

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: February 12, 1998 Revised: 02/18/98 _____

Subject: A bill relating to the powers and duties of the Governor.

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	Green	Voigt	NR	Favorable
2.	_____	_____	EE	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill prohibits the Governor from nominating for appointment to a federal fisheries management council a person who has within 24 months prior to nomination worked as a lobbyist for any entity potentially affected by council actions or decisions.

This bill adds subsection (4) to section 14.23, F.S.

II. Present Situation:

The Magnuson-Stevens Fishery Conservation and Management Act ("Magnuson-Stevens Act") authorizes the establishment of "Regional Fishery Management Councils to exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring, and revision of such plans..." 16 U.S.C. s. 1801(b)(5) (1994). These Councils enable "the State[s], the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans..." 16 U.S.C. s. 1801(b)(5) (1994).

Pursuant to 16 U.S.C. s. 1852(a)(3) (1994), Florida, Georgia, North Carolina, and South Carolina are members of the South Atlantic Fishery Management Council ("Council"). Florida is also a member of the Gulf Council, along with Texas, Louisiana, Mississippi, and Alabama. 16 U.S.C. s. 1852(a)(5) (1994). The Secretary of Commerce ("Secretary") appoints members to either Council "who, by reason of their occupational or other experience, scientific expertise, or training, are knowledgeable regarding the conservation and management, or the commercial or recreational harvest, of the fishery resources of the geographical area concerned." 16 U.S.C. s. 1852(b)(2)(A) (1994). The Secretary's appointments should, "to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their

representatives) in the commercial and recreational fisheries under the jurisdiction of the Council.” 16 U.S.C. s. 1852(b)(2)(B) (1994).

The Governor’s selection of nominees is guided by 16 U.S.C. s. 1852(b)(2)(C) (1994), which provides the Governor may submit names only when “the Governor has, to the extent practicable, first consulted with representatives of the commercial and recreational fishing interests of the State regarding those individuals.” The Governor’s list of nominees “shall include the names and pertinent biographical data of not less than three individuals for each applicable vacancy and shall be accompanied by a statement by the Governor explaining how each such individual meets the [statutory] requirements...” 16 U.S.C. s. 1852(b)(2)(C) (1994). The Secretary shall review the Governor’s submitted list “to ascertain if the individuals on the list are qualified for the vacancy on the basis of such requirements.” 16 U.S.C. s. 1852(b)(2)(C) (1994). “If the Secretary determines that any individual is not qualified, the Secretary shall notify the appropriate Governor of that determination.” 16 U.S.C. s. 1852(b)(2)(C) (1994). Finally, the Secretary selects a member of the Council from this list of qualified applicants submitted by the Governor.

The Magnuson-Stevens Act also provides for disclosure of a nominee’s financial interests. “Each affected individual must disclose any financial interest held by that individual, the spouse, minor child, or partner of that individual, and any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee in any harvesting, processing, or marketing activity that is being, or will be, undertaken within any fishery over which the Council concerned has jurisdiction.” 16 U.S.C.S. s. 1852(j)(2) (1984 & Supp. 1997).

The 1996 revisions to the Magnuson-Stevens Act prohibit a member from voting on any Council decision that may have a “significant and predictable effect” on that member’s interests. A Council decision is “...considered to have a significant and predictable effect on a financial interest if there is a close causal link between the Council decision and an expected and substantially disproportionate benefit to the financial interest of the affected individual relative to the financial interests of other participants in the same gear type or sector of the fishery.” 16 U.S.C.S. s. 1852(j)(7)(A) (1984 & Supp. 1997). “At the request of an affected individual, or upon the initiative of the appropriate designated official, the designated official shall make a determination for the record whether a Council decision would have a significant and predictable effect on a financial interest.” 16 U.S.C.S. s. 1852(j)(7)(A) (1984 & Supp. 1997). Notwithstanding the voter recusal, a member making such a disclosure may participate in deliberations when the member notifies the Council of the voting recusal and identifies the interest affected.

Recent concerns over the nomination process involved the appointment of John Sanchez to the Council. Coastal Conservation Association Florida objected to his appointment and requested a determination on Mr. Sanchez’s voting status following a controversial vote. General Counsel for the National Oceanic and Atmospheric Association (“NOAA”) responded to the request by noting the final rule implementing the 1996 Magnuson-Stevens Act voter recusal amendment was not in place at the time of the vote. Further, the NOAA General Counsel explained that the proposed rule did not ascribe the financial interests of an association’s members to that association. Such an interpretation, according to the General Counsel, would not disqualify a representative of an

association “from voting on a Council decision that has a significant and predictable effect on the financial interests of the association members.” At this time, the proposed rule has been withdrawn because of objections and a final rule is not yet in place.

III. Effect of Proposed Changes:

This bill would prohibit the Governor from nominating for appointment to a federal fisheries management council any person who is or has been a lobbyist, as defined in s. 112.3148, F.S., at any time during the 24 months preceding the nomination with any entity whose interests could be affected by actions or decisions of the council. The term “lobbyist” is defined in s. 112.3148(2)(b), F.S., as “any natural person who for compensation, seeks, or sought during the preceding 12 months, to influence the governmental decisionmaking of a reporting individual or procurement employee or his or her agency or seeks, or sought during the preceding 12 months, to encourage the passage, defeat, or modification of any proposal or recommendation by the reporting individual or procurement employee or his or her agency.”

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
