

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

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

SPONSOR(S): State Affairs Committee; Environment, Agriculture & Flooding Subcommittee; Duggan, Buchanan and others

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

FINAL HOUSE FLOOR ACTION: 116 Y's 1 N's **GOVERNOR'S ACTION:** Pending

SUMMARY ANALYSIS

CS/CS/HB 1515 passed the House on April 28, 2021, as CS/CS/CS/SB 1946. Part of the bill also passed the House and Senate in CS/CS/SB 1086 on April 29, 2021.

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.

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, excluding Monroe County, may establish an anchoring limitation area adjacent to urban areas that have 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-in-fact waterways. The bill specifies that existing anchoring limitation areas established in statute are grandfathered-in and exempt from the requirements established in the bill.

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 requires counties proposing to establish an anchoring limitation area to notify FWC 30 days before introducing an ordinance. FWC must publish notice of the proposed ordinance on its website and distribute such notice through its Boating and Waterways Section e-mail distribution list for ordinances.

The bill prohibits a person from anchoring a vessel for more than 45 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 45-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 subject to certain penalties.

The bill establishes Monroe County as an anchoring limitation area within which a vessel on state waters may be anchored in the same location for a maximum of 90 days. However, the bill specifies that this designation does not take effect until the county approves, permits, and opens new moorings for public use in certain specified areas.

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

Subject to the Governor's veto powers, the effective date of this bill is upon becoming a law.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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 Mar. 12, 2021).

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

Relocation or Removal of 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 state waters; 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.²⁷ It is unlawful to store, leave, or abandon a derelict vessel in Florida.²⁸

The Division of Law Enforcement within FWC and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officer have the responsibility and authority to enforce vessel safety and vessel title certificates, liens, and registration.²⁹

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.³⁰

Florida Intracoastal Waterway

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 823.11(1)(b), F.S.

²⁸ Section 823.11(2), F.S.

²⁹ Section 943.10(1), F.S.

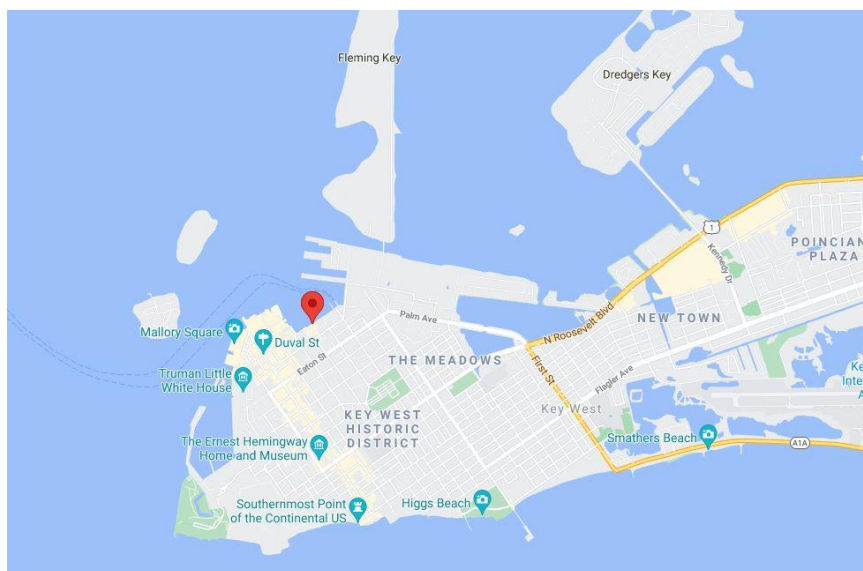
³⁰ Section 705.103(4), F.S.

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.³¹

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.³²

Key West Bight City Dock

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

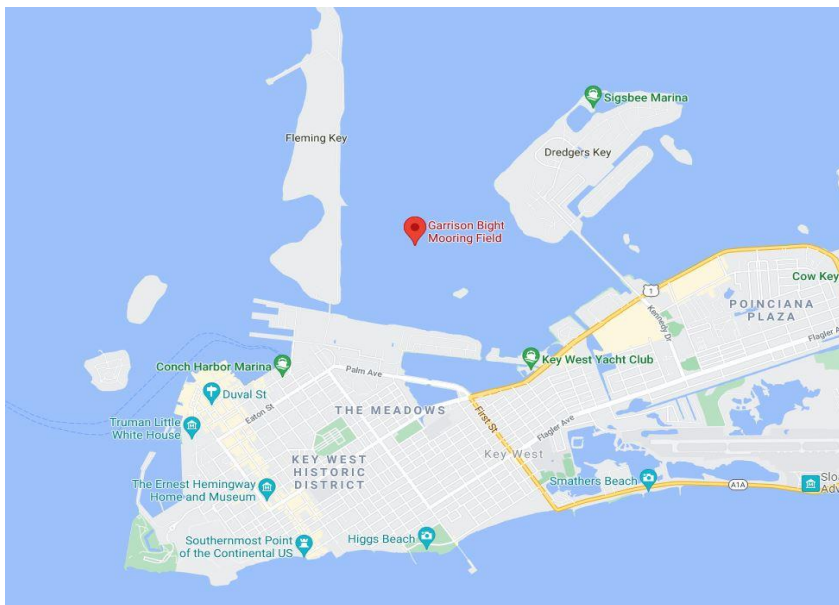


Key West Garrison Bight Mooring Field

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

³¹ Encyclopedia Britannica, *Intracoastal Waterway*, available at <https://www.britannica.com/topic/Intracoastal-Waterway> (last visited Mar. 22, 2021).

³² Section 327.02(15), F.S.



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, excluding Monroe County, may establish an anchoring limitation area adjacent to urban areas that have 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 delineated navigable-in-fact waterways.³³

The bill specifies that existing anchoring limitation areas established in statute are grandfathered-in and exempt from the requirements established in the bill.

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 limitation area. Additionally, the bill prohibits each anchoring limitation area from including any mooring field or marina 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 requires the signs and buoys to be permitted and installed in accordance with current law and FWC rule.

The bill prohibits a person from anchoring a vessel for more than 45 consecutive days in any six-month period in an anchoring limitation area, unless an exception applies.

The bill requires a county proposing to establish an anchoring limitation area to provide notice to FWC at least 30 days before introducing an ordinance to establish the area. Additionally, the bill requires FWC to publish notice of the proposed ordinance on its website and distribute such notice through its Boating and Waterways Section e-mail distribution list for ordinances.

³³ The bill defines “navigable-in-fact waterways” to mean waterways that are navigable in their natural or unimproved condition over which useful commerce or public recreation of a substantial and permanent character is or may be conducted in the customary mode of trade and travel on water. The bill specifies that the term does not include lakes or streams that are theoretically navigable; have a potential for navigability; or are temporary, precarious, and unprofitable, but the term does include lakes or streams that have practical usefulness to the public as highways for transportation.

The bill establishes Monroe County as an anchoring limitation area within which a vessel on state waters may be anchored in the same location for a maximum of 90 days, and requires FWC to adopt rules to implement the designation of Monroe County as an anchoring limitation area. The bill specifies that these anchoring limitations do not apply to approved and permitted moorings or mooring fields.

The bill specifies that, notwithstanding rules FWC has adopted, the bill is not effective for Monroe County until the county approves, permits, and opens new moorings for public use, including at least 250 moorings within one mile of Key West Bight City Dock and at least 50 moorings within one mile of the Key West Garrison Bight Mooring Field. Additionally, the bill requires FWC to designate the area within the Key West Bight City Dock as a priority for the investigation and removal of derelict vessels.

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 45-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 45 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 45 days before the inquiry.

The bill specifies that if a vessel owner or operator fails or refuses to provide proof that the vessel has not exceeded the limitations, the law enforcement officer or agency may issue a citation for a violation. Additionally, the bill specifies that a vessel that is the subject of more than three violations within 12 months that result in dispositions other than acquittal or dismissal must be declared a public nuisance subject to certain penalties.

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.

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.

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.