

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1121 City of Fort Lauderdale, Broward County

SPONSOR(S): Moraitis, Jr.

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	10 Y, 1 N	Darden	Miller
2) Agriculture & Natural Resources Subcommittee			
3) Local & Federal Affairs Committee			

SUMMARY ANALYSIS

The Fish and Wildlife Conservation Commission (FWC), counties, and municipalities may establish “boating-restricted areas,” placing limits on vessel speed and numbers, for the purpose of protecting public safety. Outside of an FWC pilot program of five municipalities, however, counties and municipalities are not allowed to regulate anchoring vessels outside of mooring areas.

The bill would prohibit anchoring in an area previously designated as a boating-restricted area by the City of Fort Lauderdale. The bill prescribes the penalty for anchoring in the designated area. The bill authorizes the City of Fort Lauderdale to adopt an ordinance defining a violation of the anchoring restriction as a civil infraction enforceable by the city’s code enforcement officers.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Vessel Safety Law

Under the Florida Vessel Safety Law, boating-restricted areas may be established for “any purpose necessary to protect the safety of the public,” as long as the restrictions relate to boating accidents, visibility, hazardous currents or waters levels, vessel traffic congestion, or other navigational hazards.¹ Both vessel speed and vessel traffic may be restricted.²

A boating-restricted area may be created by the Fish and Wildlife Conservation Commission (FWC) by adopting an administrative rule pursuant to ch. 120, F.S.,³ or by a county or municipality by adoption of an ordinance.⁴ Boating can only be restricted in an area with consultation and coordination with the governing body of the county or municipality where the area is located, and with the U.S. Coast Guard and U.S. Army Corps of Engineers, where the area is part of the navigable waters of the United States.⁵ Under the current federal general definition:

Navigable waters of the United States are those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. A determination of navigability, once made, applies laterally over the entire surface of the waterbody, and is not extinguished by later actions or events which impede or destroy navigable capacity.⁶

It is unlawful to operate a vessel in a boating-restricted area or to carry on any prohibited activity,⁷ if the area has been clearly marked by regulatory markers.⁸ Violating the Florida Vessel Safety Law is a noncriminal infraction,⁹ and violators are subject to a \$50 fine.¹⁰ The restriction and penalties do not apply in the case of an emergency, or to any law enforcement, firefighting, or rescue vessel owned or operated by a governmental entity.¹¹

Local governments may enact and enforce regulations considering live-aboard vessels within their jurisdiction, but are prohibited from regulating the anchoring of non-live-aboard vessels outside of mooring fields.¹² A live-aboard vessel is any vessel which is:

- Used solely as a residence and not for navigation;¹³
- Represented as a place of business or a professional or other commercial enterprise;¹⁴ or
- Declared a domicile, pursuant to s. 222.17, F.S.¹⁵

¹ Section 327.46(1), F.S.

² *Id.*

³ Section 327.46(1)(a), F.S.

⁴ Section 327.46(1)(b)-(c), F.S.

⁵ Section 327.46(2), F.S.

⁶ 33 C.F.R. s. 329.4 (2015).

⁷ “Prohibited activity” is defined for the purposes of ch. 327 as an “activity that will impede or disturb navigation or creates a safety hazard on waterways of this state.” s. 327.02(35), F.S.

⁸ Section 327.46(3), F.S.

⁹ Section 327.73(1)(k), F.S.

¹⁰ Section 327.73(1), F.S.

¹¹ Section 327.46(4), F.S.

¹² Section 327.60(3), F.S.

¹³ Section 327.02(19)(a), F.S.

¹⁴ Section 327.02(19)(b), F.S.

¹⁵ Section 327.02(19)(c), F.S.

A pilot program, administered by the FWC in consultation with the Department of Environmental Protection, was established in 2009 to explore regulations for anchoring or mooring of non-live-aboard vessels outside of public mooring fields.¹⁶ The program was initially established for five years and was subsequently renewed until 2017.¹⁷ FWC was responsible for selecting five locations for the pilot program, two on the east coast of the state, two on the west coast, and one within Monroe County.¹⁸ Counties and municipalities participating in the pilot program may pass ordinances regulating non-live-aboard vessels outside of a mooring field, subject to FWC approval.¹⁹

Effect of Proposed Changes

The bill describes a portion of the Middle River that has been designated by the City of Fort Lauderdale as a boating-restricted area, pursuant to s. 327.46, F.S. The bill states that the area has been designated a “watersports activity area” by the city, where single-engine vessels, not exceeding twenty-one feet, may engage in watersports activities or other activities, in accordance with idle speed/no wake zone or slow speed/minimum wake zone limitations. The bill prohibits anchoring in this “watersports activity area.”

The bill states that a person anchoring in the “watersports activity area” has committed a non-criminal civil infraction punishable by civil penalty of \$50 for a first offense, \$100 for a second offense, and \$250 for a third or subsequent offense. The bill authorizes the City of Fort Lauderdale to adopt an ordinance making a violation of the anchoring prohibition in the bill a civil infraction, enforceable by a special magistrate pursuant to the Code Enforcement chapter of the City of Fort Lauderdale’s Code of Ordinances.

The bill is intended to address concerns of residents in the affected area that anchored vessels are limiting the area available for watersports activities, creating a safety hazard, and generating excessive noise.²⁰ The bill may positively impact local marinas by encouraging anchoring in those areas instead of in undesignated areas.²¹

B. SECTION DIRECTORY:

- Section 1: Provides definitions for the purposes of the act.
- Section 2: Defines the boundaries a watersports activity area previously established the City of Fort Lauderdale, pursuant to s. 327.46, F.S., and describes the watersports activities.
- Section 3: Prohibits an owner/operator of a vessel from anchoring in the watersports activity area described in Section 2 of the bill.
- Section 4: Provides that a violation of this act is a non-criminal civil infraction pursuant to s. 162.21, F.S.
- Section 5: Authorizes the City of Fort Lauderdale to enforce the act by adoption of an ordinance.
- Section 6: Provides that the bill shall take effect upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

¹⁶ Section 327.4105, F.S.

¹⁷ Chapter 2009-86, Laws of Fla. (pilot program to expire July 1, 2014), ch. 2014-136, Laws of Fla. (pilot program to expire July 1, 2017).

¹⁸ Section 327.4105(2), F.S. FWC selected St. Augustine, Stuart, St. Petersburg, Sarasota, and Key West/Marathon. FWC, *Update on the Anchoring and Mooring Pilot Program*, available at <http://www.floridajobs.org/fdcp/dcp/waterfronts/Meetings/CrystalRiver/FWCMooringPilotProjectUpdate.pdf>. (last visited Jan. 15, 2016).

¹⁹ Section 327.4015(3), F.S.

²⁰ Economic Impact Statement for HB 1121 (2016).

²¹ *Id.*

IF YES, WHEN? October 4, 2015

WHERE? The *Sun-Sentinel*, a daily newspaper published in Broward, Palm Beach, and Miami-Dade Counties, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill does not provide authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES