

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1515 Anchoring Limitation Areas

**SPONSOR(S):** Environment, Agriculture & Flooding Subcommittee, Duggan and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1946

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Environment, Agriculture & Flooding Subcommittee	16 Y, 0 N, As CS	Gawin	Moore
2) State Affairs Committee		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. Anchoring limitation areas are typically enforced by the Division of Law Enforcement of the Fish and Wildlife Conservation Commission (FWC) and its officers, county sheriffs and deputies, and municipal police officers.

The bill specifies that notwithstanding the existing prohibition on local regulation of anchoring of vessels outside of the marked boundaries of mooring fields, a county may establish an anchoring limitation area within densely populated urban areas, which have narrow state waterways, residential docking facilities, and significant recreational boating traffic. The aggregate total of anchoring limitation areas in a county may not exceed 10 percent of the county's navigable waterways.

The bill requires each anchoring limitation area to be less than 100 acres in size and to be clearly marked with buoys and signs that provide reasonable notice of the duration of time beyond which anchoring is limited to boaters. Additionally, the bill specifies that any ordinance establishing an anchoring limitation area may not take effect until reviewed and approved by FWC.

The bill prohibits a person from anchoring a vessel for more than 30 consecutive days in any six-month period in an anchoring limitation area, unless an exception applies. Upon an inquiry by a law enforcement officer or agency, a vessel owner or operator must be given an opportunity to provide proof that the vessel has not exceeded the 30-day limit. A vessel that is the subject of more than three violations within 12 months that resulted in dispositions other than acquittal or dismissal must be declared a public nuisance.

The bill requires FWC to initiate rulemaking by July 1, 2021, to provide criteria and procedures for reviewing applications by counties to establish anchoring limitation areas and procedures for public notice and participation.

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

# 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.<sup>1</sup> 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>

##### *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).<sup>3</sup> 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.<sup>4</sup> The Board has adopted rules regulating the construction of mooring and docking structures on such lands,<sup>5</sup> 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.<sup>6</sup> 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 and punishable by a fine of \$50.<sup>8</sup>

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.<sup>9</sup>

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.<sup>10</sup>

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:

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<sup>1</sup> 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](https://www.cityofmarcoisland.com/sites/default/files/fileattachments/administration/page/7491/anchoring_away_03_09_11_full_web_3.pdf) (last visited Mar. 12, 2021).

<sup>2</sup> *Id.*

<sup>3</sup> Section 253.03(1), F.S.

<sup>4</sup> Section 253.03(7), F.S.

<sup>5</sup> See ch. 18-21, F.A.C.

<sup>6</sup> Section 327.44(2), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> Section 327.73(j), F.S.

<sup>9</sup> Section 327.4109(1), F.S.

<sup>10</sup> Section 327.4109(3), F.S.

- 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.<sup>11</sup>

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.<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 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.<sup>14</sup>

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

#### *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.<sup>19</sup> 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.<sup>20</sup>

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.<sup>21</sup> However, a person may anchor in an anchoring limitation area if:

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<sup>11</sup> Section 327.4109(2), F.S.

<sup>12</sup> Section 327.4019(4), F.S.

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

<sup>14</sup> Rule 62-330.420, F.A.C.

<sup>15</sup> 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.

<sup>16</sup> 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.

<sup>17</sup> Section 327.60(2)(f), F.S.

<sup>18</sup> Section 327.60(3), F.S.

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

<sup>20</sup> Section 327.4108(1), F.S.

<sup>21</sup> Section 327.4108(2), F.S.

- 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,<sup>22</sup> or other special event, including, but not limited to, public music performances, local government waterfront activities, or a fireworks display.<sup>23</sup>

Anchoring limitation areas are typically enforced by the Division of Law Enforcement of the Fish and Wildlife Conservation Commission (FWC) and its officers, county sheriffs and deputies, and municipal police officers.<sup>24</sup> 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.<sup>25</sup>

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.<sup>26</sup>

### Florida Intracoastal Waterway

The Intracoastal Waterway is a navigable toll-free shipping route, extending for about 3,000 miles along the Atlantic Ocean and Gulf of Mexico coasts in the southern and eastern U.S. It utilizes sounds, bays, lagoons, rivers, and canals and is usable in many portions by deep-draft vessels. The route is federally maintained and is connected to inland waterways in many places. It was originally planned to form a continuous channel from New York City to Brownsville, Texas, but the necessary canal link through northern Florida was never completed; hence, it is now in two separate sections—the Atlantic and the Gulf.<sup>27</sup>

The Florida Intracoastal Waterway means the Atlantic Intracoastal Waterway, the Georgia state line north of Fernandina to Miami; the Port Canaveral lock and canal to the Atlantic Intracoastal Waterway; the Atlantic Intracoastal Waterway, Miami to Key West; the Okeechobee Waterway, Stuart to Fort Myers; the St. Johns River, Jacksonville to Sanford; the Gulf Intracoastal Waterway, Anclote to Fort Myers; the Gulf Intracoastal Waterway, Carrabelle to Tampa Bay; Carrabelle to Anclote open bay section, using the Gulf of Mexico; the Gulf Intracoastal Waterway, Carrabelle to the Alabama state line west of Pensacola; and the Apalachicola, Chattahoochee, and Flint Rivers in Florida.<sup>28</sup>

### **Effect of the Bill**

The bill specifies that notwithstanding the existing prohibition on local regulation of anchoring of vessels outside of the marked boundaries of mooring fields, a county may establish an anchoring limitation area within densely populated urban areas, which have narrow state waterways, residential docking facilities, and significant recreational boating traffic. The aggregate total of anchoring limitation areas in a county may not exceed 10 percent of the county's navigable waterways.

The bill requires each anchoring limitation area established by a county to be less than 100 acres in size. The bill specifies that the calculated size of the anchoring limitation area does not include any portion of the marked channel of the Florida Intracoastal Waterway contiguous to the anchoring

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<sup>22</sup> Section 327.48, F.S.

<sup>23</sup> Section 327.4108(3), F.S.

<sup>24</sup> Section 327.70(1), F.S.

<sup>25</sup> Section 327.4108(5)(b), F.S.

<sup>26</sup> Section 327.4108(4), F.S.

<sup>27</sup> Encyclopedia Britannica, *Intracoastal Waterway*, available at <https://www.britannica.com/topic/Intracoastal-Waterway> (last visited Mar. 22, 2021).

<sup>28</sup> Section 327.02(15), F.S.

limitation area. Additionally, the bill prohibits each anchoring limitation area from including any mooring fields and requires them to be clearly marked with:

- Signs that provide reasonable notice to boaters, identifying the duration of time beyond which anchoring is limited and identifying the county ordinance that created the anchoring limitation area.
- Buoys installed and maintained by the county that mark the boundary of the anchoring limitation area.

The bill prohibits a person from anchoring a vessel for more than 30 consecutive days in any six-month period in an anchoring limitation area, unless an exception applies. In addition, the bill specifies that any ordinance adopted by a county to establish an anchoring limitation area may not take effect until reviewed and approved by FWC.

Upon an inquiry by a law enforcement or agency, the bill requires a vessel owner or operator to be given an opportunity to provide proof that the vessel has not exceeded the 30-day limit on anchoring in an anchoring limitation area. The bill specifies that such proof may include:

- Documentation showing that the vessel was in another location at least one mile away within a period of less than 30 days before the inquiry.
- Electronic evidence, including, but not limited to, navigational devices or tracking devices that show the vessel was in another location at least one mile away within a period of less than 30 days before the inquiry.

The bill specifies that a vessel that is the subject of more than three violations within 12 months that resulted in dispositions other than acquittal or dismissal must be declared a public nuisance.

The bill requires FWC to initiate rulemaking by July 1, 2021, to provide criteria and procedures for reviewing applications and procedures for public notice and participation. The bill specifies the rulemaking must include, at a minimum:

- Notice to the public. The Boating and Waterways Section of FWC must provide notice of completed applications received, public meetings or hearings concerning applications, and denial or approval of applications on the section's website and to all parties listed in the Boating and Waterways Section's public distribution list for ordinances, which any member of the public may join.
- An opportunity for public participation. The bill authorizes members of the public to provide written comments, recommendations, requests, inquiries, or other correspondence to the Boating and Waterways Section. If a public hearing is requested or a review by the agency head is requested, members of the public may testify at the hearing or commission meeting and may submit relevant and material exhibits to the record of the proceeding.

The bill does not impact the anchoring limitation areas that are currently designated in statute. However, the exemptions that currently exist to allow vessels to be anchored in the statutorily designated anchoring limitation areas when necessary due to mechanical failure or weather or for certain special events also apply to anchoring limitation areas designated by counties. In addition, certain vessels that are currently exempt from restrictions related to the anchoring limitation areas designated in statute are also exempt from restrictions related to anchoring limitation areas designated by counties.

## B. SECTION DIRECTORY:

- Section 1. Amends s. 327.4108, F.S., relating to anchoring of vessels in anchoring limitation areas.
- Section 2. Reenacts s. 327.73, F.S., relating to noncriminal infractions.
- Section 3. Provides an effective date of upon becoming a law.

## 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 revenue associated with the collection of penalties for violating restrictions related to anchoring limitation areas if counties establish such areas and receive approval from FWC.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on counties that choose to establish anchoring limitation areas associated with the cost of erecting signs and maintaining buoys to designate the anchoring limitation areas.

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:

None.

B. RULE-MAKING AUTHORITY:

The bill requires FWC to adopt rules to provide criteria and procedures for reviewing applications and procedures for public notice and participation, which must be initiated by July 1, 2021.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 23, 2021, the Environment, Agriculture & Flooding Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Revised the requirements for newly established anchoring limitation areas to include that the area must be less than 100 acres in size and may not include certain areas of the Florida Intracoastal Waterway or any mooring fields;
- Clarified that the bill does not expand or alter existing anchoring limitation areas;
- Reverted the definition of “law enforcement officer or agency” to existing law; and
- Clarified that a vessel owner must receive a citation before a vessel may be removed or impounded.

This analysis is drafted to the committee substitute as approved by the Environment, Agriculture & Flooding Subcommittee.