

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 1946

INTRODUCER: Environment and Natural Resources Committee and Senator Polsky and others

SUBJECT: Anchoring Limitation Areas

DATE: March 25, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Anderson</u>	<u>Rogers</u>	<u>EN</u>	<u>Fav/CS</u>
2.	<u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1946 provides 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 meets certain requirements imposed under the bill. The bill provides that the aggregate total of anchoring limitation areas in a county may not exceed 10 percent of the county's navigable waterways.

The bill provides that each anchoring limitation area must:

- Be less than 100 acres in size;
- Not include any mooring fields; and
- Be clearly marked with signs and buoys.

The bill prohibits a person from anchoring a vessel for more than 30 consecutive days in a 6-month period in an anchoring limitation area, except under existing exceptions.

The bill provides an opportunity for a vessel owner or operator to provide proof that the vessel has not exceeded the time limitation on anchoring, upon an inquiry by a law enforcement officer or agency. If the vessel owner or operator fails or refuses to provide such proof, the bill authorizes a law enforcement officer or agency to issue a citation, and later remove and impound the vessel.

A vessel that is the subject of more than three violations within 12 months, which resulted in dispositions other than acquittal or dismissal, is a public nuisance and subject to existing procedures for abandoned or lost property and relocation and removal of derelict vessels.

The bill requires FWC to initiate rulemaking, including notice to the public and an opportunity for public participation.

II. Present Situation:

Fish and Wildlife Conservation Commission

The Division of Law Enforcement Boating and Waterways Section of the Florida Fish and Wildlife Conservation Commission (FWC) oversees and coordinates statewide regulatory waterway markers to ensure compliance with uniform markers and state boating and resource protection zones for the benefit of all waterway users and fish and wildlife resources in the state.¹ The Boating and Waterways Section takes public input and provides notice of proposed local boating-restricted areas.²

FWC's boating laws are enforced by the Division of Law Enforcement and its officers, county sheriffs and deputies, municipal police officers, and any other law enforcement officer.³ The Division of Law Enforcement manages the state's waterways to ensure boating safety for residents of and visitors to the state.⁴ This includes enforcing boating rules and regulations; coordinating boating safety campaigns and education; managing public waters and access to the waters; conducting boating accident investigations; identifying and removing derelict vessels; and investigating vessel theft and title fraud.⁵

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.⁶ Mooring is accomplished through the use of moorings permanently affixed to the bottom of the water body. 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.⁷

¹ FWC, *Waterway Management*, <https://myfwc.com/boating/waterway/> (last visited Mar. 16, 2021).

² *Id.*

³ Section 327.70(1), F.S.; *see s.* 943.10(1), F.S., which 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 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.

⁴ Fish and Wildlife Conservation Commission (FWC), *Boating*, <https://myfwc.com/boating/> (last visited Mar. 17, 2021).

⁵ FWC, *Law Enforcement*, <https://myfwc.com/about/inside-fwc/le/> (last visited Mar. 17, 2021). *See s.* 327.70(1) and (4), F.S.

⁶ Section 327.02, F.S., defines the term "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.

⁷ Ankersen, Hamann, & Flag, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, 2

Local Regulation of 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 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, local governments 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 and non-fishing commercial vessels, outside the marked boundaries of permitted mooring fields.¹³

Anchoring Limitation Areas

State law designates certain densely populated urban areas as anchoring limitation areas.¹⁴ These densely populated urban areas, which have narrow state waterways, residential docking facilities, and significant recreational boating traffic, include:

- The section of Middle River lying between Northeast 21st Court and the Intracoastal Waterway in Broward County;
- Sunset Lake in Miami-Dade County; and
- 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.¹⁵

(Rev. May 2012), available at https://www.flseagrant.org/wp-content/uploads/anchoring_away_5_12_update_web.pdf (last visited Mar. 17, 2021).

⁸ See s. 373.118, F.S., and Fla. Admin. Code R. 62-330.420(1).

⁹ See Fla. Admin. Code R. 62-330.420.

¹⁰ Section 327.02, F.S., defines the term “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, F.S., defines the term “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 327.60(3), F.S.

¹³ Section 327.60(2)(f), F.S.

¹⁴ Section 327.4108(1), F.S.

¹⁵ *Id.*

To promote the public's use and enjoyment of these waterways, anchoring a vessel is prohibited at any time between 30 minutes after sunset and 30 minutes before sunrise in an anchoring limitation area.¹⁶ However, there are some exceptions where anchoring is permitted in an anchoring limitation area:

- When a vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors;
- If imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors; or
- During certain special events.¹⁷

Certain government, construction, and fishing vessels are also exempt from anchoring limitation areas.¹⁸

Law enforcement officers or agencies may remove and impound, for up to 48 hours, vessels from anchoring limitation areas when a vessel operator who was previously issued a citation:

- Continues to anchor the vessel in an anchoring limitation area within 12 hours of being issued a citation; or
- Refuses to leave the anchoring limitation area after being directed to do so by a law enforcement officer or agency.¹⁹ In addition to the civil penalty imposed by a citation, a vessel operator whose vessel has been impounded must pay all of the applicable removal and storage fees before the vessel is released.²⁰

An owner or operator of a vessel who anchors in an anchoring limitation area commits a noncriminal infraction and is subject to a uniform boating citation and penalties. The civil penalty provided is up to a maximum of:

- \$50 for a first offense;
- \$100 for a second offense; and
- \$250 for a third or subsequent offense.²¹

Section 327.73(1) F.S., provides that any person who fails to appear or otherwise properly respond to a uniform boating citation must, in addition to the charge relating to the violation of the boating laws, be charged with a second degree misdemeanor, which is punishable by a maximum fine of \$500 and no more than 60 days imprisonment.²²

Procedures for Lost or Abandoned Property

When an article of lost or abandoned property is present on public property and is not easily removable, the law enforcement officer must place a notice of removal on the property. The law

¹⁶ Section 327.4108(2), F.S.

¹⁷ Section 327.4108(3), F.S.; *see also* s. 327.48, F.S.

¹⁸ Section 327.4108(4), F.S.

¹⁹ Section 327.4108(5), F.S.

²⁰ *Id.*

²¹ Section 327.73(1)(z), F.S.

²² Sections 775.082 and 775.083, F.S.

enforcement agency must then contact the Department of Highway Safety and Motor Vehicles to determine the name and address of the owner and must mail a copy of the notice to the owner.²³

If, after 5 days of posting the notice and mailing such notice, the owner has not removed the items from public property or shown reasonable cause for failure to do so, the law enforcement agency may retain the property for its own use, trade the property, donate the property, sell the property, or remove the property.²⁴ An owner that does not remove his or her property is liable for the costs of removal, storage, and destruction of the property, less any salvage value.²⁵ If the property is sold, the agency must deposit the balance of any proceeds, less the costs of transportation, storage, and notice, into an interest-bearing account no later than 30 days after the date of the sale.²⁶ The proceeds must be held for one year and the property owner is entitled to claim the balance of the proceeds by making application to the agency.²⁷

Relocation or Removal of Derelict Vessels

Section 823.11, F.S., allows for the relocation or removal of a derelict vessel²⁸ 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.²⁹ 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

III. Effect of Proposed Changes:

The bill amends s. 327.4108, F.S., to provide 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. Each anchoring limitation area must meet certain requirements imposed under the bill.

The bill provides that each anchoring limitation area must:

- Be less than 100 acres in size. The bill provides 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;

²³ Section 705.103(2), F.S.

²⁴ *Id.*

²⁵ Section 705.103(4), F.S.

²⁶ Section 705.103(3), F.S.

²⁷ *Id.*

²⁸ 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. Section 823.11(1)(b), F.S.

²⁹ Section 823.11(3), F.S.

³⁰ *Id.*; see s. 705.103(4), F.S.

- Not include any mooring fields; and
- Be clearly marked with all of the following:
 - Signs that provide reasonable notice to boaters which identify the duration of time beyond which anchoring is limited and identify the county ordinance with its enacting date by which the anchoring limitation area was created. The bill prohibits any ordinance adopted pursuant to the provisions in the bill from taking effect until reviewed and approved as being consistent with the requirements in the bill by FWC.
 - Buoys marking the boundary of the anchoring limitation area.

The bill prohibits a person from anchoring a vessel for more than 30 consecutive days in a 6-month period in an anchoring limitation area established under the bill.

The bill provides an opportunity for a vessel owner or operator to provide proof that the vessel has not exceeded the time limitation (a maximum of 30 days in a 6-month period) on anchoring in an anchoring limitation area, upon an inquiry by a law enforcement officer or agency. Such proof may include either documentation or electronic evidence, including, but not limited to, navigational devices or tracking devices, which shows that the vessel was in another location at least one mile away from the anchoring limitation area within a period of less than 30 days before the inquiry.

If the vessel owner or operator fails or refuses to provide proof that the vessel has not exceeded the time limitation (a maximum of 30 days in a 6-month period) on anchoring, the bill authorizes a law enforcement officer or agency to issue a citation for a violation of the anchoring limitation area. The law enforcement officer or agency is authorized remove and impound the vessel for up to 48 hours, or cause such removal and impoundment, if the vessel operator has been issued a citation for anchoring and does one of the following:

- Anchors the vessel in an anchoring limitation area within 12 hours after being issued a citation; or
- Refuses to leave the anchoring limitation area after being directed to do so by a law enforcement officer or agency.

The bill declares that a vessel that is the subject of more than three violations within 12 months, which resulted in dispositions other than acquittal or dismissal, is a public nuisance and subject to the procedures for lost and abandoned property and for derelict vessels, the procedures for relocation and removal of derelict vessels.

The bill requires FWC to initiate rulemaking by July 1, 2021, to provide criteria and procedures for reviewing applications to establish a new anchoring limitation area and procedures for public notice and participation. The bill requires the rulemaking to include, at a minimum, the following:

- Notice to the public. The bill requires FWC's Boating and Waterways Section to provide notice of the completed applications received, public meetings or hearings concerning applications, and denial or approval of applications on the section's web page 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. The bill authorizes members of the public to testify at the hearing or a FWC meeting and to submit relevant and material exhibits to the record of the proceeding if a public hearing or a review by the agency head is requested.

The bill deletes an obsolete provision tied to FWC's pilot program for regulation of mooring vessels outside of public mooring fields.

The bill reenacts s. 327.73(1)(z), F.S., which provides penalties for violations of anchoring limitation areas, to incorporate the changes made by the bill to s. 327.4108, F.S.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 327.4108 and 327.73 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environment and Natural Resources on March 22, 2021:

- Revises the requirements for newly established anchoring limitation areas to include that the area is less than 100 acres in size, not including certain areas of the Florida Intracoastal Waterway or any mooring fields.
- Clarifies the distinction between the provisions that apply to existing anchoring limitation areas and newly established anchoring limitation areas.
- Reverts the definition of “law enforcement officer or agency” to existing law.
- Clarifies that a vessel owner must receive a citation before a vessel may be removed or impounded.

B. Amendments:

None.