitation area where a vessel on waters of the state can only anchor in the same location for a maximum of 90 days. The establishment of Monroe County as an anchoring limitation area does not take effect until Monroe County approves, permits, and opens new moorings for public use, including 250 moorings within one mile of Key West Bight City Dock and at least 50 moorings within the Key West Garrison Bight Mooring Field.

The bill specifies that approved and permitted moorings or mooring fields in Monroe County have a 10-year limit on general tenancies and that a sovereign submerged land or other proprietary lease may not prohibit a vessel from an approved and permitted mooring or mooring field or limit the tenancy of a vessel because it is an established domicile or primary residence.

The bill clarifies requirements related to the designation of Monroe County as an anchoring limitation area. Specifically, the bill requires each vessel anchored on state waters within 10 linear nautical miles of a public mooring field or a designated anchoring area to pull anchor, move from its location using its propulsion system, and re-anchor in a new location no less than once every 90 days.

The bill specifies that these requirements do not apply to vessels moored to approved and permitted moorings. Additionally, until at least 100 new moorings are available for public use within one mile of Key West Bight City Dock, these requirements do not apply to live-aboard vessels on state waters within Monroe County.

The bill requires certain vessels within Monroe County on state waters that are equipped with a marine sanitation device to maintain a record of the date and location of each pump-out of the device, which must occur every 30 days.

The bill may have an insignificant negative fiscal impact on the state that can be absorbed within existing resources.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Anchoring or Mooring

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, while mooring uses fixtures, known as moorings, permanently affixed to the bottom of the water body.¹ 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.²

State Regulation of the Anchoring or Mooring of Vessels

The Legislature has delegated the responsibility of managing sovereign submerged lands to the Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund (Board).³ Pursuant to this responsibility, the Board is authorized to adopt rules governing anchoring, mooring, or otherwise attaching vessels, floating homes, or any other watercraft to the bottom of sovereign submerged lands.⁴ The Board has adopted rules regulating the construction of mooring and docking structures on such lands,⁵ but has not exercised its authority to adopt rules regulating anchoring.

Florida law prohibits a person from anchoring a vessel, except in case of emergency, in a manner that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel.⁶ Anchoring under bridges or in or adjacent to heavily traveled channels constitutes interference, if unreasonable under the prevailing circumstances.⁷ Interference with navigation is a noncriminal infraction and punishable by a fine of \$50.⁸

With certain exceptions, the owner or operator of a vessel or floating structure may not anchor or moor such that the nearest approach of the anchored or moored vessel or floating structure is:

- Within 150 feet of any marina, boat ramp, boatyard, or vessel launching or loading facility;
- Within 300 feet of a superyacht repair facility; or
- Within 100 feet outward from the marked boundary of a public mooring field or a lesser distance if approved by the local government within which the mooring field is located.⁹

Additionally, the owner or operator of a vessel or floating structure may not anchor or moor within the marked boundary of a public mooring field unless the owner or operator has a lawful right to do so by contractual agreement or other business arrangement.¹⁰

¹ Ankersen, Hamann, & Flagg, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, 2 (March 2011), available at

https://www.cityofmarcoisland.com/sites/default/files/fileattachments/administration/page/7491/anchoring_away_03_09_11_full_web_3.pdf (last visited Jan. 30, 2022).

² *Id.*

³ Section 253.03(1), F.S.

⁴ Section 253.03(7), F.S.

⁵ See ch. 18-21, F.A.C.

⁶ Section 327.44(2), F.S.

⁷ *Id.*

⁸ Section 327.73(j), F.S.

⁹ Section 327.4109(1), F.S.

¹⁰ Section 327.4109(3), F.S.

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; within 300 feet of a superyacht repair facility; or within 100 feet outward from the marked boundary of a public mooring field if:

- The vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard the 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.
- 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 vessel. The owner or operator of the vessel may anchor or moor until weather conditions no longer pose such risk.¹¹

A vessel or floating structure may not be anchored, moored, or affixed to an unpermitted, unauthorized, or otherwise unlawful object that is on or affixed to the bottom of state waters. This does not apply to a mooring owned by a private individual or entity who owns submerged lands.¹²

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.¹³ Mooring fields must be located in areas where navigational access already exists between the mooring field and the nearest customarily used access channel or navigable waters that 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.¹⁴

Local governments are further authorized to enact and enforce ordinances that prohibit or restrict the mooring or anchoring of floating structures¹⁵ or live-aboard vessels¹⁶ within their jurisdictions and vessels that are within the marked boundaries of permitted mooring fields.¹⁷ 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.¹⁸

Anchoring Limitation Areas

Current law designates certain densely populated urban areas that have narrow state waterways, residential docking facilities, and significant recreational boating traffic as anchoring limitation areas.¹⁹ The following areas are designated in statute as 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, and San Marco Island and Biscayne Island.²⁰

¹¹ Section 327.4109(2), F.S.

¹² Section 327.4019(4), F.S.

¹³ Section 373.118, F.S.; r. 62-330.420(1), F.A.C.

¹⁴ Rule 62-330.420, F.A.C.

¹⁵ 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.

¹⁶ 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.

¹⁷ Section 327.60(2)(f), F.S.

¹⁸ Section 327.60(3), F.S.

¹⁹ Section 327.4108, F.S.

²⁰ Section 327.4108(1), F.S.

In an anchoring limitation area, a person is prohibited from anchoring a vessel at any time during the period between one half-hour after sunset and one half-hour before sunrise.²¹ However, a person may anchor in an anchoring limitation area 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;
- Imminent or existing weather conditions in the vicinity pose an unreasonable risk of harm to the vessel or the people onboard unless the vessel anchors; or
- The vessel is attending a regatta, race, marine parade, tournament, exhibition,²² or other special event, including, but not limited to, public music performances, local government waterfront activities, or a fireworks display.²³

The Division of Law Enforcement of the Fish and Wildlife Conservation Commission (FWC) and its officers, county sheriffs and deputies, and municipal police officers typically enforce anchoring limitation areas.²⁴ Such law enforcement officers are authorized to remove and impound a vessel that, after being issued a citation for violation of the anchoring limitation area, anchors the vessel in the anchoring limitation area within 12 hours after being issued the citation or refuses to leave the anchoring limitation area after being directed to do so by law enforcement.²⁵

Anchoring limitation areas do not apply to vessels owned or operated by a governmental entity for law enforcement, firefighting, military, or rescue purposes; construction or dredging vessels on an active job site; vessels actively engaged in commercial fishing; or vessels engaged in recreational fishing if the individuals on board are actively tending hook and line fishing gear or nets.²⁶

Monroe County Anchoring Limitation Area

In 2021, the Legislature authorized counties, except for Monroe County, to establish anchoring limitation areas adjacent to urban areas that have residential docking facilities and significant recreational boating traffic.²⁷ Monroe County was designated as an anchoring limitation area within which a vessel on state waters can only anchor in the same location for a maximum of 90 days.²⁸ However, the establishment of Monroe County as an anchoring limitation area does not take effect until the county approves, permits, and opens new moorings for public use, including at least 250 moorings within one mile of the Key West Bight City Dock and at least 50 moorings within the Key West Garrison Bight Mooring Field.²⁹

²¹ Section 327.4108(2), F.S.

²² Section 327.48, F.S.

²³ Section 327.4108(3), F.S.

²⁴ Section 327.70(1), F.S.

²⁵ Section 327.4108(5)(b), F.S.

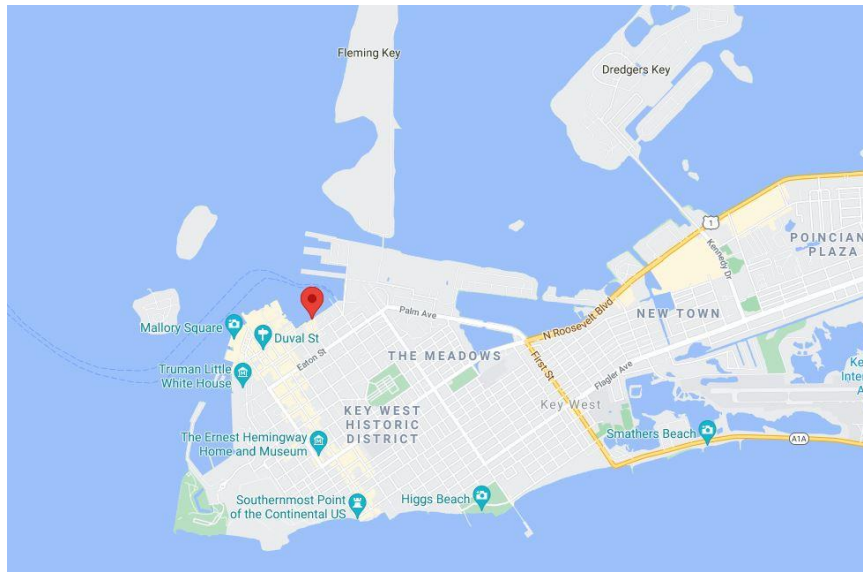
²⁶ Section 327.4108(4), F.S.

²⁷ Section 327.4108(2)(a), F.S.

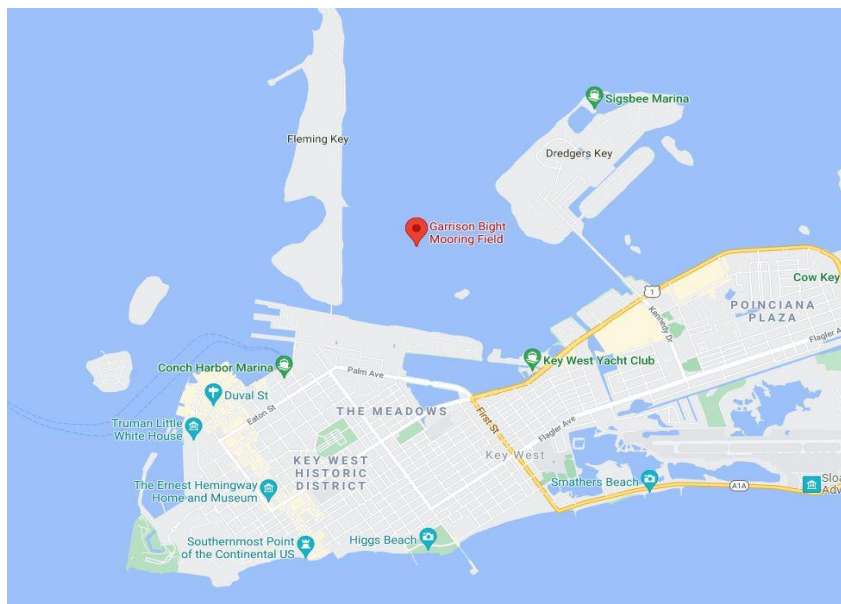
²⁸ Section 327.4108(3)(a), F.S.

²⁹ Section 327.4108(3)(c), F.S.

The Key West Bight City Dock, pictured below, is located on the Palm Avenue Causeway in Garrison Bight.



The Key West Garrison Bight Mooring Field, pictured below, is located between Fleming Key and Sigsbee Park.



Marine Sanitation Devices

Vessels that are equipped with installed toilets and operating on United States navigable waters are required to have U.S. Coast Guard certified marine sanitation devices on board.³⁰ A marine sanitation device is equipment, other than a toilet, for installation on board a vessel that is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage.³¹ The U.S. Coast Guard categorizes marine sanitation devices into Type I, Type II, and Type III devices. A Type I device is a flow-through treatment device that commonly uses maceration and disinfection for the treatment of sewage; Type II devices are flow-through treatment devices that may employ biological treatment and disinfection; and Type III devices are typically a holding tank where sewage is stored until it can be discharged shore-side or beyond three miles from shore.³²

³⁰ 33 U.S.C. 1322.

³¹ Section 327.02(27), F.S.

³² U.S. Environmental Protection Agency (EPA), *Marine Sanitation Devices (MSDs)*, <https://www.epa.gov/vessels-marinas-and-ports/marine-sanitation-devices-msds> (last visited Jan. 30, 2022).

Raw sewage cannot be discharged from any vessel or any floating structure in Florida waters.³³ All waste from Type III marine sanitation devices must be disposed of in an approved sewage pump-out facility.³⁴ A violation of the marine sanitation laws is a noncriminal infraction.³⁵

No-discharge Zones

A no-discharge zone is a designated body of water where it is unlawful to discharge treated or untreated boat sewage.³⁶ Within the boundaries of a no-discharge zone, vessel operators are required to retain their sewage discharges onboard for discharge beyond three miles from the Atlantic shore and beyond nine miles from the Gulf shore or onshore at a pump-out facility. Currently, Florida has three designated no-discharge zones within Destin Harbor,³⁷ the city of Key West waters,³⁸ and the state waters within the Florida Keys National Marine Sanctuary.³⁹

Effect of the Bill

The bill specifies that, notwithstanding any other law, the following conditions apply for approved and permitted moorings or mooring fields in Monroe County:

- The general tenancy on a mooring may exceed 12 months, if requested, but may not exceed 10 years.
- A sovereign submerged land or other proprietary lease may not prohibit a vessel from an approved and permitted mooring or mooring field or limit the tenancy of a vessel because an individual has established it as his or her domicile or because the vessel is an individual's primary residence.

The bill revises the requirements that apply to vessels in the Monroe County anchoring limitation area. Specifically, the bill requires each vessel anchored within Monroe County on state waters within 10 linear nautical miles of a public mooring field or a designated anchoring area to pull anchor, move from its location using its propulsion system, and re-anchor in a new location no less than once every 90 days. The bill requires the new location to be:

- No less than one-half linear nautical mile from the vessel's starting location. A vessel may not be re-anchored within one-half linear nautical mile from the vessel's starting location for at least 90 days; or
- In a different designated anchoring area. A vessel may not be re-anchored in its originating designated anchoring area for at least 90 days after anchoring within a new designated anchoring area.

The bill specifies that these requirements do not apply to vessels moored to approved and permitted moorings.

Additionally, the bill revises the circumstances under which the requirements of the Monroe County anchoring limitation area take effect. Specifically, the bill provides that such requirements do not apply to live-aboard vessels until at least 100 new moorings are available for public use within one mile of

³³ Section 327.53(4)(a), F.S.

³⁴ Section 327.53(4)(b), F.S.

³⁵ Section 327.53(6)(a), F.S.

³⁶ EPA, *Vessel Sewage Discharges: No-Discharge Zones*, <https://www.epa.gov/vessels-marinas-and-ports/vessel-sewage-no-discharge-zones> (last visited Jan. 30, 2022).

³⁷ Marine Sanitation Device Standard for Destin Harbor, 53 Fed. Reg. 1,678 (Jan. 21, 1988) available at https://www.epa.gov/sites/default/files/2015-09/documents/53_fr_1678.pdf (last visited Jan. 30, 2022).

³⁸ City of Key West No Discharge Zone Determination, 64 Fed. Reg. 46,390 (Aug. 25, 1999) available at <https://www.govinfo.gov/content/pkg/FR-1999-08-25/pdf/99-22044.pdf#page=1> (last visited Jan. 30, 2022).

³⁹ Regulation to Establish a No Discharge Zone for State Waters within the Boundary of the Florida Keys National Marine Sanctuary, 67 FR 35735 (May 21, 2002) available at <https://www.govinfo.gov/content/pkg/FR-2002-05-21/pdf/02-12283.pdf#page=1> (last visited Jan. 30, 2022); The Florida Keys National Marine Sanctuary protects the 3,800 square miles of waters surrounding the Florida Keys from Miami to the Tortugas. National Oceanic & Atmospheric Administration, *About Florida Keys National Marine Sanctuary*, <https://floridakeys.noaa.gov/about/welcome.html?s=about> (last visited Jan. 30, 2022).

Key West Bight City Dock. The bill removes the requirement that at least 50 moorings must be established within the Key West Garrison Bight Mooring Field.

The bill requires FWC, in consultation with Monroe County and the Florida Keys National Marine Sanctuary, to establish by rule designated anchoring areas throughout the county. The designated anchoring areas must:

- Specify a maximum vessel draft for each area;
- Be created only in locations where the water depth is sufficient to allow vessels whose drafts are less than the area's specified maximum vessel draft to navigate into and out of the areas without grounding or stranding;
- Not be located over coral reefs or other sensitive fish or wildlife habitat, to the maximum extent practicable, as determined by FWC;
- Not be located in an area subject to ongoing hazardous water currents or tides or containing navigational hazards; and
- Not be located within navigational channels, setbacks established by the U.S. Army Corps of Engineers associated with federal channels, certain areas where anchoring is prohibited by state law, or any other lawfully established areas that prohibit anchoring.

The bill provides that certain vessels within Monroe County on state waters that are equipped with a marine sanitation device, other than a marine composting toilet, that processes and manages human waste using technologies that comply with U.S. Coast Guard requirements must maintain a record of the date and location of each pump-out of the device. Such pump-out must occur every 30 days, and the record must be maintained for one year after the date of the pump-out. These requirements apply to a vessel that has enclosed living spaces or rooms and is used by a person as a dwelling or living space overnight at any time and a vessel moored in a public mooring field.

The bill specifies it does not prohibit anchoring for less than 90 days in areas within Monroe County.

B. SECTION DIRECTORY:

Section 1. Amends s. 253.0346, F.S., related to the lease of sovereignty submerged lands for marinas, boatyards, and marine retailers.

Section 2. Amends s. 327.4108, F.S., related to anchoring limitation areas.

Section 3. Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an insignificant negative fiscal impact on FWC related to the costs associated with the rulemaking requirements of the bill. These costs can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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 state tax shared with counties or municipalities.

2. Other:

General and Special Laws

A general law operates universally throughout the state, uniformly on specific subjects throughout the state, or uniformly within a permissible classification, or relates to a state function or entity.⁴⁰ Uniform operation of a general law does not require application throughout the state; instead there must be a reasonable possibility that others in the future may meet the criteria of the classification.⁴¹ A general law of local application is a form of general law that operates within only a portion of the state due to a valid classification based on proper distinctions and differences.⁴² Article III, Section 10 of the Florida Constitution does not place any burdens or requirements on the Legislature's ability to pass a general law of local application.

A special law is a law that operates on a specific category of people or subjects, and the classification is impermissible or illegal.⁴³ A special law requires prior publication of a notice of intent to seek passage, or it may become effective after approval by the affected voters in a referendum.⁴⁴ A local law is a form of special law that operates only in a specific geographic area or in a classified territory when classification is impermissible or illegal.⁴⁵

The bill amends statutes relating to vessel anchoring and mooring and documentation of marine sanitation device pump-out in Monroe County.

B. RULE-MAKING AUTHORITY:

The bill requires FWC, in consultation with Monroe County and the Florida Keys National Marine Sanctuary, to establish by rule designated anchoring areas throughout the County.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 21, 2022, the State Affairs Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment specified that the pumpout records must reflect that the vessel was pumped out within the last 30 days and that the bill does not prohibit anchoring in Monroe County for less than 90 days.

⁴⁰ *State ex rel. Landis v. Harris*, 163 So. 237, 240, 120 Fla. 555, 562-563 (Fla. 1934).

⁴¹ *Fla. Dep't of Bus. & Prof'l Regulation v. Gulfstream Park Racing Ass'n, Inc.*, 967 So. 2d 802, 808-09 (Fla. 2007).

⁴² *City of Miami Beach v. Frankel*, 363 So. 2d 555 (Fla. 1978)

⁴³ *License Acquisitions, LLC v. Debarry Real Estate Holdings, LLC*, 155 So. 3d 1137, 1142-1143 (Fla. 2015).

⁴⁴ Art. III, s. 10, Fla. Const.

⁴⁵ *License Acquisitions, LLC*, 155 So. 3d at 1142-1143.

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