

**STORAGE NAME:** h3485s1.wrm

**DATE:** March 23, 1998

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
WATER AND RESOURCE MANAGEMENT  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** CS/HB 3485

**RELATING TO:** The powers and duties of the Governor

**SPONSOR(S):** Committee on Water and Resource Management and Representative Safley

**COMPANION BILL(S):** SB 152 (s)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) WATER AND RESOURCE MANAGEMENT YEAS 11 NAYS 1
  - (2)
  - (3)
  - (4)
  - (5)
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**I. SUMMARY:**

CS/HB 3485 would prohibit the Governor from nominating for appointment to any of the federal fisheries management councils, any person who is or has been at any time during the 24 months preceding the nomination, a lobbyist, as defined in s. 112.3148 F.S., or paid employees, for any entity of any kind whose interests are or could be affected by actions or decisions of the Councils.

Section 112.3148 (1)(b) 1. F.S. defines "lobbyist" as "any natural person who for compensation, seeks, or sought during the preceding 12 months, to influence the governmental decision making of a reporting individual or procurement employee or his or her agency or seeks, or sought during the preceding 12 months, to encourage the passage, defeat, or modification of any proposal or recommendation by the reporting individual or procurement employee or his or her agency."

CS/HB 3485 would take effect January 1, 1999.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Through the Magnuson-Stevens Fishery Conservation and Management Act, Congress established regional fishery management councils "to exercise sound judgement in the stewardship of fishery resources through the preparation, monitoring, and revision of such plans under circumstances (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States;" 16 U.S.C. s. 1852(b)(5) (1994). There are eight such councils in the United States. Florida sends representatives to serve on two of the eight: the South Atlantic Council and the Gulf of Mexico Council. The majority of the members of both of these Councils have some specific ties to either a recreational or commercial fishery business.

The guidelines for appointments to and the duties of the councils are in United States Code. The Secretary of Commerce (Secretary) appoints members to the councils "who, by reason of their occupational or other experience, scientific expertise, or training, are knowledgeable regarding the conservation and management, or the commercial or recreational harvest, of the fishery resources of the geographical area concerned." 16 U.S.C. s. 1852(b)(2)(A) (1994). "The Secretary, in making appointments under this section, shall, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries under the jurisdiction of the Council." U.S.C.S. s. 1852(b)(2)(B) (1997 Supp.).

Some of the Secretary's appointments are selected from lists of applicants submitted by the Governors of the states represented by each council. "A Governor may not submit the names of individuals to the Secretary for appointment unless the Governor...has, to the extent practicable, first consulted with representatives of the commercial and recreational fishing interest of the State regarding those individuals." 16 U.S.C. s. 1852(b)(2)(C) (1994). The list of nominees "shall include the names and pertinent biographical data of not less than three individuals for each applicable vacancy and shall be accompanied by a statement by the Governor explaining how each such individual meets the requirements..." 16 U.S.C. s. 1852(b)(2)(C) (1994). The Secretary shall then review the list, and if any individual on the list is not qualified, the Secretary will notify the Governor, who will then provide a revised list.

In 1996, revisions were made to 16 U.S.C. s. 1852 to address the issue of conflicts of interest. Each nominee "must disclose any financial interest held by that individual, the spouse, minor child, or partner of that individual, and any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee in any harvesting, processing, or marketing activity that is being, or will be, undertaken within any fishery over which the Council concerned has jurisdiction." 16 U.S.C.S. s. 1852(j)(2) (1984 and Supp. 1997). Council members are prohibited from voting on any Council decision that might have a "significant and predictable effect" on that member's interest. A decision is "...considered to have a significant and predictable effect on a financial interest if there is a close causal link between the Council decision and an expected and substantially disproportionate benefit to the financial interest of the affected individual relative to the financial interests of other participants in the same

gear type or sector of the fishery. At the request of an affected individual, or upon the initiative of the appropriate designated official, the designated official shall make a determination for the record whether a Council decision would have a significant and predictable effect on a financial interest." 16 U.S.C.S. 1852(j)(7)(A) (1984 and Supp. 1997).

Though these requirements are currently in U.S. Code, the second one has not yet become effective. The reason is 16 U.S.C.S. s. 1852(j)(7)(F), which states that the Secretary "...by not later than one year from the date of enactment of the Sustainable Fisheries Act [enacted Oct. 11, 1996], shall promulgate regulations which prohibit an affected individual from voting in accordance with subparagraph (A)." (Subparagraph (A) is quoted in the preceding paragraph.) There was a proposal that would have carried out this direction, but due to objections from the Coastal Conservation Association (CCA) and the Office of Government Ethics, the proposal was withdrawn. Those objections related to the way in which the General Counsel of the National Oceanic and Atmospheric Association (NOAA) interpreted 16 U.S.C.S. 1852(j)(7)(A) for the Secretary, National Marine Fishery Service, and therefore the councils. The interpretation came from NOAA in response to a specific request, from CCA, for the voting status of a member of the South Atlantic Fishery Management Council.

Some recent specific concerns about the nomination and voting of council members, have involved the nomination and subsequent appointment of John Sanchez to the South Atlantic Fishery Management Council. Mr. Sanchez serves as the executive director of the Monroe County Commercial Fishermen, Inc. He is also a registered lobbyist for that organization. Due to those associations, CCA has publicly stated that Mr. Sanchez should not have voted on a rule that would have affected Monroe County fishermen. The rule, which failed to pass, would have prohibited the sale of amberjack during the spawning months of March, April, and May. Because of that vote, CCA Florida requested a determination on Mr. Sanchez's voting status. That request was denied by the NOAA General Counsel for the following reasons:

- ◆ Based on the interpretation of the General Counsel, a member of the council who also represents an association is not disqualified "from voting on a Council decision that has significant and predictable effect on the financial interest of the association members."
- ◆ It also was noted that the voter recusal amendment was not in place at the time of the controversial vote which occurred in August 1997. The rule does not apply until the effective date of the final regulations implementing the amendment [16 U.S.C.S. s. 1852(j)(7)(A)]. That regulation was to be published in October 1997, but at this time a final version of the rule is not yet in place.

**B. EFFECT OF PROPOSED CHANGES:**

CS/HB 3485 prohibits the Governor from nominating for appointment to a federal fisheries management council any person who is or has been a lobbyist, as defined in s. 112.3148, F.S., or paid employees, at any time during the 24 months preceding the nomination, for any entity whose interest could be affected by actions or decisions of the Council.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

- b. Does the bill require or authorize an increase in any fees?

N/A

- c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

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5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

**D. STATUTE(S) AFFECTED:**

CS/HB 3485 amends section 14.23 F.S., creating subsection (4).

**E. SECTION-BY-SECTION RESEARCH:**

Section 1: Creates subsection (4) of 14.23 F.S. prohibiting the Governor from nominating for appointment to a federal fisheries management council any person who is or has been a lobbyist, or paid employees, as defined in s. 112.3148, F.S., at any time during the 24 months preceding the nomination with any entity whose interest could be affected by actions or decisions of the Council.

Section 2: Provides that the bill shall take effect January 1, 1999.

**III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:**

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:**

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision is not applicable to an analysis of CS/HB 3485 because the bill does not require cities or counties to expend funds, or take actions which require the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the revenue raising authority of local governments.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

N/A



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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 17, 1998, Representative Safley offered and the Committee on Water and Resource Management voted to adopt an amendment to HB 3485. The amendment prohibits the governor from nominating, for appointment to any of the federal fisheries management councils, paid employees of any entity of any kind whose interest are or could be affected by actions or decisions of the Councils.

VII. SIGNATURES:

COMMITTEE ON WATER AND RESOURCE MANAGEMENT:

Prepared by:

Legislative Research Director:

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Sarah J. Hodges

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Joyce Pugh