

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 847 Vessel Regulations

SPONSOR(S): Infrastructure Strategies Committee and Water Quality, Supply & Treatment Subcommittee, Stark and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1082

FINAL HOUSE FLOOR ACTION: 113 Y's

2 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/CS/HB 847 passed the House on April 26, 2023, and subsequently passed the Senate on May 2, 2023.

The Fish and Wildlife Conservation Commission (FWC), created by Article IV, section 9, of the Florida Constitution, is the agency responsible for regulating boating in the state. This responsibility includes enforcing boating rules and regulations, and managing public water and access to the waters.

Boating-restricted areas, which restrict vessel speeds and traffic, may be established on the waters of the state for any purpose necessary to protect the safety of the public. The restrictions must be necessary due to boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion, or other navigational hazards or to protect seagrasses on privately-owned submerged lands.

The Department of Environmental Protection (DEP) regulates activities in, on, or over surface waters, as well as any activity that alters surface water flows, through environmental resource permits (ERPs). ERPs are required for development or construction activities typically involving the dredging or filling of surface waters, construction of flood protection facilities, building dams or reservoirs, and any other activities that affect state waters. Current law provides exceptions from ERP permitting for certain types of projects. Generally, these permit exceptions restrict how the project is undertaken, provide size and location requirements, or provide for maintenance, repair, or replacement of existing structures. An exemption currently exists for the construction, installation, operation, or maintenance of floating vessel platforms or floating boat lifts that meet certain requirements.

The bill allows a municipality or county to adopt an ordinance that establishes a slow speed, minimum wake boating-restricted area, if the area is within 500 feet of a sewage pumpout station at any public or private nonresidential marina if the sewage pumpout station is within 100 feet of the marked channel of the Florida Intracoastal Waterway.

The bill revises the ERP permitting exemption for floating vessel platforms and floating boat lifts to specify local governments may only require a one-time registration for a floating vessel platform where the owner of such platform self-certifies compliance with the ERP exemption criteria to ensure compliance with ordinances, codes, state-delegated or state-mandated plans or programs, which may not be applied more stringently than, or inconsistent with, the ERP exemption criteria for certain floating vessel platforms.

The bill does not appear to have a fiscal impact on state or local government.

The bill was approved by the Governor on May 25, 2023, ch. 2023-151, L.O.F., and will become effective on July 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Fish and Wildlife Conservation Commission

The Fish and Wildlife Conservation Commission (FWC), created by Article IV, section 9, of the Florida Constitution, is responsible for regulating, managing, protecting, and conserving the state's fish and wildlife resources. FWC is governed by a board of seven members who are appointed by the Governor and confirmed by the Senate.¹ Pursuant to its constitutional authority, FWC exercises the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life.²

FWC is also the agency responsible for regulating boating in the state. Through its Division of Law Enforcement, FWC manages the state's waterways to ensure boating safety for residents and visitors to the state.³ This responsibility includes enforcing boating rules and regulations, coordinating boating safety campaigns and education, managing public water and access to the waters, conducting boating accident investigations, identifying and removing derelict vessels, and investigating vessel theft and title fraud.⁴

Boating Restricted Areas

Boating-restricted areas, which restrict vessel speeds and traffic, may be established on the waters of the state for any purpose necessary to protect the safety of the public.⁵ The restrictions must be necessary due to "boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion, or other navigational hazards or to protect seagrasses on privately-owned submerged lands."⁶

Local governments are generally prohibited from regulating any vessel upon the Florida Intracoastal Waterway.⁷ However, local governments have been delegated authority to establish certain boating-restricted areas by ordinance, including in the portion of the Florida Intracoastal Waterway that is within their jurisdiction.⁸

A municipality or county may adopt an ordinance that establishes an idle speed, no wake boating-restricted area, if the area is:

- Within 500 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways more than 300 feet in width or within 300 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways not exceeding 300 feet in width.
- Within 500 feet of fuel pumps or dispensers at any marine fueling facility that sells motor fuel to the general boating public on waterways more than 300 feet in width or within 300 feet of the

¹ Art. IV, s. 9, Fla. Const.

² *Id.*

³ Fish and Wildlife Conservation Commission (FWC), *Boating*, <https://myfwc.com/boating/> (last visited Mar. 22, 2023).

⁴ FWC, *Law Enforcement*, <https://myfwc.com/about/inside-fwc/le/> (last visited Feb. 23, 2023). See s. 327.70(1) and (4), F.S.

⁵ S. 327.46(1), F.S.

⁶ *Id.*

⁷ S. 327.60(2)(c), F.S.; "Florida Intracoastal Waterway" means the Atlantic Intracoastal Waterway, the Georgia state line north of Fernandina to Miami; the Port Canaveral lock and canal to the Atlantic Intracoastal Waterway; the Atlantic Intracoastal Waterway, Miami to Key West; the Okeechobee Waterway, Stuart to Fort Myers; the St. Johns River, Jacksonville to Sanford; the Gulf Intracoastal Waterway, Anclote to Fort Myers; the Gulf Intracoastal Waterway, Carrabelle to Tampa Bay; Carrabelle to Anclote open bay section, using the Gulf of Mexico; the Gulf Intracoastal Waterway, Carrabelle to the Alabama state line west of Pensacola; and the Apalachicola, Chattahoochee, and Flint Rivers in Florida. S. 327.02(15), F.S.

⁸ S. 327.46(1)(b)-(c), F.S.

fuel pumps or dispensers at any licensed terminal facility that sells motor fuel to the general boating public on waterways not exceeding 300 feet in width.

- Inside or within 300 feet of any lock structure.⁹

A municipality or county may adopt an ordinance that establishes a slow speed, minimum wake boating-restricted area, if the area is:

- Within 300 feet of any bridge fender system.
- Within 300 feet of any bridge span presenting vertical clearance of less than 25 feet or a horizontal clearance of less than 100 feet.
- On a creek, stream, canal, or similar linear waterway if the waterway is less than 75 feet in width from shoreline to shoreline.
- On a lake or pond of less than 10 acres in total surface area.
- Within the boundaries of a permitted public mooring field and a buffer around the mooring field of up to 100 feet.¹⁰

A municipality or county may adopt an ordinance that establishes a vessel-exclusion zone if the area is:

- Designated as a public bathing beach or swim area, except that such areas may not be created on waters that include any portion of the Florida Intracoastal Waterway or that are within 100 feet of the marked channel of the Florida Intracoastal Waterway.
- Within 300 feet of a dam, spillway, or flood control structure.¹¹

It is unlawful for any person to operate a vessel in a prohibited manner or to carry on any prohibited activity within a boating-restricted area which has been clearly marked by regulatory markers as an authorized restricted area.¹² These restrictions do not apply in the case of an emergency or to a law enforcement, firefighting, or rescue vessel owned or operated by a government entity.¹³

Pumpout stations

Pumpout stations are machines that pull sewage from the waste holding tank of a boat.¹⁴ There are public and private pumpout stations.¹⁵ It is important to have a sufficient supply of pumpout stations because a lack of such facilities for recreational boaters leads to sewage being dumped into waters.¹⁶ Raw or partially-treated boat sewage contains dangerous viruses and bacteria,¹⁷ and it is particularly important to prevent the spread of such sewage.¹⁸

The federal Clean Vessel Act was signed into law in 1992 and it prohibits individuals from discharging raw sewage from vessels into fresh water or coastal saltwater.¹⁹ The act established the Clean Vessel Act Grant Program, which is housed in the U.S. Fish and Wildlife Service and administered in Florida by the Department of Environmental Protection (DEP), to fund sewage disposal facilities.²⁰ Since 1994,

⁹ S. 327.46(1)(b)1., F.S.

¹⁰ S. 327.46 (1)(b)2., F.S.

¹¹ S. 327.46(1)(b)3., F.S.

¹² S. 327.46(3), F.S.

¹³ S. 327.46(4), F.S.

¹⁴ Michigan Pumpouts, *Pumpout FAQs*, <https://www.michiganseagrant.org/michiganpumpouts/frequently-asked-questions/> (last visited Apr. 14, 2023).

¹⁵ UF, IFAS Extension, *Florida Sea Grant Extension & Education Program* (last updated Oct. 27, 2022), <https://flseagrant.ifas.ufl.edu/clean-boating/where-to-pumpout/> (last visited Apr. 16, 2023).

¹⁶ Department of Environmental Protection (DEP), *About the Clean Vessel Act* (last updated Aug. 5, 2022), <https://floridadep.gov/rcp/cva/content/about-clean-vessel-act> (last visited Apr. 14, 2023).

¹⁷ Department of Ecology, State of Washington, *Pump Out, Don't Dump Out – Help Protect Puget Sound!* (May 19, 2021), <https://ecology.wa.gov/Blog/Posts/May-2021/Pump-out-dont-dump-out-Help-protect-Puget-Sound> (last visited Apr. 14, 2023).

¹⁸ U.S. Environmental Protection Agency, *A Recreational Boater's Guide to Vessel Sewage*, p.3, https://www.epa.gov/sites/default/files/2021-06/documents/a_recreational_boaters_guide_to_vessel_sewage.pdf.

¹⁹ DEP, *Clean Vessel Act Grant Program*, <https://floridadep.gov/RCP/CVA> (last visited Apr. 16, 2023).

²⁰ *Id.*

more than 570 pumpout stations have been installed across Florida with funding from the Clean Vessel Act Grant Program.²¹

Environmental Resource Permits

DEP regulates activities in, on, or over surface waters, as well as any activity that alters surface water flows, through environmental resource permits (ERPs). ERPs are required for development or construction activities typically involving the dredging or filling of surface waters, construction of flood protection facilities, building dams or reservoirs, and any other activities that affect state waters.²² ERP applications are processed by either DEP or one of the state's water management districts (WMDs) in accordance with the division of responsibilities specified in operating agreements between DEP and the WMDs.²³

ERP Exceptions

Current law provides exceptions from ERP²⁴ permitting for certain types of projects.²⁵ Generally, these permit exceptions restrict how the project is undertaken, provide size and location requirements, or provide for maintenance, repair, or replacement of existing structures.²⁶ For example, state law provides exceptions from ERP permitting for the installation of overhead transmission lines with support structures that are not constructed in waters of the state and that do not create a navigational hazard; the installation and maintenance of certain boat ramps on artificial bodies of water where navigational access is provided; and the construction of private docks of 1,000 square feet or less of over-water surface area and seawalls in artificially created waterways when such construction will not violate existing water quality standards, impede navigation, or affect flood control.²⁷ These exceptions do not relieve an applicant from obtaining permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund (Board) or a WMD or from complying with local pollution control programs or other requirements of local governments.²⁸

ERP Exceptions for Docks

Included among the projects that are exempt from ERP permitting requirements is the installation and repair of mooring pilings and dolphins associated with private docking facilities or piers; the installation of private docks, piers, and recreational docking facilities; or the installation of piers and recreational docking facilities of local governmental entities when the entity's activities will not take place in any manatee habitat.²⁹ This exemption applies when the dock:

- Has 500 square feet or less of over-water surface area and is located in an area designated as an Outstanding Florida Water or has 1,000 square feet or less of over-water surface area and is not located in an area that is designated as an Outstanding Florida Water;
- Is constructed on or held in place by pilings or is a floating dock constructed so as not to involve filling or dredging other than that necessary to install the pilings;
- Does not substantially impede the flow of water or create a navigational hazard;
- Is used for recreational, noncommercial activities associated with the mooring or storage of boats and boat paraphernalia; and

²¹ DEP, *supra* note 16. (Each year, DEP may apply to the U.S. Fish and Wildlife Service for funding of up to 75% of all approved projects, with matching funds being supplied by the state, local governments, private businesses or associations.)

²² South Florida Water Management District, *Environmental Resource Permits*, <https://www.sfwmd.gov/doing-business-with-us/permits/environmental-resource-permits> (last visited Mar. 1, 2023).

²³ DEP, *Submerged Lands and Environmental Resources Coordination Program*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination> (last visited Mar. 1, 2023).

²⁴ See chs. 373 and 403, F.S.

²⁵ S. 403.813(1), F.S.

²⁶ See s. 403.813(1)(a)-(v), F.S.; see also r. 62-330.051, F.A.C.

²⁷ *Id.*

²⁸ S. 403.813(1), F.S.

²⁹ S. 403.813(1)(b), F.S.

- Is the sole dock constructed pursuant to this exemption as measured along the shoreline for a distance of 65 feet, unless the parcel of land or individual lot as platted is less than 65 feet in length along the shoreline, in which case one exempt dock may be allowed per parcel or lot.³⁰

ERP Exceptions for Floating Structures

Additionally, there is an ERP permit exemption for the construction, installation, operation, or maintenance of floating vessel platforms or floating boat lifts, provided that such structures:

- Float at all times in the water for the sole purpose of supporting a vessel so that the vessel is out of the water when not in use;
- Are wholly contained within a previously permitted boat slip or do not exceed a combined total of 500 square feet, or 200 square feet in an Outstanding Florida Water, when associated with a dock that is exempt from ERP permitting or associated with a permitted dock with no defined boat slip or attached to a bulkhead on a parcel of land where there is no other docking structure;
- Are not used for any commercial purpose or for mooring vessels that remain in the water when not in use, and do not substantially impede the flow of water, create a navigational hazard, or unreasonably infringe upon the riparian rights of adjacent property owners;
- Are constructed and used so as to minimize the adverse impacts to submerged lands, wetlands, shellfish areas, aquatic plant and animal species, and other biological communities, including locating such structures in areas where seagrasses are least dense adjacent to the dock or bulkhead; and
- Are not constructed in areas specifically prohibited for boat mooring under conditions of an ERP permit or other form of authorization issued by a local government.³¹

Structures that meet this exemption criteria are typically made of lightweight materials that float and do not have posts or structures that disturb the sovereign submerged lands below.

Structures that qualify for this exemption are not required to obtain permission to use or occupy lands owned by the Board, and, with certain exceptions, may not be subject to any more stringent permitting requirements, registration requirements, or other regulation by any local government.³² Local governments may require either permitting or one-time registration of floating vessel platforms.³³

Effect of the Bill

The bill allows a municipality or county to adopt an ordinance that establishes a slow speed, minimum wake boating-restricted area if the area is within 500 feet of a sewage pumpout station at any public or private nonresidential marina if the sewage pumpout station is within 100 feet of the marked channel of the Intracoastal Waterway.

The bill revises the ERP permitting exemption for floating vessel platforms and floating boat lifts to specify local governments may only require a one-time registration for a floating vessel platform where the owner of such platform self-certifies compliance with the ERP exemption criteria to ensure compliance with ordinances, codes, state-delegated or state-mandated plans or programs, which may not be applied more stringently than, or inconsistent with, the ERP exemption criteria for certain floating vessel platforms.

³⁰ *Id.*

³¹ S. 403.813(1)(s), F.S.; Rule 62-330.428, F.A.C.

³² *Id.*

³³ S. 403.813(1)(s), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.