

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 1404

SPONSOR: Comprehensive Planning Committee, Natural Resources Committee and Senator Alexander

SUBJECT: Waterway Markers

DATE: March 23, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Branning</u>	<u>Kiger</u>	<u>NR</u>	<u>Fav/CS</u>
2.	<u>Herrin / Perrin</u>	<u>Yeatman</u>	<u>CP</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute for the committee substitute (CS) requires any new or replacement marker that is placed after December 31, 2003, to conform with the United States Aids to Navigation System, 33 C.F.R. part 62. It provides that the placement of informational markers, including, but not limited to, end of boat ramp, no swimming, swimming area, lake name, trash receptacle, public health notice, underwater hazard, canal, regulatory, emergency, and special event markers by counties, municipalities, or other governmental entities in, on, or over the waters or shores of landlocked inland lakes and their associated canals does not require a permit from the Fish and Wildlife Conservation Commission (commission).

In addition, the CS provides that the appearance of certain informational markers, except for those markers intended to protect the public health and safety, need not conform to the requirements of the United States Aids to Navigation System, 33 C.F.R. part 62, or any uniform system of waterway markers adopted by the commission. Notwithstanding certain provisions in this act, counties, municipalities, and other governmental entities shall comply with federal laws and regulations when placing informational markers on federally regulated waters.

This CS substantially amends s. 327.40 of the Florida Statutes.

II. Present Situation:

State Law and Rules

In 2000, s. 327.40(1), F.S., was amended to provide that waterways in Florida which need marking for safety or navigation purposes shall be marked under the United States Aids to

Navigation System, 33 C.F.R. part 62. Until December 31, 2003, channel markers and obstruction markers may continue to be used on waters of the state that are not navigable waters of the United States. However, the statutory revisions were silent as to any penalty for noncompliant markers in place after December 31, 2003.

Section 327.40(2)(b), F.S., was also amended in 2000 to prohibit placement of any “safety or navigation markers” in, on, or over the waters or shores of the state without a permit from the commission’s Division of Law Enforcement (division). Section 327.41(4), F.S., was further amended to prohibit placement of any “regulatory markers” in, on, or over the waters or shores of the state without a permit from the division. Section 327.02(38), F.S., defines the phrase “waters of the state” to include all the inland lakes, rivers, and canals under the jurisdiction of the state. Therefore, the permitting requirements appear to apply to any inland lake and its associated canals, and governmental entities wishing to place a regulatory, safety, or navigation marker on an inland lake or associated canal must apply to the Division for a permit prior to placement of the marker. However, the statute does not define the terms “regulatory,” “safety,” or “navigation” marker.

Section 327.40(2)(c), F.S., authorized the Commission to adopt rules to implement the 2000 legislative changes to the waterway marker requirements. The commission adopted its rule revisions in 2001. In part, the rules:

- Provide design specifications for all markers placed in, on, or over the waters and shores of this state by adopting by reference the U.S. System;¹
- Prohibit placement of “any marker” in, on, or over the waters of the state or the shores thereof without a permit from the Division;²
- Establish application and review criteria and procedures for applications submitted to the Division;³
- Require all new markers and mooring buoys to conform to the U.S. System;
- Require all nonconforming markers to be brought into conformity by December 31, 2003, or be removed;
- Declare nonconforming markers to be a “nuisance” after December 31, 2003;
- Authorize Division law enforcement officers and other authorized law enforcement officers to remove nonconforming markers;⁴ and
- Establish permit conditions, including maintenance and inspection requirements.⁵

The Commission’s rules regarding waterway markers prohibit placement of all waterway markers on state waters without a permit issued by the Division, not just those markers designated as “regulatory,” “safety,” or navigational.”

¹ Fla. Admin. Code Rules 68D-23.102, 68D-23.107, 68D-23.108, 68D-23.109.

² Fla. Admin. Code R. 68D-23.104(1).

³ Fla. Admin. Code Rules 68D-23.104(2)-(5) and 68D-23.105.

⁴ Fla. Admin. Code Rules 68D-23.107(2)(e) and 68D-23.111, F.A.C.

⁵ Fla. Admin. Code Rules 68D-23.106 and 68D-23.110.

Federal Law and Rules

Federal law prohibits any person, public body or instrumentality from establishing, erecting, or maintaining any aid to maritime navigation in or adjacent to the “waters subject to the jurisdiction of the United States” without first obtaining authority from the United States Coast Guard.⁶ Federal regulations adopted by the United States Coast Guard require markers in those waters to comport with the U.S. System. As provided in 33 C.F.R 62.1, the primary objective of the U.S. System is to mark navigable channels and waterways, obstructions adjacent to those waterways, and obstructions in areas of general navigation which may not be anticipated.

Whether a particular body of water is under the jurisdiction of the United States depends upon several factors that are considered by the Coast Guard, which is responsible for determining the jurisdictional status of waterbodies. Those factors include whether the waters: (1) are subject to tidal influence; (2) are or have been used, or are to have been susceptible for use by themselves or in connection with other waters, as highways for substantial interstate or foreign commerce notwithstanding natural or man-made obstructions that require portage or (3) are capable of improvement at a reasonable cost to provide, by themselves or in connection with other waters, highways for substantial interstate or foreign commerce.⁷

III. Effect of Proposed Changes:

Section 1 amends s. 327.40, F.S., to require any new or replacement marker, after December 31, 2003, to conform with the United States Aids to Navigation System, 33 C.F.R. part 62. It provides that counties, municipalities, and other governmental entities do not require a permit from the commission to place informational markers on landlocked, inland lakes and their associated canals. Pursuant to the CS, the appearance of informational waterway markers placed by counties, municipalities, or other governmental entities, except for those markers intended to protect the public health and safety, is not required to conform to the United States Aids to Navigation System, 33 C.F.R. part 62, or any other uniform waterway marker system adopted by the Commission.

Notwithstanding the provisions of paragraph (c) in s. 327.40(2), F.S., as amended by this CS, counties, municipalities, and other governmental entities shall comply with federal laws and regulations when placing informational markers on federally regulated waters. The CS provides that the placement of any safety, navigational, or informational marker on state submerged lands does not subject such lands to the lease requirements of ch. 253, F.S.

Section 2 provides that this CS shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁶ 14 U.S.C 83.

⁷ See U.S. Coast Guard, Appendix 11 to Annex Y to CCGDSEVEN SOP, page Y-11-1.

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:

The CS provides that the placement of certain informational markers on landlocked inland lakes by counties, municipalities, or other governmental entities does not require a permit from the division. There could be a cost savings to these governmental entities if they are not required to replace all of the markers that were rendered nonconforming on December 31, 2003. This CS could also result in cost savings to the commission as they will no longer be required to review and approve permit applications from counties, municipalities, or other governmental entities for the placement of certain informational markers on inland lakes and their associated canals. Such a cost savings cannot be quantified at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

On January 14, 2004, Mr. J.B. Embres, Chief of the Planning and Marine Information/Waterways Management Section, Aids to Navigation Waterways Management Branch, United States Coast Guard, Seventh Coast Guard Division, provided the following comments, via e-mail, to the Commission regarding waterway markers in Florida:

This is to advise you of the Coast Guard's appreciation for the State of Florida's efforts in supporting the standardization of information/regulatory marks often referred to as signs. During the last decade there have been thousands of such marks/signs installed throughout the state both in Navigable Waters of the U.S. as well as inland bodies of water.

The Coast Guard is interested in the safety of boaters and the protection of the environment. The proliferation of boaters, many of whom have limited

education and or experience, combined with the myriad of rules and regulations established to protect "protected species" and the environment, with the associated requirement to establish signs for enforcement, has created potential hazards to the boaters as well as the species or environment that the signs are meant to protect.

It is important that there is uniformity on all of the waters of the state so when the boaters transit or trailer their boats from one body of water to another they will see the same sign, (shape, color, symbol and verbiage) so there would be little to no confusion. This uniformity allows for better understanding by the boaters and allows for better law enforcement.

The need for uniformity of aids to navigation which includes information regulatory marks/signs has been recognized by all of the maritime nations of the world who formed the International Association of Lighthouse Authorities with the purpose to establish uniformity of marks throughout the waters of the world. It is only through this process that a mariner can safely and effectively travel anywhere and feel secure in knowing that the representation placed in the water is the same and means the same thing regardless of what body of water he is transiting.

VIII. Amendments:

None.