

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 777 w/CS Working Waterfronts

**SPONSOR(S):** Berfield

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

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Government &amp; Veterans' Affairs</u>	<u>18 Y, 0 N w/CS</u>	<u>Grayson</u>	<u>Cutchins</u>
2) <u>Natural Resources</u>	<u></u>	<u></u>	<u></u>
3) <u>Finance &amp; Tax</u>	<u></u>	<u></u>	<u></u>
4) <u>Transportation &amp; Economic Development</u> <u>Appropriations (Sub)</u>	<u></u>	<u></u>	<u></u>
5) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

This bill relates to the protection and preservation of the state's "working public waterfronts" in consideration of their provision of access to the state's navigable waterways and their economic impact.

The bill creates s. 163.3164(32), F.S., to define "working public waterfront."

The bill creates s. 163.3177(6)(l) F.S., to require that all local comprehensive plans include a "component" regarding a sufficient number of public access boat ramps with adjoining boat trailer parking capacity.

The bill creates s. 163.3177(6)(m) F.S., to require local governments to include a "component" in their local comprehensive plan that identifies, or provides a means of identifying working public waterfronts.

The bill creates s. 342.07, F.S., relating to working public waterfronts. The section includes legislative intent language stating that there is a significant interest in the availability and economic impact of public marinas, public boat yards and public boat ramps along the state's navigable waterways; and that commerce and transportation are important waterway uses that are not feasible without access to the land through working public waterfronts.

The bill requires the Florida Fish and Wildlife Conservation Commission to commission a study on working public waterfronts and present a report to the Governor and the Legislature by January 4, 2005.

**The mandates provision appears to apply because this general law bill may require counties and municipalities to spend funds or take an action requiring the expenditure of funds. The bill does not appear to qualify for either an exemption or exception, accordingly the bill needs to include a statement of important state interest and have a 2/3 vote of the membership of each house.**

**The bill does not contain a statement of important state interest as required for an exception to Art. VII, s. 18(a), State Constitution.**

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0777a.lgv.doc

**DATE:** March 28, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

This bill relates to the protection and preservation of the state's "working public waterfront" as in consideration of their provision of access to the state's navigable waterways and their economic impact.

##### Working Public Waterfront Definition

The bill creates s. 163.3164(32), F.S., to define "working public waterfront."

##### Comprehensive Plan and the Provision of Sufficient Boat Ramps – s. 163.3177(6)(l), F.S.

The bill creates s. 163.3177(6)(l) F.S., to require that all local comprehensive plans include a "component" regarding a sufficient number of public access boat ramps with adjoining boat trailer parking capacity.

The bill provides that in determining a sufficient number for construction and operation by local government that the local government shall examine:

- the availability of privately owned boat ramps,
- the demand for boating facilities, points of origin and destination,
- the volume and types of boats, seasonal variations in boating patterns,
- the types and distribution of boating activities, and the ability of local government to fund boat ramp facilities.

Additionally, the bill provides that unless the local government determines a different appropriate ratio, the plan is required to have a goal of providing a minimum number of boat trailers parking spaces adjoining public access boat ramps equal to 5 % of the registered vessels in that jurisdiction under 40 feet in length by July 1, 2014.

The bill as filed defines the term "vessel" as it is in s. 327.02(37), F.S.

Section 327.02(37), F.S., states:

"Vessel" is synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution and includes every description of watercraft, barge, and air boat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

Art. VII, s. 1(b), State Constitution, states:

Motor vehicles, boats, airplanes, trailers, trailer coaches and mobile homes, as defined by law, shall be subject to a license tax for their operation in the amounts and for the purposes prescribed by law, but shall not be subject to ad valorem taxes.

- **Comment – “Component”:** This provision [and s. 163.3177(6)(m), F.S.] confuses the term “component” with the term “element.” Words like “component” and “element” have specific meanings within the context of the Local Government Comprehensive Planning and Land Development Regulation Act (Growth Management Act). A “component,<sup>1</sup>” while not defined in the Growth Management Act, is a portion of an “element,” which itself is a portion of a local comprehensive plan; much as a subchapter is a part of a chapter, which itself is part of a book. Thus, the creation of these two sections creates confusion and do not appear to integrate with the remainder of the section.

Looking at the other subsections of 163.3177, F.S., they address numerous required or optional “elements of a local comprehensive plan. Specifically, they address:

- (a) a future land use element;
- (b) a traffic circulation element;
- (c) a general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element;
- (d) a conservation element;
- (e) a recreation and open space element;
- (f) a housing element;
- (g) a coastal management element (for units of local government identified in s. 380.24, F.S.);
- (h) an intergovernmental coordination element;
- (i) which speaks to optional elements;
- (j) a transportation element for local governments within urbanized areas; and
- (k) an airport master plan.

Now the bill would add to this list of “elements” two “components.” This raises a couple of questions besides how these “components” mesh with the other required or optional “elements.” Are these meant as stand alone “elements” and merely misnamed, or are they truly components of some element? If they are stand alone elements, are they required or optional? If the provision [and s. 163.3177(6)(m), F.S.] is intended to be a component of another element, that element (i.e., the coastal element) should be identified. If the provision [and s. 163.3177(6)(m), F.S.] is intended as an element, then that intent needs to be clarified and identified as either a required or optional element.

- **Comment - Scope:** According to existing law, each local government<sup>2</sup>, defined as any county or municipality, is required to develop a comprehensive plan.<sup>3</sup> This provision [and s. 163.3177(6)(m), F.S.] requires all counties and municipalities, whether or not that particular jurisdiction has a “working public waterfront” within its boundary, to include the components required in ss. 163.3177(6)(l) and (m), F.S. At present, it is unclear whether every local government has a “working public waterfront.”
- **Comment – Local government responsibility to construct and operate:** The way the language of the second sentence of the provision is drafted, it appears to require local governments to construct and operate “public access boat ramps with adjoining boat trailer parking capacity.”

<sup>1</sup> See: Sections 163.3167(11) & (12); 163.3177(3)(a)1; 163.3178(2)(d)-(g), (i), & (k); and 163.3180(12)(a), F.S.

<sup>2</sup> s. 163.3164(13), F.S.

<sup>3</sup> s. 163.3167(2), F.S.

Comprehensive Plan and the Working Public Waterfront component – s. 163.3177(6)(m), F.S.

The bill creates s. 163.3177(6)(m) F.S., to require local governments to include a “component” in their local comprehensive plan that identifies, or provides a means of identifying working public waterfronts.

The bill also requires that the component provide “a means by which working public waterfronts and working public waterfront facilities ... that are removed by governmental action are replaced by the political subdivision whose actions led to the removal, in compliance with s. 342.07.”

- Comment – “Component” : See discussion above.
- Comment - Scope: See discussion above.
- Comment – Replacement: The last sentence requires these governmental entities to essentially create some type of replacement program in compliance with the provisions of the newly created s. 342.07, F.S. While the provision does require compliance with s. 342.07, F.S., neither the provision nor the referenced section give guidance regarding how this replacement program will work. The result may be a multiplicity of programs which may be most complex if a working public waterfront or working public waterfront facility were located in more than one jurisdiction. See discussion below.
- Comment – Working Public Waterfront Facility: The term “working public waterfront facility” is not defined. The lack of a specific definition may provide for difficulties in the interpretation and implementation of this portion of the bill.

Governmental Removal of a Working Public Waterfront Facility

The bill creates s. 342.07, F.S., relating to working public waterfronts. The section includes legislative intent language stating that there is a significant interest in the availability and economic impact of public marinas, public boat yards and public boat ramps along the state’s navigable waterways; and that commerce and transportation are important waterway uses that are not feasible without access to the land through working public waterfronts.

The bill requires all political subdivisions and water management districts to identify working public waterfronts within their jurisdiction.

The bill requires that whenever a political subdivision or water management district “takes any action to close to public access a publicly owned working public waterfront facility, or that uses the power of eminent domain to take a privately owned working public waterfront, or any part thereof, must account for the loss of public access by replacing the lost access.” Further, the bill requires that the replacement:

- must be substantially the same;
- must provide similar access to the same navigable waterway; and must be available for use when the existing working waterfront, or portion thereof, is removed or closed.

The bill provides guidance in determining whether a replacement (for working public waterfronts other than those serving only inland freshwater bodies of water) is “substantially the same and provides similar access.” It provides that the political subdivision or water management district must take into account:

- distance,
- speed zones,
- water depth,
- and man-made obstructions to travel between the replacement and the Atlantic Ocean of the Gulf of Mexico.

The bill provides that a replacement is not substantially the same and does not provide similar access if:

- bridges, shoals, or shallow water would restrict access to vessels that can transverse the watercourse to the existing working public waterfront; or
- the travel time to the Atlantic Ocean or the Gulf of Mexico is substantially increased.
  
- Comment – Political Subdivision: The term “political subdivision” is defined in s. 1.01.(8), F.S. to include “counties, cities, towns, villages, special tax districts, special road and bridge districts, bridge districts, and all other district in this state.” Therefore, the requirements and responsibilities of this provision apply to all such entities.
  
- Comment – Working Public Waterfront Facility: See discussion above..
  
- Comment – Non functioning or Economically Infeasible Working Public Waterfronts: The replacement provision appears to apply to working public waterfronts that are economically infeasible. As a result, the argument could be made that the bill requires all political subdivisions and water management districts to subsidize or replace such economically infeasible working public waterfront or working public waterfront facility even if it is an economic burden on such entity.
  
- Comment – Working Public Waterfront serving inland water bodies: The provision although requiring replacement, by exclusion does not provide any guidance in determining whether a replacement is “substantially the same or provides similar access.”
  
- Comment – Factual Issues: The provision appears to create numerous factual issues that arguably may lead to litigation when differing interests interpret the same factual matters in different ways. The bill does not provide for resolution. Factual issues include:
  - Whether a given set of facts regarding bridges, shoals, or shallow water would restrict access to vessels that can transverse the watercourse to the existing working public waterfront? Further, the very inclusive definition of “vessel” incorporated by reference into the bill appears to mean that *any* vessel that could access the original working public waterfront but that cannot access the replacement would negate the replacement as “substantially the same.” Considering the “lay of the land” of Florida’s coastal and waterway areas, that may have far reaching unintended consequences.
  - What constitutes “substantially increased” as used in reference to travel time for a replacement working public waterfront?

#### Working Public Waterfront Study

The bill requires the Florida Fish and Wildlife Conservation Commission to commission a study and represent the results to the Governor, the President of the Senate and the Speaker of the House of Representatives by January 4, 2005. The study will focus on:

- the economic trends of the state’s working public waterfronts;
- the impact on the state of the loss of critical working public waterfronts;
- findings concerning the coastal and waterway development trends and their impact on the working public waterfronts.

The study is required to also examine coastal and waterway development trends and their impact on working public waterfronts; and to present recommendations for statutory changes regarding the preservation of existing working public waterfronts.

- Comment: The provision appears to raise a new term “critical working public waterfronts” which is undefined.

C. SECTION DIRECTORY:

Section 1. Creates s. 163.3164(32), F.S., to define "working public waterfronts."

Section 2. Creates ss. 163.3177(6)(l) and (m), F.S., requiring all local comprehensive plans to include components respectively regarding access boat ramps, and working public waterfronts.

Section 3. Creates s. 342.07, F.S., relating to working public waterfronts.

Section 4. Requires the Florida Fish and Wildlife Conservation Commission to commission a study on working public waterfronts.

Section 5. Provides an effective date of upon becoming law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate. The Florida Fish and Wildlife Conservation Commission is required to conduct a study and report to the Governor and Legislature.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Unknown. However, s. 2(3) of the bill requires a governmental entity to replace any working public waterfront facility that it removes. Considering that real property within the coastal area of the state is generally costly, the required facility replacement costs may be significant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because this general law bill may require counties and municipalities to spend funds or take an action requiring the expenditure of funds. The bill does not appear to qualify for either an exemption or exception, accordingly the bill needs to include a statement of important state interest and have a 2/3 vote of the membership of each house.

The bill does not contain a statement of important state interest as required for an exception to Art. VII, s. 18(a), State Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

See EFFECTS OF PROPOSED CHANGES.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 23, 2004, the Committee on Local Government & Veterans' Affairs adopted one strike all amendment. The amendment accomplished the following:

- Defines the term "working public waterfront" and clarifies the definition in lieu of the term "working waterfront."
- Amends s. 163.3177(6), F.S., to add local comprehensive plans components addressing a sufficient number of public access boat ramps, and working public waterfronts.
- Creates s. 342.07, F.S., to require the replacement of a working public waterfront when one is removed or closed by certain government actions.
- Requires the Florida Fish and Wildlife Conservation Commission to commission a study examining the economic trends of the state's working public waterfronts and the economic impact of the loss of these assets and report back to the Governor, the President of the Senate, and the Speaker of the House of Representatives by 1/4/05.