

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 192

INTRODUCER: Environment and Natural Resources Committee and Senator Garcia

SUBJECT: Anchoring Limitation Areas

DATE: February 5, 2024 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carroll</u>	<u>Rogers</u>	<u>EN</u>	Fav/CS
2.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 192 expands the sections of Biscayne Bay that are designated as anchoring limitation areas. The bill designates as anchoring limitation areas the sections of Biscayne Bay within Miami Dade County that are within 200 yards of any part of the shore of the City of Miami Beach lying between State Road A1A and State Road 112.

The bill specifies that documentation used to prove that a vessel has not exceeded the limits of county-established anchoring limitation areas must show the vessel at least one *nautical* mile away within a certain period. Further the bill specifies that electronic evidence used as proof of location may include navigational or tracking devices if they are permanently affixed to the vessel.

The bill takes effect July 1, 2024.

II. Present Situation:

Fish and Wildlife Conservation Commission

The Florida Fish and Wildlife Conservation Commission (FWC) is governed by a board of seven members who are appointed by the Governor and confirmed by the Florida Senate.¹ The Division of Law Enforcement Boating and Waterways Section of FWC oversees and coordinates

¹ FLA. CONST. art. IV, s. 9; *see also* s. 379.102(1), F.S.

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.² The Boating and Waterways Section takes public input and provides notice of proposed local boating-restricted areas.³

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.⁴ The Division of Law Enforcement manages Florida's waterways to ensure boating safety for residents of and visitors to the state.⁵ 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.⁶

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.⁷ Anchorages are areas that boaters regularly use for anchoring or mooring, whether designated or managed for that purpose or not.⁸

Anchoring Limitation Areas

State law designates certain densely populated urban areas as anchoring limitation areas.⁹ These areas usually have narrow state waterways, residential docking facilities, and significant recreational boating traffic. The listed anchoring limitation areas are:

- 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.¹⁰

² FWC, *Waterway Management*, <https://myfwc.com/boating/waterway/> (last visited Feb. 3, 2024).

³ *Id.*

⁴ 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.

⁵ Fish and Wildlife Conservation Commission (FWC), *Boating*, <https://myfwc.com/boating/> (last visited Feb. 3, 2024).

⁶ FWC, *Law Enforcement*, <https://myfwc.com/about/inside-fwc/le/> (last visited Feb. 3, 2024). *See s. 327.70(1) and (4), F.S.*

⁷ 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.

⁸ Ankersen, Hamann, & Flagg, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, 2 (Rev. May 2012), available at <https://repository.library.noaa.gov/view/noaa/36907>. (last visited Feb. 3, 2024)

⁹ Section 327.4108(1), F.S.

¹⁰ *Id.*

Counties, except for Monroe County, may establish an anchoring limitation area adjacent to urban areas that have residential docking facilities and significant recreational boating traffic.¹¹ The aggregate total of anchoring limitation areas in a county may not exceed 10 percent of the county's delineated navigable-in-fact waterways.¹² Each anchoring limitation area must meet the following requirements:

- Be less than 100 acres in size, not including any portion of the marked channel of the Florida Intracoastal Waterway contiguous to the anchoring limitation area;
- Not include any mooring field or marina; and
- Be clearly marked with signs and buoys.¹³

Unless otherwise exempt, person may not anchor a vessel for more than 45 consecutive days in any six-month period in an anchoring limitation area established by a county.¹⁴

Exceptions to anchoring prohibitions in any anchoring limitation area include the following:

- 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; and
- During a regatta, tournament, or marine parade or exhibition or other special events, including, but not limited to, public music performances, local government waterfront activities, or fireworks displays.¹⁵

Vessels exempt from anchoring prohibitions in an anchoring limitation area include:

- Vessels owned or operated by a government entity for law enforcement, firefighting, military, or rescue purposes;
- Construction or dredging vessels on an active job site;
- Vessels actively engaged in commercial fishing; and
- Vessels engaged in recreational fishing if the persons onboard are actively tending hook and line fishing gear or nets.¹⁶

Anchoring Limitation Area Enforcement

For a vessel in a county-established anchoring limitation area, 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 limitations for county-established anchoring limitation areas.¹⁷ If a vessel owner or operator fails or refuses to provide proof that the vessel

¹¹ Section 327.4108(2), F.S.

¹² *Id.* "Navigable-in-fact waterways" are 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. *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Section 327.4108 (4), F.S.

¹⁶ Section 327.4108(5), F.S.

¹⁷ Section 327.4108(6), F.S.

has not exceeded the limitations, the officer or agency may issue a citation. Proof may include any of the following:

- Documentation showing that the vessel was in another location at least 1 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 1 mile away within a period of less than 45 days before the inquiry.¹⁸

For a vessel in any anchoring limitation area, a law enforcement officer or agency may remove and impound the vessel for up to 48 hours if the vessel operator was previously issued a citation for violating anchoring limitation area regulations and:

- Anchors the vessel in an anchoring limitation area within 12 hours of being issued the 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:

- \$100 for a first offense;
- \$250 for a second offense; and
- \$500 for a third or subsequent offense.²¹

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 a 60-day imprisonment.²²

Biscayne Bay

Biscayne Bay is a 428-square mile estuary extending nearly the entire length of Miami-Dade County.²³ The Bay is home to over 500 species of fish and other marine organisms, and its extensive areas of seagrasses are an important food source for the Florida manatee and as nursery areas for many ecologically and commercially important estuarine species.²⁴ Miami-Dade

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Section 327.73(1)(z), F.S.

²² Sections 775.082 and 775.083, F.S.

²³ Miami-Dade County, *About Biscayne Bay*, <https://www.miamidadegov/global/economy/environment/about-biscayne-bay.page> (last visited Feb. 3, 2024).

²⁴ U.S. Army Corps of Engineers, *Biscayne Bay Coastal Wetlands Project*, <https://www.saj.usace.army.mil/BBCW/> (last visited Feb. 3, 2024).

County is one of Florida’s most populous counties, with approximately 2.7 million residents and the county sees millions of visitors each year.²⁵

The map below shows where the municipal boundary of the City of Miami Beach lies in Biscayne Bay, as well as State Road (SR) 112 and SR A1A.²⁶



III. Effect of Proposed Changes:

Section 1 amends s. 327.4108, F.S., to revise the sections of Biscayne Bay in Miami-Dade County that are anchoring limitation areas, within which a person may not anchor a vessel at any time between one-half hour after sunset and one-half hour before sunrise. The bill provides that the anchoring limitation areas are the sections of Biscayne Bay in Miami-Dade County which are within 200 yards of any part of the shore of the City of Miami Beach lying between State Road A1A and State Road 112.

The bill specifies that documentation used to prove that a vessel has not exceeded the limits of county-established anchoring limitation areas must show that the vessel was at least one nautical mile away with a certain period. Further, the bill specifies that electronic evidence used to prove the location of a vessel may include navigational devices or tracking devices if they are permanently affixed to the vessel.

Section 2 provides an effective date of July 1, 2024.

²⁵ Florida Department of Environmental Protection, *Biscayne Bay Aquatic Preserves*, <https://floridadep.gov/rcp/aquatic-preserve/BiscayneBayAquaticPreserves> (last visited Dec. 8, 2023); Miami-Dade County, *About Biscayne Bay*.

²⁶ City of Miami Beach, *2040 Miami Beach Comprehensive Plan*, 146 (2020), available at <https://www.miamibeachfl.gov/wp-content/uploads/2021/05/2040-Comprehensive-Plan-12-9-2020-Adopted-Compressed.pdf>. (last visited Feb 3, 2024.)

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:

Article III, section 10 of the Florida Constitution prohibits the Legislature from enacting any special law unless notice is first published or a referendum is conducted. A special law or “local law” relates to or operates upon a particular person, thing, or part of the state; it does not apply with geographic uniformity across the state and bears no reasonable relationship to differences in population or other legitimate criteria.²⁷ On the other hand, a general law of local application relates to a class of persons or things or subdivisions of the state, based upon distinctions or differences that are inherent or particular to the class or location. The Legislature is granted wide discretion in making such classifications.²⁸ If a particular condition exists in only a portion of the state, enactments that reference the limited geographic area may be general laws.²⁹ “[I]f a law utilizes a classification that is geographical in its terms but the purpose of the statute is one of statewide importance and impact, and the classification is reasonably related to the law’s purpose, it is a valid general law.”³⁰

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

²⁷ See *State ex rel. Landis v. Harris*, 163 So. 237, 240 (Fla. 1934); and *Lawnwood Medical Center, Inc. v. Seeger*, 990 So.2d 503 (Fla. 2008).

²⁸ *Shelton v. Reeder*, 121 So. 2d 145, 151 (Fla. 1960). *But see also* FLA. CONST. Art. X, s. 11s.

²⁹ *Schrader v. Florida Keys Aqueduct Authority*, 840 So.2d 1050, 1055 (Fla. 2003).

³⁰ *Id.* at 1056.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 327.4108 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environment and Natural Resources on January 24, 2024:

- Expands the anchoring limitation areas in Biscayne Bay to include the sections of Biscayne Bay in Miami-Dade County that are within 200 yards of any part of the shore of the City of Miami Beach lying between State Road A1A and State Road 112.
- Specifies that documentation used to prove that a vessel has not exceeded the limits of a county-established anchoring limitation area must show the vessel at least one nautical mile away within a certain period.
- Specifies that electronic evidence used as proof of location may include navigational or tracking devices if they are permanently affixed to the vessel.

B. Amendments:

None.