

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 2120

SPONSOR: Governmental Oversight and Productivity Committee, Natural Resources Committee, Senator Sullivan and Others

SUBJECT: Sea Turtle License Plates

DATE: February 26, 2002      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Branning	Voigt	NR	Favorable/CS
2.	White	Wilson	GO	Favorable/CS
3.	_____	_____	FT	_____
4.	_____	_____	AGG	_____
5.	_____	_____	AP	_____
6.	_____	_____	_____	_____

## I. Summary:

This bill distributes a portion of the license plates' annual revenue to the Caribbean Conservation Corporation (CCC) for the purpose of funding a Sea Turtle Grants Program. Further, the bill provides that up to 25 percent of the funds distributed to the CCC may be used for administrative costs, and to promote and market the license plate, and specifies that none of the funds may be used for litigation.

This bill amends s. 320.08058, F.S. and repeals s. 370.12(1)(h), F.S.

## II. Present Situation:

**Overview of Specialty License Plates:** Pursuant to ch. 320, F.S., more than 50 specialized motor vehicle license plates are available in Florida. Some may be purchased by anyone, while others are only available to select persons with certain qualifications, e.g., members of Congress or the State Legislature, former prisoners of war, Purple Heart Recipients, and Medal of Honor winners.

Revenues from some specialty license plates are deposited in a state agency trust fund or in state or independent university foundation account, or are directed to citizen support organizations, direct support organizations, or named nonprofit foundations. The following specialty license plates revenues, or a portion thereof, are distributed to the benefit of a nonprofit foundation:<sup>1</sup>

- Challenger License Plate — 50 percent of the annual user fee is distributed to the Astronauts Memorial Foundation, Inc.

<sup>1</sup> Section 320.0858, F.S.

- Florida Special Olympics License Plate — The first \$5 million collected annually must be forwarded to the private nonprofit corporation described in s. 393.002, F.S. (Developmental Disabilities Council)
- Florida Professional Sports Team License Plate — 45 percent of the proceeds of the annual use fee allocated to the Florida Sports Foundation, a direct-support organization of the Office of Tourism, Trade, and Economic Development.
- Police Athletic League License Plate — The annual use fees are distributed to the Florida Police Athletic League, Inc.
- Keep Kids Drug-Free License Plate — The annual use fees are distributed to the Keep Kids Drug-Free Foundation, Inc.
- Conserve Wildlife License Plate — The proceeds of the annual use fees are forwarded to the Wildlife Foundation of Florida, Inc., a citizen support organization to the Fish and Wildlife Conservation Commission (FWCC).
- United State Marine Corps License Plate — After the first \$50,000 collected annually, the fees are deposited into the Marine Corps Scholarship Foundation, Inc.

**Audits for Specialty License Plate Annual Use Fees:** Pursuant to ss. 215.97 and 320.08062, F.S., any organization receiving proceeds from a specialty license plate must: (a) submit an annual attestation, under penalties of perjury, to the Department of Highway Safety and Motor Vehicles (DHSMV) that such proceeds were used in compliance with statute if the amount of proceeds received are less than \$300,000; or (b) submit an annual audit report in accordance with Auditor General rules to the DHSMV if the amount of proceeds is \$300,000 or greater.<sup>2</sup> The DHSMV, after receiving the attestation or audit, is required to determine if the license plate proceeds have been properly expended. In the event the DHSMV finds an improper expenditure, it must discontinue distribution of proceeds to the organization. If the organization does not become compliant within 12 months after the discontinuance of proceeds, the DHSMV is to deposit the proceeds into the Highway Safety Operating Trust Fund. The DHSMV and the Auditor General are authorized to examine all records pertaining to the use of proceeds from the specialty license plates.<sup>3</sup>

**Sea Turtle License Plate:** In 1997, the Legislature authorized the issuance of a Sea Turtle license plate. Section 320.08056, F.S., provides that the annual use fee for this specialty license plate is \$17.50. Section 320.08058, F.S., provides that the annual use fees from this license plate are to be deposited in the FWCC's Marine Resources Conservation Trust Fund. The first \$500,000 in annual revenue is to be used by the Florida Marine Turtle Protection Program to conduct sea turtle protection, research, and recovery activities. Additional license plate revenue,

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<sup>2</sup> Section 215.97(7), F.S., provides that nonstate entities receiving state financial assistance of \$300,000 or more per fiscal year are to have a "state single audit" for that fiscal year or a "state project-specific audit" if only one state project is involved in the nonstate entity's fiscal year.

<sup>3</sup> Sections 11.45(3)(a)13., and 320.08062, F.S.

up to an amount not exceeding 30 percent of the total annual revenue, is to be dispersed through the Marine Turtle Grants Program as provided in s. 370.12(1)(h), F.S. The remaining annual use proceeds are to be used by the Florida Marine Turtle Protection Program for sea turtle conservation activities.

Since it was first offered to the public in 1998, the sea turtle license plate has generated a total revenue of \$2,709,637.85, as of February 6, 2002. New sales and renewals of the plate in 2001 constituted \$991,917.50 of the total amount.<sup>4</sup>

**Marine Turtle Protection Act:** Section 370.12(1), F.S., is known as the “Marine Turtle Protection Act.” The stated legislative intent of the Act is to ensure that the FWCC has the appropriate authority and resources to implement its responsibilities under the recovery plans of the U.S. Fish and Wildlife Service for the following species of marine turtles:

- Atlantic loggerhead turtle
- Atlantic green turtle
- Leatherback turtle
- Atlantic hawksbill turtle
- Atlantic ridley turtle

The Act requires the FWCC to provide grants to coastal local governments, educational institutions, and Florida-based nonprofit organizations to conduct marine turtle research, conservation, and education activities within the state. The FWCC is required to adopt criteria for allocating grant funds by rule that must include the scope of the proposed activity, the relevance of the proposed activity to the recovery plans for marine turtles, the demand and public support for the proposed activity, the duration of the proposed activity, the availability of alternative funding, and the estimated cost of the activity. The executive director of the commission must appoint a committee of at least five members, including at least two nongovernmental representatives, to consider and choose grant recipients from proposals submitted by eligible entities. Committee members may not receive compensation from the commission.

**Caribbean Conservation Corporation:** The CCC is a not-for-profit 501(c)(3) organization based in Gainesville that is dedicated to the conservation of sea turtles and related marine and coastal wildlife through research, training, advocacy, education and the protection of natural areas. It was founded in 1959 and is headed by a four-officer board of directors.<sup>5</sup> The CCC’s literature provides:

To address the many threats facing sea turtles and their habitats in the U.S., especially in Florida, CCC launched the Sea Turtle Survival League [STSL] program in 1993. In the nine years since its formation, the STSL program has

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<sup>4</sup> Revenue information was received from the DHSMV.

<sup>5</sup> In 1999, the CCC sued the FWCC. At issue in the case was whether the Legislature had the authority to limit the FWCC’s rulemaking authority over endangered marine life. The Circuit Court in Leon County found the statute unconstitutional. On June 12, 2001, however, the First District Court of Appeals reversed the Circuit Court’s decision. *Florida Fish and Wildlife Conservation Commission v. Caribbean Conservation Corporation, Inc.*, 789 So.2d 1053 (Fla. 1<sup>st</sup> DCA 2001).

become the most effective voice for sea turtle conservation in Florida – and is one of the only groups actively watch-dogging sea turtle and coastal issues at a statewide level in Florida. In fact, the League now serves as an umbrella organization for the many small sea turtle conservation and education groups.

Some of CCC's claimed accomplishments include:

- Playing an instrumental role in Congress' designation of the Archie Carr National Wildlife Refuge -- the only federally protected sea turtle refuge in the U.S.
- Leading the campaign to establish the Sea Turtle license plate, which provides 100 percent of the annual budget for Florida's Marine Turtle Protection Program and provides grants to numerous private turtle conservation groups; and
- Helping to reverse declining turtle population trends in Tortuguero, Costa Rica and in the Archie Carr National Wildlife Refuge in Florida.

### III. Effect of Proposed Changes:

**Section 1.** The bill amends s. 320.08058, F.S., to provide that the first \$500,000 in annual use fees from the sea turtle license plate are to be used by the Florida Marine Turtle Protection Program administered by the FWCC. The next \$215,000 in fees are to be distributed to the CCC, which is to annually distribute these funds through a Sea Turtle Grants Program that supports sea turtle research and education activities of Florida-based nonprofit groups, educational institutions, and Florida coastal counties. The CCC is required to write and publish procedures for submitting grant applications and criteria for allocating available funds, and to appoint a technical advisory committee, composed of at least five members, including two representatives from the FWCC. The technical advisory committee is directed to select grant recipients from proposals submitted by eligible entities.<sup>6</sup>

Revenue from the sea turtle license plate in excess of \$715,000 is to be distributed as follows:

- 70 percent is to be deposited in the Marine Resources Conservation Trust Fund and used by the Florida Marine Turtle Protection Program for sea turtle conservation activities.
- 30 percent is to be assigned to the CCC for distribution through the Sea Turtle Grants Program.

Further, up to 15 percent of total funds distributed to the CCC may be expended for administrative costs directly associated with the grants program, and up to 10 percent of total funds distributed to the CCC may be used to promote and market the license plate. None of the funds may be expended for litigation.

**Section 2.** The bill repeals paragraph (h) of subsection (1) of s. 370.12, F.S., which provides for the FWCC's Sea Turtle Grants Program. The repeal is delayed until June 30, 2003, in order to allow the FWCC to honor current grant agreements and to use monies already distributed.

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<sup>6</sup> It would appear that the CCC, as a Florida-based nonprofit group, could qualify under the bill to receive a grant to support its sea turtle research and education activities.

**Section 3.** The bill provides that it takes effect on July 1, 2002.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

As a result of the funding provided by this bill, the CCC would be required to annually submit an attestation to the DHSMV providing that it has utilized the funds in compliance with statute if it receives less than \$300,000. If more than \$300,000 is received, the CCC would be required to submit an annual audit report in accordance with Auditor General rules to the DHSMV.<sup>7</sup> Further, both the DHSMV and the Auditor General are specifically authorized by statute to examine all records pertaining to the use of proceeds from the specialty license plates.<sup>8</sup> Any record received or obtained by the DHSMV or Auditor General under this authority would be public record subject to ch. 119, F.S.<sup>9</sup>

Whether other records of the CCC, which relate to the grant program created by the bill, would be public record depends upon whether the CCC would be considered to be “acting on behalf of a public entity.”<sup>10</sup> The Florida Supreme Court has adopted a “totality of factors” test for use as a guide in determining whether a private entity is “acting on behalf of a public entity.”<sup>11</sup> These factors include, but are not limited to: (1) the level of public funding; (2) commingling of funds; (3) whether the activity was conducted on publicly owned property; (4) whether services contracted for are an integral part of the public agency's chosen decision-making process; (5) whether the private entity is performing a governmental function or a function which the public agency otherwise would perform; (6) the extent of the public agency's involvement with, regulation of, or control over the private entity; (7) whether the private entity was created by the public agency; (8) whether the public agency has a substantial financial interest in the private entity; and (9) for who's benefit the private entity is functioning.

It is unclear when considering these factors whether the CCC would be generally subject to ch. 119, F.S., when distributing funds to grant recipients. It could be argued that the CCC is “acting on behalf of a public entity” in that the CCC would be distributing public funds pursuant to statutory guidelines for the public purpose of protecting sea turtles and in that the FWCC would have two employees participating in the grant decision-making process. It can also be argued, however, that the CCC is not “acting on behalf of a public

<sup>7</sup> Sections 215.97 and 320.08062, F.S.

<sup>8</sup> Sections 11.45(3)(a)13. and 320.08062, F.S.

<sup>9</sup> Article I, s. 24 of the Florida Constitution, sets forth the right to access public records and meetings.

<sup>10</sup> The term “agency” as used in the Public Records Act includes private entities “acting on behalf of any public agency.” Section 119.011(2), F.S.

<sup>11</sup> *News & Sun-Sentinel Co. v. Schwab, Twitty, & Hanser Architectural Group, Inc.*, 596 So.2d 1029 (Fla. 1992).

entity” in that the majority of the CCC’s funding is private in nature;<sup>12</sup> the CCC rents office space on privately-owned land; the decisions of the CCC under this bill would have little, if anything, to do with the decision-making of the FWCC or DHSMV; the DHSMV would only regulate the CCC to the extent of reviewing its annual attestation or audit report; the majority of the grant decision making process would be controlled by members of the CCC’s technical advisory committee who would not necessarily be state agency employees; and the CCC is not a state created entity.<sup>13</sup> There does not appear to be any case law that dispositively resolves this issue.

Further, whether the CCC would be subject to the open meeting requirements of ch. 286, F.S., is equally unclear, as the Florida Supreme Court has held that ch. 119, F.S., and ch. 286, F.S., are to be construed similarly in determining whether a public entity is subject to either chapter’s requirements.<sup>14</sup>

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Under the bill, educational institutions, Florida-based nonprofit groups, and Florida coastal counties may be eligible to receive grant funding.

**C. Government Sector Impact:**

The bill’s transfer of funds to the CCC, which constitutes approximately 30 percent of the license plate fees, should not result in any reduction in funding to the FWCC, as under the bill, the CCC will assume the FWCC’s current statutory responsibility to administer the grant program with up to 30 percent of the license plate fees.

**VI. Technical Deficiencies:**

None.

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<sup>12</sup> Pursuant to information received from the Executive Director of the CCC, the CCC’s annual operating budget is approximately \$1,000,000. This amount is privately funded, except that the CCC received a \$20,000 grant, e.g., two percent of its operating budget, from the FWCC in 2001. Under the bill, if \$991,917 was annually generated by the license plate, as occurred in 2001, the CCC would receive \$298,075. This amount would constitute approximately 23 percent of a \$1,298,075 annual budget.

<sup>13</sup> On February 18, 2002, the FWCC’s Office of the General Counsel issued a memorandum that concluded that the Harbor Branch Oceanographic Institute, which currently receives all annual use fees from the “Protect Wild Dolphins” license plate for the purposes of funding wild dolphins research pursuant to s. 320.08058(20), F.S., was not subject to ch. 119, F.S., for reasons similar to those discussed *supra*.

<sup>14</sup> *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 1999).

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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