

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/CS/HB 437 Anchoring Limitation Areas

**SPONSOR(S):** Infrastructure Strategies Committee and Agriculture, Conservation & Resiliency Subcommittee, Porras and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 192

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**FINAL HOUSE FLOOR ACTION:** 105 Y's

2 N's

**GOVERNOR'S ACTION:** Pending

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### SUMMARY ANALYSIS

CS/CS/HB 437 passed the House on February 29, 2024, as amended, and subsequently passed the Senate on March 4, 2024.

The Fish and Wildlife Conservation Commission (FWC), created by Article IV, section 9, of the Florida Constitution, is responsible for regulating, managing, protecting, and conserving the state's fish and wildlife resources. Pursuant to its constitutional authority, FWC exercises the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life. Through its Division of Law Enforcement, FWC manages the state's waterways to ensure boating safety for residents and visitors to the state.

Anchoring 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. Anchorages are areas that boaters regularly use for anchoring, whether designated or managed for that purpose or not.

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. The following areas are designated in statute as anchoring limitation areas:

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

In these anchoring limitation areas, 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 bill expands the sections of Biscayne Bay in Miami-Dade County that are designated as anchoring limitation areas. Specifically, the bill designates the sections of Biscayne Bay lying between Palm Island and State Road A1A and between San Marino Island and Di Lido Island as anchoring limitation areas.

The bill revises the types of evidence a vessel owner or operator may provide to a law enforcement officer or an agency upon inquiry.

The bill does not appear to have a fiscal impact on the state or local governments.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2024.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Background

##### Fish and Wildlife Conservation Commission

The Fish and Wildlife Conservation Commission (FWC), created by Article IV, section 9, of the Florida Constitution, is responsible for regulating, managing, protecting, and conserving the state's fish and wildlife resources. FWC is governed by a board of seven members who are appointed by the Governor and confirmed by the Senate.<sup>1</sup> Pursuant to its constitutional authority, FWC exercises the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life.

FWC is also the agency responsible for regulating boating safety in the state. Through its Division of Law Enforcement, FWC manages the state's waterways to ensure boating safety for residents and visitors to the state.<sup>2</sup> This responsibility includes enforcing boating rules and regulations, coordinating boating safety campaigns and education, managing public water and access to the waters, conducting boating accident investigations, identifying and removing derelict vessels, and investigating vessel theft and title fraud.<sup>3</sup>

##### Anchoring

Anchoring 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.<sup>4</sup> Anchorages are areas that boaters regularly use for anchoring, whether designated or managed for that purpose or not.<sup>5</sup>

##### *State Regulation of the Anchoring 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). 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>6</sup> The Board 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>7</sup> Anchoring under bridges or in or adjacent to heavily traveled channels constitutes interference, if unreasonable under the prevailing circumstances.<sup>8</sup> Interference with navigation is a noncriminal infraction and punishable by a fine of \$50.<sup>9</sup>

With certain exceptions, the owner or operator of a vessel or floating structure may not anchor 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

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<sup>1</sup> Article IV, s. 9, FLA. CONST.

<sup>2</sup> Fish and Wildlife Conservation Commission (FWC), Boating, <https://myfwc.com/boating/> (last visited Dec. 1, 2023).

<sup>3</sup> FWC, Law Enforcement, <https://myfwc.com/about/inside-fwc/le/> (last visited Dec. 1, 2023). See s. 327.70(1) and (4), F.S.

<sup>4</sup> Ankersen, Hamann, & Flagg, Anchoring Away: Government Regulation and the Rights of Navigation in Florida, (March 2011), <https://repository.library.noaa.gov/view/noaa/36905> (last visited Dec. 1, 2023).

<sup>5</sup> *Id.*

<sup>6</sup> Section 253.03(7), F.S.

<sup>7</sup> Section 327.44(2), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Section 327.73(1)(j), F.S.

- 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>10</sup>

#### *Local Regulation of the Anchoring of Vessels*

Local governments are authorized to enact and enforce ordinances that prohibit or restrict the anchoring of floating structures<sup>11</sup> or live-aboard vessels<sup>12</sup> within their jurisdictions and vessels that are within the marked boundaries of permitted mooring fields.<sup>13</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>14</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>15</sup> The following areas are designated in statute as anchoring limitation areas:

- The section of Middle River lying between Northeast 21<sup>st</sup> Court and the Intracoastal Waterway in Broward County.
- Sunset Lake in Miami-Dade County.
- The section 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>16</sup>

In these anchoring limitation areas, 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>17</sup> However, a person may anchor in these anchoring limitation areas 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,<sup>18</sup> or other special event, including, but not limited to, public music performances, local government waterfront activities, or a fireworks display.<sup>19</sup>

Current law also authorizes a county<sup>20</sup> to establish an anchoring limitation area adjacent to urban areas that have residential docking facilities and significant recreational boating traffic.<sup>21</sup> The aggregate total

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<sup>10</sup> Section 327.4109(1), F.S.

<sup>11</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>12</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>13</sup> Section 327.60(2)(f), F.S.

<sup>14</sup> Section 327.60(3), F.S.

<sup>15</sup> Section 327.4108, F.S.

<sup>16</sup> Section 327.4108(1), F.S.

<sup>17</sup> Section 327.4108(2), F.S.

<sup>18</sup> Section 327.48, F.S.

<sup>19</sup> Section 327.4108(3), F.S.

<sup>20</sup> Except for Monroe County.

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

of anchoring limitation areas in a county may not exceed 10 percent of the county's delineated navigable-in-fact waterways.<sup>22</sup> Each county anchoring limitation area must:

- Be less than 100 acres in size;<sup>23</sup>
- Not include any mooring field or marina; and
- Be clearly marked with signs<sup>24</sup> and buoys.<sup>25</sup>

A person may not anchor a vessel for more than 45 consecutive days in any six-month period in a county-established anchoring limitation area.<sup>26</sup>

The Division of Law Enforcement of FWC and its officers, county sheriffs and deputies, and municipal police officers typically enforce anchoring limitation areas.<sup>27</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>28</sup>

The owner or operator of a vessel in an anchoring limitation area must be given an opportunity by a law enforcement officer or agency to provide proof that the vessel has not exceeded the limitations.<sup>29</sup> Such proof may include any of the following:

- Documentation showing that the vessel was in another location at least one mile away within a period of less than 45 days prior to the inquiry by a law enforcement officer or agency.
- Electronic evidence, including, but not limited to, navigational devices or tracking devices showing that the vessel was in another location at least one mile away within a period of less than 45 days before the inquiry.

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 gears or nets.<sup>30</sup>

## **Effect of the Bill**

The bill expands the sections of Biscayne Bay in Miami-Dade County that are designated as anchoring limitation areas. Specifically, the bill designates the sections of Biscayne Bay lying between Palm Island and State Road A1A and between San Marino Island and Di Lido Island as anchoring limitation areas.

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<sup>22</sup> "Navigable-in-fact waterways" means 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 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. Section 327.4108(2)(a), F.S.

<sup>23</sup> For purposes of this subsection, 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. Section 327.4108(2)(a)1., F.S.

<sup>24</sup> Signs must provide reasonable notice to boaters identifying the duration of time beyond which anchoring is limited and identifying the county ordinance by which the anchoring limitation area was created. Section 327.4108(2)(a)3.a., F.S.

<sup>25</sup> The county that has created an anchoring limitation area must install and maintain buoys marking the boundary of the anchoring limitation area. Section 327.4108(2)(a)3.b., F.S.

<sup>26</sup> Section 327.4108(2)(b), F.S.

<sup>27</sup> Section 327.70(1), F.S.

<sup>28</sup> Section 327.4108(5)(b), F.S.

<sup>29</sup> Section 327.4108 (6)(b), F.S.

<sup>30</sup> Section 327.4108(4), F.S.

The bill specifies that when providing proof to a law enforcement officer or agency that a vessel has not exceeded the limits of an anchoring limitation area, the vessel owner or operator may provide documentation or evidence that the vessel was in another location at least one nautical mile<sup>31</sup> away, rather than one mile. The bill also specifies that a vessel owner may provide electronic evidence that includes, but is not limited to, navigational devices or tracking devices permanently affixed to the vessel.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

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<sup>31</sup> A nautical mile is slightly longer than a mile on land, equaling 1.1508 land-measured miles. Nautical miles are used to measure the distance traveled through water. NOAA, *What is the difference between a nautical mile and a knot?*, <https://oceanservice.noaa.gov/facts/nautical-mile-knot.html#:~:text=Nautical%20Miles&text=A%20nautical%20mile%20is%20slightly,measurement%20system%20for%20marine%20navigation%3F> (last visited Jan. 16, 2024).