

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 Regulated Industries Committee

BILL: CS/CS/SB's 1094 & 326

INTRODUCER: Regulated Industries Committee, Environmental Preservation and Conservation Committee and Senators Haridopolis and Constantine and others

SUBJECT: Gambling Vessels/Clean Ocean Act

DATE: April 15, 2008 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Branning	Kiger	EP	Fav/Combined CS
2.	Bedford	Imhof	RI	Fav/CS
3.			GA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill creates the "Clean Ocean Act". It provides definitions and requires the owner or operator of a gambling vessel to register with the Department of Environmental Protection (DEP). The registration is required to be executed under oath and transmitted electronically. The bill requires each waterfront-landing facility that is registered as a gambling vessel's berth to establish procedures for the release of waste from gambling vessels at the facility; make available a waste-management service; and collect a fee for the associated costs. It specifies that DEP shall consider certain information when estimating a facility's minimum waste-service demand. It requires a gambling vessel to report releases immediately. The bill provides penalties for violations of the act. It requires DEP to establish and collect fees to cover the costs associated with administering the Clean Ocean Act. The bill provides that certain releases are exempt from the act's provisions. It provides that the act does not apply to vessels of any branch of the U.S. Armed Services. DEP is required to adopt rules. This act does not apply to any gambling vessel that annually verifies to DEP that it operates a marine waste treatment system that produces sterile, clear, and odorless reuse water without generating solid waste and that eliminates the need to pump out or dump wastewater. It requires DEP to request certain amendments to Florida's Coastal Zone Management Program. It requires DEP to request the appropriate federal

agencies to prohibit the release of waste from any gambling vessel within the federal territorial waters off the shores of Florida.

The bill creates s. 376.25, Florida Statutes.

II. Present Situation:

Florida vessel registration and titling

Pursuant to s. 328.40, F.S., all vessels which operate in state waters must register with and obtain a certificate of title from the Department of Highway Safety and Motor Vehicles (DHSMV). The registration form requires specific vessel information such as the identification number, make and manufacturer, year of production, color, length, materials used in construction, type of propulsion, and the type of fuel used. Along with the completed registration form, a Manufacturer's Statement of Origin, or its equivalent form, must be submitted along with a registration fee.

Pollution Regulation

According to s.1, Art. II of the State Constitution, the state boundaries extend three geographic¹ miles into the Atlantic Ocean or the edge of the Gulf Stream whichever is the greater distance and three marine leagues (9 nautical miles)² into the Gulf of Mexico.

Section 376.041, F.S., generally prohibits the discharge of pollutants into or upon any coastal waters, estuaries, tidal flats, beaches, and lands adjoining the seacoast of the state. The term "discharge" as defined in s. 376.031, F.S., includes, but is not limited to, any spilling, leaking, seeping, pouring, emitting, emptying, or dumping which occurs within the territorial limits of the state or outside the territorial limits of the state and affects lands and waters within the territorial limits of the state. Penalties for discharging oil or other pollutants may be as much as \$50,000 per day. Violators are liable for cleanup costs, and can be required to compensate the state for any damage done to the state's natural resources.

Similarly, it is a violation of state law to discharge untreated sewage.³ Pursuant to s. 403.413(6), F.S., discharge of untreated sewage from a commercial vessel is presumptively done for a commercial purpose, and is a felony of the third degree.

Section 376.12, F.S., provides that any responsible party who permits or suffers a prohibited discharge or other polluting condition to take place within the state boundaries shall be liable for all costs of removal, containment, and abatement of a prohibited discharge, unless the responsible party is entitled to a limitation or defense under this section.

¹ A geographic mile is the equivalent of a nautical mile. <http://dictionary.reference.com/browse/geographic%20mile> (last visited April 10, 2008).

² See <http://dictionary.reference.com/browse/marine%20league> (last visited April 10, 2008).

³ ss. 327.53(4) and 403.413(5), F.S.

Section 376.121(1), F.S., requires DEP to assess and recover compensation from responsible parties for the injury or destruction of natural resources as a result of prohibited pollutant discharges.

Section 376.16(1), F.S., provides that it is unlawful for any person to violate any provision of the Pollutant Discharge Prevention and Control Act (ss. 376.011-376.21, F.S.,), or any rule or order of DEP made pursuant to the act. Also, this section provides for civil penalties.

Section 376.071, F.S., provides that any vessel operating in state waters with a storage capacity to carry 10,000 gallons or more of pollutants as fuel or cargo shall maintain adequate written ship-specific discharge prevention and control contingency plans.

Under the federal Clean Water Act⁴, the Environmental Protection Agency (EPA) has the authority to implement pollution control programs such as wastewater and water quality standards for industries and surface waters. Pursuant to the federal Clean Water Act, the discharge of any pollutant by any person shall be unlawful. The regulation of cruise ship pollution is covered under general water pollution laws which cover a wide variety of issues.

In 2004 and 2005, the Clean Cruise Ship Act was proposed by Congress. The purpose of the act was to establish national standards for discharges from cruise vessels into the waters of the United States, and for other purposes. Key provisions of the proposed act included⁵:

- Prohibiting discharges of sewage or other bilge materials within 12 miles of the U.S. shore;
- Providing for more enhanced inspections of discharge operations and equipment;
- Providing for whistleblower protection for employees who report noncompliance;
- Enacting stricter penalty provisions for violations; and
- Empowering citizens to commence civil actions against violators of the act.

According to the Florida Casino City website, there are 12 casino vessels which operate from the following Florida ports:

- Cape Canaveral — Sterling Casino Lines (Ambassador II)
- Fort Lauderdale — SeaEscape Island Adventure
- Fort Myers Beach — Big M Casino, Big Cat Express
- Key Largo — SunCruz Casino
- Mayport — SunCruz Casino
- Miami — Discovery Sun
- Ponce Inlet — SunCruz Casino — Daytona Beach
- Port Canaveral — SunCruz Casino
- Port Richey — SunCruz Casino
- Riviera Beach — Palm Beach Princess; SunCruz Casino — Palm Beach⁶

⁴ Clean Water Act of 1977, Pub. L. No. 95-217, 91 Stat. 1566, codified as amended in 33 U.S.C. ss. 1251 et seq.

⁵ See H.R. 4101 by Rep. Farr and S. 2271 by Sen. Durbin (108th Congress) and H.R. 1636 by Rep. Ferr and S. 793 by Sen. Durbin (109th Congress).

⁶ <http://florida.casinocity.com/> (last visited April 10, 2008).

In addition, there are more than 100 cruise ships owned and operated by a variety of cruise lines, some of which host gambling activities. Many cruise and casino-only vessels use both ports and marinas for docking and waste disposal purposes. The DEP has an operating agreement with the Florida-Caribbean Cruise Association and the International Council of Cruise Lines⁷ under which cruise ships implement certain waste and wastewater management practices. Casino-only vessels are not party to this agreement.

The Florida Caribbean Cruise Association (FCCA) is a non-profit trade association representing 12 Member Lines operating almost 100 vessels in Florida, the Caribbean, and Mexican Waters. The FCCA's mandate is to provide a forum for discussion on legislation, tourism, development, ports, safety, security and other cruise industry issues.⁸

The International Council of Cruise Lines (ICCL) is also a non-profit trade organization that represents the interests of 15 passenger cruise lines in the North American cruise market and a growing number of important cruise industry strategic business partners. The mission of the ICCL is to participate in the regulatory and policy development process and promote all measures that foster a safe, secure and healthy cruise ship environment. Under the direction of the chief executives of its member lines, ICCL advocates industry positions to domestic and international regulatory organizations, policymakers and other industry partners. The ICCL actively monitors international shipping policy and develops recommendations to its membership on a wide variety of issues.⁹

The Florida Ports Council conducted research on the capability of Florida's deepwater seaports to pump-out sewage, oily bilge water, untreated or treated gray water, untreated or treated black water, hazardous waste, or biomedical waste. The following information was reported¹⁰:

- Most seaports provide waste disposal capabilities to vessels anchored at their facilities through tank trucks operated by licensed private waste disposal firms.
- Liquid waste materials, with the exception of hazardous and biomedical waste, are pumped through hoses from ships to tank trucks.
- Sewage and gray water are either disposed of at a port's sanitary waste water system (if a system is located at the port) or hauled by the waste disposal firm to an off-site location.
- Black water, as well, is hauled by the waste disposal firm to an off-site location.

Pursuant to s. 381.0098, F.S., the Department of Health regulates the packaging, transport, storage, and treatment of biomedical waste. DEP regulates onsite and offsite incineration and disposal of biomedical waste. Further, the Department of Health has the exclusive authority to establish treatment efficacy standards for biomedical waste and the DEP has the exclusive authority to establish statewide standards relating to environmental impacts. Gambling vessels

⁷ www.dep.state.fl.us/legal/Operating_Agreement/operating_agreements.htm (last visited April 10, 2008)

⁸ Florida Caribbean Cruise Association <http://www.f-cca.com/> (last visited April 10, 2008)

⁹ International Council for Cruise Lines <http://www.iccl.org/> (last visited April 10, 2008)

¹⁰ Memorandum from the Florida Ports Council on HB 313, February 2, 2006. (on file with the Senate Committee on Environmental Preservation and Conservation).

with medical clinics are biomedical waste generators and subject to Department of Health regulations.

III. Effect of Proposed Changes:

The bill creates s. 376.25, F.S., which establishes the "Clean Ocean Act." The following terms are defined: "berth"; "coastline"; "coastal waters"; "department"; "gambling vessel"; "hazardous waste"; "oily bilge water"; "release"; "sewage"; "treated blackwater"; "treated graywater"; "untreated blackwater"; "untreated graywater"; and "waste."

For each calendar year in which the owner or operator of a gambling vessel intends to operate, or cause or allow to be operated, a gambling vessel in coastal waters, the owner or operator of the vessel shall register with DEP. The registration shall be completed before the gambling vessel enters the coastal waters of the state in that calendar year. The registration must include the following information:

- The vessel owner's business name and vessel operator's business name for each gambling vessel.
- The postal address, e-mail address, telephone number, and facsimile number of the principal place of each business.
- The name and address of an agent for service of process for each business.
- The name or call sign, port of registry, berth location, passenger and crew capacity, and weekly schedule of when passengers are to be onboard for each of the owner's or operator's vessels scheduled to be in coastal waters during the calendar year and after the date of registration. If passengers embark or disembark a gambling vessel from another vessel while the gambling vessel is in coastal waters but not moored to a waterfront landing, a waterfront-landing facility in this state where the other vessel moors while such passengers embark or disembark for the gambling-vessel voyage must also be registered as a berth location of the gambling vessel.
- A description of all waste management systems, including systems for the treatment, storage, or disposal of waste for each gambling vessel including, but not limited to, system type, design, operation, location, and capacity of all discharge pipes and valves, and the number and capacity of all storage areas and holding tanks.

The registration is required to be executed under oath. Upon request of DEP, registration information will be submitted electronically. The registrant will promptly advise DEP of a change in the information provided, during a valid registration period.

The owner of each waterfront-landing facility that is registered as a gambling vessel's berth location will:

- Establish procedures for the release of waste from gambling vessels at the facility;
- Make available a waste-management service that has the capability, at a minimum, of handling and disposing of the facility's minimum waste-service demand as calculated by DEP; and

- Collect a fee not to exceed the costs associated with making such waste-management service available from each gambling vessel for which the waterfront-landing facility is a registered berth.

DEP will maintain on its website a current estimate of the minimum waste-service demand for each waterfront-landing facility that is a registered berth for a gambling vessel. The minimum waste-service demand is the volume of waste that is reasonably expected to be released at the facility over a calendar year from gambling vessels that have a registered berth at the facility. In estimating a facility's minimum waste-service demand, the department will consider for each gambling vessel that has a registered berth at the facility:

- The registered capacity of the vessel's systems for treating, holding, or disposing of waste; and
- Other appropriate information, including, but not limited to other information provided during registration of the vessel.

If a gambling vessel releases any waste into coastal waters, the owner or operator shall immediately, but no later than 24 hours after the release, notify DEP of the release and provide certain specified information.

A person who violates the Clean Ocean Act is subject to a civil penalty of not more than \$50,000 for each violation. This civil penalty is separate from, and in addition to, any other civil penalty imposed for a separate violation under this act or any other law.

In determining the amount of a civil penalty to be imposed, DEP will consider:

- The degree of toxicity and volume of the release;
- The extent of harm caused by the violation;
- Whether the effects of the violation can be reversed or mitigated;
- With respect to the defendant, the ability to pay, the effect of a civil penalty on the ability to continue in business, all voluntary cleanup efforts undertaken in the past, the prior history of violations, the gravity of the behavior, and the economic benefit, if any, resulting from the violation; and
- All other matters DEP determines justice may require.

DEP will establish and collect fees that are adequate to cover the entire cost to the department of developing and implementing its responsibilities, as required or authorized under the Clean Ocean Act, regarding registration of gambling vessels, tracking of releases, compliance and enforcement.

The act does not apply to releases made for the purpose of securing the safety of the gambling vessel or saving life at sea if all reasonable precautions have been taken for the purpose of preventing or minimizing the release.

The act is intended to supplement and not conflict with federal law. The act does not apply to vessels of any branch of the U.S. Armed Services. The act does not require a person who holds a

valid federal National Pollutant Discharge Elimination System (NPDES) permit which governs releases from a gambling vessel to violate such permit.

This act does not apply to any gambling vessel that annually verifies to DEP that it operates a marine waste treatment system that produces sterile, clear, and odorless reuse water without generating solid waste and that eliminates the need to pump out or dump wastewater.

DEP will adopt rules to implement the act's provisions. DEP is required to submit a request to the U.S. Secretary of Commerce proposing that Florida's Coastal Zone Management Program be amended to include the provisions of this act. The request must be submitted by August 1, 2008, and must comply with the federal Coastal Zone Management Act¹¹ and implementing regulations. If the Secretary of Commerce approves the amendment to include this section in Florida's Coastal Zone Management Program, the DEP will request the appropriate federal agencies to prohibit the release of waste from any gambling vessel in any waters which could affect the coastal waters of Florida. Independent of the process to amend Florida's Coastal Zone Management Program, the DEP shall request the appropriate federal agencies to prohibit the release of waste from any gambling vessel within the federal territorial waters off the shores of Florida.

The bill provides an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The owner of each waterfront-landing facility will collect a fee not to exceed the costs associated with making a waste-management service available from each gambling vessel for which the waterfront-landing facility is a registered berth.

DEP will establish and collect fees that are adequate to cover the entire cost to the department of developing and implementing its responsibilities, as required or authorized

¹¹ Coastal Zone Management Act of 1972, Pub. L. 89-454, title III, s. 302, as added Pub. L. 92-583, Oct. 27, 1972, 86 Stat. 1280; codified as amended in 16 U.S.C. ss. 1451. *et seq.*

under the Clean Ocean Act, which concern registration of gambling vessels, tracking of releases, compliance with the act and enforcement of the act.

B. Private Sector Impact:

The owners of affected casino gambling vessels would have to pay the costs of compiling and providing registration information to DEP and the costs associated with removing the vessel from state waters every year in order to meet the registration conditions. The registration information required under this bill should be readily available as it is used for other purposes and relatively inexpensive to provide. The owners would have to pay whatever fees the berthing facilities charge to dispose of the wastes that their vessels release at those facilities. Those costs are not known at this time.

The owners of affected gambling vessels would have to pay a registration fee to DEP to cover the costs associated with the program. The amount of that fee cannot be determined at this time.

To the extent that the requirements are applied equally on all vessels covered by the act, there would not be a competitive advantage or disadvantage to any one gambling vessel covered by the act. Cruise ships are not included in the definition of "gambling vessels" and are not subject to the provisions of this bill.

C. Government Sector Impact:

DEP would have to develop a gambling vessel registry under this bill. The cost to develop such a system is not known at this time. DEP would have to adopt rules to implement the provisions of the bill and establish a fee to cover the costs associated with implementing and administering the provisions of the bill. The fee has not yet been determined. DEP would have to determine the costs associated with the program. Those costs have not yet been determined.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation Committee on March 27, 2008:

The committee substitute combines SB 1094 and SB 326 and is the language contained in SB 1094 with the following modification. The act does not apply to any gambling vessel that annually verifies to the DEP that it operates a marine waste treatment system that

produces sterile, clear, and odorless reuse water without generating solid waste and that eliminates the need to pump out or dump wastewater.

CS by Regulated Industries Committee on April 15, 2008:

The committee substitute removes the definition of biomedical waste. It also removes biomedical waste from the definition of waste.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
