

## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** HB 871 Broward County

**SPONSOR(S):** Clarke-Reed

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	9 Y, 0 N	Darden	Miller
2) Highway & Waterway Safety Subcommittee	13 Y, 0 N	Whittaker	Smith
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. To enforce speed limits in “boating-restricted areas,” FWC must place regulatory markers (such as speed limit signs). The New River Canal and the Florida Intracoastal Waterway in Broward County are defined as “boating-restricted areas.” Current law directs Broward County to bear the cost of providing speed limit signs and directs that each incorporated area within the county shall bear the cost of erecting any signs to be placed within its boundaries.

The bill repeals current law requiring Broward County to pay for the cost of providing the speed limit signs and requiring each incorporated area within the county to bear the cost of erecting any signs to be placed within its boundaries. Any responsibility for constructing and maintaining signs after the passage of the act would pass to FWC under general law. The bill also repeals a provision specifying that a person who operates a vessel in excess of the maximum speed limit in New River Canal and the Florida Intracoastal Waterway is guilty of a non-criminal infraction to be punished under s. 318.18(3), F.S. Persons found to have operated a vessel in excess of the maximum speed limit would therefore be liable according to general law.

Broward County currently spends \$30,000 per year on “upgrades” to the speed limit signs. The bill would shift those costs from the county to FWC.

This bill would take effect upon becoming law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Boating-Restricted Areas

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.<sup>1</sup> Both vessel speed and vessel traffic may be restricted.<sup>2</sup>

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.,<sup>3</sup> or by a county or municipality by adoption of an ordinance.<sup>4</sup> 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 Coast Guard and Army Corps of Engineers, where the area is part of the navigable waters of the United States.<sup>5</sup> The current federal definition of navigable waters of the United States includes:

- All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- All interstate waters, including interstate wetlands;
- All other waters, including intrastate waters, that could affect interstate or foreign commerce;
- All tributaries of those waters previously described;
- The territorial sea; and
- Wetlands adjacent to those waters previously described (but are not themselves wetlands).<sup>6</sup>

It is unlawful to operate a vessel in a boating-restricted area or to carry on any prohibited activity,<sup>7</sup> if the area has been clearly marked by regulatory markers.<sup>8</sup> Violating the Florida Vessel Safety Law is a noncriminal infraction,<sup>9</sup> and violators are subject to a \$50 fine.<sup>10</sup> 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.<sup>11</sup>

The ability to enforce regulations in boating-restricted areas is dependent upon the placement of regulatory markers.<sup>12</sup> FWC is required to adopt rules establishing a uniform system of regulatory markers compatible with Coast Guard regulations.<sup>13</sup> Counties and municipalities which have been granted a boating-restricted area designation for a portion of the Florida Intracoastal Waterway may apply to FWC for permission to place regulatory markers under the procedures of s. 327.40, F.S.<sup>14</sup>

##### Boating-Restricted Areas in Broward County

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<sup>1</sup> Section 327.46(1), F.S.

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

<sup>3</sup> Section 327.46(1)(a), F.S.

<sup>4</sup> Section 327.46(1)(b)-(c), F.S.

<sup>5</sup> Section 327.46(2), F.S.

<sup>6</sup> 40 C.F.R. §110.1 (2015).

<sup>7</sup> “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.

<sup>8</sup> Section 327.46(3), F.S.

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

<sup>10</sup> Section 327.73(1), F.S.

<sup>11</sup> Section 327.46(4), F.S.

<sup>12</sup> *See* s. 327.46(3), F.S.

<sup>13</sup> Section 327.41(1), F.S.

<sup>14</sup> Section 327.41(2), F.S.

Chapter 86-364, Laws of Florida, established a speed limit of thirty miles per hour for vessels travelling on the New River Canal and Florida Intracoastal Waterway.<sup>15</sup> Boaters are informed of the speed limit by signs at locations designated by Division of Law Enforcement of FWC.<sup>16</sup> Broward County is responsible for the cost of erecting and maintaining the signs in unincorporated areas, while municipalities are responsible for these costs for any sign inside their boundaries.<sup>17</sup> The speed limit set by the act does not apply in regulatory zones, idle speed/no wake zones, and manatee zones.<sup>18</sup>

Boating restrictions are enforced by the Division of Law Enforcement of FWC and other law enforcement officers.<sup>19</sup> FWC has also adopted a rule concerning "Broward County Boating Restricted Areas."<sup>20</sup> An earlier version of this rule specifically authorized Broward County to install and maintain regulatory markers, as directed by the Division of Law Enforcement, within boating-restricted areas.<sup>21</sup> This authorization was removed with the intention of shifting authority and responsibility for managing regulatory markers along the Florida Intracoastal Waterway from Broward County and the City of Fort Lauderdale to FWC.<sup>22</sup>

### **Effect of Proposed Changes**

The bill transfers authority for the construction and maintenance of speed limit signs along the New River Canal and Florida Intracoastal Waterway in Broward County from the county to FWC.

The bill removes a provision stating that operating a vessel in excess of the maximum speed limit in the New River Canal and the Florida Intracoastal Waterway is a non-criminal infraction punishable by a civil penalty "computed in accordance with [the] provisions [of] ... s. 318.18(3), F.S." Vessel operators who exceed the maximum speed limit would instead be liable under the provisions of s. 327.73, F.S.

Broward County has previously spent money erecting speed limit signs in the New River Canal and Florida Intracoastal Waterway.<sup>23</sup> Most of these signs are still in good condition and the county currently spends approximately \$30,000 a year for upgrades as part of its Parks and Recreation budget.<sup>24</sup> FWC maintains ninety percent of the markers for manatee protection.<sup>25</sup>

#### **B. SECTION DIRECTORY:**

Section 1: Amends ch. 86-364, Laws of Florida, concerning speed limit signs on the New River Canal and Florida Intracoastal Waterway, Broward County.

Section 2: Provides that the bill shall take effect upon becoming law.

## **II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS**

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? October 4, 2015

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<sup>15</sup> Ch. 86-364, s. 1, Laws of Fla.

<sup>16</sup> Ch. 86-364, s. 2, Laws of Fla. The Florida Marine Patrol's functions are now part of FWC's Division of Law Enforcement.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Section 327.70(1), F.S.

<sup>20</sup> Rule 68D-24.008, F.A.C. (effective 7/21/13).

<sup>21</sup> Rule 68D-24.008(3), F.A.C. (effective 12/18/94).

<sup>22</sup> Letter from Major Richard Moore, Boating and Waterways Section Leader, FWC, to Barbara Sharief, Mayor of Broward County, Re: Broward County Special Acts of Local Application Numbers 86-364 and 89-428, dated 2/10/14. A copy of this letter is on file with the House Local Government Affairs Subcommittee.

<sup>23</sup> Economic Impact Statement for HB 869 (2015).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

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

None